

**Oregon State Bar**  
**Meeting of the Board of Governors**  
 November 19, 2016  
 Timberline Lodge, Timberline, OR  
**Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00pm on November 19, 2016.  
 Items on the agenda will not necessarily be discussed in the order as shown.*

**Saturday, November 19, 2016, 1:00pm**

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

**2. 2017 President & President-elect Elections**

- |    |  |        |  |
|----|--|--------|--|
| A. | Confirmation of Vanessa Nordyke for 2017 President-elect [Mr. Levelle] | Inform |  |
| B. | Confirmation of Michael Levelle as 2017 OSB President [Mr. Heysell]    | Inform |  |

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

- |    |  |        |          |
|----|--|--------|----------|
| A. | Policy & Governance [Mr. Levelle]                            |        |          |
| 1. | Diversity & Inclusion Programs Overview                      | Inform | Exhibit  |
| 2. | OSB Strategic Action Plan [Exhibit 2015 Program Evaluations] | Action | Exhibit  |
| B. | Board Development Committee [Ms. Nordyke]                    |        |          |
| 1. | Appointments to Bar Groups and Affiliated Boards             | Action | Exhibits |
| C. | Budget & Finance Committee [Mr. Mansfield]                   |        |          |
| 1. | 2017 OSB Budget Report                                       | Action | Exhibit  |
| 2. | Audit Report – OSB Financial Statements 2014-2015            | Inform | Exhibit  |
| D. | Public Affairs Committee [Mr. Ross]                          |        |          |
| 1. | Legislative Update   | Inform |          |
| 2. | Adoption of Priorities                                       | Action | Exhibit  |

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

- |    |   |        |         |
|----|---|--------|---------|
| A. | August 31, 2016 Financial Statements                              | Inform | Exhibit |
| B. | 2017 Pro Bono Plan Revisions                                      | Action | Exhibit |
| C. | 2017 Budget   |        |         |
| 1. | Revision to PLF Policy 5.200(I) Investment Portfolio Reallocation | Action | Exhibit |
| D. | Excess Program  |        |         |
| 1. | General Update  | Inform |         |
| 2. | Revisions to PLF Policies 7.300, 7.600, and 4.350                 | Action | Exhibit |
| 3. | Approve 2017 Excess Base Rate                                     | Action | Exhibit |

**5. OSB Committees, Sections, Councils and Divisions**

- |    |  |        |         |
|----|--|--------|---------|
| A. | Proposed Changes to Bar Rules [Ms. Evans]        | Action | Exhibit |
| B. | Oregon New Lawyers Division Report [Mr. Andries] | Inform | Exhibit |

- |    |   |        |         |
|----|---|--------|---------|
| C. | LRAP Advisory Committee                             | Action | Exhibit |
| D. | New Lawyer Mentoring Program Committee Sunset       | Action | Exhibit |
| E. | Client Security Fund Committee [Ms. Hirschbiel]     |        |         |
| 1. | Award Recommendation                                |        |         |
| a) | FERRUA (Lopez-Diaz) 2016-35                         | Action | Exhibit |
| b) | GERBER (Shorb) 2016-40                              | Action | Exhibit |
| c) | MILSTEIN (Connolly) 2015-31                         | Action | Exhibit |
| 2. | Request for Review                                  |        |         |
| a) | HAWES (Sansome) 2016-23                             | Action | Exhibit |
| b) | McCART (Mandelberg) 2016-30                         | Action | Exhibit |
| 3. | CSF Financial Reports and Claims Paid               | Inform | Exhibit |
| F. | Legal Ethics Committee [Ms. Hirschbiel]             |        |         |
| 1. | Proposal to Amend RPC 7.3(a)                        | Action | Exhibit |
| 2. | Proposal to Amend OSB Formal Ethics Op No. 2005-110 | Action | Exhibit |
| G. | Other   |        |         |
| 1. | 2016 HOD Meeting Summary of Actions [Mr. Heysell]   | Action | Exhibit |
| 2. | Legal Needs Study [Ms. Baker]                       | Inform |         |
| 3. | Access to Justice Grant [Ms. Baker]                 | Inform |         |

## 6. Consent Agenda

- |    |  |        |         |
|----|--|--------|---------|
| A. | Report of Officers & Executive Staff         |        |         |
| 1. | President's Report [Mr. Heysell]             | Inform |         |
| 2. | President-elect's Report [Mr. Levelle]       | Inform |         |
| 3. | Executive Director's Report [Ms. Hirschbiel] | Inform | Exhibit |
| 4. | Director of Regulatory Services [Ms. Evans]  | Inform | Exhibit |
| 5. | MBA Liaison Report [Mr. Ross]                | Inform |         |
| B. | Approve Minutes of Prior BOG Meetings        |        |         |
| 1. | Regular Session September 9, 2016            | Action | Exhibit |
| 2. | Special Open Session October 7, 2016         | Action | Exhibit |

## 7. Closed Sessions – **CLOSED** Agenda

- |     |  |  |  |
|-----|--|--|--|
| A.  | Executive Session (pursuant to ORS 192.660(2)(f) and (h) and ORS 192.690(1)) |  |  |
| 1.) | General Counsel/UPL Report   |  |  |

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

- |    |                      |  |  |
|----|----------------------|--|--|
| A. | Correspondence       |  |  |
| B. | Articles of Interest |  |  |

# OSB Board of Governors

## Action Plan 2017

### 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.”<sup>1</sup> 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.<sup>2</sup> 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 five core functions that provide overall direction for OSB programs and activities:

- We are a regulatory body.
- We are a partner with the judicial system.
- We are a professional organization.
- We are advocates for diversity, equity and inclusion.
- We are champions 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 BODY PROTECTING THE PUBLIC

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

Strategy 1	Engage in member education about and implement approved changes to the disciplinary system. Devise a system for measuring success.
Strategy 2	Consider recommendations of Futures Task Force.
Strategy 3	Enhance public awareness and understanding of the disciplinary process, the client protection fund, and the fee dispute resolution process and of their respective roles in client protection.
Strategy 4	Increase efficiency and accountability by beginning process of upgrading case management and document management systems.

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<sup>1</sup> 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."

<sup>2</sup> 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: Support and protect the quality and integrity of the judicial system.

Strategy 1	Support adequate funding for the Judicial Branch in the legislature.
Strategy 2	Respond appropriately to challenges to a fair and impartial judiciary.
Strategy 3	Participate meaningfully in judicial selection processes.
Strategy 4	Promote understanding of and respect for the rule of law, the judicial system and the legal profession.
Strategy 5	Pursue improvements to the administration of justice.

## FUNCTION #3 – PROFESSIONAL ORGANIZATION PROMOTING EXCELLENCE

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

Strategy 1	Continue review OSB programs for adherence to mission, value to members, and efficiency.
Strategy 2	Complete upgrade of association management software to meet changing member demands for online services.
Strategy 3	Consider recommendations of Futures Task Force.
Strategy 4	Provide high quality, accessible CLE programs on topics that meet the needs of a broad cross-section of members.

## FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

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

Strategy	Develop and adopt OSB Diversity Action Plan.
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## FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

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

Strategy 1	Support adequate funding for low-income legal services.
Strategy 2	Consider recommendations of the Futures Task Force.
Strategy 3	Participate in conducting a Legal Needs Study.
Strategy 5	Increase the amount of pro bono services by Oregon lawyers
Strategy 6	Promote and expand the Referral & Information Service programs.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**Memo Date:** November 8, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (1 of 2)

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### Action Recommended

On October 7 the Board Development Committee selected the following members for appointment:

#### Advisory Committee on Diversity and Inclusion

Chair: Daniel Simon  
Secretary: Jonathan Patterson  
Members with terms expiring 12/31/2017:  
Daniel Simon  
Jacqueline Alarcon  
Members with terms expiring 12/31/2019:  
Kasia Rutledge  
Miranda Summers  
Andrea Montag  
Susan Krant

#### Client Security Fund Committee

Chair: Stephen Rahe  
Secretary: Courtney Dippel  
Members with terms expiring 12/31/2019:  
Douglas Stamm  
Judy Shipler Henry  
David Roy  
Raymond Young

#### Legal Ethics Committee

Chair: Ankur Doshi  
Secretary: Daniel Keppler  
Members with terms expiring 12/31/2019:  
Walter Fonseca  
Jonathan W. Monson  
Corey B. Tolliver  
Samia C. Haddad  
Tara Millan  
J. Adam Peterson

#### Legal Heritage Interest Group

Chair: Elisabeth Jessop  
Members with terms expiring 12/31/2019:  
Charles Allen  
Andrew Narus  
Marc Brown  
Breckenridge Cartwright  
Ellen Flint  
David Roy  
Megan Miller  
Sarah Petersen  
Nicole Krishnaswami

#### Legal Services Committee

Chair: Andrea Thompson  
Secretary: Brent Hall  
Members with terms expiring 12/31/2019:  
Kamala Shugar  
Andrea H. Thompson  
Brent Hall

#### MCLE Committee

Chair: Katherine Zerkel  
Secretary: Adam Adkin  
Members with terms expiring 12/31/2018:  
Adam Adkin  
Members with terms expiring 12/31/2019:  
John Mellgren  
Sandy Kuenzi  
Denise Fjordbeck

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**Procedure & Practice Committee**

Chair: Kristian Roggendorf

Secretary: Ben Cox

Members with terms expiring 12/31/2019:

Hon. Marilyn Litzenberger

Jonahan Radmacher

Nathan Morales

Melissa Bobadilla

**Quality of Life Committee**

Chair: Michael J. Turner

Secretary: Nadia Dahab

Members with terms expiring 12/31/2019:

Jammel N. Rose

Greg Claessens

Deena Anreise, public member

**State Lawyers Assistance Committee**

Chair: John Parsons

Secretary: Ed Versteeg

Members with terms expiring 12/31/2020:

Mark Baskerville

John Parsons

Laura Rufolo

Jonathan Strahull

Ed Versteeg, public member

**Uniform Criminal Jury Instructions Committee**

Chair: Erik Blumenthal

Secretary: Greg Rios

Members with terms expiring 12/31/2019:

Hon. Bronson D. James

Anna E. Melichar

Tippi C. Pearse

Matthew S. Dyal

Joel A. Wirtz

The committee selected the following members to recommend to the Supreme Court for appointment:

**Disciplinary Board**

State Chair: William "Bill" G. Blair, term expires 12/31/2017

State Chair-Elect: Ronald Atwood, term expires 12/31/2017

**Region 1:**

Jennifer Kimble, Chair, term expires 12/31/2017

Michael McGean, term expires 12/31/2019

W. Eugene Hallman, term expires 12/31/2019

Elizabeth Dickson, term expires 12/31/2019

Lawrence Lehman, Public Member, term expires 12/31/2019

Ray Taylor, Public Member, term expires 12/31/2019

**Region 2:**

Jet Harris, Chair, term expires 12/31/2017

Carrie Bebout, Public Member, term expires 12/31/2019

**Region 3:**

John E. Davis (Jack), Chair, term expires 12/31/2017

Dr. Anthony J. Rosilez, term expires 12/31/2019

Joan Marie Michelsen, term expires 12/31/2019

April Sevick, Public Member, term expires 12/31/2019

**Region 4:**

Kathy Proctor, Chair, term expires 12/31/2017

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**Region 5:**

Ronald Atwood, Chair, term expires 12/31/2017  
David Doughman, term expires 12/31/2019  
Krista Stearns, term expires 12/31/2019  
Charles Paternoster, term expires 12/31/2019  
Kristina Reynolds, term expires 12/31/2019  
Ismail Mehmet Pekin, term expires 12/31/2019  
Nataliya Voloshina, Public Member, term expires 12/31/2019  
Charles Martin, Public Member, term expires 12/31/2019

**Region 6:**

James C. Edmonds, Chair, term expires 12/31/2017  
John Barlow, term expires 12/31/2019  
Gina Johnnie, term expires 12/31/2019  
Josh Crowther, term expires 12/31/2019  
Robert McCann, term expires 12/31/2019  
Yvonne Ana Tamayo, term expires 12/31/2019  
Fadd Beyrouty, Public Member, term expires 12/31/2019  
Dorothy Fallow, Public Member, term expires 12/31/2019

**Region 7:**

Andrew Cole, Chair, term expires 12/31/2017  
Willard Chi, term expires 12/31/2019  
Deanna Franco, term expires 12/31/2019  
Tom Kranovich, term expires 12/31/2019  
Gene Bentley, Public Member, term expires 12/31/2019  
Joan Lebarron, Public Member, term expires 12/31/2019

**State Professional Responsibility Board**

Chair: Justin Rosas, term expires 12/31/2017

**Members:**

Amanda Walkup, region 2, term expires 12/31/2020  
Christine Meadows, region 4, terms expires 12/31/2020

After discussion and thorough review by the committee, Mr. Ramfjord motioned and Ms. von Ter Stegge seconded a motion to forgo appointments to the Local Professional Responsibility Committees for 2017. The motion was unanimously approved by the committee.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**Memo Date:** November 14, 2016  
**From:** Rod Wegener, CFO  
**Re:** 2017 OSB Budget Report

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### **Action Recommended**

Review and approval of the 2017 OSB Budget.

### **Background**

The 2017 OSB Budget Report consisting of 11 pages of narrative and exhibits follows this memo. The report will be reviewed by the Budget & Finance Committee and will forward its recommendation to the board.

Highlights of the 2017 budget are listed on the first page of the report. The result is a net operating revenue of \$390,604, which is an expected lower amount than the 2016 budget. Also as expected, there is no change in the active or inactive membership fee and no reserve funds are transferred to revenue for operational needs;

# 2017 BUDGET



November 19, 2016

## Report to the Board of Governors

### Purpose of This Report

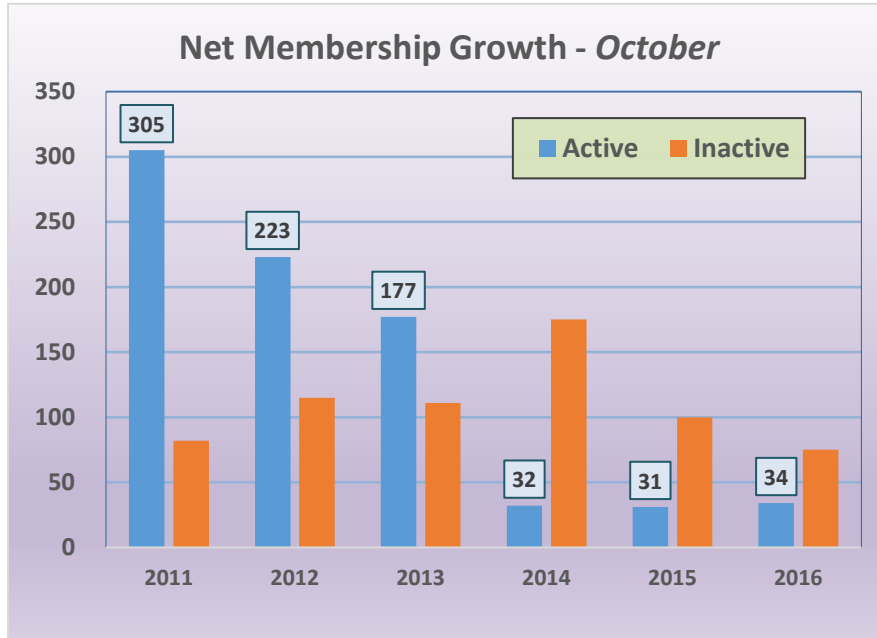
- This version of the 2017 Budget Report includes staff preparation of all the line item program and department budgets.
- The report will first be reviewed by the Budget & Finance Committee prior to the board meeting of the same date.
- The Board of Governors will formally act on the approval of the final 2017 Budget.
- The five-year forecast incorporated herein includes no changes to program or services in 2018 and beyond except to move the Professional Adjudicator position to a full-year.

### Highlights in This Report

- The Net Revenue for the 2017 General Operating budget is \$390,604 - an improvement over the \$262,353 Net Revenue reported in October.
- There is no change in the Active Member Fee of \$557.00 nor the Inactive Member Fee of \$125.00.
- All Revenue increases \$310,000 from the 2016 budget, with 92% of that amount coming from Lawyer Referral percentage fees and Admissions.
- Expenditures increase by \$775,000. Most is due to personnel related costs, although program/ services costs also increase more than the annual normal.
- There were cost reductions totaling \$218,000 from the October report. This makes for a solid Net Revenue in 2017, but with increased costs expected more adjustments are necessary in 2018 and 2019.
- The next member fee increase is forecast for 2020 as planned with the 2016 fee increase
- Section 6 addresses alternatives to raising the member fee by transferring funds to operations from Reserves invested in the long-term portfolio.

## 1. Membership Fees Revenue . . .

The bar membership count at the end of October reflects a not-so-surprising trend. The low growth in the number of members in the Oregon State Bar each year affect what the revenue will be.



The average active membership growth in the three year period 2011 to 2013 was **235**.

The last three years including 2016, the average is **32**.

The October data also shows how members are joining the bar. The number of those who entered via the bar exam declined by 94 from 2015. The number who joined via reciprocity increased by 134. An interesting demographic is Multnomah County reported a drop of 71 members from 2015.

### **CONCLUSION ON MEMBERSHIP FEE REVENUE**

*Membership Fee revenue will increase 1/2 of 1% for 2017 adding \$40,000 in additional revenue.*

## 2. Non-dues (Program Fee) Revenue . . .

Of the six largest sources of *Program Fee* revenue, three (Admissions, MCLE, Lawyer Referral) report higher revenue in 2017. Two (CLE Seminars, Legal Publications) report declines, and Bulletin advertising is about the same.

**Admissions (\$805,875):** The 2017 budget estimates that 701 candidates will sit for the bar exam. In 2016, 713 sat for the exam. Unknown is the impact of the uniform bar exam which will be offered with the July exam. The 2017 budget revenue is reasonable as for 10-month 2016 revenue is only \$7,100 short of that goal.

**CLE Seminars (\$923,185):** This revenue source continues its downward trend and won't correct until the section co-sponsor issue is resolved and the new AMS software generates more revenue.

**Legal Publications (\$275,905):** The 2017 budget is only \$8,900 less than the 2016 budget. Some books expected in 2016 have been deferred to 2017 and new in 2017, books that will be designed and marketed to the Washington lawyer. Sales of printed Legal Publications books will continue to decline as online features grow to be more popular. Revenue bucked the trend in 2015 due to the size and popularity of the *Real Estate Desk Book*.

**MCLE (\$343,700):** Revenue from Sponsor Fees and Late Fees continues upward and the 2017 projection is a conservative one using the highest-ever 2015 revenue as the base.

**Lawyer Referral (\$900,000):** Revenue from percentage fees has grown every year since its inception in 2010. The 2017 budget of \$785,000 is a 4.4% increase over the projected 2016 percentage fee revenue.

#### **CONCLUSION OF NON-DUES REVENUE**

*Program Fee, or non-dues, revenue, will increase by \$223,500 in 2017 primarily due to three program fee revenue sources.*


### **3. The Salary Pool, Taxes & Benefits . . .**

#### **SALARIES**

- a) The bar and PLF CEOs recommend a 3% salary pool for the 2017 budget. A recent Robert Half Salary Survey indicated 3% to 4% increases for finance and administrative positions for 2017.
- b) This budget report includes the 3% salary pool which adds approximately \$223,600 in personnel costs to the 2017 budget. This is \$2,300 less than presented in the October report since \$158,780 in salaries, taxes and benefits (including FTE) were eliminated for 2017 since the October report.
- c) Including taxes and benefits each 1% salary pool change over the 2016 budget adds \$74,900 (again similar to the October report because of personnel reductions).
- d) Previous salary pool increases have been: 2016 – 3%; 2015 – 3%; 2014 – 2%; 2013 – 2%; 2012 – 2%; 2011 – 3%.

#### **PERS RATES**

- e) PERS rates change on July 1, 2017. Tier 1&2 rates increase from 13.30% to 18.67% and OPSRP from 7.33% to 10.78%.
- f) These mid-year rates increases add \$116,500 to personnel costs for 2017.
- g) The overall increase in PERS costs is \$100,900 more in 2017 from 2016. This is small compared to the rate increases and is attributable to the decline in PERS salaries by \$199,400 from 2016 and the personnel reductions.
- h) Worse news about the PERS rates is the 2017 budget includes only six months of the higher rates. The budget in 2018 will include a full year of the higher rates.



**In 2017, 37% of all salaries are included in Tier 1&2, down from the budgeted 42% in 2016.**

## **CONCLUSION FOR PERSONNEL COSTS**

*Personnel costs remain the highest expenditure in the bar's 2017 budget and are 72% of revenue.*

### **4. Changes from 2016 included in the 2017 Budget . . .**

The 2017 budget includes some new or changed programs or services. A total of \$59,600 in program and administrative costs were removed from the October report, yet these costs still are \$183,800 higher than the 2017 budget. Below is a list of new or changed services or projects and other activities with cost increases and the budget for each activity.

#### **a. Governance (BOG)**

##### **Special Projects & Sponsorships for the Board of Governors.**

BUDGET: \$ 10,000 - \$5,000 each for Special Projects and Sponsorships. These were reduced by \$5,000 each from the October budget report.

#### **b. General Counsel**

##### **Professional Adjudicator (Presiding Disciplinary Judge).**

The 2017 budget assumes the position is approved in the legislative cycle and is in place by September 2017, two months later than included in the October report. Included is a full-time adjudicator and a half-time assistant. The projected annual cost for these positions is \$212,000 and one-third that amount is included in the 2017 budget.

BUDGET: \$67,500 increase

#### **c. Special Projects**

##### **Economic Survey**

This survey was performed last in 2012 and each 4 to 5 years since 1989. Staff have received inquiries from members if a current survey is available expressing value in the survey information. The approximate cost of the 2012 survey was \$20,000 and is increased for 2017 since a new contractor likely will be awarded the task.

BUDGET: \$25,000

#### **d. Loan Repayment Assistance Program**

##### **Grants**

With the increase in the allocated fee from \$5.00 to \$10.00 in 2015, more and higher grants will be made in 2017. The 2016 budget includes \$142,400 in grants; \$173,100 is included in 2017. There is a fund balance carryover for LRAP as the revenue from the \$10.00 assessment is \$154,100.

BUDGET: \$30,700 increase

#### **e. Technology**

##### **Impact of the new AMS system**

Any cost impact will not be felt until the second half of 2017 as until then time and resources are spent in the go-live and learning the system. The AMS will eliminate some existing IT related costs and add more. The impact on all staff is unknown except that numerous responsibilities and tasks will change and it will take several months for staff to learn the best practices of the system and maximize its functionality and efficiency.



BUDGET: \$7,748 increase

**f. Capitalization Policy**

The bar is changing its outdated policy on the cost of capitalizing the purchase of assets from \$500 to \$1,500. This is suggested by the bar's auditors, a review of similar organizations' policy, and the time and effort to monitor the depreciation of assets of \$500. The amount in the 2017 budget is \$16,050, but that cost will offset by lower depreciation expense.

BUDGET: \$16,050 offset by lower depreciation in 2017 and subsequent years

**g. Personnel**

**Various Departments**

Personnel costs of \$158,780 were reduced or eliminated from the October report. There were personnel changes in 2016 after the final budget due to anticipated changes in tasks caused initially by the AMS project; the reassignment of personnel in New Lawyer Mentoring, Member Services, the New Lawyers Division, and General Counsel; increases in .5 FTE each in Lawyer Referral and Legal Services; personnel changes in Disciplinary Counsel, an increase in the social security base for 2017, and an error in the calculation of benefit costs in 2016 have caused an increase in personnel costs from 2016 to 2017. Included in the cost increase is the 3% salary pool and the higher cost caused by higher PERS rates.

BUDGET: \$626,900 including salaries, taxes and benefits

**h. Other Cost Increase**

**Various Departments**

Costs of \$33,682 are higher in **Admissions** but is due to the increased revenue .... **Depreciation** expense is a non-cash item but is \$29,300 higher in 2017 as the cost of the AMS software begins being depreciated in the latter part of 2017 ... **Disciplinary Counsel** costs for court reports and contract services are more heavily needed and higher by \$ 12,050.

**5. What Stays the Same from the 2016 Budget . . .**

Not all accounts or programs and services in the bar's budget increase year over year. Here are various services or accounts included in the 2017 budget and have been included in the bar's budget at the amount listed for several years. They are listed as they are critical services of the bar, but seldom mentioned in financial reports since the amounts have not changed.

- **PLF Grant:** The PLF has committed to the \$200,000 grant for an undisclosed period.
- **Client Security Fund claims:** \$200,000 is included as the annual placeholder amount
- **Contingency:** \$25,000 for unusual or unexpected costs
- **Fastcase:** \$99,000 annual cost for the popular legal research library
- **Classroom Law Project:** \$20,000 grant
- **Campaign for Equal Justice:** \$45,000 grant
- **Council on Court Procedures:** \$4,000 grant for council member travel expenses

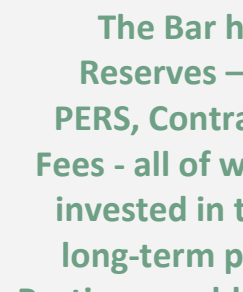
**Note:** Staff considered reducing the grant to the Classroom Law Project by \$5,000 due to the limited number of students benefitting from the grant.

## 6. Looking Ahead at the Five-Year Forecast . . .

This draft of the 2017 budget includes a Net Revenue of \$390,604, and is a \$128,000 net revenue improvement over the October report. Although there is a healthy net revenue in 2017, the two years thereafter include a large net expense and a \$50.00 (or higher) active member fee increase is forecast in 2020.

The challenge is making the 2016 increase extend until 2020. To do so, here are some possibilities.

- ❖ Even though there were substantial changes from the October budget report, it would take another \$30,000 to \$70,000 to attain the goal mentioned in the October report.
- ❖ At its October meeting, the Budget & Finance Committee resolved to review the budget and the bar's services looking toward 2018 to ascertain what changes should be made to the budget to assure a balanced budget and defer a fee increase as long as possible.
- ❖ Increase the Active Member Fee by at least \$50.00 in 2020, or possibly 2019, earlier than expected with the last fee increase.
- ❖ Within the next three years transfer the funds in the Capital Reserve (invested in the long-term investment portfolio) to general operations and either balance the budget with these funds and delay a fee increase.
  - The bar has paid all AMS costs from operating funds. That is possible due to the large net revenues in 2014 and 2015. The Capital Reserve of \$500,000 has never been tapped and could be used to "pay back" operational funds.
- ❖ Within the next three years transfer the funds in the PERS Contingency (also invested in the long-term investment portfolio) to general operations to offset the bar's annual expense for PERS.
  - Similar to the Capital Reserve, all PERS expenses have been paid from the annual operating budget. The PERS Contingency is \$434,000 and also has never been tapped to pay for PERS expenses.
  - One or the other of these two reserves could be transferred to general operations, not both.



**The Bar has three Reserves – Capital, PERS, Contract Legal Fees - all of which are invested in the bar's long-term portfolio. Portions could be used to balance the operating budget and hold off a member fee increase in the future.**

- ❖ Within the next three years transfer a portion of the funds in the Contract Legal Fees reserve (currently at \$ 243,923 and also invested in the long-term investment portfolio) to general operations.

Note: In the Five-Year Forecast an arbitrary amount of \$400,000 was transferred from reserves to balance the 2018 budget. Doing so is only a one year solution.

## 7. Restricted Funds . . .

None of the three Restricted Funds 2017 budgets should cause negative financial challenges for each, even though the Client Security Fund and Legal Services project a deficit budget. All three have adequate fund balances to make any financial adjustments. A vacancy in the Diversity & Inclusion director still exists, which only accumulates its fund balance.

The projected fund balances at the end of 2017 are:

Fund	2017 Fund Balance	Notes
Client Security Fund	\$1,058,000	Always dependent on number of claims; \$200,000 is 2017 placeholder; fund balance probably will be higher due to lower claims in 2016
Diversity & Inclusion	\$250,000 to \$300,000	Unusually high due to the vacancy in the program director position
Legal Services	\$20,000	Could be higher depending when the legislative appropriation is released

## 8. Fanno Creek Place . . .

The operating loss (\$635,422) for Fanno Creek Place will be slightly less than 2016 even if the bar center is not 100% occupied beginning in 2017. This is due to higher rents and the annual decrease in the mortgage interest expense.

- The lease for the 6,015 s.f. expired September 30, 2016 and two other leases expire in the last quarter of 2017. The latter two are expected to renew. The larger space is taking longer to fill.
- If the larger space remains vacant for three months in 2017, the negative cash flow is projected to remain at \$392,000, almost identical to 2016.

## 9. Recommendation of the Budget & Finance Committee . . .

The Committee will review this report and recommend to the Board of Governors the 2017 budget including decisions on:

- Changes in the 2017 budget (Section 4 in this report);
- the 2017 salary pool;
- other matters (Classroom Law Project, looking toward the 2018 budget and funding for bar services, et al)

## OREGON STATE BAR 2017 Budget Summary by Program

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal &amp; Benefits</i>	<i>Direct Program</i>	<i>Gen &amp; Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$805,875	\$310,780	\$281,450	\$30,856	\$623,086	\$140,454	\$42,335
Bulletin	\$677,450	\$162,200	\$347,876	\$4,018	\$514,094	\$133,882	\$29,474
CLE Seminars	\$923,185	\$453,900	\$360,455	\$17,382	\$831,737	\$278,508	(\$187,060)
Client Assistance Office	\$0	\$563,500	\$1,700	\$18,266	\$583,466	\$165,889	(\$749,355)
Communications	\$31,900	\$493,900	\$19,270	\$8,275	\$521,445	\$139,636	(\$629,181)
General Counsel	\$1,000	\$577,500	\$66,925	\$23,765	\$668,190	\$113,223	(\$780,413)
Governance (BOG)	\$0	\$314,900	\$184,875	\$25,445	\$525,220	\$107,887	(\$633,107)
Legal Publications	\$275,905	\$660,200	\$70,271	\$21,407	\$751,878	\$226,181	(\$702,154)
Loan Repayment Assistance Progra	\$154,100	\$0	\$173,100	\$0	\$173,100	\$0	(\$19,000)
MCLE	\$343,700	\$186,500	\$2,000	\$8,656	\$197,156	\$102,434	\$44,110
Member Services	\$0	\$222,800	\$12,750	\$4,548	\$240,098	\$121,929	(\$362,027)
New Lawyer Mentoring Program	\$20,200	\$200,200	\$8,700	\$5,204	\$214,104	\$81,144	(\$275,048)
New Lawyers Division	\$4,850	\$68,600	\$81,850	\$2,780	\$153,230	\$48,703	(\$197,083)
Public Affairs	\$0	\$492,200	\$21,500	\$31,716	\$545,416	\$116,882	(\$662,298)
Referral & Information Services	\$900,000	\$485,900	\$44,500	\$9,400	\$539,800	\$239,234	\$120,966
Regulatory Services	\$88,600	\$1,907,000	\$123,850	\$88,092	\$2,118,942	\$409,270	(\$2,439,612)
Special Projects	\$200,000	\$10,800	\$198,200	\$375	\$209,375	\$0	(\$9,375)
<b>TOTAL PROGRAMS</b>	\$4,426,765	\$7,110,880	\$1,999,272	\$300,185	\$9,410,337	\$2,425,256	(\$7,408,828)
<b>ALLOCATIONS:</b>							
Finance & Operations	\$7,824,432	\$1,661,520	\$897,983	\$103,598	\$2,663,101	(\$2,436,216)	\$7,597,547
Less: Dept Charges/Offsets			(\$226,885)		(\$226,885)		\$226,885
Oregon State Bar Center						\$0	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
<b>TOTAL OPERATIONS</b>	\$12,251,197	\$8,772,400	\$2,695,370	\$403,784	\$11,871,554	(\$10,960)	\$390,604
Fanno Creek Place	\$868,437	\$122,700	\$1,510,808	\$30,810	\$1,664,318	(\$160,459)	(\$635,422)
<b>TOTAL GENERAL FUND</b>	\$13,119,634	\$8,895,100	\$4,206,178	\$434,594	\$13,535,872	(\$171,419)	(\$244,819)
<b>DESIGNATED FUNDS:</b>							
Diversity Inclusion	\$725,300	\$297,200	\$245,065	\$40,079	\$582,344	\$107,741	\$35,215
Client Security Fund	\$244,700	\$45,700	\$202,950	\$2,444	\$251,094	\$33,367	(\$39,761)
Legal Services	\$6,205,000	\$157,800	\$6,035,100	\$4,598	\$6,197,498	\$30,311	(\$22,809)
<b>TOTAL ALL FUNDS</b>	\$20,294,634	\$9,395,800	\$10,689,293	\$481,715	\$20,566,808	\$0	(\$272,174)

Exhibit A

**2017 Budget**

**Oregon State Bar**

**Five-Year Forecast**

		Operations	No Member Fee Increase in 2017				
November-16							
Proposed Fee increase for Year →		\$0	\$0	\$0	\$50	\$0	\$0
Operations	BUDGET	BUDGET	F O R E C A S T				
	2016		2017	2018	2019	2020	2021
<b>REVENUE</b>							
MEMBER FEES							
General Fund	\$7,930,600	\$7,970,000	\$8,010,000	\$8,050,100	\$8,090,400	\$8,894,700	\$8,939,200
Active Member Fee Increase			0	0	760,000	0	0
% of Total Revenue	66.4%	65.1%	63.3%	64.9%	61.1%	66.2%	66.1%
PROGRAM FEES:							
Admissions	705,985	805,875	750,000	750,000	787,500	866,300	866,300
CLE Seminars	1,025,990	923,185	923,200	969,400	969,400	969,400	969,400
Legal Publications (print sales)	284,820	275,905	250,000	250,000	200,000	200,000	200,000
Lawyer Referral % Fees	600,000	785,000	785,000	785,000	785,000	785,000	785,000
All Other Programs	1,036,106	1,086,500	1,108,200	1,130,400	1,153,000	1,176,100	1,193,700
Total Program Fees	3,652,901	3,876,465	3,816,400	3,884,800	3,894,900	3,996,800	4,014,400
OTHER INCOME							
PLF Contribution	200,000	200,000	200,000	200,000	200,000	200,000	200,000
Investment & Other Income	157,550	204,732	225,500	260,000	302,800	337,500	375,300
Transfer from Reserves	0	0	400,000	0	0	0	0
TOTAL REVENUE	11,941,051	12,251,197	12,651,900	12,394,900	13,248,100	13,429,000	13,528,900
<b>EXPENDITURES</b>							
SALARIES TAXES & BENEFITS							
Salaries - Regular	5,985,600	6,270,900	6,488,100	6,609,500	6,733,000	6,858,700	6,986,600
Benefits - Regular	2,147,900	2,495,200	2,804,200	2,906,200	3,004,300	3,111,800	3,215,300
Salaries & Taxes - Temp	11,590	6,300	30,000	20,000	30,000	20,000	30,000
Total Salaries & Benefits	8,145,090	8,772,400	9,322,300	9,535,700	9,767,300	9,990,500	10,231,900
% of Total Revenue	68.2%	71.6%	73.7%	76.9%	73.7%	74.4%	75.6%
DIRECT PROGRAM:							
CLE Seminars	388,990	360,455	364,100	367,700	373,200	376,900	382,600
Legal Publications	74,199	70,271	75,000	75,000	60,000	60,000	60,000
All Other Programs	2,036,621	2,264,644	2,386,600	2,469,300	2,553,700	2,665,300	2,780,300
Total Direct Program	2,499,810	2,670,370	2,825,700	2,912,000	2,986,900	3,102,200	3,222,900
GENERAL & ADMIN (incl offsets)	415,533	392,823	398,700	406,700	414,800	427,200	440,000
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
TOTAL EXPENSES	11,085,433	11,860,593	12,571,700	12,879,400	13,194,000	13,544,900	13,919,800
NET REVENUE/(EXPENSE) - OPERATIONS	\$855,618	\$390,604	\$80,200	(\$484,500)	\$54,100	(\$115,900)	(\$390,900)

**2017 Budget**

**Five-Year Forecast**

**Fanno Creek Place**

Fanno Creek Place	BUDGET	BUDGET	F O R E C A S T				
	2016	2017	2018	2019	2020	2021	2022
<b>REVENUE</b>							
<b>RENTAL INCOME</b>							
PLF	\$527,865	\$535,783	\$543,820	\$551,977	\$560,257	\$568,661	\$577,190
First Floor Tenant - Suite 175 - Zip Realty	46,315	47,824	49,300	50,800	50,800	52,300	39,200
First Floor Tenant - Suite 150 - Joffe	100,550	112,781	154,886	159,533	164,319	169,248	130,744
First Floor Tenant - Suite 100 - Simpson Prop	24,917	25,664	26,400	27,200	28,000	28,800	29,700
First Floor Tenant - Suite 110 - Prof Prop Gp	29,672	30,562	31,500	32,400	33,400	34,400	35,400
First Floor Tenant - Suite 165 - ALA	47,378	48,811	50,250	51,758	53,311	54,900	56,500
OLF	31,176	32,112	33,100	34,100	35,100	36,200	37,300
Meeting Rooms	32,000	32,000	30,000	25,000	24,000	24,000	24,000
Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400
INTEREST	1,650	2,900	2,000	2,200	2,500	2,800	3,000
<b>TOTAL REVENUE</b>	<b>841,523</b>	<b>868,437</b>	<b>924,256</b>	<b>938,068</b>	<b>954,886</b>	<b>974,609</b>	<b>936,435</b>
<b>EXPENDITURES</b>							
<b>OPERATING EXPENSE</b>							
Salaries & Benefits	122,200	122,700	125,200	129,000	132,900	136,900	141,000
Operations	323,909	345,060	352,000	362,600	373,500	384,700	396,200
Depreciation	512,600	514,900	514,900	519,900	519,900	529,900	529,900
Other	16,059	18,500	18,500	18,500	18,500	18,500	18,500
<b>DEBT SERVICE</b>							
Interest	678,884	663,158	646,462	628,739	609,924	589,951	568,749
<b>TOTAL OPERATING EXPENSES</b>	<b>1,653,652</b>	<b>1,664,318</b>	<b>1,657,062</b>	<b>1,658,739</b>	<b>1,654,724</b>	<b>1,659,951</b>	<b>1,654,349</b>
ICA to Operations	(160,459)	(160,459)	(165,300)	(165,300)	(165,300)	(165,300)	(169,400)
<b>NET EXPENSES</b>	<b>1,493,193</b>	<b>1,503,859</b>	<b>1,491,762</b>	<b>1,493,439</b>	<b>1,489,424</b>	<b>1,494,651</b>	<b>1,484,949</b>
<b>NET REVENUE/(EXPENSE) - FC Place</b>	<b>(\$651,670)</b>	<b>(\$635,422)</b>	<b>(\$567,506)</b>	<b>(\$555,371)</b>	<b>(\$534,538)</b>	<b>(\$520,042)</b>	<b>(\$548,514)</b>
<b>ACCRUAL TO CASH ADJUSTMENT</b>							
<b>SOURCES OF FUNDS</b>							
Depreciation Expense	512,600	514,900	514,900	519,900	519,900	529,900	529,900
Landlord Contingency Fund	30,000	40,000			150,000		
Loan Proceeds							
<b>USES OF FUNDS</b>							
Assign PLF Subtenants' Leases (Net)							
TI's - First Floor Tenants	(30,000)	(40,000)			(50,000)		(50,000)
Principal Pmts - Mortgage	(255,424)	(271,150)	(287,846)	(305,569)	(324,384)	(344,357)	(365,559)
<b>NET CASH FLOW - FC Place</b>	<b>(\$394,494)</b>	<b>(\$391,672)</b>	<b>(\$340,452)</b>	<b>(\$341,040)</b>	<b>(\$239,022)</b>	<b>(\$334,499)</b>	<b>(\$434,173)</b>

**2017 Budget**

**Five-Year Forecast**

**Funds Available/Reserve Requirement**

	BUDGET	BUDGET	F O R E C A S T				
	2016	2017	2018	2019	2020	2021	2022
<b>FUNDS AVAILABLE</b>							
Funds Available - Beginning of Year	\$ 1,456,000	\$2,436,460	\$2,406,932	\$2,394,080	\$1,917,740	\$1,827,718	\$1,367,719
<b>SOURCES OF FUNDS</b>							
Net Revenue/(Expense) from operations	855,618	390,604	80,200	(484,500)	54,100	(115,900)	(390,900)
Depreciation Expense	92,200	121,500	123,900	126,400	128,900	130,200	131,500
Provision for Bad Debts	49,000	45,200	40,000	40,000	40,000	40,000	40,000
Increase in Investment Portfolio MV	53,000	41,000	47,000	48,000	0	63,000	75,000
Allocation of PERS Reserve	0		108,500	217,000	108,500		
<b>Projected HIGHER Net Operating Revenue</b>	<b>0</b>						
<b>USES OF FUNDS</b>							
Capital Expenditures	(73,350)	(33,260)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)
Capital Expenditures - Building	0	0					
Capital Reserve - AMS Software	400,136	(200,000)					
Capital Reserve Expenditures - Building					(100,000)		
Landlord Contingency Interest	(1,650)	(2,900)	(2,000)	(2,200)	(2,500)	(2,800)	(3,000)
Net Cash Flow - Fanno Creek Place	(394,494)	(391,672)	(340,452)	(341,040)	(239,022)	(334,499)	(434,173)
Addition to PERS Reserve	0					(120,000)	(120,000)
Projected LOWER Net Operating Revenue	0						
<b>CHANGE IN FUNDS AVAILABLE</b>	<b>980,460</b>	<b>(29,528)</b>	<b>(12,852)</b>	<b>(476,340)</b>	<b>(90,022)</b>	<b>(459,999)</b>	<b>(781,573)</b>
<b>Funds Available - End of Year</b>	<b>\$2,436,460</b>	<b>\$2,406,932</b>	<b>\$2,394,080</b>	<b>\$1,917,740</b>	<b>\$1,827,718</b>	<b>\$1,367,719</b>	<b>\$586,145</b>
<b>RESERVE REQUIREMENT</b>							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
<b>Total - Reserve Requirement</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>
<b>RESERVE VARIANCE</b>							
Over/(Under) Reserve Requirement	\$1,436,460	\$1,406,932	\$1,394,080	\$917,740	\$827,718	\$367,719	(\$413,855)
<b>RECONCILIATION CASH to ACCRUAL</b>							
	BUDGET	BUDGET	F O R E C A S T				
	2016	2017	2018	2019	2020	2021	2022
NET REVENUE/(EXPENSE) - Operations	855,618	390,604	80,200	(484,500)	54,100	(115,900)	(390,900)
NET REVENUE/(EXPENSE) - FC Place	(651,670)	(635,422)	(567,506)	(555,371)	(534,538)	(520,042)	(548,514)
NET REVENUE/(EXPENSE) - OSB	\$203,948	(\$244,818)	(\$487,306)	(\$1,039,871)	(\$480,438)	(\$635,942)	(\$939,414)

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**Memo Date:** November 10, 2016  
**From:** Rod Wegener, CFO  
**Re:** Audit Report – OSB Financial Statements 2014-2015

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### Action Recommended

Acknowledge receipt of the audit report of the bar’s combined 2014 and 2015 financial statements from Moss Adams LLP.

### Background

The 36-page audit report for the combined 2014-2015 financial statements is finally available. There were numerous delays in completing the report primarily waiting for the information from the state on the data to record the bar’s unfunded pension liability for PERS as required in Government Accounting Standards Board (GASB) Statement No. 68. The requirement of that liability and the corresponding expense skews what is generally a positive audit report. At the September 9 Budget & Finance Committee meeting the lead auditor from Moss Adams explained to the Committee the amount and requirement for reporting the unfunded pension liability and expense in the audit report. The required information about PERS and the liability begins on page 25 in the Notes to Financial Statements.

A summary of the financial results for 2014 and 2015 is best understood in the Management Discussion & Analysis (MD&A) on pages 3 to 8. The middle of page 3 includes numbers that require explanation as they appear to present a bleak financial condition. The statement which skews the financial picture for 2014-2015 is the “decrease in net position for the two-year period was \$1,608,500” suggesting the bar lost \$1.6 million in 2014 and 2015. The chart below paints a more accurate picture of the financial activity for the period.

<i>Description</i>	<i>Amount in Report</i>
<i>Change in Net Position per Audit Report</i>	<i>(\$1,608,500)</i>
<i>Exclude Non-cash Net Pension Expense</i>	<i>\$3,434,111</i>
<i>Revised Net Position Excluding Pension Expense</i>	<i>\$1,825,611</i>

The “Revised Net Position” is the amount of operating and non-operating revenue exceeding the operating and non-operating expenses for 2014 and 2015 combined. The report includes the revenue and expense of the building and the investment activity as non-operating activities. The explanation of the \$1.8 million net position is in the MD&A beginning at the bottom of page 4 and is due to the increases in the Client Security Fund and Diversity & Inclusion assessments and the inactive member fee, higher program fee revenue, and operating expenses declining.



# Oregon State Bar Legislative Priorities for 2017

1. **Support Court Funding.** Support for adequate funding for Oregon's courts.
  - **Citizens Campaign for Court Funding.** Continue with efforts to institutionalize the coalition of citizen and business groups that was formed in 2012 to support court funding.
  - **eCourt Funding.** Support the Oregon Judicial Department's effort to fund Oregon eCourt.
  - **Court Facilities Funding.** Continue to work with the legislature and the courts to make critical improvements to Oregon's courthouses.
  
2. **Support legal services for low income Oregonians.**
  - **Civil Legal Services.**
    - Increase the current level of funding for low income legal services.
  - **Indigent Defense.**
    - **Public Defense Services.** Constitutionally and statutorily required representation of financially qualified individuals in Oregon's criminal and juvenile justice systems:
      - Ensure funding sufficient to maintain the current service level.
      - Support fair compensation for publicly funded attorneys in the criminal and juvenile justice systems.
      - Support reduced caseloads for attorneys representing parents and children.
  - **Child Welfare.**
    - Support a Judicial Conference resolution for increased funding for the child welfare system.
    - Support the Oregon Task Force on Dependency Representation proposal (LC 523, 2017) including appointment of attorneys in child dependency hearings.
  
3. **Support OSB 2017 Law Improvement Package and continue to engage with ongoing legislative work group and task force proposals.**

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
8/31/2016**

**TABLE OF CONTENTS**

<u>Page</u>	<u>Description</u>
2	Combined Statement of Net Position
3	Primary Program Statement of Revenues, Expenses and Changes in Net Position
4	Primary Program Operating Expenses
5	Excess Program Statement of Revenues, Expenses and Changes in Net Position
6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar  
Professional Liability Fund  
Combined Primary and Excess Programs  
Statement of Net Position  
8/31/2016**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$2,520,436.79	\$2,063,592.09
Investments at Fair Value	52,031,315.10	49,373,548.47
Assessment Installment Receivable	2,564,918.50	2,666,578.00
Due from Reinsurers	54,324.67	164,648.66
Other Current Assets	72,420.35	81,541.41
Net Fixed Assets	726,353.40	781,304.46
Claim Receivables	9,854.78	65,489.84
Other Long Term Assets	<u>6,250.00</u>	<u>6,800.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$57,985,873.59</u></b>	<b><u>\$55,203,502.93</u></b>

**LIABILITIES AND FUND POSITION**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$95,350.89	\$231,477.28
Due to Reinsurers	\$451,408.04	\$370,722.19
Deposits - Assessments	2,255,126.00	0.00
Liability for Compensated Absences	397,427.82	354,702.17
Liability for Indemnity	13,681,918.73	15,031,682.13
Liability for Claim Expense	14,851,222.96	14,650,079.30
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	261,272.60	251,683.18
Primary Assessment Allocated for Rest of Year	<u>8,183,480.67</u>	<u>8,198,872.55</u>
<b>Total Liabilities</b>	<b><u>\$47,277,207.71</u></b>	<b><u>\$45,789,218.80</u></b>
<b>Change in Net Position:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$7,916,263.73	\$10,928,972.39
Year to Date Net Income (Loss)	<u>2,936,621.15</u>	<u>(1,514,688.26)</u>
<b>Net Position</b>	<b><u>\$10,852,884.88</u></b>	<b><u>\$9,414,284.13</u></b>
<b>TOTAL LIABILITIES AND FUND POSITION</b>	<b><u>\$58,130,092.59</u></b>	<b><u>\$55,203,502.93</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Revenues, Expenses, and Changes in Net Position  
8 Months Ended 8/31/2016**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$16,147,578.67	\$16,216,664.00	\$69,085.33	\$16,174,633.78	\$24,325,000.00
Installment Service Charge	219,382.66	218,666.64	(716.02)	223,111.34	328,000.00
Other Income	45,577.98	26,666.64	(18,911.34)	79,020.21	40,000.00
Investment Return	<u>2,842,811.32</u>	<u>2,231,664.00</u>	<u>(611,147.32)</u>	<u>(349,900.77)</u>	<u>3,347,495.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$19,255,350.63</u></b>	<b><u>\$18,693,661.28</u></b>	<b><u>(\$561,689.35)</u></b>	<b><u>\$16,126,864.56</u></b>	<b><u>\$28,040,495.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$13,072,500.00			\$11,656,000.00	
Actuarial Adjustment to Reserves	(1,664,001.84)			940,670.98	
Coverage Opinions	78,855.03			56,469.86	
General Expense	12,277.40			49,347.92	
Less Recoveries & Contributions	(27.80)			(4,048.65)	
Budget for Claims Expense		<u>\$12,510,000.00</u>			<u>\$18,765,000.00</u>
<b>Total Provision For Claims</b>	<b><u>\$11,499,602.79</u></b>	<b><u>\$12,510,000.00</u></b>	<b><u>\$1,010,397.21</u></b>	<b><u>\$12,698,440.11</u></b>	<b><u>\$18,765,000.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$1,688,141.95	\$1,812,073.08	\$123,931.13	\$1,691,036.92	\$2,719,948.00
Accounting Department	555,691.07	583,497.00	27,805.93	510,532.65	863,251.00
Loss Prevention Department	1,420,368.14	1,487,285.00	66,916.86	1,338,198.44	2,229,864.00
Claims Department	1,757,831.75	1,834,997.64	77,165.89	1,758,987.78	2,750,806.00
Allocated to Excess Program	<u>(710,653.28)</u>	<u>(710,648.00)</u>	<u>5.28</u>	<u>(632,277.20)</u>	<u>(1,065,980.00)</u>
<b>Total Expense from Operations</b>	<b><u>\$4,711,379.63</u></b>	<b><u>\$5,007,204.72</u></b>	<b><u>\$295,825.09</u></b>	<b><u>\$4,666,478.59</u></b>	<b><u>\$7,497,889.00</u></b>
Contingency (4% of Operating Exp)	\$0.00	\$84,920.00	\$84,920.00	\$219.14	\$127,382.00
Depreciation and Amortization	\$108,101.64	\$94,517.44	(\$13,584.20)	\$108,683.02	\$141,776.16
Allocated Depreciation	<u>(16,174.00)</u>	<u>(16,176.00)</u>	<u>(2.00)</u>	<u>(11,320.00)</u>	<u>(24,261.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$16,302,910.06</u></b>	<b><u>\$17,680,466.16</u></b>	<b><u>\$1,377,556.10</u></b>	<b><u>\$17,462,500.86</u></b>	<b><u>\$26,507,786.16</u></b>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>\$2,952,440.57</u></b>	<b><u>\$318,195.12</u></b>	<b><u>(\$2,634,245.45)</u></b>	<b><u>(\$1,335,636.30)</u></b>	<b><u>\$490,208.84</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
8 Months Ended 8/31/2016**

	<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>
<b><u>EXPENSE:</u></b>						
Salaries	\$350,039.04	\$2,971,902.09	\$3,072,064.00	\$100,161.91	\$2,783,255.99	\$4,608,093.00
Benefits and Payroll Taxes	125,186.94	1,080,499.85	1,100,628.00	20,128.15	1,062,875.27	1,647,119.00
Investment Services	0.00	21,744.00	20,000.00	(1,744.00)	19,103.00	40,000.00
Legal Services	1,549.50	22,372.45	6,664.00	(15,708.45)	19,824.17	10,000.00
Financial Audit Services	0.00	17,000.00	23,000.00	6,000.00	22,800.00	23,000.00
Actuarial Services	12,468.75	23,870.00	34,300.00	10,430.00	43,498.02	34,300.00
Information Services	6,675.40	24,906.91	50,666.64	25,759.73	35,851.99	76,000.00
Document Scanning Services	0.00	30,105.15	43,336.00	13,230.85	14,831.76	65,000.00
Other Professional Services	7,861.45	64,070.42	101,060.72	36,990.30	107,648.04	151,592.00
Staff Travel	569.78	9,585.48	19,664.00	10,078.52	12,559.20	29,500.00
Board Travel	2,978.10	18,646.07	41,333.36	22,687.29	35,791.67	62,000.00
NABRICO	4,330.19	4,897.58	0.00	(4,897.58)	8,431.60	13,750.00
Training	916.92	27,281.78	26,362.64	(919.14)	18,813.27	39,500.00
Rent	44,070.17	371,713.35	351,912.00	(19,801.35)	346,388.86	527,865.00
Printing and Supplies	2,744.47	45,632.63	55,000.00	9,367.37	55,219.72	82,500.00
Postage and Delivery	1,889.62	15,639.28	21,040.00	5,400.72	17,895.98	31,550.00
Equipment Rent & Maintenance	11,702.54	31,444.62	38,002.64	6,558.02	38,559.34	57,000.00
Telephone	4,069.58	33,073.94	34,336.00	1,262.06	30,013.33	51,500.00
L P Programs (less Salary & Benefits)	26,820.29	282,596.08	335,952.00	53,355.92	249,641.54	503,906.00
Defense Panel Training	0.00	0.00	0.00	0.00	89,305.25	0.00
Bar Books Grant	16,666.67	133,333.36	133,336.00	2.64	133,333.36	200,000.00
Insurance	3,655.25	30,029.53	27,928.00	(2,101.53)	27,525.11	41,894.00
Library	3,788.86	18,378.00	21,000.00	2,622.00	16,627.18	31,500.00
Subscriptions, Memberships & Other	19,725.50	143,310.34	158,930.72	15,620.38	108,962.14	234,300.00
Allocated to Excess Program	<u>(88,831.66)</u>	<u>(710,653.28)</u>	<u>(710,648.00)</u>	<u>5.28</u>	<u>(632,277.20)</u>	<u>(1,065,980.00)</u>
<b>TOTAL EXPENSE</b>	<b><u>\$558,877.36</u></b>	<b><u>\$4,711,379.63</u></b>	<b><u>\$5,005,868.72</u></b>	<b><u>\$294,489.09</u></b>	<b><u>\$4,666,478.59</u></b>	<b><u>\$7,495,889.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Revenue, Expenses, and Changes in Net Position  
8 Months Ended 8/31/2016**

	<b>YEAR TO DATE <u>ACTUAL</u></b>	<b>YEAR TO DATE <u>BUDGET</u></b>	<b><u>VARIANCE</u></b>	<b>YEAR TO DATE <u>LAST YEAR</u></b>	<b><u>ANNUAL BUDGET</u></b>
<b><u>REVENUE</u></b>					
Ceding Commission	\$522,545.19	\$508,000.00	(\$14,545.19)	\$503,366.35	\$762,000.00
Prior Year Adj. (Net of Reins.)	0.00	4,600.00	4,600.00	887.07	6,900.00
Profit Commission	46,653.47	0.00	(46,653.47)	(4,264.74)	0.00
Installment Service Charge	44,760.00	42,000.00	(2,760.00)	40,447.00	42,000.00
Investment Return	<u>150,467.70</u>	<u>113,920.00</u>	<u>(36,547.70)</u>	<u>(27,581.11)</u>	<u>170,879.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$764,426.36</u></b>	<b><u>\$668,520.00</u></b>	<b><u>(\$95,906.36)</u></b>	<b><u>\$512,854.57</u></b>	<b><u>\$981,779.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$764,071.78	\$764,089.00	\$17.22	\$680,586.53	\$1,146,830.00
Allocated Depreciation	<u>\$16,174.00</u>	<u>\$16,176.00</u>	<u>\$2.00</u>	<u>\$11,320.00</u>	<u>\$24,261.00</u>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>(\$15,819.42)</u></b>	<b><u>(\$111,745.00)</u></b>	<b><u>(\$95,925.58)</u></b>	<b><u>(\$179,051.96)</u></b>	<b><u>(\$189,312.00)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
8 Months Ended 8/31/2016**

	<u>CURRENT</u> <u>MONTH</u>	YEAR <u>TO DATE</u> <u>ACTUAL</u>	YEAR <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	YEAR <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$49,160.58	\$393,284.64	\$393,288.00	\$3.36	\$356,472.64	\$589,927.00
Benefits and Payroll Taxes	16,066.75	128,534.00	128,536.00	2.00	127,693.28	192,801.00
Investment Services	0.00	756.00	1,425.00	669.00	897.00	2,850.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	23,604.33	188,834.64	188,832.00	(2.64)	148,111.28	283,252.00
Reinsurance Placement & Travel	562.20	6,542.07	13,336.00	6,793.93	11,072.63	20,000.00
Training	0.00	485.00	336.00	(149.00)	0.00	500.00
Printing and Mailing	201.57	3,846.33	7,000.00	3,153.67	4,915.65	10,500.00
Program Promotion	0.00	8,035.00	16,666.64	8,631.64	16,679.05	25,000.00
Other Professional Services	0.00	8,450.85	1,336.00	(7,114.85)	299.30	2,000.00
Software Development	<u>2,513.70</u>	<u>25,303.25</u>	<u>13,333.36</u>	<u>(11,969.89)</u>	<u>14,445.70</u>	<u>20,000.00</u>
<b>TOTAL EXPENSE</b>	<b><u>\$92,109.13</u></b>	<b><u>\$764,071.78</u></b>	<b><u>\$764,089.00</u></b>	<b><u>\$17.22</u></b>	<b><u>\$680,586.53</u></b>	<b><u>\$1,146,830.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
8 Months Ended 8/31/2016**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$12,707.87	\$99,459.33	\$5,910.37	\$74,552.30
Intermediate Term Bond Funds	23,728.22	204,039.44	31,125.78	270,157.69
Domestic Common Stock Funds	0.00	86,396.73	0.00	91,320.86
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	89,745.78	0.00	86,674.97
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>99,603.73</u>	<u>0.00</u>	<u>95,134.79</u>
<b>Total Dividends and Interest</b>	<b><u>\$36,436.09</u></b>	<b><u>\$579,245.01</u></b>	<b><u>\$37,036.15</u></b>	<b><u>\$617,840.61</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	(\$22,346.10)	\$8,508.10	(\$12,638.74)	(\$41,907.69)
Intermediate Term Bond Funds	(1,200.67)	387,799.72	(70,327.08)	(158,425.55)
Domestic Common Stock Funds	28,117.68	672,990.32	(584,490.91)	(302,008.97)
International Equity Fund	187,452.77	353,235.08	(665,072.41)	(239,292.47)
Real Estate	0.00	117,238.13	0.00	244,110.74
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>8,136.32</u>	<u>874,262.66</u>	<u>(217,906.99)</u>	<u>(497,798.55)</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$200,160.00</u></b>	<b><u>\$2,414,034.01</u></b>	<b><u>(\$1,550,436.13)</u></b>	<b><u>(\$995,322.49)</u></b>
<b>TOTAL RETURN</b>	<b><u>\$236,596.09</u></b>	<b><u>\$2,993,279.02</u></b>	<b><u>(\$1,513,399.98)</u></b>	<b><u>(\$377,481.88)</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$1,559.46	\$22,326.87	\$1,681.44	\$26,333.88
Gain (Loss) in Fair Value	<u>8,566.85</u>	<u>128,140.83</u>	<u>(70,389.80)</u>	<u>(53,914.99)</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$10,126.31</u></b>	<b><u>\$150,467.70</u></b>	<b><u>(\$68,708.36)</u></b>	<b><u>(\$27,581.11)</u></b>



**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Balance Sheet  
8/31/2016**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$505,464.41	\$505,986.31
Assessment Installment Receivable	85,873.50	66,703.00
Due from Reinsurers	54,324.67	164,648.66
Investments at Fair Value	<u>2,284,049.34</u>	<u>2,192,765.04</u>
<b>TOTAL ASSETS</b>	<b><u>\$2,929,711.92</u></b>	<b><u>\$2,930,103.01</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable & Refunds Payable	\$2,616.03	\$2,463.75
Due to Primary Fund	\$562.20	(\$16.59)
Due to Reinsurers	451,408.04	370,722.19
Ceding Commision Allocated for Remainder of Year	<u>261,272.60</u>	<u>251,683.18</u>
<b>Total Liabilities</b>	<b><u>\$715,858.87</u></b>	<b><u>\$624,852.53</u></b>
<b>Net Position</b>		
Net Position (Deficit) Beginning of Year	\$2,229,470.90	\$2,480,828.88
Year to Date Net Income (Loss)	<u>(15,819.42)</u>	<u>(179,051.96)</u>
<b>Total Net Position</b>	<b><u>\$2,213,651.48</u></b>	<b><u>\$2,301,776.92</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$2,929,510.35</u></b>	<b><u>\$2,926,629.45</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Balance Sheet  
8/31/2016**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$2,014,972.38	\$1,557,605.78
Investments at Fair Value	49,747,265.76	47,180,783.43
Assessment Installment Receivable	2,479,045.00	2,599,875.00
Due From Excess Fund	562.20	(16.59)
Other Current Assets	71,858.15	81,558.00
Net Fixed Assets	726,353.40	781,304.46
Claim Receivables	9,854.78	65,489.84
Other Long Term Assets	<u>6,250.00</u>	<u>6,800.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$55,056,161.67</u></b>	<b><u>\$52,273,399.92</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$92,172.66	\$229,030.12
Deposits - Assessments	2,255,126.00	0.00
Liability for Compensated Absences	397,427.82	354,702.17
Liability for Indemnity	13,681,918.73	15,031,682.13
Liability for Claim Expense	14,851,222.96	14,650,079.30
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>8,183,480.67</u>	<u>8,198,872.55</u>
<b>Total Liabilities</b>	<b><u>\$46,561,348.84</u></b>	<b><u>\$45,164,366.27</u></b>
<b>Net Position</b>		
Net Position (Deficit) Beginning of the Year	\$5,686,792.83	\$8,448,143.51
Year to Date Net Income (Loss)	<u>2,952,440.57</u>	<u>(1,335,636.30)</u>
<b>Total Net Position</b>	<b><u>\$8,639,233.40</u></b>	<b><u>\$7,112,507.21</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$55,200,582.24</u></b>	<b><u>\$52,276,873.48</u></b>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 Pro Bono Coverage Plan

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### **Action Recommended**

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2017 Pro Bono Coverage Plan (see attached). There are changes to the Plan.

### **Background**

Earlier this year, the Board of Governors approved changes to the 2017 PLF Primary and Excess Plans.

The revisions to the attached 2017 Pro Bono Plan are reflective of the changes made to those Plans.

Attachment: PLF 2017 Pro Bono Coverage Plan

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND**

**2017 PRO BONO PROGRAM  
CLAIMS MADE PLAN**

**INTRODUCTION**

The Professional Liability Fund (“PLF”) provides limited coverage regarding Oregon attorneys who claim exemption from PLF Primary coverage and who volunteer their time for Pro Bono Programs jointly certified by the Oregon State Bar and the Professional Liability Fund. Because this coverage is provided at no cost, it is intended to apply only to claims based on or arising from the actual or alleged conduct of volunteer attorneys when there is no other plan or insurance coverage that would apply to any such claim. The coverage provided under this Plan is not the same, in some respects, as the coverage provided under the PLF Primary Plan. The Pro Bono Program and its volunteers should review this Plan carefully in order to understand its restrictions, limitations, exclusions, conditions, and the applicable limit of coverage.

Throughout this Professional Liability Fund (“PLF”) Pro Bono Coverage Plan (“**Plan**”), issued to the Pro Bono Program, identified in the Declarations: **Pro Bono Program** refers to the Named Program shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this **Plan** was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this **Plan**. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A.

**SECTION I - COVERAGE AGREEMENT**

Subject to the terms, conditions, definitions, exclusions, and limitations set forth in this **Plan** and the applicable **Limit of Coverage** and **Claims Expense Allowance** as these are defined and described in Section VIII, the coverage provided by this **Plan** is as follows:

**A. Indemnity**

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which the **Coverage Period** of this **Plan** applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

**Legally Obligated** to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of

**Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the claimant to collect money **Damages** directly from the **Covered Party**.

**Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs, or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**.

## B. Defense

1. Until the **Claims Expense Allowance** and applicable **Limit of Coverage** are exhausted, the PLF will defend a **Covered Party** against any **Suit** seeking **Damages** to which this **Plan** applies. The PLF is not bound by any **Covered Party's** agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

**Suit** means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this **Plan** applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review, or repair any **Claim** or matter that may create the potential for a **Claim**.
3. The PLF will pay **Claims Expense** the PLF incurs.

**Claims Expense** means fees and expenses charged by any attorney designated by the PLF; all other fees, costs and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair, or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 incorporated in this **Plan** by Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of a **Covered Activity** and are not otherwise excluded by other applicable exclusions in this **Plan**. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

## C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

D. No Prior Knowledge or Prior Coverage

This **Plan** applies only to a **Covered Activity** that occurred either: (a) during the **Coverage Period**; or (b) before the **Coverage Period** if (i) on the effective date of this **Plan**, the **Covered Party** had no knowledge of any **Claim** having been asserted or of any facts or circumstances of which the **Covered Party** was aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity**; (ii) the actual or alleged error, omission negligent act or breach of duty on which the **Claim** is based occurred during a period in which a previous PLF pro bono Plan applied to the **Pro Bono Program**; and (iii) there is no prior plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior plan or policy are sufficient to pay any liability or **Claim**.

E. Coverage Territory

This **Plan** applies to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

## SECTION II - WHO IS A COVERED PARTY UNDER THIS PRO BONO PLAN?

Only the following are **Covered Parties** under this **Plan**:

A. Individual Volunteer Attorneys

An individual **Volunteer Attorney** is a **Covered Party**, but only with respect to a **Claim** arising from **Covered Activities** rendered on behalf of the **Pro Bono Program**, and only if there is no other plan or insurance coverage that applies to such **Claim**.

**Volunteer Attorney** means an attorney who: (1) is not otherwise covered under a PLF Primary Plan; (2) provided pro bono **Professional Legal Services** or **Special Capacity Services** to clients of the **Pro Bono Program**; (3) is not employed or compensated in any way by the **Pro Bono Program**; and (4) was eligible to provide voluntary **Professional Legal Services** or **Special Capacity Services** under the applicable rules of the Oregon State Bar at the time such services were provided.

**Pro Bono Program** means the Pro Bono Program named in the Declarations.

B. The Pro Bono Program

The **Pro Bono Program** is also a **Covered Party** under this **Plan**, but only to the limited extent it is legally liable for any **Claim** based on or arising from a **Volunteer Attorney's Covered Activities**, and only provided the **Pro Bono Program** has no other applicable plan or insurance coverage for any such liability. In the event any **Claim** against a **Volunteer Attorney** also involves **Claims** against employees of the **Pro**

**Bono Program**, any defense or indemnity under this **Plan** is limited to that portion of the **Pro Bono Program's** legal liability that relates to a **Volunteer Attorney's Covered Activities**.

### SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this **Plan**, a **Covered Activity** is an error, omission, negligent act, or breach of duty by a **Volunteer Attorney** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services** to a client or clients of the **Pro Bono Program**, but only if such services are within the scope of duties assigned to the **Volunteer Attorney** by the **Pro Bono Program**.

**Professional Legal Services** and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year** and are subject to all the same limitations and conditions set forth in subsections B and C of Section III of the PLF Primary Plan for this **Plan Year**.

### SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?

#### A. Date of Claim:

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed, or an arbitration or alternative dispute resolution proceeding is first initiated against a **Covered Party** under this **Plan**;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this **Plan**;
3. The date notice of a **Claim** is received by any **Covered Party** under this **Plan**;
4. The date the PLF receives notice of a **Claim** against a **Covered Party** under this **Plan**;
5. The date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a **Claim**, for the purpose of investigation, mitigation, review or prevention of any potential **Claim** against a **Covered Party** under this **Plan**; or
6. The date a **Covered Party** under this **Plan** first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

#### B. Special Rule Regarding Related Claims:

If any **Claim** against a **Covered Party** is **Related** to one or more **Related Claim(s)**, the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date a **Covered Party**, under this **Plan**, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, received notice of the earliest **Related Claim**;
4. The date the PLF received notice of the earliest **Related Claim**; or
5. The date a **Covered Party**, under this **Plan**, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, first became aware that a claimant intended to make the earliest **Related Claim**, but the claimant was delaying assertion of the **Claim**, or the **Covered Party** was delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

However, if the **Pro Bono Program** did not have a PLF Pro Bono Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and the **Pro Bono Program** has no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** is determined using the method set forth in Section IV A.

## SECTION V – RELATED CLAIMS

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, activities covered under this or any other PLF Plan, or damages, liabilities or the relationship of the people or entities involved (including clients, claimants, attorneys and/or other advisors) that are logically or causally connected or share a common bond or nexus. A **Claim** against a **Covered Party** under this **Plan** may be **Related** to another **Claim** against the same **Covered Party** and/or to a **Claim(s)** against other **Covered Parties**, or attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VIII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

Examples of **Related Claims** set forth in the PLF Primary Plan, in effect during this **Plan Year**, not intended to be exhaustive, illustrate the intended meaning of **Related Claims** under this Plan. These examples are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

All Exclusions in the PLF Primary Plan, in effect during this **Plan Year**, except Exclusion 6, apply equally to the coverage under this **Plan**. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this **Plan**.



## SECTION VII – PRO BONO PLAN ADDITIONAL EXCLUSIONS

1. Activities Outside Pro Bono Program Exclusion. This **Plan** does not apply to any **Claim** against a **Covered Party** arising from or related to work or services beyond the scope of activities assigned to the **Volunteer Attorney** by the **Pro Bono Program**.
2. Business Interests. This **Plan** does not apply to any **Claim** relating to or arising out of any business enterprise:
  - a. In which any **Covered Party** is a general partner, managing member, or employee, or in which any **Covered Party** was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;
  - b. That is controlled, operated, or managed by any **Covered Party**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any **Covered Party** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
  - c. In which any **Covered Party** either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) the **Covered Party**, those controlled by the **Covered Party** and his or her spouse, parent, step-parent, child, sibling, any member of the **Covered Party's** household, and those with whom the **Covered Party** is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.

## SECTION VIII – LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE, AND SPECIAL LIMITS REGARDING RELATED CLAIMS

### A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this **Plan** is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this **Plan** applies. The making of multiple **Claims** against any **Covered Party** or against multiple **Covered Parties** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this **Plan** applies:

1. All **Claims Expense** paid by the PLF, on behalf of any **Covered Party** under this **Plan**, that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF's payment, on behalf of any **Covered Party** under this **Plan**, of any and all amounts relating to settlements, judgments or any other indemnity payments based on or arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this **Plan**.

The shared single \$300,000 **Limit of Coverage** under this **Plan** applies both to **Claims** against any and all **Volunteer Attorneys** to whom this **Plan** applies and to **Claims** against the **Pro Bono Program** for any and all **Claims** based on or arising from the actual or alleged conduct of any and all such **Volunteer Attorneys**. Multiple **Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this \$300,000 single **Limit of Coverage**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Limit of Coverage** under this **Plan**, there is either no further coverage under this **Plan** for any **Covered Party**, or a reduced **Limit of Coverage**. This **Limit of Coverage** is also subject to Section VII C below regarding **Related Claims**.

#### B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this **Plan** also provides a single separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this **Plan** subject to Section VII C below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments or any other indemnity payments.

The shared single \$50,000 **Claims Expense Allowance** under this **Plan** applies both to **Claims** against any and all **Volunteer Attorneys** to whom this **Plan** applies and/or to **Claims** against the **Pro Bono Program**. Multiple **Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this single \$50,000 **Claims Expense Allowance**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Claims Expense Allowance**, there is either no further **Claims Expense Allowance** under this **Plan** for any **Covered Party**, or a reduced **Claims Expense Allowance**.

#### C. Special Rules and Limits for Related Claims

If a **Claim** against a **Covered Party** is **Related** to another **Claim** against that **Covered Party**, to any **Claim** against any other **Covered Party** under this **Plan**, or to a **Claim** against any other attorney, law entity, or pro bono program covered by the PLF under this or any other PLF **Plan**, then regardless of the number of claims, claimants, clients, attorneys, volunteer attorneys, pro bono programs or law entities involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF **Plan** regarding all such **Related Claims**. This is subject only to the discretionary exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available for any **Claim** based on or arising from the actual or alleged conduct of a **Covered Party** cannot exceed the amount of the remaining limit available under this **Plan** for the applicable **Coverage Period**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on behalf of any **Covered Party** under this **Plan**, or on behalf of any other parties covered under any other PLF **Plans** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any **Related Claim** against any **Covered Party**.

Only one **Claims Expense Allowance** applies regarding **Related Claims** against any and all **Covered Parties** under this **Plan** and against any parties covered under any other PLF Plan. In the sole discretion of the PLF, however, it may grant separate **Claims Expense Allowances** when there are **Related Claims** against other parties covered under other PLF Plans.

If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

## SECTION IX – DUTIES OF COVERED PARTIES

### A. Notice of Claims, Suits and Circumstances

As a condition precedent to any right of protection afforded by this **Plan**, the **Covered Party** must give the PLF, at the address shown in the Declarations, timely written notice of any **Claim, Suit**, or circumstances, as follows:

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** which otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

### B. Other Duties of Cooperation

As a condition of coverage under this **Plan**, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Plan. These conditions are incorporated in this **Plan** by reference, and have the same force and effect as if fully set forth in this **Plan**.

## SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

The provisions of Section IX of the PLF Primary Plan, applicable to this **Plan Year**, are incorporated into this **Plan** by reference and have the same force and effect as if fully set forth in this **Plan**.

## **SECTION XI – RELATION OF THE PLF’S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE**

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under this Plan until the limits of the **Covered Party’s** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Limit of Coverage** of this Plan.

## **SECTION XII – WAIVER AND ESTOPPEL**

The provisions of Section XII of the PLF Primary Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this **Plan**.

## **SECTION XIII — ASSIGNMENT**

Any interest of any **Covered Party** under this **Plan** is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the **Plan**.

## **SECTION XIV — TERMINATION**

This **Plan** will terminate immediately and automatically in the event the **Pro Bono Program** is no longer certified as a Pro Bono Program by the Oregon State Bar.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Budget

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### **Action Recommended**

Approve the 2017 Budget.

### **Background**

On an annual basis, the Board of Governors approves the PLF budget for the coming year. The attached materials contain the proposed budget.

Both the Executive Director of the Bar and the CEO of the PLF recommend a 3.0% salary pool. This salary pool is separate from reclassifications that are in the budget and occurs when individuals take on additional responsibilities and move to a new classification with tenure (e.g. Claims Attorney I to Claims Attorney II). After the budget was prepared and submitted to the PLF Board but before the Board voted, the PLF received the PERS employer contribution amounts for the July 2017 to June 2019 biennium. The increases were 40.59% and 47.47% on tiers 1 & 2, and OPSRP respectively. Additionally, an adjustment to the increase in medical benefits costs of 5% was recommended. These two adjustments increase budgeted expenses by \$35,525. The PLF Board voted to approve the Budget with the expectation that the increases to these expenses would be incorporated into the budget. The attached budget reflects those additions.

The June 30, 2016 actuarial rate study estimates a cost of \$2,730 per lawyer for new 2017 claims, remaining the same from 2016. But, as in the past, this budget includes a factor for adverse claims development. For 2017, we are projecting \$500,000 in adverse claim development, which equals approximately \$72 per attorney. In prior years, this amount has been closer to \$150. The reduction in the number of claims has allowed this number to decline. As in all previous years, an operational shortfall exists for 2017. This year it is \$871 per attorney. This shortfall is covered by the Fund's net position.

### **2017 PLF Budget**

#### **Number of Covered Attorneys**

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

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" attorneys. We

project 6,950 “full-pay” attorneys for 2017. The actual number of covered parties in 2017 is expected to be approximately 7200.

The PLF Excess program anticipates continued growth. The number of covered attorneys is expected to increase by 8% to 2298. There is an expected increase to ceding commissions of 15%.

### **Allocation of Costs between the Excess and Primary Programs**

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

### **Primary Program Revenue**

Projected assessment revenue for 2017 is based upon the \$3,500 assessment paid by the estimated 6950 full pay attorneys.

Investment returns have been volatile for the PLF in the first 8 months of 2016. The first six months showed losses while the 7<sup>th</sup> and 8<sup>th</sup> month of the fiscal year have seen some recovery in the portfolio. 2017 is equally difficult to project with uncertainty around the impact of the United States election and the disengagement of the UK from the European union. Based on performance of the portfolio overall in 2016, we are conservatively projecting an overall portfolio return of 3.27% in 2017. A .5% change to the projected rate has a value of approximately \$267,815.

### **Primary Program Claims Expense**

By far the largest cost category for the PLF is claim costs for indemnity and defense. Since claims often don't resolve quickly, these costs are paid over several years after the claim is first made. The ongoing calculation of estimated claim costs, along with investment results are the major factors in determining the Primary Program's positive/negative in-year results.

For any given year, financial statement claims expense includes two factors: (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of claims liabilities reflecting positive or adverse claims development for those pending at the beginning of the year. Factor 1 (new claims) is much larger and much more important than factor 2.

Our projections of claim costs for 2017 are based on a projected claim count for 2017 of 870 claims. At August 31, 2016 the PLF annualized claim count is at 871. The cost of each new claim has been budgeted in accordance with actuarial recommendations of \$22,500. The claims frequency anticipated for 2017 is 12.5%. A 5% difference in the estimated claim count from that budgeted equates to 43.5 claims or \$978,750.

**Full-Time Employee Statistics (Staff Positions)**

We have included “full-time equivalent” or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department. Each department is indicated net of Excess staff allocations (explained below):

	<u>2016 Projections</u>	<u>2017 Budget</u>
Administration	6.8 FTE	6.8 FTE
Claims	19.96 FTE	19.46 FTE
Loss Prevention (includes OAAP)	13.79 FTE	13.50 FTE
Accounting	6.93 FTE	6.93 FTE
Excess Allocations	<u>3.75 FTE</u>	<u>3.75 FTE</u>
<b>Total</b>	<b>51.23 FTE</b>	<b>50.44 FTE</b>

**Salary Pool for 2017**

In consultation with the Oregon State Bar, a three percent cost of living increase is recommended for 2017. The budget reflects planned reclassifications. Salary reclassification is done either for those employees who changed status (e.g. Claims Attorney I to Claims Attorney II) or to increase salaries for recently hired employees hired at “probationary salaries”<sup>1</sup> or to address a historical lack of parity between the salaries of employees in positions with equivalent responsibilities.

**Benefit Expense**

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

The employer contribution rates for PERS will remain the same as 2016 for the first six months of 2017. However, a new biennium commences on July 1, 2017. In the absence of any reliable indication from the State around the new biennium numbers, an increase of 20% from the first six months of 2017 rates has been budgeted for the second half of 2017.

Unlike most state and local employers, the PLF does not “pick up” the mandatory 6% employee contribution to PERS. PLF employees have the six percent employee contribution deducted from their biweekly remuneration.

The PLF covers the cost of medical and dental insurance for PLF employees. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents.

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<sup>1</sup> This practice has been discontinued in the last year.

### **Capital Budget Items**

The major capital purchases in 2017 will be functional furniture for claims attorneys. The anticipated cost of this furniture is approximately \$57,000. There are smaller amounts allocated to various leasehold updates and the purchase of computer peripherals.

### **Other Primary Operating Expenses with Changes from 2016 +/- 10%**

**Depreciation** will increase from 2016 due to the purchase of new desk tops for PLF staff and the purchase of two network servers.

**Loss Prevention Programs** have increases due to increased FTE, increased staff training, and web distribution of programming.

**Defense Panel Program** happens only bi-annually and there was no conference in 2016. Hence, the increase in 2017.

**Library** charges are decreasing at the discretion of the claims attorney responsible for stocking the library.

**Credit Card Fees** will continue to increase as the use of credit cards to pay primary assessments is expected to increase.

### **Excess Program Budget**

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess premium that the PLF retains. The commissions are based upon a percentage of the premium charged, with commissions varying depending on the coverage limits. Most of the excess premium is turned over to reinsurers who cover the costs of excess claims. We currently project ceding commission of \$876,300 for 2017. This represents an anticipated increase from the 2016 level of ceding commissions.

Excess investment earnings are calculated using a formula that allocates investment revenue based on contribution to cash flow from the Excess Program.

Attachments



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET**

Presented to PLF Board of Directors on October 14, 2016

	<u>2013 ACTUAL</u>	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<b>Revenue</b>						
Assessments	\$25,042,533	\$24,668,300	\$24,326,360	\$24,325,000	\$24,300,000	\$24,325,000
Installment Service Charge	391,097	378,008	334,667	328,000	330,000	330,000
Investments and Other	<u>4,364,988</u>	<u>2,418,326</u>	<u>(242,895)</u>	<u>3,347,495</u>	<u>3,000,000</u>	<u>1,862,183</u>
Total Revenue	<u>\$29,798,618</u>	<u>\$27,464,633</u>	<u>\$24,418,131</u>	<u>\$28,000,495</u>	<u>\$27,630,000</u>	<u>\$26,517,183</u>
<b>Expenses</b>						
Provision for Claims						
New Claims	\$17,427,049	\$19,595,940	\$17,354,000	\$18,765,000	\$19,800,000	\$19,575,000
Pending Claims Development	<u>\$664,998</u>	<u>(\$987,534)</u>	<u>\$307,272</u>	<u>\$1,051,350</u>	<u>\$0</u>	<u>\$500,000</u>
Total Provision for Claims	<u>\$18,092,047</u>	<u>\$18,608,406</u>	<u>\$17,661,272</u>	<u>\$19,816,350</u>	<u>\$19,800,000</u>	<u>\$20,075,000</u>
Expense from Operations						
Administration	\$2,266,674	\$2,348,769	\$2,570,407	\$2,707,647	\$2,576,287	\$2,654,538
Accounting	805,336	805,336	796,768	833,795	827,910	882,349
Loss Prevention	2,016,547	2,016,547	2,117,267	2,241,396	2,207,634	2,216,331
Claims	<u>2,488,569</u>	<u>2,488,569</u>	<u>2,680,742</u>	<u>2,724,229</u>	<u>2,698,266</u>	<u>2,919,190</u>
Total Operating Expense	\$7,577,126	\$7,659,221	\$8,165,184	\$8,507,067	\$8,310,097	\$8,672,408
Contingency	0	0	0	127,606	0	0
Depreciation	166,575	164,678	157,777	141,776	137,571	160,507
Allocated to Excess Program	<u>(1,135,160)</u>	<u>(1,145,155)</u>	<u>(965,396)</u>	<u>(1,091,476)</u>	<u>(1,040,447)</u>	<u>(1,135,566)</u>
Total Expenses	<u>\$24,700,588</u>	<u>\$25,287,150</u>	<u>\$25,018,837</u>	<u>\$27,501,323</u>	<u>\$27,207,221</u>	<u>\$27,772,348</u>
<b>Net Income (Loss)</b>	<u>\$5,098,030</u>	<u>\$2,177,484</u>	<u>(\$600,705)</u>	<u>\$499,172</u>	<u>\$422,779</u>	<u>(\$1,255,165)</u>
<b>Number of Full Pay Attorneys</b>	7,155	7,048	6,950	6,950	6,943	6,950

**CHANGE IN OPERATING EXPENSES:**

Increase from 2016 Budget 1.94%

Increase from 2016 Projections 4.36%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Presented to PLF Board of Directors on October 14, 2016**

	<u>2013 ACTUAL</u>	<u>2014 BUDGET</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<b><u>Expenses</u></b>						
Salaries	\$4,145,086	\$4,189,074	\$4,384,740	\$4,608,094	\$4,606,695	\$4,698,648
Benefits and Payroll Taxes	1,457,187	1,486,255	1,610,449	1,590,316	1,576,099	1,683,242
Professional Services	331,128	325,775	372,283	387,892	283,400	292,675
Auto, Travel & Training	92,557	109,931	114,350	166,750	117,600	121,100
Office Rent	521,138	512,379	520,065	527,865	527,865	535,783
Office Expense	133,569	155,121	167,049	150,000	148,000	147,261
Telephone (Administration)	48,675	49,326	50,453	51,500	51,500	50,500
L P Programs	373,908	483,532	438,699	503,906	449,113	519,750
OSB Bar Books	200,000	200,000	200,000	200,000	200,000	200,000
Defense Panel Program	9,970	1,915	94,340	0	0	98,448
Insurance	71,471	38,344	42,106	41,894	41,894	43,000
Library	32,659	31,741	32,346	31,500	31,500	27,000
Memberships & Subscriptions	21,458	22,469	24,275	36,500	36,500	36,500
Bank Charges/Credit Card Fees	5,213	56,088	121,331	169,800	169,800	190,500
Promo, Wellness, Staff Functions						28,000
Total Operating Expenses	<u>\$7,444,018</u>	<u>\$7,661,949</u>	<u>\$8,172,484</u>	<u>\$8,466,017</u>	<u>\$8,239,966</u>	<u>\$8,672,408</u>
Allocated to Excess Program	<u>(\$1,105,104)</u>	<u>(\$1,120,789)</u>	<u>(\$948,416)</u>	<u>(\$1,073,329)</u>	<u>(\$1,022,300)</u>	<u>(\$1,114,708)</u>
<b>Full Time Employees</b>	43.83	49.53	49.78	51.23	51.23	51.73
<b>Number of Full Pay Attorneys</b>	7,155	7,048	6,950	7,009	6,943	6,950
<b>Non-personnel Expenses</b>	\$1,841,746	\$1,986,620	\$2,177,296	\$2,288,656	\$2,057,172	\$2,290,517
Allocated to Excess Program	<u>(\$278,874)</u>	<u>(\$270,406)</u>	<u>(\$222,167)</u>	<u>(\$290,900)</u>	<u>(\$290,900)</u>	<u>(\$294,605)</u>
Total Non-personnel Expenses	<u>1,562,872</u>	<u>1,716,214</u>	<u>1,955,129</u>	<u>1,997,756</u>	<u>1,766,272</u>	<u>1,995,912</u>

**CHANGE IN OPERATING EXPENSES:**

Increase from 2016 Budget **2.44%**

Increase from 2016 Projections **5.25%**

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
ADMINISTRATION**

Presented to PLF Board of Directors on October 14, 2016

	<u>2013</u> <u>ACTUAL</u>	<u>2014</u> <u>ACTUAL</u>	<u>2015</u> <u>ACTUAL</u>	<u>2016</u> <u>BUDGET</u>	<u>2016</u> <u>PROJECTIONS</u>	<u>2017</u> <u>BUDGET</u>
<b><u>Expenses</u></b>						
Salaries	\$641,274	\$684,773	\$731,111	\$756,436	\$755,046	\$793,860
Benefits and Payroll Taxes	238,566	233,366	259,873	258,460	258,732	280,859
Staff Travel	21,363	37,354	24,986	46,000	36,100	16,100
Board of Directors Travel	35,514	35,244	54,138	62,000	44,500	41,500
Training	8,947	13,651	6,347	7,500	7,500	7,500
Investment Services	28,018	28,095	38,314	40,000	38,500	44,000
Legal Services	13,738	11,461	31,521	10,000	20,000	10,000
Actuarial Services	19,731	24,209	46,566	34,300	33,000	30,000
Information Services	136,221	83,788	42,660	76,000	82,000	71,000
Electronic Record Scanning	47,086	44,859	36,008	65,000	8,000	30,000
Other Professional Services	63,734	110,564	154,415	139,592	79,300	84,675
OSB Bar Books	200,000	200,000	200,000	200,000	200,000	200,000
Office Rent	521,138	512,379	520,065	527,865	527,865	535,783
Equipment Rent & Maint.	38,672	45,047	49,075	57,000	57,000	39,261
Dues and Memberships	21,458	22,469	24,275	36,500	36,500	36,500
Office Supplies	51,661	70,597	76,145	69,000	69,000	75,000
Insurance	71,471	38,344	42,106	41,894	41,894	43,000
Telephone	48,675	49,326	50,453	51,500	51,500	50,500
Printing	7,629	11,472	10,813	13,500	13,500	4,000
Postage & Delivery	33,400	27,482	30,781	31,550	31,550	26,500
NABRICO - Assoc. of Bar Co.s	10,959	7,680	13,819	13,750	15,000	15,000
Bank Charges/Credit Card Fees	5,213	56,088	121,331	169,800	169,800	189,000
Repairs	2,207	523	235	0	0	2,500
Promo, Wellness, Staff Functions	<u>0</u>	<u>0</u>	<u>5,372</u>	<u>0</u>	<u>0</u>	<u>28,000</u>
Total Operating Expenses	<u>\$2,266,674</u>	<u>\$2,348,769</u>	<u>\$2,570,407</u>	<u>\$2,707,647</u>	<u>\$2,576,287</u>	<u>\$2,654,538</u>
Allocated to Excess Program	<u>(\$430,857)</u>	<u>(\$461,595)</u>	<u>(\$401,955)</u>	<u>(\$495,421)</u>	<u>(\$461,672)</u>	<u>(\$509,451)</u>
<b>Administration Department FTE</b>	8.00	8.00	9.00	9.00	9.00	9.00
<b>CHANGE IN OPERATING EXPENSES:</b>						
Decrease from 2016 budget		-1.96%				
Increase from 2016 Projections		3.04%				



**PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
LOSS PREVENTION (Includes OAAP)  
Presented to PLF Board of Directors on October 14, 2016**

	<u>2013 ACTUAL</u>	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<b>Expenses</b>						
Salaries	\$1,065,411	\$1,111,996	\$1,222,736	\$1,264,141	\$1,281,966	\$1,221,157
Benefits and Payroll Taxes	390,424	423,748	468,504	461,349	457,474	473,924
In Brief	46,731	66,468	59,384	70,000	70,000	75,000
PLF Handbooks	4,949	45,758	9,086	9,000	9,000	5,100
Library	389	997	316	1,000	1,000	1,200
Video and Audio Tapes	44,382	33,193	18,486	30,000	30,000	22,000
Mail Distribution of Video and Audi	14,607	14,341	10,177	12,000	12,000	6,000
Web Distribution of Programs	25,215	58,940	30,395	35,000	35,000	60,000
Program Promotion	16,863	16,452	16,418	22,000	22,000	22,500
Expense of Closing Offices	3,691	7,330	22,781	15,000	15,000	15,000
Facilities	42,828	45,804	46,781	47,000	47,000	48,000
Speaker Expense	4,466	(1,362)	8,581	10,000	10,000	8,000
Accreditation Fees	1,205	956	1,371	1,600	1,600	1,600
Beepers & Confidential Phone	5,110	6,430	7,188	7,000	7,000	7,500
Expert Assistance	0	0	500	5,000	5,000	5,000
Bad Debts from Loans	0	2,325	0	0	0	0
Memberships & Subscriptions	10,517	11,855	12,018	14,200	13,100	16,300
Travel	26,541	30,792	28,210	35,750	22,338	35,350
Training	25,420	29,571	26,737	44,000	23,300	52,900
Downtown Office	100,992	110,893	127,600	141,856	141,856	134,800
Bank Charges/Credit Card Fees				12,000		1,500
Miscellaneous	<u>0</u>	<u>60</u>	<u>_____</u>	<u>3,500</u>	<u>3,000</u>	<u>3,500</u>
<b>Total Operating Expenses</b>	<b><u>\$1,829,743</u></b>	<b><u>\$2,016,547</u></b>	<b><u>\$2,117,267</u></b>	<b><u>\$2,241,396</u></b>	<b><u>\$2,207,634</u></b>	<b><u>\$2,216,331</u></b>
Allocated to Excess Program	<u>(\$209,540)</u>	<u>(\$225,930)</u>	<u>(\$110,811)</u>	<u>(\$124,960)</u>	<u>(\$126,900)</u>	<u>(\$127,751)</u>
<b>Loss Prevention Department FTE (Includes OAAP)</b>	11.83	13.58	14.08	13.83	13.83	14.83
<b>CHANGE IN OPERATING EXPENSES:</b>						
<b>Increase from 2016 Budget</b>		<b>-1.12%</b>				
<b>Increase from 2016 Projections</b>		<b>0.39%</b>				

OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT

Presented to PLF Board of Directors on October 14, 2016

	<u>2013 ACTUAL</u>	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<b><u>Expenses</u></b>						
Salaries	\$1,853,764	\$1,815,952	\$1,872,069	\$1,980,789	\$1,962,964	\$2,044,777
Benefits and Payroll Taxes	628,388	628,756	668,475	671,939	666,802	711,964
Training	8,577	4,620	5,195	31,000	29,000	28,000
Travel	4,966	5,584	8,317	9,000	8,000	9,000
Library & Information Systems	32,659	31,741	32,346	31,500	31,500	27,000
Defense Panel Program	<u>9,970</u>	<u>1,915</u>	<u>94,340</u>	<u>0</u>	<u>0</u>	<u>98,448</u>
Total Operating Expenses	<u>\$2,538,325</u>	<u>\$2,488,569</u>	<u>\$2,680,742</u>	<u>\$2,724,228</u>	<u>\$2,698,266</u>	<u>\$2,919,190</u>
Allocated to Excess Program	<u>(\$353,033)</u>	<u>(\$343,000)</u>	<u>(\$325,921)</u>	<u>(\$337,169)</u>	<u>(\$323,080)</u>	<u>(\$353,265)</u>
Claims Department FTE	18.10	20.33	20.50	20.50	20.40	20.00
<b>CHANGE IN OPERATING EXPENSES:</b>						
Decrease from 2016 Budget		7.16%				
Increase from 2016 Projections		8.19%				

OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
CAPITAL BUDGET

Presented to PLF Board of Directors on October 14, 2016

	<u>2013</u> <u>ACTUAL</u>	<u>2014</u> <u>ACTUAL</u>	<u>2015</u> <u>ACTUAL</u>	<u>2016</u> <u>BUDGET</u>	<u>2016</u> <u>PROJECTIONS</u>	<u>2017</u> <u>BUDGET</u>
<b><u>Capital Items</u></b>						
Furniture and Equipment	\$0	\$0	\$49,887	\$7,000	\$7,000	\$57,000
Telephone	0	0	0		0	0
Copiers / Scanners	0	0	0	5,000	5,000	0
Audiovisual Equipment	0	0	0	0	0	0
Data Processing						
Hardware	0	0	0	25,000	25,000	20,000
Software	0	0	0	6,000	6,000	10,000
PCs, Ipads and Printers	0	0	12,810	127,450	127,450	6,500
Leasehold Improvements	<u>0</u>	<u>0</u>	<u>(42,560)</u>	<u>10,000</u>	<u>5,000</u>	<u>10,000</u>
Total Capital Budget	<u>\$0</u>	<u>\$0</u>	<u>\$20,137</u>	<u>\$180,450</u>	<u>\$175,450</u>	<u>\$103,500</u>
Decrease from 2016 Budget		-42.64%				
Decrease from 2016 Projections		-41.01%				

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 EXCESS PROGRAM BUDGET  
Presented to PLF Board of Directors on October 14, 2016**

	<u>2013</u> <u>ACTUAL</u>	<u>2014</u> <u>ACTUAL</u>	<u>2015</u> <u>ACTUAL</u>	<u>2016</u> <u>BUDGET</u>	<u>2016</u> <u>PROJECTIONS</u>	<u>2017</u> <u>BUDGET</u>
<b>Revenue</b>						
Ceding Commission	747,993	797,386	762,929	762,000	762,000	876,300
Profit Commission	32,069	22,021	4,265	0	0	0
Installment Service Charge	41,433	39,808	40,447	42,000	45,000	45,000
Other	7,913	21,393	884	6,900	6,900	6,900
Investment Earnings	<u>330,352</u>	<u>218,440</u>	<u>(23,272)</u>	<u>170,879</u>	<u>215,467</u>	<u>131,809</u>
Total Revenue	<u>\$1,159,760</u>	<u>\$1,099,049</u>	<u>\$785,252</u>	<u>\$981,779</u>	<u>\$1,029,367</u>	<u>\$1,060,009</u>
<b>Expenses</b>						
Allocated Salaries	\$599,356	\$621,781	\$534,709	\$589,927	\$590,000	\$610,599
Direct Salaries	73,078	76,929	0	0	0	0
Allocated Benefits	226,874	228,602	191,540	192,502	193,000	209,504
Direct Benefits	24,120	30,051	0	0	0	0
Program Promotion	3,922	8,625	23,169	25,000	7,500	15,000
Investment Services	1,982	1,905	1,686	2,850	2,500	2,500
Allocation of Primary Overhead	278,874	270,406	222,167	290,900	285,000	294,605
Reinsurance Placement Travel	369	18,120	12,770	20,000	20,000	20,000
Training	0	0	0	500	500	1,000
Printing and Mailing	4,035	1,947	6,120	10,500	7,500	10,500
Other Professional Services	0	16	299	2,000	18,000	17,000
Software Development	<u>0</u>	<u>0</u>	<u>18,641</u>	<u>20,000</u>	<u>38,250</u>	<u>40,000</u>
Total Expense	<u>\$1,212,611</u>	<u>\$1,258,383</u>	<u>\$1,011,101</u>	<u>\$1,154,179</u>	<u>\$1,162,250</u>	<u>\$1,220,708</u>
<b>Allocated Depreciation</b>	<u>\$30,056</u>	<u>\$24,366</u>	<u>\$16,980</u>	<u>\$17,200</u>	<u>\$16,980</u>	<u>\$18,000</u>
<b>Net Income</b>	<u>(\$82,907)</u>	<u>(\$183,700)</u>	<u>(\$242,829)</u>	<u>(\$189,600)</u>	<u>(\$149,863)</u>	<u>(\$178,699)</u>
<b>Allocated Employee FTE</b>	3.74	3.44	3.48	3.48	3.75	3.75
<b>Number of Covered Attorneys</b>	2,193	2,395	2,025	2,125	2,128	2,298
<b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2016 Budget		5.76%				
Increase from 2016 Projections		5.03%				



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016   
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Investment Portfolio Reallocation – PLF Policy 5.200(I)

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### **Action Recommended**

The PLF Board of Directors recommends that the Board of Governors approve the following:

Reallocation of investment portfolio assets as follows:  
-10% from Diversified Inflation Strategies  
+4% US Equity  
+2% International Equity  
+4% Core Fixed Income.

### **Background**

The need to protect the PLF's investment portfolio from deleterious inflationary effects is no longer required in this economic climate of relatively low inflation levels. Hence, in consultation with our outside investment advisors (RVK, Inc.), the Board recommends diversifying out of inflation protected assets and into existing, relatively well performing components of the portfolio.

Attachment: PLF Policy 5.200(I) - Tracked

allocation to deem that it is appropriate for the PLF investment objectives. Within each asset class, the Board of Directors shall adopt portfolio implementation strategies and investment styles to meet the overall investment objective of each asset class.

The following is intended to represent the current target mix of asset classes for long term investments:

ASSET CLASS	MINIMUM PERCENT	TARGET PERCENT	MAXIMUM PERCENT
U.S. Equities	<del>13.0%</del> 17%	<del>20.0%</del> 24%	<del>27.0%</del> 31%
International Equities	<del>10.0%</del> 12%	<del>19.0%</del> 21%	<del>28.0%</del> 30%
Fixed Income	<del>16.0%</del> 20%	<del>22.0%</del> 26%	<del>28.0%</del> 32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	<del>10.0%</del> 5%	<del>15.0%</del> 5%	<del>20.0%</del> 5%

(BOD 12/12/03; BOG 01/31/04; BOD 5/14/04; BOG 6/11/04; BOD 6/23/06; BOG 7/7/06; BOD 10/8/10; BOG 11/12/10)

(J) **Rebalancing:** The Chief Executive Officer and Chief Financial Officer, on an ongoing basis and in accordance with market fluctuations, shall rebalance the investment portfolio so it remains within the range of minimum and maximum allocations.

(BOD 5/17/91; BOG 10/1/91; BOD 8/14/92; BOG 9/22/92; BOD 12/3/93; 12/17/93; 2/18/94; BOG 3/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/15/97; BOG 9/25/97; BOD 2/12/99; BOG 4/3/99; BOD 1/28/00; BOG 6/3/00; BOD 8/9/01; BOG 11/17/01; BOD 4/19/02; BOG 8/3/02)

**5.250 AUDITING AND ACCOUNTING ASSISTANCE**

The Board of Directors hires the independent financial auditor subject to the requirements of the Oregon Secretary of State. Any audit report will be made directly to the Board of Directors. The Board of Directors may retain additional outside accounting advice whenever it deems necessary.

(BOD 5/14/04; BOG 6/11/04)

**5.300 CLAIMS RESERVES**

The estimated liability for claims is the major item in the Liabilities and Equity portion of the Professional Liability Fund’s Balance Sheet. The accuracy of this item is crucial when presenting the financial condition of the PLF. The Chief Executive Officer will periodically review the

case-by-case indemnity and expense reserves required under section 4.350 and will adjust these figures to present at all times as accurate a picture as possible of the total claims liabilities incurred by the PLF. The Chief Executive Officer will use consulting actuaries when appropriate. The method of calculating estimated liabilities will be reported in detail to the Board on at least an annual basis.

(BOD 7/16/93, BOG 8/13/93)

**5.350 BUDGET**

A budget for the Primary and Excess Programs will be as approved by the Board of Directors and the Board of Governors. The budget will reflect the PLF’s mission and goals as stated at Policy 1.250. The Excess Program will be allocated a portion of all common costs based upon the benefits received from PLF departments and programs. The budget will be prepared and submitted for approval of the Board of Governors in the same manner as budgets of other functions of the bar. The Primary Program budget will be presented to the Board of Governors in conjunction with the recommended Primary Program assessment for the coming year.

(BOD 10/2/91; BOG 12/13/91; BOD 10/25/02; BOG 11/16/02; BOD 5/14/04; BOG 6/11/04)

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** Proposed Policy Revisions – Policies 7.300, 7.600 and 4.350

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### Action Recommended

We are seeking three changes to the PLF Policies and Procedures. The first two relate to the Excess program and the third change relates to how we do reserves.

### Background

#### Excess Plan

1. Amendment to PLF Policy 7.300(E).

In 2015, the Board and the BOG approved changes to the PLF policies that flowed from a complete overhaul of the way we price excess. Before the 2016 plan year, the PLF priced excess essentially the same as primary with a single price (a limited number of lawyers with past claims that met a certain threshold and/or who practiced in high risk areas were charged a higher premium). Historically the BOD and then the BOG approved those rates. The change in our pricing eliminated standard rates. We now have a rate sheet that includes a base rate, but which applies numerous debits and credits based on a wide range of factors (generally outlined in PLF Policies 7.250 and 7.600).

In 2015, we amended PLF Policy 7.300(E) to read:

Assessments for excess coverage will be determined through an underwriting formula and rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be approved by the Board of Governors upon recommendation of the PLF Board of Directors.

We are seeking to amend the policy to eliminate approval of the base rate. The new Policy 7.300(E) would read:

Assessments for excess coverage will be determined through an underwriting formula and rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be reported to the Board of Directors and approved by the Board of Governors.

There are two reasons for requesting this change. First, the base rate is not particularly informative of what any given lawyer will pay. For the 2016 Plan Year the base rate was \$1150. By way of example, solo practitioners seeking an additional

\$700,000 in coverage paid anywhere from \$1200 - \$1700 for that coverage, depending on their risk profile.

The second reason for the change is because the base rate becomes part of the negotiations and the contract with our reinsurers. We need to have flexibility to work with them (through our broker, Aon) to adjust the base rate to meet the overall premium goals we have. Those negotiations occur between mid-September and October 1. If the BOD and BOG approve the base rate in August and early September (respectively), the subsequent negotiations with reinsurers may require an adjustment to that rate. Once we sign the contract with the reinsurers, if the BOD and/or BOG doesn't approve the base rate, we are arguably in breach of contract.

2. Amendment to PLF Policy 7.600(M)(1)

This request follows the preceding request. Policy 7.600(M)(1) currently reads:

Higher limits coverage: Firms who meet the additional underwriting criteria and procedures established by the PLF and its reinsurers may be eligible to purchase limits in excess of the \$4.7 million excess limits offered by the PLF's standard excess program. In accordance with reinsurance agreements, firms applying for higher limits coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

~~(+) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms seeking coverage above the \$4.7 million standard excess coverage will be subject to the standard underwriting formulate and rate sheet and also subject to reinsurer approval and rating adjustment. will be charged for higher limits excess coverage at rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors. These rates are subject to reinsurer adjustment for firms meeting certain underwriting criteria.~~

(1) We are seeking to amend the policy to read as follows:

~~(+) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms seeking coverage above the \$4.7 million standard excess coverage will be subject to the standard underwriting formula and rate sheet and also subject to reinsurer approval and rating adjustment." will be charged for higher limits excess coverage at rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors. These rates are subject to reinsurer adjustment for firms meeting certain underwriting criteria.~~

3. Amendment to PLF Policy 4.350(C)

We have discovered that the policy with respect to reserving for defense expenses is not consistent with our claims handling manual or actual practices (and in fact has not been the policy of the PLF for a significant amount of time). It therefore needs to be revised to comport with our actual practice.

PLF Policy 4.350(C) currently reads:

Expense reserves will be adjusted as payment of defense costs and attorneys fees are received and paid so as to keep the reserve a positive or zero balance. The carrying of excessive expense reserves is to be avoided.

This policy is a holdover from when the PLF was not fully funded. We are well past that now. We recommend deleting this policy as the other provisions of the policy describing the reserving policy and procedures applies equally to indemnity and loss. The new PLF Policy 4.350 would read as follows:

(A) It is the policy of the Professional Liability Fund to establish both loss and expense reserves as quickly and accurately as possible as part of the claim file set-up procedure. Consideration is to be given to the following factors in light of what is known at any given time:

- (1) The degree of potential liability of the Covered Party for negligent acts or omissions.
- (2) The nature and extent of the claimant's damages.
- (3) Coverage questions.
- (4) Defenses available to the Covered Party on the malpractice issue.
- (5) The nature of the underlying case.
- (6) Defenses available in the underlying case.
- (7) Jurisdiction in which the claim is or would be filed.
- (8) Mitigation efforts by claimant in the underlying case.
- (9) Opinion of defense counsel.
- (10) Character and reputation of the Covered Party and the claimant.
- (11) General assessment of the overall situation, both as to the underlying and malpractice cases.
- (12) Reports and assessments of liability received from outside experts.
- (13) Such other factors as may be deemed relevant to the claim.


(B) It is the PLF's policy that all loss and expense reserves will be reviewed by the Professional Liability Fund staff attorney assigned to the case at least every 90 days, and more often if new information is received which bears on file evaluation.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO   
**Re:** 2017 Excess Base Rate

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### Action Recommended

The PLF Board of Directors (BOD) requests that the Board of Governors approve a base rate of \$1,322 for 2017 excess coverage.

### Background

In addition to its primary coverage, the PLF provides optional excess coverage to Oregon attorneys. The excess coverage is completely reinsured. Rates are determined through negotiations between the PLF and the excess reinsurers, usually Lloyds of London syndicates. Each year's rates are based on the ongoing PLF experience and predicted future trends, as well as in-person discussions between representatives of the PLF and reinsurers.

Since the PLF began offering excess coverage, we approached pricing in a way similar to that of the primary program: a single rate. For excess, we did charge a higher rate for lawyers practicing in high risk areas (primarily securities and certain types of real estate) or who had a history of claims that met a certain severity threshold (not something we do at primary). We also had two rates for out-of-state attorneys.

As I have been reporting in my updates to the BOG, the PLF completely changed its excess pricing system for 2016. We have discontinued the two-rate model in favor of a fully underwritten approach that begins with a base rate. At the October 14, 2016 PLF Board meeting, the Board approved a base rate of \$1322. This rate was developed after extensive modeling provided by our broker in London, Aon, working closely with our largest reinsurer. The rates for our Excess Program will increase in 2017, generally between 15-20%. We have nearly \$9 million in loss development in the previous two years. Oregon's strict liability securities law has generated about 80% of that loss.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 1, 2016  
**From:** Dawn M. Evans, Disciplinary Counsel  
**Re:** Amendments to Bar Rules

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### **Action Recommended**

Approve proposed revisions to the Bar Rules of Procedure (Bar Rules) for publication and comment.

### **Background**

In the months since the March meeting in which the Board of Governors (“Board”) accepted or rejected the Disciplinary System Review Committee (“DSRC”) recommendations, I have worked closely with the Supreme Court staff member who attended every meeting of the DSRC in developing the revisions that implement the Board’s recommendations (including the more recent vote approving the professional adjudicator position). Along the way, we have identified opportunities to make the rules more clear and to brush up the document stylistically. In addition, three issues have developed since March that warrant amendments to the rules beyond those considered and recommended by the DSRC.

In order to facilitate an efficient digestion of the proposed changes, several tools are attached: (1) a chart correlating the Board-approved DSRC recommendations with the rules in which the changes are reflected; (2) a categorization of proposed changes not considered or recommended by the DSRC, with explanations; and (3) a redlined version of the Bar Rules (with deleted language [*italicized within brackets*] and new language underlined). In addition, I have summarized the amendments that implement the DSRC recommendations approved by the BOG below.

#### *Summary of Amendments to Implement DSRC Recommendations Approved by the BOG*

All references to “accused” are now “respondent.” Several definitions have been added, including the terms “complainant,” “grievance,” and “inquiry” (to rectify confusion between “complaint” to refer to the document filed with the Client Assistance Office and usage of the phrase “formal complaint” to refer to the pleading filed).

All references to Local Professional Responsibility Committees are deleted.

The State Professional Responsibility Board (SPRB), which will be appointed by the Supreme Court and whose members will now be eligible for appointment to a non-consecutive term not to exceed 4 years, retains the role of determining the outcome of all complaints not dismissed or diverted by Disciplinary Counsel (DCO), through authorizing formal prosecution, dismissal, or a negotiated outcome of everything from admonition to a Form B resignation (2.3).

Language defining the duties and responsibilities of the DCO is set forth in a new rule (2.2) and expounded upon elsewhere. New is DCO's exclusive ability to offer, enter into, amend, and terminate diversions; to report possible criminal behavior by an attorney to the appropriate authority or investigate based upon an accusatory instrument; and to initiate various types of special proceedings (2.6(a)(3), 2.10, 3.1(a), 3.3, and 3.4(a)).

The duties and responsibilities of the new professional adjudicator (Adjudicator) are grouped together, with the Adjudicator ruling on disqualification motions pertaining to other members of the panel; chairing every trial panel (with the provision for a substitute in the event of disqualification or unavailability); ruling on all pretrial motions; having the ability to conduct a prehearing conference; presiding in various special proceedings; and, in every instance in which the Adjudicator votes with the majority, authoring the trial panel opinion (2.4(e)). In some ways, the Adjudicator is performing functions heretofore performed by the State Chair of the Disciplinary Board, a position that is eliminated, while Regional Chairs are retained because of their involvement in appointment of other trial panel members. (A recommendation to retain the State Chair but eliminate Regional Chairs was tabled at the BOG meeting, pending a decision on whether to recommend a professional adjudicator. With the professional adjudicator in place, it makes more sense to retain the regional chairs to appoint the second and third members of the trial panel as they would have more of a rapport and familiarity with persons within their region, and the responsibility to appoint all trial panel members other than the Adjudicator would not be placed on a single volunteer.) In every instance in which a trial panel provides the adjudicatory function, a lawyer and a nonlawyer appointed by the Regional Chair will serve with the Adjudicator.

The rule addressing trial panel member disqualification has been clarified by the provision of separate timetables for peremptory and for-cause disqualifications, with each side able to exercise one peremptory challenge, unlimited for-cause challenges, and the Adjudicator being subject only to for-cause disqualification (2.4(g)).

The somewhat confusingly-named "pre-hearing conference" (which is something of a hybrid of a more conventional pretrial conference and a settlement conference held before a Disciplinary Board member other than anyone serving on the trial panel) has been renamed and clarified, and language describing a more traditional pretrial conference option that may be called by the Adjudicator is set forth in a separate rule (4.6 and 4.7).



Changes to special proceedings (including seeking suspension during the pendency of a disciplinary proceeding in pursuit of protection of the public – 3.1; discipline based upon the attorney’s criminal conviction – 3.4; and reciprocal discipline – 3.5) include empowering DCO to initiate those proceedings without first obtaining authority to do so from the SPRB; refining the criteria for obtaining relief; having the Adjudicator rule upon the initial relief sought; and providing an accelerated Supreme Court de novo review where interim relief is granted or denied in the case of interlocutory suspension to protect the public or arising out of a criminal conviction. Proceedings dealing with issues of mental competency or addiction will still be filed directly with the Supreme Court (3.2).

Language clarifying a lawyer’s obligations upon suspension or disbarment has been added (6.3(a) and (b)).

Various provisions intended to shorten the time from the filing of a formal complaint to its resolution include: (a) requiring DCO to request the appointment of a trial panel within 30 days following the timely filing of an answer (4.1(e)); (b) mandating the Adjudicator’s scheduling of a hearing on the formal complaint upon learning of assignment of other trial panel members to take place within set parameters (2.4(e)(8) and 5.4); providing remedies if a trial panel opinion is not timely issued (2.4(h)(2)(B)); and shortening the time in which to request Supreme Court review of a trial panel decision from 60 days to 30 and the date upon which a trial panel decision is final (absent a request for review) from 61 days to 31 days (10.3 and 10.1).

## **Conclusion**

This packet of proposed changes gives voice to the Board's recommendations to come out of the Disciplinary System Review Committee's work; clarifies the Court's involvement in the appointment of members of the Unlawful Practice of Law Committee; clarifies the status of retired members; institutes a shift from affidavits to declarations in various forms, consistent with civil practice; and paves the way for electronic signatures on Bar-accessible forms.

DME:de

Attachments – Chart of BOG Recommendations, Explanation of Changes, Bar Rules (redlined)

<p style="text-align: center;"><b>BOG Recommendations</b></p> <p>(Numbering correlates with DSRC recommendation numbers)</p>	<p style="text-align: center;"><b>Rules <u>amend</u> <u>ed, added,</u> <u>or deleted</u><sup>1</sup></b></p>
(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.	<u>2.3</u>
(3) DCO should have sole authority to enter into diversion agreements for lesser misconduct.	2.2(b)(3); <del>2.6(e)(1)</del> ; 2.6(a)(3); <u>2.10</u>
(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.	2.2(b)(6); 4.1(d); 4.4(b)( <u>1</u> )
(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.	2.2(b)(5); <u>3.1(a)</u>
(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.	2.2(b)(5); <u>3.3</u>
(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.	<u>2.3(c)(1)</u> ; <u>2.6(e)(2)</u> ; <u>2.6(e)(3)</u>
(11) The Local Professional Responsibility Committees should be eliminated.	<del>1.1(r)</del> ; <del>2.1(c)</del> ; <del>2.3</del> ; <del>2.4</del> ; <del>2.6</del> ; <del>2.10(c)</del> ; <del>3.3(b)</del> ; <del>7.1(a)</del>
(13) Trial panels should be appointed promptly upon the filing of the answer or upon the expiration of the time allowed to answer.	4.1(f)
(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.	2.4(e)(2); 2.4(3); 2.4(9); 4.7

<sup>1</sup> Deleted language is referenced by identifying numbering and lettering of current rules.

<p style="text-align: center;"><b>BOG Recommendations</b></p> <p>(Numbering correlates with DSRC recommendation numbers)</p>	<p style="text-align: center;"><b>Rules <u>amend</u> <u>ed, added,</u> <u>or deleted</u><sup>1</sup></b></p>
<p>(15) Settlement conferences requested by either DCO or the accused lawyer should be conducted by a mediator selected by mutual agreement of the parties.</p>	<p>4.9 (no change)</p>
<p>(16) Oregon should establish a professional adjudicator position.</p>	<p><u>1.1(a)</u>; <u>2.4</u>; <u>3.1</u>; <u>3.4</u>; <u>3.5</u>; <u>3.6</u>; <u>4.1(f)</u>; <u>4.3(b)</u>; <u>4.4(c)</u>; <u>4.5</u>; <u>4.6</u>; <u>4.7</u>; <u>4.8</u>; <u>4.9</u>; <u>5.3</u>; <u>5.4</u>; <u>5.7</u>; <u>5.8</u>; <u>5.9</u>; <u>6.2</u>; <u>7.1</u>; <u>10.1</u>; <u>10.7(d)</u></p>
<p>(17) The neutral terms “Respondent” and “finding of misconduct” should be substituted for “Accused” and “guilt” throughout the discipline process.</p>	<p><del>1.1(a)</del>; <u>1.1(x)</u>; <u>2.6(e)(2)</u>; and innumerable other rules</p>
<p>(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.</p>	<p><u>2.2(b)(5)</u>; <u>3.5</u></p>
<p>(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.</p>	<p><u>2.2(b)(6)</u>; <u>3.5(j)</u></p>
<p>(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.</p>	<p><u>3.1</u></p>
<p>(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.</p>	<p><u>2.2(b)(5)</u>; <u>3.4</u></p>

<p style="text-align: center;"><b>BOG Recommendations</b></p> <p>(Numbering correlates with DSRC recommendation numbers)</p>	<p><b>Rules <u>amend</u> <u>ed</u>, <u>added</u>, <u>or deleted</u><sup>1</sup></b></p>
<p>(23) Statutory immunity should be extended to volunteer probation and diversion monitors.</p>	<p>[Requires amendment to Bar Act]</p>
<p>(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.</p>	<p><u>3.1(f)</u>; <u>3.4(e)</u>; <u>6.3(c)</u>;</p>
<p>(29) Authorize DCO to initiate transfers to Involuntary Inactive Status for Mental Incompetency or Addiction.</p>	<p><i>2.2(b)(5)</i></p>

## Summary of Amendments not Considered or Recommended by the DSRC

In addition to amendments intended to implement the Board's votes (as articulated in the attached chart, matching BOG recommendations with the affected rules), there are modifications that can be categorized as: (1) housekeeping or grammatical; (2) definitional; (3) stylistic; (4) intended to clarify; (5) intended to promote prompter resolution; (6) pertaining to the Unlawful Practice of Law Committee; (7) pertaining to the category of "retired" members; and (8) pertaining to electronic transmission of Bar forms.

### **Housekeeping or grammatical**

Examples include the consistent usage of commas in lists of three, changing "which" to "that," using semi-colons instead of commas, changing future tense to present tense, and correcting obvious inadvertent errors.

### **Definitional**

Definitions have been added for Client Assistance Office, complainant, and General Counsel. The term "inquiry" is added to refer to matters reviewed by the Client Assistance Office. The term "grievance" is added to refer to that subset of inquiries that is referred to Disciplinary Counsel for further investigation. Use of these more precise terms is intended to dispel confusion that may occur now because the word "complaint" is used to refer to both types of matters and, when preceded by the word "formal," refers to the pleading filed with the Disciplinary Board Clerk. [BR 1.1]

### **Stylistic**

Examples of stylistic changes include:

#### *Changing the passive voice to the active voice (without altering the meaning)*

For example, in BR 2.6(c)(1)(A), changing:

If the SPRB determines that probable cause does not exist to believe misconduct occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

To:

If the SPRB determines that probable cause does not exist to believe misconduct occurred, the SPRB shall dismiss the grievance, and Disciplinary Counsel shall notify the complainant and the attorney in writing.

#### *Consistently applying protocols*

For example, referring to the Oregon Supreme Court as "Supreme Court" the first time it is referenced in a rule and thereafter as "court."

## **Intended to clarify**

Examples would include:

### *Adding a cross-reference in order to clear up a potential ambiguity*

For example, BR 5.4 pertains to scheduling a hearing in matters in which an answer has been filed because it is not triggered until (in the current language) the formal complaint and the answer are delivered to the assigned trial panel chair. A cross-reference to BR 5.8 (pertaining to defaults) makes clear that it does not apply to default situations.

### *Spelling out a procedure to accommodate other changes in the rules, to resolve ambiguities in the current rule language, or both.*

For example, the current rule on challenges to trial panel members (BR 2.4(g)) does not address the timing of a challenge for cause if the reason for the challenge is not known within the 7 days from receipt of notice of trial panel members' appointment given to exercise a challenge. It also does not address what challenges would apply to the Adjudicator. The proposed rule lengthens the time to challenge a peremptory from 7 to 10 days; measures the timing of a for-cause challenge as the later of the same 10-day period or 10 days following receipt of information from the trial panel member that raises a disqualification issue; and clarifies that the Adjudicator is not subject to peremptory challenges but is subject to for-cause challenges.

### *Rectifying ambiguities that have resulted in practice from seeking to apply a rule or procedure that pertains to one type of proceeding to another type of proceeding.*

For example, the special proceedings within Title 3 (including seeking an interlocutory suspension during the pendency of a disciplinary proceeding; a transfer to inactive status based upon a mental health or substance issue; an interlocutory suspension based upon a criminal conviction; or a reciprocal discipline) are, by their nature, intended to be relatively summary in nature and brought to a resolution within a relatively short period of time (based upon either the urgency of the public protection concern (as in 3.1 and 3.2 matters) or the fact that there has already been an adjudication in which full due process was afforded, so that the underlying facts are not to be relitigated (as in 3.4 and 3.5 matters). Similarly, motions to revoke probation set forth in a final disciplinary order based upon failure to comply are not the types of proceedings that are intended to be protracted in nature. Although the discovery provisions contained in Title 4 (which governs formal complaints seeking to determine whether misconduct has occurred) are not replicated in Title 3 or Title 6, discovery has been

sought in connection with special proceedings, relying upon language in Title 4. To make clear which rules apply, the following language has been added within BR 3.1, 3.4 and 3.5: Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.[1, 4 and 5]. A similar provision, cross-referencing only Title 4 and Title 5, has been added in the rule discussing probation revocation (BR 6.2).

*Another example intended to address the interplay between the Bar Rules, the Rules of Civil Procedure, and the Rules of Evidence (consistent with BR 4.4(a), 4.5, and 5.1) is this change to BR 1.2:*

These “Rules of Procedure” are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542, and govern exclusively the proceedings contemplated in these rules except to the extent that specific reference is made herein to other rules or statutes. These rules may be amended or repealed and new rules may be adopted by the Board at any regular meeting or at any special meeting called for that purpose. No amendment, repeal or new rule shall become effective until approved by the [Supreme] c[C]ourt.

### **Intended to promote prompter resolution**

Examples include:

*Providing a mechanism when a trial panel opinion is not timely issued (BR 2.4(h)(2)(B)).*

The current rule simply provides that the opinion shall be issued within 28 days of an identified date and that, if the trial panel wants an extension, it must be sought of the state chair. There is no articulated remedy if the opinion is not timely issued. If an extension is necessary, the proposed language directs the Adjudicator to notify the parties of an anticipated issuance date no more than 90 days after the original due date; permits either party to file a motion if no opinion is issued by 90 days after the original due date that will prompt the Adjudicator to specify a new issuance date not more than 120 days from the original deadline; and, if no opinion is issued within 120 days, provides that either party can petition the court for an order compelling the Disciplinary Board to issue an opinion by a date certain.

*Shortening the time to file a petition for review from 61 to 31 days after notice of receipt of a trial panel opinion, consistent with civil appellate practice (BR 10.1).*



### **Pertaining to Unlawful Practice of Law Committee**

A new Title 12 specifies that the Supreme Court will appoint members of the Unlawful Practice of Law Committee, incorporates the basic functions of the committee that are currently spelled out in the Bylaws, and sets forth the Bar's ability to petition the Supreme Court regarding either disbarred or resigned attorneys who are engaging in unlawful practice. See BRs 12.1, 12.2, 12.3, and 12.4.

### **Pertaining to "retired" members**

In any BR discussing "inactive" members, language is added to include "retired" members, which are a subset of "inactive" members. See BRs 1.11, 8.1, 8.2, 8.6, 8.14, 13.9, and 13.10.

### **Pertaining to electronic transmission**

In places currently requiring or referring to affidavits, language permitting the use of declarations has been inserted, thereby obviating the need for notarization (with the exception of a Form B resignation – a resignation with disciplinary matters pending, which necessarily involves the Disciplinary Counsel in drafting to insure that all pending matters are addressed). See BRs 4.3, 7.1, 8.3, 13.3, 13.6, and 13.9. A new rule (BR 1.13) facilitates electronic signature on Bar-produced forms pertaining to reinstatement and another new rule authorizes by agreement of the parties service of any document other than the formal complaint and answer service by email delivery to the email address identified in the Bar's membership records (BR 1.8(e)).

## Rules of Procedure

*(As approved by the Supreme Court by order dated February 9, 1984 and as amended by Supreme Court orders dated April 18, 1984, May 31, 1984, July 16, 1984, July 27, 1984, November 1, 1984, June 25, 1985, July 8, 1985, July 22, 1985, November 29, 1985, January 2, 1986, January 24, 1986, March 20, 1986, September 10, 1986, June 30, 1987, September 24, 1987, October 1, 1987, November 10, 1987, November 24, 1987, December 10, 1987, January 5, 1988, February 22, 1988, February 23, 1988, July 8, 1988, March 13, 1989, March 31, 1989, June 1, 1989, March 20, 1990, October 1, 1990, January 10, 1991, April 4, 1991, July 22, 1991, August 2, 1991, January 17, 1992, December 22, 1992, June 29, 1993, December 13, 1993, December 28, 1993, October 10, 1994, May 15, 1995, November 6, 1995, December 14, 1995, September 30, 1996, June 5, 1997; August 19, 1997, effective October 4, 1997; October 3, 1997; July 10, 1998; November 30, 1999; February 5, 2001; June 28, 2001; September 6, 2001; June 17, 2003, effective July 1, 2003; July 9, 2003, effective August 1, 2003; June 17, 2003, effective, January 1, 2004; December 8, 2003, effective January 1, 2004; December 9, 2004, effective January 1, 2005; January 21, 2005; April 26, 2007; August 29, 2007; January 17, 2008; March 20, 2008; October 19, 2009; January 1, 2011; December 10, 2010, effective June 1, 2011; July 21, 2011; June 6, 2012; April 5, 2013; August 13, 2013, effective November 1, 2013); August 10, 2015.*

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## Title 1 — General Provisions

### **Rule 1.1 Definitions.**

In these rules, unless the context or subject matter requires otherwise:

*(a) “Accused” means an attorney charged with misconduct by the Bar in a formal complaint.*

*(a) “Adjudicator” means the Disciplinary Board statewide adjudicator, one or more of whom is appointed by the Supreme Court to chair all trial panels and any attorney appointed to serve in the Adjudicator’s role in a particular proceeding pursuant to BR 2.4(f)(2).*

*(b) “Applicant” means an applicant for reinstatement to the practice of law in Oregon.*

*(c) “Attorney” means a person who has been admitted to the practice of law in Oregon.*

*(d) “Bar” means Oregon State Bar created by the Bar Act.*

*(e) “Bar Act” means ORS Chapter 9.*

*(f) “Bar Counsel” means counsel appointed by the SPRB or the Board to represent the Bar.*

*(g) “BBX” means Board of Bar Examiners appointed by the Supreme Court.*

*(h) “Board” means Board of Governors of the Bar.*

*(i) “Client Assistance Office” means a department of the Bar that reviews and responds to inquiries from the public about the conduct of attorneys.*

*(j) “Complainant” means the person who inquires about the conduct of an attorney through the Client Assistance Office.*

*(k) [(i)] “Contested Admission” means a proceeding in which the BBX is objecting to the admission of an applicant to the practice of law after a character review proceeding.*

(l) [(j)] “Contested Reinstatement” means a proceeding in which the Bar is objecting to the reinstatement of an attorney or a former attorney to the practice of law.

(m) [(k)] “Disciplinary Board” means the board appointed by the Supreme Court to hear and decide disciplinary and contested reinstatement proceedings pursuant to these rules.

(n) [(l)] “Disciplinary Board Clerk” means the person or persons designated in General Counsel’s Office of the Bar to receive and maintain records of disciplinary and reinstatement proceedings on behalf of the Disciplinary Board.

(o) [(m)] “Disciplinary Counsel” means disciplinary counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist disciplinary counsel.

(p) [(n)] “Disciplinary p[P]roceeding” means a proceeding in which the Bar is charging an attorney with misconduct in a formal complaint.

(q) [(o)] “Examiner” means a member of the BBX.

(r) [(p)] “Executive Director” means the chief administrative employee of the Bar.

(s) [(q)] “Formal c[C]omplaint” means the document that initiates a formal lawyer discipline proceeding alleging misconduct and violations of disciplinary rules or statutory provisions [instrument used to charge an attorney with misconduct].

(t) “General Counsel” means the General Counsel of the Bar.

(u) “Grievance” means an instance of alleged misconduct by an attorney that may be investigated by Disciplinary Counsel.

(v) “Inquiry” means a communication received by the Client Assistance Office pertaining to an attorney that may or may not allege professional misconduct.

*[(r) “LPRC” means a local professional responsibility committee appointed by the Board.]*

(w) [(s)] “Misconduct” means any conduct which may or does subject an attorney to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court.

(x) “Respondent” means an attorney who is charged with misconduct by the Bar in a formal complaint or who is the subject of proceedings initiated pursuant to BR 3.1, BR 3.2, BR 3.3, BR 3.4, or BR 3.5.

(y) [(t)] “State Court Administrator” means the person who holds the office created pursuant to ORS 8.110.

(z) [(u)] “Supreme Court” and “court” mean the Oregon Supreme Court [of Oregon].

(aa) [(v)] “SPRB” means State Professional Responsibility Board *[created]*appointed by the *[Board]*Supreme Court.

(bb) [(w)] “Trial Panel” means a three-member panel of the Disciplinary Board.

(cc) “Unauthorized Practice of Law Committee” means the committee appointed by the Supreme Court to carry out the committee’s functions on behalf of the Bar pursuant to ORS 9.164.

*(Rule 1.1 amended by Order dated November 10, 1987.)*

*(Rule 1.1(c) amended by Order dated February 23, 1988.)*

*(Rule 1.1(i) and (k) amended by Order dated July 22, 1991.)*

*(Rule 1.1(l) through (w) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.1(b) and (i) amended by Order dated October 19, 2009.)*

**Rule 1.2 Authority.**

These “Rules of Procedure” are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542, and govern exclusively the proceedings contemplated in these rules except to the extent that specific reference is made herein to other rules or statutes. These rules may be amended or repealed and new rules may be adopted by the Board at any regular meeting or at any special meeting called for that purpose. No amendment, repeal or new rule shall become effective until approved by the Supreme Court.

*(Rule 1.2 amended by Order dated June 5, 1997, effective July 1, 1997.)*

**Rule 1.3 Nature Of Proceedings.**

Disciplinary and contested reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant’s conduct should preclude the applicant from being reinstated to membership in the Bar.

*(Rule 1.3 amended by Order dated October 19, 2009.)*

**Rule 1.4 Jurisdiction; Choice of Law.**

(a) Jurisdiction. An attorney admitted to the practice of law in Oregon, and any attorney specially admitted by a court or agency in Oregon for a particular case, is subject to the Bar Act and these rules, regardless of where the attorney’s conduct occurs. The Supreme Court’s jurisdiction over matters involving the practice of law by an attorney shall continue whether or not the attorney retains the authority to practice law in Oregon, and regardless of the residence of the attorney. An attorney may be subject to the disciplinary authority of both Oregon and another jurisdiction in which the attorney is admitted for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of Oregon, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which an attorney has been admitted to practice, either generally or for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct,

(A) If the attorney is licensed to practice only in Oregon, the rules to be applied shall be the Oregon Code of Professional Responsibility and the Bar Act; and

(B) If the attorney is licensed to practice in Oregon and another jurisdiction, the rules to be applied shall be the rules of the jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(c) Application. The provisions of BR 1.4 [shall] appl[y]ies to conduct occurring on or before December 31, 2004. Conduct occurring on or after January 1, 2005, is[shall be] governed by Rule of Professional Conduct 8.5.

*(Rule 1.4 amended by Order dated September 30, 1996.)*

*(New Rule 1.4(c) added by Order dated April 26, 2007.)*

**Rule 1.5 Effective Date.**

(a) These rules [shall] apply to all disciplinary and contested reinstatement proceedings initiated by the service of a formal complaint or statement of objections on a[n accused] respondent or an applicant on or after January 1, 1984.

(b) The provisions of BR 1.5(a) [shall] apply except to the extent that in the opinion of the Supreme C[c]ourt their application in a particular matter or proceeding would not be feasible or would work an injustice. U[f]in that [which] event, the former or current rule most consistent with the fair and expeditious resolution of the matter or proceeding under consideration shall be applied.

*(Rule 1.5(a) amended by Order dated July 22, 1991.)*

*(Rule 1.5(a) amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 1.6 Citation Of Rules.**

These Rules of Procedure may be referred to as Bar Rules and cited, for example, as BR 1.1(a).

**Rule 1.7 Bar Records.**

(a) Property of Bar. The records of the Bar and of its officers, governors, employees and committees, in contested admission, disciplinary and reinstatement proceedings are the property of the Bar.

(b) Public Records Status. Except as exempt or protected by law from disclosure, the records of the Bar relating to contested admission, disciplinary, and reinstatement proceedings are available for public inspection.

**Rule 1.8 Service Methods.**

(a) Except as provided in Rule 4.2 and Rule 8.9, any pleading or document required under these rules to be served on a[n accused] respondent, applicant, or attorney shall be

(1) sent to the [accused] respondent, applicant, or attorney, or his or her attorney if the [accused] respondent, applicant, or attorney is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar, or

(2) served on the [accused] respondent, applicant, or attorney by personal or office service as provided in ORCP 7D(2)(a)-(c).

(b) Any pleading or document required under these rules to be served on the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address or served by personal or office service as provided in ORCP 7D(2)(a)-(c).

(c) A copy of any pleading or document served on Bar Disciplinary Counsel shall also be provided to Bar Counsel, if one has been appointed, by first class mail addressed to his or her last designated business address on file with the Bar or by personal or office service as provided in ORCP 7D(2)(a)-(c).

(d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12.

(e) The parties may by mutual agreement serve any document other than the formal complaint and answer by email delivery to the email address identified in the Bar's membership records for the respondent, or his or her attorney if the respondent is represented.

*(Rule 1.8 amended by Order dated June 30, 1987.)*

*(Rule 1.8(a) amended by Order dated February 23, 1988.)*

*(Rule 1.8(a), (b) and (c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.8(d) amended by Order dated April 26, 2007.)*



*(Rule 1.8(a) amended by Order dated August 12, 2013, effective November 1, 2013.)*

**Rule 1.9 Time.**

In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or a legal holiday, in which event the period runs until the end of the next day that*[which]* is not a Saturday or legal holiday. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and ORS 187.020.

**Rule 1.10 Filing.**

(a) Any pleading or document to be filed with the Disciplinary Board Clerk shall be delivered in person to the Disciplinary Board Clerk, Oregon State Bar, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail to the Disciplinary Board Clerk, Oregon State Bar, P. O. Box 231935, Tigard, Oregon 97281-1935. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563, consistently with the requirements of the Oregon Rules of Appellate Procedure, including Chapter 16 (filing and service by electronic means). Any pleading or document to be filed with the [State Chair of the Disciplinary Board]Adjudicator, a regional chair or a trial panel chair shall be delivered to the intended recipient at his or her last designated business or residence address on file with the Bar.

(b) Filing by mail is*[shall be]* complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.

(c) If filing is not done as provided in subsection (b) of this rule, the filing is*[shall]* not *[be]* timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.

(d) A copy of any pleading or document filed under these Rules must also be served by the party or attorney delivering it on other parties to the case. All service copies must include a certificate showing the date of filing. "Parties" for the purposes of this rule shall be the [accused]respondent or applicant, or his or her attorney if the [accused]respondent or applicant is represented; ; ; Disciplinary Counsel; ; ; and Bar Counsel, if any.

(e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledg[e]ment of service by the person served or be in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who has made service.

*[(f) Any pleading or document to be filed with the Supreme Court pursuant to these rules of procedure may be filed electronically, rather than conventionally by paper, provided the filing complies with ORAP 16.]*

*(Rule 1.10 amended by Order dated June 30, 1987.)*

*(Rule 1.10(d) amended by Order dated February 23, 1988.)*

*(Rule 1.10(d) amended by Order dated February 5, 2001.)*

*(Rule 1.10(a), (b),(d) and (e) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.10(a) amended by Order dated April 26, 2007.)*

*(Rule 1.10(a) amended by Order dated March 20, 2008.)*

*(Rule 1.10(f) added by Order dated October 19, 2009.)*

**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 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 is [shall] not [become] effective until actually received by the [Oregon State] Bar.

*(Rule 1.11 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)*

*(Rule 1.11(a) and (b) amended by Order dated August 23, 2010, effective January 1, 2011.)*

*(Rule 1.11(a) amended, (b) and (c) added and former (b) now (d) redesignated by Order dated July 21, 2011.)*

**Rule 1.12 Service Of Bar Pleadings Or Documents on Out-of-State Attorney.**

(a) If an attorney, pursuant to BR 1.11, has designated an address that[which] is not located within the State of Oregon, a formal complaint filed under BR 4.1 or a statement of objections filed under BR 8.9 may be:

(1) personally served upon the attorney; or

(2) served on the attorney by certified mail, return receipt requested, to the attorney's last designated address on file with the Bar, in which case service shall be complete on the date on which the attorney signs a receipt for the mailing.

(b) If service under either BR 1.12(a)(1) or BR 1.12(a)(2) is attempted but cannot be completed, a formal complaint or a statement of objections may be served on the attorney by first class mail to the attorney's last designated address on file with the Bar, in which case service shall be complete seven days after such mailing. Proof of such service by mail shall be by certificate showing the date of deposit in the mail.

(c) Service of all other pleadings or documents on an attorney who has designated an address that[which] is not located within the State of Oregon shall comply with BR 1.8(a).

**Rule 1.13 Electronic Signature and Submission.**

(a) For purposes of this rule, "Form" means only a form made available by the Bar on its website for electronic filing through the Bar's website and "filer" means the attorney using the Form and self-identified in the completed Form.

(b) As to any Form obtainable or accessible only by means of a login, the use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required. In lieu of a signature, the document shall include an electronic symbol intended to substitute for the signature, such as a scan of the filer's handwritten signature or a signature block that includes the typed name of the filer preceded by an "s" in the space where the signature would otherwise appear. Example of a signature block with "s/":

s/ Jane Q. Attorney  
 JANE Q. ATTORNEY  
 OSB # \_\_\_\_\_  
 Email address \_\_\_\_\_

(c) When a Form requires a signature under penalty of perjury, in addition to signing and submitting the Form electronically, the filer shall sign a printed version of the Form and retain the signed Form in its original paper form for no less 30 days.

(d) An attorney may submit a Form through the Bar's website at any time, except when the Bar's electronic filing system is temporarily unavailable.

(e) Filing a Form pursuant to this rule shall be deemed complete at the time of electronic submission.

*(Rule 1.12 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)  
(Rule 1.12 amended by Order dated April 26, 2007.)*

## Title 2 — Structure And Duties

### Rule 2.1 Qualifications of Counsel.

(a) Definition of [Accused]Respondent. Notwithstanding BR 1.1(a), for the purposes of this rule, "[accused]respondent" means an attorney who is the subject of an allegation of misconduct that is under investigation by the Bar, or who has been charged with misconduct by the Bar in a formal complaint.

(b) Bar Counsel. Any attorney admitted to practice law at least three years in Oregon may serve as Bar Counsel unless the attorney:

- (1) currently represents a [n accused]respondent or applicant;
- (2) is a current member of the Disciplinary Board[,] or has a firm member currently serving on the Disciplinary Board;
- (3) served as a member of the Disciplinary Board at a time when the formal complaint against the [accused]respondent was filed.

(c) Counsel for [Accused]Respondent. Any attorney admitted to practice law in Oregon may represent an [accused]respondent unless the attorney:

- (1) is a current member of the Board or the SPRB;
- (2) served as a member of the Board or the SPRB at a time when the allegations about which the [accused]respondent seeks representation were under investigation by the Bar or were authorized to be charged in a formal complaint;
- [(3) is a current member of an LPRC that investigated allegations about which the accused seeks representation;*
- [(4) served as a member of an LPRC that investigated allegations about which the accused seeks representation, at a time when such investigation was undertaken;]*
- ~~(3)~~[(5)] currently is serving as Bar Counsel;
- ~~(4)~~[(6)] is a current member of the Disciplinary Board[,] or has a firm member currently serving on the Disciplinary Board;
- ~~(5)~~[(7)] served as a member of the Disciplinary Board at a time when the formal complaint against the [accused]respondent was filed.

(d) Counsel for Applicant. Any attorney admitted to practice law in Oregon may represent an applicant unless the attorney:

(1) is a current member of the Board, the BBX, or the SPRB;

(2) served as a member of the Board, the BBX, or the SPRB at a time when the investigation of the reinstatement application was conducted by the Bar;

(3) currently is serving as Bar Counsel;

(4) is a current member of the Disciplinary Board[,] or has a firm member currently serving on the Disciplinary Board;

(5) served as a member of the Disciplinary Board at a time when the statement of objections against the applicant was filed.

(e) Vicarious Disqualification. The disqualifications contained in BR 2.1(b), (c), and (d) [shall] also apply to firm members of the disqualified attorney's firm.

(f) Exceptions to Vicarious Disqualification.

(1) Notwithstanding BR 2.1(b), (c), and (d), an attorney may serve as Bar Counsel or represent a[n accused]respondent or applicant even though a firm member is currently serving on the Disciplinary Board, provided the firm member recuses himself or herself from participation as a trial panel member[,] or regional chairperson [or state chairperson] in any matter in which a member of the firm is Bar Counsel or counsel for a[n accused]respondent or applicant.

(2) Subject to the provisions of RPC 1.7, and notwithstanding the provisions of BR 2.1(b), (c), and (d), an attorney may serve as Bar Counsel or represent a[n accused]respondent or applicant even though a firm member is currently serving as Bar Counsel or representing a[n accused]respondent or applicant, provided firm members are not opposing counsel in the same proceeding.

(3) Notwithstanding BR 2.1(b), (c), and (d), an attorney in a Board member's firm may represent a[n accused]respondent provided the Board member is screened from any form of participation or representation in the matter. [In order t]o ensure such screening:

(A) The Board member shall prepare and file an affidavit with the Executive Director attesting that, during the period his or her firm is representing a[n accused]respondent, the Board member will not participate in any manner in the matter or the representation and will not discuss the matter or representation with any other firm member;

(B) The Board member's firm shall also prepare and file an affidavit with the Executive Director attesting that all firm members are aware of the requirement that the Board member be screened from participation in or discussion of the matter or representation;

(C) The Board member and firm shall also prepare, at the request of the Executive Director, a compliance affidavit describing the Board member's and the firm's actual compliance with these undertakings;

(D) The affidavits required under subsections (A) and (B) of this rule shall be filed with the Executive Director no later than 14 days following the acceptance by a Board member's firm of a[n accused]respondent as a client, or the date the Board member becomes a member of the Board.

(g) Investigators. Disciplinary Counsel may, from time to time, appoint a suitable person or persons, to act as an investigator, or investigators, for the Bar with respect to grievances, allegations, or instances of alleged misconduct by attorneys, and matters of reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

*(Rule 2.1(b) amended by Order dated May 31, 1984, July 27, 1984, nunc pro tunc May 31, 1984.)*

*(Rule 2.1 amended by Order dated June 30, 1987.)*

*(Rule 2.1 amended by Order dated October 1, 1990.)*

*(Rule 2.1(d) amended by Order dated November 6, 1995.)*

*(Rule 2.1 deleted and new Rule 2.1 added by Order dated October 3, 1997.)*

*(Rule 2.1(f)(2) amended by Order dated April 26, 2007.)*

*(Rule 2.1(d)(2), 2.1(f)(3), 2.1(f)(3)(A), and 2.1(f)(3)(D) amended by Order dated October 19, 2009.)*

**Rule 2.2 [Investigators]Disciplinary Counsel.**

*[Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.]*

(a) Appointment. Disciplinary Counsel is retained and employed by the Bar.

(b) Duties.

(1) Disciplinary Counsel shall review and investigate, as appropriate, allegations or instances of alleged misconduct on the part of attorneys, including grievances referred by the Client Assistance Office or the General Counsel and matters arising out of notifications from financial institutions that an instrument drawn against an attorney's Lawyer Trust Account has been dishonored. Disciplinary Counsel may initiate investigation of the conduct of an attorney in the absence of receipt of a complaint by the Client Assistance Office based upon reasonable belief that misconduct has occurred, that an attorney is disabled from continuing to practice law, or that an attorney has abandoned a law practice or died leaving no attorney who has undertaken the responsibility of either managing or winding down the law practice.

(2) Disciplinary Counsel has authority to issue and seek the enforcement of subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers, documents, and other records pertaining to the matter under investigation.

(3) For those grievances not dismissed pursuant to BR 2.6(b), Disciplinary Counsel may, in its discretion, offer diversion pursuant to BR 2.10.

(4) Disciplinary Counsel shall provide advice and counsel to the SPRB on the disposition of all grievances neither dismissed pursuant to BR 2.6(b) nor resolved by diversion pursuant to BR 2.10.

(5) Disciplinary Counsel shall seek, as appropriate, relief provided for in BR 3.1, 3.2, 3.3, 3.4, and 3.5.

(6) Disciplinary Counsel shall prosecute formal proceedings as directed by the SPRB, including any review or other proceeding before the Supreme Court.

(7) Disciplinary Counsel shall represent the Bar in all contested reinstatement proceedings.

(8) Disciplinary Counsel shall represent the Bar before the Supreme Court in all contested admission proceedings.

*(Rule 2.2 amended by Order dated October 19, 2009.)*

**Rule 2.3 [Local Professional Responsibility Committees And] State Professional Responsibility Board.**

*[(a) LPRCs.*

*(1) Appointment. The Board shall create a local professional responsibility committee for each of the districts into which the counties of the state are grouped by the Board for convenient administrative purposes. The size of each LPRC shall be as the Board determines and each LPRC may have a member of the public who is not an attorney. Members of LPRCs shall be appointed by the Board for one-year terms, and may be reappointed. The Board shall appoint a chairperson for each committee.*

*(2) Duties of LPRCs.*

*(A) Disciplinary Counsel shall refer complaints or allegations of misconduct to an LPRC, as necessary and appropriate, by assigning each matter to a specific LPRC member, with notice to the LPRC chairperson.*

*(B) Members of the LPRC serve as fact-finders, investigating those complaints or allegations of misconduct referred to them by the SPRB or Disciplinary Counsel. Upon the conclusion of an investigation by an LPRC member, the member shall submit a written report to Disciplinary Counsel with specific findings. The LPRC member also shall provide a copy of such report to the chairperson of the LPRC of which he or she is a member.*

*(C) LPRC members are to complete each investigation and submit a written report within 90 days of the receipt of the referral from Disciplinary Counsel. The SPRB may grant one extension of time for a maximum of 60 days for good cause shown. Thereafter, if the investigation is not complete, the LPRC shall refer the matter back to Disciplinary Counsel for completion.*

*(D) An LPRC chairperson shall monitor the progress of the investigations assigned to the members of his or her committee, and may assign additional committee members to an investigation if the principal investigator requests it or if the LPRC chairperson deems it appropriate.*

*(E) An LPRC member may request that the LPRC chairperson convene a meeting of the LPRC or otherwise solicit input from other LPRC members in those matters justifying such committee deliberation. However, an LPRC member need not obtain the approval of the LPRC as a whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel.*

*(F) LPRCs shall perform such other duties on behalf of the Bar as may be referred to such LPRCs by the SPRB or Disciplinary Counsel.*

*(3) Authority.*

*(A) LPRCs shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.*

*(B) A witness in an investigation conducted by an LPRC who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. LPRCs may enforce any subpoena issued pursuant to BR 2.3(a)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.*

*(C) A member of an LPRC may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(a)(3)(A).*

*(b) SPRB.]*

(a)[1] Appointment. [The Board shall create for the state at large a state professional responsibility board and appoint its members.] Members of the SPRB are nominated by the Board and appointed by the Supreme Court. The SPRB shall be composed of eight resident attorneys and two members of the public who are not attorneys. Two attorney members shall be from Board Region 5 and one attorney member

shall be from each of the remaining Board regions located within the state of Oregon. The public members shall be at-large appointees. Members of the SPRB shall be appointed for terms of not more than four years and shall serve not more than four years consecutively. Members are eligible for reappointment to a nonconsecutive term not to exceed four years. Each year the Board shall nominate and the court shall appoint one attorney member of the SPRB as chairperson. [*The chairperson shall be an attorney.*] In the event the chairperson is unable to carry out any responsibility given to him or her by these rules, the chairperson may designate another attorney member of the SPRB to do so.

(b)[(2)] Duties of SPRB. The SPRB shall supervise the investigation of grievances[complaints], allegations, or instances of alleged misconduct on the part of attorneys and act on such matters as it may deem appropriate. A grievance from[complaint by] a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or the institution of disciplinary proceedings against any attorney.

(c)[(3)] Authority.

(1)[(A)] The SPRB has[shall have] the authority to dismiss grievances[complaints], allegations, or instances of alleged misconduct against attorneys[,]; refer matters to Disciplinary Counsel [or LPRCs] for further investigation[,]; issue admonitions for misconduct[,]; refer [*matters*]attorneys to the State Lawyers Assistance Committee[,]; [*approve and supervise diversion agreements,*] direct Disciplinary Counsel to institute disciplinary proceedings against any attorney[,]; or take other action within the discretion granted to the SPRB by these rules.

(2)[(B)] The SPRB has[shall have] the authority to adopt rules dealing with the handling of its affairs, subject to the Board's approval [*by the Board*].

*(C) The SPRB shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.*

*(D) A witness in an investigation conducted by the SPRB who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The SPRB may enforce any subpoena issued pursuant to BR 2.3(b)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.*

*(E) A member of the SPRB or Disciplinary Counsel may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(b)(3)(C).*

(d)[c)] Resignation and Replacement. The [*Board*] court may remove, at its discretion, or accept the resignation of, any officer or member of the SPRB [*or an LPRC*] and appoint a successor who shall serve the unexpired term of the member who is replaced.

*(Rule 2.3(b)(3) amended by Order dated April 4, 1991, effective April 15, 1991.)*

*(Rule 2.3(b)(1) amended by Order dated April 4, 1991, effective October 7, 1991. Amended by Order dated June 5, 1997, effective July 1, 1997. Amended by Order dated February 5, 2001.)*

*(Rule 2.3(b)(1) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 2.3(b)(3) amended by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.3(a) amended by Order dated December 8, 2003, effective January 1, 2004.)*

*(Rule 2.3(b)(1) amended by Order dated August 23, 2010, effective January 1, 2011.)*

## **Rule 2.4 Disciplinary Board.**

(a) Composition. [A] The Supreme Court appoints members of the D[d]isciplinary B[b]oard [shall be appointed by the Supreme Court]. The Disciplinary Board shall consist of [*a state chairperson*]the Adjudicator, 7 regional chairpersons, and 6 additional members for each Board region located within the state of Oregon, except for

Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, and Region 6 which shall have 11 additional members. The regional chairpersons shall be attorneys. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board, including the Adjudicator, shall be resident attorneys admitted to practice in Oregon for at least 3 years. Except for the *[state chairperson who shall be an at-large appointee]* Adjudicator, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of the Adjudicator, [2] 1 additional attorney[s], and 1 public member, except as provided in BR 2.4(f)(3). *[The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.]*

(b) Term.

(1) The Adjudicator shall serve pursuant to appointment of the court. Disciplinary Board members other than the Adjudicator shall serve terms of 3 years and may be reappointed. *[State and r]* Regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the *[Supreme C]* court.

(2) Notwithstanding BR 2.4(a) and 2.4(b)(1), the powers, jurisdiction and authority of Disciplinary Board members other than the Adjudicator shall continue beyond the expiration of their appointment or after their relocation to another region for the time required to complete the cases assigned to them during their term of appointment or prior to their relocation, and until a replacement appointment has been made by the *[Supreme C]* court. The *[state chairperson and the]* regional chairpersons shall serve until a replacement appointment has been made by the *[Supreme C]* court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor. Any person so appointed to serve in a position that has term [who] shall serve the unexpired term of the member who is replaced.

(d) Disqualifications and Suspension of Service.

(1) The disqualifications contained in the Code of Judicial Conduct *[shall]* apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board[, ] or the SPRB[, or an LPRC] shall not serve on the Disciplinary Board during the member's term of office. This disqualification *[shall]* also preclude an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board[, ] or the SPRB[, or an LPRC].

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to a subject matter considered by the Board[, ] or the SPRB[, or an LPRC] while he or she was a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board[, ] or the SPRB[, or an LPRC].

(3) A member of the Disciplinary Board against whom charges of misconduct have been approved for filing by the SPRB is suspended from service on the Disciplinary Board until those charges [filed against the member] have been resolved by final decision or order. If a Disciplinary Board member is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service on the Disciplinary Board until the member is once again authorized to practice law. For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, the determination by the SPRB to admonish an attorney pursuant to BR 2.6(c)(1)(B) or BR 2.6(d)(1)(B), which admonition is thereafter refused by the attorney, *[authorization*



*by the SPRB to notify*]Disciplinary Counsel's notification to the [*Supreme C*]court of a criminal conviction pursuant to BR 3.4(a), and [*authorization by the SPRB to notify*] Disciplinary Counsel's notification to the [*Supreme C*]court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

(e) Duties of [*State Chairperson*]Adjudicator.

(1) The [*state chairperson*]Adjudicator shall coordinate and supervise the activities of the Disciplinary Board[, *including the monitoring of timely preparation and filing of trial panel opinions*].

(2) The [*state chairperson*]Adjudicator shall serve as trial panel chairperson for each trial panel adjudicating a formal proceeding, a contested reinstatement proceeding, or a proceeding brought pursuant to BR 3.5; and shall preside in every proceeding brought pursuant to BR 3.1 or 3.4 unless disqualified after a challenge for cause pursuant to BR 2.4(g)[*not be required to, but may, serve on trial panels during his or her term of office*]. Upon the stipulation of the Bar and a respondent, the Adjudicator shall serve as the sole adjudicator in a disciplinary proceeding and shall have the same duties and authority under these rules as a three-member trial panel. In the event the Adjudicator is disqualified or otherwise unavailable to serve as trial panel chairperson, the regional chairperson shall appoint another attorney member of the Disciplinary Board to serve on the trial panel, with all the duties and responsibilities as the Adjudicator as to that proceeding from the date of appointment forward.

(3) The Adjudicator shall rule on all motions for default filed pursuant to BR 5.8.

(4)[(3)] The [*state chairperson*]Adjudicator shall determine the timeliness of and, as appropriate, grant or deny peremptory challenges and resolve all challenges for cause to the qualifications of all trial panel members other than the Adjudicator appointed pursuant to BR 2.4(e)(2), BR 2.4(e)(9), and BR 2.4(f) [*regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings*].

(5)[(4)] Upon receipt of written notice from the Disciplinary Board Clerk of a Supreme Court referral pursuant to BR 8.8[*Disciplinary Counsel of service of a statement of objections*], the [*state chairperson*]Adjudicator shall appoint an attorney member and a public member[a trial panel and trial panel chairperson] from an appropriate region to serve on the trial panel with the Adjudicator. The [*state chairperson*]Adjudicator shall give written notice to Disciplinary Counsel, Bar Counsel, and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(6)[(5)] The [*state chairperson*]Adjudicator shall appoint an attorney member of the Disciplinary Board to conduct pre[-]hearing conferences as provided in BR 4.6.

(7)[(6)] The [*state chairperson*]Adjudicator may appoint Disciplinary Board members from any region to [*serve on trial panels or to*] conduct pre[-]hearing conferences pursuant to BR 4.6, to participate with the Adjudicator in a show cause hearing pursuant to BR 6.2(d), [*as may be necessary*] to serve on trial panels to resolve [*the*] matters submitted to the Disciplinary Board for consideration by the court, or when a sufficient number of members is unavailable within a region for a particular proceeding.

(8) Upon receiving notice from the Disciplinary Board Clerk of a regional chairperson's appointment of an attorney member and a public member pursuant to BR 2.4(f)(1), and upon determining that either no timely challenge pursuant to BR 2.4(g) was filed or that a timely-filed challenge pursuant to BR 2.4(g) has either been denied or resulted in the appointment of a substitute member or members, the Adjudicator shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify, in writing, the Disciplinary Board Clerk and the parties of the date and place of hearing. The Disciplinary Board Clerk shall provide to the trial panel members a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the respondent or applicant.

(9) The Adjudicator shall rule on all questions of procedure and discovery except as specifically provided elsewhere in these rules. The Adjudicator may convene the parties or their counsel before the hearing, to

discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The Adjudicator may thereafter issue an order regarding agreements or rulings made at such prehearing meeting.

(10) The Adjudicator shall convene the trial panel hearing, oversee the orderly conduct of the same and timely file with the Disciplinary Board Clerk the written opinion of the trial panel. In all trial panels in which the Adjudicator is a member of the majority, the Adjudicator shall author the trial panel opinion.

(11)(7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the [state chairperson]Adjudicator shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(12)(8) The Adjudicator shall preside i[/]n all matters involving the filing of a petition for suspension pursuant to BR 7.1[ the state chairperson shall promptly review the petition for immediate suspension, the attorney's response, if any, and any reply from Disciplinary Counsel. Upon such review the state chairperson shall promptly issue an order pursuant to BR 7.1(d)].

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel [of service of a formal complaint]pursuant to BR 4.1(e) or written notice from the Adjudicator pursuant to BR 3.5(g) or 5.8(a), the regional chairperson shall appoint an attorney member and a public member to serve with the Adjudicator on the trial panel from the members of the regional panel[ and a chairperson thereof]. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel, and the [accused]respondent of such appointments, and a copy of the notice shall be filed with the Disciplinary Board Clerk. In the event a member is disqualified pursuant to BR 2.4(g) or becomes unavailable to serve, the regional chairperson shall appoint a replacement member, giving written notice of such appointment as is given of initial appointments.

(2) [Except as provided in BR 2.4(e)(3), t]The regional chairperson shall rule on all challenges for cause to the Adjudicator [qualifications of members of the trial panels in his or her region] or to any attorney appointed to the role of Adjudicator pursuant to this paragraph brought pursuant to [under] BR 2.4(g). In the event the Adjudicator is disqualified for cause or is otherwise unavailable to chair a trial panel, the regional chairperson shall appoint an attorney member from within the region to serve in place of the Adjudicator who has all the duties and responsibilities of the Adjudicator in that proceeding. In the event no attorney member from within the region is available to serve in place of the Adjudicator, the regional chairperson shall so notify the Disciplinary Board Clerk, who will ask another regional chairperson to appoint an attorney member pursuant to the authority granted the Adjudicator in BR 2.4(e)(9). The attorney member so appointed shall have all the duties and responsibilities of the Adjudicator in that proceeding.

[(3) Upon the stipulation of the Bar and an accused, the regional chairperson shall appoint one attorney member from the regional panel to serve as the sole adjudicator in a disciplinary proceeding. In such case, the member appointed shall have the same duties and authority under these rules as a three member trial panel.]

(3)(4) The regional chairperson may serve on trial panels during his or her term of office.

[(5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.]

(g) Challenges. The Bar and a[n accused] respondent or applicant shall be entitled to one peremptory challenge of either the attorney member who is not the Adjudicator or the public member [and an unlimited number of challenges for cause as may arise under the Code of Judicial Conduct or these rules]. A[ny such]

peremptory challenge[s] shall be timely if filed in writing within ten [seven] days [of written notice of an] following that member's appointment [of a] to the trial panel with the Disciplinary Board Clerk[, with copies to the regional chairperson for disciplinary proceedings or to the state chairperson for contested reinstatement proceedings or for challenges to a regional chairperson]. A challenge for cause as may arise under the Code of Judicial Conduct may be filed by the Bar, the respondent, or an applicant as to any member of the trial panel. A c[C]hallenge[s] for cause shall state the reason for the challenge and is timely if filed in writing within ten days following the date of the member's appointment to the trial panel or the date the trial panel member discloses to the parties information raising a disqualification issue, whichever is later. For purposes of this paragraph, the Adjudicator is deemed appointed to the trial panel on the same date that the regional chairperson appoints the other two members of the trial panel pursuant to BR 2.4(f)(1). The written ruling on a challenge shall be filed with the Disciplinary Board Clerk, [and the regional chairperson or the state chairperson, as the case may be,] who shall serve copies of the ruling on all parties. [These provisions shall apply to all substitute appointments, except that neither the Bar nor an accused or applicant shall have more than 1 peremptory challenge.] The Bar and a[n accused] respondent or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

*[(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson may convene the parties or their counsel prior to the hearing to discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The trial panel chairperson may thereafter issue an order regarding agreements or rulings made at such pre-hearing meeting. The trial panel chairperson shall convene the hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.]*

(h)[(i)] Duties of Trial Panel.

(1) Trial. [It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.] The trial panel to which a disciplinary or contested reinstatement proceeding has been referred has a duty to promptly try the issues.

(2)

(A) Opinions. The trial panel shall issue [render] a written opinion [signed by] identifying the concurring members of the trial panel. A dissenting member shall be identified [note the dissent] and may file a dissenting opinion attached to the majority opinion [of the trial panel]. The majority opinion shall include specific findings of fact, conclusions of law, and a disposition. In any matter in which the Adjudicator is not a member of the majority, the other attorney member shall author the trial panel opinion. The [trial panel chairperson]Adjudicator shall file the original opinion with the Disciplinary Board Clerk[,] and serve copies on the parties[ and the State Court Administrator]. The opinion [It] shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the [trial panel chairperson]Adjudicator pursuant to BR 4.8, whichever is later.

(B) Extensions of Time to File Opinions. If the trial panel requires additional time [is required by the trial panel] to issue [render] its opinion, the [trial panel chairperson]Adjudicator may so notify the parties, indicating the anticipated date by which an opinion shall be issued, not to exceed 90 days after the date originally due. If no opinion has been issued within 90 days after the date originally due, either party may file a motion with the Disciplinary Board, seeking issuance of an opinion. Upon

the filing of such a motion, the Adjudicator shall enter an order establishing a date by which the opinion shall be issued, not to exceed 120 days after the date it was originally due. If no opinion has been issued by 120 days after the date originally due, either party may petition the court to enter an order compelling the Disciplinary Board to issue an opinion by a date certain [file a request for an extension of time with the Disciplinary Board Clerk and serve a copy on the state chairperson prior to the expiration of the applicable 28 day period. Disciplinary Counsel, Bar Counsel, and the accused or applicant shall be given written notice of such request. The state chairperson shall file a written decision on the extension request with the Disciplinary Board Clerk and shall serve copies on all parties].

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file the[such] record with the Disciplinary Board Clerk, after the hearing concludes.

(4) Notice. The Disciplinary Board Clerk shall promptly notify the parties of receipt of the trial panel opinion[ from the trial panel].

(i)[(j)] Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the Supreme Court. *[ The reporter service shall be distributed to all state and county law libraries and members of the Disciplinary Board.]*

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court disciplinary proceeding, contested admission, and contested reinstatement [and disciplinary] decisions, and summaries of all Disciplinary Board decisions not reviewed by the [Supreme C]court.

*(Rule 2.4(a) amended by Order dated January 2, 1986, further amended by Order dated January 24, 1986 effective January 2, 1986, nun pro tunc.)*

*(Rule 2.4(d)(2) amended by Order dated September 10, 1986, effective September 10, 1986.)*

*(Rules 2.1, 2.6, 2.7 and 2.8 amended by Order dated June 30, 1987.)*

*(Rule 2.4(j) amended by Order dated October 1, 1987, effective October 1, 1987.)*

*(Rule 2.4(f)(1) amended by Order dated February 22, 1988.)*

*(Rule 2.4(d), (h) and (i) amended by Order dated February 23, 1988.)*

*(Rule 2.4(e) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

*(Rule 2.4(i)(3) amended by Order dated March 20, 1990, effective April 2, 1990.)*

*(Rule 2.4(a) amended by Order dated January 10, 1991.)*

*(Rule 2.4(d), (e) and (i) amended by Order dated July 22, 1991.)*

*(Rule 2.4(b) amended by Order dated December 22, 1992.)*

*(Rule 2.4(a), (e) and (f) amended by Order dated December 13, 1993.)*

*(Rule 2.4(i)(3) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 2.4 (a) amended by Order dated July 10, 1998.)*

*(Rule 2.4(e), (f), (g), (h), (i) and (j) amended by Order dated February 5, 2001.)*

*(Rule 2.4(b)(2) and (i)(2)(a) and (b) amended by Order dated June 28, 2001.)*

*(Rule 2.4(b)(1) and (2);(e)(4); (f)(1); (g); (h); and (i)(2)(a) and (b), (3) and (4) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 2.4(d)(3) added by Order dated January 21, 2005.)*

*(Rule 2.4(b)(2) amended by Order dated April 26, 2007.)*

*(Rule 2.4(g) and 2.4(h) amended by Order dated October 19, 2009.)*

*(Rule 2.4(a) amended by Order dated August 23, 2010, effective January 1, 2011.)*

*(Rule 2.4(e)(8) added by Order dated August 12, 2013, effective November 1, 2013.)*

**Rule 2.5 Intake and Review of Inquiries [ and Complaints] by Client Assistance Office.**

(a) Client Assistance Office. The Bar [will]shall maintain a Client Assistance Office, separate from that of Disciplinary Counsel. The Client Assistance Office [will]shall, to the extent possible and resources permitting, receive, review, and respond to all inquiries from the public concerning the conduct of attorneys and may

refer inquirers to other resources. *[The Client Assistance Office will also receive and review all complaints about the conduct of attorneys.]* The Client Assistance Office will consider [complaints]inquiries submitted in person, by telephone or by e-mail, but may require the complainant to submit the matter in writing before taking any action. The Client Assistance Office will determine the manner and extent of review required for the appropriate disposition of any [complaint]inquiry.

(b) Disposition by Client Assistance Office.

(1) If the Client Assistance Office determines that, even if true, an inquiry[ complaint] does not allege misconduct, it [will]shall dismiss the inquiry[complaint] with written notice to the complainant and to the attorney named in the inquiry[complaint].

(2) If the Client Assistance Office determines, after reviewing the inquiry[ complaint] and any other information deemed relevant, that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the inquiry[complaint will] shall be referred to Disciplinary Counsel as a grievance. Otherwise, the inquiry[complaint will] shall be dismissed with written notice to the complainant and the attorney.

(3) The Client Assistance Office may, at the request of the complainant, contact the attorney and attempt to assist the parties in resolving the complainant's concerns, but the provision of such assistance does not preclude a referral to Disciplinary Counsel of any matter brought to the attention of the Client Assistance Office.

(c) Review by General Counsel. Any inquiry[complaint] dismissed by the Client Assistance Office may be reviewed by General Counsel upon written request of the complainant. General Counsel may request additional information from the complainant or the attorney[,] and, after review, [will]shall either affirm the Client Assistance Office dismissal or refer the inquiry[complaint] to Disciplinary Counsel[*'s Office*] as a grievance. The decision of General Counsel is final.

*(Rule 2.5 amended by Order dated January 17, 1992.)*

*(Rule 2.5(g) amended by Order dated October 10, 1994.)*

*(Rule 2.5(c), (f), (g), and (h) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 2.5(a), (b), (c), (d), (f), (h) and (i) amended by Order dated February 5, 2001.)*

*(Rule 2.5(a) and (b) added and former Rule 2.5(b) through (i) renumbered 2.6 by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.5(a) and (b) amended and 2.5(c) added by Order dated August 29, 2007.)*

## **Rule 2.6 Investigations**

(a) Review of Grievance by Disciplinary Counsel.

(1) For grievances [disciplinary complaints] referred to Disciplinary Counsel by the C[c]lient A[a]ssistance O[o]ffice pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the grievance[complaint], mail a copy of the grievance[said complaint] to the attorney, if the C[c]lient A[a]ssistance O[o]ffice has not already done so, and notify the attorney that he or she must respond to the grievance[complaint] in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney. An attorney need not respond to the grievance[complaint] if he or she provided a response to the C[c]lient A[a]ssistance O[o]ffice and is notified by Disciplinary Counsel that further information from the attorney is not necessary.

(2) If the attorney fails to respond to Disciplinary Counsel or to provide records requested by Disciplinary Counsel within the time allowed, *[or fails to reply to a subpoena issued pursuant to BR 2.3(b)(3)(C) or BR 2.3(b)(3)(E),]* Disciplinary Counsel may file a petition with the Disciplinary Board to suspend the attorney from the practice of law, pursuant to the procedure set forth in BR 7.1. Notwithstanding the

filing of a petition under this rule, Disciplinary Counsel may investigate the grievance[*complaint or refer the complaint to an appropriate LPRC pursuant to the procedure set forth in BR 2.3(a)*].

(3) Disciplinary Counsel may, if appropriate, offer to enter into a diversion agreement with the attorney pursuant to BR 2.10. If Disciplinary Counsel chooses not to offer a diversion agreement to the attorney pursuant to BR 2.10 and does not dismiss the grievance pursuant to BR 2.6(b), Disciplinary Counsel shall refer the grievance to the SPRB at a scheduled meeting.

(b) Dismissal of Grievance by Disciplinary Counsel. If, after considering a [*disciplinary*] grievance[*complaint*], the response of the attorney, and any additional information deemed relevant, Disciplinary Counsel determines that probable cause does not exist to believe misconduct has occurred, Disciplinary Counsel shall dismiss the grievance[*complaint shall be dismissed*]. Disciplinary Counsel shall notify t[*he*] complainant and the attorney [*shall be notified in writing by Disciplinary Counsel*] of the dismissal in writing. A complainant may contest in writing the action taken by Disciplinary Counsel in dismissing his or her grievance[*complaint*], in which case Disciplinary Counsel shall submit a report on the grievance[*complaint*] to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate[ *on such complaint*].

(c) Review of Grievance by SPRB.

(1) [*If Disciplinary Counsel determines that misconduct may be involved, the complaint shall be referred by Disciplinary Counsel to an appropriate LPRC for further investigation, or referred by Disciplinary Counsel to the SPRB at a scheduled meeting. If the complaint is referred to an LPRC by Disciplinary Counsel, the procedure specified in BR 2.3(a) shall be followed. Otherwise, t*]The SPRB shall evaluate [*the*]a grievance[*complaint*] based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the grievance[*complaint*], [*refer it to an LPRC,*] admonish the attorney, [*authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10,*] direct Disciplinary Counsel to file [*approve the filing of*]a formal complaint by the Bar against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the SPRB shall dismiss the grievance[ *complaint*], and Disciplinary Counsel shall notify[ *shall be dismissed and*] the complainant and the attorney [*shall be notified*] of the dismissal in writing[ *by Disciplinary Counsel*].

(B) If the SPRB determines that the attorney should be admonished, Disciplinary Counsel shall so notify the attorney [*such procedure shall be initiated*] within 14 days of the SPRB's meeting. If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, Disciplinary Counsel shall file a formal complaint [*shall be filed by the Bar*] against the attorney on behalf of the Bar. Disciplinary Counsel shall notify the complainant[ *and the attorney*] in writing of the admonition of the attorney[ *this action*].

(C) If the SPRB determines that the complaint should be investigated further, Disciplinary Counsel shall conduct the investigation and[*or submit the complaint to the appropriate LPRC within 14 days of the SPRB's meeting. Disciplinary Counsel shall*] notify the complainant and the attorney in writing of such[*this*] action.

[(d) Review of LPRC Reports by SPRB.

(1) *Disciplinary Counsel shall submit an LPRC's report to the SPRB at a scheduled meeting. The SPRB shall evaluate the complaint based on the LPRC's report and the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, have it investigated further, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10, approve the filing of a formal complaint against the attorney, or take action within the discretion granted to the SPRB by these rules.*

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such action shall be initiated within the time set forth in BR 2.6(c)(1)(B). If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(C) If the SPRB determines that further investigation is needed, Disciplinary Counsel shall conduct the investigation or, within 14 days of the SPRB's meeting, refer the matter to the appropriate LPRC member who shall conduct a further investigation in accordance with BR 2.3(a). The further investigation by an LPRC shall be completed and a report shall be filed with Disciplinary Counsel within 30 days after the date of the referral. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action. The report of the further investigation shall be submitted to the SPRB at a scheduled meeting, at which the SPRB shall take action in accordance with BR 2.6(d)(1).]

(d)[(e)] Reconsideration; Discretion to Rescind.

(1) An SPRB decision [by the SPRB] to dismiss a grievance[complaint] or allegation of misconduct against an attorney shall not preclude reconsideration or further proceedings on such grievance[complaint] or allegation, if evidence that is not available or submitted at the time of such dismissal justifies, in the judgment of not less than a majority of SPRB, such reconsideration or further proceedings.

(2) The SPRB may rescind a[A] decision [by the SPRB] to file a formal complaint against an attorney [for misconduct may be rescinded by the SPRB] only when, to the satisfaction of a majority of the entire SPRB, good cause exists. Good cause is:

(A) new evidence that[which] would have clearly affected the SPRB's decision to file a formal complaint; or

(B) legal authority, not known to the SPRB at the time of its last consideration of the matter, that[which] establishes that the SPRB's decision to file a formal complaint was incorrect.

(e)[(f)] Approval of Filing of Formal Complaint[Charges].

(1) If the SPRB determines that a formal complaint should be filed against an attorney, or if an attorney rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. Disciplinary Counsel shall notify t[7]he attorney and the complainant [shall be notified] in writing [by Disciplinary Counsel] of such action.

(2) Notwithstanding an SPRB determination [by the SPRB] that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that the Bar take no further action on a grievance[complaint] or allegation of misconduct [be taken by the Bar] if one or more of the following circumstances exist:

(A) the attorney is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon;

(B) other disciplinary proceedings are pending that are likely to result in the attorney's disbarment;

(C) other disciplinary charges are authorized or pending and the anticipated sanction, should the Bar prevail on those charges, is not likely to be affected by a [guilty] finding of misconduct in the new matter or on an additional charge; or

(D) formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings.

An exercise of discretion under this rule to take no further action on a grievance[complaint] or allegation of misconduct shall not preclude further SPRB consideration or proceedings [*by the SPRB*] on such grievance[complaint] or allegation in the future.

(3) Notwithstanding an SPRB determination [*by the SPRB*] that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a grievance[complaint] or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising [*its*]that discretion [*under this rule*] include, but are not limited to:

(A) the attorney's mental state;

(B) whether the misconduct is an isolated event or part of a pattern of misconduct;

(C) the potential or actual injury caused by the attorney's misconduct;

(D) whether the attorney fully cooperated in the investigation of the misconduct; and

(E) whether the attorney previously was admonished or disciplined for misconduct.

Misconduct that adversely reflects on the attorney's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

(f) [(g)] Investigation of Complaints Against Disciplinary Counsel, General Counsel or other Bar agents. Complaints of misconduct concerning D[*d*]isciplinary C[*c*]ounsel or G[*g*]eneral C[*c*]ounsel of the [*Oregon State*] Bar, or complaints that Bar Counsel [*or members of an LPRC*] has [*ve*] engaged in misconduct while acting on the Bar's behalf, shall be referred to the chairperson of the S [*tate*] P [*rofessional*] R [*esponsibility*] B [*oard*] within seven days of their receipt by the B[*b*]ar.

(1) If the SPRB chairperson determines that probable cause does not exist to believe misconduct has occurred, the SPRB chairperson[complaint] shall [*be*] dismiss [*ed*] the inquiry and notify the parties [*shall be notified*] of the dismissal in writing [*by the SPRB chairperson*]. A complainant may contest the dismissal in writing [*the dismissal*], in which case the matter shall be submitted to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate [*on the complaint*].

(2) If the SPRB chairperson determines the inquiry[complaint] should be investigated, the SPRB chairperson may appoint [*a local professional responsibility committee or*] an investigator of his or her choice to investigate the matter and to report on the matter directly to the SPRB. The same procedure shall, as far as practicable, apply to the investigation of such grievances[complaints] as apply to members of the [*Oregon State*] Bar generally.

*(Rule 2.6 amended and 2.6(g)(3) added by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.6 amended by Order dated December 8, 2003, effective January 1, 2004.)*

*(Rule 2.6(g)(1) amended by Order dated March 20, 2008.)*

*(Rule 2.6(f)(2) amended by Order dated October 19, 2009.)*

*(Rule 2.6(a)(2) amended by Order dated August 12, 2013, effective November 1, 2013.)*

### **Rule 2.7 Investigations Of Alleged Misconduct Other Than By Complaint.**

Allegations or instances of alleged misconduct that are brought or come to the attention of the Bar other than through the receipt of a written inquiry[complaint] shall be evaluated using the procedure specified in BR 2.6



except as that rule may be inapplicable due to the lack of a written grievance[*complaint*] or a complainant with whom[*which*] to communicate.

*(Rule amended and renumbered by Order dated July 9, 2003, effective August 1, 2003.)*

### **Rule 2.8 Proceedings Not To Stop On Compromise.**

Neither unwillingness nor neglect of the complainant to [*sign or to*] pursue a grievance[*complaint*] or to participate as a witness, nor settlement, compromise or restitution of any civil claim, shall, in and of itself, justify any failure to undertake or complete the investigation or the formal resolution of a disciplinary or contested reinstatement matter or proceeding.

*(Rule 2.7 amended by Order dated July 22, 1991.)*

*(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)*

### **Rule 2.9 Requests For Information And Assistance.**

The Bar may request a complainant[*person complaining against an attorney*] or applicant to supply and disclose to the investigating authorities of the Bar all documentary and other evidence in his or her possession, and the names and addresses of witnesses relating to his or her inquiry[*complaint*], and may otherwise request the complainant to assist such investigating authorities in obtaining evidence in support of the facts surrounding his or her inquiry[*complaint*].

*(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)*

### **Rule 2.10 Diversion.**

(a) Diversion Offered by Disciplinary Counsel[*SPRB*]. As an alternative to seeking authority from the SPRB to offer an attorney[*issuing*] an admonition or to file[*approving the filing of*] a formal complaint[*against an attorney, or prosecuting a formal complaint that has been filed, the SPRB may authorize*], Disciplinary Counsel may offer to an attorney to divert a grievance on the condition that the attorney[*to*] enter into a diversion agreement in which the attorney agrees to participate in a remedial program as set forth in the agreement.[*Subject to the provisions of this rule, the SPRB has the discretion to determine whether to authorize diversion of a complaint or allegation of misconduct.*] An attorney does not have a right to have a grievance[*complaint or allegation of misconduct*] diverted under this rule.

(b) Diversion Eligibility. [*The SPRB*]Disciplinary Counsel may consider diversion of a grievance[*complaint or allegation of misconduct*] if:

- (1) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor involving moral turpitude or a felony under Oregon law;
- (2) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence, or a lack of training, education or other similar circumstance; and
- (3) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(c) Offer of Diversion.

- (1) If, after investigation, [*by Disciplinary Counsel or an LPRC, the SPRB*] Disciplinary Counsel determines that an attorney may have committed misconduct and that the matter is appropriate for diversion under this rule, [*the SPRB, through*] Disciplinary Counsel[*,*] may offer a diversion agreement to the attorney. The

attorney has~~[shall have]~~ 30 days from the date diversion is offered to accept and enter into the diversion agreement. Disciplinary Counsel may grant an extension of time to the attorney for good cause shown.

(2) An attorney may decline to enter into a diversion agreement, in which case Disciplinary Counsel shall refer the grievance~~[complaint or allegation of misconduct shall be referred back]~~ to the SPRB for review pursuant to Rule 2.6~~[ or, if a formal complaint has been filed, proceed to hearing]~~.

(d) Diversion Agreement.

(1) A diversion agreement shall require the attorney to participate in a specified remedial program to address the apparent cause of the misconduct. Such a remedial program may include, but is not limited to: appointment of a diversion supervisor; assistance or training in law office management; chemical dependency treatment; counseling or peer support meetings; oversight by an experienced practicing attorney; voluntary limitation of areas of practice for the period of the diversion agreement; restitution; or a prescribed course of continuing legal education. The attorney shall pay~~[bear]~~ the costs of a remedial program.

(2) A diversion agreement~~[ further]~~ shall require the attorney to stipulate to a set of facts concerning the complaint or allegation of misconduct being diverted~~[,]~~ and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the stipulated facts shall be deemed true in any subsequent disciplinary proceeding.

(3) A diversion agreement may be amended at any time ~~[with the consent of the SPRB]~~by agreement between Disciplinary Counsel and the attorney. ~~[The SPRB]~~Disciplinary Counsel is not obligated to amend a diversion agreement to incorporate additional complaints or allegations of misconduct made against the attorney subsequent to the date of the original agreement.

(4) The term of a diversion agreement shall be no more than 24 months following the date of the last amendment to the agreement.

(5) In a diversion agreement, the attorney shall agree that a diversion supervisor, treatment provider or any other person to whom the attorney has been referred pursuant to the remedial program specified in the agreement shall report to Disciplinary Counsel any failure by the attorney to comply with the terms of the agreement.

(6) If a~~[A]~~ diversion agreement is entered into between~~[ prepared by]~~ Disciplinary Counsel and ~~[signed by an]~~the attorney~~[ is not effective until approved by the SPRB. If approved by the SPRB]~~, Disciplinary Counsel shall so notify the complainant~~[ and the attorney]~~ in writing.

(e) Compliance and Disposition.

(1) If it appears to Disciplinary Counsel that an attorney has failed to comply with the terms of a diversion agreement~~[, Disciplinary Counsel shall inform the SPRB. If the SPRB]~~and Disciplinary Counsel determines that the allegation of noncompliance, if true, warrants the termination of the diversion agreement, ~~[the SPRB]~~Disciplinary Counsel shall provide the attorney an opportunity to be heard, through written submission, concerning the alleged noncompliance. Thereafter, ~~[the SPRB]~~Disciplinary Counsel shall determine whether to terminate the diversion agreement and, if so, ~~[take action deemed appropriate under]~~shall then refer the matter to the SPRB for review pursuant to BR 2.6.

(2) If an attorney fulfills the terms of a diversion agreement, Disciplinary Counsel thereafter shall dismiss the grievance~~[complaint or allegation of misconduct]~~ with written notice to the complainant and the attorney. The dismissal of a grievance~~[complaint or allegation of misconduct]~~ after diversion shall not be considered a prior disciplinary offense in any subsequent proceeding against the attorney.

(f) Public Records Status. The Bar shall[will] treat records relating to a grievance[complaint or allegation of misconduct] diverted under this rule, a diversion agreement, or a remedial program as official records of the Bar, subject to the Oregon Public Records Law, and also subject to any applicable exemption[ *thereunder*].

*(Rule 2.10 added by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.10(a), 2.10(c)(2), and 2.10(d)(4) amended by Order dated October 19, 2009.)*

### Title 3 — Special Proceedings

#### **Rule 3.1 Interlocutory[Temporary] Suspension During Pendency Of Disciplinary Proceedings.**

(a) Petition for Interlocutory[Temporary] Suspension. [*If it appears to the SPRB, upon the affirmative vote of two-thirds of its membership, that the continuation of the practice of law by an attorney during the pendency of disciplinary proceedings will, or is likely to, result in substantial harm to any person or the public at large, Disciplinary Counsel shall directly, or through Bar Counsel, petition the Supreme Court on behalf of the Bar for an order suspending the attorney from practice until further order of the court. A petition under this rule may be filed by the Bar at any time after the SPRB has approved the filing of a formal complaint by the Bar against the attorney.*] At any time after Disciplinary Counsel has determined probable cause exists that an attorney has engaged in misconduct, has evidence sufficient to establish a probable violation of one or more rules of professional conduct or the Bar Act, and reasonably believes that clients or others will suffer immediate and irreparable harm by the continued practice of law by the attorney, Disciplinary Counsel shall petition the Adjudicator for an order for interlocutory suspension of the attorney's license to practice law pending the outcome of the disciplinary proceeding.

(b) Contents of Petition; Contents of Notice to Answer; Service[; Answer by Attorney]. A petition[ *to the Supreme Court*] for the suspension of an attorney under this rule shall set forth the acts and violations of the rules of professional conduct or statutes submitted by the Bar[ *as grounds for the attorney's suspension*], together with an explanation of why interlocutory suspension is warranted under BR 3.1(a). If a formal complaint has been filed against the attorney, a copy shall be attached. [*The petition shall have attached as an exhibit a copy of the Bar's formal complaint against the attorney, if one has been filed by the Bar.*] The petition may be supported by documents or affidavits. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 14 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice of answer, on the attorney pursuant to BR 1.8. [*A copy of the petition, along with a notice to answer, shall be served on the attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons. The attorney shall file an answer to the Bar's petition with the Supreme Court within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and Bar Counsel, if any, and file proof of mailing with the court.*]

(c) Answer by Attorney. The attorney shall file an answer to the Bar's petition with the Disciplinary Board Clerk within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(d) Default; Entry of Order. The failure of the attorney to answer the Bar's petition within the time provided in BR 3.1(c) constitutes a waiver of the attorney's right to contest the Bar's petition, and all factual allegations contained in the petition shall be deemed true. Not earlier than 14 days after service of the petition and in the absence of an answer filed by the attorney named in the petition, the Adjudicator shall review the sufficiency of the petition and, if it establishes a probable violation of one or more rules of professional conduct or the Bar Act, and a reasonable belief that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney, shall enter an appropriate interlocutory order suspending the attorney's license to practice law until further order of the Adjudicator or the Supreme Court.

(e)[(c)] Setting; h[H]earing on interlocutory suspension;[,] answer filed. Upon the timely filing of the attorney's answer pursuant to BR 3.1(c), the Adjudicator[court] shall hold a hearing on the Bar's petition not less than 30 days nor more than 60 days after the date the answer is filed. The Disciplinary Board Clerk shall promptly notify Disciplinary Counsel and the attorney named in the petition of the date, time, and location of the hearing. The hearing shall take place consistently with BR 5.3(a), (b), (c), and (d). [The hearing date shall be set by the court and notice thereof shall be mailed to Disciplinary Counsel, Bar Counsel and the attorney by the State Court Administrator.] At the hearing, the Bar must prove by clear and convincing evidence that one or more rules of professional conduct or provision of the Bar Act has been violated by the attorney named in the petition and that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney. Proof that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney may include, but is not limited to, establishing within the preceding 12-month period: (1) theft of conversion of funds held by the attorney in any fiduciary capacity, including but not limited to funds that should have been maintained in a lawyer trust account; (2) three or more instances of failure to appear in court on behalf of a client notwithstanding having notice of the setting; or (3) abandoning a practice with no provision of new location or contact information to 3 or more clients. If the attorney, having been notified of the date, time, and location of the hearing, fails to appear, the Adjudicator may enter an order finding the attorney in default, deeming the allegations contained in the petition to be true, proceed on the basis of that default consistent with BR 3.1(d), and enter an appropriate order.

*[(d) Hearing, default. The failure of the attorney to answer the Bar's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the Bar's petition. The court shall then enter the order provided in BR 3.1(e) either upon the record before it, or at the discretion of the court, after a hearing ordered by the court.]*

(f)[(e)] Order of [Court]Adjudicator; Suspension; Restrictions on Trust Account; Notice to Clients; Custodian; Other Orders. The Adjudicator[court], [after the hearing provided in BR 3.1(c) or] upon the record pursuant to BR 3.1(d) or after the hearing provided in 3.1(e)[(d)], shall enter an appropriate order. If the Adjudicator[court] grants the Bar's petition and interlocutorily suspends the attorney's license to practice law, the order of suspension shall state an effective date [for the attorney's suspension shall be stated therein]. The suspension shall remain in effect until further order of the Adjudicator or the court. The Adjudicator may enter such other orders as appropriate to protect the interests of the suspended attorney, the suspended attorney's clients, and the public, including, but not limited to:

*[(f) Duties upon Suspension. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).]*

*(g) Immediate Suspension; Restrictions on Trust Account; Other Orders. The court may enter such other orders as it deems appropriate to protect the interests of the suspended attorney, the suspended attorney's clients and the public including, but not limited to:*

*(1) an order for the immediate suspension of the attorney prior to the hearing required by BR 3.1(c), in which event the hearing on the Bar's petition shall be held no later than 60 days following the attorney's suspension and the order of the court contemplated by BR 3.1(e) shall be entered no later than 30 days after the hearing. The time limitations in this subsection of the rule shall not apply if the attorney is in default;]*

(1)[(2)] an order that[which], when served upon a financial institution, [shall] serves as an injunction prohibiting withdrawals from the attorney's trust account or accounts except in accordance with restrictions set forth in the Adjudicator's[court's] order.

(2) an order directing the attorney to notify current clients and any affected courts of the attorney's suspension; and to take such steps as are necessary to deliver client property, withdraw from pending matters, and refund any unearned fees.

(3) an order appointing another attorney as custodian to take possession of and inventory the files of the suspended attorney and take such further action as necessary to protect the interests of the suspended attorney's clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the Adjudicator[court].

(g)[(h)] Costs and Expenses. The Adjudicator[court] may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as *[far as]* practicable.

(h) Duties of Attorney. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b). An attorney whose suspension under this rule exceeds 6 months must comply with BR 8.1 in order to be reinstated. An attorney whose suspension under this rule is 6 months or less must comply with BR 8.2 in order to be reinstated.

(i) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.1.

(j)[(i)] Accelerated Proceedings Following Interlocutory[Temporary] Suspension. When an attorney has been interlocutorily[temporarily] suspended by order [of the court under]entered pursuant to BR 3.1(f)[(e)], the related formal complaint filed by the Bar shall thereafter proceed and be determined as an accelerated case, without unnecessary delay. The interlocutory suspension shall expire 45 days after date of entry, unless the SPRB authorizes the filling of a formal complaint against the attorney for one or more acts described in the petition as a basis for seeking the interlocutory petition. Unless extended by stipulation of the Bar and the attorney, and approved by the Adjudicator[court], the further order [of the court] contemplated by BR 3.1[(e)][(f)] shall be entered not later than 270 days following the entry of the order of interlocutory[temporary] suspension, subject to continuance for an additional period not to exceed 90 days upon motion filed by the Bar, served upon the attorney, and granted by the Adjudicator[Supreme Court].

(k) Supreme Court Review. No later than 14 days after the entry of an order pursuant to BR 3.1(f), Disciplinary Counsel or the attorney who is the subject of an order entered pursuant to BR 3.1(f) may request the Supreme Court to review the Adjudicator's order, including conducting a *de novo* review on the record, on an expedited basis. Unless otherwise order by the court, an interlocutory order of suspension, if entered, shall remain in effect until the court issues its decision.

(l)[(j)] Termination of Interlocutory[Temporary] Suspension. In the event the further order of the court contemplated by BR 3.1(f)[(e)] is not entered within the time provided by BR 3.1(j)[(h)], the order of interlocutory[temporary] suspension shall automatically terminate without prejudice to any pending or further disciplinary proceeding against the attorney.

*(Rule 3.1(h) amended by letter dated December 10, 1987.)*

*(Rule 3.1 amended by Order dated February 23, 1988.)*

*(Rule 3.1(f) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

*(Rule 3.1(a) and (g) amended by Order dated May 15, 1995.)*

*(Rule 3.1(g)(3) added and 3.1(h)-3.1(j) amended by Order dated October 19, 2009.)*

### **Rule 3.2 Mental Incompetency Or Addiction— Involuntary Transfer To Inactive Membership Status.**

(a) Summary Transfer to Inactive Status.

(1) The Supreme Court may summarily order, upon ex parte application by the Bar, that an attorney be placed on inactive membership status until reinstated by the court if the attorney has been adjudged by a court of competent jurisdiction to be mentally ill or incapacitated.

(2) A copy of the court's order shall be personally served on the[*such*] attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons and mailed to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(b) Petition by Bar.

(1) The Bar may petition the court to determine whether an attorney is disabled from continuing to practice law due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) diminished capacity[*senility*]; or
- (iv) addiction to drugs, narcotics or intoxicants.

The Bar's petition shall be mailed to the attorney and to his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding.

(2)

(A) On the filing of such a petition, the court may take or direct such action as it deems necessary or proper to determine whether an [*such*] attorney is disabled. Such action may include, but is not limited to, examination of the [*such*] attorney by such qualified experts as the court shall designate.

(B) A copy of an order requiring an attorney to appear, for examination or otherwise, shall be mailed by the State Court Administrator to the attorney and to his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(C) In the event of a failure by the attorney to appear at the appointed time and place for examination, the court may place the attorney on inactive membership status until further order of the court.

(D) If, upon consideration of the reports of the designated experts or otherwise, the court finds that probable cause exists that the attorney is disabled under the criteria set forth in BR 3.2(b)(1) from continuing to practice law, the court may order the attorney to appear before the court or its designee to show cause why the attorney should not be placed by the court on inactive membership status until reinstated by the court. *[A copy of such show cause order shall be mailed by t]*The State Court Administrator shall mail such a show cause order to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(E) After any[*such*] show cause hearing as the court deems appropriate, if the court finds that the[*such*] attorney is disabled from continuing to practice law, the court may order the attorney placed on inactive membership status. The State Court Administrator shall mail a[A] copy of an order placing the attorney on inactive membership status *[shall be mailed by the State Court Administrator]* to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding, and to Disciplinary Counsel.

(3) Any disciplinary investigation or proceeding pending against an attorney placed by the court on inactive membership status under this rule shall *[thereupon]* be suspended and held in abeyance until further order of the court.

(c) Disability During Disciplinary Proceedings.

(1) The court may order that an attorney be placed on inactive membership status until reinstated by the court if, during the course of a disciplinary investigation or disciplinary proceeding, the respondent[accused] files a petition with the court, with notice to Disciplinary Counsel [*and Bar Counsel*], alleging that he or she is disabled from understanding the nature of the proceeding against him or her [*the accused*], assisting and cooperating with his or her attorney, or from participating in his or her defense due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) diminished capacity[*senility*]; or
- (iv) addiction to drugs, narcotics or intoxicants.

(2) The court shall take or direct such action as it deems necessary or proper as provided in BR 3.2(b) to determine if the[*such*] attorney is disabled.

(3) A copy of the court's order [*in the matter*] shall be mailed by the State Court Administrator to Disciplinary Counsel, Bar Counsel, and the attorney and his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding, and the attorney of record in the Bar's disciplinary proceeding.

(4) Any disciplinary investigation or proceeding against an attorney who the court places on inactive membership status under this rule shall be suspended and held in abeyance until further order by the court.

(5)[(4)] If the court determines that the attorney is not disabled under the criteria set forth in BR 3.2(c)(1), it may take such action as it deems necessary or proper, including the issuance of an order that any disciplinary investigation or proceeding against the attorney that[*which*] is pending or held in abeyance be continued or resumed.

(d) Appointment of Attorney. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to represent the attorney if he or she is without representation.

(e) Custodians. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to inventory the files of the attorney and to take such action [*as seems*] necessary to protect the interests of his or her clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(f) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be paid by the attorney or his or her estate, including compensation fixed by the court to be paid to any attorney or medical expert appointed under this rule. The court may order such hearings as it deems necessary or proper to determine the costs and expenses to be paid under this rule.

(g) Waiver of Privilege.

(1) Under this rule, a respondent's claim of disability [*by an accused*] in a disciplinary investigation or disciplinary proceeding, or the filing of an application for reinstatement as an active member by an attorney placed on inactive membership status under this rule for disability, shall be deemed a waiver of any privilege existing between such respondent[*accused*] or attorney and any doctor or hospital treating him or her during the period of the alleged disability.

(2) The[*Such*] respondent[*accused*] or attorney shall, in his or her claim of disability or in his or her application for reinstatement, disclose the name of every doctor or hospital by whom he or she has been

treated during his or her disability or since his or her placement on inactive membership status and shall furnish written consent to divulge all such information and all such doctor and hospital records as *[ may be requested by]* the Bar or the court may request.

(h) Application of Other Rules.

(1) The Rules of Procedure that apply to the resolution of a formal complaint or statement of objections do not apply to transfers from active to inactive membership status under BR 3.2. *[Nor does t]*The placement of an attorney on inactive membership status under BR 3.2 does not preclude the Bar from filing a formal complaint against the attorney. An attorney placed on inactive membership status under BR 3.2 must comply with the applicable provisions of Title 8 of these rules to obtain reinstatement to active membership status.

(2)

(i) An attorney transferred to inactive status under this rule shall not practice law after the effective date of the transfer. This rule shall not preclude the*[such an]* attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(ii) *[It shall also be the duty of a]*An attorney transferred to inactive status under this rule shall*[to]* immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(iii) Notwithstanding BR 3.2(b)(3) and BR 3.2(c)(4), Disciplinary Counsel may petition the Supreme Court to hold an attorney transferred to inactive status under this rule in contempt for failing to comply with the provisions of BR 3.2(h)(2)(i) and (ii). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

*(Rule 3.2(h) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

**Rule 3.3 Allegations Of Criminal Conduct Involving Attorneys.**

(a) *If**[n the event]* the SPRB directs the filing of a formal complaint *[causes disciplinary charges to be filed against an attorney]* that*[which]* alleges acts*[charges]* involv[e]ing the possible commission of a crime that do not appear to have been the subject of a criminal prosecution, *[the SPRB shall direct]* Disciplinary Counsel shall*[to]* report the possible crime to the appropriate investigatory authority*[district attorney]*.

(b) On the filing of an accusatory instrument against an attorney for the commission of a misdemeanor that*[which]* may involve moral turpitude or of a felony, *[the SPRB shall forthwith direct an investigation by]* Disciplinary Counsel *[ or an LPRC to]* shall determine whether a disciplinary investigation*[proceeding]* should be initiated*[instituted]* against such attorney.

*(Rule 3.3 amended by Order dated March 31, 1989.)*

**Rule 3.4 Conviction Of Attorneys.**

(a) *[Referral of Convictions to Court.]*Petition; Interlocutory Suspension; Notice to Answer. *[Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after]*Upon learning *[receiving notice]* that an attorney has been convicted in any jurisdiction of an offense that is a misdemeanor that*[which]* may involve moral turpitude, *[or is]* a felony under the laws of this state, or a crime *[is]* punishable by death or imprisonment under the laws of the United States~~[.]~~, and determining that immediate and irreparable harm to the attorney's clients or the public is likely to result if a suspension of the attorney's license to practice law is not ordered. Disciplinary Counsel shall *[file]*petition the Disciplinary Board to interlocutorily suspend the attorney's license to practice law. The petition shall describe the conviction and



explain the basis upon Disciplinary Counsel believes that immediate and irreparable harm to the attorney's clients or the public is likely to result if a suspension is not ordered. The petition shall include a copy of the documents that[which] show the conviction and may be supported by documents or affidavits[ and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney]. A "conviction" for [the] purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 14 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice to answer, on the attorney pursuant to BR 1.8.

(b) *[Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.]*Answer by Attorney. The attorney shall file an answer to the Bar's petition with the Disciplinary Board Clerk within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(c) *[Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.]*Default; Entry of Order. The failure of the attorney to answer the Bar's petition within the time provided in BR 3.4(b) constitutes a waiver of the attorney's right to contest the Bar's petition, and all factual allegations contained in the petition shall be deemed true. Not earlier than 14 days after service of the petition and in the absence of an answer filed by the attorney named in the petition, the Adjudicator shall review the sufficiency of the petition and, if it establishes the attorney's conviction of a category of offense described in BR 3.4(a) and a reasonable belief that clients or others will suffer immediate or irreparable harm by the attorney's continued practice of law, shall enter an appropriate interlocutory order suspending the attorney's license to practice law until further order of the Adjudicator or the Supreme Court.

(d) *[Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).*

(e) *Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. The referral shall be made in writing to the Disciplinary Board Clerk, with copies to Disciplinary Counsel and the attorney. Upon receipt of notice of a referral of a conviction matter to the Disciplinary Board, Disciplinary Counsel shall file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.]*Setting; Hearing on interlocutory suspension; Answer filed. Upon the timely filing of the attorney's answer pursuant to BR 3.4(b), the Adjudicator shall hold a hearing on the Bar's petition not less than 30 days nor more than 60 days after the date the answer is filed. The Disciplinary Board Clerk shall promptly notify Disciplinary Counsel and the attorney of the date, time, and location of the hearing. The hearing shall take place consistently with BR 5.3(a), (b), (c), and (d). At the hearing, the Bar must prove by clear and convincing evidence that the attorney has been convicted of a category of offense described in BR 3.4(a) and that clients or others will suffer immediate or irreparable harm by the attorney's continued practice of law. Proof that clients or others will suffer immediate or irreparable harm by the attorney's continued practice of law may include, but is not limited to, establishing that a period of incarceration was imposed on the attorney as a result of the conviction. If the attorney, having been notified of the date, time, and location of the hearing, fails to appear, the Adjudicator may enter an order finding the attorney in default, deeming the allegations contained in the petition to be true, proceed on the basis of that default consistent with BR 3.4(c), and enter an appropriate order.

(e) Order of Adjudicator; Suspension; Restrictions on Trust Account; Notice to Clients; Custodian; Other Orders. The Adjudicator, upon the record pursuant to BR 3.4(c) or after the hearing provided in BR 3.4(d), shall

enter an appropriate order. If the Adjudicator grants the Bar's petition and interlocutorily suspends the attorney's license to practice law, the order of suspension shall state an effective date. The suspension shall remain in effect until further order of the Adjudicator or the court. The Adjudicator may enter such other orders as appropriate to protect the interests of the suspended attorney, the suspended attorney's clients, and the public, including, but not limited to:

(1) an order that, when served upon a financial institution, serves as an injunction prohibiting withdrawals from the attorney's trust account or accounts except in accordance with restrictions set forth in the Adjudicator's order.

(2) an order directing the attorney to notify current clients and any affected courts of the attorney's suspension; and to take such steps as are necessary to deliver client property, withdraw from pending matters, and refund any unearned fees.

(3) an order appointing an attorney as custodian to take possession of and inventory the files of the suspended attorney and take such further action as necessary to protect the interests of the suspended attorney's clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the Adjudicator.

(f) Costs and Expenses. The Adjudicator may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as practicable.

(g) Duties of Attorney. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b). An attorney whose suspension under this rule exceeds 6 months must comply with BR 8.1 in order to be reinstated. An attorney whose suspension under this rule is 6 months or less must comply with BR 8.2 in order to be reinstated.

(h) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.4.

(i) Supreme Court Review. No later than 14 days of the entry of an order pursuant to BR 3.4(e), Disciplinary Counsel or the attorney who is the subject of an order entered pursuant to BR 3.4(e) may request the Supreme Court to review the Adjudicator's order, including conducting a *de novo* review on the record, on an expedited basis. Unless otherwise ordered by the court, an interlocutory order of suspension, if entered, shall remain in effect until the court issues its decision.

~~(j)~~~~(f)~~ Independent Charges; *Consolidated Proceedings*. Whether or not interlocutory suspension is sought pursuant to BR 3.4(a), ~~[T]~~the SPRB may direct Disciplinary Counsel to file a formal complaint ~~[cause disciplinary charges to be filed]~~ against the attorney based upon ~~[independent of]~~ the fact of the attorney's conviction or the underlying conduct. ~~[In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.]~~

~~(g) Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.~~

~~(h) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).]~~

~~(k)~~~~(i)~~ Relief From Suspension. If an attorney's conviction is reversed on appeal, and such reversal ~~is~~has become a final order not subject to further appeal or review, or the attorney has been granted a new trial and the~~[which]~~ order granting new trial has become final, a suspension or discipline previously ordered based solely on the conviction shall be vacated upon the Disciplinary Board's~~[court's]~~ receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal or the

granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

*(Rule 3.4(d) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 3.4(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 3.4(e) amended by Order dated October 19, 2009.)*

### **Rule 3.5 Reciprocal Discipline.**

(a) Petition; Notice to Answer[*Notice to Court*]. [*Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after*] Upon learning [*receiving notice*] that an attorney has been disciplined for misconduct in another jurisdiction[.], not predicated upon a prior discipline of the attorney pursuant to these rules, Disciplinary Counsel shall file with the Disciplinary Board Clerk a petition seeking reciprocal discipline of the attorney. The petition shall include a copy of the judgment, order or determination of discipline in the other jurisdiction[*with the court,*]; may be supported by other documents or affidavits; and shall contain a recommendation as to the imposition of discipline in Oregon, based on the discipline in the jurisdiction whose action is reported, and such other information as the Bar deems appropriate[ *with written notice to the attorney*]. A plea of no contest, a stipulation for discipline or a resignation while formal charges are pending is [*shall be*] considered a judgment or order of discipline for the purposes of this rule. [*The judgment or order or determination of discipline shall be accompanied by a recommendation of the SPRB as to the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court, and such other information as the Bar deems appropriate to file with the court.*] If the Bar seeks imposition of a sanction greater than that imposed in the other jurisdiction, it shall state with specificity the sanction sought and provide applicable legal authority to support its position. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 21 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice to answer, on the attorney pursuant to BR 1.8.

(b) Order of Judgment; Sufficient Evidence of Misconduct; Rebuttable Presumption. A copy of the judgment, order or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct so described[ *therein*]. There is a rebuttable presumption that the sanction to be imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction.

(c) Answer of Attorney. The attorney has[*shall have*] 21 days from [*the filing of the judgment, order, or determination of discipline with the court*]service to file with the Disciplinary Board[*court*] an answer discussing whether[*the following issues*]:

(1) [*Was t*] The procedure in the jurisdiction which disciplined the attorney was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;[*?*]

(2) The conduct for which the attorney was disciplined in the other jurisdiction is conduct that should subject the attorney to discipline in Oregon; and [*Should the attorney be disciplined by the court?*]

(3) The imposition of a sanction equivalent to the sanction imposed in the other jurisdiction would result in grave injustice or be offensive to public policy.

The attorney shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk[*court*].

(d) [*Reply of Bar. The Bar shall have 14 days from the expiration of the time specified in BR 3.5(c) in which to file a reply to the attorney's answer with the court. The Bar shall mail a copy to the attorney and file proof of mailing with the court.*]

(e) Review by Court; ~~Default; [Referral for ]Hearing.~~ If no answer is timely filed, the Adjudicator may proceed to the entry of an appropriate judgment based upon its review of the record before it. If an answer is timely filed that asserts a defense pursuant to BR 3.5(c)(1), (2), or (3), the Adjudicator, in his or her discretion, based upon a review of the petition, answer, and any supporting documents filed by either the Bar or the attorney, may either [Upon review of the judgment, order or determination of discipline and the response and answer filed by the attorney and the Bar, and after oral argument if ordered by the court, the court shall ]determine on the basis of the record whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner, or may determine that testimony will be taken solely on the issues set forth in the answer pertaining to BR 3.5(c)(1), (2), and (3). The Adjudicator shall enter an appropriate order. [The court, in its discretion, may refer the matter to the Disciplinary Board for the purpose of taking testimony on the issues set forth in BR 3.5(c)(1) and (2). The referral shall be made in writing to the Disciplinary Board Clerk with copies to Disciplinary Counsel and the attorney. Upon receipt of a notice of referral to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the issues before the Disciplinary Board. The same rules as apply in a disciplinary proceeding shall apply in a reciprocal discipline proceeding.]

(f) Burden of Proof. The attorney has~~shall have~~ the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction.

(g) Hearing by Trial Panel; Review by Supreme Court. If the Adjudicator decides to take testimony pursuant to BR 3.5(e), the Adjudicator shall request the regional chairperson to appoint an attorney member and a public member to serve on the trial panel. Upon receiving notice from the Disciplinary Board Clerk of a regional chairperson's appointment of an attorney member and a public member pursuant to BR 2.4(f)(1), and upon determining that either no timely challenge pursuant to BR 2.4(g) was filed or that a timely filed challenge pursuant to BR 2.4(g) has either been denied or resulted in the appointment of a substitute member or members, the Adjudicator shall promptly establish the date and place of the evidentiary hearing no less than 21 days and no more than 42 days thereafter. BR 5.1 and BR 5.3 apply to the evidentiary hearing. The [ A ] trial panel [appointed by the state chairperson ]shall make a decision concerning the issues submitted to it. The trial panel's decision shall be subject to review by the Supreme C[c]ourt as is authorized in Title 10 of these rules. On review by the court, the sanction imposed in the other jurisdiction may be a factor for consideration but does not operate as a rebuttable presumption.

(h) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.5.

(i)[(h)] Suspension or Disbarment. [The court may suspend an attorney from the practice of law in this state at the time it approves a referral of the matter to the Disciplinary Board for hearing. The suspension shall remain in effect until otherwise ordered by the court. ]An attorney suspended or disbarred under this rule shall comply with the requirements of BR 6.3(a) and (b).

(j)[(i)] Reinstatement Rules Apply. The rules on reinstatement [ shall ] apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.5(e), (f), and (g).

(k)[(j)] Independent Charges. Nothing in this rule [ shall ] precludes the Bar from filing [of] a formal complaint [disciplinary charges by the Bar ]against an attorney for misconduct in any jurisdiction.

*(Rule 3.5 amended by Order dated July 16, 1984, effective August 1, 1984.)*

*(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 3.5(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

### **Rule 3.6 Discipline By Consent.**

(a) Application. Any allegation of misconduct that is neither dismissed nor disposed of pursuant to BR 2.10 may be disposed of by a no contest plea, or by a stipulation for discipline, entered into at any time after the SPRB finds probable cause that misconduct has occurred.

(b) No Contest Plea. A plea of no contest to all causes or any cause of a formal complaint, or to allegations of misconduct if a formal complaint has not been filed, shall be verified by the respondent[accused] and shall include:

- (i) A statement that the respondent freely and voluntarily makes the plea *[ has been freely and voluntarily made by the accused]*;
- (ii) A statement that the respondent[accused] does not desire to defend against the formal complaint or any designated cause thereof, or against an allegation of misconduct not yet pled;
- (iii) A statement that the respondent[accused] agrees to accept a designated form of discipline in exchange for the no contest plea; and
- (iv) A statement of the respondent's[accused's] prior record of reprimand, suspension, or disbarment, or absence of such record.

(c) Stipulation for Discipline. A stipulation for discipline shall be verified by the respondent[accused] and shall include:

- (i) A statement that the respondent has freely and voluntarily entered into the stipulation *[ has been freely and voluntarily made by the accused]*;
- (ii) A statement that explains the particular facts and violations to which the Bar and the respondent[accused] are stipulating;
- (iii) A statement that the respondent[accused] agrees to accept a designated form of discipline in exchange for the stipulation; and
- (iv) A statement of the respondent's[accused's] prior record of reprimand, suspension or disbarment, or absence of such record.

(d) Approval of SPRB. Pleas of no contest and stipulations shall be approved as to form by Disciplinary Counsel and approved in substance by the chairperson of the SPRB or a member of the SPRB designated by the chairperson. If the plea or stipulation[,] is acceptable to the respondent and the SPRB chairperson or designated member *[ and the accused]*, and if the full term of the discipline agreed upon does not exceed a 6-month suspension, Disciplinary Counsel shall *[file it with]* submit it to the Disciplinary Board Clerk for review by the Adjudicator, acting on behalf of the Disciplinary Board *[ and provide copies to the state chairperson and the appropriate regional chairperson of the Disciplinary Board if the full term of the discipline agreed upon does not exceed a 6-month suspension;]*. Otherwise, Disciplinary Counsel shall file the stipulation *[ otherwise it shall be filed]* with the State Court Administrator for review by the Supreme C*[c]*ourt.

(e) Review by Adjudicator*[Disciplinary Board]* or Supreme Court. The Adjudicator*[Disciplinary Board]* or the court, as the case may be, shall review the plea or stipulation. *[ If the matter is submitted to the Disciplinary Board, it shall be reviewed by the state chairperson and the regional chairperson in the region the accused maintains his or her principal place of business. If the accused does not maintain a place of business in Oregon, the plea or stipulation shall be reviewed by the regional chair for Region 5. The state chairperson and regional chairperson shall have the authority to act on the matter for the Disciplinary Board.]* If the Adjudicator*[Disciplinary Board]* or the court approves the plea or stipulation, an order *[ decision]* shall be issued so stating. The Adjudicator, acting on behalf of the Disciplinary Board, shall file a written decision in that regard *[ The written decision of the Disciplinary Board shall be filed by the state chairperson]* with the Disciplinary Board Clerk, and the Clerk shall provide *[ shall be provided]* copies to Disciplinary Counsel and the respondent[accused]. If the plea or stipulation is rejected by the Adjudicator*[Disciplinary Board]* or the court it may not be used as evidence of misconduct against the respondent[accused] in the pending or in any subsequent disciplinary proceeding.

(f) Costs. In matters submitted under this rule that are resolved by a decision of the Disciplinary Board, the Bar may file a cost bill with the Disciplinary Board Clerk within 21 days of the filing of the decision of the Disciplinary Board[, *accompanied by proof of service on the state chairperson and the accused*]. The Bar must serve a copy of the cost bill on the attorney pursuant to BR 1.8. To contest the Bar's statement of costs, t[7]he respondent[accused][, if he or she desires to contest the Bar's statement of costs,] must file an [verified] objection[s] supported by a declaration under penalty of perjury with the Disciplinary Board Clerk within 7 days from the date of service[*the filing of the Bar's cost bill, accompanied by proof of service on the state chairperson and Disciplinary Counsel*]. The attorney shall mail a copy of the objection to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk. If the matter is resolved by a decision of the court, the Bar's cost bill and the respondent's[*accused's*] objections must be filed with the court within the same time period, accompanied by proof of service on the other party. The Adjudicator[*state chairperson of the Disciplinary Board*] or the court, as the case may be, may fix the amount of the Bar's actual and necessary costs and disbursements incurred in the proceeding to be paid by the respondent[*accused*].

(g) Supplementing Record. If the Adjudicator[*Disciplinary Board*] or the court concludes that facts are not set forth in sufficient detail to enable [it to] forming an opinion as to the propriety of the discipline agreed upon, the Adjudicator[*Disciplinary Board*] or the court may request that additional stipulated facts be submitted or it may disapprove the plea or stipulation.

(h) Confidentiality. A plea or stipulation prepared for the Adjudicator's[*Disciplinary Board*] or the court's consideration shall not be subject to public disclosure:

(i) prior to Adjudicator[*Disciplinary Board*] or court approval of the plea or stipulation; or

(ii) if rejected by the Adjudicator[*Disciplinary Board*] or court.

*(Rule 3.6(d) and (e) amended by Order dated February 23, 1988.)*

*(Rule 3.6(d) amended by Order dated December 13, 1993. Amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 3.6(a), (b), (d) and (e) amended by Order dated February 5, 2001.)*

*(Rule 3.6(d), (e) and (f) amended by Order dated June 17, 2003, effective July 1, 2003.)*

## Title 4 — Prehearing Procedure

### Rule 4.1 Formal Complaint.

(a) Designation of Counsel and Region. If [ *it shall appear to*] the SPRB determines that probable cause exists to believe an attorney has engaged in misconduct and that formal proceedings are warranted, it shall refer the matter to Disciplinary Counsel with instructions to file [*specified charges*]a formal complaint against the attorney. Disciplinary Counsel, being so advised, may appoint Bar Counsel[ *and, upon the service of a formal complaint upon an accused, request that the Disciplinary Board appoint a trial panel in the appropriate region selected pursuant to BR 5.3(a)*].

(b) Filing. Disciplinary Counsel[ *or Bar Counsel*] shall prepare and file with the Disciplinary Board Clerk a formal complaint against the attorney on behalf of the Bar. [*Proceedings thereon shall then be had as herein provided.*] The formal complaint shall be in substantially the form set forth in BR 13[2].1.

(c) Substance of Formal Complaint. A formal complaint shall be signed by Disciplinary Counsel, or his or her designee, and shall set forth succinctly the acts or omissions of the respondent[*accused*], including the specific statutes or rules of professional conduct[*disciplinary rules*] violated, so as to enable the respondent[*accused*] to know the nature of the charge or charges against the respondent[*accused*]. When more than one act or transaction is relied upon, the allegations shall be separately stated and numbered. The formal complaint need not be verified.

(d) Amendment of Formal Complaint. Disciplinary Counsel may amend the formal complaint on behalf of the Bar subject to the requirements of BR 4.4(b) as to any grievance the SPRB has instructed Disciplinary Counsel to file a formal complaint pursuant to BR 4.1(a) and BR 4.1(e).

(e)[(d)] Consolidation of Charges and Proceedings. The Bar, at the SPRB's direction[ of the SPRB], may consolidate in a formal complaint two or more causes of complaint against the same attorney or attorneys, but shall file a separate formal complaint against each respondent[accused]. The findings and conclusions thereon may be either joint or separate, as the trial panel, in its discretion, may determine. The Bar, at the discretion of the SPRB, may also consolidate formal complaints against two or more attorneys for hearing before one trial panel.

(f) Appointment of Trial Panel. Within 30 days following respondent's timely filing of an answer pursuant to BR 4.3, Disciplinary Counsel shall file a request with the Disciplinary Board Clerk that the regional chairperson appoint an attorney and a public member to serve on the trial panel with the Adjudicator.

*(Rule 4.1(a) amended by Order dated January 5, 1988. Amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 4.1(b) amended by Order dated February 23, 1988.)*

*(Rule 4.1(a) and (c) amended by Order dated February 5, 2001.)*

*(Rule 4.1(b) amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 4.2 Service Of Formal Complaint.**

(a) Manner of Service of Formal Complaint. A copy of the formal complaint, accompanied by a notice to file an answer [ it] within 14 days, may be personally served on the respondent[accused] or as otherwise permitted by B[ar ]R[ule] 1.12. The notice to answer shall be substantially the form set forth in BR 12.2.

(b) Alternative Service of Formal Complaint. The Bar may request the Adjudicator[Supreme Court] to authorize the service of a formal complaint and notice to answer on the respondent[Accused] pursuant to ORCP 7.D(6).

(c) Proof of Service of Complaint. Proof of personal service shall be made in the same manner as in a case pending in a circuit court.

(d) Service of Amended Formal Complaint. An amended formal complaint may be served by mail, provided the original formal complaint was served [up] on the respondent[accused] in the manner provided by BR 4.2(a) or (b).

(e) Disregard of Error. Failure to comply with any provision of this rule or BR 1.12 shall not affect the validity of service if the respondent[Accused] received actual notice of the substance and pendency of the disciplinary proceedings.

*(Rule 4.2 amended by Order dated June 30, 1987.)*

*(Rule 4.2(d) added by Order dated February 5, 2001.)*

*(Rule 4.2(a) amended by Order dated April 26, 2007.)*

#### **Rule 4.3 Answer.**

(a) Time to Answer. The respondent[accused] shall answer the formal complaint within 14 days of service of the formal complaint.

(b) Extensions. The respondent[accused] may, in writing, request an extension of time to file his or her answer from the Adjudicator[Disciplinary Counsel]. The request for extension must be received by the Adjudicator[Disciplinary Counsel] within the time the respondent[accused] is required to file an answer. The Adjudicator[Disciplinary Counsel] shall respond to the request in writing and shall file a copy of the response with the Disciplinary Board Clerk.

*[(c) Trial Panel Authority. Upon application of either the Bar or the accused, the trial panel chairperson to which the matter is assigned, or the regional chairperson if a trial panel chairperson has not been appointed, may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.]*

*[(d)] Form of Answer. The respondent's[*accused's*] answer shall be responsive to the formal complaint filed. General denials are are[*shall*] not be allowed. The answer shall be substantially in the form set forth in BR 12.3 and shall be supported by a declaration under penalty of perjury[*verified*] by the respondent[*accused*]. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel[ *and Bar Counsel, if one has been appointed*].*

*(Rule 4.3(b) and (c) amended by Order dated February 5, 2001.)*

*(Rule 4.3(b) and (d) amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 4.4 Pleadings And Amendments.**

(a) Pleadings. The only permissible pleadings shall be a formal complaint and an answer, and amendments thereto, except for a motion to require a formal complaint to comply with BR 4.1(c) and an answer to comply with BR 4.3(d).

(b) Amendments.

(1) Disciplinary Counsel may amend a[A] formal complaint [*can be amended*] at any time after filing, subject to any limitations that may be imposed by the Adjudicator as to timing or content in any prehearing order entered pursuant to BR 4.7, in amplification of the original charges, to add new charges, or to withdraw charges. If an[*In case of*] amendment is made, [*however,*] the respondent[*accused*] shall be given a reasonable time, set by the Adjudicator[*trial panel chairperson or the regional chairperson if a trial panel chairperson has not been appointed*], to answer the amended formal complaint, to procure evidence and to prepare to meet the matters raised by the amended formal complaint.

(2) The respondent may amend a[A]n answer [*can be amended*] at any time after filing, subject to any limitations that may be imposed by the Adjudicator as to timing or content in any prehearing order entered pursuant to BR 4.7. If an answer is amended[*In the case of amendment, however*], the Bar shall be given a reasonable time, set by the Adjudicator[*trial panel chairperson or the regional chairperson if a trial panel chairperson has not been appointed*], to procure evidence and to prepare to meet the matters raised by the amended answer.

(c) Adjudicator Authority. Upon application of either the Bar or the respondent, the Adjudicator may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.

*(Rule 4.4(b) amended by Order dated February 5, 2001.)*

#### **Rule 4.5 Discovery.**

(a) General. Discovery in disciplinary proceedings is intended to promote identification of issues and a prompt and fair hearing on the charges. Discovery shall be conducted expeditiously by the parties[*Bar and the accused,*] and shall be completed within 14 days prior to the date of hearing, unless the Adjudicator extend[*ed*]s the time for good cause shown[*by the trial panel chairperson*].

(b) Permitted Discovery.

(1) Requests for admission, requests for production of documents, and depositions may be utilized in disciplinary proceedings.



(2) The manner of taking depositions shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Subpoenas may be issued when necessary by the Adjudicator[*trial panel chairperson*], Bar Counsel, Disciplinary Counsel, the respondent[*accused*] or his or her attorney of record. Depositions may be taken any time after service of the formal complaint.

(3) Transcripts of depositions in disciplinary proceedings shall comply with the Oregon Rules of Appellate Procedure[ *of the Supreme Court*] as to form. A person who is deposed may request at the time of deposition to examine the person's transcribed testimony. In such case, the procedure set forth in the Oregon Rules of Civil Procedure shall be followed as[ *far as*] practicable.

(4) The manner of making requests for the production of documents shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for production may be served any time after service of the formal complaint with responses due within 21 days.

(5) The manner of making requests for admission shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for admission may be served any time after service of the formal complaint with responses due within 21 days.

(c) Discovery Procedure. The Adjudicator shall resolve a[A]ll discovery questions[ *shall be resolved by the trial panel chairperson on motion, or by the regional chairperson if a trial panel chairperson has not been appointed*]. Discovery motions, including motions for limitation of discovery, shall be in writing. All such motions, and any responses, shall be filed with the Disciplinary Board Clerk with proof of service on the[ *trial panel chairperson and on the*] other party[*ies*]. The Bar or the respondent[*accused*] has[*shall have*] 7 days from the filing of a motion in which to file a response, unless the Adjudicator shortens the time[ *is shortened by the trial panel chairperson*] for good cause shown. [ *The response shall be filed with the Disciplinary Board Clerk with proof of service on the trial panel chairperson and the other parties.*] Upon expiration of the time for response, the Adjudicator[*trial panel chairperson*] shall promptly rule on the motion, with or without argument at the Adjudicator's discretion[ *of the trial panel chairperson*]. Argument on any motion may be heard by conference telephone call. The Adjudicator shall file [R]ulings on discovery motions[ *shall be filed*] with the Disciplinary Board Clerk, and the Clerk shall mail[ *with*] copies[ *mailed*] to the parties.

(d) Limitations on Discovery. In the exercise of his or her discretion, the Adjudicator[*trial panel chairperson*] shall impose such terms or limitations on the exercise of discovery as may appear necessary to prevent undue delay or expense in bringing the matter to hearing and to promote the interests of justice.

(e) Discovery Sanctions. For failure to provide discovery as required under BR 4.5, the Adjudicator[*trial panel chairperson*] may make such rulings as are just, including, but not limited to, the following:

(1) A ruling that the matters regarding which the ruling was made or any other designated fact are[*shall be*] taken to be established for the purposes of the proceeding in accordance with the claim of the party[*litigant*] obtaining the ruling; or

(2) A ruling refusing to allow the disobedient party[*litigant*] to support or oppose designated claims or defenses, or prohibiting the disobedient party[*litigant*] from introducing designated matters in evidence.

[*In addition, a*]Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena[,] is[*shall be*] subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to this rule[*BR 4.5*] may be enforced by application of the Bar or the respondent[*accused*] to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(f) Rulings Interlocutory. Discovery rulings are interlocutory.

(*Rule 4.5(c) amended by Order dated February 23, 1988. Rule 4.5(b) amended by Order April 4, 1991, effective April 15, 1991.*)

(*Rule 4.5(a) and (c) amended by Order dated February 5, 2001.*)

*(Rule 4.5(c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 4.6 Pre[-]hearing Issue Narrowing and Settlement Conference[s] and Order.**

(a) Within 28[seven] days of written notice that the [pleadings were mailed to the trial panel under BR 2.4(h)] Adjudicator has set the date and place of the hearing pursuant to BR 2.4(e)(8), either party[the Bar or the accused] may file with the Disciplinary Board Clerk a request for a single pre[-]hearing issue narrowing and settlement conference pursuant to this rule. [A copy of the request shall be served on the state chairperson, who] Upon notification from the Disciplinary Board Clerk that a timely request for a BR 4.6 conference has been filed, the Adjudicator shall appoint a member of the Disciplinary Board to serve as a presiding member and conduct the[a pre-hearing] BR 4.6 conference. A conference shall be held no later than 21 days before the scheduled hearing date in a disciplinary proceeding and shall not exceed one business day in length. The[ Bar and the] respondent[accused], [ and] counsel for the respondent[accused], if any, and Disciplinary Counsel must attend. The purpose of the conference is[shall be] to narrow factual and legal issues in dispute for trial and to facilitate discussion regarding discipline by consent under BR 3.6, if appropriate. Except for those facts admitted and denied in the pre[-]hearing order, under BR 4.7, no oral or written statements or admissions made at or in connection with the pre[-]hearing conference shall be admitted as evidence in this or any subsequent B[b]ar disciplinary proceeding. No member of the trial panel appointed in the proceeding shall conduct or participate in the pre[-]hearing conference.

(b) At the conclusion of the BR 4.6 conference, the presiding member shall enter an order setting forth agreed and disputed facts and elements of the violations alleged. In the absence of any agreement, the presiding member shall enter an order indicating that the BR 4.6 conference was held and that no agreements resulted. The presiding member shall file the order with the Disciplinary Board Clerk, with copies to be served by the Disciplinary Board Clerk on the parties. Agreed facts shall be deemed admitted and need not be proven at the hearing before the trial panel.

*(Rule 4.6 added by Order dated December 13, 1993.)*

*(Rule 4.6 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 4.7 Pre[-]hearing Conference and Orders.**

(a) At any time after the Adjudicator has set the time and place of the hearing pursuant to BR 2.4(e)(8) but not later than 56 days prior to the date of the hearing, the Adjudicator may schedule and convene a prehearing conference that may be conducted by telephone or in person and shall be attended by the respondent, respondent's counsel, if any, and Disciplinary Counsel, upon notice sent by the Disciplinary Board Clerk not less than 14 days prior to the scheduled date and time. Such prehearing conference is intended to facilitate the efficient conduct of the proceeding and may include discussing the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, and the preparation of trial exhibits; and the scheduling of pleading amendment and discovery deadlines.

(b) At the conclusion of a pre[-]hearing conference, the Adjudicator[presiding member] shall enter an order setting forth all matters discussed and addressed, including any deadlines imposed[ agreed and disputed facts and elements of the violations alleged]. The Adjudicator shall file the[ original] order[ shall be filed] with the Disciplinary Board Clerk, and the Disciplinary Board Clerk shall serve [with] copies [served] on the parties.[Agreed facts shall be deemed admitted and need not be proven at the hearing before the trial panel.]

*(Rule 4.7 added by Order dated December 13, 1993.)*

*(Rule 4.7 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 4.8 Briefs.**

Briefs, if any, shall be filed with the Disciplinary Board Clerk with copies served on the trial panel no later than 7 days prior to the hearing. Where new or additional issues have arisen, [provided that] the Adjudicator[trial

panel chairperson] may[, in his or her discretion, where new or additional issues have arisen,] grant 7 days additional time for the filing of briefs on those issues.

*(Rule 4.8 (former Rule 2.4(i)(2)) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 4.9 Mediation**

(a) Mediation. The parties[An accused and the Bar] may employ the services of a mediator, other than a member of the Disciplinary Board, to determine the potential for, and to assist the parties in, negotiating[,] a settlement of issues in dispute. Mediation is voluntary; both parties must agree to participate in the mediation. The SPRB shall decide for the Bar whether to mediate.

(b) Time of Mediation. Mediation may occur at any time after the filing of the formal complaint, provided that the mediation shall not delay a hearing before a trial panel scheduled in accordance with BR 5.4. After a trial panel issues[renders] a written opinion in the proceeding pursuant to BR 2.4(i)(2), mediation may occur only if authorized by the Adjudicator[State Chairperson of the Disciplinary Board].

(c) Discipline by Consent. A stipulation for discipline or no contest plea negotiated through mediation is subject to approval by the SPRB, and the Disciplinary Board or the Supreme Court, as the case may be, as set forth in BR 3.6, before it is effective.

(d) Costs. The expense of mediation shall be shared equally by[ an accused and] the parties[Bar], unless the parties agree otherwise.

(e) Confidentiality. Mediation communications, as defined in ORS 36.110, are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, except as provided by ORS 36.226.

*(Rule 4.9 added by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 4.9(a) and (e) amended by Order dated April 26, 2007.)*

### **Title 5 — Disciplinary Hearing Procedure**

#### **Rule 5.1 Evidence And Procedure.**

(a) Rules of Evidence. Trial panels may admit and give effect to evidence that[which] possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) Harmless Error. No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the respondent[accused] has occurred.

*(Rule 5.1(a) amended by Order dated February 23, 1988.)*

#### **Rule 5.2 Burden Of Proof.**

The Bar has[shall have] the burden of establishing misconduct by clear and convincing evidence.

#### **Rule 5.3 Location Of Hearing; Subpoenas; Testimony.**

(a) Location. [In t]The trial panel hearing of any D[d]isciplinary P[p]roceeding in which the respondent maintains an office or residence in Oregon[, the hearing] shall be held either in the county in which the respondent[person charged] maintains his or her office for the practice of law or other business, in which he or she resides, or in which the offense is alleged to have been committed, at[in] the Adjudicator's discretion[

*of the trial panel chairperson*]. With the respondent's consent*[ of the accused]*, the hearing may be held elsewhere. For any proceeding brought pursuant to these rules other than pursuant to Title 4 in which the attorney the subject of the proceeding maintains an office or residence in Oregon, and for any proceeding brought pursuant to these rules in which the attorney the subject of the proceeding does not maintain an office or residence in Oregon, the Adjudicator shall designate a location for the hearing.*[ In the trial of a disciplinary proceeding involving an accused who does not maintain an office or residence in Oregon and the alleged misconduct either did not occur in Oregon or occurred in more than one county in Oregon, or in the trial of any contested reinstatement matter, the hearing shall be held at a location designated by the state chairperson of the Disciplinary Board.]*

(b) Subpoenas. The Executive Director, the Adjudicator*[state chairperson]*, or regional chairpersons of the Disciplinary Board,*[ trial panel chairpersons,]* Bar Counsel, Disciplinary Counsel and the attorney*[of record]* for the respondent*[accused]*, or the respondent*[accused]*, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, is*[shall be]* subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to this rule*[BR 4.5]* may be enforced by application of either party*[the Bar or an accused]* to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) Board Members as Witnesses. Current members of the Board of Governors shall not testify as witnesses in any Bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

(d) Testimony. Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an oath.

(e) Transcript of Proceedings; Correction of Errors; Settlement Order. Every disciplinary hearing shall be transcribed and shall comply with the Oregon Rules of Appellate Procedure as to form. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the respondent*[accused]* of the filing of the transcripts with the Disciplinary Board Clerk, who shall provide copies to the Adjudicator*[trial panel chairperson]*. Within 14 days after the transcript is filed, the Bar or the respondent*[accused]* may move the Adjudicator*[trial panel chairperson]* for an order to correct any errors appearing in the transcript, by filing a motion*[. A copy of such motion shall be filed]* with the Disciplinary Board Clerk and serving*[ed on]* the *[trial panel chairperson and the]* other party*[ies]*. Within 7 days, the Bar or the respondent*[accused]*, as the case may be, may file a response to the motion with the Disciplinary Board Clerk, *[and]* serving a copy*[ies]* on the *[trial panel chairperson and the]* other party*[ies]*. The Adjudicator*[trial panel chairperson]* shall thereafter either deny the motion or direct the making of such corrections as may be appropriate. Upon the denial of the*[a]* motion *[ to correct the transcript]* or *[upon]* the making of such corrections *[ as may be directed by the trial panel chairperson]*, the Adjudicator*[trial panel chairperson]* shall file with the Disciplinary Board Clerk an order settling the transcript and the Disciplinary Board Clerk shall serve copies on the parties.

*(Rule 5.3(b) amended by Order dated April 4, 1991, effective April 15, 1991.)*

*(Rule 5.3(a) amended by Order dated July 22, 1991.)*

*(Rule 5.3 (c), (d), and (e) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 5.3(a) and (e) amended by Order dated February 5, 2001.)*

*(Rule 5.3(e) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 5.3(a) amended by Order dated April 26, 2007.)*

#### **Rule 5.4 Hearing Date; Continuances.**

Except in matters of default pursuant to BR 5.8, t[7]he Adjudicator shall establish the hearing date, which [shall be established by the trial panel chairperson and] shall not be less than 91[63] days nor more than 182 days following[ from] the date the [pleadings are received by the trial panel chairperson pursuant to BR 2.4(h)] Adjudicator notifies the parties of the date and time for hearing pursuant to BR 2.4(e)(5). The Adjudicator may

grant c[C]ontinuances of the hearing date[ may be granted by the trial panel chairperson] at any time prior to the hearing, or[ by], upon a showing of compelling necessity therefor, the trial panel[, ] may grant continuances at the time of the hearing[, only upon a showing of compelling necessity therefor].; but i]n no event shall continuances[ granted the Bar or the accused] exceed 56 days in the aggregate.

*(Rule 5.4 amended by Order dated October 10, 1994.)*

*(Rule 5.4 amended by Order dated February 5, 2001.)*

#### **Rule 5.5 Prior Record.**

(a) Defined. "Prior record" means any contested admission, disciplinary or reinstatement decision of the Disciplinary Board or the Supreme Court that[which] has become final.

(b) Restrictions on Admissibility. At the fact finding hearing in a disciplinary proceeding, a[n accused's] respondent's prior record or lack thereof shall not be admissible to prove the character of a[n accused] respondent or to impeach his or her credibility.

#### **Rule 5.6 Evidence Of Prior Acts Of Misconduct.**

Evidence of prior acts of misconduct on the part of a[n accused] respondent is admissible in a disciplinary proceeding for such purposes as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

#### **Rule 5.7 Consideration Of Sanctions.**

Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the respondent[accused] is in violation of a rule of professional conduct[disciplinary rule] or statute. Only when the Adjudicator[trial panel chairperson] considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred.

*(Rule 5.7 amended by Order dated February 23, 1988.)*

#### **Rule 5.8 Default.**

(a) Failure to Answer or Appear. If a[n accused lawyer] respondent fails to resign or file an answer to a formal complaint within the time allowed by these rules, or if a[n accused lawyer] respondent fails to appear at a hearing set pursuant to BR 2.4(h), the Adjudicator[trial panel chairperson, or the regional chairperson if a trial panel has not been appointed,] may file with the Disciplinary Board Clerk an order finding the respondent[accused] in default under this rule and, if so, shall request the regional chairperson to appoint an attorney member and a public member to serve on the trial panel. The Disciplinary Board Clerk shall serve c[C]opies of the order of default[ shall be served] on the parties. The trial panel shall thereafter deem the allegations in the formal complaint to be true[.] and [The trial panel shall thereafter ] proceed to issue[render] its written opinion based on the formal complaint, or, at the trial panel's discretion[ of the trial panel,] after considering evidence or legal authority limited to the issue of sanction. Following entry of an order of default, the [accused]respondent is not [shall not be ] entitled to further notice in the disciplinary proceeding under consideration, except as may be required by these rules or by statute. The trial panel shall not, absent good cause, continue or delay proceedings due to a[n accused's] respondent's failure to answer or appear.

(b) Setting Aside Default. At any time prior to a trial panel's issuing[ rendering] its written opinion, the trial panel may set aside an order of default upon a showing by the respondent[accused] that the respondent's[accused's] failure to resign, answer, or appear timely was the result of mistake, inadvertence, surprise, or excusable neglect. If[After] a trial panel has issued its opinion[ is rendered], a respondent must file any motion to set aside an order of default[ must be filed] with the Supreme Court.

*(Rule 5.8 amended by Order dated June 29, 1993.)*

*(Rule 5.8(a) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 5.8(a) amended by Order dated October 19, 2009.)*

### **Rule 5.9 Attorney Assistance Evidence.**

(a) Definition. For the purposes of this rule, an "attorney assistance program" is any treatment, counseling, training or remedial service, created under ORS 9.568 or otherwise, designed to provide assistance to attorneys who are suffering from impairment or other circumstances which may adversely affect their professional competence or conduct, or to provide advice and training to attorneys in practice management.

(b) Use of Evidence by Respondent[*Accused*]. Subject to the provisions of BR 5.1(a) and this rule, the respondent[*accused*] may offer evidence at a disciplinary hearing concerning the respondent's[*accused's*] participation in or communication with an attorney assistance program. If the respondent[*accused*] fails to provide timely notice to Disciplinary Counsel as required under BR 5.9(c), the respondent[*accused*] may not offer evidence of the respondent's[*accused's*] participation in or communication with an attorney assistance program at the hearing.

(c) Prior Notice. If the respondent[*accused*] intends to offer evidence at a hearing concerning the respondent's[*accused's*] participation in or communication with an attorney assistance program, the respondent[*accused*] shall file with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel, written notice of such intent, not less than 63 days prior to the date the hearing is scheduled to commence. For good cause shown, the Adjudicator[*trial panel chairperson*] may permit the respondent[*accused*] to give the notice within a shorter period of time. The notice shall specify the identity of the attorney assistance program, the nature of the evidence that will be offered, the names of the service providers with whom the respondent[*accused*] dealt, and the names and addresses of witnesses the respondent[*accused*] intends to call to present the evidence. The notice shall also include the consent or waiver required by BR 5.9(d). The respondent[*accused*] shall provide a copy of the notice to the attorney assistance program.

(d) Discovery. In the event the respondent[*accused*] provides a notice to Disciplinary Counsel under BR 5.9(c), Disciplinary Counsel may conduct discovery concerning the respondent's[*accused's*] participation in or communication with the attorney assistance program. The respondent[*accused*] shall provide any consent or waiver necessary to permit Disciplinary Counsel to obtain discovery from the attorney assistance program or its service providers at the time the respondent[*accused*] provides the notice required by BR 5.9(c). Questions regarding the permissible scope of discovery under this rule shall be resolved by the Adjudicator[*trial panel chairperson*] on motion pursuant to BR 4.5(c).

(e) Discovery not Public. Records and information obtained by Disciplinary Counsel through discovery under this rule are[*shall*] not be subject to public disclosure pursuant to BR 1.7(b), consistent with ORS 9.568(3), and may[*shall*] be disclosed by the parties only in the disciplinary proceeding.

(f) Use of Evidence by Bar. The Bar shall have the right to introduce evidence obtained through discovery under this rule only if the respondent[*accused*] introduces evidence of participation in or communication with an attorney assistance program.

(g) Enforcement. The Adjudicator[*trial panel chairperson*] may issue a protective order and impose sanctions to enforce this rule pursuant to BR 4.5(d) and (e).

*(Rule 5.9 added by Order dated November 30, 1999.)*

*(Rule 5.9(a) amended by Order dated February 5, 2001.)*

*(Rule 5.9(c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

## Title 6 — Sanctions And Other Remedies

### Rule 6.1 Sanctions.

(a) Disciplinary Proceedings. The dispositions or sanctions in disciplinary proceedings or matters brought pursuant to BR 3.4 or 3.5 are

- (i) dismissal of any charge or all charges;
- (ii) public reprimand;
- (iii) suspension for periods from 30 days to five years;
- (iv) a suspension for any period designated in BR 6.1(a)(iii), which may be stayed in whole or in part on the condition that designated probationary terms are met; or
- (v) disbarment.

In conjunction with a disposition or sanction referred to in this rule, a[n *accused*] respondent may be required to make restitution of some or all of the money, property, or fees received by the respondent[*accused*] in the representation of a client, or reimbursement to the Client Security Fund.

(b) Contested Reinstatement Proceedings. In contested reinstatement cases a determination shall be made whether the applicant shall be

- (i) denied reinstatement;
- (ii) reinstated conditionally, subject to probationary terms; or
- (iii) reinstated unconditionally.

(c) Time Period Before Application and Reapplication. The Supreme C[c]ourt may require an applicant whose admission or reinstatement has been denied to wait a period of time designated by the court before reapplying for admission or reinstatement.

(d) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years have[s] elapsed from the effective date of his or her disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

*(Rule 6.1(a) amended by Order dated May 31, 1984, effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985. Rule 6.1(a) amended by Order dated December 14, 1995. Rule 6.1(d) amended by Order dated December 14, 1995. Rule 6.1(e) added by Order dated December 14, 1995. Rule 6.1(a) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 6.1(a) amended by Order dated February 5, 2001.)*

*(Rule 6.1(a)(iii) – 6.1(a)(v) and 6.1(b) – 6.1(d) amended by Order dated October 19, 2009.)*

### Rule 6.2 Probation.

(a) Authority in Disciplinary Proceedings. Upon determining that a[n *accused*] respondent should be suspended, the trial panel may decide to stay[*that the*] execution of the suspension[ *shall be stayed*], in whole or in part, and place[*that*] the respondent[*accused shall be placed*] on probation for a period no longer than three years. The imposition of a probationary term shall not affect the criteria established by statute and these rules for Supreme Court [*the*] review of trial panel decisions[ *of trial panels by the Supreme Court*]. Probation, if ordered, may be under such conditions as the trial panel or the [Supreme C]court considers appropriate. Such conditions may include, but are not limited to, requiring alcohol or drug treatment;

requiring medical care; requiring psychological or psychiatric care; requiring professional office practice or management counseling; and requiring periodic audits or reports. In any case where an attorney is placed on probation pursuant to this rule, the Adjudicator[*state chairperson of the Disciplinary Board*] or the [*Supreme C*]court may appoint a suitable person or persons to supervise the probation. Cooperation with any person[ *or persons*] so appointed shall be a condition of the probation.

(b) Authority in Contested Reinstatement Proceedings. Upon determining that an applicant should be readmitted to membership in the Oregon State Bar, the trial panel may decide to place the applicant on probation for a period no longer than three years. The probationary terms may include, but are not limited to, those provided in BR 6.2(a). The [*Supreme C*]court may adopt, in whole or in part, the trial panel's decision[ *of the trial panel*] regarding probation and enter an appropriate order upon a review of the proceeding. The court may appoint a suitable person or persons to supervise the probation. Cooperation with any person[ *or persons*] so appointed shall be a condition of the probation. An attorney placed on probation pursuant to this rule may have his or her probation revoked for a violation of any probationary term by petition of Disciplinary Counsel in accordance with the procedures set forth in BR 6.2(d). An attorney whose probation is revoked shall be suspended from the practice of law until further order of the court.

(c) Disciplinary Board. In all cases where the trial panel determines that the respondent[*accused*] should be suspended and the determination is not reviewed by the [*Supreme C*]court, thereby resulting in such determination becoming final, the decision that the respondent[*accused*] be placed on probation under the conditions specified in the trial panel's opinion shall be deemed adopted and made a part of the determination.

(d) Revocation Petition; Service; Trial Panel; Setting; Hearing. Disciplinary Counsel may petition the Adjudicator[*state chairperson of the Disciplinary Board*] or the [*Supreme C*]court, as the case may be, to revoke the probation of any attorney for violation of any probationary term imposed by a trial panel or the [*Supreme C*]court, serving the attorney with a copy of the petition pursuant to BR 1.8. The Adjudicator or the court, as the case may be, may order the attorney to appear and show cause why probation should not be revoked and the original sanction imposed; the court also may refer the matter to the Disciplinary Board for hearing.[ *The state chairperson or court may order the attorney to appear and show cause, if he or she has any, why the attorney's probation should not be revoked and the original sanctions imposed.*] When revocation of a trial panel probation is sought or the court has referred the matter to the Disciplinary Board for hearing, t[ 7]he Adjudicator[*state chairperson or the court, as the case may be, may*] shall appoint [a] trial panel members pursuant to BR 2.4(e)(7) [of the Disciplinary Board ]to serve with the Adjudicator on a trial panel that will conduct the show cause hearing and, where applicable, report back to the[ *state chairperson or*] the court. The Disciplinary Board Clerk shall notify the attorney and Disciplinary Counsel in writing of the members to serve on the trial panel. BR 2.4(g) applies. After any timely filed challenges have been ruled upon and any substitute members have been appointed, the Adjudicator shall promptly enter an order that the attorney appear and show cause why probation should not be revoked and the original sanction imposed, and that establishes the date, place, and time of the show cause hearing, which must be held not less than 21 days later. The Disciplinary Board Clerk shall send the parties a copy of the show cause order. At the hearing, Disciplinary Counsel has the burden of proving by clear and convincing evidence that the attorney has violated a material term of probation. If the attorney, after being served with a copy of the petition and sent a copy of the show cause order, fails to appear at the hearing, the trial panel shall deem the allegations in the petition to be true and proceed to issue its written opinion based on the petition.[ *The state chairperson or the court, as the case may be, shall thereafter rule on the petition.*] If the revocation matter is within the jurisdiction of the Disciplinary Board, the [*petition, the order to appear and show cause, the order appointing a trial panel and the*] trial panel's decision[ *of the trial panel*] shall be filed with the Disciplinary Board Clerk and the Disciplinary Board Clerk shall serve[ *and*] copies[ *shall be served*] on the [*other*] parties. If the revocation matter is within the court's jurisdiction, the trial panel appointed to conduct the show cause hearing shall report back to the court, and the court shall thereafter rule on the petition. A petition for revocation of an attorney's probation shall not preclude the Bar from filing independent disciplinary charges based on the same conduct as alleged in the petition.



(e) Application of Other Rules. Except as specifically provided herein, Title 4 and Title 5 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 6.2(d).

*(Rule 6.2(b) amended by Order dated July 22, 1991.)*

*(Rule 6.2(d) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

### **Rule 6.3 Duties Upon Disbarment Or Suspension.**

(a) Attorney to Discontinue Practice. A disbarred or suspended attorney shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of a disbarred or suspended attorney to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Notice; Return of Client Property. When, as a result of the disbarment or suspension, any active client matter will be left for which no other active member of the Bar, with the consent of the client, has agreed to resume responsibility, the disbarred or suspended attorney shall give written notice of the cessation of practice to the affected clients, opposing parties, courts, agencies, and any other person or entity having reason to be informed of the cessation of practice. Such notice shall be given no later than 14 days after the effective date of the disbarment or suspension. In the case of a disbarment or a suspension of more than 60 days, client property pertaining to any active client matter shall be delivered to the client or an active member of the Bar designated by the client as substitute counsel.

(d)[(c)] Contempt. Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

*(Rule 6.3 amended by Order dated March 13, 1989, effective April 1, 1989.)*

### **Rule 6.4 Ethics School.**

(a) An attorney sanctioned under BR 6.1(a)(ii), (a)(iii) or (a)(iv) shall successfully complete a one-day course of study developed and offered by the Bar on the subjects of legal ethics, professional responsibility and law office management. Successful completion requires that the attorney attend in person the course offered by the Bar and pay the attendance fee established by the Bar.

(b) An attorney reprimanded under BR 6.1(a)(ii) who does not successfully complete the course of study when the course is next offered by the Bar following the effective date of the reprimand may be suspended from the practice of law upon the order of the Adjudicator[Supreme Court] until the attorney successfully completes the course.

(c) An attorney suspended under BR 6.1(a)(iii) or (a)(iv) shall not be reinstated until the attorney successfully completes the course of study, unless the course is not offered before the attorney's term of suspension expires, in which case the attorney may be reinstated if otherwise eligible under applicable provisions of Title 8 of these Rules until the course is next offered by the Bar. If the attorney does not successfully complete the course when it is next offered, the attorney may be suspended from the practice of law upon the order of the Adjudicator[Supreme Court] until the attorney successfully completes the course.

(d) Notwithstanding the provisions of BR 6.4(b) and (c), an extension of time in which to complete the ethics school requirement may be granted by the Bar or the Adjudicator[Supreme Court], as the case may be, for good cause shown.

*(Rule 6.4 added by Order dated December 10, 2010, effective June 1, 2011.)*

## Title 7 — Suspension for Failure to Respond in a Disciplinary Investigation

### Rule 7.1 Suspension for Failure to Respond to a Subpoena.

(a) Petition for Suspension. When an attorney fails without good cause to timely respond to a request from Disciplinary Counsel [or the LPRC] for information or records, or fails to respond to a subpoena issued pursuant to BR 2.2(b)(2)[2.3(a)(3), BR 2.3(b)(3)(C), or BR 2.3(b)(3)(E)], Disciplinary Counsel may petition the Disciplinary Board for an order immediately suspending the attorney until such time as the attorney responds to the request or complies with the subpoena. A petition under this rule shall allege that the attorney has not responded to requests for information or records, or has not complied with a subpoena, and has not asserted a good-faith objection to responding or complying. The petition shall be supported by a declaration setting forth the efforts undertaken by Disciplinary Counsel [or the LPRC] to obtain the attorney's response or compliance.

(b) Procedure. Disciplinary Counsel shall file a petition under this rule with the Disciplinary Board Clerk, with proof of service on the state chairperson, who The Adjudicator shall have the authority to act on the matter for the Disciplinary Board. A copy of the petition and declaration shall be served on the attorney as set forth in BR 1.8(a).

(c) Response. Within 7 business days after service of the petition, the attorney may file a response with the Disciplinary Board Clerk, setting forth facts showing that the attorney has responded to the requests or complied with the subpoena or the reasons why the attorney has not responded or complied. The attorney shall serve a copy of the response[answer] upon Disciplinary Counsel pursuant to BR 1.8(b). Disciplinary Counsel may file a reply to any response with the Disciplinary Board Clerk within 2 business days after being served with a copy of the attorney's response and shall serve a copy of the reply on the attorney. [ *The response and reply shall be filed with the Disciplinary Board Clerk, with proof of service on the state chairperson.* ]

(d) Review by the Disciplinary Board. Upon review, the Adjudicator[*Disciplinary Board state chairperson*] shall issue an order that either denies the petition or[:] immediately suspends[*ing*] the attorney from the practice of law for an indefinite period[: *or denying the petition*]. The Adjudicator[*state chairperson*] shall file the order with the Disciplinary Board Clerk, who shall promptly send [ *a* ] copies[*y*] to Disciplinary Counsel and the attorney.

(e) Duties upon Suspension. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(f) Independent Charges. Suspension of an attorney under this rule is not discipline. Suspension or reinstatement under this rule shall not prevent [bar] the SPRB from directing Disciplinary Counsel to file [*causing*] a formal complaint[*disciplinary charges to be filed*] against an attorney alleging a [*for*] violation of RPC 8.1(a)(2), arising from the failure to respond or comply as alleged in the petition for suspension filed under this rule.

(g) Reinstatement. Subject to [ *the provisions of* ] BR 8.1(a)(viii) and BR 8.2(a)(v), any attorney[*person*] who has been a member of the Bar but suspended under Rule 7.1 solely for failure to respond to requests for information or records or to respond to a subpoena shall be reinstated by the Executive Director to the membership status from which the person was suspended upon the filing of a Compliance Declaration[*Affidavit*] with Disciplinary Counsel as set forth in BR 13[2].10.

*(Rule 7.1 amended by Order dated November 1, 1984, effective December 1, 1984. Amended by Order dated September 24, 1987, effective October 1, 1987. Rule 7.1 amended by Order dated October 1, 1990. Title 7 amended by Order dated July 22, 1991.)*

*(Rule 7.1 deleted by Order dated October 19, 2009.)*

*(Rule 7.1 added by Order dated August 12, 2013, effective November 1, 2013.)*

## 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 6 [six] months; or

(v) been suspended for misconduct for a period of 6 [six] months or less but has remained in a suspended status for a period of more than 6 [six] months prior to the date of application for reinstatement; or

(vi) been enrolled voluntarily as an inactive or retired member for more than 5 [five] years; or

(vii) been involuntarily transferred to[*enrolled as an*] inactive membership status; or

(viii) been suspended for any reason and has remained in that status more than 5 [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 that[*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 is[*shall*] not[ *be*] allowed under this rule. An applicant who has been suspended for a period exceeding six months may not apply[ *The application*] for reinstatement[ *of a person who has been suspended for a period exceeding six months shall not be made earlier than*] any earlier than 3 [three] months before the earliest possible expiration of the period specified in the[ *court's*] opinion or order imposing[*of*] suspension.

(b) Required Showing; Effect of Noncooperation. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application. The Executive Director may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(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 3 [three] years or has been enrolled voluntarily

or involuntarily as an inactive or retired member for more than 5 [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 Oregon[this state]; and whether the applicant has participated in continuing legal education activities during the period of suspension, [ or] inactive, or retired status in Oregon[this state].

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$500 at the time the application for reinstatement is filed, [ an application fee of \$500].

(e) Review by Executive Director; Referral of Application to Board. Notice of and requests for comment on applications filed under BR 8.1 shall be published on the [b]Bar's website for a period of 30 days. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Executive Director determines that the applicant has made the showing required by BR 8.1(b), the Executive Director shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Executive Director is unable to determine from a review of an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Board determines that the applicant has not made the showing required by BR 8.1(b), the Board shall recommend to the [Supreme C]court that the application be denied.

*(Rule 8.1(c) and (f) amended by Order dated May 31, 1984, effective July 1, 1984.)*

*(Rule 8.1(c) amended by Order dated July 27, 1984 nun pro tunc May 31, 1984.)*

*(Rule 8.1 amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

*(Rule 8.1(a) and (c) amended by Order dated March 20, 1990, effective April 2, 1990.)*

*(Rule 8.1(a), (c), and (d) amended by Order dated December 14, 1995.)*

*(Rule 8.1(a) amended by Order dated February 5, 2001.)*

*(Rule 8.1(d) amended by Order dated October 19, 2009.)*

*(Rule 8.1(c) amended and Rule 8.1(e) and (f) added by Order dated April 5, 2013.)*

### **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 5 [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 5 [five] years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than 6 [six] months but not in excess of 5 [five] years prior to the date of application for reinstatement; or

(iv) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than 6 [six] months but not in excess of 5 [five] years prior to the date of application for reinstatement; or

(v) been suspended under BR 7.1 and has remained in that status more than 6 [six] months but not in excess of 5 [five] years prior to the date of application for reinstatement,

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 are[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.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state [by the applicant] will not be detrimental to the administration of justice or the public interest. Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application. The Executive Director may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250 at the time the application for reinstatement is filed[, *an application fee of \$250*].

(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 that[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

(iii) has engaged in conduct that[which] raises issues of possible violation of the Bar Act, former Code of Professional Responsibility, or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments, and penalties due and delinquent at the time of the applicant's resignation, suspension, or transfer to inactive status, and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for

reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(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 8.2(b) amended by Order dated May 31, 1984, effective July 1, 1984.)*  
*(Rule 8.2 amended by Order dated March 13, 1989, effective April 1, 1989.)*  
*(Rule 8.2 (a) and (b) amended by Order dated March 20, 1990, effective April 2, 1990.)*  
*(Rule 8.2(a) amended by Order dated December 28, 1993.)*  
*(Rule 8.2(a) amended by Order dated December 14, 1995.)*  
*(Rule 8.2 amended by Order dated December 9, 2004, effective January 1, 2005.)*  
*(Rule 8.2(d)(iii) amended by Order dated April 26, 2007.)*  
*(Rule 8.2(c) and 8.2(d) amended by Order dated October 19, 2009.)*  
*(Rule 8.2(a)(iv) added by Order dated June 6, 2012.)*  
*(Rule 8.2(a)(v) added by Order dated August 12, 2013, effective November 1, 2013.)*

**Rule 8.3 Reinstatement — Compliance Declaration[Affidavit].**

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Declaration[Affidavit] with Disciplinary Counsel as set forth in BR 13[2].9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$250 at the time the application for reinstatement is filed.

*(Rule 8.3 established by Order dated March 13, 1989, effective April 1, 1989.)*  
*(Rule 8.3(a) amended by Order dated December 28, 1993.)*  
*(Rule 8.3(b) amended by Order dated October 19, 2009.)*

**Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.**

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties, or suspended solely for failure to file a certificate disclosing lawyer trust accounts, may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon:

- (i) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and
- (ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or

(iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, payment of a reinstatement fee of \$100; or

(iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, payment of a reinstatement fee of \$200; or

(v) in the case of suspension for failure to file a lawyer trust account certificate, filing such a certificate with the Bar and payment of a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement will be[is] authorized. The written statement shall be on a form prepared by the Bar for that[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 suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, must[shall be required to] seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 pursuant to this rule[because of BR 8.4(b)] shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

*(Rule 8.4 (former BR 8.3) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.4(a)(ii) – 8.4(a)(iv) and 8.4(b) amended by Order dated October 19, 2009.)*

*(Rule 8.4(a) amended by Order dated June 6, 2012.)*

**Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education, New Lawyer Mentoring Program or Ethics School Requirements.**

(a) Applicants. Subject to the provisions of BR 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules, the New Lawyer Mentoring Program, or the Ethics School established by BR 6.4 may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

(i) Completing the requirements that led to the suspension;

(ii) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and the applicable MCLE, NLMP, or Ethics School Rule. 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 suspension; and

(iii) Submitting a reinstatement fee of \$100 at the time of filing the[in conjunction with the required] written statement[, a reinstatement fee of \$100].

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the [Supreme C]court with a copy to the applicant. No reinstatement is effective until approved by the [C]court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

*(Rule 8.4 established by Order dated November 24, 1987, effective January 1, 1988.)*

*(Rule 8.5 (former BR 8.4) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.5(a) amended by Order dated December 14, 1995.)*

*(Rule 8.5(a) amended by Order dated October 19, 2009.)*

*(Rule 8.5(a) amended by Order dated June 6, 2012.)*

**Rule 8.6 Other Obligations Upon Application.**

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i) and BR 8.1(a)(viii), shall also pay to the Bar, at the time of application, an amount equal to \$50 for each year the applicant remained suspended or resigned, and for which no membership fee has been paid. Each applicant under BR 8.2(a)(i), BR 8.2(a)(iii), or (iv) shall also pay to the Bar, at the time of application, an amount equal to \$100 for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs; Client Security Fund Claim. Each applicant shall also pay to the Bar, at the time of application:

(i) any unpaid judgment for costs and disbursements assessed in a disciplinary or contested reinstatement proceeding; and

(ii) an amount equal to any claim paid by the Client Security Fund due to the applicant's conduct, plus accrued interest thereon.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant the membership fees and assessments paid for the year the application was filed, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

*(Rule 8.6(a) and (b) amended by Order dated December 14, 1995.)*

*(Rule 8.6(a), (b) and (c) amended by Order dated February 5, 2001.)*

*(Rule 8.6(a) amended by Order dated June 6, 2012.)*

*(Rule 8.6(a) amended by Order dated August 10, 2015.)*

**Rule 8.7 Board Investigation And Recommendation.**

(a) Investigation and Recommendation. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, Disciplinary Counsel shall make such investigation as it deems proper and report to the Executive Director or the Board, as the case may be. For applications filed under BR 8.1, the Executive Director or the Board, as the case may be, shall recommend to the Supreme C[c]ourt that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant. For applications denied by the Board or recommended for conditional reinstatement under BR 8.2(f), the Board shall file its recommendation with the court and mail a copy of the recommendation to the applicant.

(b) Temporary Reinstatements. Except as provided herein, upon making a determination that the applicant is of good moral character and generally fit to practice law, the Executive Director or the Board may temporarily reinstate an applicant pending receipt of all investigatory materials[ *if a determination is made that the applicant is of good moral character and generally fit to practice law*]. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. *[In no event shall the Executive Director or the Board temporarily reinstate a]*An applicant who seeks reinstatement following a suspension or disbarment for



professional misconduct, or an involuntary transfer to inactive status, shall not be temporarily reinstated pursuant to this rule.

*(Rule 8.7 amended by Order dated December 28, 1993.)*

*(Rule 8.7(a) amended by Order dated December 9, 2004, effective January 1, 2005.)*

*(Rule 8.7(a) and (b) amended by Order dated April 5, 2013.)*

#### **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 Supreme C[c]ourt, 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, servicing a copy on Disciplinary Counsel. 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 t*]The State Court Administrator shall give written notice of such a referral to the Disciplinary Board Clerk, Disciplinary Counsel, and the applicant [ *of such referral*]. The applicant's resignation, disbarment, suspension, or inactive membership status shall remain in effect until the court's final disposition of the petition [ *by the court*].

*(Rule 8.8 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 8.8 amended by Order dated April 5, 2013.)*

#### **Rule 8.9 Procedure On Referral By Supreme Court.**

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 13[2].5.

*(Rule 8.9 amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 8.10 Answer To Statement Of Objections.**

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 13[2].3 and [ *The original*] shall be filed with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel [ *and Bar Counsel*]. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

*(Rule 8.10 amended by Order dated July 17, 2003, effective July 1, 2003.)*

#### **Rule 8.11 Hearing Procedure.**

Titles 4, 5, and 10 [ *shall*] apply as far as practicable to reinstatement proceedings referred by the Supreme C[c]ourt to the Disciplinary Board for hearing.

#### **Rule 8.12 Burden Of Proof.**

An applicant for reinstatement to the practice of law in Oregon shall have the burden of proving[ *establishing*] by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in Oregon[ *this state*] will not be detrimental to the administration of justice or the public interest.

**Rule 8.13 Burden Of Producing Evidence.**

While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

**Rule 8.14 Reinstatement and Transfer--Active Pro Bono.**

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive 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 of such an applicant for reinstatement for the reasons set forth in BR 8.2(d), in which case[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.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

*(Rules 8.5 - 8.11 amended by Order dated November 24, 1987, effective January 1, 1988.)*

*(Rules 8.6 - 8.13 amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.14 added by Order dated September 6, 2001, effective September 6, 2001.)*

*(Rule 8.14(a) and 8.14(b) amended by Order dated October 19, 2009.)*

## Title 9 — Resignation

**Rule 9.1 Resignation.**

An attorney may resign membership in the Bar by filing with Disciplinary Counsel a resignation that[in writing which] shall be effective only on acceptance by the Supreme C[c]ourt. If no charges, allegations or instances of alleged misconduct involving the attorney are under investigation by the Bar, and no disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.6. If charges, allegations, or instances of alleged misconduct involving the attorney are under investigation by the Bar, or if disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.7.

*(Rule 9.1 amended by Order dated February 5, 2001.)*

**Rule 9.2 Acceptance Of Resignation.**

Disciplinary Counsel shall promptly forward the resignation to the State Court Administrator for submission to the Supreme C[c]ourt. Upon acceptance of the resignation by the court, the name of the resigning attorney shall be stricken from the roll of attorneys; and he or she shall no longer be entitled to the rights or privileges of an attorney, but shall remain subject to the jurisdiction of the court with respect to matters occurring while he or she was an attorney. Unless otherwise ordered by the court, any pending investigation of charges, allegations, or instances of alleged misconduct by the resigning attorney shall, on the acceptance by the court of his or her resignation, be closed, as shall any pending disciplinary proceeding against the attorney.

*(Rule 9.2 amended by Order dated February 5, 2001.)*

**Rule 9.3 Duties Upon Resignation.**

(a) Attorney to Discontinue Practice. An attorney who has resigned membership in the [Oregon State ]Bar shall not practice law after the effective date of the resignation. This rule shall not preclude an attorney who has resigned from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of an attorney who has resigned to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Notice. When, as a result of an attorney's resignation, an active client matter will be left for which no other active member of the Bar, with the consent of the client, has agreed to resume responsibility, the resigned attorney shall give written notice of the cessation of practice to the affected clients, opposing parties, courts, agencies, and any other person or entity having reason to be informed of the cessation of practice. Such notice shall be given no later than 14 days after the effective date of the resignation. Client property pertaining to any active client matter shall be delivered to the client or an active member of the Bar designated by the client as substitute counsel no later than 21 days after the effective date of the resignation.

(d)[(c)] Contempt. Disciplinary Counsel may petition the Supreme Court to hold an attorney who has resigned in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

*(Rule 9.3 amended by Order dated March 13, 1989, effective April 1, 1989.)*

**Rule 9.4 Effect of Form B Resignation.**

An attorney who has resigned membership in the Bar under Form B of these rules after December 31, 1995, shall never be eligible to apply for reinstatement under Title 8 of these rules and shall not be considered for admission under ORS 9.220 or on any basis under the Rules for Admission of Attorneys [ *reinstatement under Title 8 of these rules*].

*(Rule 9.4 added by Order dated December 14, 1995.)*

**Rule 9.5 [Reserved for expansion]**

*(Rule 9.5 repealed by Order dated January 17, 2008.)*

**Title 10 — Review By Supreme Court****Rule 10.1 Disciplinary Proceedings.**

Upon the conclusion of a disciplinary hearing, the Adjudicator[*trial panel*], pursuant to BR 1.8, shall file the trial panel's[*its*] written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, Bar Counsel, and the respondent[*accused*]. [*The trial panel shall file a copy of its opinion with the State Court Administrator.*] The Bar or the respondent[*accused*] may seek review of the matter by the Supreme Court; otherwise, the decision of the trial panel shall be final on the 3[*6*]1st day following the notice of receipt of the trial panel opinion by the Disciplinary Board Clerk pursuant to Rule 2.4(i)(4).

*(Rule 10.1 amended by Order dated July 8, 1988.)*

*(Rule 10.1 amended by Order dated August 2, 1991.)*

*(Rule 10.1 amended by Order dated August 19, 1997, effective October 4, 1997.)*

*(Rule 10.1 amended by Order dated February 5, 2001.)*

*(Rule 10.1 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.1 amended by Order dated June 17, 2003, effective January 1, 2004.)*

**Rule 10.2 [Contested Reinstatement Proceeding.] Request For Review.**

*[Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, the applicant and the State Court Administrator. Each such reinstatement matter shall be reviewed by the Supreme Court.]*

Within 30 days after the Disciplinary Board Clerk has acknowledged, as required by BR 2.4(i)(4), receipt of a trial panel opinion, the Bar or the respondent may file with the Disciplinary Board Clerk and the State Court Administrator a request for review as set forth in BR 12.8. A copy of the request for review shall be served on the opposing party.

*(Rule 10.2 amended by Order dated July 22, 1991.)*

*(Rule 10.2 amended by Order dated February 5, 2001.)*

*(Rule 10.2 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.2 amended by Order dated October 19, 2009.)*

**Rule 10.3 [Request For Review.] Contested Reinstatement Proceeding.**

*[Within 60 days after the Disciplinary Board Clerk has acknowledged, as required by BR 2.4(i)(4), receipt of a trial panel opinion, the Bar or the accused may file with the Disciplinary Board Clerk and the State Court Administrator a request for review as set forth in BR 12.8. A copy of the request for review shall be served on all parties.]*

Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and the State Court Administrator, and serve copies on Disciplinary Counsel and the applicant. Each such reinstatement matter shall be reviewed by the Supreme Court.

*(Rule 10.3 amended by Order dated July 8, 1988.)*

*(Rule 10.3 amended by Order dated August 19, 1997, effective October 4, 1997.)*

*(Rule 10.3 amended by Order dated February 5, 2001.)*

*(Rule 10.3 corrected by Order dated June 28, 2001.)*

*(Rule 10.3 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.3 amended by Order dated June 17, 2003, effective January 1, 2004.)*

**Rule 10.4 Filing In Supreme Court.**

(a) Record. Disciplinary Counsel shall file the record of a proceeding with the State Court Administrator upon the receipt by Disciplinary Counsel of:

(i) a request for review timely filed pursuant to BR 10.2 [a trial panel opinion in any contested reinstatement proceeding]; or

(ii) a trial panel opinion in any contested reinstatement proceeding [a request for review timely filed pursuant to BR 10.3].

The record shall include a copy of the trial panel's opinion. Upon receipt of the record, the matter shall be reviewed by the court as provided in BR 10.5.

*(Rule 10.4(a)(i) amended by Order dated July 22, 1991.)*

*(Rule 10.4 amended by Order dated June 29, 1993.)*

*(Rule 10.4(a)(ii) and (b) amended by Order dated August 19, 1997, effective October 4, 1997.)*

*(Rule 10.4 amended by Order dated June 17, 2003, effective January 1, 2004.)*

**Rule 10.5 Procedure In Supreme Court.**

*[(a) Petition. No later than 28 days after the court's written notice to Disciplinary Counsel, Bar Counsel and the accused or applicant of receipt of the record, a petition asking the court to adopt, modify or reject, in whole or in part, the decision of the trial panel shall be filed with the court.*

*[(b) Moving Party. The petition shall be filed by the accused or applicant if the trial panel made a finding of misconduct against the accused or recommended that an applicant be denied reinstatement or be conditionally reinstated; otherwise, the Bar shall file the petition.]*

*[(a)[c] Briefs. No later than 28 days after the Supreme Court's written notice to Disciplinary Counsel and the respondent or applicant of receipt of the record, the party who requested review or the applicant, as the case may be, must file a brief. The brief must include a request for relief asking the court to adopt, modify, or reject, in whole or in part, the decision of the trial panel. [A petition filed under this rule shall be accompanied by a brief.] Otherwise, t[7]he format of the opening brief and the timing and format of answering briefs and reply briefs shall be governed by the applicable Oregon Rules of Appellate Procedure[ of the Supreme Court]. The failure of the Bar or a[n accused] respondent or applicant to file a [petition or] brief does not prevent the opposing litigant from filing a brief. Answering briefs are not limited to issues addressed in petitions or opening briefs, and may urge the adoption, modification or rejection in whole or in part of any decision of the trial panel.*

*[(b)[d] Oral Argument. The Oregon Rules of Appellate Procedure[ of the Supreme Court] relating[ve] to oral argument[ shall] apply in disciplinary and contested reinstatement proceedings.[ The moving party under BR 10.5(b) shall be considered the appellant.]*

*(Rule 10.5(b) and (c) amended by Order dated July 22, 1991.)*

*(Rule 10.5(b), 10.5(c), and 10.5(d) amended by Order dated October 19, 2009.)*

**Rule 10.6 Nature Of Review.**

The Supreme C[c]ourt shall consider each matter de novo upon the record and may adopt, modify or reject the decision of the trial panel in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel without opinion, the opinion of the trial panel shall stand as a statement of the decision of the court in the matter but not as the opinion of the court.

*(Rule 10.6 amended by Order dated July 22, 1991.)*

*(Rule 10.6 amended by Order dated October 19, 2009.)*

**Rule 10.7 Costs And Disbursements.**

*(a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions or other depositions admitted into evidence; (3) expenses of the hearing transcript, including the cost of a copy of the transcript if a copy has been provided by the Bar to a[n accused] respondent without charge; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05. Lawyer fees are not recoverable costs and disbursements, either at the hearing or on review[appeal], [nor are p]revaling party fees are not recoverable by any party.*

*(b) Allowance of Costs and Disbursements. In any discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the [court or ]Disciplinary Board or the Supreme Court. A[n accused] respondent or applicant prevails when the charges against the respondent[accused] are dismissed in their entirety or the applicant is unconditionally reinstated to the practice of law in Oregon. The [b]Bar shall be considered to have prevailed in all other cases.*

(c) Recovery After Offer of Settlement. A[n *accused*] respondent may, at any time up to 14 days prior to hearing, serve upon[ *Bar Counsel and*] Disciplinary Counsel an offer[ *by the accused*] to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the SPRB rejects such an[ *written*] offer[ *by an accused to enter into a stipulation for discipline or no contest plea is rejected by the SPRB,*] and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or[ *of*] the court imposing a sanction no greater than that to which the respondent[*accused*] was willing to plead no contest or stipulate based on the charges the respondent[*accused*] was willing to concede or admit, the Bar shall not recover, and the respondent[*accused*] shall recover, actual and necessary costs and disbursements as permitted in BR 10.7(a) incurred after the date the SPRB rejected the respondent's[ *accused's*] offer[ *was rejected by the SPRB*].

(d) Procedure for Recovery and Collection. The procedure set forth in the Oregon Rules of Appellate Procedure [of the Supreme Court] regarding the filing of cost bills and objections thereto shall apply[*be followed*] except that, in matters involving final decisions of the Disciplinary Board, cost bills and objections thereto shall be resolved by the Adjudicator[*state chairperson of the Disciplinary Board*]. The cost bill and objections thereto shall be filed with the Disciplinary Board Clerk, with proof of service on the [state chairperson of the Disciplinary Board and the] other party, and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536.

*(Rule 10.7 amended by Order dated June 25, 1985, effective July 15, 1985; amended by further Orders dated July 8, 1985 and July 22, 1985; amended by Order dated March 13, 1989, effective April 1, 1989. Rule 10.7 (a) amended by Order dated October 1, 1990; amended by Order dated June 28, 2001.)*

*(Rule 10.7(d) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.7(a) and (d) amended by Order dated April 26, 2007.)*

*(Rule 10.7(b) amended by Order dated October 19, 2009.)*

## Title 11 — Time Requirements

### **Rule 11.1 Failure To Meet Time Requirements.**

The failure of any person or body to meet any time limitation or requirement in these rules shall not be grounds for the dismissal of any charge or objection, unless a showing is made that the delay substantially prejudiced the ability of the respondent[*accused*] or applicant to receive a fair hearing.

## Title 12 — Unlawful Practice of Law Committee

### **Rule 12.1 Appointment.**

The Supreme Court may appoint as many members as it deems necessary to carry out the Unlawful Practice of Law Committee's functions. At least two members of the Unlawful Practice of Law Committee must be members of the general public and no more than one-quarter of the Unlawful Practice of Law Committee members may be lawyers engaged in the private practice of law.

### **Rule 12.2 Investigative Authority.**

Pursuant to ORS 9.164, the Unlawful Practice of Law Committee shall investigate on behalf of the Bar complaints of the unlawful practice of law. For purposes of this rule, "unlawful practice of law" means (1) the practice of law in Oregon, as defined by the Supreme Court, by a person who is not an active member of the Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.

**Rule 12.3 Public Outreach and Education.**

(a) The Unlawful Practice of Law Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law. The Unlawful Practice of Law Committee may cooperate in its education efforts with federal, state, and local agencies tasked with preventing consumer fraud.

(b) The Unlawful Practice of Law Committee may write informal opinions on questions relating to what activities may constitute the practice of law. Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

**Rule 12.4 Enforcement.**

The Bar may petition the Supreme Court to hold a disbarred attorney or an attorney whose resignation pursuant to BR 9.1 or BR 9.4 has been accepted by the court in contempt for engaging in the unlawful practice of law. The court may order the disbarred or resigned attorney to appear and show cause, if any, why the disbarred or resigned attorney should not be held in contempt of court and sanctioned accordingly.

Title 13[2] — Forms

**Rule 13[2].1 Formal Complaint.**

A formal complaint in a disciplinary proceeding shall be in substantially the following form:

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re:	)	No. _____
_____	)	
Complaint as to the conduct of	)	FORMAL
_____, <u>Respondent</u> [ <i>Accused</i> ])	)	COMPLAINT

For its first cause of complaint, the Oregon State Bar alleges:

**1.**

The Oregon State 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 discipline of attorneys.

**2.**

The Respondent[*Accused*], \_\_\_\_\_, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his [her] office and place of business in the County of \_\_\_\_\_, State of \_\_\_\_\_.

**3. et seq.**

(State with certainty and particularity the actions of the Respondent[*Accused*] alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

**4. (or next number)**

The aforesaid conduct of the Respondent[*Accused*] violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its second cause of complaint against said Respondent[*Accused*], the Oregon State Bar alleges:

**5. (or next number)**

Incorporates by reference as fully set forth herein Paragraphs \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ of its first cause of complaint.

**6. (or next number)**

(State with certainty and particularity the actions of the Respondent[*Accused*] alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

**7. (or next number)**

The aforesaid conduct of the Respondent[*Accused*] violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its third cause of complaint against said Respondent[*Accused*], the Oregon State Bar alleges:

**8. (or next number)**

Incorporates by reference as fully set forth herein Paragraphs \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ of its first cause of complaint and Paragraphs \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ of its second cause of complaint.

**9. (or next number)**

(State with certainty and particularity the actions of the Respondent[*Accused*] alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

**10. (or next number)**

The aforesaid conduct of the Respondent[*Accused*] violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

WHEREFORE, the Oregon State Bar demands that the Respondent[*Accused*] make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

DATED this \_\_\_\_ day of \_\_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Disciplinary Counsel

*(Rule 12.1 amended by Order dated February 5, 2001.)*

**Rule 13[2].2 Notice to Answer.**

A copy of the formal complaint (statement of objections), accompanied by a notice to answer it within a designated time, shall be served on the respondent[*accused*] (applicant). Such notice shall be in substantially the following form:



**(Heading as in complaint/statement of objections)****NOTICE TO ANSWER**

You are hereby notified that a formal complaint against you (statement of objections to your reinstatement) has been filed by the Oregon State Bar, a copy of which formal complaint (statement of objections) is attached hereto and served upon you herewith. You are further notified that you may file with the Disciplinary Board Clerk, with a service copy to Disciplinary Counsel, your verified answer within fourteen (14) days from the date of service of this notice upon you. In case of your default in so answering, the formal complaint (statement of objections) shall be heard and such further proceedings had as the law and the facts shall warrant.

(The following paragraph shall be used in a disciplinary proceeding only:)

You are further notified that an attorney accused of misconduct may, in lieu of filing an answer, elect to file with Disciplinary Counsel of the Oregon State Bar, a written resignation from membership in the Oregon State Bar. Such a resignation must comply with BR 9.1 and be in the form set forth in BR 12.7. You should consult an attorney of your choice for further information about resignation.

The address of the Oregon State Bar is 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail at P. O. Box 231935, Tigard, Oregon 97281-1935.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Disciplinary Counsel

*(Rule 12.2 amended by Order dated February 5, 2001.)*

*(Rule 12.2 amended by Order dated April 26, 2007.)*

*(Rule 12.2 amended by Order dated March 20, 2008.)*

*(Rule 12.2 amended by Order dated October 19, 2009.)*

**Rule 13[2].3 Answer.**

The answer of the respondent*[accused]* (applicant) shall be in substantially the following form:

**(Heading as in complaint/statement of objections)****ANSWER**

\_\_\_\_\_, (name of respondent*[accused]* applicant), whose residence address is \_\_\_\_\_, in the County of \_\_\_\_\_, State of Oregon, and who maintains his [her] principal office for the practice of law or other business at \_\_\_\_\_, in the County of \_\_\_\_\_, State of Oregon, answers the formal complaint (statement of objections) in the above-entitled matter as follows:

**1.**

Admits the following matters charged in the formal complaint (statement of objections) as follows:

**2.**

Denies the following matters charged in the formal complaint (statement of objections) as follows:

**3.**

Explains or justifies the following matters charged in the formal complaint (statement of objections).

4.

Sets forth new matter and other defenses not previously stated, as follows:

5.

WHEREFORE, the respondent*[accused]* (applicant) prays that the formal complaint (statement of objections) be dismissed.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

RESPONDENT*[ACCUSED]* (APPLICANT)  
Attorney for Respondent*[Accused]* (Applicant)

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 the trial panel hearing and is subject to penalty for perjury.

[ACCUSED] RESPONDENT (APPLICANT)

**Rule 13[2].4 [Reserved for expansion]**

*(Rule 12.4 repealed by Order dated July 22, 1991.)*

**Rule 13[2].5 Statement Of Objections To Reinstatement.**

In a contested reinstatement proceeding, the statement of objections shall be in substantially the following form:

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In The Matter Of The	)	
Application of	)	STATEMENT
_____	)	OF
For Reinstatement as	)	OBJECTIONS
an Active Member	)	TO
of the Oregon State Bar	)	REINSTATEMENT

The Oregon State Bar objects to the qualifications of the Applicant for reinstatement on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Governors, that he [she] has the good moral character or general fitness required for readmission to practice law in Oregon, that his [her] readmission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, \_\_\_\_\_ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Governors to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for reinstatement as an active member of the Oregon State Bar be denied.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Disciplinary Counsel

*(Rule 12.5 amended by Order dated February 5, 2001.)  
(Rule 12.5 amended by Order dated October 19, 2009.)*

**Rule 13[2].6 Form A Resignation.**

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re: ) FORM A  
(Name) ) RESIGNATION

[State of )  
County of ) ss]

I, \_\_\_\_\_, *[being duly sworn on oath, depose and say]* declare that my residence address is \_\_\_\_\_ (No. and Street), \_\_\_\_\_ (City), \_\_\_\_\_ (State), \_\_\_\_\_ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and respectfully request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of \_\_\_\_\_, a resident Oregon attorney, whose principal office address is \_\_\_\_\_, and that all such clients have been or will be promptly notified accordingly, and that the following arrangements have been made with regard to client files and records pertaining to inactive or former clients, if any:

\_\_\_\_\_.

DATED at \_\_\_, this \_\_\_ day of \_\_\_, 20\_\_.

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.

(Signature of Member)

*[Subscribed and sworn to before me this \_\_\_ day of \_\_\_, 20\_\_.*

Notary Public for Oregon  
My Commission Expires: ]

I, \_\_\_\_\_, Executive Director of the Oregon State Bar, do hereby certify that there are not now pending against the above-named attorney any formal disciplinary charges and no complaints, allegations or instances of alleged misconduct involving said attorney are under investigation by the Oregon State Bar.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Executive Director

**Rule 13[2].7 Form B Resignation.**

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re: \_\_\_\_\_ ) FORM B  
(Name) \_\_\_\_\_ ) RESIGNATION

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

I, \_\_\_\_\_, being duly sworn on oath, depose and say that my principal office for the practice of law or other business is located at \_\_\_\_\_ (Building No. and Name, if any, or Box No.), \_\_\_\_\_ (Street address, if any), \_\_\_\_\_ (City), \_\_\_\_\_ (State), \_\_\_\_\_ (Zip Code); that my residence address is \_\_\_\_\_ (No. and Street), \_\_\_\_\_ (City), \_\_\_\_\_ (State), \_\_\_\_\_ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations or instances of alleged misconduct by me are under investigation by the Oregon State Bar and that such complaints, allegations and/or instances include:

(List of formal complaints, proceedings or investigations pending.)

I do not desire to contest or defend against the above-described complaints, allegations or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the Oregon State Bar with respect to admission, discipline, resignation and reinstatement of members of the Oregon State Bar. I understand that any future application by me for reinstatement as a member of the Oregon State Bar is currently barred by BR 9.4, but that should such an application ever be permitted in the future, it will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations or instances of alleged misconduct upon which this resignation is predicated. I understand that, on its filing in this court, this resignation and any supporting documents, including those containing the complaints, allegations or instances of alleged misconduct, will become public records of this court, open for inspection by anyone requesting to see them.

This resignation is freely and voluntarily made; and I am not being, and have not been, subjected to coercion or duress. I am fully aware of all the foregoing and any other implications of my resignation.

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of \_\_\_\_\_, a resident Oregon attorney, whose principal office address is \_\_\_\_\_, and that all such clients have been or will be promptly notified accordingly.

DATED at \_\_, this \_\_ day of \_\_, 20\_\_.

(Signature of Attorney)

Subscribed and sworn to before me this \_\_ day of \_\_, 20\_\_.

Notary Public for Oregon  
My Commission Expires:

*(Rule 12.7 amended by Order dated June 5, 1997, effective July 1, 1997).  
(Rule 12.7 amended by Order dated February 5, 2001.)*

**Rule 13[2].8 Request For Review.**

A request for review pursuant to BR 10.3 shall be in substantially the following form.

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re: )  
 ) No. \_\_\_\_\_  
Complaint as to the )  
Conduct of \_\_\_\_\_ ) REQUEST FOR  
Respondent[*Accused*] ) REVIEW

[The Respondent[*Accused*]/The Oregon State Bar] hereby requests the Supreme Court to review the decision of the Disciplinary Board trial panel rendered on [date] in the above matter.

DATED this \_\_ day of \_\_, 20\_\_.

[signature of respondent[*accused*] or counsel]

**Rule 13[2].9 Compliance Declaration[Affidavit].**

A compliance declaration[*affidavit*] filed under BR 8.3 shall be in substantially the following form:

**COMPLIANCE DECLARATION[AFFIDAVIT]**

In re: Application of  
\_\_\_\_\_  
(Name of attorney) (Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

- 1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_
- 2.a. Residence address \_\_\_\_\_ Telephone \_\_\_\_\_
- 3. I hereby attest that during my period of suspension from the practice of law from \_\_\_\_\_ to \_\_\_\_\_, (insert dates) I did not at any time engage in the practice of law except where authorized to do so.

4. I also hereby attest that I complied as directed with the following terms of probation: (circle applicable items)

- a. abstinence from consumption of alcohol and mind-altering chemicals/drugs, except as prescribed by a physician
- b. attendance at Alcoholics Anonymous meetings
- c. cooperation with Chemical Dependency Program
- d. cooperation with State Lawyers Assistance Committee
- e. psychiatric/psychological counseling
- f. passed Multi-State Professional Responsibility exam
- g. attended law office management counseling and/or programs
- h. other - (please specify) \_\_\_\_\_
- i. none required

[I, \_\_\_\_\_, the undersigned, being first duly sworn, depose and say that the above answers are true and correct as I verily believe.]

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.

(Name)

[Subscribed and sworn to before me this \_\_\_ day of \_\_\_, 20\_\_.

*Notary Public in and for  
the State of Oregon  
My Commission Expires: ]*

*(Rule 12.9 established by Order dated March 13, 1989, effective April 1, 1989.)  
(Rule 12.9 amended by Order dated February 5, 2001.)*

**Rule 13[2].10 Compliance Declaration[Affidavit].**

A compliance declaration[*affidavit*] filed under BR 7.1(g) shall be in substantially the following form:

**COMPLIANCE DECLARATION[AFFIDAVIT]**

In re: Reinstatement of

\_\_\_\_\_  
(Name of attorney) (Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_

2.a. Residence address \_\_\_\_\_ Telephone \_\_\_\_\_

3. I hereby attest that during my period of suspension from the practice of law from \_\_\_\_\_ to \_\_\_\_\_, (insert dates)

I did not at any time engage in the practice of law except where authorized to do so.

OR

I engaged in the practice of law under the circumstances described on the attached [attach an explanation of activities relating to the practice of law during suspension].

4. I also hereby attest that I responded to the requests for information or records by Disciplinary Counsel[ *or the Local Professional Responsibility Committee*] and have complied with any subpoenas issued by Disciplinary Counsel[ *or the Local Professional Responsibility Committee*], or provided good cause for not complying to the request.

[I, \_\_\_\_\_, the undersigned, being first duly sworn, depose and say that the above answers are true and correct as I verily believe.]

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.

(Name)

[Subscribed and sworn to before me this \_\_\_ day of \_\_\_, 20\_\_.

*Notary Public in and for  
the State of Oregon  
My Commission Expires: ]*

*(Rule 12.10 established by Order dated August 12, 2013, effective November 1, 2013.)*

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 17, 2016  
**Memo Date:** November 8, 2016  
**From:** Colin Andries, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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

- Rob Welsh, Chelsea Glynn, and Jennifer Nicholls, represented Oregon during the ABA Young Lawyers Division (YLD) Fall Meeting in Detroit. In addition to highlighting two of our own programs in the affiliate showcase attendees brought back information about successful programs from other affiliates.
- The CLE Subcommittee held one professionalism brown bag CLE.
- On November 1 & 2, the ONLD, in conjunction with the Litigation Section, held a day and a half CLE focusing on practical tips and techniques in civil litigation presented by well-respected attorneys and judges. The CLE included a practical skills component including a simulated deposition.
- On November 4 the ONLD held its annual meeting to elect new board members and officers. The ONLD also held an awards reception right before the annual meeting to celebrate the hard work of its member.

### **2016 Executive Committee Slate:**

Chair: Kaori Eder  
Chair-Elect: Jennifer Nicholls  
Past Chair: Colin Andries  
Secretary: Cassie Jones  
Treasurer: Andrew Gust  
Member, region 5: Andrew Gust  
Member, region 6: Robert Welsh  
Member, at large 11: Jaimie Fender

### **2015 ONLD Award Honorees:**

Member Services Award: Stephanie M. Palmblad  
Public Service Award: Grant T. Engrav  
Volunteer of the Year Award: Ralph Gzik  
The Honorable John V. Acosta Professionalism Award: Bonnie Richardson  
Project of the Year Award: Stephanie Palmblad & Katherine Denning

- The program, "Beyond Borders: Protecting Abused, Neglected, and Abandoned Immigrant Children" was held on Friday, October 7 from 1-5pm with a social until 6pm at the Hotel Monaco. The program had 33 attendees including a few law students. The participants learned about helping youth immigrants gain legal status in the United States.
- The Pro Bono Celebration including 3 free CLEs, a pro bono fair, and awards reception was held at the World Trade Center on October 27. Awards were handed out to firms, attorneys, and law



students with the most pro bono hours. This year there were simulcasts of a CLE in Eugene, Salem, Bend, and Medford.

Exhibit to be posted.

Exhibit to be posted.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
FERRUA (Lopez-Diaz) 2016-35

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### **Action Requested**

The Client Security Fund Committee recommends reimbursement of \$12,500 to Marcelino Lopez-Diaz for his loss resulting from the conduct of attorney Franco Ferrua.

### **Discussion**

#### Background

Mr. Lopez-Diaz hired Mr. Ferrua in January 2013 to represent him in a criminal matter, which originated in Washington County Circuit Court and was removed to the U.S. District Court of Oregon. A family member paid Mr. Ferrua \$15,000 to provide representation through trial. Mr. Ferrua deposited the funds in a personal account (rather than a lawyer trust account), and there is no evidence of a written fee agreement as required by RPC 1.5(c)(3) and RPC 1.15-1(c). He did not maintain contemporaneous time records or an accounting of the funds.

In late May 2013, Mr. Ferrua appeared at arraignment and a detention hearing. A five-day jury trial was scheduled for July 23, 2013. On July 16, 2013, Mr. Ferrua moved to extend the trial date for 90 days. The court granted the motion, re-setting the trial date to November 5, 2013, and ordering the parties to report readiness by October 22, 2013.

When Mr. Ferrua failed to either report to the court or file a motion for continuance by mid-day on November 4, 2013, the court removed Mr. Ferrua from representation and appointed Federal Public Defender Thomas Price.

Formal disciplinary proceedings were initiated against Mr. Ferrua, alleging misconduct in representing Mr. Lopez-Diaz. The trial panel found that Mr. Ferrua deposited unearned fees into his personal account, and failed to account for those fees. It determined that from the arraignment on May 28, 2013 until November 4, 2013, Mr. Ferrua visited Mr. Lopez-Diaz once. Further, it found no evidence that Mr. Ferrua had taking any steps to prepare for trial—no pleadings were filed, no witnesses interviewed, no exhibits prepared.

On March 8, 2016, the trial panel found multiple violations of the rules of professional conduct by Mr. Ferrua and suspended him for 180 days. The trial panel also ordered restitution to Mr. Lopez-Diaz in the amount of \$12,500.

### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. However, reimbursement of a legal fee will be allowed if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee found that Mr. Lopez-Diaz loss was caused by the dishonest conduct of Mr. Ferrua who promised to provide legal services in exchange for the advance payment of a legal fee. Mr. Ferrua deposited the money into his personal account, and the extent of his legal services, if any, were minimal or insignificant. Therefore, the CSF Committee recommends that Mr. Lopez-Diaz be reimbursed \$12,500, the full amount of his claim.

Attachment: Investigator's Report

8/29/16

CLIENT SECURITY FUND  
INVESTIGATION REPORT

RE : Client Security Fund Claim No.: 2016-35  
Claimant : Marcelino Lopez-Diaz  
Lawyer : Franco D. Ferrua  
Investigator : Ronald W. Atwood

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RECOMMENDATION

We recommend payment of Mr. Lopez-Diaz' claim in the amount of \$12,500.00.

CLAIM INVESTIGATION SUMMARY

Marcelino Lopez-Diaz filed this claim against Franco D. Ferrua. The claim is dated July 12, 2012.[sic]<sup>1</sup> The Oregon State Bar Executive Director received the claim on July 18, 2016. Mr. Lopez-Diaz hired Mr. Ferrua in January 2013 to represent him in a criminal matter, which originated in Washington County and was transferred to federal court. Mr. Ferrua charged a fee of \$15,000.00 for a legal consultation and to handle the case through trial, even if it were transferred to federal court. A family member, Veronica Horce, paid the fee in cash. Mr. Ferrua provided a receipt for the payment.

We relied upon documents submitted as exhibits *In Re Conduct of Franco Ferrua*, Oregon State Bar Case No. 15-39. Those exhibits included the receipt for the \$15,000.00 payment, materials from the federal court's file in *United States of America v. Marcelino Lopez-Diaz*, Case No. 3:13-CR-00108 JO-1, the transcript of Mr. Ferrua's deposition in the disciplinary matter, correspondence between Mr. Ferrua and Bar Counsel, and telephone and visitor logs from Washington County Jail and Federal Bureau of Prisons - Sheridan.

We sent Mr. Ferrua an email asking for his assistance in investigating the Client Security Fund claim. He has not responded.

*Marcelino Lopez-Diaz Background*

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<sup>1</sup> This date appears to be an error. The payment for which Mr. Lopez-Diaz seeks reimbursement was made in January 2013, six months after the date on the CSF claim form. The criminal case, for which the payment was made, began in November 2012, also after the date on the claim.

In November 2012, Mr. Lopez-Diaz was arrested in Washington County. The case was transferred to federal court. Mr. Lopez-Diaz was indicted on drug and firearms charges, including conspiracy possession with the intent to distribute heroin, conspiracy to distribute heroin to an individual whose use of the heroin resulted in his death, possession of a firearm during and in relation to a drug trafficking crime, and unlawful possession of a firearm by a felon. Mr. Lopez-Diaz faced a possible mandatory minimum sentence of life imprisonment.

Following Mr. Ferrua's removal from the case by the federal judge, Mr. Lopez-Diaz entered into a plea bargain and is serving less than a lifetime sentence. We believe he imprisoned in California.

#### *Franco D. Ferrua Background*

Mr. Ferrua was admitted to the Oregon Bar in 1992. His primary area of practice was criminal defense work. The Bar filed a formal complaint against Mr. Ferrua on July 7, 2015, alleging violations of several rules of professional conduct. Mr. Ferrua was living outside the United States during the investigation and trial of the disciplinary case. We believe he continues to reside outside of the country. The trial panel suspended Mr. Ferrua for 181 days. He is subject to formal reinstatement.

#### *Criminal Case*

A brother of Mr. Lopez-Diaz contacted Mr. Ferrua about representing Mr. Lopez-Diaz. On two occasions, one in November 2012 and the other in January 2013, Mr. Ferrua met with Mr. Lopez-Diaz at the Washington County jail to consult with him about the criminal case. Family members of Mr. Lopez-Diaz paid Mr. Ferrua for those consultations and the payments are not part of the Client Security Fund claim.

In January 2013, a sister-in-law of Mr. Lopez-Diaz, "Veronica," paid Mr. Ferrua \$15,000.00 cash. Mr. Ferrua provided "Veronica" with a signed receipt for a legal consultation regarding Marcelino Lopez-Diaz. The receipt includes a handwritten note, in Spanish, which indicates the money paid represented the entire fee through trial, even if the case were transferred to federal court.

There is no written fee agreement. During the disciplinary case, Mr. Ferrua claimed that Mr. Lopez-Diaz signed an agreement. However, he admitted that he did not have a copy of it. Also, there are inconsistencies in his story about the agreement. In his deposition, Mr. Ferrua testified that he met with Mr. Lopez-Diaz at the Washington County jail on January 16, 2013, immediately after he obtained the \$15,000.00 payment. He testified that he and Mr. Lopez-Diaz discussed the agreement and Mr. Lopez-Diaz verbally agreed to it. Mr. Ferrua believed a guard hand delivered the agreement to Mr. Lopez-Diaz while Mr. Ferrua was meeting with

him and he watched Mr. Lopez-Diaz sign the agreement, but Mr. Lopez-Diaz did not return the signed agreement to him. In a letter to Bar Counsel dated February 2, 2015, Mr. Ferrua wrote that he left the agreement in an attorney/client box for jail staff to deliver to Mr. Lopez-Diaz because he could not give the document to him directly. The letter is silent with respect to what happened to the agreement then. It was Mr. Ferrua's practice to obtain payment before a retainer agreement was signed.

The receipt Mr. Ferrua signed contains no information about where he would deposit the money. The receipt does not include any statement that Mr. Lopez-Diaz would be entitled to discharge Mr. Ferrua, nor does it include any provision that Mr. Lopez-Diaz would be entitled to a partial or complete refund if Mr. Ferrua did not complete the services for which he had been paid.

Mr. Ferrua did not deposit the funds in trust account or track them in any way. In emails to Bar Counsel in the disciplinary case and in deposition testimony for that case, Mr. Ferrua stated that he deposited the funds in a personal account at U.S. Bank. He also stated that he did not keep a ledger to track the funds, and, instead, relied upon bank statements to track the monies.

Mr. Ferrua did not maintain contemporary time records. In a letter to Bar Counsel dated February 17, 2015, he provided his best estimate of the work he performed in the case. It was approximately 40 hours. At an hourly rate of \$400, he claimed he had earned \$16,280.00, more than he had been paid.

There is documentation for some, but not all of Mr. Ferrua's claimed activities. Some of the documentation contradicts his claims. The disciplinary trial panel ordered restitution of \$12,500. There is no dispute that Mr. Ferrua appeared before US Magistrate Janice Stewart on May 28, 2013 for Mr. Lopez-Diaz' Arraignment and Detention Hearing. There is documentation of some contact with his client and the court before the judge removed him from the case, although he claims there was more contact than the documents demonstrate. There is documentation of some contact with a potential expert witness and conversations with two other lawyers about how to handle the case.

Mr. Ferrua has refused to refund any money to Mr. Lopez-Diaz.

### *Analysis*

A loss of money of a lawyer's client is eligible for reimbursement if the loss results from a lawyer's dishonest conduct. 2.2 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" includes (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 an advance payment in a lawyer trust account until earned. 2.2.1.



In this case, Mr. Ferrua wrongfully failed to deposit his client's \$15,000.00 advance payment in a trust account. He placed the money in his general business account. He did not have a fee earned upon receipt fee agreement. As a result, when he was removed from his position as counsel for the claimant, he owed Mr. Lopez-Diaz the unearned fee.

There is documentation that he performed some work on behalf of Mr. Lopez-Diaz, so full reimbursement is not appropriate. The disciplinary trial panel determined \$2,500.00 was a reasonable fee for the work Mr. Ferrua performed and ordered restitution of \$12,500.00. We found no information in our review of the file to dispute this figure and it feel it is reasonable. Mr. Ferrua has not made restitution. It does not appear that he can be forced to make restitution. There is some evidence that he cannot make restitution.

### Findings and Conclusions

1. Marcelino Lopez-Diaz was a client of Franco Ferrua.
2. Mr. Lopez-Diaz paid \$15,000 to Mr. Ferrua in order to handle a criminal matter.
3. Mr. Lopez-Diaz did not sign a fee agreement.
4. Mr. Ferrua took the money he received from his client and placed it in his general business account.
5. Mr. Ferrua did not keep time records to document the time he spent on this matter.
6. Mr. Ferrua was removed from his position as counsel for Mr. Lopez-Diaz prior to completion of the representation.
7. Mr. Ferrua did not refund the unearned portion of the fee.
8. Mr. Ferrua now lives in Brazil and it does not appear as if he will pay restitution; nor does it appear practical to require Mr. Lopez-Diaz to pursue Mr. Ferrua in Brazil for the unearned fee.
9. The Client Security Fund should refund Mr. Lopez-Diaz \$12,500.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
GERBER (Shorb) 2016-40

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### **Action Requested**

The Client Security Fund Committee recommends reimbursement of \$5000 to Charles Ray Shorb for his loss resulting from the conduct of attorney Susan Gerber.

### **Discussion**

#### Background

Susan Gerber was admitted to the Oregon State Bar in 1999. Beginning sometime in 2010, Ms. Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, then in a brief partnership with Vicki Vernon in early 2014, and by March 2014 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 Ms. 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.

#### Charles Ray Shorb

Mr. Shorb was found guilty of one count of Rape in the First Degree and two counts of Sexual Abuse in the First Degree on January 30, 2008. Bear Wilner-Nugent represented Mr. Shorb in his first post-conviction relief case, which was denied. Mr. Wilner-Nugent filed an appeal. By mid-August 2013, however, Mr. Shorb was dissatisfied with Mr. Wilner-Nugent's services and notified him that he was retaining Ms. Gerber.

On September 5, 2013, Mr. Shorb hired Ms. Gerber to file a second PCR petition. He paid her \$5,000 for her services. An unsigned, undated fee agreement provides the fee is earned upon receipt. It also provides that if the client discharges the attorney, the client may be entitled to a refund if the services for which the fee was paid are not completed.

Time records indicate that Ms. Gerber spent 3.4 hours on the case over the course of a couple of months. She never initiated a second PCR or any other proceeding on Mr. Shorb's behalf. Mr. Shorb ultimately fired Ms. Gerber and contacted Mr. Wilner-Nugent again in August or September 2014 for further assistance.

### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" includes 1) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for advance payment of a legal fee, or 2) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned. CSF Rule 2.2.1. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. Further, reimbursement of a legal fee will be allowed only if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee concluded that Ms. Gerber's conduct was dishonest and that the services she provided were minimal or insignificant. Therefore, the Committee recommends reimbursement of the full amount of Mr. Shorb's claim.

Attachment: Investigator's Report

October 24, 2016

CLIENT SECURITY FUND  
INVESTIGATION REPORT

RE : Client Security Fund Claim No.: 2016-40  
Claimant : Charles Ray Shorb  
Lawyer : Susan Gerber  
Investigator : Ronald W. Atwood

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RECOMMENDATION

The recommendation is to pay the claim. The record shows that Ms. Gerber's work was minimal in quantity and content and did not advance Mr. Shorb's cause.

CLAIM INVESTIGATION SUMMARY

The claimant, Charles Ray Shorb, retained Ms. Gerber on or about September 5, 2013, to file a second petition for post-conviction relief (PCR) after his first petition was denied. Ms. Gerber was not involved in the first PCR. She did not file a second PCR.

Mr. Shorb recalled signing a retainer agreement, but does not have a copy of it. Documents from Ms. Gerber's file include an unsigned, undated retainer agreement, which has Mr. Shorb and Ms. Gerber's names on it and a fee amount. The fee amount matches what Mr. Shorb reported was paid.

We obtained a copy of a check dated September 6, 2013, in the amount of \$5,000.00. It was written on Mr. Shorb's account, made payable to Ms. Gerber, and signed by his sister. A "log" on a disc we received from Vicki Vernon that is supposed to be Ms. Gerber's file indicates a \$5,000 flat fee had been paid.

The OSB received Mr. Shorb's CSF claim on August 15, 2016. We interviewed Mr. Shorb, his sister Cheryl Casad Webb, Bear Wilner-Nugent, Vicki Vernon, and Nell Brown.

Ms. Webb, who reported having Mr. Shorb's papers, provided documents Ms. Gerber sent to Mr. Shorb. They consist of one letter from Ms. Gerber enclosing an email to Mr. Wilner-Nugent. The dates on the documents coincide with activity reported on the available time sheets.

Mr. Wilner-Nugent handled the first PCR case and represented Mr. Shorb until sometime after Ms. Gerber was retained. He also worked for Mr. Shorb on a *pro bono* basis briefly in August 2014. Mr. Wilner-Nugent reported limited contact with Ms. Gerber. In September and October 2013, she contacted him about her representation and her request

for a copy of Mr. Shorb's file. They have may talked again in November 2013. In August or September 2014, he got involved in Mr. Shorb's case again, to get a Petition for Review filed with the Supreme Court before the deadline passed.

Ms. Vernon got Mr. Shorb's case in a transfer of cases agreement involving Ms. Gerber and the Oregon State Bar. However, because he was pursuing a federal *habeas corpus* case, she understood Mr. Shorb did not want to proceed with a second PCR case and returned his file to Ms. Gerber.

Ms. Vernon provided us with a disc that contained documents from Ms. Gerber's file. We do not know how comprehensive the disc is meant to be. On it, we found time sheets from Ms. Gerber that document the 3.4 hours of work described above. The file contained no pleadings, discovery, or court file. There were two pieces of correspondence that pertained to Mr. Shorb's case, an unsigned authorization to release information, an unsigned retainer agreement, and the time sheets.

Ms. Brown represents Mr. Shorb in a federal *habeas corpus* case. Ms. Brown reported that file material she received did not include anything substantive from Ms. Gerber.

We contacted Ms. Gerber, who indicated she would provide documents, but has not. Based upon her past practices, we do not believe a decision in this matter should be delayed.

We obtained documentation that Ms. Gerber spent 3.4 hours on Mr. Shorb's case between September 18 and October 26, 2013. The documents indicate she met with him twice, talked with him on the phone once, drafted a retainer agreement and release of information form, sent a letter to Mr. Shorb, and talked with former counsel once, sent him two emails and received one from him. We have no documentation for other work Ms. Gerber might have done. The documents we obtained do not demonstrate that Ms. Gerber performed significant, substantive work on Mr. Shorb's behalf.

### *Charles Ray Shorb Background*

Mr. Shorb was found guilty of one count of Rape in the First Degree and two counts of Sexual Abuse in the First Degree on January 30, 2008. He is incarcerated at the Warner Creek Correctional Facility. He was sentenced to 120 months in prison, less time served, on the rape conviction and a concurrent term sentence of 75 months for the sexual abuse charges.

In approximately October 2014, Mr. Shorb filed a complaint about Ms. Gerber with the OSB where he alleged he had paid her money, but she had not performed any services. He withdrew the complaint after Ms. Gerber assured him she would fulfill her promises to him. On April 27, 2015, he refilled the complaint, again contending he had seen no

evidence of any work on his behalf. Ms. Gerber was in inactive status due to disability by April 2015.

### *Susan Gerber Background*

Ms. Gerber began practicing law in 1999. At all times material to this case, her primary work was representing convicts seeking PCR. In the summer of 2013, she began experiencing a series of personal problems. Her workload became overwhelming in December 2013, according to representations she made to disciplinary counsel. On March 24, 2014, the Bar notified Ms. Gerber that a disciplinary complaint had been filed against her. She formed a short-lived partnership with Ms. Vicki Vernon in April 2014. On May 30, 2014, Ms. Gerber requested additional time to respond to the disciplinary allegations. The transfer of cases agreement, which transferred Mr. Shorb's case and others to Ms. Vernon, was signed October 29, 2014. The Oregon Supreme Court ordered she be transferred to inactive status on November 20, 2014.

### *Post Conviction Relief*

Mr. Shorb retained Bear Wilner-Nugent to represent him in the first PCR case. Mr. Wilner-Nugent filed the PCR, the case went to trial, and was denied on September 13, 2011. Mr. Wilner-Nugent filed an appeal with the Court of Appeals on September 22, 2011. By mid-August 2013, Mr. Shorb was dissatisfied with Mr. Wilner-Nugent and notified the attorney that he was retaining Ms. Gerber. Mr. Shorb learned about Ms. Gerber from other inmates at the Snake River Correctional Institution where he was incarcerated at the time.

When Mr. Shorb retained Ms. Gerber, the first PCR case was pending at the Court of Appeals. Ms. Gerber requested a copy of Mr. Wilner-Nugent's filed in late October 2013 and asked whether oral argument had been scheduled. It had not been. Mr. Wilner-Nugent told us that his file was copied and sent to Ms. Gerber in mid-November 2013. We have found no information that Ms. Gerber performed any work on the appeal of the first PCR.

The Court of Appeals AWOP'd Mr. Shorb's first PCR on June 25, 2014. Sometime in August 2014, Mr. Wilner-Nugent, acting *pro bono*, filed an appeal to the Supreme Court to protect Mr. Shorb, but then withdrew from the case again. Mr. Wilner-Nugent reported declining a request from Ms. Gerber in September 2014; she wanted him to get back on the case.

Wayne Mackeson, who represented Ms. Gerber in the disciplinary case that resulted in her transfer to inactive status, handled some of her cases during her transition to involuntary inactive status. He filed a petition for review with the Supreme Court.

The Supreme Court denied review of the first PCR in December 2014. The Court of Appeals judgment of dismissal issued March 12, 2015.

In the meantime, Mr. Shorb's case - the second PCR - had been transferred to Ms. Vernon. The second PCR was not pursued. Mr. Shorb is pursuing a *habeas corpus* case in federal court. Ms. Brown represents him in that case.

Mr. Shorb recalled that Ms. Gerber visited him perhaps a half dozen times. She scheduled several meetings for which she did not appear or call. He claims that she talked about what she would do for him, not what she did do for him.

### *Analysis*

The available information indicates what Ms. Gerber did for Mr. Shorb was minimal and insignificant. She agreed to represent him on a second PCR and accepted at \$5,000.00 fee to take that case to trial. She did not file a second PCR. The only available documents indicate she prepared a retainer agreement and authorization to release information, had some telephone calls and email exchanges, and wrote a couple of letters. The content of the documents indicates she was trying to obtain documents and information. There is no information to indicate she developed any theory for the case, conducted any investigation, performed any research, drafted any pleadings, or performed any other substantive work on Mr. Shorb's behalf.

Mr. Shorb recalled signing a fee agreement. Documents obtained from Ms. Vernon included an unsigned, undated retainer agreement, which as Ms. Gerber's name on it and Mr. Shorb's. It is an earned on receipt agreement for \$5,000.00. The agreement provides that the fee is earned upon receipt and nonrefundable. It also provides that if the client discharges the attorney, the client may be entitled to a refund if services for which the fee was paid are not completed. Because Ms. Gerber did not prepare, file, try, or defend a PCR for Mr. Shorb, retention of a portion of the fee he paid is tantamount to theft.

CSF Rule 2.2.1 provides that loss of a client's money is eligible for reimbursement if the loss results from a lawyer's "misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee." Rule 2.2.3 provides that reimbursement of a legal fee will be allowed if "the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant." The services Ms. Gerber performed for Mr. Shorb were minimal and insignificant. We recommend full payment of Mr. Shorb's claim.

### FINDINGS AND CONCLUSIONS

1. Susan Gerber was admitted to the Oregon State Bar on September 30, 1999.
2. On March 24, 2014, Ms. Gerber was notified of a disciplinary complaint against her.
3. Mr. Shorb was a client of Susan Gerber. The objective of her representation was to file a second petition for post conviction relief. She was retained on September 5, 2013, and received a fee of \$5,000.00.

4. On October 9, 2014, Ms. Gerber petitioned for her bar status to become inactive, due to a disability, which was approved by the Supreme Court on November 20, 2014.
5. Ms. Gerber admitted she became overwhelmed starting in December of 2013, due to a combination of personal and professional issues. She also admitted she developed a pattern of untimeliness. The record does not show Ms. Gerber communicated with Mr. Shorb about her petition for inactive status, secondary to disability.
6. Ms. Gerber spent 3.4 hours on Mr. Shorb's case.
7. Vicki Vernon took over Mr. Shorb's case briefly. No substantive work had been done when she got the case.
8. Ms. Gerber's standard attorney fee agreement requires reimbursement if the task is not completed.
9. The legal services provided by Ms. Gerber were minimal or insignificant, comprising no more than 3.4 hours and no work product useful to Ms. Vernon.
10. Mr. Lawson is entitled to reimbursement of the fee paid to Ms. Gerber in the amount of \$5,000.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
MILSTEIN (Connolly) 2016-31

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### Action Requested

The Client Security Fund Committee recommends reimbursement of \$18,170 to Joseph A. Connolly, III for his loss resulting from the conduct of attorney Jeffrey S. Milstein.

### Discussion

#### Background

In January 2014, Joe Connolly retained Jeffrey Milstein to represent him in his marital dissolution and with related criminal charges.<sup>1</sup> The initial fee agreement provided for an hourly rate of \$50. A subsequent retainer agreement provided for an hourly rate of \$80. Mr. Milstein told Mr. Connolly by email that he didn't *"see any way for this [divorce] case to go beyond \$2,500 total....I am also going to help Joe [with defending his interests in] the misdemeanor charge."* Ms. Connolly's mother paid an initial \$1,000 retainer and additional installment payments toward attorney fees, for a total payment of \$3,000.

A settlement was reached in the dissolution matter in May 2014, which provided that Mr. Connolly's wife would pay him \$18,170. On July 24, 2014, Mr. Milstein picked up the \$18,170 settlement check, made payable solely to Mr. Connolly, from the wife's lawyer. Mr. Milstein instructed Mr. Connolly to meet him at the bank. At the bank, Mr. Milstein told Mr. Connolly that he was required to run the settlement check through his trust account. Mr. Connolly endorsed it "under protest." Mr. Milstein then presented Mr. Connolly with an itemized bill showing that Mr. Connolly owed Mr. Milstein \$16,525. Mr. Connolly disputed the bill and made demand for the full amount settlement check. Rather than refund any portion of the settlement or attempt to resolve the dispute, Mr. Milstein withdrew all of the money from the trust account and used it pay his business expenses.

Disciplinary proceedings were initiated against Mr. Milstein as a result of his conduct in appropriating Mr. Connolly's settlement proceeds. One of the violations asserted in the formal

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<sup>1</sup> The Court records reflect that Mr. Connolly was represented by court-appointed counsel in defense of the criminal charges. Mr. Milstein did appear at a couple of disposition review hearings in the spring of 2014 in relation to possible revocation of Mr. Connolly's probation. He did not, however, represent Mr. Connolly in the probation revocation hearing; Mr. Connolly was appointed counsel and Mr. Milstein withdrew from the case on September 10, 2014.

complaint was conversion of funds. Mr. Milstein submitted a Form B resignation, which was accepted by the Oregon Supreme Court on November 3, 2016.

### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. CSF Rule 2.2. In addition, reimbursement of a legal fee will be allowed only if the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee had no trouble concluding that Mr. Milstein converted Mr. Connolly's settlement check to his own use. The more difficult question was whether Mr. Milstein performed legal services for Mr. Connolly that were more than "minimal or insignificant." Mr. Milstein contends that he performed significant legal services beyond that for which Mr. Connolly paid; Mr. Connolly disagrees.

Both Mr. Milstein and Mr. Connolly have credibility issues. Mr. Connolly has a history of drug abuse and currently has a mental impairment that affects his recall. Mr. Milstein is currently facing felony heroin and meth possession charges that arose during Mr. Milstein's representation of Mr. Connolly. The documents that Mr. Milstein submitted to support his legal fees include highly suspect entries, including charges for non-legal work and charges that appear clearly excessive on their face. The CSF investigator found those documents wholly unpersuasive and unreliable to support Mr. Milstein's claim for fees above the original \$3,000 paid by Mr. Connolly. Finally, the hourly rate agreed to is at issue. In the end, the CSF Committee gave the benefit of the doubt to Mr. Connolly and recommended payment of the full settlement check of \$18,170.

Attachment: Investigator's Report

OSB/Client Security Fund Investigative Report

*(Connolly v. Milstein)*

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Investigative Report (by L. Butterfield)	1
Check # 27613: payable to J. Connolly (7/22/14)	9/ Exhibit 1
Correspondence dated 5/19/15 from J. Milstein to OSB	10/ Exhibit 2
OSB Transcribed voicemail from Milstein to Connolly	13/ Exhibit 2
Jeffrey Milstein's billing statements	14/ Exhibit 4

## CLIENT SECURITY FUND INVESTIGATIVE REPORT

FROM: Lisanne Butterfield (investigating attorney)  
DATE: November 4, 2016  
RE: CSF Claim No. 2015-31  
Claimant: Joseph A. Connolly, III  
Accused Attorney: Jeffrey S. Milstein

### I. Investigator's Recommendation

The OSB Client Security Fund should approve Claimant's claim for the reimbursement of fees paid in the amount of \$3,000.

### II. Statement of the Claim

This claim stems from a marital dissolution settlement check (the "Settlement Check"), made payable to "Joseph A. Connolly, III" (the "Claimant"), in the amount of \$18,170, that Jeffrey S. Milstein (the "Accused") allegedly negotiated and cashed, against Claimant's authority and objections. Ultimately, the Accused deposited the funds into his operating account at JP Morgan/Chase Bank in Hillsboro, Oregon. **The Settlement Check was negotiated at Chase Bank on July 23, 2014, and is attached hereto as "Exhibit 1."**

The underlying scope of representation included the Accused's settlement of the Claimant's interests in a contested divorce case (the "Divorce Case") filed in Marion County Circuit Court (Oregon) and peripheral Oregon State Court criminal charges (the "Criminal Matters") involving the Claimant. On January 7, 2014, Claimant allegedly retained the Accused to represent him in connection with the dissolution of Claimant's marriage, and the Claimant's defense of criminal menacing charges filed on October 17, 2013, in Marion County Circuit Court (Oregon). Claimant allegedly paid the Accused an initial retainer in the amount of \$1,000, and agreed to pay the Accused additional fees at the rate of \$80/hour. Subsequently, the Claimant caused the Accused to be paid additional installment payments totaling \$3,000.

By email dated January 20, 2014, the Accused reassured the Claimant via an email to Claimant's mother, Jean Connolly,<sup>1</sup> that "*I don't see any way for this [divorce] case to go beyond \$2,500 total... I am also going to help Joe [Connolly with defending his interests in] ... the misdemeanor charge.*" It was upon the Accused's above representation that the Claimant's mother apparently paid additional funds (beyond the initial \$1,000) to the Accused in order to fund the Claimant's defense in the Divorce case and the Criminal Matters.

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<sup>1</sup> At all times relevant to this investigation, Jean Connolly was deceased. Therefore, it was difficult to test the credibility of the Claimant. The apparent impaired mental health capacities of the Accused and the Claimant also created credibility issues and made it difficult to verify facts. To the extent possible, the facts stated in this report were verified through other reliable witnesses who possessed first-hand knowledge.

Claimant alleged that he (and/or his mother, on his behalf) paid the Accused the total amount of \$3,000 in legal fees and costs, *plus* the amount that the Accused allegedly misappropriated/converted from the Settlement Check (as further explained below). In his application for reimbursement, Claimant further alleged that:

- The Accused performed only the minimum amount of work<sup>2</sup> required related to the Divorce Case and the Criminal Matters.
- The Accused deposited the Settlement Check into his trust account, but never gave Claimant his agreed-upon net pay-out. On this basis, Claimant alleged that the Accused improperly converted for his own use the Settlement Check.
- The Accused on several occasions confirmed that he would send the Claimant his portion of the settlement check, but the Claimant never received it.

### **III. Relevant Background Facts**

#### **A. The Fee Agreements and Agreed Upon Bill Rates**

In this case, the Claimant signed an *initial* Fee Agreement, which included an hourly rate of \$50 an hour. That initial bill rate was allegedly based upon the Accused’s belief that the Claimant was “disabled and homeless,” which classified the Claimant as “Modest Means: Tier 1.” Jean Connolly, the Claimant’s mother, allegedly informed the Accused that the Claimant was not homeless. Therefore, according to the Accused, that factor classified the Claimant as “Tier 2,” and the Accused unilaterally decided to raise the bill rate.

After the Accused increased the hourly bill rate to \$80, a *second* Fee Agreement was apparently signed by Jean Connolly at a rate of \$80 an hour. The Accused claims he never charged for his assistance with helping the Claimant “handle creditors and keep appointments” (presumably with Claimant’s probation officer and prospective mental health care providers, etc.). The Accused also reported that he provided legal services to the Accused in relation to “related criminal cases.”<sup>3</sup>

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<sup>2</sup> The Claimant credibly explained that the Accused appeared before Marion County Judge Donald Abar in a misdemeanor case only to resign as counsel for the Claimant. However, based on the evidence adduced thus far, the Accused performed only minimal (if any) work for Claimant’s criminal misdemeanor matters.

<sup>3</sup> A review of the Claimant’s criminal history reveals several misdemeanor charges, including at least one (1) menacing /interference charge in the relevant time period. The Claimant, however, denies that the Accused provided anything more than minimal legal services for any legal matter, including any criminal charges. On this point, the evidence seems more credible in Claimant’s favor.

## **B. The Meeting at Umpqua Bank to True-Up Unpaid Legal Fees and Negotiate the Settlement Check from the Divorce Dissolution**

On July 23, 2014, the Claimant, the Accused, and the Accused's (former) paralegal, Sunil Narayan, met at Umpqua Bank<sup>4</sup> in Salem, Oregon under the pretense of the Accused delivering to the Claimant the "financial records" to substantiate the legal fees and costs charged by the Accused to the Claimant, and to deposit the Settlement Check into the Accused's trust account to settle the outstanding fees allegedly owed. To accommodate the goal of negotiating a resolution, the Accused apparently arranged for Umpqua Bank to provide a private meeting room for the three men to meet and discuss the distribution of the Settlement Check funds.

At the Umpqua Bank meeting, the Accused and the Claimant apparently endorsed the Settlement Check, but the Claimant claims he did so under protest and with express objections to the Accused's proposed allocation of funds. The Accused reported that the Claimant wanted the entire check, and that the Claimant refused to pay any legal fees/costs. (For whatever reason, the Accused did not consider the \$3,000 previously received from the Claimant.) The Claimant reported that he did not believe it was reasonable for the Accused to retain funds to offset any alleged unpaid legal fees/costs against the Settlement Check amount.

According to the Accused, during his meeting with the Claimant at Umpqua Bank, the Accused informed the Claimant that he still owed outstanding legal fees and costs. It appears to be uncontroverted that the Claimant became enraged, paced back and forth, ultimately endorsed his name on the check, but refused to accept the Accused's explanation for how/why the Settlement Check would be allocated to compensate the Accused for his prior work allegedly performed on behalf of the Claimant. The Accused did not dispute that the Claimant expressly objected to the Accused's proposal for the Claimant to endorse the check and deposit it into the Accused's bank account in order to satisfy the Accused's outstanding legal fees and costs billed to that date.

The verbal confrontation between the Accused and the Claimant escalated to a point where Umpqua Bank personnel apparently refused to accept the check as a deposit into the Accused's trust account. Therefore, it was on this basis that the Umpqua Bank representative returned the check (uncashed) to the Accused. After growing hugely frustrated and angered by the Accused's efforts to apply the Settlement Check to the outstanding legal fees claimed, the Claimant stormed out of Umpqua Bank without the Settlement Check. Subsequently, within 24

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<sup>4</sup> Ultimately, the Accused deposited the check into his own "operating account" at JP Morgan/Chase Bank because Umpqua Bank refused to deposit it into the Accused's "trust account" at Umpqua based on the Claimant's objections at Umpqua Bank. **See Exhibit 2, Correspondence dated May 19, 2015, from the Accused to Susan Cournoyer (OSB Disciplinary Counsel).**

hours, the Accused and Mr. Narayan traveled together from Salem, OR to JP Morgan/Chase (in Hillsboro, OR) and deposited the Settlement Check into the Accused's personal account, which the Accused referred to as his "operating account."

Through interviews with the OSB Disciplinary Counsel, Mr. Narayan confirmed that JP Morgan/Chase was unaware of any objections or protestations by the Claimant when the Accused deposited the Settlement Check into his account.

#### **C. The Accused's Hostile and Threatening Voicemail Message to the Claimant**

On September 10, 2014, the Claimant received an aggressive, hostile, and threatening voicemail message from the Accused. (**See Exhibit 3, OSB's transcribed voicemail message from the Accused to the Claimant, dated April 7, 2015.**) Among other things, that hostile voicemail message, if assumed to be properly authenticated and reliable, corroborated the Claimant's other allegations regarding the Accused's unethical and dishonest conduct in threatening criminal charges against the Claimant in order to facilitate a favorable resolution regarding the underlying legal fees dispute.

#### **D. The Accused's Billing Statements**

On or about February 3, 2015, in response to the OSB Client Assistance Office's investigation of the Mr. Connolly's initial bar complaint, the Accused provided documents that purported to represent his Billing Statements and screenshots of his Umpqua Bank Trust Account. The Billing Statements appear to be created not contemporaneously with the work performed, and the Billing Statements are otherwise suspect for many reasons. Most notably, the Billing Statements reflect large blocks of time billed by the Accused to the Claimant for meetings at a farm to assist with "probation requirements" and for speaking with "Jean [Connolly] about options if [case] goes to trial." The Accused also improperly charged time to the Claimant for responding to the OSB's inquiries, yet the Claimant received no value for those purported services provided.

Finally, the Billing Statements include highly suspect entries and very large blocks of time (*i.e.* the 9/12/14 bill entry states: "Threats keep coming in... deal with multiple complaints... 100.00 hours... \$8,000.") **See Exhibit 4, Billing Statement (undated), which reflects a net<sup>5</sup> outstanding balance of \$11,378 due and owing to the Accused from the Claimant.** Taking all the facts into consideration, and notwithstanding the credibility issues of several witnesses, the Accused's Billing Statements, on their face, appear to be unreliable and unpersuasive to the issue of whether or not the Accused performed legal services for which he was entitled to charge the Accused \$3,000+.

#### **E. The Spend Down of the Settlement Check by the Accused**

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<sup>5</sup> The net amount owing reflects a payment in the amount of \$18,170 for the "Trust Check."

The Accused reported that he no longer holds any of the \$18,170 in his trust account. How the Accused allocated those funds is now undeterminable (absent additional, protracted discovery). However, based on the bank records, the dates and amounts of the withdrawals are as follows:

- 8/4/14 in the amount of \$2,000
- 8/12/14 in the amount of \$1,170
- 8/22/14 in the amount of \$5,000
- 9/8/14 in the amount of \$2,000
- 9/15/14 in the amount of \$2,000
- 9/30/14 in the amount of \$1,000
- 10/8/14 in the amount of \$1,000
- 10/23/14 in the amount of \$3,000
- 10/29/14 in the amount of \$1,000.

The Accused reported that he deposited all of the above into his business account “primarily for business expenses and other case work” that he performed for the Claimant. The Accused failed to provide verifiable documentary evidence or reliable statements to support this aspect of his defense. The Claimant disputes that any of the above amounts were properly charged by the Accused for legal services or “other work” that the Accused provided to the Claimant. The Accused’s lifestyle, personal financial pressures, and emotional state of mind at the relevant time period implies a notable period of financial desperation and vulnerability for the Accused. Therefore, it seems highly plausible that the Accused withdrew the funds without authority from the Claimant, and without performing work that would otherwise entitle the Accused to retain the subject funds.

## **F. The Credibility of the Witnesses**

### **1. The Accused’s Questionable Credibility**

Within the context of the CAO’s investigation, the Accused reported that the Claimant threatened him and his family. Both the Accused and the Claimant have a history of erratic, hostile behavior, and drug use. Via email dated 9/28/16, the Accused stated:

- I am disputing this claim.
- All fees were earned. The agreement was an hourly agreement.
- I handled 2 cases for [Connolly], including a criminal case and a contested divorce that went to trial.
- There was never discussion of a flat fee.
- Mr. Connolly collects disability and his ex-wife was initially his guardian and representative payee.

Interestingly, the Accused did not deny leaving the threatening September 10, 2014, voicemail for the Claimant. Rather, the Accused stated that he left that voicemail because of his



ethical obligations to report Elder abuse that he personally witnessed. (On this point, the Accused's statements were not credible.)

At various times relevant to the undersigned's investigation of this claim, the Accused presented an unreliable, troubling account of the facts, particularly regarding his reasons for withholding the subject Settlement Check funds. The Accused was difficult to pin down for statements. In the rare instances when the Accused was available to the phone, he presented a rambling, incoherent (and at times, inconsistent) account of his attorney-client relationship with the Claimant. In short, the Accused presented an unimpressive and unstable witness who relayed scattered facts and untrustworthy information.

## 2. The Claimant's Questionable Credibility

Notwithstanding the Accused's questionable veracity on key factual issues, the Claimant likewise presented credibility issues. The Claimant's story was particularly dubious regarding his command of the factual history that led to the subject billing structure. Also, the Claimant, on several occasions, could not recall prior telephone interviews with the undersigned investigator. Moreover, the Claimant referred undersigned investigator to Lori Olson (psychiatric healthcare provider), whom the Claimant described as his *current* "mental health advocate." The Claimant offered the referral to Dr. Olson to help corroborate his story. In July 2016, however, Ms. Olson reported that the Claimant had not been her patient for over 2 years. Therefore, on this one relatively neutral fact, the Claimant either wrongly remembered the last date when he had been treated by Dr. Olson, or the Claimant was hopelessly divorced from reality.

### **G. The OSB Disciplinary Counsel's Investigation & the Accused's Resignation**

Pursuant to its letter dated April 7, 2015, the OSB Client Assistance Office referred to the OSB Disciplinary Counsel consideration of Mr. Connolly's complaint against the Accused, which implicated the provisions of RPC 1.5(a) [excessive fee: collecting a fee in excess of agreed-upon fee]; RPC 1.15-1(d) [Failure to deliver undisputed funds to client]; and RPC 3.4(g) [threatening to present criminal charges to obtain an advantage in a civil matter]. Effective November 3, 2016, the Oregon Supreme Court accepted the Form B resignation of attorney JEFFREY SCOTT MILSTEIN, Bar No. 084228.

### **H. The Marion County Criminal Investigation**

Via email dated April 10, 2015, Michael Korcek, CFCE, Detective (Salem Police Department) confirmed that he investigated a criminal complaint filed by Joseph Connolly against the Accused. That criminal investigation involved theft allegations, which stemmed from the Accused's alleged conversion of funds from the Settlement Check. The Marion County District Attorney's office (the "DA") reviewed the Salem Police Department's criminal investigation and ultimately, the DA held the criminal investigation in abeyance pending the OSB Disciplinary Counsel's related investigation of ethical violations by the Accused.

#### IV. Findings and Conclusions

- A. On or about January 7, 2014, Claimant retained Jeffrey S. Milstein, the Accused to represent Claimant's interests in a marital dissolution action filed in Marion County Circuit Court, Case No. 13C-33351 (the "Divorce Case").
- B. The Accused was an active member of the Oregon State Bar at the time of the loss. At all times relevant, the Accused maintained an office in Portland, Oregon.
- C. The Accused agreed to protect the Claimant's interests in the Divorce Case for a flat rate of \$2,500. Subsequently, in response to the Accused's request, the Claimant's mother (Jean C. Connolly), paid the Accused an additional \$500.
- D. The Accused converted to his own use the Settlement Check made payable to "Joseph Connolly," the Claimant, in the amount of \$18,170, and the Accused used that money to apply to outstanding legal fees and costs allegedly still owing by Claimant.
- E. Claimant paid the Accused both the \$3,000 and the Settlement Check proceeds, but Claimant did not receive the benefit of anything more than minimal legal services from the Accused.
- F. Based on the above findings, and pursuant to RULES OF THE CLIENT SECURITY FUND, Section 2.5.1, the subject loss of money "arose from, and was because of an established lawyer-client relationship."
- G. Despite repeated demands for same, the Accused failed and refused to respond to Claimant's requests for information on the Case, or for return of funds paid.
- H. On or about July 24, 2014,<sup>6</sup> Claimant knew or should have known of the subject loss.
- I. Claimant filed this claim with the CSF on September 28, 2015; therefore, the claim was timely filed pursuant to RULES OF THE CLIENT SECURITY FUND, Section 2.8(b) & (d), which require that the claim must be "filed with the Bar within two years *after* the latest of... (b) ...the lawyer's resignation from the Bar; or...(d) the date the claimant knew or should have known...of the loss."
- J. Pursuant to ORS 9.655, the subject claim should be approved in the amount of \$3,000, and the CSF should reimburse the Claimant the net amount of \$3,000 based on the following findings:
  - a. The subject losses were caused by the Accused's dishonest conduct; and

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<sup>6</sup> According to the OSB Disciplinary Counsel's file records and the Accused's bank records, July 24, 2014, is the date that the Accused met with the Claimant at Umpqua Bank to negotiate and ultimately convert the settlement check for the Accused's benefit. The Accused did so despite protests from the Claimant, who demanded that the Accused pay the funds to the Claimant.

- b. The subject claim of loss is less than \$5,000, and was caused by the Accused who has “resigned from the bar due to circumstances arising out of the dishonest conduct.”
- K. Pursuant to the RULES OF THE CLIENT SECURITY FUND, Section 2.2.1, the Accused’s alleged loss of money is eligible for reimbursement based on the following:
- a. The claim was made by the injured client;
  - b. The loss was caused by the Accused’s dishonest conduct;
  - c. The loss results from the Accused’s refusal or failure to refund an unearned legal fee, which in this instance includes the Accused’s “dishonest conduct” (*i.e.*, the Accused made a false promise to provide legal services to the Claimant in exchange for the advance payment of a legal fee).
- L. Pursuant to the RULES OF THE CLIENT SECURITY FUND, Section 2.2.3(ii), the Accused performed *minimal* or *insignificant* legal services for the benefit of the Claimant. (The evidence shows that the Accused performed “minimum work required to satisfy divorce [decree] requirements.”) Even if we assume that the Accused performed *some* legal services for the Claimant, and that the Accused was entitled to be paid *some* amount of money, the Accused paid himself by cashing the Settlement Check. Therefore, the Claimant should be reimbursed \$3,000 previously paid to the Accused.
- M. Pursuant to the RULES OF THE CLIENT SECURITY FUND, Section 2.3, the loss claimed herein was not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.

### Conclusion

Based on all of the above, it is recommended that the CSF approve the amount of \$3,000 to be paid to the Claimant from the Fund.

Respectfully submitted:

/s/ Lisanne M. Butterfield

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-23 HAWES (Sansome) Request for BOG Review

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### Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### Discussion

#### *Summary of Facts*

Mr. Sansome retained Mr. Hawes on March 17, 2015 to represent him in a civil case against various government entities for civil rights violations and multiple other claims arising from his arrest, prosecution, 9-day jury trial, and subsequent acquittal on multiple counts of sex abuse.

The fee agreement reflects that Mr. Sansome paid \$12,500 for legal services that were to be billed at \$125 per hour together with a hybrid contingent and pro bono agreement for additional legal services. The agreement provides that Mr. Hawes would place the money in his trust account, but he did not do so. Instead, he deposited the funds into his business account on March 17, 2015. The funds were depleted by May 8, 2015.

Although Hawes produced no tangible work in exchange for the \$12,500 he collected from Mr. Sansome, his itemized invoice reflects over 125 hours on Mr. Sansome's case over a 3 ½ month period, including reviewing the volumes of records from the criminal investigation and trial<sup>1</sup> and researching applicable law. Without tangible work product, it is difficult to test the credibility of Mr. Hawes' claim that he did the work. However, the hours claimed are not unreasonable given the complexity and novelty of some of the claims.

#### *CSF Committee Analysis and Applicant's Appeal*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" includes a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned. CSF Rule 2.2.1. Reimbursement of a

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<sup>1</sup> Mr. Sansome provided Mr. Hawes six CDs of documents, interviews, transcripts of the criminal trial, motions and other documents related to the criminal trial, videos, Albany Policy and DHS policy manuals and numerous other documents.

legal fee will only be allowed, however, if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee determined that by depositing the \$12,500 into a regular checking account, rather than into a lawyer trust account, Mr. Hawes effectively dispersed those funds to himself prior to earning them, thereby meeting the definition of dishonest conduct in Rule 2.2.1. The Committee also found, however, that Mr. Hawes performed significant legal services that would account for the total amount of the retainer. Therefore, the Committee denied reimbursement.

Mr. Sansome takes issue with the Committee's decision, noting that he never received any product for the work that Mr. Hawes alleges he performed. It may be worth noting that formal disciplinary proceeding were recently approved against Mr. Hawes for his conduct in representing Mr. Sansome; the charges are failure to deposit the funds in his trust account and failure to respond to the bar's inquiries. They do not include dishonesty or charging a clearly excessive fee.

Attachments: Investigator's Report  
Claimant's Request for Review

## CLIENT SECURITY FUND INVESTIGATIVE REPORT

**FROM:** Karen Park  
**DATE:** 09/24/2016  
**RE:** CSF Claim No.: 2016-23  
Claimant: Dain Sansome  
Amount of Claim: \$12,500  
Attorney: Jason Hawes

### Investigator's Recommendation

I recommend that this claim be denied. Attorney Hawes ultimately provided sufficient legal services to Mr. Sansome to account for the \$12,500 retainer. Mr. Sansome rejected those services after they were provided by terminating attorney Hawes before a civil complaint was produced.

### Statement of Claim

This claim arises out of Dain Sansome's pursuit of civil claims resulting from his arrest on 11/16/2011, prosecution and acquittal following a 9 day jury trial on 12/13/2013 on multiple counts of sex abuse.

Mr. Sansome was represented by attorney Steven Sherlag in the criminal case and retained Mr. Sherlag to pursue civil claims on behalf of Mr. Sansome, his wife and daughters, against the Albany Detective who investigated the criminal case, DHS employees, the City of Albany, Linn County, the State of Oregon and others for civil rights violations, malicious prosecution, fabrication of evidence and other claims. A copy of the tort claims notice prepared and served by Mr. Sherlag is attached as Exhibit 1.

Mr. Sherlag continued to work on the civil case until December 2014 at which time Mr. Sansome and his family members expressed their displeasure to Mr. Sherlag about the length of time it was taking to develop the civil complaint. Attached as Exhibit 2 is a copy of an email sent by Mr. Sherlag to the Sansomes explaining the complexity of the civil case and the breakdown in the professional relationship. It appears that Mr. Sherlag resigned from the civil case in December 2014 and that Mr. Sansome consulted with attorney James Leuenberger on or around 12/29/2014, but Mr. Leuenberger declined the case at that time.

On 03/17/2015, Mr. Sansome, his wife and daughters, retained attorney Jason Hawes to represent them in the civil case. The fee agreement reflects that the Sansomes paid a retainer in the amount of \$12,500 for legal services billed at \$125 per hour together with a hybrid contingent and pro bono agreement for additional legal services. A copy of the fee agreement is attached as Exhibit 3.

Under the terms of the fee agreement, attorney Hawes agreed to place the \$12,500 in his IOTLA account and to draw on those funds as earned. He did not do so.



On 03/23/2015, attorney Hawes deposited the \$12,500 into a regular business checking account opened on 03/17/2015. The funds were depleted by 05/08/2015. Copies of the bank statements are attached as Exhibit 4.

Mr. Sansome provided six CDs of documents, interviews, transcripts of the criminal trial, motions and other documents related to the criminal trial, videos, Albany Police and DHS policy manuals and numerous other documents to attorney Hawes, copies of which Mr. Sansome shared with me. The information on the discs is voluminous and would take many hours to review and absorb and in my opinion would have been necessary for attorney Hawes to review prior to drafting a civil complaint.

Attached as Exhibit 5 is a copy of a billing statement attorney Hawes provided to me, which Mr. Sansome denies receiving, which shows that as of 04/28/2015, attorney Hawes incurred fees of \$10,575, but had withdrawn \$11,889.18 from Mr. Sansome's funds, leaving a balance of \$610.82. As of 05/08/2015, attorney Hawes had depleted the funds, but continued to work on the case and billed an additional 125.8 hours through 07/30/2015.

On 08/04/2015, Mr. Sansome fired attorney Hawes. Mr. Sansome states attorney Hawes was fired for failing to produce a draft complaint in a timely manner. Attorney Hawes states that his termination by Mr. Sansome came out of the blue and that Mr. Sansome had not expressed any dissatisfaction prior to the termination. Attorney Hawes states that he kept Mr. Sansome informed of the status of the case through emails and other contact until his abrupt termination.

Mr. Sansome and attorney Hawes believed that the statute of limitations on the claims would run on 12/13/2015, two years from the date of Mr. Sansome's acquittal, an opinion that was also shared by Mr. Sherlag. Mr. Sansome subsequently retained attorney Leuenberger in the civil matter. Attorney Leuenberger filed a complaint in U.S. District Court prior to 12/13/2015, however Judge Aiken granted the defendants' motion to dismiss on the grounds that the complaint was not timely filed. Attorney Leuenberger did not file a response to the motion to dismiss and his motion for reconsideration was denied. A notice of appeal has been filed.

Attorney Hawes states that Mr. Sansome did not make any demand for refund of the \$12,500 until 01/29/2016. Attorney Hawes denies Mr. Sansome's claims that attorney Hawes avoided him, refused to meet with him and failed to respond to Mr. Sansome's inquiries.

### **Findings and Conclusions**

CSF Rule 1.8 defines "dishonest conduct" as "a lawyer's willful act against a client's interest by defalcation, by embezzlement, or other wrongful taking."

CSF Rule 2.2 requires the claimed loss to be caused by dishonest conduct of the lawyer.

CSF Rule 2.2.3 (i) and (ii) states that reimbursement is allowed only if no legal services were provided to the client or if the legal services provided were minimal or insignificant.

CSF Rule 2.2.4 states that if 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.

By depositing the \$12,500 into a regular checking account, rather than his IOLTA account, attorney Hawes effectively dispersed those funds to himself on 03/23/2015, prior to earning them, which would meet the definition of dishonest conduct in Rule 1.8. However, because attorney Hawes performed legal services sufficient to account for the total amount of the retainer after 03/23/2015, I do not believe acceptance of this is justified under the Rules.

The Sansomes were anxious to get a civil complaint filed; however, as Mr. Sherlag had previously informed them, the civil case was very complicated and was made more so by the Sansomes “goals” for the civil suit (see the attached Exhibit 6). While those goals were drafted by Mr. Sansome’s father, Dr. Kenneth Sansome, Dr. Sansome was very involved in the pursuit of the civil case and I believe it was reasonable, and was expected, that attorney Hawes would be responsive to Dr. Sansome as well as the rest of the Sansome family.

In my opinion it was reasonable and necessary for attorney Hawes to engage in the review of all the documents related to the criminal trial, since the conduct of the Albany Detective, the prosecutor and others formed the basis of the civil suit. It would have been much more efficient for the Sansomes to continue to retain Mr. Sherlag in the civil case, but that does not appear to have been possible due to the failure of that professional relationship.

The research engaged in by attorney Hawes also appears reasonable for the complicated issues presented by the civil case.

Mr. Sansome believes the legal services provided by attorney Hawes were of no significant value to him because attorney Hawes failed to produce a draft complaint. However, Mr. Sansome terminated attorney Hawes four months before what they all believed to be the date on which the statute of limitations ran, and before attorney Hawes felt that he was in a position to draft a viable complaint.

While Rule 2.2.4 does not exactly fit this scenario, the facts fit the spirit of the rule. I believe attorney Hawes provided legal services to Mr. Sansome that were more than sufficient to account for the \$12,500 retainer. Although attorney Hawes violated ethical rules by failing to deposit those funds in his IOLTA account, because attorney Hawes ultimately provided sufficient legal services to Mr. Sansome, which Mr. Sansome rejected by firing him, my recommendation is that this claim be denied.

Respectfully,

  
\_\_\_\_\_  
Karen J. Park



# STEVEN J. SHERLAG

ATTORNEY AT LAW

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A PROFESSIONAL CORPORATION

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June 9, 2014

## Via Hand Delivery

State of Oregon  
Department of Administrative Services  
Michael Jordan, DAS Director and State Chief Operating Officer  
155 Cottage St. NE, U20  
Salem, Oregon 97301

Jim Delapoer  
Albany City Attorney  
201 W. First Avenue  
Albany, Oregon 97321

Office of the County Attorney for Linn County  
Linn County Courthouse  
Armory Annex, Room 123  
104 SW Fourth Ave.  
Albany, Oregon 97321

Benton County Counsel Office  
205 NW 5th St.  
Corvallis, OR 97330

ABC House  
1054 29th  
Albany, Oregon 97321

Re: Tort Claim Notice re Dain Sansome

Dear All:

By this letter you are placed on notice pursuant to the Oregon Tort Claims Act ORS 30.275, regarding the negligent, reckless, and/or malicious investigation, prosecution, and presentation of evidence of child sex abuse allegations against Dain Sansome, including, but not limited to,

1. breach of statutory duty to investigate child abuse allegations in a "legally sound, child sensitive" manner as set forth in accepted protocols designed to result in accurate and reliable evidence,
2. fabrication of evidence including presentation of materially inaccurate information and evidence,
3. improper interviewing of a child,
4. failure to adequately and completely investigate criminal charges prior to institution of said charges, including failure to adequately preserve and present exculpatory information, and undertake DHS actions against the claimants,
5. malicious prosecution and malicious institution of DHS action,
6. violations of Oregon state law and rights guaranteed by the Oregon Constitution, Art. I, §§ 10, 11, 15, 16, 20, among, but not limited to, the Right to Counsel, Fair Trial, Grand Jury, and Equal Protection,
7. violations of rights guaranteed by the United States Constitution, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Am., among but not limited to the Right to Counsel, Fair Trial, Grand Jury, Due Process, and
8. unlawful interference with familial relations/association.

The breach of duties include not only the above failures, but also

1. failure to supervise employees,
2. failure to adequately train employees,
3. failure to correct unlawful and unconstitutional practices, policies and customs, and by such in fact implementing, adopting, and ratifying said practices, policies and customs, resulting in violations Oregon state law, the Oregon Constitution, and the United States Constitution as described above.

This claim is filed on behalf of Dain Sansome, Suya Sansome, Mei Sansome, Shino Sansome, and Lyla Sansome.

In summary, on or about November 16, 2011, Mr. Sansome was wrongfully arrested for the offenses of Unlawful Sexual Penetration in the First Degree and three (3) charges of Sexual Abuse in the First Degree, by a member of the Albany Police Department, inside the limits of the City of Albany, Counties of Linn and Benton, and State of Oregon. Mr. Sansome was subsequently wrongly charged with four (4) counts of Sexual Abuse in the First Degree. Mr. Sansome was acquitted of all charges after jury trial on December 12, 2012.

To preserve their right to seek compensation for their injuries, Dain Sansome, Suya Sansome, Mei Sansome, Shino Sansome, and Lyla Sansome give formal notice of a claim for damages against the City of Albany for the conduct of Albany Police Department Detective Glen Fairall, and any other employees who caused or assisted in the unlawful prosecution of Dain Sansome and separation of the Sansome family, and at all pertinent times acted under color of law.

To preserve their right to seek compensation for their injuries, Dain Sansome, Suya Sansome, Mei Sansome, Shino Sansome, and Lyla Sansome give formal notice of a claim for damages against Linn and Benton Counties, the State of Oregon, and the Department of Human Services for the conduct of Matthew Stark, and any other employees who caused or assisted in the unlawful prosecution of Dain Sansome and separation of the Sansome family,



JUNE 9, 2014

PAGE 3 of 3

or failed in their training and supervision of said employees, and at all pertinent times acted under color of law.

To preserve their right to seek compensation for their injuries, Dain Sansome, Suya Sansome, Mei Sansome, Shino Sansome, and Lyla Sansome give formal notice of a claim for damages against the State of Oregon and Linn and Benton Counties for the conduct of any employees who caused or assisted in the unlawful prosecution of Dain Sansome and separation of the Sansome family, or failed in their training and supervision of said employees, and at all pertinent times acted under color of law.

To preserve their right to seek compensation for their injuries, Dain Sansome, Suya Sansome, Mei Sansome, Shino Sansome, and Lyla Sansome give formal notice of a claim for damages against ABC House for the conduct of any employees who caused or assisted in the unlawful prosecution of Dain Sansome and separation of the Sansome family for failing to train and supervise Albany Police Department Detective Glenn Fairall, and for the actions of employees/director of ABC House for active role supporting Fairall in the prosecution in any and all manners including providing facilities, equipment, training, trial support, and trial testimony in support of Fairall and the government's prosecution, or failed in their training and supervision of said employees, and at all pertinent times acted under color of law.

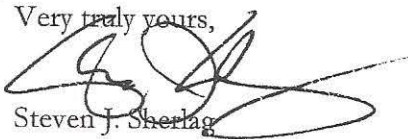
To preserve their right to seek compensation for their injuries, Dain Sansome, Suya Sansome, Mei Sansome, Shino Sansome, and Lyla Sansome give formal notice of a claim for damages against the State of Oregon and Linn County for the policies, practices, and customs violations outlined above for the actions of the Linn County District Attorney Doug Marteeny and the Linn County Multidisciplinary Child Abuse Protection Team for failing to train, supervise, monitor, and correct policies and procedures regarding sexual abuse investigations and prosecutions, and at all pertinent times acted under color of law.

This notice is not a comprehensive list of the torts that the plaintiffs may allege. It is only notice that harmful conduct occurred and fair notice of some of the actions that may have caused that harm.

Please preserve all evidence related to this matter. I will refrain from filing suit for thirty (30) days to allow you to investigate the incident and to contact me.

Please direct all correspondence and/or questions to my office.

Very truly yours,



Steven J. Sherlag

SJS/ksf

Cc: Dain Sansome  
Suya Sansome  
Mei Sansome  
Shino Sansome  
Lyla Sansome

**Ken Sansome**

**From:** "Steven Sherlag" <steven@sherlaglaw.com>  
**Date:** Monday, December 08, 2014 5:36 PM  
**To:** "Ken Sansome" <ken.sansome@hotmail.com>  
**Cc:** <dainsansome@gmail.com>; "Kristine San Filippo" <Kristine@sherlaglaw.com>  
**Subject:** RE: Sansome

Ken,

I told you'd get back to you today, and I have. I must say that initially, while I understand that you are in a lot of pain and have suffered greatly over the years that this inexplicable case has gone on, your emails to me on Friday were out of line. Way out of line. If that is the manner in which I will be spoken to, go find another lawyer.

You should know that I have always taken Dain's case seriously -- the criminal case and now the civil case, have extremely complicated facts and legal scenarios. To do the job right has an uncertain future, to do it half-way and to rush will be more costly and will open the door to various legal attacks.

More important than anything else, I must say that I seriously question whether or not I want to be involved in the matter any further. While I very much like you and all of your family and think you are all great people, the stress that you and your family are undergoing and attempting to delegate to me and my staff is counterproductive and frankly I think quite unhealthy for you and your family. We dealt with a ton of it during the criminal case without complaint. We won't in the civil case. You need to get perspective and distance. We hoped you'd gain some over the summer, but you didn't.

Civil litigation is not a place for the vengeful, nor is it a place where you are likely to find a salve for your wounds. And the more that you and your family spins out, the more it complicates the case and our ability to focus or desire to focus on the hard work it takes to prosecute the matter. This is where Kristine is coming from too.

We are frankly concerned that the Sansome family cannot handle the stress of prosecuting the civil suit and how you will melt down if you are unsuccessful. While we understand emotions run high, it is not our job to manage your emotional states. While we are here to support you, we cannot carry the burden of litigation and emotional support, including carrying your stress-- it is a distraction and doesn't help produce a successful work product, in fact it is counterproductive.

We are not giving up on your family or your case--we feel very passionately that Fairall/DDA, etc should be held accountable, but we are not sure that civil suit is most effective way to make change (Kristine's personal opinion). Even if we prevail in the suit, what changes will occur? Fairall and Eder will NOT lose their jobs over this--will this help the family heal? If we don't prevail, how will the family be dealt with it. More anger, resentment, PTSD. Victimized again?

You should carefully consider spending time, energy, voice, experience, and resources advocating for justice and against Measure 11 and other related issues where you may be



more effective using resources, experience, and intelligence to write letters, getting involved in community action groups (something like the Partnership for Safety and Justice)

The civil process is slow, and we will not be able to neglect other cases and clients and put your case as a priority all the time. In this line of work, emergencies come up, and we cannot ignore other clients and commitments.

Best regards,

*Steven J. Sherlag, P.C.*

Attorney at Law

The American Bank Building

621 S.W. Morrison Street, Suite 900

Portland, Oregon 97205

503.227.5200

503.227.2530 fax

503.422.0442 cell

steven@sherlaglaw.com

sherlaglaw.com

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## HOURLY/CONTINGENT FEE AGREEMENT

This fee agreement ("Agreement") is entered into on MARCH 18, 2015, between Jason Hawes ("Lawyer") and DAIJSUYA, MEI, SAIND LYA SAUSONG ("Client").

1. Client hereby retains Lawyer to represent Client as legal counsel in connection with the following matter: MALICIOUS PROSECUTION BASED ON CULTURE RIGHTS.

2. It is expressly understood that Client retains Lawyer for the above-described representation only. This representation does not include or extend to any other representation, or appeal of any order or judgment, any trial, or any related proceeding before any body, whether judicial, administrative, or legislative, unless specifically described above.

3. As compensation for legal services, Client agrees to pay Lawyer a fee, which will be computed on an hourly basis. The fees will be billed at \$125 per hour. Lawyer retains the right to increase the hourly rates set forth above from time to time. In addition, Client agrees to pay Lawyer 11% of all sums recovered. The term *sums recovered* means the total economic benefit obtained. If a structured settlement (involving future payments) is obtained, the fee percentage will be applied to any present payment plus the present value of future lump-sum and periodic payments and will be paid in full from sums presently received and not out of future or periodic payments. My lawyer may structure all or part of his fees in future payments. Attorney fees awarded by the court will be in addition to the percentage fee on other sums recovered. It is expressly understood that work will be provided to Client with quality, economical, and efficient service.

4. Lawyer will charge Client for the following services: consultations and telephone calls with Client; consultations and telephone calls with witnesses, other lawyers, or any other person associated with Client's case; legal research; drafting and preparing legal documents; drafting and preparing letters; depositions; trial preparation; travel time; investigation; court appearances; and all other necessary services. Client will be charged by fractions of an hour to the nearest one-tenth.

5. Client agrees to pay all costs incurred by Lawyer, including but not limited to filing fees, service fees, court reporter fees for depositions and hearings, trial court fees, photocopying costs, long-distance telephone calls, excessive postage, witness fees, mileage fees, and other necessary court and office costs. Lawyer will not incur costs of more than \$ 50.00 without first notifying Client. Lawyer may notify Client of future costs and Client will pay those costs to Lawyer at least 10 days before the costs are incurred.

6. Client agrees to place \$12,500.00 into a trust as a retainer. Client will maintain the sum of \$0.00 in trust.

7. Retainer funds are placed in a pooled trust account. Lawyer accounts for the funds and draws against the funds as agreed to pay attorney fees and advanced costs. Any interest earned by the pooled trust account is required to be paid to the Interest on Lawyer Trust Accounts (IOLTA) program accounts by statute and the Oregon Rules of Professional Conduct.

8. Each month the law firm will send a statement specifying the services rendered, the amount of the fees for services rendered, costs incurred, and the balance in the trust account or balance owing. If a balance is owing, that sum is due on billing. A late-payment charge of 0% per month applies to any fees or costs not paid within 30 days of billing.

9. Client agrees to use any money received as a result of Lawyer's legal work to pay any unpaid attorney fees. Client will pay any attorney fees and costs when Client receives



Client's first payment; if any balance remains owing to Lawyer, subsequent payments to Client will be used to pay any balance until the balance is paid in full.

10. Client will receive copies of all documents filed in Client's case and all correspondence. Client also may request copies of other written documents, including legal research.

11. Lawyer will not be obligated to complete the work for Client or on Client's case and may withdraw or, if necessary, seek leave to withdraw as Client's counsel at any time if Client fails to meet the financial agreements set forth in this Agreement. Lawyer also may withdraw or, if necessary, seek leave to withdraw as Client's counsel if Client fails to cooperate with Lawyer on Client's case, or as otherwise permitted by the Oregon Rules of Professional Conduct. If a motion for leave to withdraw is necessary, written notice of the motion will be sent to Client's last known mailing address.

12. Client may discharge Lawyer for any cause upon telephone notice followed by written notice either from Client or from the new lawyer whom Client chooses to hire. Client may secure additional copies of Client's file at any time on payment to Lawyer of any balance owing on all fees and costs, including the costs of photocopying Client's file.

13. If Lawyer or Client incurs legal fees or costs for collecting money or services due and owing under this Agreement, the prevailing party will be entitled to attorney fees and collection costs, whether or not a suit or an action is filed. If a suit or an action is filed, either party may recover attorney fees both at trial and on appeal. If a suit or an action is instituted in a Bankruptcy Court for the United States District Court to enforce or interpret any of the terms of this Agreement, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Lawyer in a bankruptcy proceeding, the party not prevailing will pay the prevailing party's actual fees and expenses, costs, and disbursements.

14. Both parties agree that if a dispute arises regarding the amount of fees, the dispute will be submitted to the Oregon State Bar Fee Arbitration Program for binding arbitration. Client and Lawyer agree that if litigation occurs other than with respect to the amount of fees, venue will be in Clackamas County, Oregon, and Oregon law will apply.

15. Lawyer agrees to provide conscientious, competent, and diligent services, and will seek to achieve a resolution of the matter that is just and reasonable for Client. However, Lawyer cannot and does not guarantee a result or final outcome of any case and Lawyer has made no representation and makes no guarantee regarding the final result or outcome of this case.

16. Lawyer may appoint another lawyer to close Lawyer's law office if Lawyer dies or becomes disabled or impaired. In that event, Client agrees that the assisting lawyer can review Client's file to protect Client's rights and can assist in closing Lawyer's law office.

17. Lawyer will send to Client information and correspondence throughout the case. These copies are Client's file copies. Lawyer will also keep the information in Lawyer's file. When Lawyer has completed all the legal work necessary for Client's case, Lawyer will close Lawyer's file and return original documents to Client. Lawyer will store the file for approximately 10 years and then destroy the file.

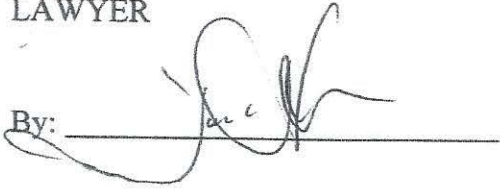
18. Time is of the essence in this Agreement. Any modification of this Agreement will be binding only if made in writing and signed by both parties.

19. If there is an appeal of this matter, work on the appeal must be the subject of a separate fee agreement.

20. Client hereby acknowledges receipt of a copy of this Agreement.

LAWYER

By: \_\_\_\_\_



CLIENT

By: \_\_\_\_\_

DAW SAUSOM  
Sup  
Mei Mai  
Shiho GHI NO  
Lyla LKLA



JASON C HAWES  
HAWES LAW LLC  
5200 MEADOWS RD #150  
LAKE OSWEGO OR 97035-3202

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The Privacy Notice for Pacific West Bank has not changed and is  
available at [www.BankPacificWest.com](http://www.BankPacificWest.com). A paper copy may be  
obtained via mail upon request by calling 800-881-0476 or 503-905-2220.  
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=====  
communityCHOICE business checking ACCOUNT XXXXXX1514  
=====

MINIMUM BALANCE	12,248.00	LAST STATEMENT 03/17/15	.00
AVERAGE BALANCE	12,444.00	1 CREDITS	12,500.00
		1 DEBITS	252.00
		THIS STATEMENT 03/31/15	12,248.00

- - - - - DEPOSITS - - - - -			
REF #.....DATE.....AMOUNT	REF #.....DATE.....AMOUNT	REF #.....DATE.....AMOUNT	
03/23 12,500.00			

- - - - - CHECKS - - - - -			
CHECK #..DATE.....AMOUNT	CHECK #..DATE.....AMOUNT	CHECK #..DATE.....AMOUNT	
1001 03/30 252.00			

- - - - - I N T E R E S T - - - - -

AVERAGE LEDGER BALANCE:	.00	INTEREST EARNED:	.00
INTEREST PAID THIS PERIOD:	.00	DAYS IN PERIOD:	
		ANNUAL PERCENTAGE YIELD EARNED:	.00%

- - - ITEMIZATION OF OVERDRAFT AND RETURNED ITEM FEES - - -

*****			
*		TOTAL FOR	TOTAL
*		THIS PERIOD	YEAR TO DATE
*			
* TOTAL OVERDRAFT FEES:		\$ .00	\$ .00
* TOTAL RETURNED ITEM FEES:		\$ .00	\$ .00
*****			

- END OF STATEMENT -

JASON C HAWES  
 HAWES LAW LLC  
 5200 MEADOWS RD #150  
 LAKE OSWEGO OR 97035-3202

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 Coming soon to a mobile phone near you!  
 Keep an eye open for Pacific West Bank's new mobile banking app.  
 Check balances, transfer money, pay bills, and even deposit checks. All  
 from the comfort of your couch, the third fairway, or most anywhere!  
 =====

=====  
 communityCHOICE business checking ACCOUNT XXXXXX1514  
 =====

MINIMUM BALANCE	610.82	LAST STATEMENT 03/31/15	12,248.00
AVERAGE BALANCE	6,028.50	CREDITS	.00
		13 DEBITS	11,637.18
		THIS STATEMENT 04/30/15	610.82

----- CHECKS -----					
CHECK #..	DATE.....	AMOUNT	CHECK #..	DATE.....	AMOUNT
1002	04/01	500.00	1005*	04/07	1,000.00
1003	04/01	100.00	1007	04/16	2,500.00
1004	04/06	500.00	1008*	04/21	637.00
			1010	04/20	500.00
			1011	04/22	1,000.00
			1012	04/24	30.00

(\*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

----- OTHER DEBITS -----			
DESCRIPTION	DATE	AMOUNT	
POS TARGET DEBIT CRD ACH TRAN TARGET -1847 WILSONVILLE OR	04/06	241.94	
PACIFIC WEST BUSINESS ONLINE TRANSFER TO 25001272 ON 4/15/15 AT 16:44	04/15	1,500.00	
ORSBPROFLIAFUND 1190001948 XXXXXX0983	04/17	3,100.00	
HARLAND CLARKE CHK ORDERS OYA645711011600	04/29	28.24	

----- INTEREST -----

AVERAGE LEDGER BALANCE:	.00	INTEREST EARNED:	.00
INTEREST PAID THIS PERIOD:	.00	DAYS IN PERIOD:	
		ANNUAL PERCENTAGE YIELD EARNED:	.00%

\*\*\* CONTINUED \*\*\*

JASON C HAWES  
HAWES LAW LLC  
5200 MEADOWS RD STE 150  
LAKE OSWEGO OR 97035-0066

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Coming soon to a mobile phone near you!  
Keep an eye open for Pacific West Bank's new mobile banking app.  
Check balances, transfer money, pay bills, and even deposit checks. All  
from the comfort of your couch, the third fairway, or most anywhere!  
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communityCHOICE business checking ACCOUNT XXXXXX1514  
=====

MINIMUM BALANCE 89.18- LAST STATEMENT 04/30/15 610.82  
AVERAGE BALANCE 613.87 1 CREDITS 2,005.00  
2 DEBITS 700.00  
THIS STATEMENT 05/29/15 1,915.82

----- DEPOSITS -----  
REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT  
05/22 2,005.00

----- CHECKS -----  
CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT CHECK #..DATE.....AMOUNT  
1009\*05/08 100.00 2001 05/05 600.00

(\*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

----- I N T E R E S T -----

AVERAGE LEDGER BALANCE: .00 INTEREST EARNED: .00  
INTEREST PAID THIS PERIOD: .00 DAYS IN PERIOD:  
ANNUAL PERCENTAGE YIELD EARNED: .00%

\*\*\* CONTINUED \*\*\*



5200 SW Meadows Road, Suite 150  
Lake Oswego, OR 97035

August 8, 2015

Dain Sansome  
489 Creswell Lane  
Albany OR 97321

Dear Mr. Sansome:

Here is the final invoice for my services. Time durations are rounded down to the nearest tenth of an hour. Additionally, a time amount with an "NC" by it means that this time was "No Charge." Please make check payable to Hawes Law LLC. Additionally, for your convenience we accept credit cards. Thank you.

Sincerely,

Jason Hawes

### FINAL INVOICE

Date	Description	Hours
3/12/2015	Initial Meeting with Clients.	1.5 [NC]
3/16/2015	Follow up meeting with Dain and Ken Sansome.	1.3
3/16/2015	Review and analyze email from Ken Sansome re: case information/discs from criminal action.	.4
3/23/2015	Receipt of Fee Agreement / Retainer	.3 [NC]
3/24/2015	Email to client re: Sherlag Status	.2
3/27/2015	Review emails from Ken Sansome re: Sherlag as well as "Angel" help. Draft responsive email. Review and analyze articles attached to email.	.6
3/30/2015	Open File/Review and Research National Child Abuse Defense and Resource Center.	2.6
3/31/2015	General research re: status of the law re: police brutality, unlawful prosecution and lawsuits against police departments.	2.5

	March Subtotal 7.6 / No Charge Hours 2.0	
4/2/2015	Review and analyze email from client re: Albany newspaper. Draft responsive email. Review Legal Research / Research the law. 1983	3.9
4/3/2015	Review and analyze email from client re: SF police officers. Review and analyze article re: SF police officers. Review and analyze video of D. Sansome interrogation.	4.8
4/4/2015	Review and analyze email from client.	.2 [NC]
4/4/2015	Review and analyze certain parts of D. Sansome interrogation video.	1.8
4/5/2015	Review several emails from Ken Sansome re: quotes from the trial. Review trial transcript. Draft responsive email. Review and analyze interview transcript of Cori Smith.	2.5
4/5/2015	Review analyze contents from client file CD #1 including case chronology, OJIN report. Albany Policy Department policy manual. DHS Policy manual. Oregon Sart Handbook version 2.	4.5
4/6/2015	Review and analyze interview transcript of Mei Sansome. Review and analyze interviews of Suya and Dain Sansome. Review and analyze interview transcript of Suya Sansome. Review and analyze interview transcript of Hunter Smith. Review and analyze hearing transcript from pornography evidence. Review and analyze OJIN report.	5.2
4/7/2015	Review analyze contents from client file CD#1 including Oregon Interviewing Guidelines, and list of persons from case, resumes, Tort notice to government agencies and their respective responses. Review and analyze indictment of Dain Sansome.	4.6
4/8/2015	Telephone call from K. Sansome re: comments about Sherlag cross of Fairall. Email re: same. Review email from client re: referendum. Legal Research – Reviewing Memo from law clerk. Review and analyze Lawson Bourg Reisengberg hearing transcript.	5.5
4/9/2015	Review and analyze contents from client file CD #2. Review and analyze transcript of Cori Smith. Review and analyze transcript of Glen Fairall. Review and analyze transcript of Hunter Smith.	6.5
4/10/2015	Review and analyze email from K. Sansome re: Fairall. Draft responsive email. Review analyze trial transcript – opening statements. Review and analyze trial transcript – motion for mistrial. Review	5.3



	analyze trial transcript – defense witnesses including Johnson, Reisberg, Lara and Smith.	
4/11/2015	Review and analyze trial transcript – Defense witnesses including Cori Smith, Dr. Chin Le, and Dr. Kenneth Sansome. Continue to review rest of the contents of CD #2 including court audios and videos, complete group of court filings, videos with advocate, Fairall incident reports, motions filed in case, special conditions release agreement, plea bargains.	6.5
4/13/2015	Review analyze contents of CD #3 including multiple days of trial transcripts and trial audio.	5.5
4/14/2015	Review email re: Janet Boytano from Ken Sansome. Draft responsive email. Telephone call to Janet Boytano. Review analyze contents of CD #4 including ABC Medical House Reports, Albany Police Department Policy Manual, audios of interviews, certified transcripts of interviews with Cori Smith, Mei Sansome, Suya Sansome, Dain Sansome and Hunter Smith, DKS arrest video transcript, Mei Sansome ABC House transcript. Review also experts on interviews, American Pediatric Report, Reisberg Report, Wakefield report, Friedman report, and Eric Johnson Report.	4.3
4/15/2015	Continue to review contents of CD #4 including information on Glen Fairall's trespass. Fairall's Creswell house videos, transcripts of Fairall's interview of Dain and Suya Sansome with drawings. Polygraph results of Dain Sansome.	3.4
4/16/2015	Review more contents of CD #4, most notably the Probable cause affidavit, as well multiple documents from Dain and family re: analysis of probable cause affidavit.	3.2
4/20/2015	Review and analyze email from client. Review and analyze article re: police power. Review and analyze the remaining contents of CD #4 including multiple family members analysis on various interviews (about 12 documents here); 249 page document with various court documents including indictment, DHS protective order.	2.8
4/23/2015	Review and analyze email from client. Review and analyze article re: civil rights litigation in New Yorker.	.3
4/24/2015	Review and analyze email from client. Review and analyze attached article re: Freddie Gray. Review contents of disc #6 including Connie's commentaries (20 documents), Dain's Commentaries (40 documents), comments on damages (5 documents), articles on Japanese baths; Ken's commentaries (40 documents), various emails and newspaper clippings.	5.4

4/25/2015	Finish review of disc #6, including relating Petition and Jack White, Suya's commentaries, reports on visitation by Dain Sansome.	1.2
4/26/2015	Review and analyze disc #5 contents relating to lawsuit efforts, including statement of damages, monetary and non-monetary, emails with former attorney Sherlag, Dain Sansome comments post trial (10 documents) re: strategy etc; issues related to DHS post-trial (comments documents etc. – 20 documents); and Sherlag's clerk memos.	6.2
4/28/2015	Review and analyze email from client. Review and analyze draft of news article in US Observer. Draft responsive email. Review and analyze other client generated documents including goals of litigation. Watch ABC House interview with Mei Sansome. Watch Hunter Smith video.	1.4
	Subtotal through April 84.6 hours/ No Charge Hours 2.0	
5/10/2015	Legal Research – review lengthy research memo regarding potential for suit against Fairall, Albany Police Department, City of Albany, DHS. Review email from Ken Sansome re: referendum. Review additional memo re: civil liability.	3.0
5/12/2015	Review multiple emails from client re: Dr. Phil show. Discuss status of case and potential for Dr. Phil show.	.6
5/13/2015	Review email from client re: Fairall. Draft responsive email.	.3
5/14/2015	Review email from Dain re: potential letter allowing Fairall to talk to Dr. Phil show. Draft email back.	.3
5/28/2015	Review and analyze email from client re: case status. Draft responsive email.	.2
	Subtotal through May - 89.0 hours / No Charge Hours 2.0	
6/12/2015	Review and analyze email from K. Sansome. Review attached article in local paper.	.3
6/15/2015	Review U.S. Constitution focusing on Due Process Clause.	1.0
6/16/2015	Research Section 1983 – Civil Action for Deprivation of Rights. Review in detail the elements for 1983 action.	4.5
6/19/2015	Continue researching Section 1983 including elements, immunities, burdens of proof, remedies.	3.5



6/23/2015	Research law re: Federal and state claims for malicious prosecution, interference with familial association, improper investigation in sex abuse cases – interview technique and fabrication of evidence.	6.0
6/26/2015	Review and analyze the book “Civil Rights Litigation – Representing Plaintiff’s Today” by Rebecca Taylor.	3.0 [NC]
6/27/2015	Continue to review and analyze the book “Civil Rights Litigation – Representing Plaintiff’s Today” by Rebecca Taylor.	4.0 [NC]
6/28/2015	Continue to review and analyze the book “Civil Rights Litigation – Representing Plaintiff’s Today” by Rebecca Taylor.	3.8 [NC]
6/29/2015	Continue to review and analyze the book “Civil Rights Litigation – Representing Plaintiff’s Today” by Rebecca Taylor.	3.0 [NC]
6/30/2015	Research law re: heightened federal pleading burden: <i>Ashcroft v. Iqbal</i> plausibility rule.	2.0
	Subtotal through June: 106.3 hours / No Charge Hours: 15.8	
7/2/2015	Review and analyze “Section 1983 litigation in a nutshell” by Michael G. Collins.	3
7/7/2015	Research law re: Failure to Train as a theory of Section 1983 Liability.	5
7/9/2015	Research Police Misconduct and Civil Rights Law	2.5
7/12/2015	Review and analyze email from client. Review 1983 claims outline by U.S. Court of Appeals, 9 <sup>th</sup> Circuit.	2.8 [NC]
7/14/2015	Review and analyze email from K. Sansome re: police settlement. Review and analyze article re: same.	.3
7/15/2015	Review and analyze the book “The Sword and the Shield: a practical approach to Section 1983 litigation.”	4 [NC]
7/17/2015	Draft email to client re: heightened pleading requirements as a result of <i>Ashcroft v. Iqbal</i> . Telephone conference with client re: same.	2.1
7/20/2015	Research the possibility of adding other claims including, intentional and negligent infliction of emotional distress, libel and slander	2.5



7/24/2015	Review and analyze book "Police Misconduct: Law and Litigation" by Michael Avery.	3 [N/C]
7/25/2015	Continue to review and analyze book "Police Misconduct: Law and Litigation" by Michael Avery.	2.2 [N/C]
7/26/2015	Review and analyze email from client re: contempt of police case. Review and analyze article.	.5
7/28/2015	Review and analyze email from client. Review and analyze attached article re: police brutality.	.3
7/29/2015	Review and analyze email from client. Review and analyze attached article re: UVA graduates.	.4
7/30/2015	Review and analyze email from client. Review and analyze attached article re: Cincinatti police. Review and analyze email from client re: case status. Draft responsive email.	.5
7/30/2015	Review and analyze email from client. Review and analyze attached article re: police corruption. Start drafting case outline combining facts and legal claims.	2.0
	Subtotal through July: 125.8 hours / No Charge Hours: 27.8	

**Total Hours:** 125.8

**Total No-Charge Hours:** 27.8

**Rate:** \$125 an hour

**Costs:** \$0

**Deposit 3/24/2015:** \$12,500.00

**Total For Current Services Rendered & Cost – Less Deposit = Amount Owed:** \$ 3,225.00

on disc #5

(excuse me)

(1) *enigma*  
(2) *anonymity: \$ 20,000,000*

KNS 2015-02-12

**Goals (by Ken)**

- exposure of the system, roles each actor played--bullying and extortion
- prohibition of police lying in affidavits, grand juries, and courtrooms
- police adherence to oaths of office, codes of conduct, policies and procedures -- they should have no second chance, fired after first violation, no immunity, forfeit credentials, personal liability
- end the threatening, coercing, or provoking of witnesses or suspects
- prohibition of predatory practices
- adherence to proper interviewing of children according to current standards -- it is child abuse otherwise
- end of grand jury secrecy
- prosecutor is accountable if grand jury finds case wanting
- defense representation in grand juries
- end of children as courtroom witnesses
- cessation of and penalties for confession-driven interrogations, fabrication of evidence, hiding or losing or not recording evidence
- evidence turned over in a timely manner -- another cause for dismissal
- speedy trials -- no more than 8 to 12 months wait--no cancellations for convenience of court
- parental notification and explanation of Miranda rights before interrogations of minor children
- apology for misconduct
- prohibition of and punishment for false or misrepresented accusations and reports
- investigation of abuse reporters, who should not be allowed anonymity (one should be able to confront one's accusers)
- clear statement by ABC house that it is a law enforcement center, not a welfare center or charitable organization
- end of bullying and extortion
- end of excessive charges and threats of a long prison term
- measure 11 repealed
- end of misuse and abuse of plea bargaining
- proper professionalism -- police and DAs accept responsibility for their actions -- they evaluate and thoroughly investigate the case before charging and prosecuting
- end of hiding behind the political sloganeering of "tough on crime" and "public safety"
- curbs on and oversight of DHS
- removal of child or parent only by court order
- voluntary removal only through fully informed consent
- supervision, training, and honest continuing education of police and DHS workers
- qualified immunity gutted
- oversight, accountability, and sanctions on police and DHS workers for misconduct
- DAs held accountable for misconduct and waste of public monies
- unbiased judges -- they should neither say nor believe they are obligated to rule for the state or the *people*
- process is more important than people*
- community awareness of all the above

Fairall and Eder out of their jobs, or least demoted to benign custodial work.  
 Smiths exposed for their slander and misrepresentation  
 Smiths doing something about their sexualized son  
 reform of ABC houses  
 responsible, credible, and complete (both sides) newspaper reporting

*no accountability by police*

489 NW Creswell Lane  
Albany, Oregon 97321

Helen Hierschbiel, CEO  
Oregon State Bar  
PO Box 231935  
Tigard, Oregon 97281-1935

October 4, 2016

RECEIVED

OCT 11 2016

Oregon State Bar  
Executive Director

Re: CSG claim Hawes (Sansome) 2016-23

Ms. Hierschbiel:

I request a Board review of my claim to the Oregon Bar Association. See attached email from Camille Greene. The CSF Committee denied the claim as being a "fee dispute."

This claim was not a fee dispute. Mr. Hawes told me he could file a complaint and had the experience to do such. He received my \$12,500 retainer and did not deposit it in a trust account. He never apprised me of any work done, if it was, or presented me with any bill for monthly services rendered, as per our written agreement. The first time a billing statement appeared was at the CSF Committee's request.

Mr. Hawes was aware of an approaching deadline for filing a complaint (due to statute of limitations). He promised to file a suit within two months of our agreement, repeatedly stated a suit would be ready, and after four months had not done such. He never filed a suit nor communicated he would not honor our agreement. He failed to communicate many times. I was forced to seek other counsel. Hawes almost made me miss the filing deadline. If I had not found new representation, I would have lost not only \$12,500, but I would have no legal standing for a lawsuit. I had to pay another lawyer \$10,000 to file on my behalf since Hawes failed to do as agreed. Hawes is liable.

As the Committee is aware, he was disgracefully unavailable for responses to their questions unless threatened, and he has since closed his practice.

This claim is not a fee dispute. This claim is for fraud, deception, misrepresentation, and unethical behavior.



Dain K. Sansome

cc. email from Camille Greene, Sept. 26, 2016

## Camille Greene

---

**From:** Camille Greene  
**Sent:** Monday, September 26, 2016 9:19 AM  
**To:** 'Dain Sansome'  
**Cc:** Helen Hirschbiel; Ronald Atwood; 'kparklaw@aol.com'; 'jhawes@hawes-law.com'  
**Subject:** CSF claim HAWES (Sansome) 2016-23

Dear Mr. Sansome:

At its meeting on September 24, 2016 the Client Security Fund Committee considered your claim for reimbursement. After discussing the facts and the requirements for eligibility for reimbursement, the committee voted to deny your claim for \$12,500 against Jason C. Hawes. The Committee concluded that although Mr. Hawes did not deposit the client's (your) retainer into his lawyer trust account, the services he ultimately provided were not minimal or insignificant. Thus, this appears to be a fee dispute.

Under Client Security Fund Rule 4.10.1 the denial of this claim by the committee is final, unless your written request for review by the Oregon State Bar Board of Governors is received by the Executive Director within 20 days of the date of this letter. Requests for Board review must be sent to: Helen Hirschbiel, CEO / Executive Director, Oregon State Bar PO Box 231935 Tigard, OR 97281-1935

If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact us should you wish any further information.



**Camille Greene**  
Executive Assistant  
503-431-6386  
[CGreene@osbar.org](mailto:CGreene@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • [www.osbar.org](http://www.osbar.org)

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-30 MCCART (Mandelberg) Request for BOG Review

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### **Action Requested**

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### **Discussion**

#### *Summary of Facts*

Arthur Mandelberg retained Rachel Kosmal McCart in December 2011 to pursue a claim for damages resulting from purchasing a lame horse. Mr. Mandelberg paid \$60,000 for a show horse for his teenage daughter. After buying the horse, he learned that the horse was lame, and alleged that defendants drugged the horse to hide its physical defects. It was an extremely contentious, lengthy, and expensive lawsuit involving seven defendants and claims for damages exceeding \$1 million. Claims against four of the defendants were settled in August and September 2015, and Ms. McCart withdrew from the representation shortly thereafter. Mr. Mandelberg paid somewhere in the neighborhood of \$400,000 to \$500,000 in attorney fees.

Mr. Mandelberg filed his CSF claim in June 2016, alleging numerous instances of overbilling and efforts to maximize her fees at his expense.

#### *CSF Committee Analysis*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. Further, reimbursement of a legal fee will be allowed if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee found no evidence of dishonest conduct by Ms. McCart. Instead, they viewed this claim as a dispute over fees, born from an unsatisfactory result in the underlying litigation.





## Client Security Fund Investigative Report

From: Dave Malcolm, Investigator  
Date: September 12, 2016  
RE: CSF Claim #2016-30  
Claimant: Arthur Mandelberg  
Attorney (status): Rachael Kosmal McCart (disciplinary complaint under investigation)

**Recommendation.** Investigator recommends denying this claim.

**Statement of Claim.** Claimant Mandelberg and his wife retained Attorney McCart to pursue their California civil claim for damages resulting from purchasing a lame horse. His claims include fraud and violation of the Consumer Legal Remedies Act ("CLRA", California's equivalent of Oregon's Unfair Trade Practices Act). Attorney sued seven defendants (five are individuals) in California Superior Court, case #EC058319. It was an extremely contentious and expensive lawsuit that settled in the end. Claimant alleges Attorney lied to him, acted with malfeasance and billed him without authorization.

**Discussion.** Claimant is a Hollywood producer and his wife is a network vice president. Claimant bought a \$60,000 show horse for his teenage daughter. After buying the horse, Claimant learned the horse was lame and defendants drugged the horse to hide its physical defects. A timeline of events follows:

- Nov 19, 2010 Claimant bought horse;
- Dec 6, 2011 Claimant retained Attorney;
- Apr 23, 2012 *Mandelberg v. Blake, et al.* filed in Los Angeles County, CA;
- Aug 3, 2014 Sixth amended complaint filed;
- Oct 24, 2014 Claimant obtains a default judgment against one defendant;
- Aug 17, 2015 Judicial settlement conference, Claimant rejects settlement offer;
- Aug 20, 2015 Claimant settles with three defendants;
- Sept 12, 2015 Claimant settles with one defendant;
- Sept 25, 2015 Attorney files motion to withdraw;
- Dec 4, 2015 Court sustains Attorney's demurrer against two defendants' cross-claims without leave to amend (cross-complaints are nullified) and grants Attorney's motion to withdraw;
- Jan 12, 2016 Claimant dismisses claims against two defendants;
- Apr 11, 2016 Case dismissed; and
- June 17, 2016 Claimant filed CSF application #2016-30 (this "Claim").

Claimant sued defendants for fraud, negligence, breach of contract, breach of duty of loyalty, breach of implied warranty of merchantability, and violation of the California Business and Professions Code (regarding the horse sale). Attorney states Claimant wanted the case prosecuted very zealously; defendants defended the case at least as zealously. Two defendants represented by insurance defense counsel made the case extremely contentious and expensive for Claimant. The pair of defendants filed (and amended) cross-claims against Claimant for fraud, breach of contract, civil conspiracy, intentional misrepresentation, and negligent misrepresentation.

Claimant sought \$1,025,158 ( $\frac{1}{3}$  is for statutory treble damages) at the Aug 17, 2015 judicial settlement conference. At the settlement conference, the judge noted Claimant's extreme legal costs (\$496,951) and commented that Claimant probably would not recover all legal costs. The Claimant-Attorney relationship soured immediately after the settlement conference. Claimant promptly settled with most defendants shortly after the settlement conference against Attorney's advice. Immediately after settling, Claimant wrote they should have asked for more money in settlement. About a month later Attorney files a motion to withdraw which is granted a little over two months thereafter.

This was an expensive case for Claimant. As of Aug 9, 2016, (a) Attorney had billed Claimant \$515,300 and Claimant had paid Attorney \$511,429 and (b) Attorney's out of pocket costs total \$114,185 (Investigator calculates attorney fees as \$397,244). As of June 1, 2016, Claimant's balance due to Attorney is \$4,152.

On June 17, 2016 when Claimant filed this Claim, he sought \$40,640 as follows:

\$17,353	for overbilling (Attorney increased her billing rate from \$350 to \$385/hour) Claimant states Attorney did not provide proper notice to Claimant (Claimant moved and later informed Attorney, Attorney learned of the change of address after mailing written notice of the rate increase to Claimant);
\$21,874	for demurrer issues "mischaracterized" by Attorney (in hindsight Claimant wouldn't have continued with the case had he known the costs associated with excessive demurrers, he implies that Attorney misled him for her financial gain);
\$750	½ sanction (Attorney should pay the whole sanction for filing paperwork late);
\$308	for a cost related to an unsigned complaint (later corrected)
\$347	for a double billed charge; and
\$9	for a fax fee for notifying the court of a scheduling conflict.

On July 20, 2016, Claimant wrote the OSB Client Assistance Office (CAO) and sought \$18,826 for Attorney's overcharges (without itemizing the charges). Now Claimant seeks \$21,430 as follows:

\$18,826	for overbilling (same as above);
\$1,190	for the CLRA process error;
\$750	for the ½ sanction (same as above);
\$308	for the unsigned complaint cost (same as above);
\$347	for the double billing (same as above); and
\$9	for the fax fee (same as above).

Claimant argues about billing issues (apparently in hindsight) and occasionally claims Attorney acted dishonestly. For example:

- Claimant reviewed emails "and found a pattern of malfeasance, unauthorized billing and outright lies";
- Claimant concludes Attorney "intentionally downplayed the demurrer (i.e. lied) to keep us in the case";
- Claimant characterizes the missed deadline (resulting in a court sanction) as part of "a pattern of behavior designed to maximize her fees at my expense";
- Claimant states Attorney raised her hourly fee (by 10%) without giving the written notice in accordance with the fee agreement;
  - Claimant moved without informing Attorney of his new mailing address;
  - Attorney mailed proper notice to Claimant's last known [prior] address;
- Claimant states the CLRA issue (exaggerated as "the complaint") "was thrown out of court without being heard because [Attorney] didn't send the documents by certified mail as mandated by the UPTA [sic];
  - Claimant mailed CLRA notice by regular first class mail (unaware the law required certified mail) over a month before he first contacted Attorney;
  - The CLRA claim was denied because it failed to meet process requirements (i.e., not mailed by certified mail) while all the other claims continued towards trial;
  - It's possible that the mailing issue may be malpractice (Attorney's failure to verify and ensure proper notice);
- Claimant is outraged over a discovery expense to copy video tapes and legal files (\$2,459 is an "exorbitant fee") and that Attorney failed to get Claimant's consent in advance to this cost;
- Claimant believes Attorney failed him because she (a solo practitioner) couldn't keep up with all the work generated by six defense attorneys;
- Claimant is frustrated that Attorney wouldn't clarify or respond to him regarding his billing inquiries after he stopped paying Attorney and chose not to participate in a fee arbitration program;
- At the hearing on Attorney's motion to withdraw, (a) Claimant states Attorney "promised to finish the case pro-bono [sic]; presumably because she felt badly enough about her miscue" and (b) Claimant testified at the hearing against Attorney's advice and he believes she "charged the travel expenses to 'teach me a lesson'; and
- Claimant wrote the CAO and asked that Attorney "be ordered to immediately refund the amount of the overcharges - \$18,826".



Overall, Claimant seems to have a fee dispute with Attorney and is unhappy with the legal results. Investigator found mistakes (a double billing, an unsigned complaint) and potential malpractice (the CLRA issue regarding failure to use certified mail to notify defendants) yet did not find dishonesty.

Claimant filed a complaint with CAO against Attorney. That complaint is currently in the analysis stage (which may be done in October) to determine if CAO will prosecute Attorney. CAO is analyzing Attorney's actions and Oregon Rules of Professional Conduct, primarily Rule 1.4 (b)<sup>1</sup>.

### **Findings & Conclusions.**

1. Attorney is licensed in California and Oregon.
2. Attorney has no discipline history in California and Oregon.  
CAO is currently investigating a related complaint and will determine whether or not to proceed with discipline.  
Claimant filed a bar complaint with the California State Bar (CSB) that is under investigation. CSB has not contacted Attorney.
3. An attorney-client relationship existed between Claimant and Attorney. The parties had a written fee agreement.
4. Attorney provided extensive legal services to Claimant over four years of litigation before withdrawing from representing Claimant.
5. Claimant demanded Attorney refund money paid and reported his loss to the district attorney and CAO. Claimant hasn't attempted any other means of collecting his "loss". Claimant's claim is not supported by a determination of any court or fee arbitration panel. Claimant did not file a CSF or fee arbitration application with the California State Bar (CSB has similar programs).
6. Investigator wonders why Claimant didn't file a CSB CSF application (it's a California case with a California attorney).
7. Regarding this Claim, Attorney has not been found guilty of a crime nor had a civil judgment entered against her.
8. Claimant timely filed this Claim.
9. Although this Claim may be unusual, Investigator has not found special or unusual circumstances or extreme hardship associated with this Claim.
10. Investigator reviewed many documents and has not found evidence of Attorney's dishonesty.
11. Investigator recommends denying this claim as it seems to be a fee dispute.

Respectfully submitted,  
/s/ Dave Malcolm

---

<sup>1</sup> Rule 1.4 (b) states "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Mandelberg  
13712 Valleyheart Drive #201  
Sherman Oaks, CA 91423

Helen Hirschbiel, CEO / Executive Director,  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

RECEIVED

OCT 04 2016

Oregon State Bar  
Executive Director

September 28, 2016

Re: OSB - CSF Claim: McCart/Mandelberg

Dear Ms. Hirschbiel:

I am writing to ask the Oregon State Bar Board of Governors to review my application with the Client Security Fund<sup>1</sup>. My appeal is based on four separate incidents detailed below in which Ms. McCart intentionally misled us. I believe these indiscretions are ethical transgressions, not "fee disputes" as concluded by the CSF.

When questioned about a fax filing fee, Ms. McCart wrote, *I am a solo practitioner. Therefore, whenever I will be out of office for more than a day or two, I take the affirmative step of filing a formal notice with each court in which I have formally appeared to avoid the possibility that opposing counsel will take advantage of my absence and present an ex-parte motion that might be adverse to my clients' interests.*

In an e-mail<sup>2</sup> she claims she was blindsided by the defense counsel's ex-parte motion and wasn't given the opportunity to participate on our behalf. If Ms. McCart filed the formal notice, why didn't it protect us?

Ms. McCart dismissed filing a Motion for Reconsideration as a "waste of time and money". She offered no solution, other than for me and my wife to be deposed again.

It's my understanding that ex-parte options must be filed by 10AM the day before the hearing. If Ms. Mc Cart was properly notified about the ex-parte, why did she tell us there was nothing she could do? If she wasn't notified properly, why did she tells us there was nothing she could do? I'm not a lawyer, but the notion that an attorney can just "show up" and get a ruling on the spot doesn't sound right. If Ms. Mc Cart is correct about the legal shenanigans, she failed to protect us for her own financial gain. She was paid \$6090.88 for these depositions.<sup>3</sup>

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<sup>1</sup> E-mail 9/26/16

<sup>2</sup> Email 12/9/13

<sup>3</sup> Billing statement 1/1/14

Mandelberg  
13712 Valleyheart Drive #201  
Sherman Oaks, CA 91423

The next incident had its origins before Ms. McCart came on board.

After discovering the horse we bought had been drugged to mask lameness, I wrote the seller, Sharon Blake, an email notifying her she was in violation of Section 1770 of the California Consumers Legal Remedies Act and demanded she immediately rectify the situation.<sup>4</sup> I found the CLRA online and tried to bluff her into refunding my money. Obviously, it didn't work.

We gave this letter to Ms. McCart shortly after retaining her on 12/6/11. She said filing a CLRA violation might be a good idea and wanted to do some research. The next time we heard about the Blake letter was on 7/18/13 when Ms. McCart told us the Unfair Trade Practices Act (UTPA) claim had been thrown out of court because I didn't send the Blake letter by certified mail.<sup>5</sup> It wasn't my responsibility to make sure the legal requirements were met. She also blamed me for not sending the CLRA letter by certified mail to the Figge defendants. I never wrote a letter to the Figges and Ms. McCart had no reason to think otherwise. She not only blamed me for losing the case, she wasted thousands of dollars researching and litigating a claim that had no chance to succeed because it was improperly filed. She dropped the ball on the UTPA filing, wasted thousands and blamed me for the loss. For the CSF to conclude this was a "fee dispute" ignores the facts.

After being served with our first demurrer, Ms. McCart called them a "rarely used response to a complaint..."<sup>6</sup> As you can see from the aforementioned e-mail, Ms. McCart downplayed the demurrer as a tactic we should worry about. As an experienced lawyer and Duke Law School graduate, she must have known that the demurrer was already a widely used legal tactic and with multiple defendants, we were certain to face multiple demurrers. In all, Ms. McCart earned tens of thousands of dollars responding to multiple demurrers.

Less than a year after calling demurrers "a rarely used response", she referred to them as "common practice"<sup>7</sup> and "typical"<sup>8</sup>. She told the CAO that over successive years, the demurrer experienced a growth spurt in popularity, yet maintains that it went from being rarely used to commonplace in less than one year. It's an implausible timeline that Ms. McCart has not addressed. I think Ms. McCart intentionally downplayed the demurrer

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<sup>4</sup> Blake letter 10/10/11

<sup>5</sup> Email 7/18/13

<sup>6</sup> Email 7/2/12

<sup>7</sup> Email 6/6/13

<sup>8</sup> Email 9/3/13

Mandelberg  
13712 Valleyheart Drive #201  
Sherman Oaks, CA 91423

so as not to scare us off the case.

---

Ms. McCart filed a motion to be removed as our attorney that was scheduled for hearing on the same day as our final demurrer. I went to court assuming Ms. McCart would participate by phone - as she had done previously. I was surprised to see her in court and she reassured me she had flown down on her "own dime".

During the hearing, I told Judge Matz that Ms. Mc Cart had made mistakes, i.e. making and accepting the wrong settlement offer, etc.

Ms. Mc Cart interrupted me to ask the Judge if she (Mc Cart) could speak with me in private. In the hallway outside the courtroom, Ms. Mc Cart asked me not say anything in "open court" because it might adversely affect my case. Since the final demurrer had already been declined, the case was effectively over, but Ms. Mc Cart repeated her request that I not speak out in "open court".

Back inside the courtroom, I told Judge Matz that Ms. Mc Cart should not be removed because she had promised to finish the case pro bono and we couldn't afford another lawyer.

Afterwards, in the hallway outside, Ms. Mc Cart and I had some harsh words for each other.

The next billing statement included \$1310.00 for travel expenses; the same expenses she said were on her "own dime". It's clear she billed me as retaliation for not heeding her advice to keep quiet.

Ms. Mc Cart abused her power by punishing me with bogus charges, then charged interest and late fees on those bogus charges – with the threat of a collection agency front and center. To trivialize this abuse by calling it a "fee dispute" would be, in my opinion, the wrong conclusion.

Since filing my CSF application, a fair amount of new information has come to light, i.e. I didn't know that an ex-parte motion had to be filed the day before a hearing until a friend going through a divorce pointed it out.

I didn't ask to revise my application because I'm under the impression that the CSF and CAO work closely together. I thought information was shared so if I need to revise my application or file a new one, I would be happy to.

My application asks for \$505,000 reimbursement; which is obviously an outrageous

Mandelberg  
13712 Valleyheart Drive #201  
Sherman Oaks, CA 91423

amount. When describing my "loss", I was confused and wrote the total of my legal fees instead of the specific losses I'm trying to recoup.

Thank you for taking the time to read this letter and consider my request.

Sincerely,



Artie Mandelberg

---

Here is a breakdown of the money I'm asking to be reimbursed:

\$6090.88 – fees and travel expenses for depositions caused by Ms. Mc Cart's failure to appear for the ex-parte.

\$10,000 – this is purely an estimate as to how much we spent on wasted UTPA research, legal fees, etc. Given that we spent over \$500,000 litigating the case, I think this amount is a fair and conservative estimate.

\$10,000 – this is purely an estimate of how much we might have saved if Ms. Mc Cart had not downplayed the truth about demurrers. This amount includes legal fees, court costs, etc.

The total reimbursement I'm requesting is \$26, 090.88.

## Artie Mandelberg

---

**From:** Camille Greene <CGreene@osbar.org>  
**Sent:** Monday, September 26, 2016 10:40 AM  
**To:** Artie Mandelberg  
**Cc:** 'dave@malcolm-law.com'; Ronald Atwood; 'rachel@equinelegalsolutions.com'; Helen Hirschbiel  
**Subject:** CSF claim McCART (Mandelberg) 2016-30

Dear Mr. Mandelberg:

At its meeting on September 24, 2016 the Client Security Fund Committee considered your claim for reimbursement. After discussing the facts and the requirements for eligibility for reimbursement, the committee voted to deny your claim for \$505,000.00 against Rachel McCart. The Committee concluded that this appears to be a **fee** dispute.

Under Client Security Fund Rule 4.10.1 the denial of this claim by the committee is final, unless your written request for review by the Oregon State Bar Board of Governors is received by the Executive Director within 20 days of the date of this letter. Requests for Board review must be sent to: Helen Hirschbiel, CEO / Executive Director, Oregon State Bar PO Box 231935 Tigard, OR 97281-1935

If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact us should you wish any further information.



**Camille Greene**  
Executive Assistant  
503-431-6386  
[CGreene@osbar.org](mailto:CGreene@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • [www.osbar.org](http://www.osbar.org)

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.

## **Artie Mandelberg**

---

**From:** Rachel Kosmal McCart <rachel@equinelegalsolutions.com>  
**Sent:** Monday, December 9, 2013 11:04 AM  
**To:** Artie Mandelberg; 'Stacy'  
**Subject:** Your Depositions - Bad News  
**Attachments:** Notice of Ruling 12.4.13.pdf

**Importance:** High

**Categories:** Work Stuff

Figge's counsel went into court ex parte and not only got their motion heard on an earlier date, the court heard their motion right then and granted it – see attached ruling. Because it was done ex parte, we didn't have any opportunity to participate. Needless to say, I am outraged that the court would take this step without giving the opposition (i.e., us) an opportunity to be heard, but there's little we can do. We could file a motion for reconsideration, but frankly, I think it would be a waste of time and money, as judges generally don't change their minds (and IMO, this judge is particularly unlikely to change her mind).

What this means is that you will have to appear for deposition on Jan 2 (Stacy) and Jan 3 (Artie). Stacy, I know your work schedule is crazy, so if Jan 3 is better than Jan 2, we can probably get them to agree to switch the two days.

Sincerely,

**Rachel Kosmal McCart**  
Equine Legal Solutions, PC  
Tel: (866) 385-2972  
Licensed to practice in OR, CA, WA and NY  
[www.equinelegalsolutions.com](http://www.equinelegalsolutions.com)

Date	Service	Activity	Quantity	Rate	Amount
01/01/2014		Glendale Superior Court: Fax filing fee			30.00
01/01/2014	Services	Draft subpoenas for Richard and Shannon Oas. Transmit to process server with instructions.	0:20	385.00	128.33
01/01/2014	Services	Travel time - ground/air/ground - Beavercreek, OR - Burbank, CA	5:00	192.50	962.50
01/01/2014	Services	Prepare for third sessions of clients' depositions.	1:00	385.00	385.00
01/02/2014		Hampton Inn (1/1 - 1/3)			208.05
01/02/2014		Priceline: Car rental (Burbank, 1/1 - 1/3)			92.50
01/02/2014		Travel - meal - dinner 1/2			35.34
01/02/2014		Air travel - roundtrip PDX - BUR (1/1 - 1/3)			657.80
01/02/2014	Services	Meet with client prior to third session of deposition.	0:20	385.00	128.33
01/02/2014	Services	Defend third session of client's deposition.	2:30	385.00	962.50
01/02/2014	Services	Travel time - deposition location/hotel	0:20	192.50	64.17
01/03/2014		Travel meal (dinner 1/1)			11.98
01/03/2014	Services	Meet with client prior to third deposition session.	0:20	385.00	128.33
01/03/2014	Services	Defendant third session of client's deposition.	4:30	385.00	1,732.50
01/03/2014	Services	Travel time - ground/air/ground - Burbank, CA - Beavercreek, OR	3:45	192.50	721.88
01/05/2014	Services	Continue drafting opposition to Rorabaugh motion to strike.	0:43	385.00	<del>275.92</del>
01/05/2014	Services	Complete drafting opposition to Rorabaugh motion to strike. Draft opposition to Rorabaugh request for judicial notice. Draft opposition to Rorabaugh demurrer.	6:32	385.00	2,515.33

*\$6090<sup>FF</sup>*

Continue to the next page



## Stacy & Artie Mandelberg

Sharon Blake  
Sharlana Farms, Inc.  
18539 via De Las Flores  
Rancho Santa Fe, CA 92067

October 10, 2011

Dear Ms. Blake,

We bought Jacke, a nine year old grey Hanoverian, from you on November 19, 2010. During the pre-purchase exam, the vet, Dr. Robert Bradley, drew Jacke's blood which was then stored at the laboratory. He did not feel it was necessary to analyze the blood right away. Your representative Erin Rorabauch assured us that Jake had never been injected with drugs, nor had his stifles and hocks injected; and you also assured our trainer Leslie Figge that Jake was drug free.

Since taking possession of Jacke, we have had a continuing litany of problems. Shortly after taking possession, he became difficult to control. Even our trainer, Leslie, had trouble controlling the horse. Leslie changed Jacke's training schedule and adjusted his feed. When that didn't work, we decided to have Jake's blood analyzed. Center for Tox Services was engaged to test the blood sample (*please see attached report*) and were dismayed to find that two tranquilizers, Butrophanol and Romifidine, were present in Jake's blood at the time of purchase.

In addition, just after taking possession of Jacke, we noticed that he experienced difficulty tracking left; at first just resistant and then subsequently exhibiting lameness in the left hind leg.

Since our initial purchase, we have spent thousands of dollars in vet bills (*please see attached*). Last week after several months of medical procedures and thousands of dollars, Jacke was deemed lame and not able to be ridden.

We believe that prior to our vet check, Jacke was injected with drugs to alleviate the pain in his stifle. We believe this was done to falsely represent the horse as healthy and attractive for sale and to present him as an appropriate ride for a 13 year old girl.

In order to invoke the protective power of the California Consumer Legal Remedies Act (CLRA), we are hereby notifying you that we believe you have engaged in a practice deemed unlawful by Section 1770 of CLRA.

I demand that you correct, replace, or otherwise rectify the goods deemed unlawful by section 1770 of CLRA.

Pursuant to Section 1782 of CLRA, we are notifying you and demanding appropriate action at least thirty days prior to commencing action for damages.

Sincerely,

**17501 Magnolia Blvd. Encino, CA 91316-2544**

## Artie Mandelberg

**From:** Rachel Kosmal McCart <rachel@equinelegalsolutions.com>  
**Sent:** Thursday, July 18, 2013 3:40 PM  
**To:** Artie Mandelberg; stacy@mandelberg.net  
**Subject:** Tentative Ruling on Figge Defendants' Demurrer

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Response Needed!

Hi, Artie and Stacy. Here is the court's tentative ruling on the demurrer (see below). We can amend the complaint and easily include the breach of contract details. What we will not be able to overcome is the problem with the unfair trade practices act claim – you didn't provide the Figge defendants with written notice of your unfair trade practices act claim sent via certified or registered mail. Now, I think we have a valid argument that we didn't know we had a UTPA claim until Figge's deposition, and therefore we couldn't have given her notice. The court appears to be unconvinced by this argument, but I will argue the point in the hearing tomorrow. However, it's usually difficult to sway the court from its tentative ruling.

What is good about this ruling is that all the defendants will only have 10 days (vs. the typical 30) to respond to the amended complaint. The leave to amend the complaint is also apparently not limited to the issues in this demurrer, so I can address the issues raised by the other demurrers when I amend it.

If we can't sustain the UTPA claims against any of the defendants (which is likely, because the Blake defendants also didn't receive notice via certified/registered mail), that's a blow because it knocks out one of our causes of action that has attorneys' fees and costs attached to it (and the only one against the Figge defendants that has it), but we do still have the fraud claim with attorneys' fees and costs (which is a strong claim) against the seller defendants, so it's not a terrible blow.

I will update you further after the hearing tomorrow morning. As always, please feel free to give me a call on my direct line at (503) 729-5246 if you'd like to discuss.

**Case Number:** EC058319    **Hearing Date:** July 19, 2013    **Dept:** NCE

Demurrer to Second Amended Complaint is sustained for the reasons stated in the moving papers.

Briefly, the first cause of action for unlawful trade practices fails to allege with sufficient factual specificity the conduct that plaintiffs allege violated the act or the specific provision of the act purportedly violated by that conduct. It also fails to allege compliance with the prerequisites to the commencement of an action pursuant to Civil Code section 1782 and as required by *Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 40-41.

The eighth and ninth causes of action for breach of contract fail to allege clearly, either verbatim or according to legal effect, the terms of the contracts allegedly violated.

Ten days leave to amend; ten days to respond. The parties may not stipulate to extend these times.

**Rachel Kosmal McCart**  
Equine Legal Solutions, PC  
Tel: (866) 385-2972

## **Artie Mandelberg**

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**From:** Rachel Kosmal McCart <rachel@equinelegalsolutions.com>  
**Sent:** Monday, July 2, 2012 4:04 PM  
**To:** stacy@mandelberg.net; Artie Mandelberg  
**Subject:** The Defendants Make an Appearance...Sort of  
**Attachments:** Blake001.pdf; Figge001.pdf; LACRC001.pdf; POS.pdf; Sharlana001.pdf; Envelope001.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Work Stuff

Hi, Stacy and Artie. I received the attached documents in the mail today. A demurrer is a rarely-used response to a complaint that is filed instead of an answer – the purpose is essentially to say that the complaint doesn't say anything that represents a legal charge to be answered. Here, the defendants have misused the demurrer and should have filed an answer instead.

It seems, judging from the return address on the envelope (see attached scan), that the defendants have hired a Del Rey paralegal to prepare this for them. It's an obvious attempt to save money. They probably consulted several attorneys and thought they'd save money by hiring this guy instead. But, judging from this document (notice the demurrers are identical, notwithstanding the fact that not all of the claims are against all defendants – see, e.g., claim #1), they got exactly what they paid for. In addition, by suggesting the demurrer in the first place and drafting it for them, the paralegal is clearly practicing law without a license (which is against the law), so I have filed a complaint against the paralegal with the California Bar and the DA's office (on my own time – no charge to you).

What happens now?

- Rorabaugh has not made an appearance in the case, so she will still be in default unless she files something by July 9. If she has not made an appearance, I will request the court to enter an order of default.
- The court may reject the demurrers at the filing desk because the case title (e.g., your last name) is misspelled – typically, the case title has to match exactly or the clerk will reject the filing.
- I sent in the requests for entry of an order of default against Figge, LACRC, Sharlana and Blake. These requests were sent in prior to the postmark on these demurrers. Therefore, it is likely that the court will enter the orders of default because they preceded the demurrers. I put in a call to the courthouse to find out if they had been entered yet and discovered they stop taking phone calls at 3:30 (budget cuts, presumably) and therefore I will call tomorrow to inquire. If the default orders have been entered, I will file a motion to strike the demurrers.
- If the orders of default haven't been entered, I will file an opposition to the demurrer. Best case scenario, the judge will refuse to grant the demurrer and the defendants will have to file an answer. Worst case scenario, the judge will grant the demurrer, but allow leave to amend the complaint to cure any defects.

As always, if you have any questions, please don't hesitate to ask!

Best regards,

**Rachel Kosmal McCart**  
Equine Legal Solutions, PC  
Tel: (866) 385-2972  
Licensed to practice in OR, CA, WA and NY  
[www.equinelegalsolutions.com](http://www.equinelegalsolutions.com)

**Artie Mandelberg**

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**From:** Rachel Kosmal McCart <rachel@equinelegalsolutions.com>  
**Sent:** Thursday, June 6, 2013 10:02 AM  
**To:** Artie Mandelberg; stacy@mandelberg.net  
**Subject:** Defendants' Demurrers  
**Attachments:** Figge Demurrer 5.28.13.pdf; Rorabaugh Demurrer 5.30.13.pdf

Hi, Artie and Stacy. As before, Defendants Figge and LACRC (and Mr. Figge – Leslie's counsel is also representing him) have demurred to the Second Amended Complaint, and the matter is scheduled for hearing on July 19. Defendant Rorabaugh has also demurred to the complaint, and that demurrer is scheduled for hearing on July 26. As you may recall from the beginning of the case, a demurrer is essentially a challenge to the legal sufficiency of the complaint. There is no penalty for filing a demurrer and losing, other than having to file an answer shortly thereafter, so it's a common practice, regardless of whether there are actually any grounds for demurring or not. Of course, I will be filing briefs opposing both demurrers. I've attached copies of the demurrers.

The other defendants have not answered or demurred yet – they have until 30 days after service to do so, and if they don't, we can seek an order of default. As Artie observed, it's déjà vu all over again...

Best regards,

**Rachel Kosmal McCart**  
Equine Legal Solutions, PC  
Tel: (866) 385-2972  
Licensed to practice in OR, CA, WA and NY  
[www.equinelegalsolutions.com](http://www.equinelegalsolutions.com)

## Artie Mandelberg

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**From:** Rachel Kosmal McCart <rachel@equinelegalsolutions.com>  
**Sent:** Tuesday, September 3, 2013 7:14 PM  
**To:** Artie Mandelberg  
**Subject:** Re: FYI, Objection to Ruling

**Categories:** Work Stuff

No, even if the court were to rule in any of the defendants' favor, it would almost certainly grant us leave to amend the complaint to cure any "defects." The demurrer process is pretty typical - as you may recall, we went through it at the beginning of this process. Adding new defendants (and adding the fraud claim against Figge) opened the door for them to demur. Frankly, I would have been surprised if the defendants didn't vigorously challenge the complaint - they have a lot at stake.

I'd be happy to discuss with you - what time tomorrow works for you?

Sent from my iPhone

On Sep 3, 2013, at 6:07 PM, Artie Mandelberg <[artie@mandelberg.net](mailto:artie@mandelberg.net)> wrote:

Hi Rachel -

I am becoming concerned that, sleazy or not, we are being outmaneuvered. If the Court doesn't go back, have we lost the chance to prove fraud and collect attorney's fees? I still don't know what their defense is, but I'm worried about them winning.

Let's see up a call with you, me and Stace so we can go over this.

thanks  
Artie

**From:** Rachel Kosmal McCart [<mailto:rachel@equinelegalsolutions.com>]  
**Sent:** Tuesday, September 3, 2013 2:15 PM  
**To:** Artie Mandelberg; [stacy@mandelberg.net](mailto:stacy@mandelberg.net)  
**Subject:** FYI, Objection to Ruling

Hi, Artie and Stacy.

As you will recall, the Figge defendants demurred to our second amended complaint, and the court sustained the demurrer and gave us 10 days to amend it (which we did). The court's ruling did not say anything about leave to amend being limited (and it typically is not limited unless the court says it is).

During the Rorabaugh demurrer, Figge's counsel (the junior attorney) attended and asked the court to clarify its ruling on the Figge demurrer to make sure they would be given 10 days to respond to the amended complaint we were given leave to file when the court sustained the Rorabaugh demurrer. Nothing else was said about the ruling on the Figge demurrer. Because Figge's counsel was the only attorney there in the courtroom, the judge asked her to give notice of the court's ruling to all parties who hadn't attended. In a move that can only be characterized as sleazy (even by their standards), Figge's counsel issued a notice of ruling that said the court modified its ruling on the Figge demurrer to allow us to amend the complaint only in certain respects. This is absolute

CLAIM year	CLAIM #	CLAIMANT	LAWYER	CLAIM AMT	PENDING	INVESTIGATOR	STATUS
2014	02	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00	Raher	9/24/16 to CSF. Inform only.
2015	23	Ballantyne, Robert	Smith, Fred T	\$ 1,500,000.00	\$ 50,000.00	Thompson	7/16/16 CSF denied. <b>11/19/16 BOG review.</b>
2015	31	Connolly, Joe	Milstein, Jeffrey S.	\$ 3,000.00	\$ 18,170.00	Butterfield	11/5/16 CSF approve. <b>11/19/16 to BOG \$18,170</b>
2015	39	Boone, Charles P	Morningstar, Jonah	\$ 8,000.00	\$ 8,000.00	Butterfield	9/24/16 CSF stayed.
2015	41	Erwert, Anna M.	Merrill, Nick	\$ 2,031.00	\$ 2,031.00	Braun	3/5/16 CSF denied. Don't move to K: yet.
2015	42	Sumandea, Magdalena	Daily, Matthew C	\$ 3,000.00	\$ 3,000.00	Naucler	<b>11/5/16 CSF approved \$3000</b>
2016	07	Gonzalez Sierra, Florencio E.	Krull, Julie	\$ 6,000.00	\$ 6,000.00	Dippel	
2016	12	Shaw, Donald Clayton	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00	Atwood	7/16/16 CSF denied.
2016	14	Starr, Anna	Krull, Julie	\$ 2,000.00	\$ 1,175.00	Dippel	<b>11/5/16 CSF approved \$1,175</b>
2016	19	Ryan, Christina	Eckrem, John P	\$ 1,500.00	\$ 1,500.00	Cooper/Braun	<b>11/5/16 CSF denied.</b>
2016	23	Sansome, Dain	Hawes, Jason C.	\$ 12,500.00	\$ 12,500.00	Park	9/24/16 CSF deny. <b>11/19/16 Appeal to BOG</b>
2016	24	Davis, Madeline	Hunt, John Kevin	\$ 500.00	\$ 500.00	Bennett	7/16/16 CSF approved \$500.
2016	26	Sommerauer, Patrizia June	Merrill, Nick	\$ 200.00	\$ 200.00	Braun	<b>11/5/16 CSF denied.</b>
2016	27	Roden, Joseph	Morningstar, Jonah	\$ 9,385.50	\$ 9,385.50	Butterfield	9/24/16 CSF stayed.
2016	28	Henson, Wendy	Roller, Dale	\$ 1,200.00	\$ 1,200.00	Jones	
2016	29	Silajdzic, Sasa	Roller, Dale	\$ 1,200.00	\$ 1,200.00	Jones	
2016	30	Mandelberg, Arthur	McCart, Rachel	\$ 17,353.00	\$ 17,353.00	Malcolm	9/24/16 CSF deny. <b>11/19/16 Appeal to BOG</b>
2016	31	Cline, Russell Warren Brent	Wieselman, Jacob	\$ 300,000.00	\$ 50,000.00	Raher	9/26/16 client req time to gather docs
2016	32	Harbison, Abigail Franky Diane	Eckrem, John P	\$ 2,500.00	\$ 2,500.00	Cooper	<b>11/5/16 CSF denied.</b>
2016	33	Malgarejo, Micaela	Henderson, Paul	\$ 2,535.00	\$ 2,535.00	Thompson	
2016	34	Padilla-Pena, Pablo Sergio	Krull, Julie	\$ 2,000.00	\$ 2,000.00	Dippel	<b>11/5/16 CSF approved \$2000</b>
2016	35	Lopez-Diaz, Marcelino	Ferrua, Franco Dorian	\$ 17,500.00	\$ 12,500.00	Atwood	9/24/16 CSF approve <b>11/19/16 to BOG \$12,500</b>
2016	36	Cruz, Lourdes	Milstein, Jeffrey S.	\$ 1,750.00	\$ 1,750.00	Butterfield	
2016	37	Hildenbrand, Angela Danielle	Eckrem, John P	\$ 2,000.00	\$ 2,000.00	Cooper	<b>11/5/16 CSF denied.</b>
2016	38	Bellinger, Joseph Edward	Smith, Davis S.	\$ 2,600.00	\$ 2,600.00	Bennett	
2016	39	Scheid, Heather	Griffith, Mark O.	\$ 975.00	\$ 975.00	Naucler	<b>11/5/16 CSF approved \$975</b>
2016	40	Shorb, Charles Ray	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00	Atwood	11/5/16 CSF approve. <b>11/19/16 to BOG \$5000</b>
2016	41	Dau, Sherri Lee	Hawes, Jason C.	\$ 2,518.00	\$ 2,518.00	Park	9/24/16 CSF \$1000.
2016	42	Heredia, Keeley	Krull, Julie	\$ 9,000.00	\$ 9,000.00	Dippel	
2016	43	Claus, Robert and Susan	Daraee, Hafez	\$ 20,000.00	\$ 20,000.00	Malcolm	
2016	44	Insley, Ted	Stedman, Michael Reuben	\$ 5,450.00	\$ 3,000.00	Raher	<b>11/5/16 CSF approve \$3000</b>
2016	45	Baldrige, Merle	Steinman, Dennis	\$ 11,125.21	\$ 11,125.21	Atwood	
					<b>\$ 267,717.71</b>		
		Funds available for claims and indirect costs allocation as of September 2016		Total in CSF Account	\$ 1,183,603.00		
				<b>Fund Excess</b>	<b>\$ 915,885.29</b>		

Exhibit to be posted.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Legal Ethics Committee  
**Re:** Proposed Amendment to OSB Formal Ethics Op No 2005-110 *Conflicts of Interest, Former Clients: Former Client as Adverse Witness*

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### Issue

Decide whether to adopt the proposed amendment to OSB Formal Ethics Op No 2005-110 *Conflicts of Interest, Former Clients: Former Client as Adverse Witness*.

### Options

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

### Discussion

Lawyers have duties of confidentiality and loyalty to former clients that survive well after the representation ends. These duties are reflected in Oregon RPC 1.6 and 1.9. One exception is set forth in RPC 1.9(c), which provides that a lawyer may not use information relating to the representation of client *except* “when the information has become generally known....”

A frequently asked question on the Ethics Hotline is whether a former client’s criminal conviction would be considered information that is “generally known.” A typical scenario looks something like this: Lawyer represents Defendant A in a felony criminal matter, which results in a conviction. The representation ends. Later, Lawyer represents Defendant B in criminal charges unrelated to the former representation. Lawyer soon learns, however, that the prosecutor is going to call former client (Defendant A) to testify against new client (Defendant B). Lawyer would like to use the felony conviction to impeach Defendant A, but is concerned about her continuing obligations of loyalty and confidentiality to Defendant A.

In its current iteration, OSB Formal Op No 2005-110 sets forth a lawyer’s duties under Oregon RPC 1.6 and 1.9. The LEC proposal expands on the current analysis with a discussion of what information might be considered “generally known” that could be used against a former client under RPC 1.9(c)(1).

Staff recommends adoption of the proposed amended opinion.

Attachment: Proposed Amended OSB Formal Ethics Op Nos. 2005-110



**FORMAL OPINION NO. 2005-110**  
**Conflicts of Interest, Former Clients:**  
**Former Client as Adverse Witness**

**Facts:**

Lawyer formerly represented Expert Witness, who is employed by the state and who often testifies as an expert witness on behalf of the state in criminal trials. During the course of representing Expert Witness, Lawyer learned of wrongdoing by Expert Witness in the performance of Expert Witness's official duties. Lawyer's representation of Expert Witness is now concluded.

Lawyer is subsequently asked to represent Defendant, who is charged with a crime. Lawyer learns that Expert Witness will be called by the state to testify as an expert witness in the prosecution of Defendant.

**Question:**

May Lawyer undertake to represent or continue to represent Defendant in a criminal case in which Expert Witness will be a witness for the state?

**Conclusion:**

No, qualified.

**Discussion:**

Oregon RPC 1.6 provides, in pertinent part:

(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;

**Formal Opinion No. 2005-110**

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

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was 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.

Oregon RPC 1.9 provides, in pertinent part:

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.

.....

(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.

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.

## Formal Opinion No. 2005-110

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The question raised herein may properly be analyzed from the vantage point of either Oregon RPC 1.6 or Oregon RPC 1.9. *See also* OSB Formal Ethics Op No 2005-17.

A lawyer is not required to decline employment or to withdraw from a case merely because a former client will testify as an adverse witness. However, Oregon RPC 1.6 prohibits Lawyer from disclosing information learned from Expert Witness except with informed consent from Expert Witness, and Oregon RPC 1.9(c) simply prohibits the disclosure if the information will be used to Expert Witness's disadvantage. Oregon RPC 1.9(a) also prohibits Lawyer from representing Defendant absent Expert Witness's informed consent, confirmed in writing, because Lawyer's possession of confidential information about Expert Witness's wrongdoing that is relevant to the new matter makes the current and former matter substantially related.<sup>1</sup> *See* OSB Formal Ethics Op No 2005-11. *Cf.* *State v. Riddle*, 330 Or 471, 8 P3d 980 (2000); *In re Howser*, 329 Or 404, 987 P2d 496 (1999); *U.S. v. Moscony*, 927 F2d 742 (3d Cir 1991).

It is also important to note, that if something is generally known<sup>1</sup>, but adverse to a former client, an attorney may be able to use that information against their former client. ORCP 1.9(c)(1). Although the Oregon Supreme Court has not addressed this issue, courts in other jurisdictions have concluded that knowing a former client's conviction history would

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<sup>1</sup> This phrase "generally known" is not defined in the ORCP, Model Rules, or any accompanying comments. Because of this, the following Restatement definition of generally known is a good reference:

Whether information is generally known depends on all circumstance relevant in obtaining the information. Information contained in books or records in public libraries, public-record depositories such as government offices, or in publicly accessible electronic-data storage is generally known if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense. Special knowledge includes information about the whereabouts or identity of a person or other sources from which the information can be acquired, if those facts are not themselves generally known.

<sup>1</sup> Restatement of the Law 3d, The Law Governing Lawyers, Section 59, Comment d (2001). Courts have allowed the use of information that is generally known against former clients because the point for requiring confidentiality no longer exists. ABA Ctr. For Prof'l Responsibility, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct 1982-2005*, at 220 (2006) (reviewing the history of Model Rule 1.9). A case law example of what was found to be generally known and what is not can be found in *Cohen v. Wolgin*, E.D. Pa. No. 87-2007, 1993 WL 232206 (June 24, 1993), where the court found magazine and newspaper articles, court pleadings, published court decisions, and public records in government offices to be generally known information, while pleadings filed under seal and records of an international court are not. However, just because the information is publicly available does not mean that the information is generally known. *In re Adelpia Communications Corp.*, S.D.N.Y. No. 02-41729REG, 2005 WL 425498 (Feb. 16, 2005) (list of properties owned by a particular parties was not generally known information; information was publicly available, but would require substantial difficulty or expense to produce a list of the properties owned by the parties and related entities).

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be generally known and would not be enough to disqualify the attorney. See *State v. Mancilla*, Minn.App. No. A06-581, 2007 WL 2034241 (July 17, 2007); *State v. Sustaita*, 183 Ariz. 240, 902 P.2d 1344 (Ariz.App.1995); *United States v. Valdez*, 149 F.R.D. 223 (D.Utah 1993). The reasoning for criminal convictions to be generally known is because they are part of public record that require no expertise or expense to access them. *Mancilla* at 8.

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

1 Matters are *substantially related* for purposes of Oregon RPC 1.9 if they involve the same transaction or legal dispute or if there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter. ABA Model Rule 1.9 comment [3].

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§6.2–6.5, 6.8, 9.2–9.11, 9.20 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§59–60, 62, 121–122, 129, 132 (2003); and ABA Model Rules 1.0(b), (e), 1.6–1.7, 1.9. *See also* Washington Formal Ethics Op No 98.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen M. Hirschbiel, Executive Director  
**Re:** OSB Section CLE Co-Sponsorship

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### Action to Consider

Consider whether to take any action in response to the HOD resolution and discussion regarding section CLE co-sponsorship with the OSB CLE Seminars Department.

### Options

1. Move forward with implementation of the policy as planned.
2. Defer implementation of the policy until 2018.

If implementation is deferred, consider whether to:

1. Convene a focus group with sections opposed to the policy to better understand their concerns.
2. Abandon the policy entirely and look for other ways to accomplish the goals of the policy.
3. Plan to move forward with the policy in 2018, and do additional outreach in the meantime.
4. Other?

Attachments: Summary of 2016 HOD Actions

September 9, 2016 Memo to BOG regarding Section Co-Sponsorship with CLE Seminars Department

# Summary of 2016 House of Delegates Actions

## November 4, 2016

### Passed

In Memoriam  
(BOG Resolution No. 1)

Veterans Day Remembrance extending gratitude to those serving in the military service and offering condolences to the families of those who have died in service to their country  
(BOG Resolution No.2)

Increase 2017 Membership Fees for Late Payment  
(BOG Resolution No. 3)

Amendment to RPC 7.2(b)  
(Board of Governors Resolution No. 4)

Amendment to ORPCs 7.2(c) and 7.3(c)  
Called for Division of a Question. Both passed.  
(Board of Governors Resolution No. 5)

Support for Adequate Funding for Legal Services to Low-Income Oregonians  
(Delegate Resolution No. 1)

Implementation of "Writing for the Bar Mentorship Program"  
(Delegate Resolution No. 2)

Support for Public Defense Providers  
(Delegate Resolution No. 3)

### Failed

### Not Considered Due to Lack of Quorum

OSB Section CLE Co-Sponsorship  
(Delegate Resolution No. 4)

Debate on the final resolution was lengthy and raised issues of continuing concern. The OSB Board of Governors will discuss options, including deferring implementation of the underlying policy change the resolution sought to reverse, at its November 19 meeting. Delegates and other bar members are encouraged to submit comments in advance. Comments should be addressed to OSB CEO Helen Hierschbiel at [hhierschbiel@osbar.org](mailto:hhierschbiel@osbar.org).

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, CEO/Executive Director  
**Re:** Section Co-Sponsorship with CLE Seminars

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### **Action Recommended**

None. This is for information purposes only.

### **Background**

#### Current Situation

The OSB Labor & Employment Law Section has prepared a draft resolution for the House of Delegates that would direct the Board of Governors to reverse a policy decision it made in 2014 regarding co-sponsorship of CLE seminars. The new policy, slated to take effect in 2017, would give the bar's CLE Seminars Department the right of co-sponsorship with any section program four hours or more in length. The CLE Seminars Department would have discretion over which programs to co-sponsor, and as a practical matter has the capacity to add only 3-4 new cosponsored programs per year.

#### Background

For the past several years, the Board of Governors has been engaged in a review of bar programs and services in order to ensure that bar programs are aligned with the bar's mission and operate with maximum effectiveness and efficiency. In 2014, the BOG undertook a year-long, in-depth examination of the CLE Seminars Department. Former OSB President Tom Kranovich summarized the board's discussions and sought input from the membership about the policy questions involved in a column published in the August/September 2014 issue of the OSB Bulletin, a copy of which is attached.

As a result of its review, the BOG approved a number of policy changes intended to advance two goals. The first and most important goal was to make quality CLE programs that appeal to a broad cross-section of the membership available and accessible to all members. Secondly, the BOG sought to avoid using member license fees to subsidize CLE programs.

For section CLE programs, the policies establish new requirements to use registration services for all section CLE seminars, and to co-sponsor longer programs with the CLE Seminars Department. During 2015 and early 2016, staff met with each section executive committee at least once to communicate the policy changes and to seek input on how to implement the policies in a way that would best serve section needs while still advancing the Board's primary goals. Past President Tom Kranovich attended several of these section meetings; President Rich Spier, who attended even more, wrote about the process in the November 2015 issue of the OSB Bulletin, a copy of which is attached.

Many of the sections offered suggestions, several of which were incorporated into the implementation plan. On June 8, 2016, all section leaders were invited to a Section Summit at the bar center, with live webcasting available for those unable to attend in person. The purpose of the summit was to communicate the implementation plan for the registration and co-sponsorship requirements and to seek input on other section issues that the Board had identified as ripe for review. The presentation slides are attached.

The primary point of contention raised at the summit (and during the individual section meetings) was the co-sponsorship requirement. A follow-up communication was sent to summit participants and section chairs in June, and section leaders were invited to submit comments to the board in writing. The follow-up communication and written comments received are attached.

Because the CLE policy changes were the primary focus of conversations with the sections, discussion of other section issues was limited at many of the individual section meetings and those issues were not addressed at all at the summit. A summary of those issues, which is also attached, was sent to all summit participants and section chairs on August 26, 2016 requesting feedback for the BOG's review in early 2017.

Attachments:

- Kranovich, *A Business, or a Service? CLE Seminars*, OSB Bulletin (Aug/Sept 2014)
- Spier, *A Work in Progress: Considering CLE Seminars and Sections*, OSB Bulletin (Nov 2015)
- Section Summit Power Point presentation slides
- Hirschbiel post-summit email to section leaders
- Written comments received from sections
- Hirschbiel email soliciting feedback on other section issues



## Oregon State Bar Bulletin — AUGUST/SEPTEMBER 2014

August/September 14 ▼

### President's Message

#### **A Business, or a Service?**

#### **CLE Seminars**

**By Tom Kranovich**

Last month I referred to bar services and products such as BarBooks, Fastcase, lawyer referral services and CLE programming as being part of the bar's efforts to meet its statutory mission of "advancement of the science of jurisprudence and the improvement of the administration of justice." I emphasized that the programs provided to carry out this obligation are discretionary and, accordingly, potentially the most vulnerable to reduction or elimination. From last month's article you know that the Board of Governors is reviewing all of the bar's programs and services, beginning with the OSB CLE Seminars Department, to assure that bar resources are used appropriately and efficiently.

Historically, the Board of Governors has set policies and bar staff has implemented procedures that have not only maintained but increased services to the membership. Through the exercise of sound fiscal decisions, new services, such as BarBooks and Fastcase, have been provided to all members, statewide, without any fee increase or assessment. Through the program review process, the board and bar staff reduced expenses and made relevant programs more efficient to the degree that there has not been a fee increase in 10 years.

Our program reviews have focused on service programs that generate supplemental income separate from annual membership fees. As a result of earlier program reviews, the board eliminated the printed membership directory and decided to make BarBooks a member service, foregoing an earlier subscription model (and the associated revenue) to make sure this valuable service and resource was available to all members. Other than occasional (and diminishing) laments to bring back the printed directory, no one is proposing we do anything differently with bar publications.

Several years back, the lawyer referral service went through a stringent review and the flat-fee registration system was changed to a percentage recovery system. Until that time, the Lawyer Referral Service had been running at a \$240,000 yearly deficit. Lawyers who participate in the LRS program have the potential of making money from the referrals generated. Accordingly, changing to a percentage system seemed a more equitable way to minimize and recover the bar's costs for the service of connecting potentially profitable clients with proficient attorneys. While the LRS deficit has not yet been eliminated, it has been significantly reduced and continues to shrink at a rate greater than what was originally forecast.

Of the bar's remaining revenue-generating services, at least for this year's board, the discussion on CLE seminars has been the most protracted and, dare I say it, contentious topic. As of the July meeting, the board seems to have reached a consensus that the bar should continue to provide CLE seminars to its members. The unresolved issue under discussion is: should the bar provide CLE seminars on a strict business model, or should the bar subsidize CLE seminars as a service to members?

Unlike lawyer referral, continuing legal education is mandatory (although there is no requirement to obtain CLE credits from the OSB). Like lawyer referral, the CLE seminars program has never "run in the black," and the CLE seminars department is now under similar scrutiny as was the LRS program. The questions before the board are 1) should we take steps to require the CLE seminars department to run "in the black" as a business model (and if we cannot, should the department be eliminated?); or 2) should we continue to "subsidize" CLE programs as a bar service, albeit after implementing as many efficiencies as are reasonably possible? To answer these questions, we need look at the circumstances defining the deficit, the limitations preventing the CLE seminars department from minimizing the deficit and the prior policy decisions that have promoted, contributed to and/or exacerbated the situation.



**Defining the deficit.** The OSB CLE Seminars Department produces and markets 45 to 55 programs a year. Of those, 18-20 are co-sponsored with sections and other bar groups in multiple formats that provide convenient statewide participation options, including: live webcasts; DVDs; online, on-demand video; and audio-only formats. In 2013 the CLE seminars department generated revenues of \$984,855 with direct expenses (staff salary and benefits, materials, promotional and venue expenses) of \$832,258, for a net revenue of \$152,597. The department made more than it cost in direct expenses but the analysis does not stop there.

After allocating the department's share of indirect costs it had a net expense of \$230,000. Indirect costs include the department's percentage of building floor space and pro rata allocations for I.T., human resources, creative services and other "overhead" expenses. Eliminating the department would only cause its share of the indirect expenses to be reallocated back against the remaining departments while at the same time giving up the \$984,855.00 in revenue that it brought in last year.

**Competing interests.** Although the bar was once the primary provider of continuing legal education for members, that is no longer the case. Many bar-related groups such as the Oregon New Lawyers Division, bar sections and the Professional Liability Fund offer discounted or free CLEs to their members. There is a myriad of other nonprofit and for-profit CLE providers in the market, some who offer online CLE "blocks" of 45 hours of CLE for under \$200. I offer no opinion on the quality of such "block" programming, but I recognize that for our under-employed attorneys or others in tight financial circumstances, these offerings are a godsend. Similarly, while most other states require a certain percentage of credits to be earned in settings that allow participation (live programs, live webcasts and moderated replays), our board and the court have historically been reluctant to do the same lest it make meeting MCLE requirements more onerous for members, especially those in rural areas.

**Past policy decisions.** The board does what it can to promote the availability of low cost CLEs. Currently, if someone buys or streams an online OSB program, anyone else can watch it and claim credit for having seen it without paying for its use. Law libraries offer CDs of OSB CLEs for no charge. Additionally, over the years the board has adopted "complimentary admission" policies to support member involvement in certain events (serving on CLE panels, grading bar exams, teaching law school classes, participating in the New Lawyer Mentoring Program) or in recognition of certain status (judges and their staff, 50-year members). The board also promotes and subsidizes the CLE offerings of our sections by charging less than what it costs us for support services, especially the handling of checks by our accounting staff. We also try to minimize CLE costs for those providing low-cost or free legal service for underrepresented people. From a public service point of view and as a policy matter, this all makes sense, but from a break-even business point of view, revenue is not being optimized.

**Considerations to be discussed** (not comprehensive or exhaustive):

- Should the bar stop offering CLEs that have historically proven unprofitable because they relate to less common practice areas of law?
- Should we require that a minimum number of MCLE credits come from seminars with program formats that allow live interaction among participants?
- Should all sections be required to use OSB support services for their CLEs and if so, should the cost to the section be directly proportionate to OSB's cost?
- Should all sections be required to provide a certain percentage of discounted or free CLE?
- Should our pricing take into consideration the lack of availability for CLEs in remote areas of the state?
- Should the bar continue to offer free registration for 50-year members, active pro bono members, and judges and their attorney staff?
- Do our current policies and efforts to hold down CLE prices help keep down the prices from outside vendors and, if so, should that be a concern? What will happen to outside vendor prices if the OSB is no longer in the market?
- Should MCLE credit be given for listening to a CD for which the listener has made no payment?
- Should OSB be more stringent on quality control and exercise more rigorous MCLE approval criteria for all CLEs regardless of who puts them on?

The bar staff has been diligent in finding ways, consistent with board policy, to efficiently deliver quality CLE programs at the lowest cost possible while at the same time seeking to maintain or increase our market share. Expect to see some new products and new delivery platforms in the next year or so, including more emphasis on live webcasting so lawyers can participate remotely in real time for more seminars. We are also watching developments in other states, many of which are seeing declines in CLE revenue despite more business-oriented policies.

We on the board will continue our review. Are we in the business of providing CLEs or are we providing CLEs as a member service? Are CLE seminars an essential part of the bar's core mission in providing necessary services for the benefit of the public and the membership, or are they an opportunity to promote the bottom line?

Write me at [president@osbar.org](mailto:president@osbar.org) or send a letter to the editor. I invite you to weigh in.

#### **ABOUT THE AUTHOR**

OSB President Tom Kranovich practices law in Lake Oswego. Reach him at [president@osbar.org](mailto:president@osbar.org).

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## Oregon State Bar Bulletin — NOVEMBER 2015

November Issue ▼

### President's Message

#### **A Work in Progress:**

#### **Considering CLE Seminars and Sections**

*By Rich Spier*

For several years, the Board of Governors has conducted program reviews to ensure that the bar's discretionary programs are run effectively and efficiently and adhere closely to our mission. Through this process, we have contained costs and managed our resources to the degree that there has not been a general fee increase in 11 years. Earlier program reviews have led to the elimination of the printed membership directory, the decision to make BarBooks a member benefit instead of a subscription service, and the adoption of a percentage-fee funding model for the Lawyer Referral Service. Although some of you still miss the printed directory, we stand by that decision for reasons of efficiency, sustainability and accuracy of our posted membership records. The BarBooks decision has always been popular — like BarBooks itself, which is averaging more than 12,000 page views per work day this year — but it did mean a substantial decrease in revenue to the bar. The lawyer referral changes, like the membership directory, were contentious, but they have achieved the intended result of making the program self-supporting through user fees rather than general membership fees.

Last year, we turned our attention to continuing legal education. The OSB CLE Seminars Department has been unable to meet its goal of a break-even budget for many years. We took a hard look at market conditions, including internal and external competition, and reviewed a number of bar policies regarding CLE. We considered several courses of action, including eliminating our program and allowing bar sections to carry the weight of live, local CLE production. The problem with that, we discovered, was it would actually cost us much more.

Here's the situation: About half of the bar's 42 sections work with the CLE Seminars department to put on their seminars. Financially that's a break-even proposition since the fees paid by the sections cover the costs. The sections that host seminars without involving our CLE Seminars department, on the other hand, actually cost the bar money. The reason is that no fees are charged but costs are still incurred, most notably for processing registration payments. Bar groups that don't contract for registration services can only accept payment by check (due to accounting standards that apply to the bar) and those checks need to be processed by the bar's accounting department. Check processing is much more expensive than credit card processing, plus we have had repeated issues with tracking down missing checks and getting checks submitted months after they were written.

Once we understood the financial situation, it was clear that something needed to change. We saw three possibilities: charge a fee for processing checks for section CLE registrations; increase the per-member "support assessment" currently charged to all sections; or require sections to use registration services. The first option would be an administrative nightmare and the second would have a broad, negative impact on all section budgets. The third option not only seemed the most fair, it also offered other benefits: every seminar would have online registration 24/7 with payment by credit card; cancellation and refund processing would be included; sections would get registration lists for check-in purposes; MCLE attendance reporting would be simplified; date conflicts would be reduced with a single-source entry point for scheduling; and all programs would be automatically included in the bar's online event calendar, giving members a convenient place to find and register for any seminar sponsored by the bar or one of its affiliate groups.

The Board of Governors decided to move forward with requiring the use of registration services for all section CLE events. To make the changes easier to implement, we decided to wait until after installation of the bar's new database software (scheduled for mid-2016) to make them effective. This gives us time to work with the sections to address any concerns and work on



implementation details. By waiting for the new software, which allows us to bring registration services in house, we also expect to decrease costs and lower the fees we charge for registration services.

The financial realities were not the only reason we decided to continue offering OSB CLE. Last year, while the Board of Governors was conducting its review, President Tom Kranovich wrote about the situation in this space. The responses he received were strongly in support of continuing the program. I personally was most persuaded by the many comments I have heard from bar members in rural areas, who greatly appreciate the live webcasts offered by OSB CLE. These programs allow lawyers to participate in real time from any remote location, and are currently only available with bar-sponsored programs. As a statewide organization, we need to provide more of these live webcasts, not fewer.

Which brings us to a second area of section CLE: co-sponsorship. Many sections co-sponsor with CLE Seminars to present programs, with the section responsible for the legal content and the seminars staff responsible for administration and logistics. Because of the benefits of a coordinated approach, and the desirability of promoting live webcasting and other delivery methods, we have decided to require sections to offer co-sponsorship to CLE Seminars for all programs longer than three hours. Again, the new policy will not take effect immediately; to give sections time to adjust, the policy will not take effect until 2017. The policy does not envision that all section programs will be co-sponsored — which is the rule in other states — or that co-sponsorship will necessarily work the same way it does today. We are open to new models and suggestions that further our goals of increased efficiency and greater access to live CLE programming.

With these preliminary decisions made, the Board of Governors directed bar staff to meet with each section to talk about the changes and discuss any concerns. I have attended several of these meetings, as has Tom Kranovich, who wanted to continue with the project that consumed much of his term as OSB president. We have received a lot of feedback, both positive and negative, and some excellent suggestions. The Board of Governors will be discussing that feedback at our annual retreat in November.

One takeaway from the section meetings that troubles me is that some sections clearly do not see themselves as part of the larger bar organization. I suspect we do not interact enough to maintain strong relationships. While that may be understandable given the number of sections we have, I think the Board of Governors could do a better job of connecting sections to the larger organization. That's why we will be hosting a special session for section leaders next spring to talk about the final outcome of all these discussions. This is still a work in progress.

Not coincidentally, the board's next area of program review is bar sections. While each section has its own executive committee and budget, their operations are subsidized by general membership fees. The Board of Governors has always supported that subsidy because of the unquestioned importance of bar sections. Sections promote lawyer networking and collegiality, are active in law improvement and legislative activities and provide valuable educational resources for their members. We do not want any of that to stop. We remain, however, committed to ensuring that all voluntary bar programs operate efficiently and effectively. I would like to share some of the information and questions we have been asking sections (and will continue to ask) in advance of our review.

First, the OSB has a very high number of sections, currently 42 with some talk of number 43 soon to come. State bars of comparable size include Alabama with 27 and Oklahoma with 24. Even larger bars have fewer sections: Washington and Arizona each have 28 and California only 16. Administrative time and expenses increase with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and pay independent contractors to work for them. Questions for discussion include:

Should large sections with adequate means be encouraged to form independent organizations if they want more independence from the OSB?

Should there be a minimum number of members required to maintain a section?

Could some sections be merged?

Do we need a different type of group structure, perhaps with fewer constraints? For example, we could establish online forums open to any bar member interested in a particular area of law, allowing them to communicate and share information without a formal structure.

Second, some sections are carrying large fund balances. The total fund balance for all sections has been increasing year after year, and totaled \$713,337 at the end of 2014. This is not a cost to the bar, but is not a "best practice" for membership organizations and nonprofits. Questions for section leaders include:

Should the OSB have a policy or offer guidelines on appropriate reserves for bar sections?

Should sections with large fund balances be encouraged to decrease membership fees?

Currently the bar's administrative charge to sections is set at 50 percent of the actual cost. Is it necessary to keep subsidizing sections that have fund balances exceeding two or three years of their projected dues revenue?

The Board of Governors will not take up the broader discussion about sections until next year, but your input is welcome now and in the future. If you are a section leader, look for an invitation to the meeting next spring. And please feel free to share your thoughts with me any time by sending an email to [president@osbar.org](mailto:president@osbar.org).

## ABOUT THE AUTHOR

*OSB President Rich Spier is a mediator in Portland.*

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# **SECTION SUMMIT**

OREGON STATE BAR



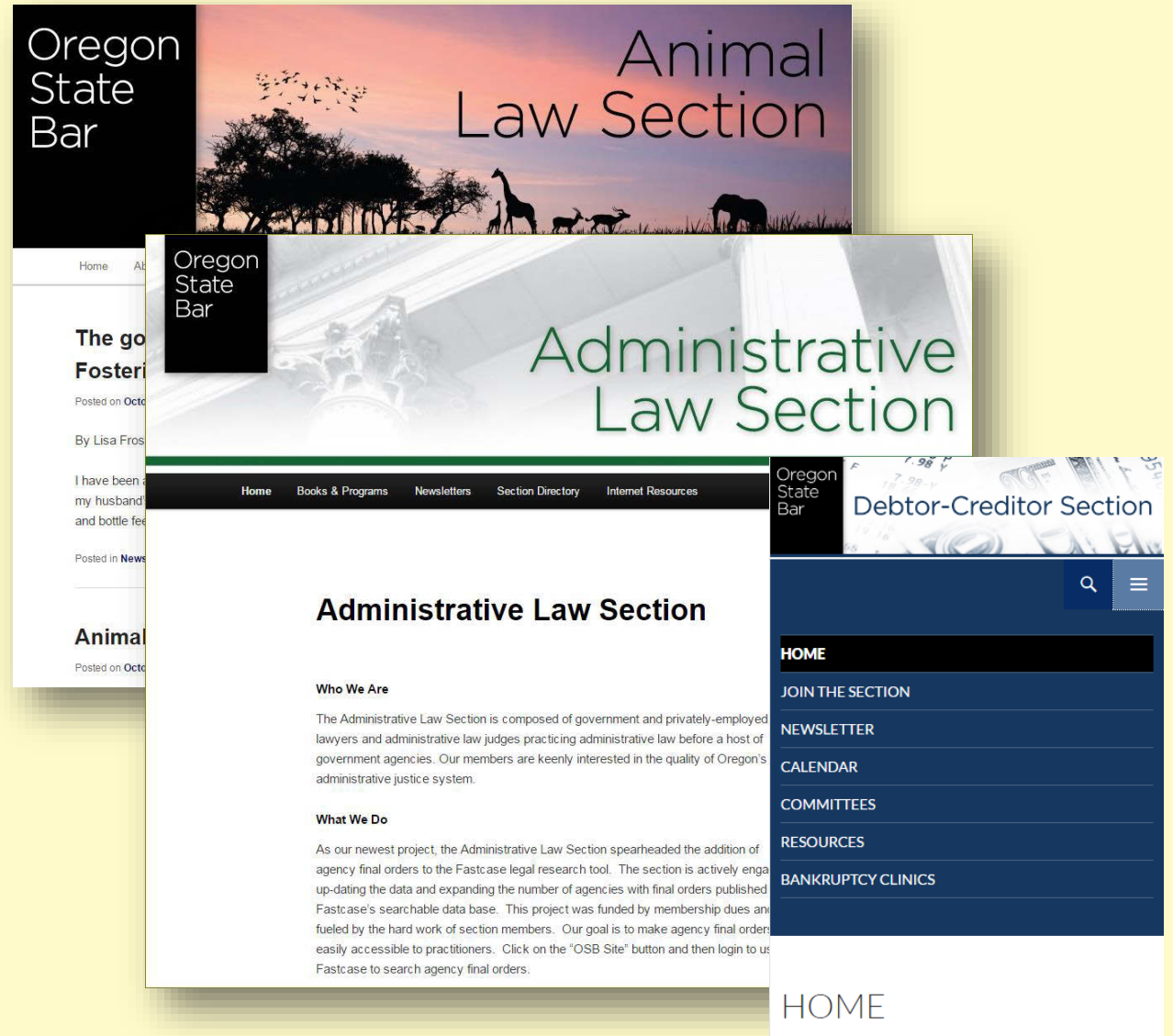
# WEBSITES

MIGRATION TO OSB WORDPRESS



# OSB WORDPRESS PLATFORM

- Set up and hosting of basic sites provided by the OSB
- Themes that are both mobile responsive and ADA accessible
- OSB branded for ready ID
- Easy-to-use content management system
- Free training for editors
- 17 section sites currently migrated to the OSB WordPress platform with another 7 in process





# **EVENT REGISTRATION**

OPTIONS FOR SECTIONS

## Registration Service Levels

	Standard	Basic	Special
Cost to section	\$10 per	\$5 per	\$100 flat fee
CLE hours	≤ 4 hrs.	≤ 4 hrs.	≤ 2 hrs.
Event limit per year	Unlimited	Unlimited	4
Registration pricing options	3 (\$2 >3)	2	Free only
<b><i>Services included:</i></b>			
Email announcements sent by OSB	3	1	1
Registration link for use on section websites and list serves	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Registration help from CLE Service Center	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Automatic registration confirmation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Listing on OSB events calendar	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Generic forms, attendee name badges and speaker name tents	<input type="radio"/>		
Attendance reporting to MCLE	<input type="radio"/>		
Course materials posted online	<input type="radio"/>		
Audio recording - optional for mp3 download	<input type="radio"/>		

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas

## CO-SPONSORSHIP

# Co-sponsored Event Services

- All registration services offered above  
*Plus...*
- Program, speaker and event planning and project management
- Course material collection and production
- Customized marketing materials
- On-site staffing
- Webcasting (when available)
- Video and/or audio recording (when available)
- Scholarships and tuition assistance
- Credit card merchant fees paid by OSB
- MCLE application and payment

## CO-SPONSORSHIP

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas



**Q & A**



# **Section Fund Balances**

\$733,778 at the end of 2015

# **Section Structure & Alternatives**

42 sections in 2016



# **SECTION SUMMIT**

OREGON STATE BAR



Section Officers:

Thanks to all who participated in the recent Section Summit, and to all of you who hosted us at your section executive committee meetings over the past year and a half.

A summary of the new CLE seminar registration options, as well as more detail on co-sponsorship, is available here <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>. This document will continue to evolve based on your suggestions and a better understanding of how event registration will work with the new software platform we are installing later this year. I apologize for the delay in getting this to you.

I also want to clarify that we are not attempting to limit section CLE or prevent sections from offering free or low-cost programs to their members. Our concern is that under our existing policies some of those programs are effectively subsidized with mandatory bar fees. The new policies reflect the board's commitment to ensuring all bar CLE programs cover their costs, whether they are offered by our CLE Seminars Department or a bar committee, section or division. We are also committed to making high-quality CLE available to all members and think the policy changes will advance that goal.

We have tried to be responsive to feedback received over the last year about how to implement the policy changes, and we will continue to adjust as we move forward. I welcome your comments and suggestions, which I will present to the Board of Governors. I will write again soon with any updates, including the questions about section structure and section fund balances that we did not have time to address at the summit.

Helen Hirschbiel, CEO/Executive Director

[hhirschbiel@osbar.org](mailto:hhirschbiel@osbar.org)

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If you would like to request accommodations for a Section meeting or event, please contact Sarah Hackbart at [shackbart@osbar.org](mailto:shackbart@osbar.org) or 503 431-6385 as soon as possible but no later than 48 hours before the scheduled event. More information about accommodations can be found [here](#)

Change how the bar communicates with you! Do you want email from certain bar groups sent to a secondary email address? Just visit [www.osbar.org/secured/login.asp](http://www.osbar.org/secured/login.asp) and log in using your bar number and password, then click on the Manage Your Profile tab from the Dashboard to adjust your communication preferences.

Please note that while you can opt out of some bar communications, you cannot opt out of regulatory notices that may affect your membership status. Also note that other groups – including the Professional Liability Fund – maintain their own email and contact lists. Please contact these groups directly with any questions about their lists.



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January 20, 2016

Helen Hirschbiel
Chief Executive Officer/Executive Director
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281

Re: OSB's Proposed Changes to Section Programming

Dear Helen:

Several months ago, representatives from the Oregon State Bar met with the labor and employment section's executive committee to discuss potential changes to section programming. One of the proposed changes would require sections to use OSB staff and services when sponsoring continuing legal education seminars (CLEs) and to split revenue from section CLEs with the Bar.

The labor and employment section sponsors an annual CLE. In the past, the section has cosponsored its CLE with the Bar, using the Bar's services and staff and sharing revenue with the Bar. The section discontinued cosponsorship with the Bar after finding that it is more cost effective to use limited services provided by the Bar and rely on volunteers from the section's executive committee instead. By using volunteers from the committee, the section has been able to increase its programming on a limited budget.

For the September 2015 CLE, the section incurred the following expenses from the Bar, using only limited services:

Table with 4 columns: Service, Quantity, Cost, Expenses. Rows include Registration, Materials Production, and Total.

Using only limited services from the Bar, the section was able to save enough money to provide five (5) scholarships to the 2015 CLE, which included registration and hotel accommodations to section members who would not have otherwise been able to attend the CLE. The section was also able to provide free registration, hotel accommodations, and travel reimbursement to speakers, and reduced registration fees for law students and recent law school graduates. While CLEs held outside the Portland area typically result in a net financial loss for the section, the 2015 CLE held at Salishan generated net revenue. Had the section been required to cosponsor the 2015 CLE with the Bar, it is unlikely that the section would have been able to provide the same benefits for section members without incurring additional costs.

The last time the section cosponsored a CLE with the Bar was in 2012. The net revenue for the 2012 program was \$3,351.45. However, the section only received \$304. The Bar received the remaining \$3,047.45 under the Bar's revenue sharing formula. Notably, the 2012 CLE did not provide any scholarships similar to those provided at the 2015 CLE.

When the section used the Bar's limited registration services for its 2014 CLE, the net revenue was approximately \$13,927. The section received the entire amount because it chose not to cosponsor the event with the Bar. The section was able to use this revenue to provide scholarships to the annual CLE and provide programs to section members at little to no cost, including the highly successful 2015 Labor & Employment Law Boot Camp and several breakfast briefings.

Requiring sections to use the Bar's staff and services and share revenue with the Bar will reduce section revenues and ultimately lead to reduced services and benefits for section members. Surely the Bar shares the section's concerns for maintaining member access to programming and providing scholarships and networking opportunities for all members. A better approach would allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue sharing with the Bar. The Bar could allow sections to choose from a variety of services, including event registration, production/printing of materials, advertising, on-site staff assistance, catering planning, A/V assistance, and general event coordination. I am confident sections will continue to take advantage of such services, which would allow the Bar to generate revenue from section CLEs without risk of depleting section revenues to the point of compromising event programming.

Please feel free to contact me if you have questions or would like to discuss this. Representatives from the labor and employment executive committee would appreciate the opportunity to present these concerns to the Board of Governors or any other committee or work group reviewing the proposed changes.

Sincerely,

***Sarah K. Drescher***

Sarah K. Drescher  
Chair, OSB Labor & Employment Section



# Oregon

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Fax (503) 378-2163  
[www.oregon.gov/opds](http://www.oregon.gov/opds)

May 27, 2016

Ms. Helen Hierschbiel  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Re: OSB's Proposed Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Constitutional Law Section's Executive Committee joins in the letter dated January 20, 2016, from the Labor & Employment Section's Chair Sarah Drescher. A better approach is to allow section to use the Bar's services at a reasonable cost without requiring cosponsorship or revenue sharing with the Bar.

The Constitutional Law Section used to cosponsor its annual CLE with the Bar. The Constitutional Law Section discontinued cosponsorship in 2014 after growing discontent with the limits the Bar sought to impose on the section's CLE. We were told that these restrictions were necessary because our annual CLE, which has historically attracted around 100 attendees each year, could not meet its expenses. However, over the past two years, the Constitutional Law Section has found that it is able to provide its annual CLE at a significantly reduced cost to most of its members without running a deficit. Instead, the CLE has generated a small profit for the section.

The Constitutional Law Section is concerned about the proposal to give the Bar the "right-of-first-refusal" for all section CLE programming. When you visited our section last July, you explained that the right-of-first refusal option will help the CLE Seminar's Department avoid "subsidizing" competing section CLE programming and break even financially. However, in the section's view, requiring mandatory CLE cosponsorship is not necessary to achieve those goals. In our case, the section produced the CLE without running a deficit; something we had not achieved in recent years with Bar cosponsorship. Additionally, the Bar can

avoid subsidizing section-led CLE programming by charging an appropriate amount for the à la carte services it provides.

We join in the Labor & Employment Section's view that a better approach would be to allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue-sharing with the Bar. We have always enjoyed working with the CLE Seminar Department's staff and would continue to take advantage of the Bar's services.

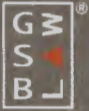
I and another representative from the Constitutional Law Section Executive Committee are planning on attending the summit on June 8, and we look forward to the opportunity to discuss our section's experience in person with Bar leadership. But, please feel free to contact me if you would like to discuss this or have any questions before then.

Sincerely,



ERIN J. SNYDER SEVERE  
Deputy Public Defender  
Criminal Appellate Section





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June 13, 2016

Board of Governors  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd.  
P.O. Box 231935  
Tigard, OR 97281

RE: Real Estate and Land Use Section's Preliminary Comments about the  
Proposed Changes to Section Programming

To the Board of Governors,

I am the Chair of the Real Estate and Land Use Section (RELU) of the Oregon State Bar (OSB) and submit these comments on behalf of the RELU Executive Committee (RELU EC). The RELU EC understands that the Board of Governors (BOG) is contemplating changes to co-sponsorship of continuing legal education seminars (CLEs) at its June 2016 meeting. Please consider these comments before presenting a draft policy to the Bar Sections for formal comment.

Annually, RELU offers three types of CLEs, its Spring Day-long CLE at the Bar that is successfully co-sponsored with OSB; and two Section-organized event types - Annual Summer Conference and Luncheon CLEs - where the Section wishes to retain flexibility in its staffing. The following describes each type in more detail.

1) Spring Day-Long CLE at the Oregon State Bar Center - This event has been a successful day-long seminar co-sponsored by the OSB. Attendees and the RELU EC appreciate the service by the staff, the venue, and the technological assistance (preparation of CLE materials and webinar interface) provided by OSB. This event previously took place in the Fall, but after communication with OSB staff, we moved the event to the Spring in 2016. Attendance was up and we appreciate the suggestion by staff to move the date. The RELU EC believes this co-sponsored event is a success and do not see a need to change how it is run and coordinated between the RELU CLE Subcommittee and the OSB.

2) Annual Summer Conference - The RELU Annual Summer Conference is a multi-day event, beginning Thursday night through Saturday morning in early August. The long-standing event annually switches location between the Oregon Coast (Salishan) and Bend (typically the

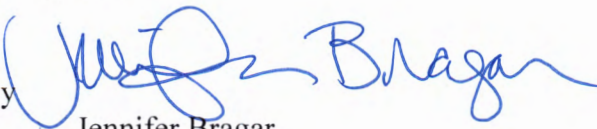
Riverhouse). The conference draws between 200-300 attendees from all around the state depending on the year and location. The event has successfully been organized by our Annual Summer Conference CLE Subcommittee with the guidance and participation of our long-time conference director, Norma Freitas. Last year, RELU relied on the OSB staff to run the on-location event. We found the staff pleasant and well-intentioned, but overall felt they were not familiar enough with the venue or the policies and practices of the event, and had to find and ask our coordinating committee members to address questions that arose. Our members and coordinating committee were not served as well as when Norma Freitas staffed the event. As a result, the RELU EC entered into a contract with Norma Freitas for 2016 to attend and staff the Annual Summer Conference, as she had for more than 10 years. We want to be able to continue to contract with outside consultants to staff the Annual Conference and ensure that funds are available for the Section to do so under the proposed co-sponsorship policy.

3) Luncheon CLEs - RELU sponsors approximately 6 lunchtime CLEs at a downtown Portland location. The effort is coordinated by our Luncheon CLE Subcommittee and payments for the luncheon are collected by one of the committee members and submitted to OSB for processing. In terms of this luncheon programming, the RELU EC's desired outcome is a co-sponsorship that streamlines payment collection and processing through OSB but retains the Subcommittee's ability to respond to current events for luncheon topics. In other words, these luncheons would not be successful if we do not have flexibility in terms of choosing the date for the luncheon (this is venue driven). In addition, the Luncheon Subcommittee would not want to have to decide topics too far in advance because the new co-sponsorship policy would impose earlier deadlines for topic choice and mailings. Last, the lunchtime CLEs are videotaped at a fee to the Section, and made available on our website for free viewing. If RELU can gain a better understanding of pricing for the recording fees under the co-sponsorship policy and whether we would be required to charge for the later viewing, that would be helpful to our future planning efforts.

Thank you for your consideration of these comments. We look forward to working with OSB to create a co-sponsorship program that works for the RELU Section and OSB.

Sincerely,

GARVEY SCHUBERT BARER

By   
Jennifer Bragar

cc: Amanda Lunsford (by e-mail)  
Dani Edwards (by e-mail)  
Karen Lee (by e-mail)



# Oregon

## Office of Public Defense Services

### Appellate Division

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August 4, 2016

Ms. Helen Hierschbiel  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Re: OSB's Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Criminal Law Section's Executive Committee joins the executive committees of the Labor and Employment Section and the Constitutional Law Section in opposing the changes undertaken by the Bar granting a "right of first refusal" to cosponsor section CLE events. Many of the reasons for our disagreement with the Bar's changes are ably expressed in Sarah Drescher's letter to you dated January 20, 2016, and Erin Severe's letter to you dated May 27, 2016. I write separately to highlight our specific concerns.

The large majority of our section members are (1) attorneys who work in district attorney offices, and (2) attorneys in firms, groups, or solo practices who are appointed by the court to represent indigent clients. Those attorneys serve the public good while being compensated at rate significantly less than their colleagues in the private bar.

The financial needs of the section members has always guided the executive committee's actions. In the six years that I have served on the committee, our section dues have remained at \$20. The cost of our annual CLE, which typically allows attendees to claim five to six hours of MCLE credits, including an hour of ethics, elder or child abuse reporting, diversity, etc., has remained around \$120 for section members, with discounts available for new attorneys and early registrants. My understanding is that those rates predate my tenure on the committee by several years.

Long ago, the executive committee made the decision that the benefits of co-sponsoring our annual CLE with the Bar were substantially outweighed by the resulting costs to section members. We have continued to use the Bar Center as the CLE venue, and utilize the Bar's CLE Services division for marketing, registration, etc. All other things being equal, I would predict that we would continue to use those services; the Bar Center is centrally located and suitably sized for our event, and Bar staff are responsive, courteous, and professional.



Requiring co-sponsorship, however, would significantly increase the costs to section members, without a corresponding increase in benefits. I have reviewed video of the section summit convened to explain the Bar's reasoning for the new co-sponsorship policy. While the Bar's goals in implementing the changes are laudable, the executive committee does not believe that the changes will further those goals for our section members.

For example, one of the reasons proffered for the changes is insuring that all of the Bar's CLE offerings have a consistent, high level of quality. The Criminal Law Section's annual CLE has consistently received high praise in evaluations submitted by attendees. Another reason offered for the changes is accessibility, with an emphasis on making CLE programs available online for those who are unable to travel to Tigard. The executive committee shares the Bar's focus on accessibility. To that end, for the past four years the section has presented regional CLEs in the fall, including CLE programs in central, eastern, and southern Oregon. The section has also experimented with making the CLE programs available online; however, the lack of interest in such offerings on the part of our section members has rendered the cost-benefit analysis relatively easy to resolve in favor of not incurring that expense.

In short, the Criminal Law Section has for years offered a high-quality annual CLE to its members at a reasonable rate. While the Bar's interest in co-sponsoring more sectional CLE programs is no doubt fueled by good intentions, the executive committee believes that the increased cost of co-sponsorship to its members will far outweigh the relatively few benefits they receive in return.

Sincerely,

Shawn Wiley  
Chair, Executive Committee  
Criminal Law Section

Thanks to all of you who responded to my last message regarding section CLE policies. I have received comments from several sections and will forward those comments to the Board of Governors. This message is intended to start a discussion of two issues we did not have time to cover at the summit: section fund balances and possible alternative structures for bar groups. We did get feedback from some of our meetings with sections last year, but would appreciate additional feedback and comments.

The first issue is our section fund balance. For accounting purposes, section reserves are pooled together in a single fund — the section fund — with each individual section retaining ownership of its own share. There is no reserve policy for the section fund, and no reserve policy for individual sections. The only guidance we offer is through the standard section bylaws, which require all section budgets to include a target reserve plan and a short description of any long-range plans that require an accumulation of funds.

At various points over the past 20 years or so the bar has encouraged sections to “spend down” their reserves. Despite those efforts (and acknowledging that some sections consistently maintain modest reserves) the section fund has continued to grow. At the end of 2005 the fund total was approximately \$508,000; by the end of 2015 it had reached approximately \$734,000. Nonprofit and government organizations commonly set reserve goals equivalent to 2-6 months of operating expenses; currently nearly half of the bar’s sections have reserves exceeding two years of operating expenses.

Our questions for you: Do you think this a problem? If not, why not? If yes, how should it be addressed? Should we have a policy or guidelines on appropriate reserves? Should sections with large fund balances be encouraged to decrease membership fees, offer scholarships or donate excess funds? Should the bar continue subsidizing the administrative costs of sections with large fund balances? [1] Is it even feasible to have a standard reserve policy given our large number of sections, each of which operates somewhat differently?

That last question relates to our second issue, which is whether the section model is too “one size fits all” for our members. The OSB has a very high number of sections — currently 42. Washington has 27, Arizona 28 and California only 16. Some small sections struggle to provide services to their members and maintain a full roster of executive committee members. Others have expressed dissatisfaction with the constraints that come with the OSB umbrella, such as limits on legislative activities. Crafting policies that are acceptable to all 42 sections can be difficult, and administrative costs increase when new sections, or even new section programs, are added.

Our questions for you: Does the OSB have too many sections? Should large sections with adequate means be encouraged to form independent organizations? Are there any sections that could merge? Should we create “interest groups” or some other less-formal structure as an alternative to sections? Should there be a minimum number of members required to retain the section format?

Again, these are discussion items only. I hope you will discuss these issues with your executive committee members, and that your discussions generate ideas that you are willing to share. I will present your comments and suggestions to the board early next year. Thanks in advance for your consideration.

Helen Hierschbiel, CEO/Executive Director

[hhierschbiel@osbar.org](mailto:hhierschbiel@osbar.org)

(503) 620-0222 ext. 361

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[1] The OSB subsidizes sections by sharing the administrative costs of basic section services. Administrative costs include: dues collection, general accounting services, legislative coordination, bar liaison expenses, maintenance of membership and executive committee rosters, coordination of meeting notices and agendas, and electronic communications (primarily broadcast emails and list serve maintenance). As a policy matter, since 1992 the assessment has been set at 50% of the actual costs. The cost-sharing policy reflects the importance of sections to the bar, the financial needs of smaller sections and the reality that reliance on administrative services varies by section as well as by year.

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to request accommodations for a Section meeting or event, please contact Sarah Hackbart at [shackbart@osbar.org](mailto:shackbart@osbar.org) or 503 431-6385 as soon as possible but no later than 48 hours before the scheduled event. More information about accommodations can be found [here](#)

Change how the bar communicates with you! Do you want email from certain bar groups sent to a secondary email address? Just visit [www.osbar.org/secured/login.asp](http://www.osbar.org/secured/login.asp) and log in using your bar number and password, then click on the Manage Your Profile tab from the Dashboard to adjust your communication preferences.

Please note that while you can opt out of some bar communications, you cannot opt out of regulatory notices that may affect your membership status. Also note that other groups – including the Professional Liability Fund – maintain their own email and contact lists. Please contact these groups directly with any questions about their lists.

# OREGON STATE BAR

## Board of Governors Agenda

**Meeting Date:** November 19, 2016  
**From:** Helen M. Hierschbiel, Executive Director  
**Re:** Operations and Activities Report

### OSB Programs and Operations

Department	
<b>Accounting &amp; Finance/ Facilities/IT (Rod Wegener)</b>	<p><i>Accounting</i></p> <ul style="list-style-type: none"> <li>▪ Staff finally created all work and schedules for the auditors the week of November 7. The task was unusually long and difficult this period due to the unfunded PERS liability issues, information gathered for two years with a new controller, and the numerous schedules and the inconsistent filing from previous audits. In October the staff finished the upgrade of its MS Dynamics Great Plains accounting software system. This was necessary to integrate with the AMS software. With the new system and streamlining various accounting processes, the financial reports are completed several days earlier than previously.</li> </ul> <p><i>Facilities</i></p> <ul style="list-style-type: none"> <li>▪ The lease for 6,015 s.f. ended on September 30 and the tenant did not renew as expected. The bar has received an offer to rent 2,500 s.f. of the space. Although the rent rate is good, the cost for TI's is high and use of smaller area would require creating a wall to divide the space into two and create a second entrance for another new tenant.</li> </ul> <p><i>Information Technology</i></p> <ul style="list-style-type: none"> <li>▪ The efforts to get the AMS online are a daily occurrence. Targeted for February 2017 go live are admissions, member and firm records, eBiz, the member single sign on, CSF, SLAC and contracts.</li> </ul>
<b>Communications &amp; Public Services (includes RIS and Creative Services) (Kay Pulju)</b>	<p><i>Communications &amp; Public Service</i></p> <ul style="list-style-type: none"> <li>▪ The November <i>Bulletin</i> included features on creative charitable giving by lawyers and the history of state-sponsored sterilization in Oregon. Features scheduled for December include winter traditions and lawyers who work with immigrants and refugees in Oregon. The online version of the <i>Bulletin</i> is now presented in a format that retains the layout of the print edition, and staff continue to convert archived issues to this format.</li> <li>▪ Preparation for the annual Awards Luncheon (Thursday, December 8, at the Sentinel Hotel in Portland) are underway.</li> <li>▪ Approximately 25 videos have been completed for the new "Legal Q&amp;A" series. Each video features a lawyer volunteer answering a single,</li> </ul>

	<p>common legal question. The videos are available on the “For the Public” pages of the OSB website, arranged by general topic area as a supplement to existing legal information topics.</p> <p><i>Creative Services</i></p> <ul style="list-style-type: none"><li>▪ Our recent web development work has focused on finalizing the single sign on for the OSB and PLF websites, now set to launch with new passwords in February after the January 31 compliance deadline.</li><li>▪ We have transitioned 26 section sites to the OSB WordPress platform with Workers Compensation the latest site to launch: <a href="https://workerscomp.osbar.org/">https://workerscomp.osbar.org/</a>. Another four WordPress sites have been developed and are in review by the section and our goal by year end is to transfer 6 sites that are currently on the public WordPress site over to the OSB platform. That leaves only 5 section sites that will need to be migrated in 2017 and we’ve begun discussion with these sections.</li></ul> <p><i>Referral &amp; Information Services</i></p> <ul style="list-style-type: none"><li>▪ The new program year began on September 1st, and will be the fourth full year under the new percentage fee model. There are now approximately 500 attorneys taking cases throughout the state.</li><li>▪ LRS revenue is on track to exceed budget projections for 2016. Current percentage fee revenue is at \$562,825 as of September 30th, which is 94% of the budgeted revenue with three months remaining in the fiscal year. Registration revenue is at \$94,940. Total revenue generated since percentage-fee implementation in 2012 is \$2,693,306. This revenue represents over \$18,400,000 in legal fees LRS attorneys have billed and collected from LRS-referred cases over the past four years.</li><li>▪ RIS is continuing its marketing campaign, focusing on Google Ads and Craigslist in conjunction with the new “Legal Q&amp;A” video series. The department is also sponsoring a new edition of “Legal Issues for Older Adults” as part of its grassroots marketing efforts.</li><li>▪ RIS is currently seeking three new employees due to recent turnover.</li></ul>
<p><b>CLE Seminars (Karen Lee)</b></p>	<ul style="list-style-type: none"><li>▪ The department cosponsored a CLE presentation and reception with the MBA in early October. This was the first joint event for the two organizations. The Honorable Mustafa Kasubhai and Duane Bosworth gave a presentation on diversity in hiring. Invitations were sent to select bar leaders and specialty bar organizations. Almost 100 members responded to the invitation and approximately 75% attended the seminar and reception.</li><li>▪ The first Solo and Small Firm Conference was very well received by the attendees. Rather than wait until 2018 for the next conference (as originally contemplated), the section agreed to cosponsor another conference in 2017 to build on the momentum. Next year’s conference</li></ul>

	<p>will be held July 7-8, 2017, at The Riverhouse on the Deschutes, in Bend. If possible, the planners would like to coordinate future conferences (2018 and forward) with BOG meetings held in the Central Oregon area.</p> <ul style="list-style-type: none"> <li>▪ With the shuttering of the Oregon Law Institute (OLI) CLE program this fall, CLE Seminars will look at sponsoring some of the former OLI programs. The Elder Law Section agreed to cosponsor the guardianship and conservatorship program. We anticipate that the next program will be held in fall 2017.</li> <li>▪ The department’s Cyber Monday sale is scheduled for Monday, November 28, for all online CLE products (streaming and MP3 downloads). Display ads are already on the bar’s website and email announcements will be grouped and sent to bar members by reporting year. Last year’s sales had very good results, resulting in net revenue of more than \$22,000 for a 24-hour period.</li> <li>▪ With a growing trend towards shorter CLE programs, the department has seven “lunch and learn” business presentations scheduled for February, March, and April of 2017. Four additional lunch time seminars may be scheduled in May. The confirmed programs will cover: SBA (small business administration) loans; bonds and their application in a variety of practice areas; and select aspects of business valuation.</li> </ul>
<p><b>General Counsel                  (includes CAO                  and MCLE)                  (Amber                  Hollister)</b></p>	<p><i>General Counsel</i></p> <ul style="list-style-type: none"> <li>▪ Over the past two months, General Counsel staff has presented numerous ethics and abuse reporting CLEs for bar Sections, specialty bars and local bars throughout Oregon, including presentations in Portland, Salem, Keizer, Oregon City, Troutdale, Bend, and Winchester Bay.</li> <li>▪ General Counsel is staffing the Regulatory Committee of the Legal Futures Task Force, which will meet for the first time on November 28.</li> <li>▪ Deputy General Counsel is staffing the Fee Mediation Task Force, which will meet for the first time on November 23, 2016.</li> <li>▪ General Counsel is completing user acceptance testing and preparing for a roll out of the Aptify SLAC and Contracts modules in early 2017.</li> </ul> <p><i>CAO</i></p> <ul style="list-style-type: none"> <li>▪ The Client Assistance Office is fully staffed with the hire of attorney Daniel Atkinson, and is receiving complaints at the highest levels seen since 2012.</li> <li>▪ Together with Public Affairs Department staff, the Client Assistance Office Manager is staffing the SB 222 Task Force Implementation Work Group’s Parent &amp; Child Performance Standards Workgroup and Child Welfare Agency Attorney Performance Standards Workgroups. The groups are working to develop performance standards for attorneys in juvenile representation matters.</li> </ul>

	<p><i>MCLE Operations</i></p> <ul style="list-style-type: none"> <li>▪ Compliance reports for the 2016 MCLE reporting period were sent via email in early October, 2016.</li> <li>▪ Staff have been fielding many member questions about the new rule MCLE amendments, which were effective September 1, 2016. Staff drafted updates on the rule amendments for inclusion on the MCLE webpage, in Bar News, and in the Bar Bulletin.</li> <li>▪ Over 6,500 MCLE accreditation applications have been processed since the first of the year.</li> <li>▪ The MCLE Program Administrator has been working closely with members who previously claimed the now non-existent “Retired Attorney MCLE Exemption” to transfer to a new status or extend their MCLE reporting periods.</li> </ul>
<p><b>Human Resources (Christine Ford)</b></p>	<ul style="list-style-type: none"> <li>▪ Provided project management training for all directors and managers.</li> <li>▪ Recruitment Activities             <ul style="list-style-type: none"> <li>○ Replacements Hired                 <ul style="list-style-type: none"> <li>○ Daniel Atkinson – Assistant General Counsel and CAO Attorney</li> <li>○ Annalisa Baskett – Administrative Assistant – OLF/LSP – part time</li> <li>○ Ernesto Ortiz – Referral and Information Services Assistant – Bilingual – part time</li> </ul> </li> <li>○ Active Searches                 <ul style="list-style-type: none"> <li>○ (2) Referral and Information Services Assistant – Bilingual – part time</li> <li>○ Referral and Information Services Assistant – part time</li> <li>○ Public Affairs Administrative Assistant</li> <li>○ Director of Diversity &amp; Inclusion</li> <li>○ Assistant Director – OLF/LSP</li> </ul> </li> </ul> </li> </ul>
<p><b>Legal Publications (Linda Kruschke)</b></p>	<ul style="list-style-type: none"> <li>▪ The following have been posted to BarBooks™ since August 24, 2016:             <ul style="list-style-type: none"> <li>○ All sections and the PDF of <i>Oregon Rules of Professional Conduct Annotated</i>.</li> <li>○ All opinions and the PDF of <i>Oregon Formal Ethics Opinions 2016</i> revision, plus one new opinion approved since posting of revision.</li> <li>○ Final PDF of <i>Oregon Administrative Law</i>.</li> <li>○ Six chapters of <i>Damages</i>.</li> <li>○ Four chapters of <i>Juvenile Law: Dependency</i>.</li> <li>○ Twelve revised <i>Uniform Criminal Jury Instructions</i>.</li> <li>○ Two revised <i>Uniform Civil Jury Instructions</i>.</li> </ul> </li> <li>▪ We printed and shipped orders of the <i>Oregon RPCs Annotated</i> and <i>Oregon Formal Ethics Opinions</i> in September:             <ul style="list-style-type: none"> <li>○ <i>ORPCs Annotated</i>: Budget = \$0; Revenue to date = \$8,711</li> <li>○ <i>Or. Formal Ethics Ops</i>: Budget = \$22,500; Revenue to date = \$9,452</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ We printed and shipped orders of <i>Oregon Administrative Law</i> supplement in October:             <ul style="list-style-type: none"> <li>○ Revenue to date: \$2,490</li> <li>○ Budget: \$4,537</li> </ul> </li> <li>▪ We began taking preorders in October for <i>Damages</i> revision, to be shipped in December:             <ul style="list-style-type: none"> <li>○ Revenue to date: \$16,920</li> <li>○ Budget: \$38,500</li> </ul> </li> <li>▪ We began take preorders in October for a new product titled <i>Joint Oregon &amp; Washington Cannabis Codebook</i>, to be shipped in December:             <ul style="list-style-type: none"> <li>○ Revenue to date: \$11,480</li> <li>○ Budget (for Misc. Revenue): \$7,225</li> </ul> </li> <li>▪ We’ve started the process of working with PLF on the next edition of <i>Oregon Statutory Time Limitations</i>, to be released in early 2018.</li> <li>▪ Our three-year licensing agreement with Bloomberg Law for our full library renews for one year in December, unless either party gave notice by October 20, 2016. We received notice from Bloomberg that they wanted to continue the licensing arrangement but at a reduced annual rate. We were able to renegotiate a rate of \$18,000 per year, which is more than they originally proposed. We will renegotiate again next year.</li> <li>▪ Our licensing agreement with Westlaw for our jury instructions has brought in more revenue than anticipated. Royalty for the period of Jan.– June 2016 was \$4,200, \$30 more than our full year royalty for 2015.</li> </ul>
<p><b>Legal Services                  (Judith Baker)                  (includes LRAP,                  Pro Bono and an                  OLF report)</b></p>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> <li>▪ Lane County Legal Aid and Advocacy Center’s (LCLAC) and the Oregon Law Center continue to engage in merger discussions. The anticipated merger date is January 1, 2017. The Director of Legal Services Program is hiring for two staff positions to support both the Legal Services Program and the Oregon Law Foundation. One is an administrative assistant position and the other an assistant director.</li> </ul> <p><i>Pro Bono</i></p> <ul style="list-style-type: none"> <li>▪ The 2016 Pro Bono Celebration increased its presence in the state. U of O School of Law held a student pro bono fair on Monday, October 24, and Willamette University School of Law held a pro bono discussion panel on Wednesday, October 26. (Lewis and Clark held a pro bono fair in September.) Bar staff attended all three schools’ events.</li> <li>▪ The Pro Bono Fair was held on Thursday, October 27. There were 3 free CLEs, 16 pro bono providers at the Fair, and a very successful Awards Ceremony and reception. Chief Justice Balmer gave out the awards, with assistance by Rich Spier.</li> <li>▪ The Pro Bono Committee stands ready to recruit volunteers for the pro</li> </ul>



	<p>bono website, once a date for start-up is identified. The Committee plans to do some publicity geared toward House Counsel to inform them of rules and opportunities regarding pro bono work. The Certified Pro Bono Programs held their last quarterly meeting of 2016 in October. These events continue to be very well attended by the certified programs.</p> <p><i>LRAP</i></p> <ul style="list-style-type: none"> <li>▪ The LRAP Advisory Committee met on Saturday, November 5. The Committee has no recommended changes to the Policies and Guidelines for 2017. They examined and modified the marketing plan for 2017. The second checks of 2016 will be sent to the participants in November or early December. The Advisory Committee is aware of the possibility of cuts to the LRAP budget.</li> </ul>
<p><b>Media Relations &amp; Public Outreach, and New Lawyer Mentoring Program (Kateri Walsh)</b></p>	<p><i>New Lawyer Mentoring Program</i></p> <ul style="list-style-type: none"> <li>▪ This is our busy season for enrolling new OSB members in the program and finding mentor matches for all new participants. We currently have more than 1000 bar members working through the program (527 matched pairs), and 107 new lawyers awaiting a mentor match.</li> <li>▪ Developed Law Firm Certification policy that will allow firms with in-house mentoring programs to streamline the administrative requirements for new associates’ participation in the NLMP. Finalized the application process for certification, and announcing the new policy to law firms in November and December. Exploring the possibility of specialty bars and sections participating as well.</li> <li>▪ Seeking participants for the “Mentoring through Pro Bono” program.</li> <li>▪ Drafting an evaluation of the program for presentation to the BOG next spring, likely with some recommended program improvements.</li> <li>▪ Processing and certifying NLMP completions and working with non-compliant new lawyers on repairing their status.</li> <li>▪ Instituting new mentor recruitment efforts based on the needs we see from our newest class of participants.</li> </ul> <p><i>Media Relations &amp; Public Outreach</i></p> <ul style="list-style-type: none"> <li>▪ Staffing committee of the Bar Press Broadcasters Council that has drafted proposed amendments to UTCR 3.180 to clarify vague language and to account for technologies such as cell phone cameras and laptops, and for emerging media vehicles like Twitter. Proposal has been finalized and approved by the UTCR Committee. The proposal now enters a period of public comment and will be considered by the Court in Spring 2017.</li> <li>▪ Leading the planning committee for the 2017 <i>Building a Culture of Dialogue</i> gathering in March, hosted by the Bar Press Broadcasters Council. Discussing doing a video-taped version of the program.</li> <li>▪ Beginning discussions with the UPL Committee on some new outreach</li> </ul>

	<p>regarding Notario Fraud.</p> <ul style="list-style-type: none"> <li>▪ Discussing with Campaign for Equal Justice some possible outreach about Access to Justice in collaboration with or dovetailing on the work of Voices for Civil Justice.</li> <li>▪ Preparing media outreach regarding new OSB President Michael Levelle.</li> <li>▪ Responding to requests from journalists and managing approximately 8-10 CAO and/or DCO cases being actively tracked by media.</li> </ul>
<p><b>Member Services (Dani Edwards)</b></p>	<ul style="list-style-type: none"> <li>▪ The Board of Governors election ended in late October with a 14% vote return which is in the average range for BOG election participation. The new board members are Thomas Peachey (region 1), Eric R. Foster (region 3), Eddie D. Medina (region 4), and Liani Reeves (region 5). Traci Rossi, Executive Director of Innovative Changes, will join the BOG as the 2017 public member.</li> <li>▪ The OSB preference poll for General Election candidates included two races for contested judicial positions in the 9<sup>th</sup> District (Malheur County) and 16<sup>th</sup> District (Douglas County). The 49% participation rate was higher than the vote return from prior polls.</li> <li>▪ The Section annual meeting season is coming to an end with more than 80% of sections having already held their membership meetings.</li> <li>▪ New bar members were welcomed during an ONLD-sponsored reception following the late September Swearing-in Ceremony at Willamette University. A few sections offering complementary membership to new members were given the opportunity to participate in the reception as a way of providing new members access to bar groups offering professional development and networking activities.</li> </ul>
<p><b>Public Affairs (Susan Grabe)</b></p>	<ul style="list-style-type: none"> <li>▪ The bar has received all of its draft proposals from Legislative Counsel’s office for pre-session filing for the 2017 Legislative Session. Public Affairs staff continues to reach out to internal bar groups and external stakeholders to address issues or concerns regarding these proposals.</li> <li>▪ Staff is preparing different strategy options for the bar’s 2017 priorities depending on the election results and potential budget deficit. The core membership of the Court Funding Campaign has been reactivated and will be preparing a plan for 2017.</li> <li>▪ Public Affairs is staffing two performance standards workgroups that came out of SB 222 re the Governor’s Dependency Task Force in 2015. One task force will address child parent representation standards in dependency cases; the other, will address government agency standards when representing DHS in dependency cases.</li> <li>▪ At the request of legislative leadership, staff has initiated a series of brown bag CLEs at the Capitol during Legislative Days.</li> <li>▪ Public Affairs staff continue to engage in outreach and involvement with</li> </ul>

	<p>numerous interim workgroups through the Oregon Law Commission ( Probate Modernization, Criminal Appeals, Election Law Update, Uniform Collateral Consequences of Conviction Act and Juvenile Records). Other legislative groups through the legislature include a rewrite of the advance directive form, guardianship, administrative hearings, due process and cost shifting as well as changes to the parenting time and child custody statutes.</p>
<p><b>Regulatory Services (Dawn Evans)</b></p>	<p><i>Admissions Office</i></p> <ul style="list-style-type: none"><li>▪ The Board of Bar Examiners (BBX) met following the new lawyer swearing-in ceremony on September 29 in Salem, in order to finalize a draft of proposed changes to the Rules for Admission that would pave the way for Oregon to become a Uniform Bar Examination state, beginning in July 2017. The Oregon Supreme Court entered an order approving the changes on October 11, 2016.</li><li>▪ On October 28, the BBX held its meeting in conjunction with a meeting of the Oregon Council on Legal Education and Admission to the Bar (OCLEAB), which was chaired by Chief Justice Thomas Balmer and attended by representatives of each of Oregon’s three law schools, in addition to members of the BBX, President-Elect Michael Levelle, and Chief Executive Officer Helen Hirschbiel. The Council discussed the recently-enacted rules pertaining to the Uniform Bar Examination, the BBX’s examination of Oregon’s cut score for passage of the Oregon bar examination, and recent modifications to the rules governing the law student appearance program.</li></ul> <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none"><li>▪ Assistant Disciplinary Counsel Susan Cournoyer spoke at the 206 Financial Crimes &amp; Digital Evidence Conference in Salem on September 22. Assistant Disciplinary Counsel Ted Reuter spoke on Ethical Issues in Prosecution at the 47<sup>th</sup> Annual ODDA Institute for Prosecutors held in Salem on October 27.</li><li>▪ Assistant Disciplinary Counsel Stacy Owen provided an overview of the attorney discipline system and discussed several substantive ethical issues as a presenter at the Professional Liability Fund’s Learning the Ropes course held November 2-4 at the Oregon Convention Center.</li><li>▪ Disciplinary Counsel Dawn Evans, recently appointed to the American Bar Association’s Standing Committee on Client Protection, attended the annual Bar Leaders Conference held by the ABA Center for Professional Responsibility in Chicago on October 21-22.</li><li>▪ The twice-annual Legal Ethics – Best Practices course is being held Friday, November 18, at the Oregon State Bar Center.</li></ul>

**Executive Director’s Activities September 9 to November 15, 2016**

<b>Date</b>	<b>Event</b>
9/9/16	BOG Meetings at OSB Center
9/12/16	Diversity & Inclusion Program Review within department
9/15/16	CEJ Luncheon in Salem
9/16/16	Oregon Supreme Court Council on Inclusion & Fairness
9/16/16	Coffee with Gabriela Perez, Willamette U law student
9/19/16	ACDI Meeting at Willamette Law School
9/20/16	Meeting with CSF Committee Chair & Chair Elect re 2017 Appointments
9/21/16	OSB Potential Diversity
9/22/16	OAPABA Annual Dinner
9/23/16	OWLs Fall CLE and Reception “Turn Up the Volume”
9/24/16	Client Security Fund Meeting
9/26/16	Lunch with Bonnie Richardson re D&I Director hiring process
9/27/16	Strategy Session – Collaborative Law
9/28/16	Lunch with Samrach Sar, Willamette U 2016 graduate
9/29/16	Meeting with Chief Justice
9/29/16	Admissions Ceremony
9/29/16	Women’s Leadership Alliance of Greater Portland
10/3/16	PLF Finance Committee Meeting
10/3/16	Lunch with Carol Bernick, PLF CEO
10/4/16	Lunch at Nike with Ray & Nike General Counsel
10/4/16	Urban League Dinner
10/5/16	Quarterly Local Bar Presidents Telephone Conference
10/6/16	Meeting with Sen. Prozanski
10/6/16	Lunch with Rich, Ray, Michael and Vanessa
10/6/16	MBA/BOG CLE & Reception
10/7/16	BOG Meetings at OSB
10/7/16	ONAC Dinner
10/11-10/13	Southern OR Tour w/ Ray – visited bar members in eight counties
10/15/16	Legal Ethics Committe Meeting
10/15/16	Youth, Rights, Justice Annual Dinner & Auction
10/17-10/19	Interviews for D&I Director Position
10/18-10/9	HOD Regional Meetings
10/21/16	Meeting with Facilitators for retreat
10/21/16	ABA Fall Leadership Conference in Chicago
10/22/16	ABA CPR PIC Business Meeting
10/25/16	Law Firm Lunch – Davis Wright Tremaine
10/25/16	OSCCIF Workforce Development Committee
10/26/16	Coffee with Lawrence Pittman, L&C Law Student

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10/26/16	Legal Innovations Meetup/Futures TF Innovations Committee meeting
10/27/16	Pro Bono Fair
10/28/16	OCLEAB Meeting at OSB
11/1/16	Staff Project Management Training
11/2/16	Meeting with Catalyst Law Institute founders
11/3/16	Learning the Ropes Luncheon
11/3/16	Ramon Pagan's Investiture
11/3/16	Perceptions of Justice Listening Session
11/4/16	HOD Meeting
11/5/16	Client Security Fund Meeting
11/6/16	Guardian Partners Annual Dinner
11/6/16	Lezak Legacy Fellowship Program Reception
11/11/16	Futures TF Innovations Committee Meeting
11/11/16	NAYA Auction/Gala
11/14/16	Coffee with Tim Johnson from BPA
11/14/16	Meeting with Jennifer Williamson
11/16/16	Breakfast meeting with bar executives

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**Memo Date:** October 31, 2016  
**From:** Dawn M. Evans, Disciplinary Counsel  
**Re:** Disciplinary/Regulatory Counsel's Status Report

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### 1. Decisions Received.

#### a. Supreme Court

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

- Issued an order in *In re Jeffrey Scott Milstein*, suspending this Portland lawyer during the pendency of his disciplinary proceedings; and
- Issued an order transferring Tigard lawyer *Kenneth R. Tolliver* to involuntary inactive status pursuant to BR 3.2.
- Issued an opinion in *In re Rick Sanai* disbaring this Lake Oswego lawyer. The court affirmed the trial panel opinion finding violations of RPC 3.1, RPC 3.4(c), RPC 4.4(a), RPC 8.4(a)(1), and RPC 8.4(a)(4).

#### b. Disciplinary Board

No appeal was filed in the following cases and the trial panel opinions are now final:

- *In re Robert S. Simon* of Santa Monica, California (185-day suspension); and
- *In re Eric Einhorn* of Mosier (disbarment).

Two Disciplinary Board trial panel opinions have been issued since August 2016:

- A trial panel recently issued an opinion in *In re Shawn E. Abrell* of Portland (1-year suspension) for conduct involving conduct involving dishonesty, fraud, deceit, or misrepresentation; knowingly disobeying obligation under rules of a tribunal; knowingly making a false statement of fact or law to a tribunal; practicing law in a jurisdiction where not licensed; and failure to respond to bar inquiries.

- A trial panel recently issued an opinion in *In re Sara Lynn Allen* of Lake Oswego (60-day suspension, formal reinstatement, and restitution) for conduct involving neglect of a legal matter, failure to keep a client reasonably informed, failure to explain a matter to the extent necessary to allow the client to make decisions, charging or collecting a clearly excessive fee, and failing to refund advance payment of fee or expense that has not been earned or incurred upon termination of employment.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulation for discipline in: *In re Steven Fisher* of Meridian, Idaho (30-day suspension), *In re Ronald M. Hellewell* of Salem (30-day suspension, all stayed, 18-month probation), *In re Shannon M. Kmetec* of Milwaukie (6-month suspension, all but 30 days stayed, 2-year probation), *In re Gerald Noble* of Portland (60-day suspension), *In re Michael R. Sandoval* of Portland (reprimand), and *In re Marianne G. Dugan* of Eugene (reprimand).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Mark O. Griffith* of Portland (3 matters) and *In re Jeffrey Scott Milstein* of Portland (2 matters).

## **2. Decisions Pending.**

The following matters are pending before the Supreme Court:

- In re Scott W. McGraw* – 18-month suspension; accused appealed; awaiting briefs
- In re Eric M. Bosse* – 24-month suspension; accused appealed; stipulation pending
- In re James R. Kirchoff* – 2-year suspension; accused appealed; awaiting briefs
- In re Lane D. Lyons* – Form B resignation pending
- In re Jeffrey Scott Milstein* – Form B resignation pending
- In re Dale Maximiliano Roller* – 4-year suspension; accused appealed; awaiting briefs
- In re Dale Maximiliano Roller* – BR 3.1 petition pending

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

- In re Lisa D. T. Klemp* – October 10, 2016
- In re Samuel A. Ramirez* – October 20, 2016

## **3. Trials.**

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

- In re Edward T. LeClaire* – November 15-17, 2016

*In re Jonathan G. Basham* – December 5-7, 2016  
*In re Travis W. Huisman* – December 12-13, 2016  
*In re Steven L. Maurer* – December 13-14, 2016  
*In re Anthony A. Allen* – January 19, 2017  
*In re Kevin Carolan* – January 23-25, 2017  
*In re Robert G. Klahn* – February 6-7, 2017

**4. Diversions.**

The SPRB approved the following diversion agreements since August 2016:

*In re Thomas Freedman, Jr.* – October 1, 2016

**5. Admonitions.**

The SPRB issued 3 letters of admonition in September 2016. The outcome in these matters is as follows:

- 3 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 2016, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

<b>MONTH</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
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	28/30
April	35/38	42/43	45/47	17/17	26/26
May	19/20	37/37	23/24	24/24	27/30
June	39/40	31/31	23/24	31/31	38/39
July	22/22	28/30	43/44	27/27	41/42
August	35/35	33/36	19/21	28/29	28/28
September	22/22	26/27	24/24	21/21	25/25
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	
<b>TOTALS</b>	<b>350/359</b>	<b>341/349</b>	<b>336/352</b>	<b>298/302</b>	<b>281/288</b>



As of October 1, 2016, there were 194 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 38% are less than three months old, 28% are three to six months old, and 34% are more than six months old. Twenty-five of these matters were on the SPRB agenda in October.

DME/rjh

**Oregon State Bar**  
**Meeting of the Board of Governors**  
September 9, 2016  
**Open Session Minutes**

President Ray Heysell called the meeting to order at 12:30 p.m. on September 9, 2016. The meeting adjourned at 3:34 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, Per Ramfjord, Kathleen Rastetter, Julia Rice, Kerry Sharp, Richard Spier, Kate von Ter Stegge, Tim Williams, and Elisabeth Zinser. Not present were Josh Ross and Charles Wilhoite. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Kateri Walsh, Dani Edwards, Judith Baker, Charles Schulz, Catherine Petrecca, and Camille Greene. Also present was Carol Bernick, PLF CEO.

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

The board accepted the agenda, as presented, by consensus.

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

**A. Awards Special Committee**

Mr. Heysell asked the board to approve the list of award recipients recommended by the committee. **[Exhibit A]**

**Motion:** The board voted unanimously in favor of the committee motion to approve the list of OSB Award Recipients. The motion passed.

**B. Policy and Governance Committee**

Mr. Levelle presented the committee motion to adopt a Sponsorship Policy to guide the ED/CEO's award of sponsorships as outlined in the committee memo. **[Exhibit B]**

**Motion:** The board voted unanimously in favor of the committee motion to adopt a Sponsorship Policy. The motion passed.

Mr. Levelle presented the committee motion for the Oregon State Bar to participate in a detailed pro bono survey, conducted and analyzed by the ABA. **[Exhibit C]**

**Motion:** The board voted unanimously in favor of the committee motion to participate in the ABA pro bono survey. The motion passed.

Mr. Levelle presented the committee motion to approve the creation of the Innovations Committee and the Regulatory Committee as subsets of the Futures Task Force with the charges set forth in **[Exhibit D]**. Mr. Heysell will appoint members of the task force committees, not to exceed twelve in number. Mr. Levelle also presented the committee motion to join with the court and legal aid organizations to submit a *Justice for All* grant proposal to the National Center for State Courts.

**Motion:** The board voted unanimously in favor of the committee motion to approve the creation of the Futures Task Force committees, and to approve Mr. Heysell signing a letter of commitment to the grant proposal. The motion passed.

Mr. Levelle presented the committee motion to approve the creation of a new section. Through a petition signed by 102 active bar members, the BOG is asked to consider the creation of a Cannabis Law Section. **[Exhibit E]** The committee agreed that this section would duplicate areas of practice covered by existing sections at a time when the board has asked staff to reduce the number of sections. There was considerable discussion about the uniqueness of this area of law that does not exist in other established sections. However, the committee recommended the board approve creation of this section rather than make this section request wait until the board reaches a decision about reducing the number of sections.

**Motion:** The board voted in favor of the committee motion to approve the creation of the Cannabis Law Section. The motion passed 10-4. In favor: Ms. von Ter Stegge, Mr. Bachofner, Mr. Mansfield, Ms. Rice, Mr. Levelle, Ms. Nordyke, Mr. Chaney, Mr. Williams, Ms. Costantino, Mr. Gratchner. Opposed: Mr. Ramfjord, Mr. Sharp, Ms. Zinser, and Ms. Rastetter.

Mr. Levelle presented the committee motion to create a Fee Mediation Task Force as set forth in Amber Hollister's memo. **[Exhibit F]**

**Motion:** The board voted unanimously in favor of the committee motion to form the Fee Mediation Task Force. The motion passed.

Mr. Levelle presented the committee motion that the Board amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. If the Board does so, the committee recommends that the Board waive the one meeting notice requirement. **[Exhibit G]**

**Motion:** Mr. Ramfjord moved, Mr. Levelle seconded, and the board voted unanimously to waive the one-meeting notice for bylaw changes presented.

**Motion:** The board voted unanimously in favor of the committee motion to amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. The motion passed.

**C. Board Development Committee**

Ms. Nordyke asked the board to ratify the Board Development Committee's input on Board of Bar Examiners (BBX) appointments: Hon. Frank R. Alley III, Stephanie Eames, Kendra M. Matthews, Joanna T. Perini-Abbott, Hon. Thomas M. Ryan, Michael J. Slauson, and Kate Anne Wilkinson. Mr. Levelle encourages the BBX to diversify their pool of co-graders. **[Exhibit H]**

**Motion:** The board voted in favor to ratify the committee's input. The motion passed. Mr. Levelle was opposed.

Ms. Nordyke presented the committee's recommendations for Public Member appointment to OSB Board of Governors, Traci Rossi, but asked the board for input on their alternate recommendation, Michael Rondeau. **[Exhi]**

**Motion:** The board voted in favor to accept the committee recommendation, Traci Rossi. The motion passed. Mr. Levelle abstained.

Ms. Nordyke presented the committee's recommendations for Professional Liability Fund appointments to PLF Board of Directors: Megan Livermore and Holly Mitchell. **[Exhibit J]**

**Motion:** The board voted in favor of accepting the committee recommendations. The motion passed. Mr. Bachofner abstained.

Ms. Nordyke presented the committee's recommendations for appointments to OSB House of Delegates. Public Members: Douglas Primmer, Nathaline Frener, Bryan Penn, and Thomas Feely. Lawyer Members: Amber Labrecque, Hans Huggler, Holly Puckett, and Jeffrey Young. **[Exhibit K]**

**Motion:** The board voted unanimously in favor to accept the committee recommendation. The motion passed.

**D. Budget and Finance Committee**

Mr. Mansfield presented the committee's motion to eliminate the second increase in the membership for those members not paying by the deadline; the only additional fee after the deadline is \$100.00 per active member and \$50.00 per inactive member. Ms. Bernick stated this change was the same as the PLF changes approved by the BOG at its June 2016 meeting. **[Exhibit L]**

**Motion:** The board voted unanimously in favor of the committee motion to approve the proposed changes to the fees. The motion passed.

**E. Public Affairs Committee**

Ms. Grabe gave a general update on legislative activity. The package of OSB law improvement proposals are mostly drafted and moving forward in the legislative process.

**3. Professional Liability Fund**

Ms. Bernick gave an update on the PLF financials and the revised financial audit. She notified the board of Steve Carpenter's sudden death this summer. Mr. Carpenter was a beloved PLF claims attorney.

Ms. Bernick asked the board to approve the 2017 PLF Assessment which will remain at \$3,500 (unchanged since 2010). **[Exhibit M]**

**Motion:** Mr. Williams moved, Mr. Ramfjord seconded, and the board voted to approve the 2017 Assessment. Mr. Bachofner and Mr. Chaney abstained.

Ms. Bernick asked the board to approve the proposed 2017 PLF Claims Made Primary Plan and 2017 Excess Plan **[Exhibit N]**. There are wholesale changes to both plans.

**Motion:** Mr. Mansfield moved, Ms. Rastetter seconded, and the board voted unanimously to approve the plans as presented. Mr. Bachofner and Mr. Chaney abstained.

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

**A. Discipline System Review Committee**

Ms. Hirschbiel gave the board an update on the rule changes which she estimates will be ready by the November 2016 board meeting. She discussed the creation of a professional

adjudicator position and asked the board to review the options presented for engaging a disciplinary system adjudicator and determine whether to create the position. [Exhibit O]

**Option 1. Adjudicator appointed by Court/Chief Justice but employed/retained by OSB;**  
**Option 2. Panel of independent contractor adjudicators appointed by the Court/Chief Justice;**  
**Option 3. Abandon the DSRC proposal to create the position.**

Ms. Hollister described the options to the board and the challenges presented by an independent contractor who is not an employee.

Mr. Greco summarized his interactions with other members who back up his support of Option 2. Mr. Bachofner suggested the position be an employee of the judicial department. Mr. Heysell reminded the board that the Chief Justice did not agree to that scenario for the reasons discussed at the June meeting.

Mr. Ramfjord said the OSB, as a self-regulating bar, should pay for this position regardless of whether it is an employee or an independent contractor. Mr. Chaney agreed but supports only Option 2 since that would make scheduling easier. Ms. Nordyke said Option 1 would offer the streamlining of the process that members wanted. Ms. Rastetter recalls that this was a close vote back in March 2016 (to create the position) and she is still not convinced that doing so would improve efficiency, consistency or quality of decisions. She favors Option 3. Ms. von Ter Stegge favors Option 1 to retain the most qualified applicant.

Mr. Sharp favors Option 3 until it can be established that it would serve the purposes for which it would be created.

**Motion:** Mr. Bachofner moved, Mr. Levelle seconded, to hold off on the discussion until it can be further resolved. In favor: John Bachofner, Rob Gratchner, Michael Levelle, Kathleen Rastetter, Julia Rice, Kerry Sharp. Opposed: Mr. Ramfjord, Mr. Mansfield, Ms. Zinser, Ms. Nordyke, Mr. Chaney, Mr. Williams, Ms. Costantino, and Ms. von Ter Stegge. Motion failed.

**Motion:** Mr. Ramfjord moved to adopt Option 1. Mr. Mansfield seconded. In favor: Mr. Ramfjord, Ms. von Ter Stegge, Mr. Mansfield, Ms. Rice, Ms. Zinser, Ms. Nordyke, Mr. Chaney, Ms. Costantino, Mr. Williams. Opposed: Mr. Bachofner, Ms. Rastetter, Mr. Gratchner, Mr. Sharp, and Mr. Greco. Abstain: Mr. Levelle. The motion passed.

**B. Oregon New Lawyers Division Report**

As written.

**C. Legal Services Program**

Ms. Baker gave an update on the Legal Services Program and its review of the Lane County Legal Aid and Advocacy Center.

**D. Client Security Fund Committee**

Claim 2016-02 KRULL (Cisneros)

Ms. Hirschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$7,500 to Guillermo Pahua Cisneros for his loss resulting from the conduct of attorney Julie Krull. [Exhibit P]

**Motion:** Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously to approve the committee's recommendation for reimbursement.

Claim 2016-21 MILSTEIN (Colvin)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's partial payment the claim and instead pay it in full, as presented in her memo. **[Exhibit Q]**

**Motion:** Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously to uphold the committee's decision to make partial payment of the claim.

Claim 2016-05 BOCCI (Tait)

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 R]**

**Motion:** Mr. Ramfjord moved, Mr. Bachofner seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Ms. Hirschbiel presented the committee's financials and claim status for information purposes.

**E. Legal Ethics Committee**

Ms. Hirschbiel presented the committee's request that the Board of Governors decide whether to adopt the proposed formal ethics opinion 2016-XXX regarding electronic-only or paperless client documents and files. **[Exhibit S]**

**Motion:** Mr. Mansfield moved, Ms. Nordyke seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

Ms. Hirschbiel presented the committee's request that the board consider the recommendation of the Legal Ethics Committee ("LEC") to amend Oregon RPC 7.2(b). **[Exhibit T]**

**Motion:** Ms. Rastetter moved, Ms. Rice seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

Ms. Hirschbiel presented the committee's request that the Board of Governors consider the Legal Ethics Committee recommendation to amend Oregon RPC 7.2(c) and RPC 7.3(c). **[Exhibit U]**

**Motion:** Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

**F. Other**

Ms. Hirschbiel presented section feedback on BOG requirement of co-sponsorship for informational purposes. **[Exhibit V]**

**5. Consent Agenda**

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

Mr. Heysell reported on the President-elect Nominating Committee's meeting today. They received one application, from Ms. Nordyke. The committee will interview Ms. Nordyke and make a recommendation to the board at the October 2016 meeting.

Report of the President-elect  
None.

Report of the Executive Director  
In addition to the written report, Ms. Hirschbiel gave them board an update on the implementation of the new association management software system rollout beginning in mid-October.

Director of Regulatory Services  
As written.

MBA Liaison Report  
None.

**Motion:** Mr. Gratchner moved, Mr. Mansfield seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

**6. Closed Sessions – see CLOSED Minutes**

**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)**

None.

**Oregon State Bar  
Board of Governors Meeting  
September 9, 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. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

B. Threatened Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

DRAFT



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 22, 2016  
**From:** Kay Pulju, Communications & Public Services Director  
**Re:** Award recommendations for 2016

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### Action Recommended

Approve the following slate of nominees:

President's Membership Service Award

Hon. Stacie Beckerman  
Hon. Valeri Love

President's Public Service Award

Brent Barton  
Edwin A. Harnden  
Hon. Douglas Tookey

President's Diversity & Inclusion Award

Derily Bechthold  
Megan Livermore

President's Public Leadership Award

Jennifer Dalglish

Wallace P. Carson, Jr., Award for Judicial Excellence

Hon. John A. Wittmayer

OSB Award of Merit

Sandra Hansberger

### Background

The ad hoc Awards Committee met by conference call on August 16 to review nomination materials and develop the recommendations detailed above. Members present were: Ray Heysell (Chair), Guy Greco, Vanessa Nordyke, Per Ramfjord and Timothy Williams.

The annual Awards Luncheon will take place on Thursday, December 8, at the Sentinel Hotel in Portland.

# OREGON STATE BAR

## Board of Governance Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 1, 2016  
**From:** Policy and Governance Committee  
**Re:** Sponsorship Policy

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### **Action Recommended**

Adopt a Sponsorship Policy to guide the ED/CEO's award of sponsorships.

### **Background**

At the February 12, 2016 meeting, the BOG adopted revised OSB Bylaw 7.203 Sponsorship, which provides:

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 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 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.

When adopting the revised bylaw, the BOG asked the Policy and Governance Committee to develop a Sponsorship Policy to aid the CEO/Executive Director in making sponsorship decisions.

The Policy and Governance Committee discussed a proposed policy at its July 2016 meeting and recommends that the Board adopt the Sponsorship Policy presented below.

### **Proposed Sponsorship Policy**

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. OSB Bylaw 7.203.

As a general matter, the Oregon State Bar supports events that are germane to the Bar's purpose and mission though the purchase of event tickets and attendance of Bar leadership or staff at events of specialty bars, sections and other legal and non-legal organizations.

In limited circumstances, the Bar may participate as a sponsor of an event or program. Except in extraordinary circumstances, the Bar's sponsorship will only exceed \$5,000 if an expenditure is specifically budgeted.

When considering sponsorship requests, the following guidelines will be applied:

1. The Bar's participation as a financial sponsor of an event or program in the amount of \$2,500 or more requires advance approval by the Board of Governors. The Bar's participation as a financial sponsor of an event or program in an amount less than \$2,500 requires approval by the CEO/Executive Director. Such expenditures may only be approved if:
  - a. The sponsorship is consistent with OSB Bylaw 12.1.
  - b. The Board or CEO/Executive Director determines the sponsorship advances one of the Bar's strategic functions; and
  - c. The proposed expenditure has been either specifically budgeted or does not exceed funds allotted for sponsorships.

Recipients must include sponsorship recognition in brochures, programs, or other event materials distributed.

Recipients must utilize awarded funds for the event or program requested. If the recipient is unable to utilize the funds for the awarded purpose, a request must be submitted to the Bar for approval of the alternative proposed use of the funds. If the "alternative use" approval is denied, then the recipient agrees the funds must be returned to the Bar.

Recipients must submit a report to the Board within 30 days of the event or program. The report should summarize how funds have been spent in furthering the strategic functions of the Bar, include copies or photographs of event materials recognizing the Bar as a sponsor, and documents that demonstrate the event or program is consistent with OSB Bylaw 12.1.

A recipient's failure to utilize funds for approved events and/or failure to submit a report will impact the recipient's ability to receive future funds.

The CEO/Executive Director will include information about sponsorships in her regular report to the Board.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Participation in ABA Pro Bono Survey

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### **Issue**

The Oregon State Bar has the option to participate in a detailed pro bono survey, conducted and analyzed by the ABA.

### **Options**

The BOG can choose for the OSB members to participate or not participate in this survey.

### **Discussion**

The ABA is conducting a first-ever, detailed nationwide pro bono public survey, with surveys sent to every Bar member of every state that chooses to participate. The ABA will draft the questions and analyze both the nationwide data and each individual state's data, forwarding the information to each state that participates. The purpose of the survey is to develop a deeper understanding of the reasons why attorneys do, and do not, engage in pro bono work, how organizations who serve low-income clients can best appeal to attorneys to do pro bono work, and how a pro bono practice fits in to different types of practices.

Currently, the Oregon New Lawyers Division conducts a voluntary Pro Bono Challenge, and this is the only pro bono data we can analyze. Typically, just over 9% of Oregon's attorneys report any pro bono hours. These hours are reported, in conjunction with the Pro Bono Challenge, by firms and individuals. Additionally, the OSB Certified Pro Bono Programs are required to report the hours of their volunteers. The OSB Economic Survey often asks a few questions about pro bono work, but cannot do so in any detailed sense.

The OSB often uses the limited data it has to provide information to the legislature when seeking to ensure that legal services funding continues. Having more detailed information will allow the Public Affairs Department to better inform the legislature of the pro bono work provided by Oregon attorneys.

Information provided by the survey responses can be shared with the OSB Certified Pro Bono Programs to help those programs in their attorney recruitment. Further, the data provided by the ABA will help Bar staff better communicate with attorneys about pro bono work.

The survey will take place in January/February, and requires very little from the participating states. Technically, the ABA wants a “leadership team” to raise awareness and raise funds for incentives to participate in the survey. Kay Pulju, Director of Communications believes that incentives are unnecessary in Oregon as Oregon attorneys respond well to well-drafted surveys. She believes that the ABA survey will be helpful and appropriate. The OSB Pro Bono Committee can constitute the leadership team.

Staff may ask the Bar President and the Chief Justice to sign the initial request for attorneys to respond to the survey.

More information about the survey may be found at the ABA’s website, here: [http://www.americanbar.org/groups/probono\\_public\\_service/research\\_pro\\_bono/pro-bono-surveys.html](http://www.americanbar.org/groups/probono_public_service/research_pro_bono/pro-bono-surveys.html)

**Project Process and Timeline, as set forth on the ABA link:**

*June – August, 2016:* determine interest among your state’s stakeholders in distributing a survey to your attorney population, confirm interest by **August 31. [The ABA has been informed that confirmation of Oregon’s participation will not happen until the BOG approves the survey.]**

*August – December, 2016:* develop a leadership team (judiciary, bar association representatives, legal services provider and others); raise or identify funds to be used as an incentive for attorneys to complete the survey. **[Staff has determined that no funds will be necessary to provide an incentive.]**

*September – December, 2016:* raise awareness among your attorney population by posting announcements in newsletters, on listservs and other social media.

*January, 2017:* surveys to be distributed by email to all attorneys in your state.

*February – March, 2017:* distribute reminders and encourage responses

*April, 2017 – May 2017:* data analyzed by ABA staff

*June, 2017:* receive analyzed data report and raw data for your state

*June – August, 2017:* the ABA will facilitate conference calls for your state’s stakeholders to discuss findings and come up with policy and program recommendations.

*Summer 2017:* the ABA will publish one report summarizing the findings for all of the states that participated.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy & Governance Committee  
**Re:** Proposed Futures Task Force Committees and Charges

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### Action Requested

The Board of Governors should approve the creation of the Innovations Committee and the Regulatory Committee as subsets of the Futures Task Force with the charges set forth below.

In addition, the Board of Governors should commit to participation with the court and legal aid organizations to submit an Access to Justice for All grant proposal.

### Discussion

At its April 24, 2016 meeting the Board of Governors approved the creation of a Futures Task Force with the following overarching 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. 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.

Since then, bar staff and the BOG have been faced with several issues relevant to this overarching charge.

- At its June 24 meeting, the Board received a report from Don Friedman regarding incubator law firms. The Board decided to assign further study of the potential viability of such a program in Oregon to the Futures Task Force.
- Leaders from the Oregon Paralegal Association have approached the OSB president Ray Heysell and CEO/Executive Director Helen Hirschbiel about the possibility of the bar licensing paralegals.
- Some BOG members have asked the Board to consider reopening the discussion of LLLTs. We have received a HOD resolution on this topic as well.
- Recently, OSB General Counsel's Office issued an informal advisory opinion, stating that lawyers who participate in AVVO's Legal Services online marketplace risk professional

discipline under Oregon Rules of Professional Conduct 5.4 (fee sharing) and 7.2 (accepting payments for recommendations). Since then, staff has met with AVVO's general counsel to better understand their position and with the Legal Services Committee to determine whether any changes should be made to the rules of professional conduct.

- The *Justice for All Project*, in coordination with the National Center for State Courts, has issued a request for proposals from state access to justice commissions or their counterparts. Grants will be awarded to conduct a state assessment/inventory that will identify the relevant available resources and design a strategic action plan to achieve access to justice for all. In order to qualify for a grant, the state bar, courts and legal aid organizations must all be committed to working together to overcome fragmentation and create an integrated approach.

In order to address these issues in a more strategic and manageable fashion, the Board should consider dividing the task force into two committees with more discrete charges specific to each.

#### Legal Innovations Committee

First, the Board should approve the creation of a Legal Innovations Committee with the following charge:

Study and evaluate how the OSB might be involved in and contribute to new or existing programs or initiatives that serve the following goals:

- Help lawyers establish, maintain, and grow sustainable practices that respond to demonstrated low and moderate income community legal needs;
- Encourage exploration and use of innovative service delivery models that leverage technology, unbundling and alternative fee structures in order to provide more affordable legal services; and
- Develop lawyer business management, technology, and other practice skills.

As part of its work, the Committee should consider the viability of an incubator program for new lawyers in Oregon, by:

- Identifying stakeholders, what role they would play in terms of funding and implementation, and their commitment to the project;
- Identifying the legal needs of low and moderate income Oregonians that could be served by an incubator program; and
- Assessing likely structure, costs, benefits and sustainability of an incubator program in Oregon.

The Committee should be asked to provide a written report to the Board of Governors before the summer of 2017 with recommendations for the Board regarding whether and how to proceed with establishing an incubator program in Oregon and whether and how to proceed with alternative projects or initiatives that serve the goals identified above.

### Regulatory Committee

Second, the Board should approve creation of a Regulatory Committee charged with examining new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and making recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models. The Committee should be asked to provide a written report to the Board of Governors before the summer of 2017 with the following information:

- A summary of what exists at present, both in terms of existing legal service delivery models and regulatory structures for those models;
- A discussion of the consumer protection and access to justice implications presented by these models and regulatory structures;
- An analysis of the stakeholders involved, including (1) the vendors that have an interest in exploring innovative ways to deliver legal services to consumers, (2) the lawyers who are interested in utilizing these innovative service delivery models, and (3) the regulatory entities that are responsible for ensuring adequate protection for consumers in this quickly evolving legal services market;
- Specific recommendations for proactive steps the OSB should take to address these new models (e.g. should the OSB propose amendments to the rules of professional conduct, the bar rules of procedure, or state law);
- A proposed strategic response in the face of unexpected action at the legislature or elsewhere.

### Access to Justice Issues

Rather than create a third committee that relates to access to justice issues at this time, the Board should first partner with the courts and legal aid to attempt to secure funding from the *Access to Justice for All* project to design a state-wide strategic action plan to achieve access to justice. The deadline for grant proposals is October 1, 2016. A letter of commitment from each of these entities, and from the state bar president must be included in the grant application. The Oregon Supreme Court, the Oregon Law Center and Legal Aid Services of Oregon are all interested in partnering on this project. The Board of Governors should approve the president providing a letter of commitment.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Formation of an OSB Cannabis Law Section

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### Action Recommended

Consider a request to form an OSB Cannabis Law Section with 2017 membership dues set at \$20.00.

### Options

1. Approve the creation of a new Cannabis Law Section.
2. Do not approve the creation of a new Cannabis Law Section.
3. Table the decision until after staff has reported back to the BOG regarding alternative section models.

### Background

OSB Bylaw 15.2 states that the Board will consider creating a section upon the petition of 100 bar members who commit to joining the section. In the last 10 years three new sections have been created including Animal Law in 2007, currently with 66 members; Nonprofit Organizations Law in 2011, with 146 members; and Military and Veterans Law in 2013, with 98 members.

Currently with 42 sections, the OSB is considered to have a very high number of sections compared to other states including Washington with 27, Arizona with 28, and California with only 16. Administrative time and expense increases with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and operate as though separate from the bar. Thus, as part of its program review process, the BOG requested that staff explore alternatives to the section model and gather feedback from executive committee leaders about their thoughts on how to meet the professional development and networking needs of members with similar practice areas. We expect to bring this information to the BOG early next year.

Through a petition signed by 102 active bar members, the BOG is asked to consider the creation of a Cannabis Law Section. Dues are proposed at \$20.00 and would be collected in conjunction with the 2017 membership fee process.

The request for formation of a Cannabis Law Section is due to the exponential growth in this area of law and would provide useful application for practitioners in many areas including agricultural, business, criminal, labor & employment, real estate & land use, and tax law.

### Cannabis Law Section Goals

- Creation of a Cannabis Law Section website;

- Hosting at least two Cannabis Law CLE's per year;
- Administering a Cannabis Law Section list serve for members to facilitate the sharing of templates and collaboration to solve issues which will continue to arise as we transition from prohibition to legalization;
- Publication and distribution to Cannabis Law Section Members of at least quarterly email newsletters covering latest regulations, and developments in Cannabis law as well as articles from practitioners, academics, and other members in the industry to provide a spectrum of information regarding relevant issues.

#### Cannabis Law Section Executive Committee

##### Officers:

Chair: Leland R. Berger of Oregon CannaBusiness in Portland

Chair-Elect: John A. Magliana Jr. from Lake Oswego

Treasurer: Aleece Burgio of Green Light Law Group LLC in Portland

Secretary: Andrew C. DeWeese of Andrew C. DeWeese PA in Portland

##### Members at large:

Courtney N. Moran of EARTH Law LLC in Portland

Michael R. Hughes of Hughes Law in Bend

Paul T. Loney of Loney Law Group in Portland

Edgar Diaz, Certified Law Student at Willamette University School of Law

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Fee Mediation Task Force

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### **Action Recommended**

Create Fee Mediation Task Force, charged to consider and recommend amendments to OSB Fee Dispute Resolution Rules and forms pertaining to mediation. Appoint members and chair of Task Force.

### **Background**

In early 2016, the Board adopted the OSB Fee Dispute Resolution Rules. The new rules made the Fee Mediation Pilot Program a permanent program offering to Oregon lawyers and clients. Since its inception, the fee mediation program has been a popular option for program participants.

Recently, General Counsel was approached by an experienced mediator who expressed concerns about the rules as drafted. The concerns pertained to exceptions to confidentiality contained in the present rules, the ability of mediation participants to determine the scope of the mediation, and possible inconsistencies between the current rules and widely accepted tenets of mediation (e.g., principles of self-determination). While normally staff would advise waiting until the program has been in effect for some time before revisiting the rules, the issues raised may warrant a more timely review.

In order to seek input from a broad range of stakeholders, staff recommends the formation of a Fee Mediation Task Force, based on the model of the 2009 Fee Arbitration Task Force.

The proposed charge is as follows:

The Fee Mediation Task Force is charged to evaluate the current fee mediation rules and make proposals for changes to the Board of Governors where appropriate. The Fee Mediation Task Force shall also make recommendations to General Counsel regarding fee mediation training and fee mediation forms.

Staff recommends the appointment of the following members to the Task Force:

- Rich Spier, Immediate Past President of the Board of Governors
- The Honorable Kristena LaMar, Past Chair of Fee Arbitration Task Force
- Mark Friel, Immediate Past Chair of ADR Section, Stoll Berne
- Sam Imperati, ICMresolutions Inc.
- Two representatives selected by the Alternative Dispute Resolution Section from the Section Executive Committee, who specialize in mediation

- Three representatives from the Fee Dispute Advisory Committee, selected by General Counsel
- A representative of Disciplinary Counsel's Office, selected by Disciplinary Counsel
- A representative of the Professional Liability Fund, selected by the PLF CEO
- Two public members from the Fee Dispute Resolution Panel, selected by General Counsel

Staff recommends that Rich Spier be appointed as Chair of the Task Force. The Task Force would be staffed by General Counsel and Fee Dispute Resolution Administrator Cassandra Dyke.

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Retired Member Status Implementation

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### **Action Recommended**

Recommend that Board amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. If the Board does so, recommend that Board waive the one meeting notice requirement.

### **Background**

At its meeting on June 24, 2016, the Board voted to amend the bylaws to implement the new retired status. As part of that change, staff anticipated seeking an amendment to Bar Rule of Procedure 8.14, to reference the new status. Presently, BR 8.14 only references transfer from Active Pro Bono Status, and there is no reference to Retired Status in the Rules.

Staff anticipates that the Bar Rules of Procedure will be amended to reference to Retired Status at the same time the disciplinary review rule changes are implemented.

To avoid member confusion in the interim, staff recommends amending Subsection 6.102(d) to reference additional provisions of the Rules that pertain to transferring from Inactive Status.

Waiving the one meeting notice requirement will allow the bylaws to be updated immediately, and will provide a clear path to members who wish to transfer from Retired to Active status.

### **Recommendation**

Adopt the bylaw amendment outlined below and waive the one meeting notice requirement.

OSB Bylaws

Subsection 6.102 Retired Status

(a) Purpose

The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.

(b) Eligibility for Retired Status

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 6.100(b)) may be enrolled as a Retired member.

(c) Membership Fees

Retired members are assessed a fee that is equivalent to the inactive membership fee.

(d) Transfer of Membership

Retired members wishing to resume regular active membership status must comply with ~~BR 8.14.~~ **BR 8.1 or 8.2, whichever is applicable. Retired members wishing to transfer to Active Pro Bono status must comply with BR 8.14.**

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 24, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Board of Bar Examiner recommendations

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### Action Recommended

Ratify the Board Development Committee's input on Board of Bar Examiners (BBX) appointments.

### 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. Last September the BOG had its first opportunity to provide comment on BBX appointments. Acknowledging new member appointees are traditionally drawn from the pool of existing co-graders, the BOG encouraged the BBX to take steps to increase the diversity of members serving as 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 (BDC), and the BOG, considered each of these factors when providing input on co-grader appointments in February of this year. During the July BDC meeting after careful consideration of the applicants and the BOG's earlier encouragement for increased diversity, the following seven members were identified as being well-qualified for service on the BBX:

Hon. Frank R. Alley III

Stephanie Eames

Kendra M. Matthews

Joanna T. Perini-Abbott

Hon. Thomas M. Ryan

Michael J. Slauson

Kate Anne Wilkinson

Based on the BBX's deadline for recommending new member appointments to the Supreme Court, the BDC offered its initial comments to the BBX in the attached July 27, 2016, letter to Stephanie J. Tuttle. This request is to ratify the recommendations the BDC made or to direct the BDC to communicate any additional comments the BOG wishes to provide to the BBX.

Included for reference is a memorandum from Charles Schulz, Oregon State Bar Admissions Director, identifying the candidates the BOG should provide input on for this year's BBX appointments. After submitting its ratification recommendations to BBX, BDC learned that BBX will make its appointment decisions before the BOG meeting. BDC will work with BBX for the next round of appointments to ensure that the BOG's ratification decision precedes BBX appointments.

## MEMORANDUM

To: BOG Appointments Committee

From: Charles Schulz, Oregon State Bar Admissions Director

Date: July 20, 2016

Re: 2017 Board of Bar Examiners Appointments

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Pursuant to Oregon State Bar bylaw 28.2, please accept this memo as the Board of Bar Examiners' request for input from the OSB Board of Governors (BOG) regarding potential candidates for appointment to the Board of Bar Examiners (BBX). The Oregon Supreme Court appoints four attorney members to three year terms, and two public members to one year terms on the board. All terms will begin on October 1, 2016.

Current co-graders were selected by the BBX after receiving input from the BOG earlier this year. Co-graders assist the BBX in developing and grading bar exam questions. The participation of co-graders on the July bar examination allows the BBX to vet them as potential board members.

In addition to preparing and grading the bar exam, BBX duties also include the review of applicant files, conducting interviews, making accommodation decisions based on the ADA, recommending rule changes to the Court, and serving on hearing panels to determine whether to recommend applicants for admission, based on their moral character and fitness to practice law. Because there is a significant learning curve for new BBX members, and because hearings and other BBX business can extend beyond the current term, the BBX often retains members, especially public members, over multiple terms. Experienced BBX members also promote continuity and serve as mentors to newer BBX members.

The BBX seeks to obtain a diverse group of individuals to serve on the board. Diversity includes a lawyer's practice area, firm size, geographic area, admission type, gender identity, and racial/ethnic diversity. In addition, the BBX prefers members who have been attorneys in any jurisdiction for a minimum of five years, who can work as a team, and whose areas of practice relate to bar exam subject matter or common character and fitness and ADA issues.

This year, 15 attorneys were identified by the BOG and their names were forwarded to the BBX for consideration as potential 2016 co-graders. From that list, as well as through direct communication with OSB members expressing interest, the BBX selected 11 Oregon attorneys to serve as co-graders in 2016. The summer grading session is scheduled for August 22-26, 2016.

The Board of Bar Examiners has compiled a list of names for consideration of appointment to the BBX, including current and former co-graders, current BBX members seeking an additional term, and attorneys recommended by the BOG Development Committee who were not used as co-graders this year.

The Board of Bar Examiners must recommend the appointment of four attorney members and two public members to the Oregon Supreme Court. The Board looks forward to receiving input from the Board of Governors to assist it in making its recommendations.



**Identified Attorney Members:**

Todd E Bofferding – Current and first-time co-grader; BOG recommended.  
Hon. Thomas M Ryan – Current BBX member (third year).  
Kate Wilkinson – Former BBX member; current co-grader.  
Ernest (Ernie) Warren – Current co-grader.  
Rosa Chavez – Current co-grader.  
Stephanie Eames – Current co-grader.  
Kendra Matthews – Current co-grader.  
Mandi Philpott – Current co-grader.  
Jo Perini-Abbott – Current co-grader.  
Lissa Kaufman – Current co-grader.  
Michael Slauson – Current co-grader.  
Michael Casper – Current co-grader.  
Hon. Frank R Alley – BOG recommended.  
John R. Huttl – BOG recommended.  
Karen A Moore – BOG recommended.  
Marisha Childs – BOG recommended.  
Patrick Gregg – BOG recommended.

**Identified Public (non-attorney) Members:**

It is common practice for public members to serve for more than a single one-year term. The BBX would like to reappoint each of its two current public members to additional one-year terms. The public members are:

Dr. Randall (Randy) Green, Ph.D.  
Mid-Valley Counseling Center  
Salem, Oregon

Dr. Green is a psychologist in private practice. He has served on the BBX for the past eleven years. Dr. Green’s experience and insight are vital to the BBX. Dr. Green spent much of the 2015-2016 term transferring knowledge to the board’s second public member, who is in his first year. Dr. Green is currently involved in multiple, current, contested admissions cases and has expressed his willingness to serve an additional year to complete those cases while also allowing the newest public member to gain experience.

Dr. Richard M Kolbell, Ph. D.  
Private Practice  
Portland

Dr. Kolbell is currently serving in his first year on the BBX. Dr. Kolbell’s extensive experience in Administrative and Civil Forensic Psychology has already proven to be very useful to the BBX, both on character and fitness matters and on ADA evaluations. Dr. Kolbell is currently active on a contested admission case and the BBX would like to reappoint him so he can continue to develop as a public member of the BBX.

July 27, 2016

**Board of Governors**

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R. Ray Heysell, Medford

*President-elect*

Michael D. Levelle, Portland

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Timothy L. Williams, Bend

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James C. Chaney, Eugene

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*Immediate Past President*

Richard G. Spier

**Chief Executive Officer/  
Executive Director**

Helen Hirschbiel, Tigard

Stephanie J. Tuttle  
DOJ Criminal Justice Division  
2250 McGilchrist St SE Ste 100  
Salem, OR 97302

Re: Board of Bar Examiners appointments

Dear Ms. Tuttle:

The Board Development Committee (BDC) of the Board of Governors (BOG) welcomes the opportunity to provide input on the recommendations being made by the Board of Bar Examiners (BBX) to the Supreme Court regarding lawyer and public member appointments to the BBX.

Fully recognizing the critical role the BBX plays in the future of the legal profession in Oregon, we agree that developing an expertise in evaluating the character and fitness of applicants and administering all aspects of the bar examination requires experience. For this reason the BDC supports the reappointment of Dr. Randall Green, Ph.D. and Dr. Richard M. Kolbell, Ph.D. as public members to the BBX.

After a thorough review of the 17 lawyer candidates the BBX will consider for appointment, the BDC identified 7 members whom we believe to be well-qualified:

- Hon. Frank R. Alley III
- Stephanie Eames
- Kendra M. Matthews
- Joanna T. Perini-Abbott
- Hon. Thomas M. Ryan
- Michael J. Slauson
- Kate Anne Wilkinson

We arrived at this list of candidates after careful consideration of the applicants, and in furtherance of our commitment to providing greater diversity of backgrounds and perspectives to all volunteer boards and committees.

The aforementioned candidates recommended by the BDC will be reviewed by the BOG during its September 9 meeting. Any additional input you wish to have the BOG consider during its deliberation must be received by August 29.

In closing I want to thank the BBX for its commitment to the important work it performs. We look forward to future opportunities to work collaboratively on volunteer selection. I would also like to extend my personal thanks to Charles Schulz, for attending our recent meeting, and offering his input and insight into this important process.

Sincerely,



Vanessa Nordyke  
Chair, BOG Board Development Committee

cc: Ray Heysell, Oregon State Bar President  
Richard G. Spier, Oregon State Bar Immediate Past-President

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 9, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Board of Governors Public Member Recommendation

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### **Action Recommended**

Approve the Board Development Committee's recommendation to appoint one of three candidates interviewed for the Board of Governors Public Member position beginning January 1, 2017.

### **Background**

During the July meeting the Board Development Committee reviewed applications for all six candidates interested in serving on the Board of Governors as a public member. Of those who applied, three were selected to move forward in the selection process.

On September 9 the committee conducted interviews which lasted 30-minutes and included eight questions. The candidates included:

**Michael Rondeau**, CEO of Cow Creek Band of Umpqua Tribe of Indians in Roseburg

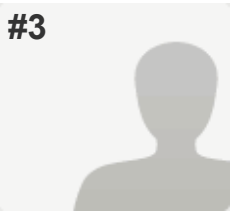
**Traci Rossi**, Executive Director of Innovative Changes in Portland

**Gregson Parker**, Owner, Forensic Accounting Services

After the interviews and a lengthy discussion of the candidates, the committee unanimously voted to recommend the appointment of Traci Rossi to the 2017 public member position. The Committee further approved a recommendation of Michael Rondeau as the alternate candidate for public member appointment.

Candidate applications and comments from each candidate's references are provided for consideration.

#3



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, May 31, 2016 3:10:12 PM  
**Last Modified:** Tuesday, May 31, 2016 4:47:23 PM  
**Time Spent:** 01:37:10  
**IP Address:** 75.142.150.254

PAGE 1: Welcome

**Q1: Contact information**

Full Name: Michael Joseph Rondeau  
Address: 38 North River Drive  
City: Roseburg  
Zip Code: 97470  
County: Douglas  
Email Address: mrondeau@cowcreek.cow  
Phone Number: 541-580-5540

**Q2: Business Contact Information (if any)**

Company: Cow Creek Band of Umpqua Tribe of Indians  
Job Title: CEO  
Address: 2371 NE Stephens Street  
City: Roseburg  
Zip Code: 97470  
County: Douglas  
Phone Number: 541-677-5540

PAGE 2

**Q3: Undergraduate Education:**

Name of School: Umpqua Community College  
Location: Roseburg, Oregon  
Dates Attended: 9/84 - 6/86  
Degrees Earned: General studies

**Q4: Postgraduate Education:**

*Respondent skipped this question*

PAGE 3

Oregon State Bar Public Member Volunteer Application

**Q5: Most Recent Employment:**

Employer: Cow Creek Band of Umpqua Tribe of Indians  
Job Title: CEO  
Location: Roseburg, OR  
Start and End Date: 3/1986 - Current

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**Q6: Previous Employment (if any):**

Employer: Volume Shoesource  
Job Title: Assistant Manager  
Location: Roseburg, OR  
Start and End Date: 2/87 - 7/88

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**Q7: Previous Employment (if any):**

Employer: EDCO Equipment  
Job Title: Maintenance  
Location: Glide, Oregon  
Start and End Date: 3/1983 - 9/1984

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**Q8: Volunteer Service:**

Organization: Phoenix Charter School  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: 9/2011 - Current

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**Q9: Additional Volunteer Service:**

Organization: Mercy Foundation  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: April 2002 - April 2010

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**Q10: Additional Volunteer Service:**

Organization: Roseburg Area Chamber of Commerce  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: January 2001 - January 2006

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Oregon State Bar Public Member Volunteer Application

**Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.**

I am a very community oriented person. I have volunteered for many organizations and enjoy the interaction with others.

I have enjoyed serving as Chairman of the Cow Creek Gaming Commission for 22 years and have been involved in the development and implementation of many dozens of minimum internal controls. A major portion of the responsibilities of a Commissioner is to research issues, evaluate and make conclusions as to adherence to policy. This experience has sparked my interest in other similar volunteering opportunities.

PAGE 6

**Q12: Reference 1:**

Full Name:

Allyn Ford

Email Address:

allynf@rfpco.com

Phone Number:

541 679 2754

**Q13: Reference 2:**

Full Name:

Sue Kupillas

Email Address:

ASK@opusnet.com

Phone Number:

541 282 4155

**Q14: Reference 3:**

Full Name:

Josh Kardon

Email Address:

jkardon@capitolcouncil.com

Phone Number:

202 365 9408

PAGE 7

**Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?**

No

**Q16: Have you ever been convicted or have you pleaded guilty to any crime?**

No

**Q17: Have you been involved in a lawsuit or litigation in the last 10 years?**

No

**Q18: If you answered Yes to any of these questions, please explain in the comment box below.**

*Respondent skipped this question*

PAGE 8

Oregon State Bar Public Member Volunteer Application

**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .**

Board of Governors

**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?**

Ray Heysell, an attorney at Hornecker Cowling in Medford inquired about my interest in serving.

PAGE 9

**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.**

American Indian or Alaskan Native

**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?**

No

**Q23: Sexual Orientation:**

*Respondent skipped this question*

**Q24: Gender Identity:**

Male

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**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.**

Michael Joseph Rondeau



# Michael Joseph Rondeau

## Candidate Reference Comments

### **Sue Kupillas, Brisbee & Stockton LLC:**

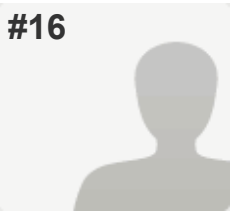
The Tribe served on the board of the non-profit for which I was executive director. I have known Michael for 15 years.

Michael is collaborative, intelligent, reasoned and energetic. He studies the issues. He is honest, direct, positive and has the highest integrity. Michael has the perspective from status as a sovereign nation and of a US Citizen.

He is very active in his community as well as all of Sothern Oregon. You would certainly find Michael an asset to any endeavor he chooses. He is also very politically connected locally, statewide and on the federal level.

DRAFT

#16



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Wednesday, July 20, 2016 9:45:38 AM  
**Last Modified:** Wednesday, July 20, 2016 10:11:03 AM  
**Time Spent:** 00:25:24  
**IP Address:** 74.92.164.158

PAGE 1: Welcome

**Q1: Contact information**

Full Name: Traci Rossi  
Address: 7 NE Floral Place  
City: Portland  
Zip Code: 97232  
County: Oregon  
Email Address: trossi@innovativechanges.org  
Phone Number: 5033584318

**Q2: Business Contact Information (if any)**

Company: Innovative Changes  
Job Title: Executive Director  
Address: 2027 Lloyd Center  
City: Portland  
Zip Code: 97232  
County: Oregon  
Phone Number: 5033584318

PAGE 2

**Q3: Undergraduate Education:**

Name of School: Catholic University of America  
Location: 620 Michigan Ave NE, Washington, DC 20064  
Dates Attended: 1990-1993  
Degrees Earned: BA English Literature

**Q4: Postgraduate Education:**

*Respondent skipped this question*

PAGE 3

Oregon State Bar Public Member Volunteer Application

**Q5: Most Recent Employment:**

Employer: Innovative Changes  
Job Title: Executive Director  
Location: 2027 Lloyd Center, Portland, OR 97232  
Start and End Date: 06/16 - Current

---

**Q6: Previous Employment (if any):**

Employer: "I Have a Dream" - Oregon  
Job Title: Vice President for Programs  
Location: 2916 NE Alberta, Portland, OR 97211  
Start and End Date: 08/10 - 06/16

---

**Q7: Previous Employment (if any):**

Employer: Catlin Gabel School  
Job Title: Director of Admission and Financial Aid  
Location: 8825 SW Barnes Road, Portland, OR 97225  
Start and End Date: 08/03 - 08/10

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PAGE 4

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**Q8: Volunteer Service:**

Organization: Women's Foundation of Oregon  
Position Held: Founding Board Member  
Location: 221 NW 2nd Ave., Portland, OR  
Start and End Date: 05/15 -current

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**Q9: Additional Volunteer Service:**

Organization: Catlin Gabel Alumni Board  
Position Held: Board Member  
Location: 8825 SW Barnes Road  
Start and End Date: 05/16 - current

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**Q10: Additional Volunteer Service:**

Organization: George Washington University  
Position Held: Parent Advisory Council Committee Member  
Location: 2121 I street, NW Washington, DC 20052  
Start and End Date: 09/15 - current

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Oregon State Bar Public Member Volunteer Application

**Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.**

I have worked in the non-profit sector for most of my career and have a passion for serving children and families, and in particular underserved people from low income communities. Serving as a leader in the non-profit sector, I have a unique ability to not only represent the public, non-attorney perspective, but I would bring additional insight from communities who lack the resources, connections and time, quite frankly to bring their perspective to the table for themselves. I have a tremendous amount of experience in both the private and public education sector, but have most recently moved into the financial sector at a community development financial institution. Our major focus is to provide financial capabilities and education to people with low incomes, communities of color and women. Again, I think that having such a close working relationship with these often marginalized communities, would bring an interesting perspective to the Board. I am also a deep believer in collaboration and in that sense, believe that I would benefit from the multiple perspectives on the BOG to better inform the work that I do.

PAGE 6

**Q12: Reference 1:**

Full Name:

Mark Langseth,

Email Address:

marklangseth07@gmail.com

Phone Number:

503-975-4583

**Q13: Reference 2:**

Full Name:

Carolyn Walker

Email Address:

carolyn.walker@stoel.com

Phone Number:

503.294.9358

**Q14: Reference 3:**

Full Name:

Emily Becker

Email Address:

emily.becker@smapdx.org

Phone Number:

503-720-1050

PAGE 7

**Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?**

No

**Q16: Have you ever been convicted or have you pleaded guilty to any crime?**

No

**Q17: Have you been involved in a lawsuit or litigation in the last 10 years?**

No

**Q18: If you answered Yes to any of these questions, please explain in the comment box below.**

*Respondent skipped this question*

PAGE 8

Oregon State Bar Public Member Volunteer Application

**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .**

Board of Governors

**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?**

Josh Ross

PAGE 9

**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.**

Black or African American

**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?**

No

**Q23: Sexual Orientation:**

Heterosexual

**Q24: Gender Identity:**

Female

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**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.**

Traci Rossi

# Traci Rossi

## Candidate Reference Comments

### **Emily Becker:**

I have known Traci for over 10 years. She served on the board of trustees at Catlin Gabel School when I was an employee, she was then my colleague at Catlin Gabel, we became close friends, served as colleagues again at "I Have a Dream" Foundation-Oregon and have remained close friends.

Traci is a remarkable board member. She's bright, collegial, thoughtful and collaborative. She brings intelligence, levity and delight to whatever group she encounters.

Traci has utmost integrity. She is loyal, genuine, trustworthy, hard-working, honest and humble. She has an even temper, she takes care to listen when important and speak when she has something meaningful to contribute. She's a leader in every sense of the word.

I believe Traci would serve the Bar very well as a volunteer. You'd be more than lucky to get her. She has a deep sense of commitment and would only put her name forth if she felt she had something to contribute and would take that commitment seriously.

I hold Traci in the highest esteem. She is truly one of the most amazing people I know.

### **Mark Langseth:**

I have known Traci for 7 years. She ran our program operations while I was president and CEO of "I Have a Dream" Oregon. She is excellent in group settings and on boards. Traci's combination of IQ and EQ and CQ (Cultural IQ) is unsurpassed in any colleague, mentor, or direct report with whom I have worked.

Her character, integrity, personality, and temperament are unsurpassed. Seriously, unsurpassed.

Traci is very selective about volunteer opportunities, because she devotes herself fully when she commits. The bar would be extremely well served by Traci as a member of your board of governors.

### **Carolyn Walker, Stoel Rives LLP:**

Traci Rossi has been a personal friend for almost 19 years. We met through a mutual friend and formed a book club together. The group still exists. I also have seen Traci function in her (former) role at I Have a Dream Portland, and can attest to her professionalism and her reputation.

I would say Traci is an excellent contributor to groups and boards. I've known Traci through many of her professional roles, and because of her reputation on boards and her involvement in organizations that have members in common with those on which I am a member, I have heard nothing but praise for Traci when people find out that I know her. I have tried to get Traci to join other boards on which I serve and I know of other people who have tried to do the same. Because of her reputation, she is most sought after.

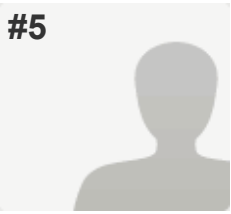
Traci's character is impeccable. She is extremely kind, thoughtful, candid and will take that tough positions even when they are not popular if it's the right thing to do. Her personality is magnetic and

she brings a very joyous spirit to the work that she does. When she does agree to take on a position/role, she takes it very seriously and is dedicated to whatever she has committed herself to. She is even-keeled, yet also passionate about issues that affect the world and the community.

I highly recommend Traci, and as a member of the Oregon State Bar myself, would be honored for Traci to serve on the Board of Governors. Oregon's legal community would be lucky to have a person like Traci helping to maintain the integrity of the profession.

DRAFT

#5



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Friday, July 08, 2016 1:50:23 PM  
**Last Modified:** Friday, July 08, 2016 4:05:40 PM  
**Time Spent:** 02:15:16  
**IP Address:** 73.96.17.2

PAGE 1: Welcome

**Q1: Contact information**

Full Name: Gregson Parker CPA, CFE  
Address: 1500 SW First Ave #1080  
City: Portland  
Zip Code: 97201  
County: OR  
Email Address: Gregson@CPA4n6.com  
Phone Number: 5032242400

**Q2: Business Contact Information (if any)**

Company: Forensic Accounting Services  
Job Title: Owner  
Address: 1500 SW First Ave #1080  
City: Portland  
Zip Code: 97201  
County: OR  
Phone Number: 5032242400

PAGE 2

**Q3: Undergraduate Education:**

Name of School: Portland State Univ  
Location: Portland  
Dates Attended: 1976-1978  
Degrees Earned: BA in Business Admin

**Q4: Postgraduate Education:**

*Respondent skipped this question*

PAGE 3



Oregon State Bar Public Member Volunteer Application

**Q5: Most Recent Employment:**

Employer: Forensic Accounting Services  
Job Title: Owner  
Location: Portland  
Start and End Date: 1989 - current

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**Q6: Previous Employment (if any):**

*Respondent skipped this question*

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**Q7: Previous Employment (if any):**

*Respondent skipped this question*

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PAGE 4

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**Q8: Volunteer Service:**

Organization: OR Board of Accountancy  
Position Held: Consumer Complaints Committee  
Location: Salem  
Start and End Date: 2010-12

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**Q9: Additional Volunteer Service:**

Organization: OR Chapter, Assn of Certified Fraud Examiners  
Position Held: President  
Location: state-wide, meetings held in Ptld  
Start and End Date: 1994-5

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**Q10: Additional Volunteer Service:**

Organization: OR Society of CPAs  
Position Held: Treasurer and 2 Board terms  
Location: state-wide, based in Beaverton  
Start and End Date: 1989-93

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**Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.**

Having worked with, for, and against thousands of attorneys for more than 30 years, I have had extensive interaction and experience with the legal profession in Oregon (and in many other states as well). My perspective will provide the Board of Governors with a unique mix of retained professional, co-worker, client, and adversarial viewpoints. I've greatly enjoyed my many working relationships with Oregon lawyers, and want to make a meaningful contribution to the profession by serving on the Board

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Oregon State Bar Public Member Volunteer Application

**Q12: Reference 1:**

Full Name: Tom Kranovich  
Email Address: Tom@TKatLaw.com  
Phone Number: 503 992-6680

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**Q13: Reference 2:**

Full Name: Tom D'Amore  
Email Address: Tom@DAmoreLaw.com  
Phone Number: 503 222-6333

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**Q14: Reference 3:**

Full Name: Larry Brisbee  
Email Address: LAB@BrisbeeandStockton.com  
Phone Number: 503 648-6677

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**Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?** No

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**Q16: Have you ever been convicted or have you pleaded guilty to any crime?** No

---

**Q17: Have you been involved in a lawsuit or litigation in the last 10 years?** Yes

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**Q18: If you answered Yes to any of these questions, please explain in the comment box below.**

Not as a party to any lawsuit, but hundreds of involvements as a retained consultant or testifying expert.

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PAGE 8

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**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .** Board of Governors

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**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?** Respondent skipped this question

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**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.** White or Caucasian

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Oregon State Bar Public Member Volunteer Application

**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?**

No

**Q23: Sexual Orientation:**

Heterosexual

**Q24: Gender Identity:**

Male

PAGE 10

**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.**

Gregson Parker

DRAFT

# Gregson Parker

## Candidate Reference Comments

### **Larry Brisbee, Brisbee & Stockton LLC:**

I have known Mr. Parker for more than 20 years and worked with him often. As a CPA and one being skilled in doing forensic work, his help on litigation matters as a consultant and as a witness was invaluable. My practice has slowed somewhat going toward retirement, so our work on common projects has diminished of late. The significance of his role in litigation was the fact that the opposition invariably held him in high regard as well, although in disagreement with his conclusions.

In my experience, Mr. Parker has always been a team player. He is not timid about expressing his views, but listens well and is very adept in building a consensus.

Mr. Parker's character, integrity, personality and temperament are above reproach. From my experience, he invariably "stuck to his guns" in advancing truth in his work. He is not one to show anger or demonstrate abstinence when his views are not accepted. However, his professionalism is always on display.

If selected, Mr. Parker would bring his own set of professional skills and experiences in dealing with matters coming before the Bar. He will also bring a unique experience in dealing with lawyers in a variety of different circumstances. This comes from his forensic work for which he has developed a very positive reputation. In this regard, I have managed several cases for the PLF representing lawyers where Mr. Parker has been retained to assist in their defense. He knows lawyers and what they do, so would be well acquainted with many of the matters in which the Bar is interested.

It is good news that he is willing to volunteer in helping the Bar. I am convinced that, if selected, he would be a valuable resource.

### **Tom D'Amore, D'Amore Law Group:**

I have used Gregson Parker as an expert witness as a forensic accountant. I have used Gregson for approximately 6-8 years.

He does great. And, as a financial expert he would be unmatched. Gregson is very thorough in all he does. His character is above reproach.

Although Gregson is not an attorney, he cares deeply about our justice system. He works in the civil arena for both plaintiffs and defendants. And, he works in the criminal system as an expert witness. As a non-attorney, Gregson has dedicated his career to working in our legal system.

### **Tom Kranovich, Kranovich & Lucero LLC:**

I have known Gregson for going on 27 or 28 years. Gregson is a forensic accountant whom I started using as an expert witness during the first few years I was in-house counsel for SAFECO Insurance Co. He has testified for me on numerous occasions and has been my economic expert on many more cases that ultimately settled. Socially we have had lunch together a few times a year and we played golf together at various bar functions for years (though not since I went on the board in 2011 – I have not held a club since my tenure with the board).

I believe Gregson would function well in a group or on a board. He is smart, articulate and a good listener. He likes to gather information before rendering an opinion. When he does have something to say it is well thought out. He is not afraid to ask questions or to raise tough issues. While he is not shy, he is very courteous and has a great sense of humor. I have had cases where there were multiple defendants who mutually retained Gregson's services. He worked well in a team setting with all attorneys.

In my experience Gregson has great character and the highest of integrity. I believe Gregson would serve the board and the bar well. When he commits to a project he dedicates himself to the project. Gregson has worked with a lot of attorneys from large, medium and small firms. He understands the perspective of all three. He understands the pressure that comes with being a small businessman with a successful practice. He understands our legal ethics and our legal culture. He has worked with attorneys of varied levels of experience. He has lived in New Mexico and is aware of and supportive of the bar's diversity efforts.

I think Gregson would serve the bar well. He has no agenda other than to serve and I know he has been interested in serving as a public member for some time. His knowledge of the legal field and his accounting expertise make for a natural fit. His dedication and his desire to serve speak volumes. I think his time has come. If appointed I know that the board will not be disappointed.

DRAFT



# Professional Liability Fund

16037 SW Upper Boones Ferry Road, Suite 300  
Tigard, Oregon 97224

PO Box 231600 | Tigard, Oregon 97281-1600

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

*Board of Directors  
and Officers*

ROBERT D. NEWELL  
CHAIR  
Portland

TERESA A. STATLER  
VICE-CHAIR  
Portland

TIM MARTINEZ  
SECRETARY-TREASURER  
(PUBLIC MEMBER)  
Salem

JULIA I. MANELA  
Eugene

DENNIS H. BLACK  
Medford

SAVILLE W. EASLEY  
Portland

ROBERT S. RASCHIO  
Canyon City

MOLLY JO MULLEN  
Portland

TOM NEWHOUSE  
(PUBLIC MEMBER)  
Portland

August 22, 2016

To: OSB Board Development Committee  
From: Carol J. Bernick, PLF Chief Executive Officer   
Re: 2017 PLF Board Appointments

The Board of Directors of the Professional Liability Fund met on August 12, 2016 to consider potential applicants for the 2017-2021 Board terms. The BOD is required to send a list of nominees equal to or greater than the number of available positions to the OSB BOG.

Article 3.4 provides that:

By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. **These may include, but are not limited to, consideration of gender, minority status, ability, experience, type of law practice, and region.**

This year, 18 attorneys expressed interest in serving on the PLF Board. (Attorneys express their interest in two ways; either through the OSB Volunteer Preference Form or through direct communication with the PLF in response to a blast e-mail, articles or notices in *In Brief* or the OSB *Bulletin*.)

This year, there are two attorney board positions to fill. The terms of Bob Newell and Julia Manela expire December 31, 2016. Their departure leaves the Board with:

- One member from Medford;
- One member from Canyon City;
- One public member from Salem; and
- Four members from Portland.

In terms of firm size, the Board (minus the two departing directors and not counting the public members) has:

- One member from a large firm (over 25);
- One member from a medium firm (10-24);
- One member from a small firm (2-9); and
- Two solo practitioners.

The substantive expertise includes immigration, domestic relations, litigation (plaintiff), litigation (defense)/mediation, and criminal.

### **Attorney Appointments**

The BOD chose three candidates from a list of eight candidates presented by our nominations committee. Those three candidates are presented in order of preference (resumes attached).

**Megan Livermore.** OSB #054789, Eugene.

Megan is a native Oregonian. She graduated from Willamette University with her JD in 2005 and is a 1994 graduate of Oregon State. Her practice focuses on representing small businesses, including start-ups, particularly in the high tech and cannabis industries. She does business formation and wind down as well as intellectual property and real estate and litigation at Hutchinson Cox, a 10-person firm. In the 8 years between college and law school she helped launch Digimarc, a high tech company that develops advance data hiding. She was involved in the company's successful \$80 million IPO before leaving for law school. She is actively involved in Lane County Legal Aid and has served on the board of both the Oregon Women Lawyers and the Lane County Bar Association.

**Holly Mitchell.** OSB #943044, Portland.

Holly is a 1984 graduate of Lewis & Clark law school. She has been with Duffy Kekel, an 18-person business and estate planning firm, since 2001. Before that she worked at a

handful of Portland firms, including Davis Wright Tremaine in the early 1990's. She currently serves on the Executive Committee of the OSB Estate Planning Section and is a frequent speaker and writer on various estate planning topics. We have wanted an estate planning lawyer on our Board for a number of years and believe the need will continue to grow.

**Lisanne Butterfield.** OSB #913683, Lake Oswego.

Lisanne is a named partner in the three person Carr Butterfield firm. Their practice is limited to representing financial services professionals, investment advisors and insurance agencies in state and federal courts, FINRA arbitrations and SEC matters. Lisanne started the firm in 2006. Her first 15 years of practice was spent doing mostly insurance defense work (save for a four year "tour" at a firm in Guam while her husband was stationed there). Lisanne most recently served on the Client Security Fund and has served in a number of other volunteer roles for both the Oregon State and the MBA. Lisanne is a 1991 graduate of Willamette University College of Law and has a BA in Economics and Political Science from University of Denver.

**Attachments:**

Resumes of the three candidates listed above  
List of all applicants





**Megan I. Livermore**  
Of Counsel

Telephone: 541/686-9160  
mlivermore@eugenelaw.com

**Education**

J.D., Willamette University College of Law, 2005  
Willamette Law Review, Symposium Editor  
B.S. cum laude Oregon State University, 1994

**Law Practice**

Megan is an experienced attorney and litigator with a strong record of professional excellence and a unique background in business and law. She is guided by her entrepreneurial experience, having helped launch a successful high tech start-up, and her decade as an attorney. Megan represents business and individuals and works diligently with clients toward finding practical solutions to their issues.

Megan especially enjoys working with entrepreneurs and emerging businesses from start-up to wind-up, and everything in between. She offers a full-service approach to helping clients create successful businesses through advising on entity formation, intellectual property strategy, navigating customer and vendor relationships, creditor's rights and litigating business disputes, when they arise. Recognizing the clear value of new and emerging markets, Megan also represents clients in the medical marijuana industry and those working toward the implementation of Measure 91 on all aspects of their business.

In addition to her business practice, Megan has a thriving real estate practice. She represents clients in commercial and residential real estate transactions, real estate development, and litigation of real estate related matters.

Before starting law school Megan helped launch Digimarc, a high tech company based in Portland that develops advanced data hiding technology used in a number of consumer, commercial, and document security applications. Megan assisted Digimarc in all aspects of the start up phase of the business and played a central role in the company's highly successful \$80 million initial public offering. After law school, and prior to private practice, she also served as a law clerk to the Honorable Darryl Larson of the Lane County Circuit Court.

Megan is passionate about serving her community, including the legal community, as demonstrated by her time spent volunteering. She is an active participant in the Lane County Legal Aid Tuesday Night clinic, a board member of the HIV Alliance and is past-president of both Oregon Women Lawyers and the Lane County Bar Association. In addition, she instructs high school students about the careful use of credit through the Federal Bankruptcy Court's Credit Abuse Resistance Education (CARE) Program.

**Practice areas**

- Business Law
- Business Acquisitions/Sales
- Cannabis Law
- Corporations
- Litigation
- Creditors' Rights
- Real Estate Law
- Trademark and Copyright Law

**Presentations**

- Introduction to Marijuana law and Recent Developments for the Non-Cannabis Practitioner Representing Clients in the Cannabis Industry
- Trademark Basics
- Ethical Issues: Representing Marijuana-Related Businesses
- Fundamentals of Landlord Tenant Law—Collections: How to Enforce Your Judgment
- Oregon Professional Liability Fund, Learning the Ropes CLE
- Panel Speaker, Success Tips from Partners and Associates
- Lane County Women Lawyers, Fourth Annual CLE
  - Moderator, Panel Discussion, Ethics In Mediation
  - Moderator, Panel Discussion, “Whether to Settle or Litigate—Zealous Representation”

**Professional Memberships**

- Oregon State Bar, admitted 2005
- United State District Court, District of Oregon, admitted 2007
- Oregon Women Lawyers, Past-President (2012-13)
- Lane County Bar Association, Past-President (2013-14)
- Oregon State Bar Diversity Section Executive Committee
- OGALLA The LGBT Bar Association of Oregon, Member
- Oregon State Bar Leadership College Fellow, 2009
- Member, Oregon State Bar Sustainability Task Force, 2009
- Oregon State Bar Debtor/Creditor Section, Local Bankruptcy Rules and Forms Committee

**Awards/Honors**

- Super Lawyers Oregon Rising Stars, 2011 through present
- Oregon State Bar Convocation on Equality Diversity Champion, 2011
- Daily Journal of Commerce Up & Coming Lawyers honoree, 2010

**Community Activities**

- Credit Abuse Resistance Education (CARE) Program volunteer
- Lane County Legal Aid & Advocacy Center, Tuesday Night Clinic
- HIV Alliance, President-elect
- Leadership Eugene-Springfield, Class of 2010-11
- Oregon Association of Rowers, Board Member, 2009-2011

**Background and Interests**

Megan was born and raised in Eugene and enjoys practicing law in her hometown. In her free time, she enjoys spending time with her partner and dogs, hiking the Pacific Northwest, and exploring the vast beauty Oregon has to offer.



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### **Practice**

Holly began practicing in Portland in the areas of estate planning, trust administration, probate, and charitable giving in 1984. Holly joined Duffy Kekel LLP in 2001.

### **Education**

Northwestern School of Law of Lewis & Clark College, J.D.

Lewis & Clark College, B.A.

### **Professional Associations and Activities**

- 2011- Oregon State Bar, Estate Planning and Administration Section, Executive Committee.
- 2008-2013 Oregon State Bar, Estate Planning and Administration Section, CLE Committee; chair 2010-2013.
- 2008- Estate Planning Council of Portland, member.
- 2006- Washington State Bar Association. Member of:  
Real Property, Probate and Trust Law Section.
- 2004 Admitted to Practice before the United States Supreme Court.
- 1984- Oregon State Bar. Member of:  
Estate Planning and Administration Section.  
Taxation Section.

## **Presentations**

- 2012 Oregon State Bar CLE “Administering Oregon Estates” Seminar.  
Topic: Preadministration Procedures and Special Considerations.
- 2010 Oregon Society of Certified Public Accountants, Seminar.  
Topic: Estate Planning in Oregon.
- 2010 Oregon State Bar CLE “Basic Estate Planning and Administration” Seminar.  
Topic: Fiduciary Duties and Risks.
- 2009 Oregon State Bar CLE “Administering the Taxable Estate” Seminar.  
Topic: The Oregon Inheritance Tax.
- 2009 Multnomah Bar Association CLE Seminar.  
Topic: The Oregon Inheritance Tax.

## **Publications**

- 2012 “Preadministration Procedures,” Oregon State Bar, Advising Oregon Estates.
- 2010 “A Divided Second Circuit Fractionalizes Section 2036 in Estate of Stewart,”  
Journal of Taxation, October 2010, Vol. 113 No. 4. Co-author.
- 2010 “Tax Procedure Issues for Estates and Trusts,” Oregon State Bar Estate Planning  
and Administration Section Newsletter, July 2010.
- 2009 “Calculating Bequests Under Formula Clauses,” Oregon State Bar Estate  
Planning and Administration Section Newsletter, October 2009. Co-author.
- 2009 “Adjusted Taxable Gifts and the Oregon Inheritance Tax,” Oregon State Bar  
Estate Planning and Administration Section Newsletter, October 2009.
- 2008 “Inheritance Tax Credit for Farming, Forestry, and Commercial Fishing  
Property,” Oregon State Bar, Oregon Legislation Highlights.



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*lbutterfield@carbutterfield.com*

**PROFESSIONAL EXPERIENCE**

**Carr Butterfield, LLC**

**Lake Oswego, Oregon**

Aug. 2006 – present

*Shareholder and Senior Litigator*

Representation of financial services professionals, registered representatives, investment advisors, insurance agencies and other licensed professionals in state and federal courts, FINRA arbitrations, and investigations initiated by the SEC, and state regulatory/licensing agencies. Advise licensed professionals regarding professional liability, regulatory, ethics and employment law matters.

**Gordon & Polsker, LLC**

**Portland, Oregon**

December 1999 – July 2005

*Senior litigation attorney and Human Resource/Hiring Attorney*

Insurance defense practice with primary focus on construction defect and coverage issues related to breach of contract, product liability, and professional liability.

**Sussman Shank LLP**

**Portland, Oregon**

July 1997 – August 1999

*Associate*

Complex business litigation and PLF defense cases, including trials, mediation and arbitration.

**Carlsmith Ball Wichman Case & Ichiki**

**Agana, Guam**

September 1993 – July 1997

*Associate*

Trial attorney for commercial litigation, employment disputes, and insurance defense matters. Cases included complex tax litigation, construction defect, foreclosure proceedings, consumer fraud, maritime/admiralty matters, administrative adverse action claims and employment law.

**Hoffman Hart & Wagner**

**Portland, Oregon**

August 1992 – August 1993

*Associate*

Insurance defense cases, with emphasis on medical malpractice claims and municipal liability.

**State of Oregon, Multnomah County Circuit Court**

**Portland, Oregon**

May 1991 – August 1992

*Judicial Law Clerk to the Honorable Stephen B. Herrell*

Assisted trial court judge in criminal and domestic relations trials.

## **EDUCATION**

Willamette University College of Law (J.D., 1991)  
Editor, International Law Journal (1989-91)  
University of Denver (B.A., Economics & Political Science, 1987)

## **PROFESSIONAL MEMBERSHIPS, ACTIVITIES, COMMUNITY SERVICE**

American Bar Association (Labor & Employment Law and Litigation Sections)(2010-present)  
Clackamas County Court Mock Trial Judge (2011)  
Guam State Bar, Legal Ethics Committee (1995-1997)  
Lewis & Clark College of Law, Moot Court Judge (2011-2013)  
Multnomah County Bar Association CLE Committee, Member (1999-2001)  
Multnomah County Bar Association, Judicial Selection Committee (2010-2013)  
New York State Bar, *pending*  
Oregon State Bar, Commission on Professionalism,  
Willamette University College of Law, Orientation Program Facilitator (2012-2014)  
Oregon State Bar, Disciplinary Board (Panel Judge 2006-2015)  
Oregon State Bar, House of Delegates (2013-2015)  
Oregon State Bar, Client Security Fund (2014-present)  
Oregon State Bar, Legal Ethics Committee (1999-2002)  
Oregon State Bar, Member (1991-present)  
Oregon State Bar, Securities Section (2011-present)  
Oregon Women Lawyers, Member (2009-present)  
Superior Court, Territory of Guam, Indigent Defense Committee (1994-1997)  
United States District Court of Guam, Indigent Defense Panel (1995-1997)  
United States District Court, Admitted (1992-present)

## **SCHOOL COMMUNITY INVOLVEMENT**

French American International School  
Board of Trustees (2013-2016)  
Budget Committee (2011-2014)  
Site Committee / Legal Liaison for Middle School Expansion Project (2014-present)  
Parent Volunteer for field trips and Outdoor Science School (2008-present)

Lincoln High School, Portland, OR  
Parent Teacher Organization (legal advisor) (2012-2014)  
Alpine Ski Race Team, parent volunteer (2012-2016)  
Lincoln High School Boys Lacrosse Team, team parent/chaperone (2013-2014)  
Lincoln High School Boys Soccer Team, parent volunteer (2012-2016)

Multnomah Athletic Club, Portland, OR  
Freestyle Youth Ski Team, parent volunteer (2015-present)



## REPRESENTATIVE CLIENTS

American Guarantee Insurance  
Berkley Specialty Underwriting Management  
C.N.A. Insurance  
Chartis  
Chubb & Son  
CIGNA  
Davis-Frost, Inc.  
Efficient Market Advisors, LLC  
Evergreen Prosthetics & Orthotics  
Fairview Fittings and Manufacturing Ltd.  
Farmers Insurance  
Federal Express, Inc.  
Fireman's Fund  
Focus Point Solutions, LLC  
Golsan Scruggs Insurance & Risk Management, LLC  
Gulf Insurance  
Hanover Insurance Group  
Liberty Mutual  
Lloyds of London  
One Beacon Insurance  
Oregon Insurance Guaranty Association (OIGA)  
Pacific Capital Resources Group, LLC  
Pepsi Bottling Group, Inc.  
Reliance Insurance  
Riverstone Group  
Smith Barney  
Sowles Construction Co.  
Spantec Constructors, Inc.  
St. Paul/Travelers Insurance  
Sterling Capital  
TenBridge Partners, LLC  
The H Group, LLC  
The Harver Company  
TIG Insurance  
Timberline Investment Management, LLC  
VergePointe, LLP  
Victory Builders, Inc.  
Western Guaranty Insurance Services (WGIS)  
Zing Toys, Inc.

**PLF Board of Directors – Applications**  
**Term Beginning January 1, 2017**

Applicant Name	Email Acknowledgment	Call/Meeting to discuss BOD role	Notes/Recommendation	Decline Letter Sent
<b>Bilyeu, Amy</b> Bar #011651 <i>Amy withdrew her application</i>			Active Member. No disciplinary sanctions. <b>1 PLF Claim &amp; 3 Suspense Files</b>	
<b>Butterfield, Lisanne M.</b> Bar #913683			Active Member. No disciplinary sanctions. <b>4 PLF Claims</b>	
<b>Fisher, Ann L.</b> Bar #840459 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions. <b>1 PLF Claim &amp; 1 Suspense File</b>	
<b>Gear, John</b> Bar #073810			Active Member. No disciplinary sanctions. <b>4 PLF Claims &amp; 4 Suspense Files</b>	
<b>Goodwin, Jeffrey D.</b> Bar #123269			Active Member. No disciplinary sanctions.	
<b>Hendry, James W.</b> Bar #832350			Active Member. No disciplinary sanctions. <b>7 PLF Claims &amp; 2 Suspense Files</b>	
<b>Howard, Dan Webb</b> Bar #060041 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions.	
<b>Livermore, Megan</b> Bar #054789			Active Member. No disciplinary sanctions.	
<b>Mansfield, William A.</b> Bar #530710			Active Member. No disciplinary sanctions. <b>8 PLF Claims &amp; 2 Suspense Files</b>	
<b>McGrath, Michael T.</b> Bar #013445 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions. <b>4 PLF Claims &amp; 1 Suspense File</b>	



**PLF Board of Directors – Applications**  
**Term Beginning January 1, 2017**

Applicant Name	Email Acknowledgment	Call/Meeting to discuss BOD role	Notes/Recommendation	Decline Letter Sent
<b>Meadows, Christine M.</b> Bar #963603 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions. <b>1 Suspense File</b>	
<b>Mitchell, Holly N.</b> Bar #843044			Active Member. No disciplinary sanctions.	
<b>O’Neil, Shawn M.</b> Bar #913880			Active Member. No disciplinary sanctions. <b>2 PLF Claims &amp; 2 Suspense Files</b>	
<b>Robinson, David J.</b> Bar #094887			Active Member. No disciplinary sanctions.	
<b>Sayles, Sara A.H.</b> Bar #110584 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions.	
<b>Welsh, Robert J.</b> Bar #115493			Active Member. No disciplinary sanctions.	
<b>Werner, Peter</b> Bar #091722			Active Member. No disciplinary sanctions. <b>1 PLF Claim &amp; 1 Suspense File</b>	
<b>Wilkinson, Kate A.</b> Bar #001705			Active Member. No disciplinary sanctions. <b>1 PLF Claim</b>	
<b>18 Applicants</b>				

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 9, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** House of Delegates Appointments

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### Action Recommended

Approve the Board Development Committee's recommendation to appoint lawyer and non-lawyer delegates to the OSB House of Delegates.

### Background

The House of Delegates has four public member and four lawyer seats open for appointment. The Board Development Committee unanimously offers the following recommendations:

#### Public Members

**Douglas Primmer**, Region 1, term expires 4/15/2019

Mr. Primmer has a strong background as a state employee and serves as a City of Hermiston Councilman.

**Nathaline Frener**, Region 2, term expires 4/15/2019

Ms. Frener has experience as an OSB volunteer having served two years on the SPRB and three years on the HOD. She recently became the manager of Lane County Youth Services after more than five years as a program manager of Lane County Family Mediation.

**Bryan Penn**, Region 4, term expires 4/15/2019

Mr. Penn is a litigation paralegal for American Family Mutual Insurance. He offers a strong background in researching and interpreting statutes and stated his passion for discussing and shaping policy.

**Thomas Feely**, Region 7, term expires 4/15/2019

Mr. Feely is a retired business operations manager for the City of Portland. He has extensive board and volunteer history including service on the budget committee for sheriff's office enhanced law enforcement. He was also recommended by Kathleen Rastetter.

#### Lawyer Members

**Amber Labrecque**, Region 4, term expires 4/15/2019

Ms. Labrecque was admitted to practice in 2009 and served one year on the region 5 HOD before moving to the firm of Houser & Allison in region 4.

**Hans Huggler**, Region 5 member, term expires 4/15/2019

Mr. Huggler was admitted to practice in 2014 and is an associate at Lane Powell. He focuses his practice on litigation including life, health, disability and ERISA.

**Holly Puckett**, Region 5, term expires 4/15/2019

Ms. Puckett is the Associate Director of the Campaign for Equal Justice. She was admitted to practice in 2012 and served as a litigation technology specialist at Ater Wynne before moving to the CEJ.

**Jeffrey Young**, Region 5, term expires 4/15/2019

Mr. Young was admitted to practice in Oregon in 2007. He is a civil litigator with Lindsay Hart, primarily focusing his practice on medical malpractice defense.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 29, 2016  
**From:** Rod Wegener, CFO  
**Re:** Additional Fee for Paying Membership Fee after Due Date

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### Action Recommended

Decision on the recommendation of the Budget & Finance Committee to eliminate the second increase in the membership for those members not paying by the deadline; the only additional fee after the deadline is \$100.00 per active member and \$50.00 per inactive member.

### Background

The recommendation is the result of the Committee's action at its July meeting. Bar staff recommended the change for two key reasons: 1) the two fee increases will cause additional modifications to the bar's new software; 2) will eliminate the cost and additional required processing staff performs at the two deadline dates. Here are the current statutes addressing the fee payment deadlines.

- ORS 9.191 allows the Board of Governors to "establish the date by which annual membership fees must be paid." Traditionally this date is January 31.
- ORS 9.200 permits the executive director to send via electronic mail a notice of delinquency if not paid timely.

Since 2014 the bar's practice has been to increase the active membership fee by \$50.00 if not paid by the first due date, and another \$50.00 if not paid within 30 days of the due date. The additional fee for Inactive members is \$25.00 and 25.00 for the two dates respectively. If not paid within 90 days after the due date the member is administrative suspended.

### Fee Schedule for 2016 Membership Fees (Current Schedule)

Note: Due date was February 1 as January 31 was a Sunday.

<b>Membership Fee Status</b>	<b>Fee through February 1</b>	<b>Fee effective February 2</b>	<b>Fee effective March 3</b>
Active Over Two Years	\$557.00	\$607.00	\$657.00
Active Under Two Years**	\$470.00	\$520.00	\$570.00
Active Pro Bono	\$125.00	\$125.00	\$125.00
Inactive	\$125.00	\$ 150.00	\$175.00

The recommendation would eliminate the additional fee 30 days after the deadline, and the fee on the current schedule of that date (March 3) would become the fee payment after the due date in 2017 (February 1 on the proposed schedule). If not paid by May 1, 2017, the member would be suspended.

### Fee Schedule for 2017 Membership Fees (Proposed Schedule)

Note: Due date is January 31, a Tuesday.

Membership Fee Status	Fee through January 31	Fee effective February 1
Active Over Two Years	\$557.00	\$657.00
Active Under Two Years**	\$470.00	\$570.00
Active Pro Bono	\$125.00	\$125.00
Inactive	\$125.00	\$ 175.00

**Financial Impact:** The amount of revenue to the bar with members paying after the 2016 deadline was \$66,663. This was an increase over 2015, but a few years ago the additional revenue exceeded \$100,000.

- The number of members paying late at February 1, 2016 was 1,241 (6.4% of members billed). Of that total 604 were active members and 638 were inactive.
- At the second deadline 669 (now 3.5% of members) were still late (314 active, 355 inactive).
- There were 118 members suspended on May 3, 2016 for non-payment of their 2016 member fees.

It is uncertain what impact the change will have on 2017 revenue. If the number paying late after January 31, 2017 is the same as the number who paid late at the second deadline in 2016, the additional revenue would approximate \$49,000. However, it is unlikely that the drop-off will be that many in 2017 and it is more likely that the additional revenue in 2017 will approximate the amount received in 2016.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 22, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Assessment

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### **Action Recommended**

Approve the 2017 Assessment.

### **Background**

On an annual basis, the Board of Governors approves the PLF assessment for the coming year. The Board of Directors proposes that the assessment remain at \$3,500 (unchanged from 2016).

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 22, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Claims Made Primary Plan and Excess Plan

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### **Action Recommended**

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2017 PLF Claims Made Primary Plan (EXHIBIT 1) and 2017 Excess Plan (EXHIBIT 2)<sup>1</sup>. There are changes to both plans.

### **Background**

The Primary Coverage Plan has not been significantly reviewed for over ten years although changes here and there have occurred in the interim. Madeleine Campbell (Claims Attorney) led the effort in taking a fresh look at the current Plan with an eye toward asking: "What is our purpose in having specific language?" Ms. Campbell did the majority of the rewriting and reorganization. Jeff Crawford, Emilee Preble, Bruce Schafer and I reviewed, edited and commented, along with the PLF's primary outside coverage attorney Bill Earle.

The revised Primary Plan reorganizes current Plan language and shortens its length to eliminate unnecessary or repetitive language and to allow someone to read and understand the Plan in the order it is presented. The revision is intended to make it easier to find and identify related provisions without a lot of going back and forth between pages and provisions. Because the Plan has been completely reworked and reorganized, a red-line version showing the changes would not be useful. Below is a summary of the significant substantive changes.

### **SECTION 1 – SUMMARY OF PROPOSED PLAN REVISIONS – BOTH PLANS**

#### **A. Structural Reorganization**

Both revised Plans are reorganized in order to eliminate unnecessary or repetitive language and to make the Plans easier to read and understand.

#### **B. Comments Removed**

Over many years, Comments have been added to both the Primary and Excess Plans to clarify intent and meaning. The proposed revised Plans eliminate the Comments. Instead, where appropriate, the Comments have been incorporated into the language of the Plan and examples are added when helpful.

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<sup>1</sup> There will also be changes to the Pro Bono Plan consistent with the proposed changes to the Primary Plan. The proposed Pro Bono Plan will be presented to the BOG at its November meeting.

**C. “Legally Obligated” Definition Added**

Both revised Plans contain a definition for the words “legally obligated,” previously undefined. The need for a definition became particularly important after the Oregon Supreme Court decision in *Brownstone Homes v. Brownstone Forest Heights*, which overturned *Stubblefield*.

**D. Arbitration Agreements**

The revised Plans adds new language directed at trying to prevent Covered Parties from entering into fee agreements that call for the arbitration of malpractice claims. The PLF does not want to be subject to advance restrictions on the forum for a malpractice claim, or to have no right of appeal.

**E. Defense of Certain Excluded Claims**

The revised Plans add a specific defense provision stating the PLF will defend, but not indemnify, Claims for malicious prosecution, abuse of process and wrongful initiation of legal proceedings, as well as claims subject to Exclusion 4 of the Plans. This reflects the current policy and practice of the PLF, but Plan language in that respect is relocated and clarified.

**F. “Private Practice” Definition Added**

Adding a definition for Private Practice allows the PLF to further define activities covered under the Plans and also to exclude from that definition work as an employee of a private entity that is not a Law Entity, or work as a government employee. Currently this type of employment is excluded through Excess Plan Exclusions 14 and 15. The revised Plans will eliminate these exclusions.

**G. “Professional Legal Services” and “Special Capacity Services” Definitions Added**

In order to bring more clarity and certainty to the scope of what is a Covered Activity, the revised Plans contain definitions for Professional Legal Services and Special Capacity Services.

**J. Related Claims**

Both revised Plans contain new language regarding Related Claims, currently defined as “SAME OR RELATED.” This new language is intended to make the PLF’s intent with respect to these claims clearer and more apparent. The Primary Revised Plan also contains additional examples in order to clarify how limits work when there are multiple covered parties who are the subject of Related Claims.

**K. Exclusions**

Proposed changes to exclusions are fully discussed in Exhibits 3 and 4. The following highlights the substantive changes of particular note:



**Exclusion 4: Punitive Damages or Certain Fee Awards.** The revised exclusion would exclude imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law against the Covered Party. If the sanction award is against the client, the exclusion applies unless the Covered Party establishes the sanction was caused by mere negligence on the part of the Covered Party and/or anyone for whose conduct any Covered Party is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the Covered Party, or on the part of anyone for whose conduct a Covered Party is legally liable. This change means any sanction against a Covered Party is automatically excluded and there is no coverage for any vicarious liability of the Covered Party's firm for such sanction. It further clarifies when there will be coverage when the sanction is against the client and who has the burden of proof.

**Exclusion 11: Family Member and Ownership Exclusion.** The definition of Family Member was expanded.

**Exclusion 20: Confidential or Private Data Exclusion.** The purpose of this exclusion was to mirror the cyber coverage found in our Excess Plan. But as currently written, the language was far broader than we intended. The new language is more tailored to the types of cyber losses the endorsement is meant to cover.

## **SECTION 2 – SUMMARY OF PROPOSED PLAN REVISIONS – EXCESS ONLY**

Again, the main change to the Excess Plan is restructure. In this case, the goal was to make the Excess Plan flow from the Primary Plan and eliminate repetition.

The only true substantive change not also in the Primary Plan relates to when a claim is first made and the claim year. The proposed revisions explain the differences of when a claim is "made" between the Primary and Excess Plans. And, when claims are Related, explains how the Plan Year is determined (which can be different with respect to Related claims in Primary vs. Excess).

### Attachments:

- Exhibit 1: Proposed - 2017 PLF Primary Coverage Plan
- Exhibit 2: Proposed - 2017 PLF Excess Coverage Plan
- Exhibit 3: Comparison Chart – Primary Coverage Plan Exclusions
- Exhibit 4: Comparison Chart – Excess Coverage Plan Exclusions

## 2017 PRIMARY COVERAGE PLAN

The Professional Liability Fund ("PLF") is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The PLF Primary Coverage Plan ("Plan") is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the statutory requirements and to meet the Mission and Goals set forth in Chapter One of the PLF Policies, including, "To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention." The limits, exclusions, and conditions of the Plan are to be fairly and objectively construed for that purpose.

While mandatory malpractice coverage and the existence of the PLF provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

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## INTRODUCTION

Throughout this Professional Liability Fund (“PLF”) Primary Coverage Plan (“Plan”): **You** and **Your** refer to the Named Party shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth in the Plan. A List and Index of Defined Terms is attached as an Appendix.

## SECTION I - COVERAGE AGREEMENT

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Plan and the applicable **Limit of Coverage** and **Claims Expense Allowance**, as defined in Section VII, the coverage provided by this Plan is as follows:

### A. Indemnity

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which this **Coverage Period** applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

**Legally Obligated** to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of **Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the claimant to collect money **Damages** directly from the **Covered Party**.

**Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**.

### B. Defense

1. Until the **Claims Expense Allowance** and the **Limit of Coverage** are exhausted, the PLF will defend a **Covered Party** against any **Suit** seeking **Damages** to which this Plan applies. The PLF is not bound by any **Covered Party**'s agreement to resolve a dispute through arbitration or any other

alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

**Suit** means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay **Claims Expense** the PLF incurs.

**Claims Expense** means fees and expenses charged by any attorney designated by the PLF; all other fees, costs and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

#### C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

#### D. No Prior Knowledge or Prior Coverage

This Plan applies only to a **Covered Activity** that occurred after the Retroactive Date shown in the Declarations and either: (a) during the **Coverage Period**, or (b) before the **Coverage Period** if (i) on the effective date of this Plan, **You** had no knowledge of any **Claim** having been asserted or of any facts or circumstances that you were aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity** and (ii) there is no prior Plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior Plan or policy are sufficient to pay any liability or **Claim**.

#### E. Coverage Territory

This Plan applies to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

## SECTION II - WHO IS A COVERED PARTY?

Only the following are **Covered Parties** under this Plan:

### A. The Individual Attorney Named in the Declarations

**You** are a **Covered Party** under this Plan, or in the event of **Your** death, adjudicated incapacity or bankruptcy, **Your** conservator, guardian, trustee in bankruptcy, or legal or personal representative, when acting in such capacity, is a **Covered Party**, regarding any **Claim** to which this Plan applies provided, at the time of the error, omission, negligent act or breach of duty on which such **Claim** is based: (1) **You** were engaged in **Private Practice**; (2) **You** were licensed to practice in Oregon; and (3) **Your Principal Office** was in Oregon.

**Private Practice** means providing **Professional Legal Services** or **Special Capacity Services** through a **Law Entity**. **Private Practice** does not include:

- a. **Your** work or conduct as an employee of any entity that is not a **Law Entity**, including but not limited to any private entity or any governmental body, subdivision or agency, whether or not **You** are employed as a public official or employee, if **You** are subject to the direction and control of the non-**Law Entity** regarding the means and manner of providing services and are paid on a salaried basis, or hourly employee basis, as opposed to being retained as an independent contractor, paid on a fee for service or hourly fee basis; or
- b. **Your** work or conduct in any other capacity that comes within the defense and indemnity provisions of ORS 30.285 and 30.287, unless the public body rejects any duty to defend and indemnify **You**. If the public body rejects **Your** defense and indemnity, the PLF will provide coverage, provided the **Claim** relates to a **Covered Activity** to which this Plan would otherwise apply, and the PLF will be subrogated to all **Your** rights against the public body.

For purposes of determining the location of **Your Principal Office**, a law office is a location held out to the public as **Your** law office. If **You** have only one law office, then that is the location of **Your Principal Office**. If **You** have two or more law offices and any of them is in Oregon, **Your Principal Office** is in Oregon if the total amount of time **You** spend engaged in **Private Practice** in such Oregon law office locations is greater than 50% of the time **You** engage in **Private Practice** in all law office locations when measured over the course of the 12 months prior to January 1st of each year. If **You** do not have a law office **Your Principal Office** is in Oregon if: **You** reside in Oregon; or, if **You** reside outside Oregon but are not an active member of the bar of the jurisdiction where you reside.

### B. Law Entities Legally Liable for Your Covered Activities

A **Law Entity** legally liable for any **Claim** against **You**, based on **Your Covered Activities** is also a **Covered Party** under this Plan. However, in the event the **Claim** also involves claims against other attorneys not covered under a PLF Plan, any defense or indemnity for the **Law Entity** under this Plan is limited to that portion of the **Law Entity's** legal liability that relates to **Your Covered Activities**.

A **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon.

## SECTION III - WHAT IS A COVERED ACTIVITY?

### A. What Qualifies as a Covered Activity?

This Plan does not apply to all activities an attorney may engage in while practicing law. To fall within coverage, a **Claim** must arise out of a **Covered Activity**, subject to the following definitions, restrictions and limitations, and all applicable exclusions in this Plan.

A **Covered Activity** is an error, omission, negligent act or breach of duty committed in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**, as limited below, by:

- a. **You**;
- b. Another attorney for whose conduct you are legally liable, in **Your** capacity as an attorney, but only if the attorney was covered under a PLF Plan at the time of the act, error, omission, negligent act or breach of duty; or
- c. **Your Non Attorney** employee, for whose conduct **You** are legally liable in **Your** capacity as an attorney, but only to the extent such employee was assisting **You** in providing **Professional Legal Services** or **Special Capacity Services**.

**Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or in any other state.

### B. What Are Professional Legal Services?

**Professional Legal Services** are legal services or legal advice provided in a **Covered Party's** capacity as an attorney in **Private Practice**, including services a **Covered Party** provides as a mediator or arbitrator. **Professional Legal Services** do not include activities such as, but not limited to, the following:

- a. Any conduct in carrying out the commercial or administrative activities associated with practicing law, including but not limited to activities such as collecting fees or costs, guaranteeing a client will pay third party vendors or service providers, such as court reporters, depositing, endorsing or otherwise transferring negotiable instruments, depositing or withdrawing any money or other instruments into or from trust accounts or other bank accounts, any activities relating to or arising from the receipt, transmittal or negotiation of counterfeit or fraudulent checks or instruments, or any activities that require no specialized skill or training, such as paying bills on time or not incurring unnecessary expenses;
- b. Business related activities or services, including operating, managing or controlling any property, business property, business or institution in a manner similar to an owner, officer, director, partner or shareholder, whether as a trustee or otherwise;
- c. Activities as an officer, director, partner, employee, shareholder, member or manager of any entity except a **Law Entity**;



- d. Activities on any board, including but not limited to serving on the board of trustees of a charitable, educational or religious institution, or a real estate or other investment syndication;
- e. Serving as trustee for the liquidation of any business or institution, or as trustee for the control of a union or other institution; or
- f. Non-legal services such as architectural, engineering, accounting, lobbying, marketing, advertising, trade services, public relations, real estate appraisal, real estate development, brokerage services, or other such services.

### C. Special Capacity Services

**Special Capacity Services** provided by a **Covered Party** arising out of a **Special Capacity Relationship**, are **Covered Activities** but only with respect to a **Claim** made by or for the benefit of a beneficiary of the **Special Capacity Relationship** and provided such **Claim** does not arise as a result of a claim by a third party relating to business activities or services provided by the **Covered Party** in the course of the **Special Capacity Relationship**.

**Special Capacity Relationship** means the **Covered Party** is formally named or designated to act in the capacity of a Personal Representative, Administrator, Conservator, Executor, Guardian Ad Litem, Special Representative pursuant to ORS 130.120, or a successor statute, or a Trustee administering a formal trust instrument for the benefit of a beneficiary.

**Special Capacity Services** means certain services commonly provided by an attorney in the course of a **Special Capacity Relationship** for the purposes of administering an estate or trust in accordance with applicable law and/or performing the legally required duties and obligations owed to beneficiaries of **Special Capacity Relationships**. **Special Capacity Services** do not include:

- a. Business related services, including but not limited to operating, managing or controlling any property, business property, business or institution, whether owned by the estate or trust or otherwise, in a manner similar to an owner, officer, director, partner or shareholder;
- b. Services provided by a **Covered Party** that generally fall within the scope of services commonly provided by another type of professional such as an accountant, tax professional, financial planner or advisor, appraiser, architect, engineer, surveyor, real estate agent or other such professional, or by a person in another trade or occupation such as a contractor, landscaper, gardener, caregiver, caretaker, housekeeper, or similar service provider.

## SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?

### A. Date of Claim

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed, or an arbitration or ADR proceeding is first initiated against a **Covered Party** under this Plan;

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
3. The date notice of a **Claim** is received by any **Covered Party** under this Plan;
4. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan;
5. The date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a **Claim**, for the purpose of investigation, mitigation, review or prevention of any potential **Claim** against a **Covered Party** under this Plan; or
6. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

#### B. Special Rule Regarding Related Claims

If any **Claim** against a **Covered Party** is **Related** to one or more **Related Claim(s)**, the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or ADR proceeding was initiated with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, received notice of the earliest **Related Claim**;
4. The date the PLF received notice of the earliest **Related Claim**; or
5. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, first became aware that a claimant intended to make the earliest **Related Claim**, but the claimant was delaying assertion of the **Claim**, or the **Covered Party** was delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

However, if **You** did not have a PLF Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and **You** have no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** against **You** is determined using the method set forth in Section IV A.

## SECTION V - WHAT ARE RELATED CLAIMS?

### A. Related Claims

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. A **Claim** against **You** may be **Related** to another **Claim(s)** against **You** and/or to a **Claim(s)** against other attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

B. General examples of **Related Claims** include, but are not limited to, the following:

1. Secondary or dependent liability. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral are **Related** to the **Claims** on which they are based.
2. Same transaction or occurrence. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences are **Related**. However, provided the **Claims** do not also fall within one of the other categories in this Section V B, the PLF will not treat the **Claims** as **Related** if: (a) the participating **Covered Parties** acted independently of one another; (b) they represented different clients or groups of clients whose interests were adverse; and (c) the claimants do not rely on any common theory of liability or damage.
3. Alleged scheme or plan. If claimants tie together different acts as part of an alleged overall scheme or operation, then the **Claims** are **Related**.
4. Actual pattern or practice. Even if a scheme or practice is not alleged, if **Claims** arise from a method, pattern, or practice in fact used or adopted by one or more **Covered Parties** or **Law Entities** representing multiple clients in similar matters, such **Claims** are **Related**.
5. One loss. When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses, then the **Claims** are **Related**.
6. Class actions. All **Claims** alleged as part of a class action or purported class action are **Related**.

For the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to which **Claims** are considered to be **Related**, and subject to the special rules regarding limits under Section VII D, examples illustrating the PLF's intent, not intended to be exhaustive, are as follows:

*Example 1: Secondary or Dependent Liability* - Attorney A is an associate in a firm and commits malpractice. **Claims** are made against Attorney A, various attorneys who were partners in the firm at the time of the malpractice and the firm. Even if Attorney A and some of the other lawyers are at different firms at the time of the **Claim**, all **Claims** are **Related**.

*Example 2: Same Transaction, Occurrence or Series of Transactions or Occurrences* - Attorney A writes a tax opinion for an investment offering. Attorneys B and C, with a different law firm, assemble the offering circular. In 2010, Investors 1 and 2 bring **Claims** relating to the offering. Investor 3 brings a claim in 2011. **Claims** against all attorneys and firms, by all 3 investors, are **Related**.

Example 3: Independent Representation of Adverse Clients Where There is No Common Theory of Liability or Damage - Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's **Claims** are not **Related**.

Example 4: Same Transaction, Occurrence or Series of Transactions or Occurrences/One Loss - An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel, its ERISA attorney, the owner and his attorney, and the plans' former attorney, contending there were improprieties in due diligence, the form of the agreements and the amount and value of shares issued. The defendants file cross-claims. All **Claims** against the four attorneys are **Related** because they arise out of the same transactions or occurrences. The three necessary elements of the exception described in Section V B 2 are not satisfied because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Even if the exception in Section V B 2 did apply, however, the **Claims** would still be **Related** under Section V B 5 because they involve one loss.

Example 5: Claimants Allege Overall Scheme or Operation - Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. These **Claims** are all **Related** because, as is often the case in securities claims, the claimants have tied together different acts as part of an alleged overall scheme or operation.

Example 6: Actual Pattern or Practice - Attorneys A, B, and C in the same firm represent a large number of asbestos clients over several years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation. Plaintiffs do not allege a common scheme or plan, but because the firm in fact operated a firm-wide formula for handling the cases, these **Claims** are **Related** based on the **Covered Parties'** own pattern or practice.

Example 7: Successive or Collective Errors - Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. All claims are **Related**.

Example 8: Class Action or Purported Class Action - Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All claims are **Related**.

## SECTION VI - WHAT IS EXCLUDED FROM COVERAGE?

1. Fraudulent Claims. This Plan does not apply to any **Claim** in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, has participated in any fraud or collusion with respect to the **Claim**.
2. Wrongful Conduct. This Plan does not apply to any **Claim** based on or arising out of:
  - a. any criminal act or conduct;
  - b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or
  - c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any **Covered Party** who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.

3. Disciplinary Proceedings. This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.
4. Punitive Damages, Sanctions or Certain Fee Awards. This Plan does not apply to:
  - a. The part of any **Claim** seeking punitive, exemplary or statutorily enhanced damages against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable;
  - b. Any **Claim** for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law. However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the **Covered Party** establishes the sanction was caused by mere negligence on the part of the **Covered Party** and on the part of anyone for whose conduct a **Covered Party** is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the **Covered Party**, or on the part of anyone for whose conduct a **Covered Party** is legally liable; or
  - c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.
5. Failure to Pay Lien. This Plan does not apply to any **Claim** based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any **Covered Party** or to anyone for whose conduct a **Covered Party** is legally liable, prior to the payment of the funds to a client or any person or entity other than the rightful lien-holder.
6. Business Interests. This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
  - a. In which **You** are a general partner, managing member, or employee, or in which **You** were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;
  - b. That is controlled, operated, or managed by **You**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by **You** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
  - c. In which **You** either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) **You**, those controlled by **You**, **Your** spouse, parent, step-parent, child, sibling or any member of **Your** household, and those with whom **You** are regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.
7. Partner and Employee Exclusion. This Plan does not apply to any **Claim** made by:

- a. A present, former, or prospective law partner, employer, or employee of a **Covered Party**, or of anyone for whose conduct a **Covered Party** is legally liable; or
- b. A present, former, or prospective officer, director, or employee of a professional corporation in which a **Covered Party**, or in which any attorney for whose conduct a **Covered Party** is legally liable, is or was a shareholder.

This exclusion 7 does not apply if the **Claim** arises solely out of conduct in an attorney-client capacity for a person or entity listed in subsections a and b.

8. Business Transaction with Client. This Plan does not apply to any **Claim** based upon or arising out of any business transaction in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.

9. Investment Advice. This Plan does not apply to any of the following **Claims** or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:

- a. Any **Claim** for investment losses, or for any damages arising from or relating to such losses, as a result of any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.

This subsection (a) does not apply, however, to **Claims** made by a purchaser of securities for losses that arise only from **Professional Legal Services** provided to a seller of securities, provided no **Covered Party** nor any attorney for whose conduct a **Covered Party** is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.

- b. Any **Claim** arising from any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any **Covered Party** for the **Covered Party** or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.
- c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of **Special Capacity Services**.

10. Law Practice Business Activities or Benefits Exclusion. This Plan does not apply to any **Claim**:

- a. For any amounts paid, incurred or charged by any **Covered Party** as fees, costs or disbursements, (or by any **Law Entity** with which any **Covered Party** was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.

- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any **Covered Party**, or any **Law Entity** with which any **Covered Party** is now associated, or was associated at the time of the conduct giving rise to the **Claim**; or
- c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any **Covered Party**.

In the event the PLF defends any **Claim** or **Suit** that includes any claim within the scope of this exclusion, the **Covered Party** is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s). This exclusion does not apply to the extent a **Claim** is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.

*The following illustrative examples, not intended to be exhaustive, are provided for the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 10:*

*Example 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under subsection a, there is no coverage for the claim.*

*Example 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under subsection a, there is no coverage for the claim.*

*Example 3: Attorney C writes a demand letter to Client for unpaid fees, and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.*

*Example 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b, there is no coverage for the claim.*

*Example 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c, there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.*

11. Family Member and Ownership Exclusion. This Plan does not apply to any **Claim** based on or arising from any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having provided or failed to provide:

- a. **Professional Legal Services** to any person or entity that is his or her own **Family Member** or **Family Business** at the time any such services are provided or fail to be provided; or
- b. **Special Capacity Services** to a trust or estate: (i) if the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such **Special Capacity Services** are provided, or fail to be provided, any **Family Member** or **Family Business** of that **Covered Party**, or of the person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate.

**Family Member(s)** means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling,

step-sibling, half sibling, brother or sister-in-law or any member of the **Covered Party's** household and, if the household member is a spousal equivalent of the **Covered Party**, the Family Members of any such person.

**Family Business** means a business entity in which the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, and/or the **Family Members**, of such **Covered Party** or person for whose conduct a **Covered Party** is legally liable, collectively or individually, have a controlling interest.

This exclusion does not apply to **Professional Legal Services** or **Special Capacity Services** an attorney provides to another attorney's **Family Member** or **Family Business**.

12. Benefit Plan Fiduciary Exclusion. This Plan does not apply to any **Claim** arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having acted as a fiduciary under any employee retirement, deferred benefit, or other similar plan.
13. Notary Exclusion. This Plan does not apply to any **Claim** arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.
14. Loss of Client Funds or Property/Certain Disbursements. This Plan does not apply to any **Claim** against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable, relating to or arising from: conversion, misappropriation, improper commingling, negligent supervision of client funds or trust account property, including loss or reduction in the value of such funds or property; or the disbursement of funds, checks or other similar instruments deposited to a trust, escrow or other similar account in which the deposit was not irrevocably credited to such account.
15. General Tortious Conduct. This Plan does not apply to any **Claim** for:
  - a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or
  - b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services** or **Special Capacity Services**.

*The following illustrative examples, not intended to be exhaustive, are provided for the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 15:*

*Example 1: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C. Following the completion of the matter, the documents are lost or destroyed. Client makes a claim for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this claim because the loss of documents did not adversely affect the professional services, which had already been completed.*

*Example 2: Client gives Attorney B a defective ladder from which Client fell, to be used as critical evidence in his personal injury case. Attorney B loses the ladder and cannot use it as evidence, causing a defense verdict. A claim for the value of the lost personal injury case would not be excluded.*

*Example 3: A client makes a claim for bodily injury or emotional distress based on allegations that an attorney engaged in sexual contact with the client, the client suffered injury while riding in an attorney's car or that the client slipped on the floor in an attorney's office. As an initial matter, none of these claims arise out of a **Covered Activity**. They are also excluded by exclusion 15 a, and may also be subject to other exclusions.*



*Example 4: An attorney negligently fails to inform a client of a court date in a criminal matter. As a result, the client fails to appear and is arrested, jailed and injured by another inmate. A claim against the attorney alleging damages arising from bodily injury and emotional distress is not excluded by exclusion 15 a.*

16. Harassment and Discrimination. This Plan does not apply to any **Claim** based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual orientation, disability, pregnancy, national origin, marital status, or any other basis.

17. Patent Exclusion. This Plan does not apply to any **Claim** based upon or arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.

18. Contractual Obligation Exclusion. This Plan does not apply to any **Claim**:

- a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a **Covered Party** or by someone for whose conduct any **Covered Party** is legally liable, unless the **Claim** arises out of **Special Capacity Services**, and the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, signed the bond or agreement solely in a representative capacity arising from the **Special Capacity Relationship**;
- b. For liability based on an agreement or representation, if the **Covered Party** would not have been liable in the absence of the agreement or representation; or
- c. To the extent the **Claim** is based on an actual or alleged promise to obtain a certain outcome or result if the **Covered Party** would not have been liable in the absence of such a promise.

The following illustrative examples, not intended to be exhaustive, are provided to assist a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 18:

*Example 1: Attorney A personally guarantees that a client will secure funding for a real estate development. Any claim against Attorney A arising from the guarantee is not covered.*

*Example 2: Attorney B enters into an agreement with a client that if there is any dispute arising from the representation, the prevailing party will be able to recover attorney fees. The client sues Attorney C for malpractice and prevails. The contractually based attorney fee award is not covered because it would not exist in the absence of the agreement.*

*Example 3: Attorney C promises a plaintiff that he will recover at least \$200,000 in a lawsuit, but does not achieve this result. To the extent the client bases any claim against Attorney D solely on a promise to obtain a particular outcome, rather than on negligence in failing to meet the applicable standard of care, there is no coverage for the breach of contract claim.*

19. Bankruptcy Trustee Exclusion. This Plan does not apply to any **Claim** arising out of activity as a bankruptcy trustee.

20. Confidential or Private Information/Computer Systems. This Plan does not apply to any **Claim** arising from:

- a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, whether or not such information was in electronic form or in paper form;
- b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security of information referenced in subsection a, including but not limited to failure to report the loss of such information; or
- c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by a computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.

**Personally Identifiable Non-Public** information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, 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. This includes, but is not limited to certain medical or health care information, driver's license or state identification information, social security numbers, credit information or financial account information.

**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 which is not available to the general public.

This exclusion 20, however, does not apply to a **Claim** to the limited extent it arises solely out of immediate inability to provide **Professional Legal Services** or **Special Capacity Services** caused by the sudden and unexpected loss of documents or information necessary to such services provided: (i) such loss materially and adversely affected the ability to provide such services; and (ii) following the discovery of any such loss of documents or information, the **Covered Party** at the **Covered Party's** own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.

If the PLF agrees to defend a **Suit** that includes a **Claim** falling within this exclusion, and/or a **Claim** falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.

## SECTION VII — LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE AND SPECIAL LIMITS REGARDING RELATED CLAIMS

### A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this Plan is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this Plan applies. The making of multiple claims or claims against more than one **Covered Party** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this Plan applies:

1. All **Claims Expense** paid by the PLF on behalf of any **Covered Party** under this Plan, that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF's payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments or any other indemnity payments arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

### B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this Plan also provides a separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this Plan, subject to Section VII C, below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments or any other indemnity payments.

### C. Special Rules and Limits for Related Claims

If **Your** Plan and one or more other Plans issued by the PLF to other attorneys apply to **Claims** that are **Related**, then regardless of the number of claims, claimants, clients, attorneys or **Law Entities** involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF Plan regarding all such **Related Claims**. This is subject only to the exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available to **You** cannot exceed the amount of the available remaining limit of **Your** Plan in effect during the **Coverage Period** that applies to the **Related Claim(s)** against **You**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on **Your** behalf, or on behalf of other attorneys or **Law Entities** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** available to **You** has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any **Related Claim** against **You**.

Under the following circumstances, the PLF may grant more than one **Claims Expense Allowance** with respect to **Related Claims**: (1) the **Related Claims** allegedly arise from **Covered Activities** by two or more **Law Entities**; (2) the **Law Entities** were separate entities at the time of the alleged errors,

omissions, negligent acts or breaches of duty; and (3) a **Covered Party** requests, and in the sole judgment of the PLF, should be entitled to separate defense counsel. Not more than one separate **Claims Expense Allowance per Law Entity**, or group of **Law Entities** practicing together as a single firm, will be granted. Any such separate allowance may be used only for the defense of **Claims** arising from the **Covered Activities** of the **Law Entity** or group of **Entities** to which the separate allowance applies. If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

For the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to meaning of Section VII C, illustrative examples, not intended to be exhaustive, are as follows:

*Example 1:* In 2009 Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 2013, Investor W brings securities **Claims** against Attorneys B and C. The PLF incurs \$50,000 in **Claims Expense** relating to Investor W's **Claims** against Attorneys B and C and settles the **Claims** against them for a total of \$250,000-\$125,000 for Attorney B and \$125,000 for Attorney C.

In 2014, following the settlement of Investor W's **Claims** against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B and C regarding Investor X's investment in the LLC. Because the **Claims** by Investor X are **Related** to the previous **Claims** against Attorneys B and C, this **Claim** relates back to the 2013 Plans issued to Attorneys A, B and C.

There was another completely unrelated **Claim** against Attorney A in 2013, but the PLF successfully defended Attorney A, using his entire \$50,000 **Claims Expense Allowance** for 2013. Although Attorney A has not used his \$300,000 limit for 2013, because the PLF has already spent \$250,000 settling the **Related Claims** against Attorneys B and C, all the attorneys collectively, now have a total limit of \$50,000, under their 2013 Plans, to respond to the **Claim** by Investor X. Because Attorney A has already used his **Claims Expense Allowance** for 2013, he does not have another **Claims Expense Allowance** for this **Claim**. There is no additional **Claims Expense Allowance** available for Attorneys B and C because they are entitled to only one shared **Claims Expense Allowance** regarding the **Related Claims**, and this was already spent on the **Related Claim** by Investor W.

*Example 2:* Same facts as in Example 1, except that the previous unrelated 2013 **Claim** against Attorney A was not successfully defended. The PLF spent Attorney A's \$50,000 **Claims Expense Allowance**, plus \$275,000 settling the unrelated 2013 **Claim** against Attorney A. Under this scenario, there is a total maximum limit of \$25,000 for Attorney A to respond to the **Claim** by Investor X. Although the \$50,000 left after settling the **Claim** by Investor W is available collectively to A, B and C, no more than \$25,000 of this amount can be used for Attorney A because that is all that is remaining of his 2013 limit. Assuming \$25,000 is spent to settle the Investor X **Claim** against Attorney A, there is \$25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

*Example 3:* Same facts as in Example 1, except that \$300,000 is spent settling Investor W's claim against Attorneys B and C. Attorneys B and C have exhausted both their 2013 Limit of Coverage and their 2013 **Claims Expense Allowance**. Attorney A exhausted his 2013 **Claims Expense Allowance** to defend an unrelated **Claim**. The PLF has already paid the most it will pay regarding the **Related Claims**. As a result, there is nothing left to defend or indemnify Attorneys A, B or C against the **Claim** by Investor X under any PLF Primary Coverage Plan.

*Example 4:* Same facts as Example 1, except the PLF settles Investor W's claim against Attorneys B and C for \$30,000, without incurring any **Claims Expense** for them, and Attorney A has used all but \$5,000 of his 2013 limit, as well as his **Claims Expense Allowance**, for an earlier unrelated **Claim**. Under this scenario, there is a maximum total limit of \$270,000 to respond to the **Claim** by Investor X against all three attorneys, but only \$5,000 of this amount is available to Attorney A because that is the limit remaining under his 2013 Plan. Attorney A has no **Claims Expense Allowance** remaining. Attorneys B and C, however, have a shared \$50,000 **Claims Expense Allowance** for their defense against the **Claim** by Investor X.

*Example 5:* Same facts as Example 1, except Attorney A already spent both his entire 2013 **Claim Expense Allowance**, plus his entire 2013 limit on an unrelated **Claim**. Attorney A has no coverage for the **Claim** by Investor X under the PLF Primary Coverage Plan.

*Example 6:* Attorney A performed **Covered Activities** for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 **Limit of Coverage** and two **Claims Expense Allowances**. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate **Law Entity** from the firm at which she worked. Accordingly, two, not three, **Claims Expense Allowances** are potentially available.

*Example 7:* Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client and commit errors in handling the case. Two **Claims Expense Allowances** are potentially available. There are only two separate firms – the BC partnership and D's firm.

## SECTION VIII – DUTIES OF COVERED PARTIES

### A. Notice of Claims, Suits and Circumstances

As a condition precedent to any right of protection afforded by this Plan, the **Covered Party** must give the PLF, at the address shown in the Declarations, timely written notice of any **Claim, Suit**, or Circumstances, as follows:

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** which otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

### B. Assistance and Cooperation in Defense

As a condition of coverage under this Plan, the **Covered Party** will, without charge to the PLF, cooperate with the PLF and will:

1. Provide to the PLF, within 30 days after written request, narrative statements or sworn statements providing full disclosure concerning any **Claim** or any aspect thereof;
2. Attend and testify when requested by the PLF;
3. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any **Claim** against the **Covered Party**;

4. Execute authorizations, documents, papers, loan receipts, releases, or waivers when requested by the PLF;
5. Submit to arbitration of any **Claim** when requested by the PLF;
6. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense and settlement of all **Claims**;
7. Not communicate with any person, other than the PLF or an insurer for the **Covered Party**, regarding any **Claim** that has been made against the **Covered Party**, after notice to the **Covered Party** of such **Claim**, without the PLF's written consent; and
8. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any **Claim** against the **Covered Party**.

#### C. No Voluntary Payments, Admissions or Representations

No **Covered Party** can bind or prejudice the PLF with voluntary payments or admissions or representations. If a **Covered Party**, without the advance written consent of the PLF, voluntarily makes any payment, assumes any obligation or incurs any expense with respect to a **Claim**, makes any representation to a claimant that the claimant will be indemnified or makes any representation as to the value or potential value of the **Claim**, any payment, obligation, expense, obligation to pay, or obligation to pay the represented amount will be the sole obligation of the **Covered Parties**, to be paid or satisfied at the sole cost and expense of the **Covered Parties**.

#### D. Protection of Subrogation Rights

To the extent the PLF makes any payment under this Plan, it will be subrogated to any **Covered Party's** rights against third parties to recover all or part of these sums. No **Covered Party** will take any action to destroy, prejudice or waive any right of subrogation the PLF may have, and will, if requested, assist the PLF in bringing any subrogation action or similar claim. The PLF's subrogation or similar rights will not be asserted against any **Non Attorney** employee of a **Covered Party** who was acting in the course and scope of employment, except for claims arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

#### E. Assistance and Cooperation in Coverage Issues

1. Any party claiming coverage under this Plan has a duty and obligation to timely provide, upon the request of the PLF, accurate, complete and truthful information relevant to any claimed right to coverage under this Plan.
2. In the event the PLF proposes, in writing, a settlement to be funded by the PLF but subject to the **Covered Party's** being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the **Claim** settled, the **Covered Party** must advise the PLF in writing that the **Covered Party** either agrees or objects to the PLF's proposal. The written response must be made by the **Covered Party** as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. The **Covered Party's** objection to the settlement waives any right to assert the PLF should have settled the **Claim**.

## SECTION IX - ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

1. No legal action in connection with this Plan will be brought against the PLF unless all **Covered Parties** have fully complied with all the terms and conditions of the Plan.
2. Absent the PLF's express written consent, the PLF will not be obligated to make any indemnity payments until after the **Covered Party** has been held liable in a **Suit** on the merits, and all applicable coverage issues have been determined by Declaratory Judgment.
3. The bankruptcy or insolvency of a **Covered Party** does not relieve the PLF of its obligations under this Plan, nor deprive the PLF of any of its rights under this Plan.
4. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all of the **Limit of Coverage** toward settlement of a **Claim** before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Plan is not applicable to the **Claim**, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the **Covered Party** (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the **Claim**, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's **Limit of Coverage** before all applicable coverage issues have been fully determined.
5. This Plan is governed by the laws of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to or arising out of any duties or provision of benefits under this Plan, between any **Covered Party** (or anyone claiming through a **Covered Party** or based on any actual or alleged right of direct action) and the PLF, whether any claim against the PLF is based on tort or in contract, is subject to Oregon law and will be tried in the Multnomah County Circuit Court of the State of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
6. No person or entity may recover consequential damages for the PLF's breach of any provision in this Plan. Any damages recoverable for any such breach are strictly limited to those amounts a court rules would have been payable by the PLF, under the provisions of this Plan, if there had been no such breach.
7. The PLF has a right of subrogation and may bring a legal action to recover from a **Covered Party** under this Plan for damages it has paid regarding a **Claim** against another attorney or entity covered under this or another PLF Plan, subject to the following conditions:
  - a. If not for the PLF's right of subrogation, the **Covered Party** against whom recovery is sought could be responsible for contribution, indemnity or otherwise to the person or entity on whose behalf the PLF's payment was made; and
  - b. The PLF's right of subrogation can be alleged based on a theory or theories for which there would not be coverage under this Plan for the **Covered Party** against whom recovery is sought.



In the circumstances outlined in this subsection 7, the PLF reserves the right to sue the **Covered Party**, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this subsection will not entitle the PLF to sue the **Covered Party** if the PLF's alleged rights against the **Covered Party** are premised on a theory of recovery that would entitle the **Covered Party** to indemnify under this Plan if the PLF's action were successful.

*The following examples, not intended to be exhaustive, illustrate the effect of Section IX 5:*

*Example 1: Attorney A engages in intentionally wrongful conduct in representing Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the **Claim** under his Plan, but Attorney B has coverage for her liability under her Plan. If the PLF pays the **Claim** under Attorney B's Plan, it has a right to sue Attorney A for the damages it paid.*

*Example 2: Same facts as the prior example, except that the PLF lends funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. The PLF has the right, pursuant to such an arrangement with Attorney B, to participate in her action against Attorney A.*

## SECTION X — SUPPLEMENTAL ASSESSMENTS

This Coverage Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, **You** agree to pay **Your** supplemental assessment to the PLF within 30 days of request. The PLF is authorized to make additional assessments against **You** for this **Plan Year** until all the PLF's liability for this **Plan Year** is terminated, whether or not **You** are a **Covered Party** under a Plan issued by the PLF at the time the assessment is imposed.

## SECTION XI — RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If a **Covered Party** has valid and collectible insurance coverage or other source of indemnification that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under the Plan until the limits of the **Covered Party's** insurance or other source of indemnification, including any applicable deductible, have been exhausted, unless such insurance or other source of indemnification is written only as specific excess coverage over the **Claims Expense Allowance** and **Limit of Coverage** of this Plan.

## SECTION XII — WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.



## SECTION XIII – AUTOMATIC EXTENDED REPORTING COVERAGE

1. If **You** terminate **Your** PLF coverage during this **Plan Year**, or do not obtain PLF coverage as of the first day of the next year following the expiration of this **Plan Year**, as of **Your** last day of PLF coverage, and until the date specified in Subsection 2, **You** will automatically have extended reporting coverage under this Plan for future **Claims** made against **You**, provided such **Claims** are not based on activities that occurred after **Your** last day of PLF coverage. **Your** extended reporting coverage does not provide **You** with a renewed **Limit of Coverage** or **Claims Expense Allowance**. The remaining **Limit of Coverage** and **Claims Expense Allowance** available under this Plan, after subtracting all amounts spent by the PLF regarding any **Claims** or matters to which this Plan applied or applies, as of the date any such future **Claim** is made, will be the maximum amount available for the defense and indemnity of any such **Claim**.
2. If **You** terminate **Your** PLF coverage during this **Plan Year** and return to PLF coverage later in the same year the extended reporting coverage granted to **You** under Subsection 1 will automatically terminate as of the date **You** return to PLF coverage, the coverage provided under this Plan will be reactivated and **You** will not receive a new **Limit of Coverage** or **Claims Expense Allowance** on **Your** return to coverage.

## SECTION XIV — ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the Plan.

## APPENDIX – LIST AND INDEX OF DEFINED TERMS

1. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p. 1)
2. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)
3. **Claims Expense Allowance** means the separate allowance for aggregate **Claims Expense** for all **Claims** as provided for in Section VII B. (p. 15)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (§1, p. 1)
5. **Covered Activity** has the meaning set forth in Section III A. (p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II. (p. 3)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Section I A, p. 1)
8. **Family Business** has the meaning set forth in Exclusion 11. (p. 12)
9. **Family Member(s)** has the meaning set forth in Exclusion 11. (p. 12)
10. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Section II B, p. 3)
11. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)
12. **Limit of Coverage** has the meaning set forth under Section VII A. (p. 15)
13. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Section III A, p. 4)
14. **Personally Identifiable Non-Public Information** has the meaning set forth in exclusion 20.(p. 14)
15. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (§1, p. 1)
16. “PLF” means the Professional Liability Fund of the Oregon State Bar. (§1, p. 1)

17. **Private Practice** has the meaning set forth in Section II A. (p. 3)
18. **Principal Office** has the meaning set forth in Section II A. (p. 3)
19. **Professional Legal Services** has the meaning set forth under Section III B. (pp. 4 and 5)
20. **Related Claims** has the meaning set forth in Section V. (pp. 6 - 8)
21. **Special Capacity Relationship** has the meaning set forth in Section III C. (p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C. (p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 1)
24. **Third Party Corporate Information** has the meaning set forth in exclusion 20. (p. 14)
25. **You** and **Your** refer to the Named Party shown in the Declarations. (§1, p. 1)

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2017

# PLF Claims Made Excess Plan

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# OREGON STATE BAR PROFESSIONAL LIABILITY FUND CLAIMS MADE EXCESS PLAN

Effective January 1, 2017

## INTRODUCTION

This Professional Liability Fund (“PLF”) Excess Plan is excess coverage over the PLF Primary Plan and is also assessable. Although the coverage provided under both the Primary and Excess Plans is similar, not all terms, conditions, definitions and exclusions are the same. Coverage under this Plan is more restrictive and differs in some respects. You should read both the Primary and Excess Plans, in their entirety, to understand your coverage.

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A. For the purposes of illustrating the PLF’s intent as to certain provisions in this Plan, Appendix B contains related examples.

**Plan Year** means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Excess Plan and the applicable **Excess Limit of Coverage**, as set forth in the Declarations and defined in Section VII, this Plan provides the following coverage:

## SECTION I – COVERAGE AGREEMENT

### A. Indemnity

The PLF will pay all sums in excess of the **Applicable Underlying Limit** and or applicable Deductible that a **Covered Party** under this Plan, becomes **Legally Obligated** to pay because of **Claims First Made** against a **Covered Party** during the **Coverage Period**, arising from a **Covered Activity**, to which this Plan applies.

**Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought.

**Claim, Damages**, and **Legally Obligated** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## B. Defense

1. After the **Applicable Underlying Limit** has been exhausted and the applicable Deductible has been satisfied, the PLF will defend any **Suit** against a **Covered Party** seeking **Damages** to which this Plan applies until the **Excess Limit of Coverage** is exhausted. The PLF is not bound by any **Covered Party's** agreement to resolve a dispute through arbitration or any other alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.
2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based only on projected defense costs or potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review or repair any **Claim** or matter that may create the potential for a **Claim**.
3. The PLF will pay all **Claims Expense** it incurs, and all such payments will reduce the **Excess Limit of Coverage**.
4. Notwithstanding Exclusions 2 and 4 of the PLF Primary Plan, incorporated in this Plan by reference, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

**Suit** and **Claims Expense** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## C. Exhaustion of Limit

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Excess Limit of Coverage** has been exhausted.

## D. Coverage Territory

This Plan applies only to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

## E. Basic Terms of Coverage

This Plan applies to **Claims** for **Damages** against a **Covered Party** arising from a **Covered Activity**, subject to all definitions, terms, restrictions, limitations and exclusions applicable to this Plan, and the **Excess Limit of Coverage**, provided all the following terms and conditions of coverage are satisfied:

1. The **Claim** must be **First Made**, as determined by the rules set forth in Section VII, during the **Coverage Period**;



2. The **Covered Activity** on which the **Claim** is based must have been rendered on behalf of the **Firm**;
3. The **Covered Activity** on which the **Claim** is based must have occurred after the Retroactive Date listed in the Declarations, or listed in any endorsement to the Declarations;
4. The **Covered Activity** on which the **Claim** is based must have occurred:
  - a. During the **Coverage Period**; or
  - b. Before the **Coverage Period**, but only provided each of the following conditions are met:
    - (i) the **Firm** circulated its Application for Coverage among all attorneys listed in Section 10 of the Declarations as “Firm Attorneys,” and those listed in Section 14 of the Declarations as current “Non Oregon Attorneys”;
    - (ii) before the effective date of this Plan, no **Covered Party** had a basis to believe that the error, omission, negligent act or breach of duty was a breach of the standard of care, or may result in a **Claim**; and
    - (iii) there is no prior policy, policies or agreements to indemnify that provide coverage for such liability or **Claim**, regardless of whether the available limits of any such policy, policies or agreements to indemnify are subject to different limits, or otherwise differ from this Plan, and regardless of whether the limits of any such policy, policies or agreements to indemnify are sufficient to pay any liability or **Claim**.

Subsection 4 b (ii) will not apply as to any **Covered Party** who, before the effective date of this Excess Plan, did not have a basis to believe the error, omission, negligent act or breach of duty was a breach of the standard of care or may result in a **Claim**.

*For the purposes of demonstrating the PLF's intent as to how this subsection 4 applies, illustrative examples are set forth in Appendix B of this Plan.*

5. There must have been full and timely payment of all assessments relating to this Plan; and
6. There must have been compliance with the Duties of Covered Parties, as set forth in Section IX.

## SECTION II - WHO IS A COVERED PARTY UNDER THIS EXCESS PLAN?

Only the following are **Covered Parties**:

### A. The Firm

The **Firm** is a **Covered Party** under this Excess Plan but only with respect to liability arising out of the conduct of: an attorney(s) who is not an **Excluded Attorney** and qualifies as a **Covered Party** under Section II B; or a **Non Attorney** employee, subject to the terms and conditions of Section III.

**Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations.

**Excluded Attorney** means an attorney who is designated as such in the Declarations.

**Law Entity** and **Non Attorney** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## B. Individual Covered Parties

Only the following individuals, not otherwise listed in the Declarations as **Excluded Attorneys**, are **Covered Parties** under this Excess Plan as to any **Claim** to which this Plan applies, and only with respect to **Claims** arising from **Covered Activities** rendered on behalf of the **Firm**, as attorneys in **Private Practice**:

1. Attorneys who are specifically designated in the Declarations as “Firm Attorney,” “Former Attorney” or “Non Oregon Attorney.”
2. A former partner, shareholder, member or attorney employee of the **Firm** or any attorney formerly in an “of counsel” relationship to the **Firm** who ceased to be affiliated with the **Firm** more than five years prior to the beginning of the **Coverage Period**, but only with respect to **Claims** arising out of a **Covered Activity** that took place while a PLF Primary Plan issued to that attorney was in effect.
3. An attorney who becomes affiliated with the **Firm** after the beginning of the **Coverage Period** and who has been issued a PLF Primary Plan is automatically a **Covered Party** - unless the attorney becomes affiliated with the **Firm** as a result of one of the changes required to be reported to the PLF and newly underwritten pursuant to Section IX D. In that event, the attorney is not covered under the Plan until and unless coverage for the affiliated attorney is underwritten and specifically accepted by the PLF. (*See, Section IXD*)
4. In the event of the death, adjudicated incapacity or bankruptcy of a **Covered Party**, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of the **Covered Party**, when acting in such capacity, is a **Covered Party**.

**Private Practice** has the meaning set forth in the PLF Primary Plan in effect during this **Plan Year**.

## SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Excess Plan, a **Covered Activity** is an error, omission, negligent act or breach of duty: by a **Covered Party** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or by a **Non Attorney** employee, for whose conduct a **Covered Party** is legally liable who assists in providing such services, provided:

1. The error, omission, negligent act, error, or breach of duty, by the **Covered Party**, on which the **Claim** is based, occurred after any applicable Retroactive Date, before such **Covered Party’s** applicable Separation Date, specified in the Declarations, and satisfies the conditions of Section I E 4;
2. The error, omission, negligent act, error, or breach of duty by the **Covered Party**, on which the **Claim** is based, constituted rendering **Professional Legal Services** or **Special Capacity Services** on behalf of the **Firm**, as an attorney in **Private Practice**; and

3. Any error, omission, negligent act or breach of duty by a **Non Attorney** employee must be directly related to a **Covered Party's** rendering of **Professional Legal Services** or **Special Capacity Services**, on behalf of the **Firm**, that meets the conditions of subsections 1 and 2 above.

**Professional Legal Services** and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## SECTION IV – WHEN IS A CLAIM FIRST MADE?

### A. Date of Claim

For the purposes of this Excess Plan, subject to the exception set forth in Section IV B, regarding **Excess-Related Claims**, a **Claim** is **First Made** on the earliest of the following dates:

1. The date a lawsuit is first filed, or an arbitration or ADR proceeding is first initiated against a **Covered Party**;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party**;
3. The date any **Covered Party** receives notice of a **Claim**;
4. The date the PLF receives notice of a **Claim** against a **Covered Party**; or
5. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

### B. Excess-Related Claims

When a **Claim** is **Excess-Related** to an earlier **Claim** or **Claims** against any **Covered Party** or **Parties** under this Excess Plan, the **Claim** is **First Made** on the date the earliest such **Excess-Related Claim** was **First Made**.

## SECTION V – EXCESS-RELATED CLAIMS

### A. Definition of Excess-Related Claims

For the purposes of this Excess Plan, two or more **Claims** are **Excess-Related** when the **Claims** are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus; and such **Claims** have been asserted, or are asserted, against **Covered Parties** under this Excess Plan.

General examples of **Excess-Related Claims** include, but are not limited to the following:

1. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral;
2. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences;
3. **Claims** in which the claimants tie together different acts as part of an alleged overall scheme or operation;
4. **Claims** that arise from a method, pattern, or practice used or adopted by one or more **Covered Party** or **Law Entities** representing multiple clients in similar matters;
5. **Claims** in which successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses; or
6. **Claims** alleged as part of a class action or purported class action.

**Related Claims**, as defined in the PLF Primary Plan, against other attorneys or firms, not **Covered Parties** under this Plan do not necessarily cause a **Claim** to which this Excess Plan applies to relate back to the same excess **Plan Year** applicable to **Related Claims** under the PLF Primary Plan. Prior knowledge of a **Covered Party** or **Parties** of the potential for a **Claim** before the inception date of this Plan however, may cause a **Claim** not to be covered under this Plan under the terms of Section I E 4.

*For the purposes of demonstrating the PLF's intent as to what constitutes an Excess-Related Claim, illustrative examples are set forth in Appendix B of this Plan.*

#### B. What Happens When Claims Are Excess-Related?

When **Claims** are **Excess-Related**, they are all considered as having been **First Made** on the date the earliest such **Claim** is **First Made**. This causes all such **Claims** to share the same maximum **Excess Limit of Coverage** that was in effect when the earliest such **Claim** was **First Made**.

## SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

All Exclusions in the PLF Primary Plan, in effect during this **Plan Year**, except Exclusion 6 (Business Interests) apply equally to the coverage under this Excess Plan. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION VII – EXCESS PLAN ADDITIONAL EXCLUSIONS

1. Business Interests. This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
  - a. In which any **Covered Party** is a general partner, managing member, or employee, or in which any **Covered Party** was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;

- b. That is controlled, operated, or managed by any **Covered Party**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any **Covered Party** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
  - c. In which any **Covered Party** either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) the **Covered Party**, those controlled by the **Covered Party** and his or her spouse, parent, step-parent, child, sibling, any member of the **Covered Party's** household, and those with whom the **Covered Party** is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.
2. **Excluded Attorney Exclusion.** This Plan does not apply to any **Claim** against any **Covered Party**:
- a. Arising from or relating to any act, error, or omission of any **Excluded Attorney** in any capacity or context, whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable; or
  - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any **Excluded Attorney**.
3. **Excluded Firm Exclusion.** This Plan does not apply to any **Claim** made against a **Covered Party**:
- a. That arises from or is related to any act, error, or omission of: (i) an **Excluded Firm**, or (ii) a past or present partner, shareholder, associate, attorney, or employee (including any **Covered Party**) of an **Excluded Firm** while employed by, a partner or shareholder of, or in any way associated with an **Excluded Firm**, in any capacity or context, and whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable therefore; or
  - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent or mitigate any activities of, or harm caused by any **Excluded Firm** or any person described in Subsection (a)(ii) above.

**Excluded Firm** means a firm designated as such in the Declarations.

4. **Office Sharing Exclusion.** This Plan does not apply to any **Claim** alleging the vicarious liability of any **Covered Party** under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom the **Firm** or attorney **Covered Parties** shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

## SECTION VIII – EXCESS LIMIT OF COVERAGE AND DEDUCTIBLE

### A. Excess Limit of Coverage

1. Regardless of the number of **Covered Parties** under this Excess Plan, the number of persons or organizations who sustain damage, or the number of **Claims** made, the PLF's maximum aggregate **Excess**

**Limit of Coverage** for indemnity and **Claims Expense** under this Plan will be limited to the amount shown as the **Excess Limit of Coverage** in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of **Claims** against more than one **Covered Party** does not increase the PLF's **Excess Limit of Coverage**.

2. All **Excess-Related Claims** are considered **First Made** during the **Plan Year** when the first such **Excess-Related Claim** was **First Made**. The single **Excess Limit of Coverage** in effect when the first such **Excess-Related Claim** was **First Made** will apply to all such **Claims**.

#### B. Deductible

1. The Deductible for **Covered Parties** under this Excess Plan who are not also covered under the PLF Primary Plan is either the maximum limit of liability for indemnity and **Claims Expense** under any insurance policy covering the **Claim** or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.

2. The **Firm** is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or **Claims Expense** as a result of a **Claim** for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each **Claim**, except for **Excess-Related Claims**. The Deductible amount must be paid by the **Firm** as **Claims Expenses** are incurred or a payment of indemnity is made. At the PLF's option, it may pay such **Claims Expenses** or indemnity, and the **Firm** will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

### SECTION IX – DUTIES OF COVERED PARTIES

#### A. Timely Notice of Claims, Suits or Circumstances

1. The **Firm** must, as a condition precedent to the right of protection afforded any **Covered Party** by this coverage, give the PLF, at the address shown in the Declarations, written notice of any **Claim** that is reasonably likely to involve any coverage under this Excess Plan.

2. In the event a **Suit** is brought against any **Covered Party**, that is reasonably likely to involve any coverage under this Excess Plan, the **Firm** must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the **Covered Party** or the **Covered Party's** representatives.

3. If during the **Coverage Period**, any **Covered Party** becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Excess Plan, the **Firm** must give written notice to the PLF as soon as practicable during the **Coverage Period** of: the specific act, error, or omission; the injury or damage that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.

4. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under Subsections 1 through 3 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.



## B. Other Duties of Cooperation

As a condition of coverage under this Excess Plan, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Plan. These conditions are incorporated in this Plan by reference, and have the same force and effect as if fully set forth in this Plan.

## C. Duty of Full Disclosure in Application

A copy of the Application the **Firm** submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide the **Firm** with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements in the Application will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- (1) are contained in the Application;
- (2) are material and have been relied upon by the PLF; and
- (3) are either: (a) fraudulent; or (b) material either to the acceptance of the risk or to the hazard assumed by the PLF.

Without limiting the foregoing, any misrepresentation, omission, concealment of fact, or incorrect statement that causes the PLF to charge a lower premium than would otherwise have been charged is material to the acceptance of the risk or to the hazard assumed by the PLF.

## D. Duty to Notify the PLF of Certain Changes in Risk

The **Firm** must notify the PLF if, after the start of the **Coverage Period**, any of the following events or circumstances occur: (1) the number of Firm Attorneys increases by more than 100 percent; (2) there is a firm merger or split; (3) an attorney joins or leaves a branch office of the **Firm** outside Oregon; (4) a new branch office is established outside Oregon; (5) the **Firm** or a current attorney with the **Firm** enters into an “of counsel” relationship with another firm or with an attorney who was not listed as a current attorney at the start of the **Coverage Period**; or (6) the **Firm** hires an attorney who is not eligible to participate in the PLF’s Primary Coverage Plan.

Upon the occurrence of any of the foregoing events or circumstances, the **Firm’s** coverage will again be subject to underwriting, and a prorated adjustment may be made to the **Firm’s** excess assessment.

## **SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS**

The provisions of Section IX of the PLF Primary Plan, applicable to this **Plan Year**, are incorporated into this Plan by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION XI - CANCELLATION AND TERMINATION

### A. Cancellation by the Firm or the PLF

The **Firm** may cancel this Excess Plan, before the expiration of the **Coverage Period**, by mailing or delivering prior written notice to the PLF stating the date when the cancellation will become effective.

The PLF may cancel this Excess Plan, before the expiration of the **Coverage Period**, for any of the following reasons:

- (1) Failure by the **Firm** to pay an assessment when due;
- (2) Material misrepresentation by any **Covered Party**;
- (3) Substantial breaches of contractual duties, conditions, or warranties by any **Covered Party**; or
- (4) Revocation, suspension, or surrender of any **Covered Party's** license or right to practice law.

The PLF's cancellation of this Plan, for any of the foregoing reasons, is made by mailing or delivering written notice of cancellation to the **Firm**, stating the effective date of cancellation, to occur within no less than 10 days after the date notice of cancellation is mailed or delivered.

The last and final day of the **Coverage Period** will be the date preceding the effective date of cancellation stated in the cancellation notice sent by the **Firm** or the PLF. Coverage will expire at 11:59 pm on the date preceding the specified date of cancellation. If the PLF cancels this Plan, assessments shall be computed and refunded to the **Firm** pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. If the **Firm** cancels this Plan, the PLF will retain the assessment on a pro rata basis.

### B. Termination

This Excess Plan terminates on the date and time shown as the end of the **Coverage Period** in the Declarations, unless canceled by the PLF or by the **Firm** in accordance with the provisions of this Plan before such date and time. There is no automatic renewal.

## SECTION XII – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, the **Firm** agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. The **Firm** further agrees that liability for such supplemental assessments shall be joint and several among the **Firm** and the partners, shareholders, and professional corporations listed as **Firm Attorneys** in the Declarations.

The PLF is authorized to make additional assessments for this **Plan Year** until all its liability for this **Plan Year** is terminated, whether or not any **Covered Party** maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.



## SECTION XIII – RELATION OF THE PLF'S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the **Covered Party's** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Limit of Coverage** of this Excess Plan.

## SECTION XIV – WAIVER AND ESTOPPEL

The provisions of Section XII of the PLF Primary Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION XV – EXTENDED REPORTING COVERAGE

After 24 months of continuous excess coverage with the PLF, upon termination or cancellation of this Excess Plan by either the **Firm** or the PLF, the **Firm** may be eligible to purchase an extended reporting endorsement. This endorsement extends the period within which a **Claim** may be **First Made** under this Excess Plan, but does not otherwise change the terms of this Plan. Eligibility to purchase an extended reporting endorsement, the amount of the additional assessment for such coverage and the period during which **Claims** may be **First Made** under the endorsement are determined by the PLF's underwriting department based on the **Firm's** claims experience and other underwriting factors.

## SECTION XVI – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment, without the express written consent of the PLF, voids any coverage under this Plan.

## APPENDIX A - LIST AND INDEX OF DEFINED TERMS

1. **Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought. (Excess Plan, p. 1)
2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Primary Plan, p.1)
3. **Claims Expense** has the meaning set forth in Section I B 3 of the Primary Plan. (p. 2)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.” (Excess Plan, p. 1)
5. **Covered Activity** has the meaning set forth in Section III of this Plan. (Excess Plan, p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II of this Plan. (Excess Plan, pp. 3-4)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Primary Plan, p.1)
8. **Excess Limit of Coverage** has the meaning set forth in Section VIII of this Plan. (Excess Plan, p. 7)
9. **Excess-Related** has the meaning set forth in Section V of this Plan. (Excess Plan, pp. 5-6)
10. **Excluded Attorney** means an attorney who is designated as such in the Declarations. (Excess Plan, p. 3)
11. **Excluded Firm** means a firm designated as such in the Declarations. (Excess Plan, p. 7)
12. **Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations. (Excess Plan, p. 3)
13. **First Made** has the meaning set forth in Section IV of this Plan. (Excess Plan, p. 5)
14. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Primary Plan, p. 3)
15. **Legally Obligated** has the meaning set forth in Section I A of the Primary Plan. (p. 1)

16. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Primary Plan, p. 4)
17. **Plan Year** means the period of January 1 through December 31 of the calendar year for this Excess Plan was issued. (Excess Plan, p. 1)
18. “PLF” means the Professional Liability Fund of the Oregon State Bar. (Excess Plan p. 1)
19. **Private Practice** has the meaning set forth in Section II A of the Primary Plan. (p. 3)
20. **Professional Legal Services** has the meaning set forth under Section III B of the Primary Plan. (pp. 4 and 5)
21. **Special Capacity Relationship** has the meaning set forth in Section III C of the Primary Plan. (p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C of the Primary Plan. (p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding, but only if the PLF expressly consents to it. (Primary Plan, p. 1)

## APPENDIX B – EXCESS PLAN ILLUSTRATIVE EXAMPLES

For the purpose of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the meaning of certain Excess Plan provisions, the PLF provides the following illustrative examples, not intended to be exhaustive regarding Section I E 4 and Section V-**Excess-Related Claims**:

### 1. Section I E 4:

**a.** Law firm A maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year. Nevertheless, it does not report the matter to Carrier X in Year 1. Law firm A obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 PLF Excess Plan. This is true whether or not Carrier X provides coverage for the claim.

**b.** Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities, but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm, but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a Covered Party (i.e., Attorney C) prior to the beginning of the **Coverage Period**, and because the firm did not circulate its application among the Firm Attorneys and Current Non-Oregon Attorneys before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.

**c.** Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Section I E 4 will not be applied to deny coverage for the claim as to Attorneys A and B and the Firm. However, there will be no coverage for Attorney C because the claim falls outside the coverage grant under the terms of Section I E 4, and because Attorney C made a material misrepresentation to the PLF in the application.

### 2. Section V – Excess Related Claims:

**a. Related Under the PLF Primary Plan vs. Excess-Related:** Firm G, and one of its members, Attorney A, are sued by a claimant in 2014. The **Claim** is covered under Attorney A's 2014 PLF Primary Plan. Claimant amends the Complaint in 2015, and for the first time, asserts the same **Claim** also against Firm H and one of its members, Attorney B, also covered under the PLF Primary Plan. Under the terms of the PLF Primary Plan, the firms and attorneys all share a single primary Limit of Coverage under the 2014 PLF Primary Plan. This is because the **Claims** are **Related**, for primary purposes, and the earliest **Related Claim** was made in 2014.

Firm H purchased PLF Excess Coverage in 2015, but was previously covered for excess liability, in 2014, by Carrier X. Neither Firm H, nor Attorney B, were aware of the potential claim in 2014, and therefore did not give notice of a potential claim against Attorney B or Firm H to the PLF or Carrier X until 2015. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in 2014 and Firm H did not purchase tail coverage from Carrier X. Under this scenario, any PLF excess coverage

would be under the 2015 PLF Excess Plan because no **Claim** was made against the **Covered Parties** until 2015. (If, however, Firm G and Attorney B did have a basis to believe that the act, error, omission or breach of duty to which the **Claim** relates was a breach of the standard of care, or may result in a **Claim** before the PLF Excess Plan was issued, there would not be coverage for the Claim under the 2015 PLF Excess Plan. Also if they had previously given notice to Carrier X, or purchased applicable tail coverage, there would not be coverage under the PLF 2015 Excess Plan, because other insurance would apply.

**b. Secondary or Dependent Liability** – Firm A has Excess coverage with the PLF between 2013 and 2015. Attorney X, while an associate in the Firm A, commits malpractice in 2012 and then leaves to work with another firm in 2014. He is listed as a Former Attorney in the Declarations of the PLF Excess Plan. **Claims** are alleged only against Attorney A in 2014, and in 2015, a lawsuit is filed also alleging **Claims** against various attorneys who are partners in Firm A, and the Firm itself, based on vicarious liability for Attorney X's malpractice. The **Claims** are **Excess-Related** and, therefore, were **First Made** in 2014.

**c. Same Transaction, Occurrence or Series of Transactions or Occurrences** - Attorney A, a partner in a Firm, with PLF excess coverage between 2007 and the present, writes a tax opinion in 2008 for an investment offering. Attorneys B and C, with a different law firm, and then assemble the offering circular in 2007. In 2010, Investors 1 and 2 bring **Claims** against all 3 attorneys relating to the offering. In 2011, Investor 3 also brings a **Claim** against all 3 attorneys. Under the PLF Primary Plan, **Claims** against all attorneys and firms, by all 3 investors, are **Related** and all attorneys and firms share one Primary Limit of Coverage, applicable to all 3 claims. For the purposes of Attorney A's PLF Excess Plan, however, the **Claims** against B and C are not **Excess-Related**. Therefore, the **Claims** against Attorney A are **First Made** in 2010 and Attorney A has a separate 2010 Excess Limit that applies to all 3 Investor Claims.

**d. Actual Pattern or Practice** - Attorneys A, B, and C, who are all members of a Firm, covered under the PLF Excess Plan for the past 12 years, represent a large number of asbestos clients over several years, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by various clients in 2014 for improper evaluation and by other clients making similar allegations in 2015. Plaintiffs do not allege a common scheme or plan, but because the Firm in fact operated a firm-wide formula for handling the cases, all claims are Excess-Related, First Made in 2014, and subject to the Limit of the 2014 Excess Plan.

**e. Successive or Collective Errors** - Attorney C, an associate at a Firm covered under the PLF Excess Plan during all relevant periods, represents a group of clients at trial and commits certain errors. Attorney D, a partner at the Firm, undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. Under the PLF Primary Plan, all three claims are Related and share a single primary limit. Only the Claims against Attorneys C and D, however, are Excess-Related.

**f. Class Action or Purported Class Action** - Attorneys A, B, and C, all at a Firm covered under the Excess Plan during the relevant periods, represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All the class action claims are **Excess-Related** and subject to the excess limit that was in place at the time the class action **Claim** was **First Made**.

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>1. Fraudulent Claim Exclusion.</b> This Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.</p>	<p>1. <u>Fraudulent Claims</u>. This Plan does not apply to any <b>Claim</b> in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, has participated in any fraud or collusion with respect to the <b>Claim</b>.</p>
<p><b>2. Wrongful Conduct Exclusion.</b> This Plan does not apply to the following CLAIMS, regardless of whether any actual or alleged harm or damages were intended by YOU:</p> <p>(a) any CLAIM against YOU arising out of or in any way connected with YOUR actual or alleged criminal act or conduct;</p> <p>(b) any CLAIM against YOU based on YOUR actual or alleged dishonest, knowingly wrongful, fraudulent or malicious act or conduct on the part of any COVERED PARTY;</p> <p>(c) any CLAIM against YOU based on YOUR intentional violation of the Oregon Rules of Professional Conduct (ORPC) or any other applicable code of professional conduct; or</p> <p>(d) This Plan does not apply to any CLAIM based on or arising out of YOUR non-payment of a valid and enforceable lien if actual notice of such lien was provided to YOU, or to anyone employed in YOUR office, prior to the payment of the funds to a person or entity other than the rightful lien-holder.</p>	<p>2. <u>Wrongful Conduct</u>. This Plan does not apply to any <b>Claim</b> based on or arising out of:</p> <p>a. any criminal act or conduct;</p> <p>b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or</p> <p>c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.</p> <p>Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any <b>Covered Party</b> who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>3. Disciplinary Proceedings Exclusion.</b> This Plan does not apply to any CLAIM based on or arising out of a proceeding brought against YOU by the Oregon State Bar or any similar entity.</p>	<p>3. <u>Disciplinary Proceedings</u>. This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.</p>
<p><b>4. Punitive Damages and Cost Award Exclusions.</b> This Plan does not apply to:</p> <p>a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or</p> <p>b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct, false or unwarranted certification in a pleading, or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.</p>	<p>4. <u>Punitive Damages, Sanctions or Certain Fee Awards</u>. This Plan does not apply to:</p> <p>a. The part of any <b>Claim</b> seeking punitive, exemplary or statutorily enhanced damages against any <b>Covered Party</b>, or against anyone for whose conduct a <b>Covered Party</b> is legally liable;</p> <p>b. Any <b>Claim</b> for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law.</p> <p>However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the <b>Covered Party</b> establishes the sanction was caused by mere negligence on the part of the <b>Covered Party</b> and on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the <b>Covered Party</b>, or on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.</p>



CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>6. Business Ownership Interest Exclusion.</b> This Excess Plan does not apply to any CLAIM based on or arising out of any business enterprise:</p> <p><b>a.</b> In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;</p> <p><b>b.</b> In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors or omissions on which the CLAIM is based; or</p> <p><b>c.</b> That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.</p> <p>Ownership interest, for the purpose of this exclusion, will not include any ownership interest now or previously held by YOU solely as a passive investment, as long as those YOU control, YOUR, spouse, parent, step-parent, child, step-child, siblings, or any member of YOUR household and those with whom YOU are regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.</p>	<p>6. <u>Business Interests.</u> This Plan does not apply to any <b>Claim</b> relating to or arising out of any business enterprise:</p> <p>a. In which <b>You</b> are a general partner, managing member, or employee, or in which <b>You</b> were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based;</p> <p>b. That is controlled, operated, or managed by <b>You</b>, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by <b>You</b> at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based; or</p> <p>c. In which <b>You</b> either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based unless: (i) such interest is solely a passive investment; and (ii) <b>You</b>, those controlled by the <b>You</b>, <b>Your</b> spouse, parent, step-parent, child, sibling, any member of <b>Your</b> household, and those with whom the <b>You</b> are regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.</p>



CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>7. Partner and Employee Exclusion.</b> This Plan does not apply to any CLAIM made by:</p> <p><b>a.</b> YOUR present, former, or prospective partner, employer, or employee; or</p> <p><b>b.</b> A present, former, or prospective officer, director, or employee of a professional corporation in which YOU are or were a shareholder,</p> <p>unless such CLAIM arises out of YOUR conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.</p>	<p>7. <u>Partner and Employee Exclusion.</u> This Plan does not apply to any <b>Claim</b> made by:</p> <p>a. A present, former, or prospective law partner, employer, or employee of a <b>Covered Party</b>, or of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which a <b>Covered Party</b>, or in which any attorney for whose conduct a <b>Covered Party</b> is legally liable, is or was a shareholder.</p> <p>This exclusion does not apply if the <b>Claim</b> arises solely out of conduct in an attorney-client capacity for one of the parties listed in Subsections a and b.</p>
<p><b>8. ORPC 1.8 Exclusion.</b> This Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which YOU participate with a client unless any required written disclosure has been properly executed in compliance with that rule and has been fully executed by YOU and YOUR client prior to the business transaction giving rise to the CLAIM.</p>	<p>8. <u>Business Transaction with Client.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any business transaction in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>9. Investment Advice Exclusion.</b> This Excess Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by YOU (or by someone for whose conduct YOU are legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by YOU constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10.</p> <p>("INVESTMENT ADVICE" refers to any of the following activities:</p> <ul style="list-style-type: none"> <li>a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;</li> <li>b. Managing any investment;</li> <li>c. Buying or selling any investment for another;</li> <li>d. (1) Acting as a broker for a borrower or lender, or (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;</li> <li>e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;</li> <li>f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or</li> <li>g. Inducing someone to make a particular investment.)</li> </ul>	<p>9. <u>Investment Advice.</u> This Plan does not apply to any of the following <b>Claims</b> or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:</p> <ul style="list-style-type: none"> <li>a. Any <b>Claim</b> for investment losses, or for any damages arising from or relating to such losses, as a result of any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.</li> </ul> <p>This subsection (a) does not apply, however, to <b>Claims</b> made by a purchaser of securities for losses that arise only from <b>Professional Legal Services</b> provided to a seller of securities, provided no <b>Covered Party</b>, nor any attorney for whose conduct a <b>Covered Party</b> is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.</p> <ul style="list-style-type: none"> <li>b. Any <b>Claim</b> arising from any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any <b>Covered Party</b> for the <b>Covered Party</b> or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.</li> <li>c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of <b>Special Capacity Services</b>.</li> </ul>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>10. Law Practice Business Activities or Benefits Exclusion.</b> This Excess Plan does not apply to any CLAIM:</p> <p>a. For any amounts paid, incurred or charged by any COVERED PARTY, as fees, costs, or disbursements, (or by any LAW ENTITY with which the COVERED PARTY, THE FIRM or any other LAW ENTITY was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY, THE FIRM, or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY or THE FIRM.</p> <p>In the event the PLF defends any claim or suit that includes any claim within the scope of this exclusion, it will have the right to settle or attempt to dismiss any other claim(s) not falling within this exclusion, and to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to any CLAIM based on an act, error or omission by any COVERED PARTY regarding the client's right or ability to recover fees, costs, or expenses from an opposing party, pursuant to statute or contract.</p>	<p>10. <u>Law Practice Business Activities or Benefits Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. For any amounts paid, incurred or charged by any <b>Covered Party</b> as fees, costs or disbursements, (or by any <b>Law Entity</b> with which any <b>Covered Party</b> was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any <b>Covered Party</b>, or any <b>Law Entity</b> with which any <b>Covered Party</b> is now associated, or was associated at the time of the conduct giving rise to the <b>Claim</b>; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any <b>Covered Party</b>.</p> <p>In the event the PLF defends any <b>Claim</b> or <b>Suit</b> that includes any claim within the scope of this exclusion, the <b>Covered Party</b> is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a <b>Claim</b> is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>11. <b>Family Member and Ownership Exclusion.</b> This Plan does not apply to: (a) any CLAIM based on or arising out of legal services performed by YOU on behalf of YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest; or (b) any CLAIM, against YOU based on or arising out of another lawyer having provided legal services or representation to his or her own spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest</p>	<p>11. <u>Family Member and Ownership Exclusion.</u> This Plan does not apply to any <b>Claim</b> based on or arising from any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having provided or failed to provide:</p> <ul style="list-style-type: none"> <li>a. <b>Professional Legal Services</b> to any person or entity that is his or her own <b>Family Member</b> or <b>Family Business</b> at the time any such services are provided or fail to be provided; or</li> <li>b. <b>Special Capacity Services</b> to a trust or estate: (i) if the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such <b>Special Capacity Services</b> are provided, or fail to be provided, any <b>Family Member</b> or <b>Family Business</b> of that <b>Covered Party</b>, or of the person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate.</li> </ul> <p><b>Family Member(s)</b> means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling, step-sibling, half sibling, brother or sister-in-law or any member of the <b>Covered Party's</b> household and, if the household member is a spousal equivalent of the <b>Covered Party</b>, the Family Members of any such person.</p> <p><b>Family Business</b> means a business entity in which the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, and/or the <b>Family Members</b>, of such <b>Covered Party</b> or person for whose conduct a <b>Covered Party</b> is legally liable, collectively or individually, have a controlling interest.</p> <p>This exclusion does not apply to <b>Professional Legal Services</b> or <b>Special Capacity Services</b> an attorney provides to another attorney's <b>Family Member</b> or <b>Family Business</b>.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>13. Notary Exclusion.</b> This Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of YOUR employee and YOU have no actual knowledge of such act.</p>	<p>13. <u>Notary Exclusion.</u> This Plan does not apply to any <b>Claim</b> arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.</p>
<p><b>16. General Tortious Conduct Exclusions.</b> This Plan does not apply to any CLAIM against any COVERED PARTY for:</p> <ul style="list-style-type: none"> <li>a. Bodily injury, sickness, disease, or death of any person;</li> <li>b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or</li> <li>c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.</li> </ul> <p>This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.</p>	<p>15. <u>General Tortious Conduct.</u> This Plan does not apply to any <b>Claim</b> for:</p> <ul style="list-style-type: none"> <li>a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b>; or</li> <li>b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects a <b>Covered Party's</b> performance of <b>Professional Legal Services</b>.</li> </ul>
<p><b>18. Patent Exclusion.</b> This Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.</p>	<p>17. <u>Patent Exclusion.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>20. Contractual Obligation Exclusion.</b></p> <p>This Plan does not apply to any CLAIM:</p> <p><b>a.</b> Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;</p> <p><b>b.</b> Any costs connected to ORS 20.160 or similar statute or rule;</p> <p><b>c.</b> For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p><b>d.</b> Claims in contract based upon an alleged promise to obtain a certain outcome or result.</p>	<p>18. <u>Contractual Obligation Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a <b>Covered Party</b> or by someone for whose conduct any <b>Covered Party</b> is legally liable, unless the <b>Claim</b> arises out of <b>Special Capacity Services</b> and the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, signed the bond or agreement solely in a representative capacity arising from the <b>Special Capacity Relationship</b>;</p> <p>b. For liability based on an agreement or representation, if the <b>Covered Party</b> would not have been liable in the absence of the agreement or representation; or</p> <p>c. To the extent the <b>Claim</b> is based on an actual or alleged promise to obtain a certain outcome or result if the <b>Covered Party</b> would not have been liable in the absence of such a promise.</p>



CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>22. Confidential or Private Data Exclusion.</b> This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.</p> <p><i>COMMENTS</i></p> <p><i>There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, driver's licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a COVERED PARTY; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a COVERED PARTY or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.</i></p> <p><i>There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.</i></p>	<p>20. <u>Confidential or Private Information/Computer Systems.</u> This Plan does not apply to any <b>Claim</b> arising from:</p> <p>a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of <b>Personally Identifiable Non-Public Information</b> or <b>Third Party Corporate Information</b>, whether or not such information was in electronic form or in paper form;</p> <p>b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security information referenced in subsection a, including but not limited to failure to report the loss of such information;</p> <p>c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by any <b>Covered Party's</b> computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any <b>Covered Party's</b> electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.</p> <p><b>Personally Identifiable Non-Public</b> information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, 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. This includes, but is not limited to certain medical or health care information, driver's license or state identification information, social security numbers, credit information or financial account information.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
	<p><b>Third Party Corporate Information</b> 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 which is not available to the general public.</p> <p>This exclusion 20, however, does not apply to a <b>Claim</b> to the limited extent it arises solely out of a <b>Covered Party's</b> immediate inability to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b> caused by the sudden and unexpected loss of documents or information necessary to such services provided: (a) such loss materially and adversely affected the <b>Covered Party's</b> ability to provide such services; and (b) following the discovery of any such loss of documents or information, the <b>Covered Party</b> at the <b>Covered Party's</b> own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.</p> <p>If the PLF agrees to defend a <b>Suit</b> that includes a <b>Claim</b> falling within this exclusion, and/or a <b>Claim</b> falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.</p>



CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>1. Fraudulent Claim Exclusion.</b> This Excess Plan does not apply to any COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.</p>	<p>1. <u>Fraudulent Claims.</u> This Plan does not apply to any <b>Claim</b> in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, has participated in any fraud or collusion with respect to the <b>Claim</b>.</p>
<p><b>2. Wrongful Conduct Exclusion.</b> This Excess Plan does not apply to the following CLAIMS, regardless of whether any actual or alleged harm or damages were intended:</p> <p>(a) Any CLAIM against any COVERED PARTY arising out of or connected with any actual or alleged criminal act or conduct on the part of any COVERED PARTY;</p> <p>(b) any CLAIM against any COVERED PARTY based on any actual or alleged dishonest, knowingly wrongful, fraudulent or malicious act or conduct on the part of any COVERED PARTY;</p> <p>(c) any CLAIM against any COVERED PARTY based on any COVERED PARTY'S intentional violation of the Oregon Rules of Professional Conduct (ORPC) or any other applicable code of professional conduct; or</p> <p>(d) any CLAIM based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any COVERED PARTY, or anyone employed by the FIRM, prior to the payment of the funds to any person or entity other than the rightful lien-holder.</p> <p>Subsections (a), (b) and (c) of this exclusion do not apply to any COVERED PARTY who: (i) did not personally commit, direct or participate in any of the acts or conduct excluded by these provisions; <u>and</u> (ii) either had no knowledge of any such acts or conduct, or who after becoming aware of any such acts or conduct did not acquiesce or remain passive regarding any such acts or conduct, and upon becoming aware of any such acts or conduct, immediately notified the PLF.</p>	<p>2. <u>Wrongful Conduct.</u> This Plan does not apply to any <b>Claim</b> based on or arising out of:</p> <p>a. any criminal act or conduct;</p> <p>b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or</p> <p>c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.</p> <p>Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any <b>Covered Party</b> who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>3. Disciplinary Proceedings Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of a proceeding brought the Oregon State Bar or any similar entity.</p>	<p>3. <u>Disciplinary Proceedings.</u> This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.</p>
<p><b>4. Punitive Damages and Cost Award Exclusions.</b> This Excess Plan does not apply to:</p> <p>a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or</p> <p>b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct, false or unwarranted certification in a pleading, or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.</p>	<p>4. <u>Punitive Damages, Sanctions or Certain Fee Awards.</u> This Plan does not apply to:</p> <p>a. The part of any <b>Claim</b> seeking punitive, exemplary or statutorily enhanced damages against any <b>Covered Party</b>, or against anyone for whose conduct a <b>Covered Party</b> is legally liable;</p> <p>b. Any <b>Claim</b> for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law.</p> <p>However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the <b>Covered Party</b> establishes the sanction was caused by mere negligence on the part of the <b>Covered Party</b> and on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the <b>Covered Party</b>, or on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>6. Business Ownership Interest Exclusion.</b> This Excess Plan does not apply to any CLAIM based on or arising out of any business enterprise:</p> <ul style="list-style-type: none"> <li>a. In which any COVERED PARTY has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;</li> <li>b. In which any COVERED PARTY is a general partner, managing member, or employee, or was a general partner, managing member, or employee at the time of the alleged acts, errors or omissions on which the CLAIM is based; or</li> <li>c. That is controlled, operated, or managed by any COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.</li> </ul> <p>Ownership interest, for the purpose of this exclusion, will not include any ownership interest now or previously held solely as a passive investment, as long as all COVERED PARTIES, those they control, spouses, parents, step-parents, children, step-children, siblings, or any member of their households, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.</p>	<p>Excess Plan - Section VII</p> <ul style="list-style-type: none"> <li>1. <u>Business Interests.</u> This Plan does not apply to any <b>Claim</b> relating to or arising out of any business enterprise: <ul style="list-style-type: none"> <li>a. In which any <b>Covered Party</b> is a general partner, managing member, or employee, or in which any <b>Covered Party</b> was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based;</li> <li>b. That is controlled, operated, or managed by any <b>Covered Party</b>, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any <b>Covered Party</b> at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based; or</li> <li>c. In which any <b>Covered Party</b> either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based unless: (i) such interest is solely a passive investment; and (ii) the <b>Covered Party</b>, those controlled by the <b>Covered Party</b> and his or her spouse, parent, step-parent, child, sibling, any member of the <b>Covered Party's</b> household, and those with whom the <b>Covered Party</b> is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.</li> </ul> </li> </ul>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>7. Partner and Employee Exclusion.</b> This Excess Plan does not apply to any CLAIM made by:</p> <p><b>a.</b> THE FIRM'S present, former, or prospective partner, employer, or employee; or</p> <p><b>b.</b> A present, former, or prospective officer, director, or employee of a professional corporation in which any COVERED PARTY is or was a shareholder,</p> <p>unless such CLAIM arises out of conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.</p>	<p>7. <u>Partner and Employee Exclusion.</u> This Plan does not apply to any <b>Claim</b> made by:</p> <p>a. A present, former, or prospective law partner, employer, or employee of a <b>Covered Party</b>, or of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which a <b>Covered Party</b>, or in which any attorney for whose conduct a <b>Covered Party</b> is legally liable, is or was a shareholder.</p> <p>This exclusion does not apply if the <b>Claim</b> arises solely out of conduct in an attorney-client capacity for one of the parties listed in Subsections a and b.</p>
<p><b>8. ORPC 1.8 Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which any COVERED PARTY participated with a client unless any required written disclosure has been properly executed in compliance with that rule and has been properly executed by any COVERED PARTY and his or her client prior to the business transaction giving rise to the CLAIM.</p>	<p>8. <u>Business Transaction with Client.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any business transaction in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>9. Investment Advice Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of any act, error, or omission in the course of providing INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all of the INVESTMENT ADVICE constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10 of the PLF CLAIMS MADE PLAN.</p> <p>("INVESTMENT ADVICE" refers to any of the following activities:</p> <ul style="list-style-type: none"> <li>a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;</li> <li>b. Managing any investment;</li> <li>c. Buying or selling any investment for another;</li> <li>d. (1) Acting as a broker for a borrower or lender, or (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;</li> <li>e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;</li> <li>f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or</li> <li>g. Inducing someone to make a particular investment.)</li> </ul>	<p>9. <u>Investment Advice.</u> This Plan does not apply to any of the following <b>Claims</b> or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:</p> <ul style="list-style-type: none"> <li>a. Any <b>Claim</b> for investment losses, or for any damages arising from or relating to such losses, as a result of any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.</li> </ul> <p>This subsection (a) does not apply, however, to <b>Claims</b> made by a purchaser of securities for losses that arise only from <b>Professional Legal Services</b> provided to a seller of securities, provided no <b>Covered Party</b>, nor any attorney for whose conduct a <b>Covered Party</b> is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.</p> <ul style="list-style-type: none"> <li>b. Any <b>Claim</b> arising from any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any <b>Covered Party</b> for the <b>Covered Party</b> or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.</li> <li>c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of <b>Special Capacity Services</b>.</li> </ul>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>10. Law Practice Business Activities or Benefits Exclusion.</b> This Excess Plan does not apply to any CLAIM:</p> <p>a. For any amounts paid, incurred or charged by any COVERED PARTY, as fees, costs, or disbursements, (or by any LAW ENTITY with which the COVERED PARTY, THE FIRM or any other LAW ENTITY was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY, THE FIRM, or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY or THE FIRM.</p> <p>In the event the PLF defends any claim or suit that includes any claim within the scope of this exclusion, it will have the right to settle or attempt to dismiss any other claim(s) not falling within this exclusion, and to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to any CLAIM based on an act, error or omission by any COVERED PARTY regarding the client's right or ability to recover fees, costs, or expenses from an opposing party, pursuant to statute or contract.</p>	<p>10. <u>Law Practice Business Activities or Benefits Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. For any amounts paid, incurred or charged by any <b>Covered Party</b> as fees, costs or disbursements, (or by any <b>Law Entity</b> with which any <b>Covered Party</b> was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any <b>Covered Party</b>, or any <b>Law Entity</b> with which any <b>Covered Party</b> is now associated, or was associated at the time of the conduct giving rise to the <b>Claim</b>; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any <b>Covered Party</b>.</p> <p>In the event the PLF defends any <b>Claim</b> or <b>Suit</b> that includes any claim within the scope of this exclusion, the <b>Covered Party</b> is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a <b>Claim</b> is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.</p>



CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>11. Family Member and Ownership</b></p> <p><b>Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of an attorney COVERED PARTY'S legal services performed on behalf of the attorney COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest, based upon or arising out of the acts, errors or omissions of that COVERED PARTY.</p>	<p>11. <u>Family Member and Ownership Exclusion.</u> This Plan does not apply to any <b>Claim</b> based on or arising from any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having provided or failed to provide:</p> <p>a. <b>Professional Legal Services</b> to any person or entity that is his or her own <b>Family Member</b> or <b>Family Business</b> at the time any such services are provided or fail to be provided; or</p> <p>b. <b>Special Capacity Services</b> to a trust or estate: (i) if the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such <b>Special Capacity Services</b> are provided, or fail to be provided, any <b>Family Member</b> or <b>Family Business</b> of that <b>Covered Party</b>, or of the person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate.</p> <p><b>Family Member(s)</b> means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling, step-sibling, half sibling, brother or sister-in-law or any member of the <b>Covered Party's</b> household and, if the household member is a spousal equivalent of the <b>Covered Party</b>, the Family Members of any such person.</p> <p><b>Family Business</b> means a business entity in which the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, and/or the <b>Family Members</b>, of such <b>Covered Party</b> or person for whose conduct a <b>Covered Party</b> is legally liable, collectively or individually, have a controlling interest.</p> <p>This exclusion does not apply to <b>Professional Legal Services</b> or <b>Special Capacity Services</b> an attorney provides to another attorney's <b>Family Member</b> or <b>Family Business</b>.</p>
<p><b>13. Notary Exclusion.</b> This Excess Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of THE FIRM'S employee and no COVERED PARTY has actual knowledge of such act.</p>	<p>13. <u>Notary Exclusion.</u> This Plan does not apply to any <b>Claim</b> arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>16. General Tortious Conduct Exclusions.</b> This Excess Plan does not apply to any CLAIM against any COVERED PARTY for:</p> <ul style="list-style-type: none"> <li>a. Bodily injury, sickness, disease, or death of any person;</li> <li>b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or</li> <li>c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.</li> </ul> <p>This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.</p>	<p>15. <u>General Tortious Conduct.</u> This Plan does not apply to any <b>Claim</b> for:</p> <ul style="list-style-type: none"> <li>a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b>; or</li> <li>b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects a <b>Covered Party's</b> performance of <b>Professional Legal Services</b>.</li> </ul>
<p><b>18. Patent Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of professional services performed or any act, error or omission committed in relation to the prosecution of a patent if the COVERED PARTY who performed the services was not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.</p>	<p>17. <u>Patent Exclusion.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.</p>



CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>20. Contractual Obligation Exclusion.</b></p> <p>This Plan does not apply to any CLAIM:</p> <p><b>a.</b> Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a COVERED PARTY or someone for whose conduct any COVERED PARTY is legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;</p> <p><b>b.</b> Any costs connected to ORS 20.160 or similar statute or rule;</p> <p><b>c.</b> For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p><b>d.</b> Claims in contract based upon an alleged promise to obtain a certain outcome or result.</p>	<p>18. <u>Contractual Obligation Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a <b>Covered Party</b> or by someone for whose conduct any <b>Covered Party</b> is legally liable, unless the <b>Claim</b> arises out of <b>Special Capacity Services</b> and the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, signed the bond or agreement solely in a representative capacity arising from the <b>Special Capacity Relationship</b>;</p> <p>b. For liability based on an agreement or representation, if the <b>Covered Party</b> would not have been liable in the absence of the agreement or representation; or</p> <p>c. To the extent the <b>Claim</b> is based on an actual or alleged promise to obtain a certain outcome or result if the <b>Covered Party</b> would not have been liable in the absence of such a promise.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>22. Confidential or Private Data Exclusion.</b>  This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUTT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.</p> <p><i>COMMENTS</i></p> <p><i>There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, driver’s licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a COVERED PARTY; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a COVERED PARTY or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.</i></p> <p><i>There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.</i></p>	<p>20. <u>Confidential or Private Information/Computer Systems.</u> This Plan does not apply to any <b>Claim</b> arising from:</p> <p>a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of <b>Personally Identifiable Non-Public Information</b> or <b>Third Party Corporate Information</b>, whether or not such information was in electronic form or in paper form;</p> <p>b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security information referenced in subsection a, including but not limited to failure to report the loss of such information;</p> <p>c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by any <b>Covered Party’s</b> computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any <b>Covered Party’s</b> electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.</p> <p><b>Personally Identifiable Non-Public</b> information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, 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. This includes, but is not limited to certain medical or health care information, driver’s license or state identification information, social security numbers, credit information or financial account information.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
	<p><b>Third Party Corporate Information</b> 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 which is not available to the general public.</p> <p>This exclusion 20, however, does not apply to a <b>Claim</b> to the limited extent it arises solely out of a <b>Covered Party's</b> immediate inability to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b> caused by the sudden and unexpected loss of documents or information necessary to such services provided: (a) such loss materially and adversely affected the <b>Covered Party's</b> ability to provide such services; and (b) following the discovery of any such loss of documents or information, the <b>Covered Party</b> at the <b>Covered Party's</b> own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.</p> <p>If the PLF agrees to defend a <b>Suit</b> that includes a <b>Claim</b> falling within this exclusion, and/or a <b>Claim</b> falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.</p>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 6, 2016  
**From:** Dawn Evans, Disciplinary Counsel  
Amber Hollister, General Counsel  
**Re:** Disciplinary System Adjudicator

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### **Action Recommended**

Review the options presented for engaging a disciplinary system adjudicator and determine whether to create the position.

### **Background**

At its March 11, 2016 special meeting, the Board voted to pursue creating a disciplinary system adjudicator position (DSRC Recommendation #16), on the condition that the person be an employee of the Oregon Supreme Court. Board members were concerned that, if the adjudicator were a bar employee, the physical proximity to the Disciplinary Counsel's Office (DCO) might raise a perception that the exercise of independent judgment and decision-making was compromised. At the same time, the Board expressed interest in improving the quality and consistency of trial panel opinions as well as the efficiency of the disciplinary process. Several members believed that an adjudicator would accomplish these goals. Thus, staff was asked to explore whether the Oregon Supreme Court would be willing to employ the adjudicator.

Over the following months, bar staff met with representatives of the Oregon Supreme Court, the State Court Administrator's Office, and the Oregon Judicial Department to discuss the logistics and statutory requirements associated with creating an adjudicator position as an employee of the court. It became apparent that there are significant challenges and serious disadvantages to the Court employing an adjudicator. These challenges and disadvantages were outlined in a memorandum presented at the June 24, 2016 Board meeting, with various options for engaging an adjudicator. That memo is attached hereto.

At the June meeting, the Board voted to continue exploring options for establishing an adjudicator position that would not be an employee of the Supreme Court but that would address concerns about a lack of independence from DCO. Given the Board's input, staff developed the two options outlined below.

Since the Board's last meeting, the bar has also taken preliminary steps to create a framework for a possible adjudicator position. Disciplinary Counsel Dawn Evans has drafted proposed changes to court rules (see attached summary of Proposed Duties of Adjudicator), and the bar has asked legislative counsel to draft a proposed amendment to statute, which could be introduced in the 2017 session.

## Description of Options

### 1. Adjudicator Appointed by Court/Chief Justice and Employed by OSB

**Position Description:** Under this scenario, the adjudicator would be an Oregon lawyer appointed by the Supreme Court (or the Chief Justice) and an employee of the OSB. The bar would enter into an employment contract with the adjudicator, which could be renewed on an annual basis. Appointment by the Supreme Court would be a requirement for continued employment. Only the Supreme Court (or the Chief Justice) would have the power to remove the adjudicator.

**Supervision:** The Executive Director would engage in day-to-day supervision of the adjudicator. This would mean that the Executive Director would be responsible for administrative supervision of the individual (e.g. approving timesheets, vacation requests, and reimbursement requests).

The Executive Director would also be responsible for ensuring the adjudicator received adequate support as he or she became accustomed to the position. Part of this support might include asking General Counsel to provide background information on the format of opinions, procedural questions, ethics law, and existing disciplinary precedent.

While the adjudicator would report to the Executive Director, and the Executive Director could furnish general information about the disciplinary system, the Executive Director would not have any decisional authority over disciplinary matters. Any decisions about specific cases would be reserved exclusively for the adjudicator (and other disciplinary panel members appointed to the case).

The adjudicator would be subject to bar policies, including accounting and human resources policies. If an adjudicator violated a bar policy, the Executive Director could report that violation to the Supreme Court and request that the Supreme Court remove the adjudicator. Ultimately, any decision to remove the adjudicator would be up to the Supreme Court.

**Benchmarks:** The adjudicator would be responsible for meeting performance benchmarks, as approved by the Supreme Court. The Executive Director and adjudicator would submit reports to the Supreme Court on an annual basis on the adjudicator's progress on performance benchmarks. The Executive Director would make available all opinions and orders drafted by the adjudicator throughout the year to the Court (regardless of whether they were appealed).

The performance benchmarks would include measures on timeliness and responsiveness. The Executive Director would also provide the Supreme Court with general feedback about the adjudicator's job performance, training and professional development. In

the reports, the Executive Director would share any feedback she received about the adjudicator from other disciplinary board members, respondent's counsel and DCO.

**Office Location:** The position would be advertised as an off-site position, so that the individual would be expected to work from home or out of another office space. This off-site location would provide an additional degree of physical separation between bar staff and the adjudicator.

**Support:** The adjudicator would receive administrative support from the Disciplinary Board Clerk. The Disciplinary Board Clerk would provide assistance as needed in connection with appointment of panels, scheduling of hearings, locating and securing hearing space and court reporters, and other procedural matters. The Disciplinary Board Clerk would also provide example forms of orders, and copies of necessary documents from the Clerk's files, but would not provide secretarial or word processing support to the adjudicator. The Disciplinary Board Clerk would continue to report to General Counsel.

The adjudicator would receive a bar laptop and IT support from bar staff. Although the adjudicator would utilize the bar's server, the adjudicator's electronic files would be not be open for review by disciplinary staff; similarly, the adjudicator would not have access to disciplinary or client assistance office electronic files.

The bar's General Counsel would be available to provide general information about the disciplinary system, case law and rules of procedure, in the same manner she is available to existing disciplinary board members. While General Counsel would offer general input on interpretation of bar rules of procedure and could serve as a resource for legal research questions, General Counsel would not provide input on specific case decisions.

The bar would provide the adjudicator with training, including the opportunity to attend conferences related to ethics and lawyer regulation. The bar could also seek out opportunities for the adjudicator to attend trainings with Oregon judges related to opinion writing and courtroom management.

**Cost:** A ballpark estimate from our CFO suggests that this position would cost roughly \$92,300 for a half-time employee or \$184,600 for a full-time position (this includes annual salary and benefits only). This approximate cost assumes that the position is filled at the same range as that of the bar's Disciplinary Counsel. If this position were created and assuming implementation of changes to the Rules of Procedure within the same timeframe, it would likely be filled in mid-2017, so any cost would be half of the above amount for the first year.

## **2. Panel of Independent Contractor Adjudicators, Appointed by Court/Chief Justice**

**Position Description:** Under this scenario, three Oregon lawyers would be appointed as adjudicators by the Supreme Court (or Chief Justice), but would serve as independent

contractors of the OSB. The term of the contract could be for up to one year, but would not be automatically renewed. The adjudicators would only be removable by the Supreme Court.

The adjudicators would need to be able to demonstrate to the bar that they were otherwise engaged in the business of law or a related field, to support their designation as independent contractors.

A contract would detail the OSB and the Court's broad-based expectations for the position, and the tasks required to be completed pursuant to the bar rules of procedure. If an adjudicator had specific questions about contract requirements, the Executive Director or General Counsel could field questions.

**Supervision:** Because of the nature of the independent contractor relationship, the bar would not (and could not) exercise day-to-day supervision over the adjudicators, or exercise control over the manner in which they complete their assigned tasks. Adjudicators hired as independent contractors would be required to supply their own on-the-job training and would need to have the existing skills to perform the work when retained.

**Benchmarks:** The adjudicators would be responsible for meeting high-level benchmarks related to timeliness and responsiveness, as approved by the Supreme Court. The adjudicators would submit reports to the Supreme Court on an annual basis (these reports would likely be similar to those already provided by Disciplinary Counsel and the Client Assistance Office). The Executive Director would make available to the Court all opinions and orders drafted by the adjudicators throughout the year (regardless of whether they were appealed).

To the extent that the adjudicators sought others' feedback, they would be charged with obtaining it through their own inquiries. The Executive Director could share her feedback about the adjudicators with the Court (or Chief Justice) to help inform appointment decisions.

**Office Location:** The adjudicators would be responsible for supplying their own office space and equipment, off of bar premises.

**Support:** The adjudicators would be responsible for providing for their own staff and administrative support, and could hire and pay assistants. Although the adjudicators would coordinate with and, to some extent, work in concert with the Disciplinary Board Clerk, they would not otherwise receive administrative support from the bar, and would be expected to provide all tools and equipment required to complete their required work.

The bar's General Counsel would be available to provide basic information about the disciplinary system, in the same manner she is available to existing disciplinary board members.

**Cost:** Using the data from the 2012 survey for a "Government Lawyer" and updated by the CPI to a 2016 estimate, our CFO has estimated that we would hire at a billing rate of approximately \$138 per hour. At 1,080 hours a year (equal to a half-time employee), the cost to

the bar would be \$149,000/year for each half-time contractor. Ultimately, any rate of pay would need to be negotiated with the adjudicators.

The bar could also explore paying adjudicators based on a piece rate, which would depend on the adjudicator's work on any given case (e.g. a flat rate per motion, per opinion, or per day of trial).

If this position were created, and again assuming timely implementation of the rule changes, it would likely be filled in mid-2017, so any cost would be half of the above amount for the first year.

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### Options – Pro/Con Charts

#### Option 1 – Adjudicator Appointed by Court, Employed by OSB.

+ Pros	- Cons
The adjudicator would have the opportunity to <b>develop expertise</b> as the presiding member of every disciplinary board panel (unless successfully challenged for cause or otherwise unavailable).	Hiring one adjudicator could lead to the perception that one individual decision maker has <b>significant influence</b> in the disciplinary process (although panels will continue to consist of 3 members).
Having one person serving in this position would <b>increase consistency</b> in trial panel opinions in terms of quality, reasoning and outcome.	Because the individual would be a <b>bar employee</b> , there could be a perception that disciplinary counsel has sway over decision making.
A presiding adjudicator would have the ability to coordinate with regional chairs and the disciplinary board, with the goal of <b>improving efficiency and reducing delay</b> .	
If the bar pursued this option, it could provide direct technical and administrative support to the position, thereby <b>maximizing efficiency</b> .	
Because the individual would work off site and be appointed and removed by the Court, there would be a <b>clear separation</b> between the bar and the adjudicator.	
Initial estimates suggest an adjudicator appointed by the Court, who is an OSB employee, may be retained at a <b>lower cost</b> than an independent contractor.	

### Option 2 – Adjudicator Appointed by Court, Employed by OSB.

+ Pros	- Cons
Engaging three adjudicators as independent contractors, rather than as an employees, may foster the appearance of <b>increased separation</b> between the bar’s disciplinary and adjudicatory functions.	Because the work would be divided among a number of individuals, there may be <b>less consistency</b> in decisions – that lack of consistency is precisely the concern the Court has raised about the current system.
Retaining a panel of adjudicators would allow the bar to <b>easily substitute</b> an adjudicator who is challenged for cause.	Each contractor would have less of an opportunity to serve on trial panels, and may <b>develop expertise more slowly</b> .
A panel would also give the bar the opportunity to hire contractors from <b>across Oregon</b> .	The independent contractor model places <b>significant restrictions</b> on how the positions are structured, in order to ensure that the classification withstands scrutiny.
	Adjudicators would also be required to <b>provide their own staff, technical and administrative support</b> , which could lead to logistical complications.
	Initial estimates suggest that this option may come at a <b>higher cost</b> to the bar. Any rate would need to be negotiated.

### Option 3 – Abandon DSRC proposal to establish adjudicator position.

+ Pros	- Cons
Retaining current system would mean <b>costs remain the same</b> .	The Court has expressed concern with <b>consistency and quality</b> of opinions.
Allows for <b>increased volunteer participation</b> (three volunteers serve per panel, instead of two).	Relying entirely on volunteers <b>does not allow adjudicators to develop depth of experience and knowledge</b> . (Volunteers typically only serve on a panel every few years.)
Oregon lawyers are <b>familiar</b> with this system.	Volunteers are busy with existing practices and often have <b>limited time and energy</b> to devote to a panel.
	The <b>Court has expressed support</b> for the creation of an adjudicator position.

Proposed Duties of Adjudicator

1. Coordinating and overseeing the activities of the Disciplinary Board – interacting with the Disciplinary Board Clerk and with the Regional Chairs on a regular basis;
2. Presiding member of all trial panels – ruling on challenges to other trial panel members, ruling on all pretrial matters, setting hearings, conducting all pretrial hearings and conferences (other than the BR 4.6 pre-hearing conference, which is more akin to a settlement conference), ruling on all challenges to other trial panel members, presiding at trial, and ruling on any post-hearing motions (such as objections to the record and reviewing statements of cost);
3. Opinion writing – drafting orders, and when in majority, writing all trial opinions;
4. Making appointments – appointing trial panelist who will conduct BR 4.6 pre-hearing conference, trial panelists for cases referred by the Supreme Court (serving a “master” function), and trial panelists on an at-large basis to fill in from other regions as needed;
5. Serving as the sole adjudicator – upon agreement of the parties in lieu of a 3-member panel, ruling on defaults and various special proceedings (BR 7.1 motions, temporary interlocutory suspensions, reciprocal discipline cases, and interim suspensions based upon criminal convictions); and
6. Stipulations – Reviewing and entering orders approving all stipulations imposing six months or less.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 24, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** Disciplinary System Professional Adjudicator

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### Action Recommended

Review the options presented for engaging a disciplinary system professional adjudicator and provide feedback on a general direction.

### Background

At its special meeting on March 11, 2016, the Board voted to recommend engaging a disciplinary system professional adjudicator, on the condition that the person be an employee of the Court.

The Court has expressed general enthusiasm about the prospect of creating a professional adjudicator position. The Court believes that creating a professional adjudicator position would support the Board's goals of improving the quality of disciplinary opinions and the efficiency of the disciplinary system.

Since March, bar staff has engaged in discussions with the Chief Justice, the State Court Administrator, and other representatives of the Oregon Judicial Department to delve into the logistics and statutory limitations of creating such a position.

At the request of the Court, bar staff and OJD staff researched the advantages and disadvantages of the following options for structuring the professional adjudicator position:

1. Professional Adjudicator Employed by Court/OJD
2. Professional Adjudicator who is an Independent Contractor Retained by Court/OJD
3. Professional Adjudicator Appointed by Court, but Employed/Retained by OSB
4. Professional Adjudicator who is an Independent Contractor Retained by OSB
5. Professional Adjudicator Employed by OSB

As a result of this collaborative process, it became apparent that if the Professional Adjudicator was an employee of the Court, there would be several additional challenges to implementation, which can be summarized as follows:

- The Oregon Judicial Department must have specific authority from the legislature to hire additional FTE. Any budget associated with that hire also requires legislative approval. See ORS 8.125(2)(b); ORS 8.105.

- Any money paid by the bar to fund an OJD employee may need to be deposited in the General Fund and specially allocated by the legislature to the Court. *See* ORS 8.130.
- If the Professional Adjudicator is supervised by the Chief Justice, the Chief Justice may be disqualified from hearing a disciplinary case before the Supreme Court. *See* ORS 14.275. Court staff acknowledged the Board's desire to avoid any appearance of an improper connection between an adjudicator and the bar, but pointed out that direct supervision by the Court would likely create significant conflicts.
- The Professional Adjudicator would be prohibited from engaging in the private practice of law. ORS 8.160. As a result, it may be difficult to find a person interested in a part-time position, if that were what the position required.
- The Oregon State Court Administrator's Office may be statutorily required to support the Professional Adjudicator's function, with potential added expense. ORS 8.125.

In addition, the Court has made it clear that from a policy perspective, regardless of what entity retains the Professional Adjudicator, the Professional Adjudicator position should be funded entirely out of bar funds rather than OJD funds (which are primarily general funds) in order to avoid shifting the costs of the disciplinary system to the public.

### Options

- **Further Explore Options 3-5 (OSB Employee, OSB Independent Contractor, or Appointed by Court but Employed/Retained by OSB).** Given the challenges outlined above, staff recommends completing further research about these options.
- **Abandon proposal to establish position of professional adjudicator.** Given the Court's support for the idea of a professional adjudicator, staff would not recommend this option at this time.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen Hierschbiel, CEO/Executive Director  
**Re:** CSF Awards Recommended for Payment  
KRULL (Cisneros) 2016-02

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### Action Requested

The Client Security Fund Committee recommends reimbursement of \$7,500 to Guillermo Pahua Cisneros for his loss resulting from the conduct of attorney Julie Krull.

### Discussion

#### Background

Guillermo Pahua Cisneros hired Julie Krull on March 28, 2014 to represent him in immigration removal proceedings. Although Mr. Cisneros resides in Hillsboro, Oregon, the proceedings were filed in Houston, Texas because that is where Mr. Cisneros was detained. The first objective of the representation was to secure a change of venue from Texas to Oregon.

The fee agreement provides for a flat fee of \$11,000. Mr. Cisneros paid Ms. Krull \$7,500 of the retainer. Ms. Krull's file reflects six separate time entries for a total of .5 hours spent on Mr. Cisneros' case, which appear to be for purely administrative tasks. The CSF investigator found no evidence that Ms. Krull took any substantive or meaningful action on behalf of Mr. Cisneros, including no evidence of any efforts to change venue of the removal proceedings.

Ms. Krull resigned Form B effective November 12, 2015. She never returned the money that Mr. Cisneros paid to her.

#### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. However, reimbursement of a legal fee will be allowed if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee found that Mr. Cisneros' loss was caused by the dishonest conduct of Ms. Krull who promised to provide legal services in exchange for the advance payment of a legal fee. Further, it determined that Ms. Krull's legal services, if any, were minimal or insignificant. Finally, Mr. Cisneros submitted his claim within the required time. Therefore, the

CSF Committee recommends that Mr. Cisneros be reimbursed \$7,500, the full amount of his claim.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2016-21 MILSTEIN (Colvin) Request for BOG Review

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### Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to partially approve her claim for reimbursement of \$4,000.

### Discussion

#### *Summary of Facts*

Kayla Ann Colvin seeks reimbursement of \$4,000 that she paid to Jeff Milstein for legal fees and costs for representation in defense of two charges: Driving Under the Influence of Intoxicants ("DUII") and resisting arrest charges. In late 2013 and early 2014, Ms. Colvin paid \$2,000 (in four installments) pursuant to a Flat Fee Agreement for legal services. In April 2014, Ms. Colvin paid an additional \$2,000 at Mr. Milstein's request for a purported "team of experts" to aid in Ms. Colvin's defense at trial.

Mr. Milstein did provide some legal services for Ms. Colvin. He met with her and communicated with her on numerous occasions regarding her case. In addition, he appeared at several court proceedings and attempted to negotiate a plea bargain. Ms. Colvin saw no evidence of work by Mr. Milstein's "experts," however, and believes the request for these additional funds was a ruse to get more money from her. The only alleged expert that Ms. Colvin was aware of was a childhood friend of Mr. Milstein and disbarred California lawyer who was staying with Milstein on a personal visit. Despite requests from the OSB, Mr. Milstein has not provided an accounting of the \$2,000 cost advance or any description of services provided by any experts. Mr. Milstein did not deposit the funds into a trust account, and has not refunded any of these costs to Ms. Colvin, despite her demand that he do so.

The SPRB found probable cause of misconduct and charged Mr. Milstein with violations of RPC 1.15-1(c)(failing to deposit and maintain in trust until earned or incurred fees or costs paid in advance); RPC 8.4(a)(2)(committing a criminal act that reflects adversely on honesty, trustworthiness or fitness); and RPC 8.4(a)(3)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; dishonest conversion of client funds).

Ms. Colvin petitioned for fee arbitration, and an award of \$2,000 was issued in her favor, which remains uncollected. The Client Security Fund Committee approved an award from the CSF to Ms. Colvin of \$2,000.



Ms. Colvin has appealed the CSF Committee decision to award her only \$2,000 and asks that the Board consider awarding her the full \$4,000 that she paid to Mr. Milstein. Ms. Colvin says that she only asked for \$2,000 in the fee arbitration proceeding because she did not feel like she could prove she was entitled to more than that. At the time of the proceedings, she was unable to access text and email messages from Mr. Milstein related to the case because her cell phone was broken. Since then, she has been able to retrieve those text and email messages, and believes she can prove she was entitled the full \$4,000.

*CSF Committee Analysis*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. In addition, CSF Rule 2.2.3 provides that reimbursement of a legal fee is allowed only if: (i) the lawyer provided no legal services to the client; (ii) the legal services provided were minimal or insignificant; or (iii) the claim is supported by a court or arbitration award that establishes a refund is owed. Finally, as a condition of receiving an award, a claimant must transfer the claimant's rights against the lawyer who may be liable for the claimant's loss. CSF Rule 5.1.1.

The CSF Committee found evidence of dishonesty on the part of Mr. Milstein. However, the Committee determined that Mr. Milstein did provide some legal services to Ms. Colvin, and that such services were not minimal or insignificant. Therefore, the Committee did not find Ms. Colvin to be eligible for reimbursement of the \$2,000 paid for legal services. Further, the fee arbitration award established that Ms. Colvin was entitled to \$2,000, but no more. Because Ms. Colvin cannot transfer rights to collect from Mr. Milstein any more than that established by the fee arbitration award, the arbitration award limits the OSB's subrogation rights. Consequently, the CSF Committee felt bound to award Ms. Colvin no more than the \$2,000.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-05 BOCCI (Tait) Request for BOG Review

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### Action Requested

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

### Discussion

#### *Summary of Facts*

On July 30, 2009, Mr. J.H. Tait paid a flat fee of \$1,000 to the Christopher Bocci and Associates law firm for representation in the appeal of two traffic convictions in Salem Municipal Court—one for speeding and one for failing to use a seatbelt. William Carl was initially responsible for the case; Mr. Bocci took over the case when Mr. Carl was suspended in January 2010 (for reasons unrelated to Mr. Tait's case).

The Flat Fee Agreement did not state that the fee was "earned on receipt" as required under RPC 1.5(c)(3) and RPC 1.15-1(c). Therefore, the funds should have been deposited into Mr. Bocci's lawyer trust account. Mr. Bocci admits that he mistakenly deposited the funds into his general account instead. As a result of this violation of RPC 1.15-1(c), Mr. Bocci received a letter of admonition from Disciplinary Counsel's Office.

Mr. Carl filed a Notice of Appeal and a Motion to Stay the Salem Municipal Court and DMV Action on Appeal and paid the filing fee of \$189. The motion was granted on August 6, 2009. Due to court staff error the file did not get transferred to Circuit Court until nearly three years later, in May 2012. Even so, the Circuit Court still showed no record of the case as late as March 2014. Mr. Bocci prepared a Motion to Dismiss based on speedy trial grounds in July 2013, but because the Circuit Court had no record of the case, he could not file the motion. Ultimately, the Salem Municipal Court deemed the case to be transferred back to its jurisdiction and Mr. Bocci appeared on May 6, 2014 to request that the Municipal Court dismiss the charges due to the unreasonable delay in transferring the file. The request was denied.

Mr. Tait was unhappy with the outcome of the case and with the representation. Mr. Bocci says he reached an agreement with Mr. Tait in which Mr. Bocci would pay Mr. Tait's fines in order to settle Mr. Tait's claims against Mr. Bocci. Mr. Bocci did in fact pay the court fines of \$217.09 on May 9, 2014. In the end, Mr. Bocci paid Mr. Tait's court fees and fines of approximately \$421; he retained \$579 of the original retainer as payment for the 6.9 hours of time he devoted to the case.

In November 2014, Mr. Tait contacted Mr. Bocci and made a demand for \$825 plus “statutory interest” of \$405. In his ethics complaint to the bar, Mr. Tait claimed that Mr. Bocci owed him \$825. On January 1, 2016, Mr. Tait made a claim against the CSF for the full \$1,000 retainer he paid to the Bocci law firm.

In reviewing Mr. Tait’s ethics complaints against Mr. Carl and Mr. Bocci, the SPRB determined that the fee collected was not clearly excessive.

*CSF Committee Analysis*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer’s dishonest conduct. CSF Rule 2.2.1. The CSF Committee found no evidence of dishonesty on the part of Mr. Bocci or his law firm. Rather, it appeared to the Committee that Mr. Tait’s complaint was in the nature of a fee dispute.

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**FORMAL OPINION NO. 2015-xxx**

**Client Property:  
Electronic-Only or “Paperless” Client Documents and Files**

**Facts:**

Lawyer prefers to maintain client file documents in electronic form only, to the greatest extent possible. For open matters, Lawyer plans to convert documents to electronic form and contemporaneously destroy the paper copies as they are received.

Lawyer’s closed matters contain a mix of paper and electronic documents. Lawyer plans to similarly convert the paper documents in her closed files to electronic form and destroy the paper copies of the documents.

**Question:**

May Lawyer maintain electronic-only files and convert existing paper files to electronic form?

**Conclusion:**

Yes, qualified.

**Discussion:**

With limited exceptions for documents that are intrinsically significant or are valuable original paper documents, such as securities, negotiable instruments, deeds, and wills, there is no ethical prohibition against maintaining the “client file” solely in electronic or paperless form.<sup>1</sup>

Lawyers must take appropriate steps to safeguard client property (RPC 1.15(a)), maintain confidentiality of client information (RPC 1.6(c), RPC 1.9(c)(2)), and communicate with the client regarding the terms of the representation and relevant developments affecting the representation (RPC 1.4). Accordingly, lawyers who maintain electronic-only client files should take reasonable steps to ensure the security<sup>2</sup> and availability<sup>3</sup> of electronic file documents during appropriate time periods, including following the completion of the matter or termination of the representation.

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<sup>1</sup> For a discussion of what constitutes the “client file,” see OSB Formal Ethics Op 2005-125 [Client Property: Photocopy Charges for Client Files, Production or Withholding of Client Files].

<sup>2</sup> See, e.g., OSB Formal Ethics Opinion 2011-188 [Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials], explaining that a “Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client’s information secure within a given situation.”

<sup>3</sup> Whether and how long to maintain a client file is a matter of substantive law and beyond the scope of this opinion. The Professional Liability Fund generally recommends that files be kept for a minimum of 10 years to ensure the file will be available to defend the lawyer against malpractice claims. See, e.g., “File Retention and Destruction,” part of the PLF practice aid and form collection in the “File Management” category on the PLF’s website, [www.osbplf.org](http://www.osbplf.org).

Lawyers and clients may enter into reasonable agreements regarding how the lawyer will maintain the client’s file during and after the conclusion of a matter. A lawyer who chooses to convert paper file documents in closed files to electronic-only documents should confirm that doing so will not violate the terms of the retention agreement with the client. The lawyer should also consider the former client’s circumstances—e.g., whether an electronic-only file might present a hardship for the former client if the former client needs to access and work with the documents in paper form.<sup>4</sup> Even after a lawyer has taken reasonable steps to electronically preserve original documents created by a client, the lawyer should not destroy original client documents without the client’s express consent.

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<sup>4</sup> Examples may include indigent or incarcerated former clients, or other clients who may have difficulty using electronic-only documents.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, Executive Director  
**Re:** Revision to Oregon RPC 7.2(b)

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### Action Recommended

Consider the recommendation of the Legal Ethics Committee (“LEC”) to amend Oregon RPC 7.2(b).

### Background

At the 2013 HOD meeting, the HOD approved a package of changes to the advertising rules—including RPC 7.2—with the goal of bringing Oregon’s advertising rules more in line with the ABA Model Rules.<sup>1</sup> The changes were not intended to be substantive. Rather, the purpose of the amendments was to provide Oregon practitioners with advertising guidelines that are clear, simple, and more consistent with other jurisdictions.

Over the course of the last year and a half, the Legal Ethics Committee has been revising the formal ethics opinions to bring them in line with the new advertising rules. Recently, it was brought to the LEC’s attention that one of the rule amendments resulted in a substantive change to the former advertising rules.

Prior to the January 1, 2014 amendment of RPC 7.2, Oregon lawyers were permitted to pay referral fees to any lawyer referral service, if certain conditions were met. Former Oregon RPC 7.2 provided:

(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

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<sup>1</sup> The LEC developed the proposal at the BOG’s request in response to a 2010 HOD resolution to conform Oregon’s advertising rules to Washington’s. Because Washington’s advertising rules are similar to the ABA Model Rules, the LEC decided to look to the ABA Model Rules for overall guidance and eventually modelled its proposal on the ABA Model Rules, rather than the Washington Rules of Professional Conduct.

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.

Under this former version of the rule, Oregon lawyers could utilize lead services or for-profit lawyer referral services, as long as the service complied with the additional restrictions of RPC 7.2(c)(1)-(4).

As amended, Oregon's RPC 7.2 currently 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.

Under this amended version of the rule, payments to for-profit referral services are simply not allowed. Nothing in the LEC Agendas, BOG minutes or HOD minutes from that time suggest that

that the bar intended to implement an across-the-board prohibition of all lawyer payments to for-profit lawyer referral services. Therefore, it appears that prohibiting all lawyer payments to for-profit lawyer referral services was an unintended consequence of the 2014 amendments.

The question of whether Oregon lawyers may pay a for-profit lawyer referral service for recommendations is not merely theoretical. In July, General Counsel received a request for an informal written ethics opinion from a lawyer interested in receiving referrals from Avvo, which is a for-profit entity. The request raised a number of issues, one of which was whether the lawyer could pay Avvo for leads or referrals under any circumstance. Given the current rules, General Counsel advised that RPC 7.2 prohibited making payments to Avvo for client referrals.

The Legal Ethics Committee considered a number of options to remedy this oversight, the first of which was to revert back to the language from the original rule. In keeping with its original directive to simplify the advertising rules, however, the LEC ultimately decided to recommend the following change to Oregon RPC 7.2(b):

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

If the BOG approves this amendment, it will be placed on the November 2016 HOD Agenda for the HOD's approval before being submitted to the Oregon Supreme Court for final adoption.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, Executive Director  
**Re:** Revision to Oregon RPC 7.2(c) and RPC 7.3(c)

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### Action Recommended

Consider the Legal Ethics Committee recommendation to amend Oregon RPC 7.2(c) and RPC 7.3(c).

### Background

In response to a resolution presented at the 2010 HOD meeting, the BOG directed the Legal Ethics Committee ("LEC") to study and make recommendations to the BOG regarding conforming Oregon's advertising rules to those of our neighboring states. After more than a year of work, the LEC submitted its recommendations to the BOG at the June 22, 2012 meeting. The BOG asked that the rules be submitted to the membership for comment prior to adoption.

Comments received were nominal and generally supportive of the changes. In late August 2013, however, shortly before the rules were to be submitted to the HOD for approval, one Oregon lawyer expressed concern that RPC 7.2(c) and RPC 7.3(c) are unconstitutional as they relate to electronic communications. The rules at issue are set forth in their entirety below, with the alleged offending language in bold.

#### RULE 7.2 ADVERTISING

(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.**

RULE 7.3 SOLICITATION OF CLIENTS

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

(1) is a lawyer; or

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

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

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

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

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

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

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

Rather than halt the amendment process and start over with a review of two provisions in a package of multiple rule revisions, the BOG decided to move forward with the proposed amendments as they were. The new advertising rules were approved by the HOD in November 2013 and adopted by the Supreme Court effective January 1, 2014. The Board of Governors then asked the Legal Ethics Committee to revisit the issue of whether RPC 7.2(c) and 7.3(c) are constitutional.

The Legal Ethics Committee has completed its review and, for the reasons set forth in more detail below, recommends that RPC 7.3(c) be stricken entirely and that RPC 7.2(c) be amended to require the inclusion of contact information rather than the office address.

## Analysis

### Free Speech Protections

The Supreme Court has long held that lawyer advertising that is truthful and not misleading is protected by the First Amendment to the United States Constitution. See e.g., *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 417 US 626 (1985)(state may not prohibit non-deceptive illustrations in advertising); *Shapiro v. Kentucky Bar Ass'n*, 486 US 466 (1988)(state may not prohibit non-deceptive direct mailing). Under the First Amendment, a state may regulate lawyer advertising if that regulation satisfies the three-part test for regulation of commercial speech generally. *Florida Bar v. Went For It, Inc.*, 515 US 618 (1995), citing *Central Hudson Gas & Electric v. Public Serv. Comm. Of New York*, 447 US 557 (1980). First, the state must assert a substantial interest in support of its regulation; second, the restriction on speech must “directly and materially advances that interest”; and third, the regulation must be “narrowly drawn.” *Central Hudson*, 447 US at 624.

Lawyers in other jurisdictions have challenged advertising rules similar to those at issue here, with mixed results. Compare *Public Citizen Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212 (5th Cir. 2011) (discussing potential constitutional issues with advertising rules and upholding rules as constitutional); and *Rubenstein v. Florida Bar*, 72 F. Supp. 3d 1298 (S.D. Fla. 2014) (holding certain advertising rules were unconstitutional).

It is well-established that Article I, Section 8 of the Oregon Constitution provides greater protections to speech than the Federal First Amendment. The Oregon Supreme Court applies its own approach to free speech analysis under the Oregon Constitution. First, the Court distinguishes between laws that restrict the *content* of speech and laws that restrict the *results or effects* of speech. *State v. Robertson*, 293 Or 402, 416-417 (1982). Content-based restrictions are prohibited “unless the scope of the restraint is wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach. Examples are perjury, solicitation or verbal assistance in crime, some forms of theft, forgery, and fraud, and their contemporary variants.” *Id.* at 412. As noted by the 2009 OSB Advertising Task Force report, this historical exception is particularly significant as to lawyer advertising because before 1859, and into the early 20<sup>th</sup> century, advertising and solicitation by Oregon lawyers was not prohibited.

Laws that focus on “forbidden effects, but expressly prohibit expression used to achieve to those affects” are analyzed for overbreadth. Laws that focus on “forbidden effects but without referring to expression at all” are analyzed to determine whether they are unconstitutionally vague or unconstitutional as applied. *Id.* at 417-418. Generally, reasonable restrictions on the time, place or manner of speech (as opposed to outright prohibitions) are allowed as long as they are narrowly tailored to meet specific, clearly expressed and permissible objectives. See, e.g., *In re Lasswell*, 296 Or 121 (1983)(pretrial publicity limitation on lawyer speech upheld as long as there was a “serious and imminent threat” to a fair trial.)

### LEC Analysis

In 2009, the OSB Advertising Task Force issued a report which gave an overview of the federal and state constitutional free speech protections as applied to the advertising rules. It concluded that significant changes to the advertising rules were necessary in order to strike a proper balance in terms of constitutional law and public policy. Among the changes proposed were significant changes to the provisions at issue here.

Although the Legal Ethics Committee did discuss these constitutional restrictions on the regulation of advertising, it did not engage in an in-depth analysis of whether these provisions actually violate free speech protections under the Oregon and Federal Constitutions. Instead, it focused on whether the provisions actually serve the purposes for which they exist. The LEC determined that the sections provide no additional consumer protection and risk violating free speech.

Oregon RPC 7.2(c) requires that lawyers include their office address in all advertising. In practice, this means that lawyers may be unable to use modern electronic advertising mediums with character restrictions (e.g. Twitter has a 140 character limit, GoogleAd Words is also limited) because of the length of the address. Arguably, requiring an office address is out of step with today's legal culture, in which lawyers interact with potential clients through various mediums and not just the mail. In fact, many lawyers operate primarily online through "virtual offices."

The purpose of RPC 7.2(c) is to enable members of the public to identify the lawyer or law firm advertising, and to give them the tools to find out more about the lawyer and report the lawyer to the bar if necessary. This same purpose would be served by simply requiring the lawyer to include some contact information in the advertising (e.g. telephone number, email address or twitter handle). Requiring contact information is unlikely to limit lawyers; after all, advertising that does not provide the potential client a method to contact the lawyer is poor advertising.

The purpose of RPC 7.3(c) is to ensure that members of the public are not led to believe that an advertisement or solicitation from a lawyer is some type of legal process or other official communication that requires their response. The concern with the rule—as with the "laundry list" of prohibitions contained in former RPC 7.1(a)—is that it is overbroad. Lawyers are already prohibited from making false or misleading communications. See RPC 7.1(a). Thus, a lawyer who sends an advertisement that looks like a summons (with the hope that the prospective client will open it and respond, rather than throw it away) would violate RPC 7.1(a) because the communication is misleading.

Oregon RPC 7.3(c) does not provide any additional protection against this type of misleading conduct. Instead, like RPC 7.2(c), it unduly restricts lawyers from advertising in mediums with character restrictions. Perhaps more troubling is that including the phrase "Advertising Material" on lawyer solicitations might lead persons in need of legal services to simply discard a communication that may help them recognize a legal need and access legal services. In other words, the limitations on lawyer speech in RPC 7.3(c) do not protect against consumer harm and instead limit the public's access to legal services.

## Recommendation

The Legal Ethics Committee recommends that RPC 7.3(c) be stricken entirely, and that RPC 7.2(c) be amended as follows:

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

The proposed new rules are set forth below in their entirety.

### RULE 7.2 ADVERTISING

(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~~ contact information of at least one lawyer or law firm responsible for its content.

### RULE 7.3 SOLICITATION OF CLIENTS

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

(1) is a lawyer; or

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

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

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

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

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

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

(cd) 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.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, CEO/Executive Director  
**Re:** Section Co-Sponsorship with CLE Seminars

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### Action Recommended

None. This is for information purposes only.

### Background

#### Current Situation

The OSB Labor & Employment Law Section has prepared a draft resolution for the House of Delegates that would direct the Board of Governors to reverse a policy decision it made in 2014 regarding co-sponsorship of CLE seminars. The new policy, slated to take effect in 2017, would give the bar's CLE Seminars Department the right of co-sponsorship with any section program four hours or more in length. The CLE Seminars Department would have discretion over which programs to co-sponsor, and as a practical matter has the capacity to add only 3-4 new cosponsored programs per year.

#### Background

For the past several years, the Board of Governors has been engaged in a review of bar programs and services in order to ensure that bar programs are aligned with the bar's mission and operate with maximum effectiveness and efficiency. In 2014, the BOG undertook a year-long, in-depth examination of the CLE Seminars Department. Former OSB President Tom Kranovich summarized the board's discussions and sought input from the membership about the policy questions involved in a column published in the August/September 2014 issue of the OSB Bulletin, a copy of which is attached.

As a result of its review, the BOG approved a number of policy changes intended to advance two goals. The first and most important goal was to make quality CLE programs that appeal to a broad cross-section of the membership available and accessible to all members. Secondly, the BOG sought to avoid using member license fees to subsidize CLE programs.

For section CLE programs, the policies establish new requirements to use registration services for all section CLE seminars, and to co-sponsor longer programs with the CLE Seminars Department. During 2015 and early 2016, staff met with each section executive committee at least once to communicate the policy changes and to seek input on how to implement the policies in a way that would best serve section needs while still advancing the Board's primary goals. Past President Tom Kranovich attended several of these section meetings; President Rich Spier, who attended even more, wrote about the process in the November 2015 issue of the OSB Bulletin, a copy of which is attached.

Many of the sections offered suggestions, several of which were incorporated into the implementation plan. On June 8, 2016, all section leaders were invited to a Section Summit at the bar center, with live webcasting available for those unable to attend in person. The purpose of the summit was to communicate the implementation plan for the registration and co-sponsorship requirements and to seek input on other section issues that the Board had identified as ripe for review. The presentation slides are attached.

The primary point of contention raised at the summit (and during the individual section meetings) was the co-sponsorship requirement. A follow-up communication was sent to summit participants and section chairs in June, and section leaders were invited to submit comments to the board in writing. The follow-up communication and written comments received are attached.

Because the CLE policy changes were the primary focus of conversations with the sections, discussion of other section issues was limited at many of the individual section meetings and those issues were not addressed at all at the summit. A summary of those issues, which is also attached, was sent to all summit participants and section chairs on August 26, 2016 requesting feedback for the BOG's review in early 2017.

Attachments:

- *Kranovich, A Business, or a Service? CLE Seminars*, OSB Bulletin (Aug/Sept 2014)
- *Spier, A Work in Progress: Considering CLE Seminars and Sections*, OSB Bulletin (Nov 2015)
- Section Summit Power Point presentation slides
- Hirschbiel post-summit email to section leaders
- Written comments received from sections
- Hirschbiel email soliciting feedback on other section issues



## Oregon State Bar Bulletin — AUGUST/SEPTEMBER 2014

August/September 14 ▾

### President's Message

#### **A Business, or a Service?**

#### **CLE Seminars**

**By Tom Kranovich**

Last month I referred to bar services and products such as BarBooks, Fastcase, lawyer referral services and CLE programming as being part of the bar's efforts to meet its statutory mission of "advancement of the science of jurisprudence and the improvement of the administration of justice." I emphasized that the programs provided to carry out this obligation are discretionary and, accordingly, potentially the most vulnerable to reduction or elimination. From last month's article you know that the Board of Governors is reviewing all of the bar's programs and services, beginning with the OSB CLE Seminars Department, to assure that bar resources are used appropriately and efficiently.

Historically, the Board of Governors has set policies and bar staff has implemented procedures that have not only maintained but increased services to the membership. Through the exercise of sound fiscal decisions, new services, such as BarBooks and Fastcase, have been provided to all members, statewide, without any fee increase or assessment. Through the program review process, the board and bar staff reduced expenses and made relevant programs more efficient to the degree that there has not been a fee increase in 10 years.

Our program reviews have focused on service programs that generate supplemental income separate from annual membership fees. As a result of earlier program reviews, the board eliminated the printed membership directory and decided to make BarBooks a member service, foregoing an earlier subscription model (and the associated revenue) to make sure this valuable service and resource was available to all members. Other than occasional (and diminishing) laments to bring back the printed directory, no one is proposing we do anything differently with bar publications.

Several years back, the lawyer referral service went through a stringent review and the flat-fee registration system was changed to a percentage recovery system. Until that time, the Lawyer Referral Service had been running at a \$240,000 yearly deficit. Lawyers who participate in the LRS program have the potential of making money from the referrals generated. Accordingly, changing to a percentage system seemed a more equitable way to minimize and recover the bar's costs for the service of connecting potentially profitable clients with proficient attorneys. While the LRS deficit has not yet been eliminated, it has been significantly reduced and continues to shrink at a rate greater than what was originally forecast.

Of the bar's remaining revenue-generating services, at least for this year's board, the discussion on CLE seminars has been the most protracted and, dare I say it, contentious topic. As of the July meeting, the board seems to have reached a consensus that the bar should continue to provide CLE seminars to its members. The unresolved issue under discussion is: should the bar provide CLE seminars on a strict business model, or should the bar subsidize CLE seminars as a service to members?

Unlike lawyer referral, continuing legal education is mandatory (although there is no requirement to obtain CLE credits from the OSB). Like lawyer referral, the CLE seminars program has never "run in the black," and the CLE seminars department is now under similar scrutiny as was the LRS program. The questions before the board are 1) should we take steps to require the CLE seminars department to run "in the black" as a business model (and if we cannot, should the department be eliminated?); or 2) should we continue to "subsidize" CLE programs as a bar service, albeit after implementing as many efficiencies as are reasonably possible? To answer these questions, we need look at the circumstances defining the deficit, the limitations preventing the CLE seminars department from minimizing the deficit and the prior policy decisions that have promoted, contributed to and/or exacerbated the situation.



**Defining the deficit.** The OSB CLE Seminars Department produces and markets 45 to 55 programs a year. Of those, 18-20 are co-sponsored with sections and other bar groups in multiple formats that provide convenient statewide participation options, including: live webcasts; DVDs; online, on-demand video; and audio-only formats. In 2013 the CLE seminars department generated revenues of \$984,855 with direct expenses (staff salary and benefits, materials, promotional and venue expenses) of \$832,258, for a net revenue of \$152,597. The department made more than it cost in direct expenses but the analysis does not stop there.

After allocating the department's share of indirect costs it had a net expense of \$230,000. Indirect costs include the department's percentage of building floor space and pro rata allocations for I.T., human resources, creative services and other "overhead" expenses. Eliminating the department would only cause its share of the indirect expenses to be reallocated back against the remaining departments while at the same time giving up the \$984,855.00 in revenue that it brought in last year.

**Competing interests.** Although the bar was once the primary provider of continuing legal education for members, that is no longer the case. Many bar-related groups such as the Oregon New Lawyers Division, bar sections and the Professional Liability Fund offer discounted or free CLEs to their members. There is a myriad of other nonprofit and for-profit CLE providers in the market, some who offer online CLE "blocks" of 45 hours of CLE for under \$200. I offer no opinion on the quality of such "block" programming, but I recognize that for our under-employed attorneys or others in tight financial circumstances, these offerings are a godsend. Similarly, while most other states require a certain percentage of credits to be earned in settings that allow participation (live programs, live webcasts and moderated replays), our board and the court have historically been reluctant to do the same lest it make meeting MCLE requirements more onerous for members, especially those in rural areas.

**Past policy decisions.** The board does what it can to promote the availability of low cost CLEs. Currently, if someone buys or streams an online OSB program, anyone else can watch it and claim credit for having seen it without paying for its use. Law libraries offer CDs of OSB CLEs for no charge. Additionally, over the years the board has adopted "complimentary admission" policies to support member involvement in certain events (serving on CLE panels, grading bar exams, teaching law school classes, participating in the New Lawyer Mentoring Program) or in recognition of certain status (judges and their staff, 50-year members). The board also promotes and subsidizes the CLE offerings of our sections by charging less than what it costs us for support services, especially the handling of checks by our accounting staff. We also try to minimize CLE costs for those providing low-cost or free legal service for underrepresented people. From a public service point of view and as a policy matter, this all makes sense, but from a break-even business point of view, revenue is not being optimized.

**Considerations to be discussed** (not comprehensive or exhaustive):

- Should the bar stop offering CLEs that have historically proven unprofitable because they relate to less common practice areas of law?
- Should we require that a minimum number of MCLE credits come from seminars with program formats that allow live interaction among participants?
- Should all sections be required to use OSB support services for their CLEs and if so, should the cost to the section be directly proportionate to OSB's cost?
- Should all sections be required to provide a certain percentage of discounted or free CLE?
- Should our pricing take into consideration the lack of availability for CLEs in remote areas of the state?
- Should the bar continue to offer free registration for 50-year members, active pro bono members, and judges and their attorney staff?
- Do our current policies and efforts to hold down CLE prices help keep down the prices from outside vendors and, if so, should that be a concern? What will happen to outside vendor prices if the OSB is no longer in the market?
- Should MCLE credit be given for listening to a CD for which the listener has made no payment?
- Should OSB be more stringent on quality control and exercise more rigorous MCLE approval criteria for all CLEs regardless of who puts them on?

The bar staff has been diligent in finding ways, consistent with board policy, to efficiently deliver quality CLE programs at the lowest cost possible while at the same time seeking to maintain or increase our market share. Expect to see some new products and new delivery platforms in the next year or so, including more emphasis on live webcasting so lawyers can participate remotely in real time for more seminars. We are also watching developments in other states, many of which are seeing declines in CLE revenue despite more business-oriented policies.

We on the board will continue our review. Are we in the business of providing CLEs or are we providing CLEs as a member service? Are CLE seminars an essential part of the bar's core mission in providing necessary services for the benefit of the public and the membership, or are they an opportunity to promote the bottom line?

Write me at [president@osbar.org](mailto:president@osbar.org) or send a letter to the editor. I invite you to weigh in.

#### **ABOUT THE AUTHOR**

OSB President Tom Kranovich practices law in Lake Oswego. Reach him at [president@osbar.org](mailto:president@osbar.org).

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DRAFT

## Oregon State Bar Bulletin — NOVEMBER 2015

November Issue ▼

### President's Message

#### **A Work in Progress:**

#### **Considering CLE Seminars and Sections**

*By Rich Spier*

For several years, the Board of Governors has conducted program reviews to ensure that the bar's discretionary programs are run effectively and efficiently and adhere closely to our mission. Through this process, we have contained costs and managed our resources to the degree that there has not been a general fee increase in 11 years. Earlier program reviews have led to the elimination of the printed membership directory, the decision to make BarBooks a member benefit instead of a subscription service, and the adoption of a percentage-fee funding model for the Lawyer Referral Service. Although some of you still miss the printed directory, we stand by that decision for reasons of efficiency, sustainability and accuracy of our posted membership records. The BarBooks decision has always been popular — like BarBooks itself, which is averaging more than 12,000 page views per work day this year — but it did mean a substantial decrease in revenue to the bar. The lawyer referral changes, like the membership directory, were contentious, but they have achieved the intended result of making the program self-supporting through user fees rather than general membership fees.

Last year, we turned our attention to continuing legal education. The OSB CLE Seminars Department has been unable to meet its goal of a break-even budget for many years. We took a hard look at market conditions, including internal and external competition, and reviewed a number of bar policies regarding CLE. We considered several courses of action, including eliminating our program and allowing bar sections to carry the weight of live, local CLE production. The problem with that, we discovered, was it would actually cost us much more.

Here's the situation: About half of the bar's 42 sections work with the CLE Seminars department to put on their seminars. Financially that's a break-even proposition since the fees paid by the sections cover the costs. The sections that host seminars without involving our CLE Seminars department, on the other hand, actually cost the bar money. The reason is that no fees are charged but costs are still incurred, most notably for processing registration payments. Bar groups that don't contract for registration services can only accept payment by check (due to accounting standards that apply to the bar) and those checks need to be processed by the bar's accounting department. Check processing is much more expensive than credit card processing, plus we have had repeated issues with tracking down missing checks and getting checks submitted months after they were written.

Once we understood the financial situation, it was clear that something needed to change. We saw three possibilities: charge a fee for processing checks for section CLE registrations; increase the per-member "support assessment" currently charged to all sections; or require sections to use registration services. The first option would be an administrative nightmare and the second would have a broad, negative impact on all section budgets. The third option not only seemed the most fair, it also offered other benefits: every seminar would have online registration 24/7 with payment by credit card; cancellation and refund processing would be included; sections would get registration lists for check-in purposes; MCLE attendance reporting would be simplified; date conflicts would be reduced with a single-source entry point for scheduling; and all programs would be automatically included in the bar's online event calendar, giving members a convenient place to find and register for any seminar sponsored by the bar or one of its affiliate groups.

The Board of Governors decided to move forward with requiring the use of registration services for all section CLE events. To make the changes easier to implement, we decided to wait until after installation of the bar's new database software (scheduled for mid-2016) to make them effective. This gives us time to work with the sections to address any concerns and work on



implementation details. By waiting for the new software, which allows us to bring registration services in house, we also expect to decrease costs and lower the fees we charge for registration services.

The financial realities were not the only reason we decided to continue offering OSB CLE. Last year, while the Board of Governors was conducting its review, President Tom Kranovich wrote about the situation in this space. The responses he received were strongly in support of continuing the program. I personally was most persuaded by the many comments I have heard from bar members in rural areas, who greatly appreciate the live webcasts offered by OSB CLE. These programs allow lawyers to participate in real time from any remote location, and are currently only available with bar-sponsored programs. As a statewide organization, we need to provide more of these live webcasts, not fewer.

Which brings us to a second area of section CLE: co-sponsorship. Many sections co-sponsor with CLE Seminars to present programs, with the section responsible for the legal content and the seminars staff responsible for administration and logistics. Because of the benefits of a coordinated approach, and the desirability of promoting live webcasting and other delivery methods, we have decided to require sections to offer co-sponsorship to CLE Seminars for all programs longer than three hours. Again, the new policy will not take effect immediately; to give sections time to adjust, the policy will not take effect until 2017. The policy does not envision that all section programs will be co-sponsored — which is the rule in other states — or that co-sponsorship will necessarily work the same way it does today. We are open to new models and suggestions that further our goals of increased efficiency and greater access to live CLE programming.

With these preliminary decisions made, the Board of Governors directed bar staff to meet with each section to talk about the changes and discuss any concerns. I have attended several of these meetings, as has Tom Kranovich, who wanted to continue with the project that consumed much of his term as OSB president. We have received a lot of feedback, both positive and negative, and some excellent suggestions. The Board of Governors will be discussing that feedback at our annual retreat in November.

One takeaway from the section meetings that troubles me is that some sections clearly do not see themselves as part of the larger bar organization. I suspect we do not interact enough to maintain strong relationships. While that may be understandable given the number of sections we have, I think the Board of Governors could do a better job of connecting sections to the larger organization. That's why we will be hosting a special session for section leaders next spring to talk about the final outcome of all these discussions. This is still a work in progress.

Not coincidentally, the board's next area of program review is bar sections. While each section has its own executive committee and budget, their operations are subsidized by general membership fees. The Board of Governors has always supported that subsidy because of the unquestioned importance of bar sections. Sections promote lawyer networking and collegiality, are active in law improvement and legislative activities and provide valuable educational resources for their members. We do not want any of that to stop. We remain, however, committed to ensuring that all voluntary bar programs operate efficiently and effectively. I would like to share some of the information and questions we have been asking sections (and will continue to ask) in advance of our review.

First, the OSB has a very high number of sections, currently 42 with some talk of number 43 soon to come. State bars of comparable size include Alabama with 27 and Oklahoma with 24. Even larger bars have fewer sections: Washington and Arizona each have 28 and California only 16. Administrative time and expenses increase with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and pay independent contractors to work for them. Questions for discussion include:

Should large sections with adequate means be encouraged to form independent organizations if they want more independence from the OSB?

Should there be a minimum number of members required to maintain a section?

Could some sections be merged?

Do we need a different type of group structure, perhaps with fewer constraints? For example, we could establish online forums open to any bar member interested in a particular area of law, allowing them to communicate and share information without a formal structure.

Second, some sections are carrying large fund balances. The total fund balance for all sections has been increasing year after year, and totaled \$713,337 at the end of 2014. This is not a cost to the bar, but is not a "best practice" for membership organizations and nonprofits. Questions for section leaders include:

Should the OSB have a policy or offer guidelines on appropriate reserves for bar sections?

Should sections with large fund balances be encouraged to decrease membership fees?

Currently the bar's administrative charge to sections is set at 50 percent of the actual cost. Is it necessary to keep subsidizing sections that have fund balances exceeding two or three years of their projected dues revenue?

The Board of Governors will not take up the broader discussion about sections until next year, but your input is welcome now and in the future. If you are a section leader, look for an invitation to the meeting next spring. And please feel free to share your thoughts with me any time by sending an email to [president@osbar.org](mailto:president@osbar.org).

## ABOUT THE AUTHOR

*OSB President Rich Spier is a mediator in Portland.*

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DRAFT



# SECTION SUMMIT

OREGON STATE BAR





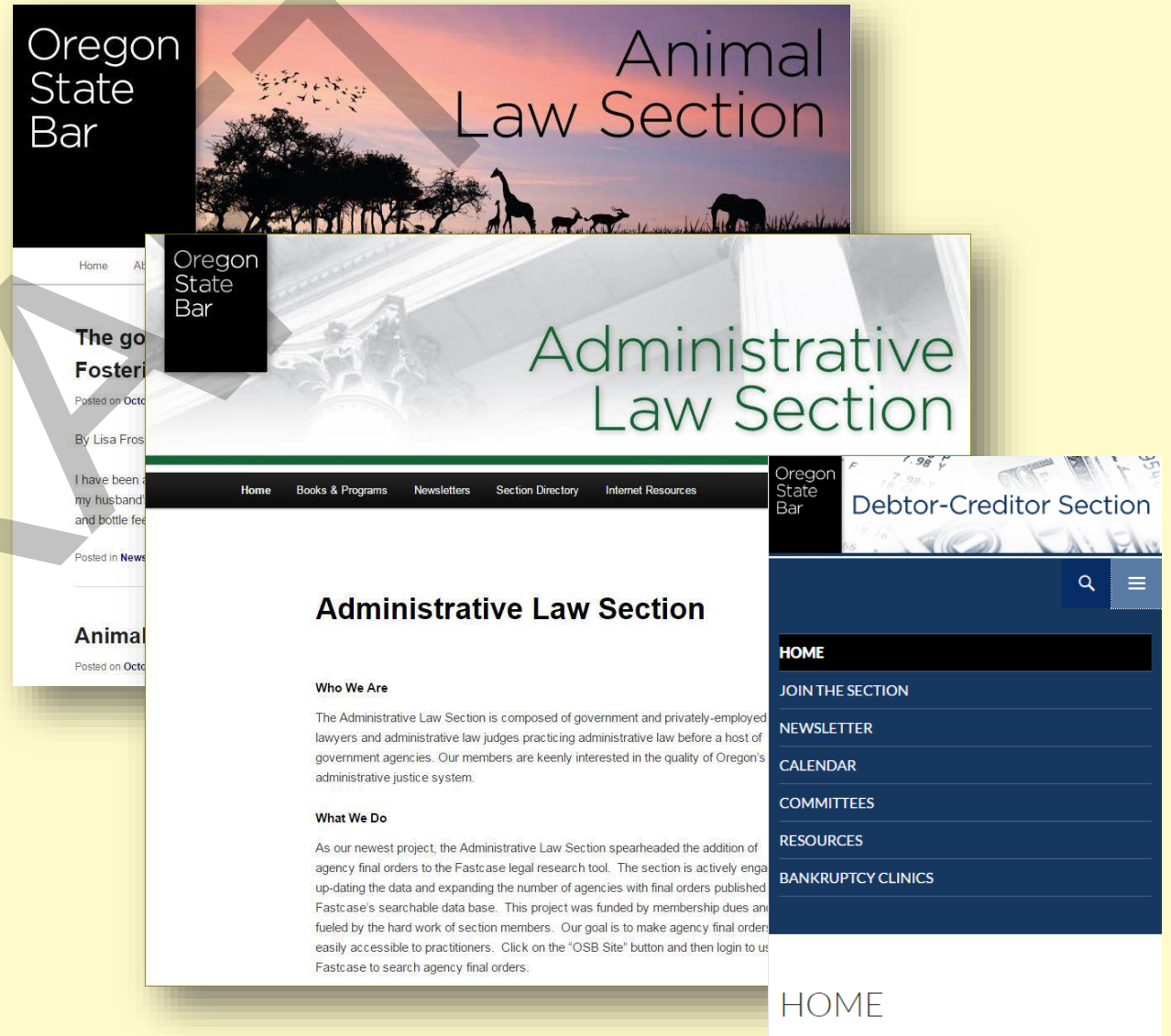
# WEBSITES

MIGRATION TO OSB WORDPRESS



# OSB WORDPRESS PLATFORM

- Set up and hosting of basic sites provided by the OSB
- Themes that are both mobile responsive and ADA accessible
- OSB branded for ready ID
- Easy-to-use content management system
- Free training for editors
- 17 section sites currently migrated to the OSB WordPress platform with another 7 in process





# EVENT REGISTRATION

OPTIONS FOR SECTIONS

## Registration Service Levels

	Standard	Basic	Special
Cost to section	\$10 per	\$5 per	\$100 flat fee
CLE hours	≤ 4 hrs.	≤ 4 hrs.	≤ 2 hrs.
Event limit per year	Unlimited	Unlimited	4
Registration pricing options	3 (\$2 >3)	2	Free only
<b><i>Services included:</i></b>			
Email announcements sent by OSB	3	1	1
Registration link for use on section websites and list serves	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Registration help from CLE Service Center	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Automatic registration confirmation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Listing on OSB events calendar	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Generic forms, attendee name badges and speaker name tents	<input checked="" type="checkbox"/>		
Attendance reporting to MCLE	<input checked="" type="checkbox"/>		
Course materials posted online	<input checked="" type="checkbox"/>		
Audio recording - optional for mp3 download	<input checked="" type="checkbox"/>		

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas

**CO-SPONSORSHIP**

# Co-sponsored Event Services

- All registration services offered above  
*Plus...*
- Program, speaker and event planning and project management
- Course material collection and production
- Customized marketing materials
- On-site staffing
- Webcasting (when available)
- Video and/or audio recording (when available)
- Scholarships and tuition assistance
- Credit card merchant fees paid by OSB
- MCLE application and payment

## CO-SPONSORSHIP

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas



**Q & A**

DRAFT



# Section Fund Balances

\$733,778 at the end of 2015

# Section Structure & Alternatives

42 sections in 2016



# **SECTION SUMMIT**

OREGON STATE BAR



Section Officers:

Thanks to all who participated in the recent Section Summit, and to all of you who hosted us at your section executive committee meetings over the past year and a half.

A summary of the new CLE seminar registration options, as well as more detail on co-sponsorship, is available here <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>. This document will continue to evolve based on your suggestions and a better understanding of how event registration will work with the new software platform we are installing later this year. I apologize for the delay in getting this to you.

I also want to clarify that we are not attempting to limit section CLE or prevent sections from offering free or low-cost programs to their members. Our concern is that under our existing policies some of those programs are effectively subsidized with mandatory bar fees. The new policies reflect the board's commitment to ensuring all bar CLE programs cover their costs, whether they are offered by our CLE Seminars Department or a bar committee, section or division. We are also committed to making high-quality CLE available to all members and think the policy changes will advance that goal.

We have tried to be responsive to feedback received over the last year about how to implement the policy changes, and we will continue to adjust as we move forward. I welcome your comments and suggestions, which I will present to the Board of Governors. I will write again soon with any updates, including the questions about section structure and section fund balances that we did not have time to address at the summit.

Helen Hirschbiel, CEO/Executive Director  
[hhirschbiel@osbar.org](mailto:hhirschbiel@osbar.org)  
(503) 620-0222 ext. 361

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to request accommodations for a Section meeting or event, please contact Sarah Hackbart at [shackbart@osbar.org](mailto:shackbart@osbar.org) or 503 431-6385 as soon as possible but no later than 48 hours before the scheduled event. More information about accommodations can be found [here](#)

Change how the bar communicates with you! Do you want email from certain bar groups sent to a secondary email address? Just visit [www.osbar.org/secured/login.asp](http://www.osbar.org/secured/login.asp) and log in using your bar number and password, then click on the Manage Your Profile tab from the Dashboard to adjust your communication preferences.

Please note that while you can opt out of some bar communications, you cannot opt out of regulatory notices that may affect your membership status. Also note that other groups – including the Professional Liability Fund – maintain their own email and contact lists. Please contact these groups directly with any questions about their lists.



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January 20, 2016

Helen Hirschbiel
Chief Executive Officer/Executive Director
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281

Re: OSB's Proposed Changes to Section Programming

Dear Helen:

Several months ago, representatives from the Oregon State Bar met with the labor and employment section's executive committee to discuss potential changes to section programming. One of the proposed changes would require sections to use OSB staff and services when sponsoring continuing legal education seminars (CLEs) and to split revenue from section CLEs with the Bar.

The labor and employment section sponsors an annual CLE. In the past, the section has cosponsored its CLE with the Bar, using the Bar's services and staff and sharing revenue with the Bar. The section discontinued cosponsorship with the Bar after finding that it is more cost effective to use limited services provided by the Bar and rely on volunteers from the section's executive committee instead. By using volunteers from the committee, the section has been able to increase its programming on a limited budget.

For the September 2015 CLE, the section incurred the following expenses from the Bar, using only limited services:

Table with 4 columns: Service, Quantity, Cost, Expenses. Rows include Registration, Materials Production, and Total.

Using only limited services from the Bar, the section was able to save enough money to provide five (5) scholarships to the 2015 CLE, which included registration and hotel accommodations to section members who would not have otherwise been able to attend the CLE. The section was also able to provide free registration, hotel accommodations, and travel reimbursement to speakers, and reduced registration fees for law students and recent law school graduates. While CLEs held outside the Portland area typically result in a net financial loss for the section, the 2015 CLE held at Salishan generated net revenue. Had the section been required to cosponsor the 2015 CLE with the Bar, it is unlikely that the section would have been able to provide the same benefits for section members without incurring additional costs.

The last time the section cosponsored a CLE with the Bar was in 2012. The net revenue for the 2012 program was \$3,351.45. However, the section only received \$304. The Bar received the remaining \$3,047.45 under the Bar's revenue sharing formula. Notably, the 2012 CLE did not provide any scholarships similar to those provided at the 2015 CLE.

When the section used the Bar's limited registration services for its 2014 CLE, the net revenue was approximately \$13,927. The section received the entire amount because it chose not to cosponsor the event with the Bar. The section was able to use this revenue to provide scholarships to the annual CLE and provide programs to section members at little to no cost, including the highly successful 2015 Labor & Employment Law Boot Camp and several breakfast briefings.

Requiring sections to use the Bar's staff and services and share revenue with the Bar will reduce section revenues and ultimately lead to reduced services and benefits for section members. Surely the Bar shares the section's concerns for maintaining member access to programming and providing scholarships and networking opportunities for all members. A better approach would allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue sharing with the Bar. The Bar could allow sections to choose from a variety of services, including event registration, production/printing of materials, advertising, on-site staff assistance, catering planning, A/V assistance, and general event coordination. I am confident sections will continue to take advantage of such services, which would allow the Bar to generate revenue from section CLEs without risk of depleting section revenues to the point of compromising event programming.

Please feel free to contact me if you have questions or would like to discuss this. Representatives from the labor and employment executive committee would appreciate the opportunity to present these concerns to the Board of Governors or any other committee or work group reviewing the proposed changes.

Sincerely,

***Sarah K. Drescher***

Sarah K. Drescher  
Chair, OSB Labor & Employment Section



# Oregon

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May 27, 2016

Ms. Helen Hierschbiel  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Re: OSB's Proposed Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Constitutional Law Section's Executive Committee joins in the letter dated January 20, 2016, from the Labor & Employment Section's Chair Sarah Drescher. A better approach is to allow section to use the Bar's services at a reasonable cost without requiring cosponsorship or revenue sharing with the Bar.

The Constitutional Law Section used to cosponsor its annual CLE with the Bar. The Constitutional Law Section discontinued cosponsorship in 2014 after growing discontent with the limits the Bar sought to impose on the section's CLE. We were told that these restrictions were necessary because our annual CLE, which has historically attracted around 100 attendees each year, could not meet its expenses. However, over the past two years, the Constitutional Law Section has found that it is able to provide its annual CLE at a significantly reduced cost to most of its members without running a deficit. Instead, the CLE has generated a small profit for the section.

The Constitutional Law Section is concerned about the proposal to give the Bar the "right-of-first-refusal" for all section CLE programming. When you visited our section last July, you explained that the right-of-first refusal option will help the CLE Seminar's Department avoid "subsidizing" competing section CLE programming and break even financially. However, in the section's view, requiring mandatory CLE cosponsorship is not necessary to achieve those goals. In our case, the section produced the CLE without running a deficit; something we had not achieved in recent years with Bar cosponsorship. Additionally, the Bar can

avoid subsidizing section-led CLE programming by charging an appropriate amount for the à la carte services it provides.

We join in the Labor & Employment Section's view that a better approach would be to allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue-sharing with the Bar. We have always enjoyed working with the CLE Seminar Department's staff and would continue to take advantage of the Bar's services.

I and another representative from the Constitutional Law Section Executive Committee are planning on attending the summit on June 8, and we look forward to the opportunity to discuss our section's experience in person with Bar leadership. But, please feel free to contact me if you would like to discuss this or have any questions before then.

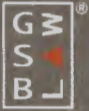
Sincerely,



ERIN J. SNYDER SEVERE  
Deputy Public Defender  
Criminal Appellate Section

DRAFT





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jbragar@gsblaw.com  
Telephone 503 553 3208

June 13, 2016

Board of Governors  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd.  
P.O. Box 231935  
Tigard, OR 97281

RE: Real Estate and Land Use Section's Preliminary Comments about the  
Proposed Changes to Section Programming

To the Board of Governors,

I am the Chair of the Real Estate and Land Use Section (RELU) of the Oregon State Bar (OSB) and submit these comments on behalf of the RELU Executive Committee (RELU EC). The RELU EC understands that the Board of Governors (BOG) is contemplating changes to co-sponsorship of continuing legal education seminars (CLEs) at its June 2016 meeting. Please consider these comments before presenting a draft policy to the Bar Sections for formal comment.

Annually, RELU offers three types of CLEs, its Spring Day-long CLE at the Bar that is successfully co-sponsored with OSB; and two Section-organized event types - Annual Summer Conference and Luncheon CLEs - where the Section wishes to retain flexibility in its staffing. The following describes each type in more detail.

1) Spring Day-Long CLE at the Oregon State Bar Center - This event has been a successful day-long seminar co-sponsored by the OSB. Attendees and the RELU EC appreciate the service by the staff, the venue, and the technological assistance (preparation of CLE materials and webinar interface) provided by OSB. This event previously took place in the Fall, but after communication with OSB staff, we moved the event to the Spring in 2016. Attendance was up and we appreciate the suggestion by staff to move the date. The RELU EC believes this co-sponsored event is a success and do not see a need to change how it is run and coordinated between the RELU CLE Subcommittee and the OSB.

2) Annual Summer Conference - The RELU Annual Summer Conference is a multi-day event, beginning Thursday night through Saturday morning in early August. The long-standing event annually switches location between the Oregon Coast (Salishan) and Bend (typically the

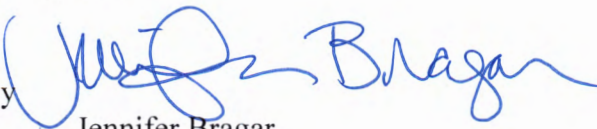
Riverhouse). The conference draws between 200-300 attendees from all around the state depending on the year and location. The event has successfully been organized by our Annual Summer Conference CLE Subcommittee with the guidance and participation of our long-time conference director, Norma Freitas. Last year, RELU relied on the OSB staff to run the on-location event. We found the staff pleasant and well-intentioned, but overall felt they were not familiar enough with the venue or the policies and practices of the event, and had to find and ask our coordinating committee members to address questions that arose. Our members and coordinating committee were not served as well as when Norma Freitas staffed the event. As a result, the RELU EC entered into a contract with Norma Freitas for 2016 to attend and staff the Annual Summer Conference, as she had for more than 10 years. We want to be able to continue to contract with outside consultants to staff the Annual Conference and ensure that funds are available for the Section to do so under the proposed co-sponsorship policy.

3) Luncheon CLEs - RELU sponsors approximately 6 lunchtime CLEs at a downtown Portland location. The effort is coordinated by our Luncheon CLE Subcommittee and payments for the luncheon are collected by one of the committee members and submitted to OSB for processing. In terms of this luncheon programming, the RELU EC's desired outcome is a co-sponsorship that streamlines payment collection and processing through OSB but retains the Subcommittee's ability to respond to current events for luncheon topics. In other words, these luncheons would not be successful if we do not have flexibility in terms of choosing the date for the luncheon (this is venue driven). In addition, the Luncheon Subcommittee would not want to have to decide topics too far in advance because the new co-sponsorship policy would impose earlier deadlines for topic choice and mailings. Last, the lunchtime CLEs are videotaped at a fee to the Section, and made available on our website for free viewing. If RELU can gain a better understanding of pricing for the recording fees under the co-sponsorship policy and whether we would be required to charge for the later viewing, that would be helpful to our future planning efforts.

Thank you for your consideration of these comments. We look forward to working with OSB to create a co-sponsorship program that works for the RELU Section and OSB.

Sincerely,

GARVEY SCHUBERT BARER

By   
Jennifer Bragar

cc: Amanda Lunsford (by e-mail)  
Dani Edwards (by e-mail)  
Karen Lee (by e-mail)



# Oregon

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August 4, 2016

Ms. Helen Hierschbiel  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Re: OSB's Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Criminal Law Section's Executive Committee joins the executive committees of the Labor and Employment Section and the Constitutional Law Section in opposing the changes undertaken by the Bar granting a "right of first refusal" to cosponsor section CLE events. Many of the reasons for our disagreement with the Bar's changes are ably expressed in Sarah Drescher's letter to you dated January 20, 2016, and Erin Severe's letter to you dated May 27, 2016. I write separately to highlight our specific concerns.

The large majority of our section members are (1) attorneys who work in district attorney offices, and (2) attorneys in firms, groups, or solo practices who are appointed by the court to represent indigent clients. Those attorneys serve the public good while being compensated at rate significantly less than their colleagues in the private bar.

The financial needs of the section members has always guided the executive committee's actions. In the six years that I have served on the committee, our section dues have remained at \$20. The cost of our annual CLE, which typically allows attendees to claim five to six hours of MCLE credits, including an hour of ethics, elder or child abuse reporting, diversity, etc., has remained around \$120 for section members, with discounts available for new attorneys and early registrants. My understanding is that those rates predate my tenure on the committee by several years.

Long ago, the executive committee made the decision that the benefits of co-sponsoring our annual CLE with the Bar were substantially outweighed by the resulting costs to section members. We have continued to use the Bar Center as the CLE venue, and utilize the Bar's CLE Services division for marketing, registration, etc. All other things being equal, I would predict that we would continue to use those services; the Bar Center is centrally located and suitably sized for our event, and Bar staff are responsive, courteous, and professional.



Requiring co-sponsorship, however, would significantly increase the costs to section members, without a corresponding increase in benefits. I have reviewed video of the section summit convened to explain the Bar's reasoning for the new co-sponsorship policy. While the Bar's goals in implementing the changes are laudable, the executive committee does not believe that the changes will further those goals for our section members.

For example, one of the reasons proffered for the changes is insuring that all of the Bar's CLE offerings have a consistent, high level of quality. The Criminal Law Section's annual CLE has consistently received high praise in evaluations submitted by attendees. Another reason offered for the changes is accessibility, with an emphasis on making CLE programs available online for those who are unable to travel to Tigard. The executive committee shares the Bar's focus on accessibility. To that end, for the past four years the section has presented regional CLEs in the fall, including CLE programs in central, eastern, and southern Oregon. The section has also experimented with making the CLE programs available online; however, the lack of interest in such offerings on the part of our section members has rendered the cost-benefit analysis relatively easy to resolve in favor of not incurring that expense.

In short, the Criminal Law Section has for years offered a high-quality annual CLE to its members at a reasonable rate. While the Bar's interest in co-sponsoring more sectional CLE programs is no doubt fueled by good intentions, the executive committee believes that the increased cost of co-sponsorship to its members will far outweigh the relatively few benefits they receive in return.

Sincerely,

Shawn Wiley  
Chair, Executive Committee  
Criminal Law Section

Thanks to all of you who responded to my last message regarding section CLE policies. I have received comments from several sections and will forward those comments to the Board of Governors. This message is intended to start a discussion of two issues we did not have time to cover at the summit: section fund balances and possible alternative structures for bar groups. We did get feedback from some of our meetings with sections last year, but would appreciate additional feedback and comments.

The first issue is our section fund balance. For accounting purposes, section reserves are pooled together in a single fund — the section fund — with each individual section retaining ownership of its own share. There is no reserve policy for the section fund, and no reserve policy for individual sections. The only guidance we offer is through the standard section bylaws, which require all section budgets to include a target reserve plan and a short description of any long-range plans that require an accumulation of funds.

At various points over the past 20 years or so the bar has encouraged sections to “spend down” their reserves. Despite those efforts (and acknowledging that some sections consistently maintain modest reserves) the section fund has continued to grow. At the end of 2005 the fund total was approximately \$508,000; by the end of 2015 it had reached approximately \$734,000. Nonprofit and government organizations commonly set reserve goals equivalent to 2-6 months of operating expenses; currently nearly half of the bar’s sections have reserves exceeding two years of operating expenses.

Our questions for you: Do you think this a problem? If not, why not? If yes, how should it be addressed? Should we have a policy or guidelines on appropriate reserves? Should sections with large fund balances be encouraged to decrease membership fees, offer scholarships or donate excess funds? Should the bar continue subsidizing the administrative costs of sections with large fund balances? [1] Is it even feasible to have a standard reserve policy given our large number of sections, each of which operates somewhat differently?

That last question relates to our second issue, which is whether the section model is too “one size fits all” for our members. The OSB has a very high number of sections — currently 42. Washington has 27, Arizona 28 and California only 16. Some small sections struggle to provide services to their members and maintain a full roster of executive committee members. Others have expressed dissatisfaction with the constraints that come with the OSB umbrella, such as limits on legislative activities. Crafting policies that are acceptable to all 42 sections can be difficult, and administrative costs increase when new sections, or even new section programs, are added.

Our questions for you: Does the OSB have too many sections? Should large sections with adequate means be encouraged to form independent organizations? Are there any sections that could merge? Should we create “interest groups” or some other less-formal structure as an alternative to sections? Should there be a minimum number of members required to retain the section format?

Again, these are discussion items only. I hope you will discuss these issues with your executive committee members, and that your discussions generate ideas that you are willing to share. I will present your comments and suggestions to the board early next year. Thanks in advance for your consideration.

Helen Hirschbiel, CEO/Executive Director

[hhirschbiel@osbar.org](mailto:hhirschbiel@osbar.org)

(503) 620-0222 ext. 361

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[1] The OSB subsidizes sections by sharing the administrative costs of basic section services. Administrative costs include: dues collection, general accounting services, legislative coordination, bar liaison expenses, maintenance of membership and executive committee rosters, coordination of meeting notices and agendas, and electronic communications (primarily broadcast emails and list serve maintenance). As a policy matter, since 1992 the assessment has been set at 50% of the actual costs. The cost-sharing policy reflects the importance of sections to the bar, the financial needs of smaller sections and the reality that reliance on administrative services varies by section as well as by year.

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to request accommodations for a Section meeting or event, please contact Sarah Hackbart at [shackbart@osbar.org](mailto:shackbart@osbar.org) or 503 431-6385 as soon as possible but no later than 48 hours before the scheduled event. More information about accommodations can be found [here](#)

Change how the bar communicates with you! Do you want email from certain bar groups sent to a secondary email address? Just visit [www.osbar.org/secured/login.asp](http://www.osbar.org/secured/login.asp) and log in using your bar number and password, then click on the Manage Your Profile tab from the Dashboard to adjust your communication preferences.

Please note that while you can opt out of some bar communications, you cannot opt out of regulatory notices that may affect your membership status. Also note that other groups – including the Professional Liability Fund – maintain their own email and contact lists. Please contact these groups directly with any questions about their lists.

## Delegate Resolution No. 1

### **ALLOW SECTIONS TO OPT OUT OF COSPONSORING CLE PROGRAMS WITH OSB**

*Whereas*, starting in 2017, the OSB is requiring all OSB sections that provide CLE programs of four (4) hours or more to cosponsor those programs with the OSB CLE Seminars Department, unless the OSB CLE Seminars Department decides that it does not want to cosponsor the program; and

*Whereas*, OSB sections required to cosponsor programs with the Seminars Department will be required to split revenue generated from those programs with the OSB CLE Seminars Department at a fixed percentage or rate; and

*Whereas*, splitting revenue generated from section CLE programs will result in a loss in revenue for sections that have developed successful CLE programs without previously cosponsoring those programs with the Seminars Department; and

*Whereas*, OSB sections required to cosponsor CLE programs with the Seminars Department will lose the right to establish the budget and set prices for registration, meals, printed course materials, and any other separately priced items associated with the program; and

*Whereas*, OSB sections that would be negatively impacted by mandatory cosponsorship would like the opportunity to work with the Board of Governors and OSB staff to identify alternatives or potential compromises that would meet the Board's objectives while addressing sections' concerns; now, therefore, be it

*Resolved*, that OSB sections that provide CLE programs of four (4) hours or more may opt out of cosponsoring CLE programs with the OSB Seminars Department.

#### **Background**

Starting in January of 2017, OSB sections that provide CLE programs of four (4) hours or more in length will be required to notify the OSB CLE Seminars Department (Seminars Department) of the program. The Seminars Department can then choose to cosponsor the program with the section. According to the OSB, "[t]he

programs we are most likely to want to cosponsor are ones where the subject is of broad general interest or there is a lack of existing quality content.”<sup>1</sup>

If the Seminars Department chooses to cosponsor the program, the section is required to cosponsor the program with the Seminars Department. There is currently no way for sections to opt out of cosponsorship.

When a section is required to cosponsor a program with the Seminars Department, the Seminars Department will establish the budget for the program and set the prices for registration, meals, printed course materials, and any other separately priced items.<sup>2</sup> The section is also required to participate in revenue sharing with the Seminars Department.

The level of revenue sharing depends on the length of the program. For full day programs with more than \$1,000 in net revenue, the section will receive only \$15 for each registration paid at the early, regular or new lawyer rate.<sup>3</sup> For half-day programs with more than \$500 in net revenue, the section will only receive \$8 for each registration paid at the early, regular or new lawyer rate.<sup>4</sup> However, complimentary and other special or discounted registration rates—including discounted section member registration rates—are not included in the revenue sharing calculation.<sup>5</sup> As a result, if a large number of program attendees are section members whose registration is discounted at a section member rate, the section receives no revenue from those registrations.

Multi-day meal-inclusive events must share revenues on a percentage basis that includes an administrative fee. The administrative fee for programs held in 2017 will be 18% of gross event revenue, i.e., all registration, sponsor, exhibitor and any other revenue that is processed by the Seminars Department. After paying the 18% administrative fee to the Seminars Department, the section then must split any remaining net revenue with the Seminars Department.

Prior to these changes, sections could choose to cosponsor CLE programs with the Seminars Department, but cosponsorship was not required. Sections that did not cosponsor programs had the ability to pay for individual services provided by the Seminars Department, such as registration services, compilation of course

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<sup>1</sup> <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

materials, print services, and signage services, without relinquishing control over program decisions and without required profit sharing.

This resolution would maintain the status quo by allowing sections to choose whether to cosponsor CLE programs with the OSB CLE Seminars Department.

This resolution seeks to maintain the status quo so that the sections, Board of Governors, and OSB staff have additional time to identify potential alternatives before the OSB implements mandatory cosponsorship under the terms described above, with the goal of developing a revised policy that would meet the Board's objectives while addressing the concerns of sections.

### **Financial Impact**

Because this resolution seeks to maintain the status quo of 2016, it would not have a financial impact when compared to 2016. If passed, the resolution would have a financial impact in 2017, when mandatory cosponsorship will be implemented.

The OSB estimates it can increase revenue for the CLE Seminars Department by approximately \$20k - \$30k per year by requiring cosponsorship of section CLEs.

By allowing sections to opt out of mandatory cosponsorship, the CLE Seminars Department would not have the right to share in profits from section CLEs and would lose the ability to generate approximately \$20k - \$30k per year.

*Presenters:*

*Sarah Drescher, Chair, OSB Labor & Employment Section*

**Oregon State Bar  
Special Open Session of the Board of Governors  
October 7, 2016  
Minutes**

President Ray Heysell called the meeting to order at 11:45 a.m. on October 7, 2016. The meeting adjourned at 12:38 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Guy Greco, Michael Levelle, Vanessa Nordyke, Per Ramfjord, Julia Rice, Josh Ross, Rich Spier, Kate von Ter Stegge, Tim Williams, and Elisabeth Zinser. Not present were Rob Gratchner, John Mansfield, Kathleen Rastetter, Kerry Sharp, and Charles Wilhoite. Staff present were Helen Hirschbiel, Rod Wegener, Amber Hollister, Dawn Evans, Susan Grabe, Kay Pulju, Dani Edwards, and Camille Greene. Also present was Carol Bernick, PLF CEO.

**1. Call to Order**

Mr. Heysell called the meeting to order.

**2. Budget & Finance Committee - 2017 Budget**

On behalf of the Committee, Mr. Levelle asked Mr. Wegener to update the board on the Budget & Finance Committee's proposed budget for 2017. The Budget & Finance Committee will meet again to finalize the budget before presenting to the board for approval on November 19, 2016.

**3. Approve 2016 HOD Agenda**

Mr. Heysell presented the preliminary HOD agenda.

Mr. Heysell asked whether a BOG member was interested in presenting the BOG Veteran's Day Resolution. Mr. Chaney volunteered to present the Veteran's Day resolution.

Mr. Heysell asked whether any BOG members were interested in presenting the In Memoriam resolution. Mr. Williams, Mr. Greco, and Ms. Costantino volunteered.

Mr. Heysell then asked for BOG positions on the remaining four delegate resolutions.

The board agreed by consensus to support Delegate Resolution #1 re: Adequate Funding for Legal Services.

**Motion:** Mr. Ross moved, Mr. Greco seconded, and the board unanimously voted to take no position on Delegate Resolution #2 re: Implementation of "Writing for the Bar Mentorship Program".

**Motion:** Mr. Bachofner moved, Mr. Greco seconded, to oppose the resolution. Mr. Bachofner withdrew his motion and Mr. Greco withdrew his second. Mr. Ramfjord moved, Ms. von Ter Stegge

seconded, and the board voted to oppose Delegate Resolution #3 re: Benefits of Licensure of Limited Licensed Legal Technicians. Mr. Bachofner was opposed, and Mr. Greco abstained. Mr. Ramfjord volunteered to present the reasoning for the board's opposition and request for HOD input into the process. Ms. Hirschbiel will contact Mr. Lang to discuss possible withdrawal of his resolution from the HOD agenda.

**Motion:** Ms. Nordyke moved, Mr. Ramfjord seconded, and the board voted to support Delegate Resolution #4 re: Support for Public Defense Providers. Mr. Greco abstained.

**Motion:** Mr. Bachofner moved, Mr. Williams seconded, and the board unanimously voted to oppose Delegate Resolution #5 re: OSB Section Co-Sponsorship. Mr. Spier and Mr. Bachofner volunteered to present the reasoning for the board's opposition.

**Motion:** Ms. Nordyke moved, Ms. Costantino seconded, and the board voted unanimously to adopt the preliminary HOD agenda as presented. **[Exhibit A]**

Mr. Heysell announced that Ms. Nordyke is the Nominating Committee's candidate for the 2017 President-Elect. The 2017 President-Elect will be determined at the November 19, 2016 BOG meeting.

DRAFT



# Youth, Rights & Justice

ATTORNEYS AT LAW

October 24, 2016

Camille Greene  
PO Box 231935  
Tigard, OR 97281-1935

**RECEIVED**

**OCT 27 2016**

**Oregon State Bar  
Executive Director**

Dear Camille,

Thank you so much for attending our 8<sup>th</sup> Annual Wine & Chocolate Gala: Justice is Sweet. With your help, Youth, Rights & Justice raised \$152,000 to help build a just future for Oregon's children.

Attached is a detailed receipt for your contributions, and this acknowledgement verifies that we have received your donation of \$350.00.

YRJ believes, that every child has the right to justice, to love, to a safe home, to parenting, to education, and to an equal opportunity to grow up and live a successful adult life. Injustice is harsh, but justice is sweet.

YRJ's attorneys go to extraordinary lengths to give Oregon's vulnerable children ordinary lives. Thank you for helping create happier endings for Oregon's children in need. You truly have made a difference in their lives.

Best regards,



Mark McKechnie  
Executive Director  
Federal Tax ID#: 93-0900864

# Youth, Rights & Justice

ATTORNEYS AT LAW

An independent, not-for-profit law firm, Est. 1975

Youth Rights & Justice

2016 Gala

## Receipt for Camille Greene

Bidder #: 383

Camille Greene  
PO Box 231935  
Tigard, OR 97281-1935

### Purchases:

Pkg.#	Package Name	Qty.	Value	Sale Price
920	Individual Ticket (2 admissions)	2	\$170.00	\$350.00
			<b>Value:</b>	<b>\$170.00</b>
<b>GRAND TOTAL:</b>				<b>\$350.00</b>

### Payments:

Date	Payment Type	Check/Card Ref	Amount
08/15/16	Credit Card Online		\$350.00
<b>Total Payments:</b>			<b>\$350.00</b>

**Total Due:** **\$0.00**

Youth, Rights & Justice is a 501 (c) (3) non-profit.

The amount of this payment deductible for federal income tax purposes is limited to the excess of the amount contributed over the value of the goods and services provided by Youth, Rights & Justice.

Please note that the Golden Ticket Raffle (\$50) is not tax deductible.

Tax ID: 93-0900864

**From:** [Helen Hierschbiel](#)  
**To:** [Camille Greene](#)  
**Subject:** FW: Good and Bad News From the ABA Futures Report (Perspective) | Big Law Business  
**Date:** Tuesday, October 18, 2016 7:01:18 PM

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Could you include this in the folder for the next BOG meeting?

Thanks.

**Helen Hierschbiel**  
CEO/Executive Director  
503-431-6361  
[HHierschbiel@osbar.org](mailto:HHierschbiel@osbar.org)

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**From:** Sheila M. Blackford [mailto:Sheilab@osbplf.org]  
**Sent:** Thursday, October 13, 2016 9:36 AM  
**To:** Carol Bernick <carolb@osbplf.org>; Helen Hierschbiel <HHierschbiel@osbar.org>  
**Subject:** Good and Bad News From the ABA Futures Report (Perspective) | Big Law Business

Hi Carol & Helen

I thought you might be interested in this piece from BNA's Business of Law as a follow up to your recent Future of Law conference. Here is lead and link to short article is below. Talks about Washington's Limited Legal Practitioner program.

## Good and Bad News From the ABA Futures Report (Perspective)

September 6, 2016

**Editor's Note:** *The author of this article is a professor at University of Tennessee College of Law and wrote the book, [Glass Half Full: The Decline and Rebirth of the Legal Profession](#).*

### **By Ben Barton, Professor of Law, University of Tennessee College of Law**

In case you hadn't noticed, after decades (centuries?) where the practice of law bumped along relatively unchanged, we are in the midst of a technology driven revolution. Technology, outsourcing, insourcing, and a glut of under- and un-employed recent law graduates has

upended a lot of what we thought we knew about the business of law. Part of this revolution assists lawyers — the use of algorithms to handle e-discovery or using lawyers in India for grunt work, for example. Part of it replaces lawyers — think LegalZoom or Rocketlawyer.

<https://bol.bna.com/good-and-bad-news-from-the-aba-futures-report-perspective/>

Best,  
Sheila

Sent from my iPhone