

Oregon State Bar
Meeting of the Board of Governors
February 10, 2017
Salem Conference Center, Salem, OR
Open Session Agenda

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00am on February 10, 2017.
Items on the agenda will not necessarily be discussed in the order as shown.*

Friday, February 10, 2017, 9:00am

1. Call to Order

2. 2016 Retreat Debrief and Next Steps

- | | | | |
|----|---|--------|---------|
| A. | Finalization of Agenda [Mr. Levelle] | | |
| B. | Generative Topics [Mr. Levelle/Ms. Hierschbiel] | | |
| C. | Strategic Functions [Mr. Levelle/Ms. Nordyke] | Action | Exhibit |
| D. | Areas of Focus for 2017 [Mr. Levelle/Ms. Nordyke] | Action | Exhibit |

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

- | | | | |
|----|--|--------|---------|
| A. | Appellate Screening Special Committee [Mr. Ramfjord] | | |
| B. | Board Development Committee [Mr. Ramfjord] | | |
| 1. | Appointments to Bar Groups and Affiliated Boards | Action | Handout |
| 2. | Board of Bar Examiners Co-grader Input | Action | Handout |
| 3. | Appointment to BPSST Policy Committee | Action | Handout |
| C. | Budget & Finance Committee [Mr. Chaney] | | |
| 1. | 2016 Financial Report | Inform | Handout |
| D. | Policy & Governance [Ms. Nordyke] | | |
| 1. | Approve proposed revision to Futures Task Force charge | Action | Exhibit |
| 2. | Approve proposed amendments to OSB Bylaw 14.4 | Action | Exhibit |
| E. | Public Affairs Committee [Ms. Rastetter] | | |
| 1. | Legislative Update | Inform | |

4. Professional Liability Fund [Ms. Bernick]

- | | | | |
|----|--|--------|---------|
| A. | December 31, 2016 Financial Statements | Inform | Exhibit |
| B. | Approve Proposed Revisions to PLF Policy 5.200 | Action | Exhibit |
| C. | 2016 Claims Attorney and Defense Counsel Evaluations | Inform | Exhibit |

5. OSB Committees, Sections, Councils and Divisions

A. MCLE Committee

- | | | |
|---------------------------------------|--------|---------|
| 1. Amend MCLE Rules re: UBE Admittees | Action | Exhibit |
|---------------------------------------|--------|---------|

- | | | |
|--|--------|---------|
| B. Oregon New Lawyers Division Report [Ms. Eder] | Inform | Exhibit |
|--|--------|---------|

6. Consent Agenda

A. Client Security Fund Committee [Ms. Hirschbiel]

- | | | |
|-------------------------------|--------|---------|
| 1. Request for Review | | |
| a) SMITH (Ballantyne) 2015-23 | Action | Exhibit |

- | | | |
|--|--------|---------|
| 2. CSF Financial Reports and Claims Paid | Inform | Exhibit |
|--|--------|---------|

B. Legal Ethics Committee [Ms. Hirschbiel]

- | | | |
|--|--------|---------|
| 1. Proposal to Amend OSB Formal Op No 2005-125 | Action | Exhibit |
|--|--------|---------|

C. Unclaimed Lawyer Trust Account [Ms. Hollister]

- | | | |
|------------------|--------|---------|
| 1. Annual Report | Inform | Exhibit |
|------------------|--------|---------|

D. Report of Officers & Executive Staff

- | | | |
|--|--------|---------|
| 1. President's Report [Mr. Levelle] | Inform | |
| a) BOG Representative to OFALA | Action | Exhibit |
| 2. President-elect's Report [Ms. Nordyke] | Inform | |
| 3. Executive Director's Report: Program Evaluations [Ms. Hirschbiel] | Inform | Exhibit |
| 4. Director of Regulatory Services [Ms. Evans] | Inform | Exhibit |
| 5. Director of Diversity & Inclusion [Mr. Puente] | Inform | |
| 6. MBA Liaison Report [Mr. Levelle & Ms. Costantino] | Inform | |

E. Approve Minutes of Prior BOG Meetings

- | | | |
|---|--------|---------|
| 1. Regular Session November 19, 2016 | Action | Exhibit |
| 2. Special Open Session January 6, 2017 | 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

STATUTORY CHARGE

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹ The Oregon State Bar (OSB) is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.² As a unified bar, the OSB may use mandatory member fees only for activities that are germane to the purposes for which the bar was established.³

MISSION

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

STRATEGIC FUNCTIONS

The BOG has translated the statutory charge and mission into five core functions that provide overall direction for OSB programs and activities:

FUNCTION #1 – REGULATORY BODY

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

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

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

FUNCTION #3 – PROFESSIONAL ORGANIZATION

GOAL: Promote professional excellence of bar members.

FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

GOAL: Advance diversity, equity and inclusion within the legal community and the provision of legal services

FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

GOAL: Foster public understanding of and access to legal information, legal services, and the justice system.

¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

² The OSB's responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

³ In *Keller v. State Bar of California*, 499 US 1,111 SCt 2228 (1990), the US Supreme Court held that an integrated bar's use of compulsory dues to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

FIDUCIARY ROLE

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.

AREAS OF FOCUS FOR 2017

1. Provide direction to and consider recommendations of Futures Task Force.
2. Develop and adopt OSB Diversity Action Plan.
3. Continue review of sections and make policy decisions about how to proceed on the following issues:
 - a. Section Fund Balances
 - b. Number of Sections
 - c. CLE co-sponsorship policy
4. Address House of Delegates quorum issues.
5. Review new lawyer programs (NLMP, ONLD, other?) for adherence to mission, value to members.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
From: Policy & Governance Committee
Re: Proposed revision to Futures Task Force charge

Action Recommended

Approve revision of the charge for the Futures Task Force.

Options

1. Approve the recommended change to the Futures Task Force charge and forward the amended charge to the BOG for adoption.
2. Decline to approve the proposed revision.

Background

In April 2016, the Board of Governors approved the creation of a Futures Task Force with the following charge:

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

The BOG subsequently approved the creation of two committees for the Task Force, one focused on regulatory issues, and the other focused on exploring innovative legal service delivery models that would both allow for more sustainable law practices and improved access to justice.

The committees have met several times over the last few months. In their meetings they have reviewed and questioned the charge for the Futures Task Force. Specifically, they noted a difference in its treatment of the public and bar members. The charge directs an examination of how the bar “can best serve its membersand better serve and protect the public....” As written, the charge seems to suggest that member service is a higher priority than public service. Given the bar’s statutory mandate as a regulatory entity in service to the public, the committees believe this difference in treatment is unintentional.

The committees have asked that the BOG consider amending the charge to reflect the bar's interest in best serving both members and the public. The following proposal seeks to do just that:

Examine how the Oregon State Bar can best protect the public and support lawyers' professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

At its meeting on January 6, 2017, the Policy & Governance Committee reviewed this matter and now recommends that the BOG approve the proposed revised charge for the Futures Task Force.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
From: Policy & Governance Committee
Re: Proposed amendment to OSB Bylaw 14.4 regarding committee appointments

Action Recommended

Waive the one-meeting notice requirement and approve the proposed amendment to OSB Bylaw 14.4 to reflect the Board Development Committee's practice for committee appointments.

Options

1. Approve the recommended revisions to OSB Bylaw 14.4 and forward the amendments to the BOG for adoption.
2. Decline to amend the bylaws.

Background

The Board Development Committee routinely evaluates and makes new member appointment recommendations for various bar committees, councils, and boards. There are a number of factors the committee considers during its selection process including the group's membership balance with regard to age, disability status, gender and gender identity, geographic location, race and ethnicity, sexual orientation, as well as type and years of practice.

During its November 2016 meeting, the committee approved the following policy describing its practice of considering disciplinary matters during the appointment process:

OSB Board Development Committee Policy

Prior or Pending Disciplinary Matters

In making appointment recommendations to the Board of Governors, the OSB Board Development Committee may consider the applicant's pending or prior disciplinary proceedings. In so doing, the Committee recognizes that, because the vast majority of bar complaints before the Client Assistance Office do not move forward, the mere existence of such a complaint will not preclude appointment. However, the existence of a pending complaint where charges of misconduct have been approved for filing by the State Professional Responsibility Board will disqualify an applicant until the charges have been resolved. In addition, the Committee will not appoint to any committee a member currently subject to disciplinary probation or suspension. In considering

past disciplinary conduct, the Committee will take account of the nature and severity of such conduct as well as the length of time that has passed since they occurred.

OSB Bylaw 14.4 pertains to committee membership and should be amended to reflect the Board Development Committee's practice in making appointments. Based on the aforementioned policy, the following bylaw change is recommended.

Section 14.4 Membership

All members of standing committees must be active members of the Bar. No member shall be eligible for appointment to a standing committee if charges of misconduct have been approved for filing or if the member is subject to current disciplinary probation or suspension. All members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year. The Board appoints members to fill vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

The Policy & Governance Committee reviewed this proposal at its January 6, 2017 meeting and recommends that the Board waive the one meeting notice requirement and adopt the proposed bylaw changes immediately.

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Processed on 1/19/2017

**Oregon State Bar
Professional Liability Fund
Financial Statements
12/31/2016**

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6	Excess Program Operating Expenses
7	Combined Investment Schedule

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**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
12/31/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$7,354,873.39	\$3,625,164.48
Investments at Fair Value	50,383,557.38	49,038,036.08
Due from Reinsurers	590,655.91	2,939,481.05
Other Current Assets	597,225.45	460,135.11
Net Fixed Assets	686,770.22	740,183.20
Claim Receivables	70,272.46	27,626.98
Other Long Term Assets	<u>1,567.87</u>	<u>11,123.09</u>
TOTAL ASSETS	<u>\$59,684,922.68</u>	<u>\$56,841,749.99</u>

LIABILITIES AND FUND POSITION

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$180,505.07	\$217,432.90
Due to Reinsurers	\$43,598.90	\$51,724.54
Deposits - Assessments	10,771,504.30	10,847,994.00
PERS Pension Liability	2,110,907.00	2,110,907.00
Liability for Compensated Absences	397,427.82	397,427.82
Liability for Indemnity	14,141,984.17	13,800,000.00
Liability for Claim Expense	14,215,253.40	14,400,000.00
Liability for Future ERC Claims	3,100,000.00	3,100,000.00
Liability for Suspense Files	1,600,000.00	1,600,000.00
Liability for Future Claims Administration (AOE)	2,600,000.00	2,400,000.00
Total Liabilities	<u>\$49,161,180.66</u>	<u>\$48,925,486.26</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$7,916,263.73	\$8,818,065.39
Year to Date Net Income (Loss)	<u>2,607,478.29</u>	<u>(901,801.66)</u>
Net Position	<u>\$10,523,742.02</u>	<u>\$7,916,263.73</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$59,684,922.68</u>	<u>\$56,841,749.99</u>

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**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
13 Months Ended 12/31/2016**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$24,299,773.00	\$24,248,640.00	(\$51,133.00)	\$24,326,359.67	\$24,248,640.00
Installment Service Charge	329,097.00	329,074.00	(23.00)	334,667.00	329,074.00
Other Income	63,203.73	56,000.00	(7,203.73)	91,919.50	56,000.00
Investment Return	<u>3,421,959.69</u>	<u>3,420,035.00</u>	<u>(1,924.69)</u>	<u>(289,722.15)</u>	<u>3,420,035.00</u>
TOTAL REVENUE	<u>\$28,114,033.42</u>	<u>\$28,053,749.00</u>	<u>(\$60,284.42)</u>	<u>\$24,463,224.02</u>	<u>\$28,053,749.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$18,900,000.00			\$17,354,000.00	
Actuarial Adjustment to Reserves	(1,125,407.27)			(280,073.01)	
Net Changes in AOE Liability	200,000.00			(100,000.00)	
Net Changes in ERC Liability	0.00			400,000.00	
Net Changes in Suspense File Liab.	0.00			100,000.00	
Coverage Opinions	122,071.62			130,516.55	
General Expense	16,417.55			56,935.17	
Less Recoveries & Contributions	(69,279.89)			(107.18)	
Budget for Claims Expense		<u>\$18,462,500.00</u>			<u>\$18,462,500.00</u>
Total Provision For Claims	<u>\$18,043,802.01</u>	<u>\$18,462,500.00</u>	<u>\$418,697.99</u>	<u>\$17,661,271.53</u>	<u>\$18,462,500.00</u>
Expense from Operations:					
Administrative Department	\$2,581,843.29	\$2,582,649.00	\$805.71	\$2,617,877.16	\$2,582,649.00
Accounting Department	854,848.74	845,340.00	(9,508.74)	796,768.31	845,340.00
Loss Prevention Department	2,204,096.31	2,191,769.00	(12,327.31)	2,131,309.60	2,191,769.00
Claims Department	2,654,515.11	2,657,711.00	3,195.89	2,689,039.13	2,657,711.00
Allocated to Excess Program	<u>(1,065,979.92)</u>	<u>(1,065,980.00)</u>	<u>(0.08)</u>	<u>(948,415.80)</u>	<u>(1,065,980.00)</u>
Total Expense from Operations	<u>\$7,229,323.53</u>	<u>\$7,211,489.00</u>	<u>(\$17,834.53)</u>	<u>\$7,286,578.40</u>	<u>\$7,211,489.00</u>
Depreciation and Amortization	\$149,328.28	\$162,969.52	\$13,641.24	\$157,776.64	\$162,969.52
Allocated Depreciation	<u>(24,261.00)</u>	<u>(24,261.00)</u>	<u>0.00</u>	<u>(16,980.00)</u>	<u>(24,261.00)</u>
TOTAL EXPENSE	<u>\$25,398,192.82</u>	<u>\$25,812,697.52</u>	<u>\$414,504.70</u>	<u>\$25,088,646.57</u>	<u>\$25,812,697.52</u>
NET POSITION - INCOME (LOSS)	<u>\$2,715,840.60</u>	<u>\$2,241,051.48</u>	<u>(\$474,789.12)</u>	<u>(\$650,443.68)</u>	<u>\$2,241,051.48</u>

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**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
13 Months Ended 12/31/2016**

	<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>
<u>EXPENSE:</u>						
Salaries	\$0.00	\$4,592,634.63	\$4,518,054.00	(\$74,580.63)	\$4,384,739.53	\$4,518,054.00
Benefits and Payroll Taxes	0.00	1,581,038.82	1,620,358.00	39,319.18	1,653,175.43	1,620,358.00
Investment Services	0.00	43,393.50	40,000.00	(3,393.50)	38,314.00	40,000.00
Legal Services	0.00	26,296.75	28,000.00	1,703.25	31,521.01	28,000.00
Financial Audit Services	0.00	22,000.00	23,000.00	1,000.00	22,800.00	23,000.00
Actuarial Services	0.00	24,995.00	34,000.00	9,005.00	46,565.52	34,000.00
Claims Audit Services	0.00	4,870.97	1,800.00	(3,070.97)	0.00	1,800.00
Information Services	0.00	65,059.31	55,452.00	(9,607.31)	42,660.48	55,452.00
Document Scanning Services	0.00	31,181.32	37,418.00	6,236.68	36,007.69	37,418.00
Other Professional Services	0.00	97,637.73	100,996.00	3,358.27	155,394.16	100,996.00
Staff Travel	0.00	18,297.47	16,323.00	(1,974.47)	21,336.57	16,323.00
Board Travel	0.00	50,574.75	39,941.00	(10,633.75)	54,138.20	39,941.00
NABRICO	0.00	14,172.00	15,655.00	1,483.00	13,818.96	15,655.00
Training	0.00	37,796.40	39,300.00	1,503.60	20,621.48	39,300.00
Rent	0.00	547,994.03	551,824.00	3,829.97	520,064.58	551,824.00
Printing and Supplies	0.00	66,802.35	68,992.00	2,189.65	86,957.20	68,992.00
Postage and Delivery	0.00	23,267.56	31,150.00	7,882.44	30,781.27	31,150.00
Equipment Rent & Maintenance	0.00	40,442.29	42,360.00	1,917.71	49,310.47	42,360.00
Telephone	0.00	50,431.54	50,000.00	(431.54)	50,452.85	50,000.00
L P Programs (less Salary & Benefits)	0.00	464,410.44	465,354.00	943.56	440,069.34	465,354.00
Defense Panel Training	0.00	4,125.00	4,125.00	0.00	94,340.25	4,125.00
Bar Books Grant	0.00	200,000.00	200,000.00	0.00	200,000.00	200,000.00
Insurance	0.00	44,650.53	40,000.00	(4,650.53)	42,105.88	40,000.00
Library	0.00	27,222.39	29,436.00	2,213.61	32,345.68	29,436.00
Subscriptions, Memberships & Other	0.00	215,074.87	221,931.00	6,856.13	167,463.82	221,931.00
Allocated to Excess Program	0.00	(1,065,979.92)	(1,065,980.00)	(0.08)	(948,415.80)	(1,065,980.00)
TOTAL EXPENSE	\$0.00	\$7,228,389.73	\$7,209,489.00	(\$18,900.73)	\$7,286,568.57	\$7,209,489.00

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**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
13 Months Ended 12/31/2016**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$791,294.50	\$790,000.00	(\$1,294.50)	\$762,928.71	\$790,000.00
Prior Year Adj. (Net of Reins.)	0.33	6,900.00	6,899.67	883.67	6,900.00
Profit Commission	46,653.47	0.00	(46,653.47)	(4,264.74)	0.00
Installment Service Charge	44,760.00	46,000.00	1,240.00	40,447.00	46,000.00
Investment Return	<u>171,574.22</u>	<u>46,653.00</u>	<u>(124,921.22)</u>	<u>(23,272.12)</u>	<u>46,653.00</u>
TOTAL REVENUE	<u>\$1,054,282.52</u>	<u>\$889,553.00</u>	<u>(\$164,729.52)</u>	<u>\$776,722.52</u>	<u>\$889,553.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$1,138,383.83	\$1,142,927.00	\$4,543.17	\$1,011,100.50	\$1,142,927.00
Allocated Depreciation	<u>\$24,261.00</u>	<u>\$24,261.00</u>	<u>\$0.00</u>	<u>\$16,980.00</u>	<u>\$24,261.00</u>
NET POSITION - INCOME (LOSS)	<u>(\$108,362.31)</u>	<u>(\$277,635.00)</u>	<u>(\$169,272.69)</u>	<u>(\$251,357.98)</u>	<u>(\$277,635.00)</u>

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**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
13 Months Ended 12/31/2016**

	<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>
<u>EXPENSE:</u>						
Salaries	\$0.00	\$589,926.96	\$589,927.00	\$0.04	\$534,708.96	\$589,927.00
Benefits and Payroll Taxes	0.00	192,801.00	192,801.00	0.00	191,539.92	192,801.00
Investment Services	0.00	1,606.50	2,000.00	393.50	1,686.00	2,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	0.00	283,251.96	283,252.00	0.04	222,166.92	283,252.00
Reinsurance Placement & Travel	0.00	8,096.33	9,365.00	1,268.67	12,769.68	9,365.00
Training	0.00	485.00	582.00	97.00	0.00	582.00
Printing and Mailing	0.00	5,743.13	9,000.00	3,256.87	6,119.77	9,000.00
Program Promotion	0.00	14,150.00	15,000.00	850.00	23,169.05	15,000.00
Other Professional Services	0.00	14,412.85	12,500.00	(1,912.85)	299.30	12,500.00
Software Development	<u>0.00</u>	<u>27,910.10</u>	<u>28,500.00</u>	<u>589.90</u>	<u>18,640.90</u>	<u>28,500.00</u>
 TOTAL EXPENSE	 <u>\$0.00</u>	 <u>\$1,138,383.83</u>	 <u>\$1,142,927.00</u>	 <u>\$4,543.17</u>	 <u>\$1,011,100.50</u>	 <u>\$1,142,927.00</u>

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**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
13 Months Ended 12/31/2016**

	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>
Dividends and Interest:				
Short Term Bond Fund	\$0.00	\$131,775.46	\$0.00	\$83,334.20
Intermediate Term Bond Funds	0.00	293,083.84	0.00	390,311.40
Domestic Common Stock Funds	0.00	202,566.46	0.00	189,000.59
International Equity Fund	0.00	231,836.46	0.00	86,219.48
Real Estate	0.00	190,341.84	0.00	181,737.55
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>210,468.78</u>	<u>0.00</u>	<u>288,440.24</u>
Total Dividends and Interest	<u>\$0.00</u>	<u>\$1,260,072.84</u>	<u>\$0.00</u>	<u>\$1,219,043.46</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$0.00	(\$34,742.09)	\$0.00	(\$43,605.58)
Intermediate Term Bond Funds	0.00	173,166.96	0.00	(295,102.97)
Domestic Common Stock Funds	0.00	990,256.55	0.00	(113,276.72)
International Equity Fund	0.00	136,915.83	0.00	(573,498.26)
Real Estate	0.00	252,378.82	0.00	512,886.75
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>815,485.00</u>	<u>0.00</u>	<u>(1,019,440.95)</u>
Total Gain (Loss) in Fair Value	<u>\$0.00</u>	<u>\$2,333,461.07</u>	<u>\$0.00</u>	<u>(\$1,532,037.73)</u>
TOTAL RETURN	<u>\$0.00</u>	<u>\$3,593,533.91</u>	<u>\$0.00</u>	<u>(\$312,994.27)</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$0.00	\$46,666.37	\$0.00	\$38,716.57
Gain (Loss) in Fair Value	<u>0.00</u>	<u>124,907.85</u>	<u>0.00</u>	<u>(61,988.69)</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$0.00</u>	<u>\$171,574.22</u>	<u>\$0.00</u>	<u>(\$23,272.12)</u>

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**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
12/31/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,695,949.02	\$1,586,166.73
Due from Reinsurers	590,655.91	2,939,481.05
Investments at Fair Value	<u>1,323,915.19</u>	<u>(935,580.04)</u>
TOTAL ASSETS	<u>\$3,610,520.12</u>	<u>\$3,590,067.74</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$508.65	(\$608.70)
Due to Primary Fund	\$60.68	\$0.00
Due to Reinsurers	43,598.90	51,724.54
Deposits of Next Year's Assessment	<u>1,445,243.30</u>	<u>1,309,481.00</u>
Total Liabilities	<u>\$1,489,411.53</u>	<u>\$1,360,596.84</u>
Net Position		
Net Position (Deficit) Beginning of Year	\$2,229,470.90	\$2,480,828.88
Year to Date Net Income (Loss)	<u>(108,362.31)</u>	<u>(251,357.98)</u>
Total Net Position	<u>\$2,121,108.59</u>	<u>\$2,229,470.90</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$3,610,520.12</u>	<u>\$3,590,067.74</u>

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**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
12/31/2016**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$5,658,924.37	\$2,038,997.75
Investments at Fair Value	49,059,642.19	49,973,616.12
Due From Excess Fund	60.68	0.00
Other Current Assets	597,164.77	460,135.11
Net Fixed Assets	686,770.22	740,183.20
Claim Receivables	70,272.46	27,626.98
Other Long Term Assets	<u>1,567.87</u>	<u>11,123.09</u>
TOTAL ASSETS	<u>\$56,074,402.56</u>	<u>\$53,251,682.25</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$179,935.74	\$218,041.60
Deposits - Assessments	9,326,261.00	9,538,513.00
PERS Pension Liability	2,110,907.00	2,110,907.00
Liability for Compensated Absences	397,427.82	397,427.82
Liability for Indemnity	14,141,984.17	13,800,000.00
Liability for Claim Expense	14,215,253.40	14,400,000.00
Liability for Future ERC Claims	3,100,000.00	3,100,000.00
Liability for Suspense Files	1,600,000.00	1,600,000.00
Liability for Future Claims Administration (ULAE)	2,600,000.00	2,400,000.00
Total Liabilities	<u>\$47,671,769.13</u>	<u>\$47,564,889.42</u>
Net Position		
Net Position (Deficit) Beginning of the Year	\$5,686,792.83	\$6,337,236.51
Year to Date Net Income (Loss)	<u>2,715,840.60</u>	<u>(650,443.68)</u>
Total Net Position	<u>\$8,402,633.43</u>	<u>\$5,686,792.83</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$56,074,402.56</u>	<u>\$53,251,682.25</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
Memo Date: December 22, 2016 
From: Carol J. Bernick, PLF CEO
Re: 2017 PLF Investment Portfolio Reallocation – PLF Policy 5.200

Action Recommended

Approve proposed revisions to PLF Policy 5.200.

Background

The PLF Board of Directors requests approval of its current asset allocation to include a Senior Secured Bank Loan Strategy. The PLF Investments Committee received presentations from VOYA and CREDIT SUISSE. The Investments Committee has determined that VOYA most closely meets the needs of the PLF. At its December 9, 2016 meeting, the Board of Directors recommended the following:

1. Approve the re-allocation of investment portfolio assets to effect -5% from Real Return Strategies (Diversified Inflation Strategies) and +5% to Senior Secured Bank Loans.

Attachment: PLF Policy 5.200

ASSET CLASS	MINIMUM PERCENT	TARGET PERCENT	MAXIMUM PERCENT
U.S. Equities	17%	24%	31%
International Equities	12%	21%	30%
Fixed Income	20%	26% 31%	32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	5%	5% 0%	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; BOD 10/14/16; BOG 11/19/16)

(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)

5.400 REPORTS TO BOARD OF DIRECTORS

The Board of Directors will receive on a monthly basis a copy of the PLF's financial statement, a copy of any investment reports prepared by the PLF's investment advisors, and such other financial reports as the Chief Executive Officer may present. In addition, the Board of Directors will receive copies of all reports from consulting actuaries and any consultants who evaluate the performance of the PLF's investment advisors. All members of the Board of Directors and Board of Governors will receive a copy of the final annual audit of the PLF.

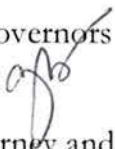
(BOD 7/16/93; BOG 8/13/93)



Professional Liability Fund

CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE : January 5, 2017 .
TO : OSB Board of Governors
FROM : Carol J. Bernick 
RE : 2016 Claims Attorney and Defense Counsel Evaluations

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

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

We closed 931 claims through December 2016 and received 391 evaluations (42%) from the Covered Parties. The results of the 2016 evaluations (updated from the November 30, 2016 numbers) are as follows:

PLF OVERALL:

Total Responses	Very Satisfied	% of Responses	Satisfied	% of Responses	Not Satisfied	% of Responses
391	353	90.28%	36	9.21%	2	0.51%

PLF CLAIMS ATTORNEY:

Total Responses	Very Satisfied	% of Responses	Satisfied	% of Responses	Not Satisfied	% of Responses
391	363	92.84%	27	6.91%	1	0.26%

MEMORANDUM

January 5, 2017

Page 2

DEFENSE COUNSEL:

Total Responses	Very Satisfied	% of Responses	Satisfied	% of Responses	Not Satisfied	% of Responses
242	223	92.15%	18	7.44%	1	0.41%

We are pleased with both the level of response (42%) and the degree of satisfaction expressed by our Covered Parties. The evaluations reflected 99.49% of our Covered Parties were very satisfied/satisfied with the overall handling of their claim, 99.74% were very satisfied/satisfied with the performance of their PLF Claims Attorneys, and 99.59% were very satisfied/satisfied with the performance of their defense or repair counsel. It is hard to imagine how we could obtain more favorable responses.

CJB/ms

Encl.



CONFIDENTIAL EVALUATION FORM
November 30, 2016

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

Covered Party:

Bar No.:

Claimant:

PLF File No:

PLF Claims Staff Attorney: <Claims Attorney>

Assigned Defense Counsel:

I. PLF CLAIMS STAFF:

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

☐ Very Satisfied ☐ Satisfied ☐ Not Satisfied

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

☐ Very Satisfied ☐ Satisfied ☐ Not Satisfied

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

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

I. (e) Other comments or suggestions:

II. DEFENSE OR REPAIR COUNSEL:

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

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

☐ Very Satisfied ☐ Satisfied ☐ Not Satisfied

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

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

III. LOSS PREVENTION/GENERAL:

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

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

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

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

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

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

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

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

Estimated number of hours you spent on this claim: _____

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
From: MCLE Committee
Re: Amend MCLE Rules for New Uniform Bar Examination Admittees and Adopt Housekeeping Changes

Action Recommended

Review and recommend approval by the Supreme Court of an MCLE Rule requiring admittees who are admitted to the Oregon State Bar after taking the Uniform Bar Exam to complete Oregon-specific MCLE credits. Also recommend approval of housekeeping changes necessary to ensure consistent numbering of MCLE Rules and Regulations.

Background

The Oregon Supreme Court has determined that Oregon will administer the Uniform Bar Exam (UBE) starting with the July 2017 exam. New Rules for Admission (RFA) provide that Oregon will begin accepting transferred UBE scores from other jurisdictions on August 21, 2017, for scores earned in other UBE jurisdictions in the July 2017 or subsequent exam administrations.

Because applicants admitted via the UBE may not have received any education on Oregon law prior to admission, the Court also promulgated RFA 8.21, which requires new admittees to complete credits emphasizing Oregon law during their first MCLE reporting period.

RFA 8.21 Continuing Legal Education on Oregon Law

As part of completing the 15 hours of accredited CLE activity required by MCLE Rule 3.3(b) to be completed in the first reporting period after admission as an active member, every applicant admitted by examination after June 1, 2017, shall complete and certify that, of the 15 required hours, 1 hour of the 2 credit hours in ethics is devoted to Oregon ethics and professionalism, and 4 hours of the 10 credit hours in practical skills is devoted to Oregon practice and procedure, as regulated and approved by the Board.

The Rules for Admission, however, apply only to applicants for admission to the Oregon State Bar. Members of the OSB are not required to comply with the RFAs. To require compliance by members, MCLE Requirements imposed by the Court need to be incorporated into the MCLE Rules and Regulations.

To accomplish this, the MCLE Committee recommends the adoption of the below proposed amendment to MCLE Rule 3.3; this would align the MCLE Rules with the Rules for Admission.

To provide further guidance to new UBE admittees, the MCLE Committee will consider and recommend the adoption of MCLE Regulations, interpreting the new Oregon-specific MCLE requirements in the near future. To this end, the Board of Bar Examiners has convened a Task Force, including a liaison from the MCLE Committee, which will consider what programs should qualify for credit as “Oregon ethics and professionalism” and “Oregon practice and procedure.”

In addition to the UBE changes, this memorandum also recommends a number of housekeeping changes necessary to ensure consistent numbering.

Proposed Amendments

In order to align the requirement in RFA 8.21 with the MCLE Rules, the MCLE Committee recommends amending MCLE Rule 3.3(b) as follows:

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

(a) An active member whose reporting period is established in Rule 3.7(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics.

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics, and ten credit hours in practical skills. One of the ethics credit hours must be devoted to Oregon ethics and professionalism and four of the ten credits in practical skills must be devoted to Oregon practice and procedure. New admittees must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Program Manager may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member’s admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee’s first reporting period, the requirements in Rule 3.2(a) shall apply.

In addition, the MCLE Committee asks the BOG to review and recommend approval of the following amendments so that the rules and regulations are consistently numbered:

3.2 Active Members.

(a) Minimum Hours. Except as provided in Rules 3.3 and 3.4, all active members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules.

(b) Ethics. At least five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule ~~5.5(a)~~ 5.13(a).

(c) Child Abuse or Elder Abuse Reporting. One hour must be on the subject of a lawyer's statutory duty to report child abuse or one hour on the subject of a lawyer's statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(d) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule ~~5.5(b)~~ 5.13(c).

3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.

(a) An active member whose reporting period is established in Rule ~~3.7(c)(2) or (d)(2)~~ 3.6(c)(2) or 3.6(c)(3) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement ~~or resumption of the practice of law in accordance with Rule 3.4~~. Two of the 15 credit hours shall be devoted to ethics.

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics, and ten credit hours in practical skills. New admittees must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Program Manager may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the requirements in Rule ~~3.2(a)~~ shall apply.

3.6 Reporting Period.

(a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(c) Reinstatements.

(1) A member who transfers to inactive, retired or Active Pro Bono status, is suspended, or has resigned and who is reinstated before the end of the reporting period in effect at the time of the status change shall retain the member's original reporting period and these Rules shall be applied as though the transfer, suspension, or resignation had not occurred.

(2) Except as provided in Rule ~~3.7~~ 3.6(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement

and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules ~~3.7~~ 3.6 (c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

Regulations to MCLE Rule 3 Minimum Continuing Legal Education Requirement

3.100 Out-of-State Compliance. An active member seeking credit pursuant to MCLE Rule ~~3.5(b)~~ 3.4(b) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rules ~~3.2(a) and (b)~~ with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.

3.200 Reciprocity. An active member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule ~~3.5(a)~~ 3.4(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule ~~3.7(c)(2)~~ 3.6(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule ~~5.13(c)~~ 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Rule Five Accreditation Standards for Category II Activities

5.7 Legal Research and Writing.

(1) Credit for legal research and writing activities, including the preparation of written materials for use in a teaching activity may be claimed provided the activity satisfies the following criteria:

- (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule ~~5.1(b)~~ 5.12(b); and

Regulations to MCLE Rule 5
Accreditation Standards

5.050 Written Materials.

- (a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1~~(e)~~ (c), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
Memo Date: January 27, 2017
From: Kaori Tanabe Eder, Oregon New Lawyers Division Chair
Re: ONLD Report

To begin the year the ONLD Executive Committee met in Pacific City for our annual retreat and January Executive Committee meeting. Three new subcommittee chairs were selected during the retreat, Eric Pickard and Matthew Mertens will serve as the CLE Co-Chairs, Jay Sayles will serve as the Pro Bono Chair, and Joel Sturm will serve as the Law Related Education Chair.

Chair Kaori Eder and Chair-elect Jen Nicholls submitted a plan to the ABA for the ABA Embracing Challenge. It calls for partnering with minority organizations and high schools to make presentations on working as a lawyer, and to provide job shadowing opportunities for high school students.

Jennifer Nicolls was approved to be the young lawyer CEJ representative. She was also appointed to the ABA YLD Redistricting Task Force.

The ONLD continues to move forward with Firm in a Flash, with plans to establish a link to the material on the OSB website, and to continue to provide the USB flash drives which will contain more in-depth information.

Jaimie Fender plans to work with the Veterans' Section on a series of CLEs focused on Veterans' issues, such as LGBTQ issues, Debt issues, Aging, and Housing.

Jaimie Fender also proposed that the ONLD create a podcast series, in an attempt to reach out to more new lawyers. Each podcast could recap past events, have some focal point (how to get involved in the ONLD, how to do pro bono work, etc.), and then highlight upcoming events.

ONLD Executive Committee members Mae Lee Browning and Jay Sayles attended the OLIO Employment Retreat on January 21. This was a welcomed opportunity for the ONLD to interact with law students and let them know what resources the ONLD makes available.

The Region Four Representative resigned from the Executive Committee. Staff will publicize the opening and solicit letters of interest. A new member will be selected at the February 11 meeting.

The ONLD is sending three representatives to the mid-year ABA Young Lawyers Division meeting. They will have an opportunity to strengthen relationships with practitioners from around the country and will represent Oregon during the division assembly.

We look forward to our February meeting in Salem. The Salem trip also includes a CLE program on Friday afternoon for students and local bar members. On Saturday we will hold our board meeting.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2015-23 SMITH (Ballantyne) Request for BOG Review

Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

Discussion

Summary of Facts

Robert Ballantyne hired Michael Morey in 2001 to represent him in a lawsuit against the Archdiocese of Portland. Mr. Ballantyne had a duly executed contingent fee agreement with Mr. Morey. After Mr. Morey worked on the case for two and a half years, the Archdiocese made a settlement offer of \$650,000, which Mr. Ballantyne refused. Mr. Ballantyne became dissatisfied with Mr. Morey's performance and sought advice from his long-time family friend, retired attorney Jeffrey Boly. Mr. Boly helped connect Mr. Ballantyne with attorney Frederick Smith.

On June 26, 2003, Mr. Ballantyne executed a fee agreement that provided that Mr. Morey's contingent fee would be paid based on the most recent offer from the Archdiocese (\$650,000) and that Mr. Smith's contingent fee would be based on any further amount Mr. Smith obtained over and above the initial offer. Mr. Smith refused to sign the proposed fee agreement. Nevertheless—and without a fully executed fee agreement—Mr. Smith undertook to represent Mr. Ballantyne at the July 7, 2003 mediation. At the time, Mr. Smith was aware of Mr. Ballantyne's fee agreement with Mr. Morey. The mediation continued through July 10, 2003, at which time Mr. Ballantyne agreed to a settlement offer of \$900,000.

When he learned of the settlement agreement, Mr. Morey attempted to contact Mr. Smith to discuss division of the contingent fee. Mr. Smith, however, did not participate in any discussions with Mr. Morey. Therefore, on July 22, 2003, Mr. Morey filed a notice of attorney's lien and action to recover his costs and a reasonable fee.

On July 23, 2003, Mr. Smith drafted and presented Mr. Ballantyne with a contingent fee agreement different from the agreement that Mr. Ballantyne signed on June 26, 2003. This new fee agreement provided that Mr. Smith would receive a one-third contingent fee of all sums recovered. Mr. Ballantyne signed the agreement and, at Mr. Smith's instruction, interlineated above his signature, "as of July 1, 2003."

Mr. Smith then represented Mr. Ballantyne in a malpractice case against Mr. Morey. Mr. Smith lost the malpractice case both at the circuit court level and on appeal. In the end, because of the attorney fee agreements he had signed with Mr. Morey and Mr. Smith, Mr. Ballantyne received a small fraction of the total settlement. Mr. Ballantyne was ordered to pay Mr. Morey \$527,000, and Mr. Smith kept the \$300,000 that he thought he was due.¹

Mr. Ballantyne then sued Mr. Smith, his daughter Jaculin Smith, and Mr. Boly for malpractice, alleging they gave him bad legal advice by encouraging him to fight Mr. Morey every step of the way. In her response to the CSF Committee investigator, Ms. Smith indicates that the PLF paid Mr. Ballantyne nearly \$210,000 in order to settle those claims; however, we do not have access to that settlement agreement.

Mr. Ballantyne also filed an ethics complaint against all the attorneys involved. Formal disciplinary proceedings were initiated against only Mr. Smith and Mr. Boly. The complaint against Mr. Smith included allegations of dishonesty, fraud, deceit or misrepresentation that reflects adversely on a lawyer's fitness to practice. Mr. Smith passed away on May 3, 2013, prior to conclusion of the disciplinary proceedings. Therefore, the bar dismissed the cases against Mr. Smith. Mr. Boly was ultimately disciplined for engaging in the unauthorized practice of law by providing legal advice and assistance to Mr. Ballantyne in this matter. *See In re Boly*, 27 DB Rptr 136 (2013).

Mr. Ballantyne alleged a loss caused by Mr. Smith of \$1.5 million and submitted a claim for reimbursement of that amount from the CSF.

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, a loss must not be covered by some other fund, bond, surety agreement or insurance contract. CSF Rule 2.3. Generally, claims must be submitted within two years after the claimant knew or should have known of the loss, but in any event, claims are not allowed if submitted more than six years after the date of the loss. CSF Rule 2.8. In the cases of extreme hardship or special and unusual circumstances, the Committee may approve or recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of the rules. See CSF Rule 2.11.

The CSF Committee struggled with this claim. In some respects, Mr. Ballantyne presents a very sympathetic case. Even so, the Committee spent considerable time discussing whether Mr. Smith's conduct in securing and taking the \$300,000 fee was dishonest. Mr. Ballantyne did sign the subsequent contingent fee agreement and because of Mr. Smith's death, no court or panel ever made any findings of dishonesty by Mr. Smith. In addition, the Committee found it

¹ The Oregonian covered the case in 2011 and again in 2013 when the case concluded, noting that "[t]he suit also has upset the legal community, raising questions about the professionalism of at least one of the attorneys involved—and fueled concerns about potential damage to the public image of attorneys."

relevant that Mr. Ballantyne had secured payment of over \$200,000 from the PLF for the malpractice claims against Mr. Smith. Although the CSF Committee did not have access to the PLF settlement documents, several members noted that the PLF standard release is very broad and likely would have covered all claims. Thus, Mr. Ballantyne would have no rights against Mr. Smith to assign to the bar as required under CSF Rule 5.1.1. Finally, as noted by the investigator, the claim was submitted more than two years after Mr. Ballantyne should have known of the loss and more than six years after the date of the loss.

On balance, given the numerous defects with Mr. Ballantyne's claim, the CSF Committee decided not to exercise its discretion to waive noncompliance with the rules, and to deny Mr. Ballantyne's claim.

June 25, 2016

CLIENT SECURITY FUND
INVESTIGATION REPORT

Re : Client Security Fund Claim No.: 2015-23
Claimant : Robert Ballantyne
Lawyer : Fred Smith, Jaculin Smith, and Jeff Boly
Investigator : Stephanie Thompson

RECOMMENDATION

I recommend that we deny the claim(s), but I understand that there is tremendous sympathy for this claimant. This is a lengthy and complicated hardship case; the loss was reported after the two-year period required in our rules.

CLAIM INVESTIGATION SUMMARY

This claim arises out of one of the priest abuse cases in the Archdiocese of Portland against Rev. Thomas Laughlin, who admitted to molesting dozens of boys and was removed from the priesthood. Ballantyne attended All Saints School in NE Portland and was abused while there. He is on Social Security and has some developmental disabilities, some of which may have been caused by abuse.

He was initially represented in a mediation of number of these abuse cases in 2003 by Michael Morey, who was offered \$650,000 to settle the claim after years of work on the case. Ballantyne refused the offer, fired Morey, and returned to mediation in July with Fred Smith, who secured a \$900,000 settlement. Morey sued to recover his portion of the fees due from the settlement, and after years of wrangling, the case concluded in April, 2013. Ballantyne received \$225,000 in settlements with Smith and Boly.

During the same time as lawsuits over fees, OSB disciplinary actions were pending against Fred Smith and Jeff Boly. Prior to the trial panel making its findings, Smith passed away. Boly was found to have committed UPL for assisting Ballantyne while he was on inactive status. Jackie Smith was neither cited nor sanctioned. The Trial Panel findings for the Boly matter were made June 14, 2013.

FINDINGS AND INITIAL CONCLUSIONS

1. The claimant, Mr. Ballantyne, is the injured client.

2. Fred Smith was an active member of the Oregon bar at the time of the loss. He did have a fee agreement with Mr. Ballantyne. Jackie Smith worked in Fred Smith's office during the priest abuse cases. Ballantyne did not have a fee agreement with Boly, who was inactive during that time, but according to the trial panel record, actively participated in the matter.
3. Mr. Smith had an office in Multnomah County. Jackie Smith currently has an office in Oregon. Jeff Boly is still inactive.
4. The loss arose as a result of the lawyer-client relationship, at least as it pertains to Smith. There is no allegation that there was any dishonest activity with the client's money—none had been entrusted to Smith or Boly. The shortfall was caused by multiple fee agreements and the number of attorneys entitled to some share of the settlement, and not being able to agree on what that share was without proceeding with a lawsuit.
5. In the case of Jackie Smith and Jeff Boly, there was no failure to refund an unearned fee. In the case of Fred Smith, the 2011 lawsuit alleges that the fee he took was larger than he was due, since Morey did the lion's share of the work prior to the mediation.
6. Attorney Smith provided some services of value. The value of the services was at issue in the 2011 lawsuit.
7. The loss is not covered by a bond, surety agreement, or other insurance.
8. Smith's conduct was under investigation at the bar at the time of his death; Boly was sanctioned for his conduct in the matter. Jackie Smith was not cited or sanctioned.
9. The claimant has made a good faith effort to obtain more of his settlement, through the lawsuit filed in 2011 and concluded in April, 2013.
10. The claim was not timely made—Ballantyne indicates that he "learned" of his loss in 2014.
11. The dollar amounts claimed are exclusive of interest, attorney's fees, or court fees.
12. The claimant is not represented by counsel.
13. There are special circumstances surrounding this case.

Attached:

Trial Panel Findings re: Conduct of Boly, June 13, 2013.

Letter to Investigator from Jackie Smith, September 16, 2015

Oregonian articles: "Priest Sex Abuse Victim's Lawyers Claim Most of His \$900,000 settlement," January 4, 2011; "Priest Sex Abuse Victim Finally Gets More of \$900,000 Settlement from his Portland Lawyers," April 19, 2013.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-129
)
JEFFREY E. BOLY,)
)
Accused.)

Counsel for the Bar: Richard A. Weill; Linn D. Davis
Counsel for the Accused: Richard A. Lee
Disciplinary Board: Dylan M. Cernitz, Chairperson
Theresa L. Wright
Jonathan Levine, Public Member
Disposition: Violation of DR 3-101(B). Trial Panel Opinion. 1-year
suspension.
Effective Date of Opinion: August 14, 2013

TRIAL PANEL OPINION

I. PROCEDURAL HISTORY

This matter came before the Oregon State Bar Disciplinary Board for trial on December 11, 13, 14, 17, and 18, 2012, January 24, 2013, and February 12, 2013. The Trial Panel consisted of Dylan M. Cernitz, Theresa L. Wright, and public member Jonathan Levine. Richard Weill, voluntary Disciplinary Counsel, and Linn Davis represented the Bar. Accused Frederick T. Smith (hereinafter “Smith”) appeared pro se. Accused Jeffrey E. Boly (hereinafter “Boly”) appeared and was represented by Richard A. Lee and Deanna L. Wray.

The Smith Amended Formal Complaint (Ballantyne): An Amended Formal Complaint was filed by Jeffrey D. Sapiro, Disciplinary Counsel for the Oregon State Bar, on February 23, 2012, which raised numerous violations of the Code of Professional Responsibility and the Oregon Rules of Professional Conduct relating to Smith’s representation of Robert Gerard Ballantyne, also at times referred to as “G.B.” Specifically, the Amended Formal Complaint alleges violations, and in some instances multiple violations, of the following rules:

DR 5-101(A)(1), Conflict of interest involving personal and financial interests;

RPC 1.7(a)(2), Current conflict of interest involving personal interest of lawyer;

DR 1-102(A)(3), Criminal conduct of lawyer which adversely reflects upon lawyer's fitness to practice law;

DR 2-106(A), Collection of a clearly excessive fee;

DR 9-101(A), Failure to place client funds in a clearly identifiable client trust account;

DR 9-101(C)(3), Failure to maintain complete record of client funds or other client property;

DR 9-101(C)(4), Failure to promptly disperse client funds to client;

DR 5-104(A), Entering into business transaction with client with differing interests and failing to obtain client consent to such conflict;

DR 7-102(A)(5), Knowingly making a false statement of law or fact;

DR 7-102(A)(7), Knowingly counseling or assisting client in conduct lawyer knows to be illegal or fraudulent;

RPC 1.15-1(d), Failure to promptly deliver client funds and accounting;

RPC 1.8(a), Entering into a business transaction adverse to client;

RPC 3.3(a)(3), Knowingly making a false statement of law or fact to a tribunal or failure to correct a false statement of material fact previously made;

RPC 8.4(a)(3), Lawyer conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely upon lawyer's fitness to practice law;

RPC 1.6, Revealing information relating to representation of client without obtaining client's informed consent; and

RPC 8.1(a)(2), Failure to respond to requests for information by the disciplinary authority.

The Smith Amended Complaint (OLCC): An Amended Formal Complaint was filed by Jeffrey D. Sapiro, Disciplinary Counsel for the Oregon State Bar, on February 23, 2012, which raised violations of the Oregon Revised Statutes and the Oregon Rules of Professional Conduct relating to Smith's representation of Suki's Bar and Grill. Specifically, the Amended Formal Complaint alleges violations of the following rules:

ORS 9.160, Practicing law while not an active member of the Bar;

RPC 5.5(a), Unauthorized practice of law; and

RPC 8.4(a)(3), Lawyer conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely upon lawyer's fitness to practice law.

The Boly Formal Complaint: A Formal Complaint was filed by Jeffrey D. Sapiro, Disciplinary Counsel for the Oregon State Bar, on February 23, 2012, which raised violations of the Oregon Rules of Professional Conduct relating to Boly's involvement with Robert Gerard Ballantyne, also at times referred to as "G.B." Specifically, the Formal Complaint alleges five violations of the following rule:

DR 3-101(B), Unlawful practice of law.

The Smith Answer: Smith filed an Answer to the Formal Amended Complaint on or about June 12, 2012, in which no affirmative defenses were asserted.

The Boly Answer: Richard Lee filed an Answer to the Formal Complaint, on behalf of Boly, on or about April 12, 2012, in which no affirmative defense were asserted.

Witnesses, Exhibits, and Transcript:

The Bar presented testimony from Anna Davis, Frederick T. Smith, Michael S. Morey, Robert G. Ballantyne, Nicole Bernhard-Lee, Linn Davis, Robert P. Johnson, Jeffrey E. Boly, and Lenette Rucker. Smith presented testimony from Seok Chung, The Honorable George A. Van Hoomissen, and Kevin P. O'Connell. Smith also testified on his own behalf. Boly presented testimony from The Honorable George A. Van Hoomissen, Linda Boly, Richard A. Lee, Kirk L. Emmons, Shari Jacobsen, and Joe Angel. Boly also testified on his own behalf.

The Bar introduced numerous exhibits. The following Bar exhibits were admitted: 1-273. Smith offered several exhibits, the following of which were admitted: 2000-2022. Boly offered numerous exhibits, the following of which were admitted: 1000-1100.

Shellene L. Iverson, CSR, of Capri-Iverson, provided the court reporting services. The Order Settling the Transcript was signed on April 10, 2013.

The Accused Frederick T. Smith passed away on May 3, 2013. As such, the Bar dismissed Case Nos. 11-22 and 11-37. This opinion will only address Case No. 11-129 relating to the Accused Jeffrey E. Boly.

II. FINDINGS OF FACT

Throughout the period of time covered in the accusations in this matter both Smith and Boly were members of the Oregon State Bar. At all relevant times herein, Smith was an active member of the Bar maintaining a place of business in Multnomah County, with the exception of July 15, 2010, through September 13, 2010, during which time Smith was under disciplinary suspension. Boly is a member of the Oregon State Bar on "inactive" status since 1998, maintaining a residence in Multnomah County.

Robert Ballantyne (hereinafter "Ballantyne" or "G.B.") was a neighbor and family friend of Boly. In 1997, Ballantyne was involved in an automobile collision, which resulted in a personal injury lawsuit being filed in Multnomah County by Jeffrey A. Long (hereinafter

“Long”) on behalf of Ballantyne. In March 1998, Ballantyne became dissatisfied with Long’s representation as a consequence of Long placing the litigation in abatement due to difficulty with the medical evidence in the matter. As such, Ballantyne sought advice from Boly regarding Long’s handling of the matter and possible professional malpractice by Long. Boly referred Ballantyne to attorneys Peter Glazer (hereinafter “Glazer”) and Kirk Emmons (hereinafter “Emmons”) to pursue claims relating to the personal injury lawsuit and Long’s possible professional malpractice. Ballantyne subsequently retained Glazer and Emmons in 2000.

Ballantyne requested that Boly attend meetings with Glazer and Emmons to assist with Ballantyne’s understanding of all aspects of the litigation. Ballantyne’s insistence on Boly’s participation in the litigation was based upon Ballantyne’s self-perceived cognitive limitations and his considerable trust in Boly’s legal acumen. To that end, throughout the Glazer/Emmons representation of Ballantyne, Boly participated in nearly every meeting between Ballantyne and Glazer/Emmons. During these meetings, Boly served as a legal interpreter for Ballantyne, which was of great assistance to Glazer and Emmons. Additionally, Boly met with Glazer, without Ballantyne present, on a few occasions to discuss the personal injury and Long malpractice litigation. The extent to which Boly offered advice or comment regarding the merits of the lawsuit is unclear.

In October 2000, through the course of representation of Ballantyne in the personal injury lawsuit and potential Long malpractice claim, Glazer learned Ballantyne had been sexually abused by a priest (Father Laughlin) when Ballantyne was a child attending All Saints School in 1974–1975. Without Ballantyne’s consent, Glazer informed Boly of Ballantyne’s childhood sexual abuse. Glazer referred Ballantyne to attorney Michael S. Morey (hereinafter “Morey”), a lawyer with substantial experience prosecuting such claims. Ballantyne retained Morey, who, pursuant to a standard written contingent fee agreement dated February 27, 2001, pursued Ballantyne’s case against the Archdiocese of Portland for over two years. (Ballantyne was referred to as “G.B.” in said lawsuit.) Pursuant to the Morey contingent fee agreement, Morey was to receive thirty-three and one-third percent (33 1/3%) of any amount recovered whether through settlement or obtaining a judgment. Further, the contingent fee agreement provided if Morey was discharged during the pendency of the case, Morey may be entitled to all or part of the contingent fee if the work performed resulted in or contributed to the eventual recovery. See Exhibit #9.

Similar to the Glazer/Emmons representation, Boly actively participated in meetings with Morey and Ballantyne to discuss all aspects of the Archdiocese litigation. Additionally, Boly conducted independent research regarding the impact of sex abuse on the cognitive development of children. Further, Boly took great interest in gathering information regarding the value of similar priest sex abuse cases nationwide.

While the Ballantyne case against the Archdiocese of Portland was in its initial stages, Boly continued to assist Ballantyne and Glazer/Emmons with the personal injury

lawsuit and potential Long professional malpractice case. As a result, in March 2002 a civil negligence case was filed against Long in Multnomah County.

Meanwhile, Morey spent two years (2001–2003) preparing Ballantyne's case, as well as several other victims' cases, including substantial discovery, numerous depositions, and significant mediation preparation. Boly assisted Morey in preparing Ballantyne's matter for mediation, including deposition transcript review, medical record review, and overall strategizing. In March 2003, mass mediation of the Archdiocese priest sex abuse cases occurred at the Gus J. Solomon Courthouse. Morey was representing ten (10) other victims of Father Laughlin and therefore all of the Father Laughlin cases were mediated contemporaneously over five (5) days with multiple mediators. During the course of negotiation, Morey offered to settle Ballantyne's matter for \$980,000. The Archdiocese countered with \$650,000. Based upon Boly's research and Morey's experience, Ballantyne had an expectation that his case was worth in excess of \$1 million, and, therefore, declined the Archdiocese's counteroffer. Mediation was set to continue July 7, 2003.

Ballantyne was upset with how the initial mediation transpired and the failure to reach settlement. The lack of success at mediation stressed the relationship between Morey and Ballantyne; however, Morey and Ballantyne continued to diligently prepare for the continued mediation, again with the assistance of Boly. To that end, Morey informed Thomas Dulcich, counsel for the Archdiocese of Portland, that Boly was going to play a more prominent role at the continued mediation and, therefore, the Archdiocese should be prepared to significantly increase their counteroffer.

During the course of mediation preparation in spring 2003, Ballantyne learned a referral fee agreement existed between Glazer and Morey involving the referral of Ballantyne's case to Morey. The referral agreement was very upsetting to Ballantyne, so much so that Ballantyne asked Boly to begin looking for a new attorney to take over the Ballantyne representation.

In late spring 2003, Boly contacted Smith regarding the Ballantyne matter. Smith was obtaining an LLM in taxation at Georgetown at the time Boly reached out to him. Upon Smith's return to Portland, Boly, Ballantyne, and Smith met at Smith's house boat to discuss Smith taking over the representation of Ballantyne. On June 26, 2003, Boly prepared a written fee agreement that provided Morey's fee would be paid based on the most recent offer from the Archdiocese (\$650,000), with Smith to be paid a contingent fee based on any further amount Smith obtained over and above the initial offer. Ballantyne executed the fee agreement on June 26, 2003. Smith declined to sign the proposed fee agreement presented by Boly. See Exhibit #27.

Despite the lack of a signed fee agreement, Smith undertook to represent Ballantyne at the July 7, 2003, mediation. Smith was aware of the terms of the executed fee agreement between Ballantyne and Morey at the time of the continued mediation. Further, Smith

undertook to represent Ballantyne at mediation without having first reviewed Morey's file. Unbeknownst to Morey, Smith appeared at the July 7, 2003, mediation reporting to be Ballantyne's new counsel. Morey, who had spent months preparing for the mediation, was informed by Smith at the mediation that Ballantyne was summarily terminating Morey's representation. Boly attended and assisted Ballantyne during the continued mediation. Mediation continued through July 10, 2003, at which time Smith accepted the Archdiocese's \$900,000 settlement offer on behalf of Ballantyne. The settlement was memorialized in a handwritten memorandum of understanding. The memorandum of understanding was executed by all parties and Boly (as a witness). The settlement was to be paid in scheduled payments of \$300,000; \$100,000; and \$500,000.

Upon learning that the case had been settled, Morey contacted Smith to initiate discussions about how the contingent fee would be divided between them. Ostensibly acting on behalf of Ballantyne, Smith did not participate in any such discussions. On July 22, 2003, attorney Michael Bloom (hereinafter "Bloom") on behalf of Morey filed a notice of attorney's lien and an action to recover Morey's costs and a reasonable fee (hereinafter "*Morey v. G.B.*").

On or about July 23, 2003, Smith drafted and presented Ballantyne with a contingent fee agreement different from the written agreement Ballantyne had signed on June 26, 2003. The fee agreement of July 23, 2003, provided Smith would receive a one-third contingent fee of all sums recovered, without defining said term. The fee agreement prepared by Smith was ultimately signed by both Smith and Ballantyne. Further, Smith advised Ballantyne to interlineate, "as of July 1, 2003," above Ballantyne's signature.

While the *Morey v. G.B.* lawsuit was progressing in the fall of 2003, the malpractice lawsuit previously filed by Ballantyne against Long, et al, had been dismissed on or about October 13, 2003. Boly, on behalf of Ballantyne, prepared several pleadings to reinstate the Long malpractice lawsuit, including Boly's own affidavit in support of reinstatement. In the motion to reinstate prepared by Boly on behalf of Ballantyne, Boly sought the affirmative relief of a six month continuance of the matter. Further, on October 14, 2003, Boly appeared, on behalf of Ballantyne, in Multnomah County Circuit Court, before the Honorable Dale R. Koch, to present Ballantyne's motion to reinstate. On November 17, 2003, Judge Koch issued a letter ruling denying Ballantyne's motion (prepared by Boly) for reinstatement.

For purposes of this opinion, the Trial Panel will not further recite the remaining ten years of litigation (2003–2013) involving the participation of Smith and Boly in the Ballantyne matter. Over the course of seven days of trial, the Bar and counsel for the Accused presented numerous exhibits and witnesses addressing the events which transpired from 2003–2013. The Trial Panel will limit its review of the facts to the relevant time period of Boly's conduct as alleged by the Bar and set forth above (June 1999 through November 2003).

III. DISCUSSION of CASE No. 11-129

A. Burden of Proof.

The Bar has the burden of establishing Boly's misconduct in this proceeding by clear and convincing evidence. BR 5.2. Clear and convincing evidence means that the truth of the facts asserted is highly probable. *In re Taylor*, 319 Or 595, 600, 878 P2d 1103 (1994).

B. Unlawful Practice of Law.

At all times set forth in the Formal Complaint, DR 3-101(B) provided: "A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." With few exceptions, none of which are applicable here, ORS 9.160 provides that a person may not practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar.

The practice of law includes all personal contact in the nature of consultation, explanation, recommendation, advice, and selection or drafting of documents regarding legal issues or principles. *OSB v. Smith*, 149 Or App 171, 942 P2d 793 (1997).

Oregon has no statutory definition of the "practice of law." The Board of Governors of the OSB has defined the practice of law to include "(h)olding one's self out, in any manner, as an attorney or lawyer authorized to practice law in the State of Oregon; appearing, personally or otherwise, on behalf of another in any judicial or administrative proceeding; or providing advice or service to another on any matter involving the application of legal principles to rights, duties, obligations or liabilities." OSB Bylaws 20.1(B).

The Oregon Supreme Court has further defined the practice of law. The issue of whether conduct is the "practice of law" often turns on whether the act requires exercise of independent legal judgment. *See In re Devers*, 328 Or 230, 974 P2d 191 (1991) (negotiating on behalf of client, drafting and reviewing a settlement agreement constitutes practice of law); *Oregon State Bar v. Gilchrist*, 272 Or 552, 563, 538 P2d 913 (1975) (practice of law includes personal contact with clients "in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms, in filling out any part of the forms, or suggesting or advising how the forms should be used in solving the particular (client's) problems . . ."); *Oregon State Bar v. Security Escrows, Inc.*, 233 Or 80, 377 P2d 334 (1962) (practice of law includes drafting documents when informed or trained discretion must be exercised in drafting the document); *see also Taub v. Weber*, 366 F3d 966 (9th Cir 2004) (applying discretionary legal principles in connection with completion of bankruptcy forms is practice of law).

C. Allegations.

The Bar has charged Boly with five counts of the unlawful practice of law in violation of DR 3-101(B). Specifically, the Bar has alleged Boly unlawfully practiced law as follows:

- (1) Referring G.B. to Glazer to handle a potential malpractice claim against G.B.'s former attorney, Jeff Long. The Bar alleges Boly offered G.B. "opinions and advice" about the Long malpractice case, while Glazer was representing G.B. (1999–2003);
- (2) Offering G.B. "opinions and advice" about the sex abuse case, while Morey was representing G.B. The Bar alleges Boly "encouraged" G.B. to fire Morey, and retain Smith. (2000–2003);
- (3) Drafting and giving advice about a contingent fee agreement for G.B. to use in retaining Smith. (June 2003);
- (4) Advising G.B. about a separate contingent fee agreement prepared by Smith. The Bar also alleges Boly advised G.B. about the settlement agreement with the Archdiocese, while Smith was representing G.B. (July 2003); and
- (5) Assisting G.B. after Glazer withdrew from G.B.'s case against Long and the court dismissed the matter. The Bar alleges Boly appeared in court for G.B., and drafted a motion for G.B. (August 2003–November 2003).

D. Trial Panel Findings.

For each of the alleged violations set forth above, the Trial Panel finds:

- (1) The evidence presented at trial by both the Bar and counsel for Boly substantiates the Bar's allegation that Boly attended meetings between Ballantyne and Glazer/Emmons relating to the Long malpractice claim. The Trial Panel finds the testimony of Kirk Emmons to be credible relating to Boly's attendance and involvement at the meetings between Ballantyne and Glazer/Emmons. Specifically, Emmons testified that Boly's role at said meetings was limited to explaining Glazer/Emmons' analysis of the auto accident case and the Long malpractice case to Ballantyne in terms Ballantyne could understand. The Bar did not prove to the Trial Panel's satisfaction that Boly offered independent legal advice to Ballantyne during the meetings with Glazer/Emmons. Rather, Boly served as a conduit between Ballantyne and Glazer/Emmons. To that end, the Trial Panel finds the Bar did not meet its burden of proof (clear and convincing evidence) regarding its allegation that Boly offered legal opinion and legal advice to Ballantyne with respect to the auto accident and Long malpractice matters.

Further, the Trial Panel does not find the act of referring Ballantyne to Glazer to constitute the unlawful practice of law in violation of DR 3-101(B).

- (2) The Trial Panel finds the Bar presented witnesses who gave credible testimony regarding Boly's involvement in the assessment and handling of the sex abuse case at all relevant times herein. While Ballantyne presented as a

challenging witness at times, Ballantyne's testimony regarding Ballantyne's reliance on Boly's opinion as to the merits and value of the sex abuse case was found to be credible by the Trial Panel. Given the vulnerability of Ballantyne during the preparation of the sex abuse case for mediation, and during the mediations themselves, the Trial Panel is convinced Boly served to provide independent legal analysis as to the potential value of Ballantyne's case and to offer his opinion to both Ballantyne and Morey. Evidence presented at trial established Boly conducted his own research of priest sex abuse cases from across the United States and took a keen interest in the potential value of Ballantyne's case against the Archdiocese. Boly's own testimony confirmed his independent research of similar cases from across the nation, as well as scientific research regarding early childhood abuse on the developing brain. Coupled with Boly's long and successful legal career, the Trial Panel finds it implausible that Boly would play an active role in assisting Ballantyne and Morey with the preparation of the sex abuse case over a period of months without providing some form of independent legal analysis tailored specifically to Ballantyne's case. Further, the Bar clearly established Boly's awareness of Ballantyne's vulnerability and cognitive limitations, thus creating a heightened sense of reliance by Ballantyne on Boly. The Trial Panel is convinced Ballantyne relied heavily on Boly's advice regarding the sex abuse case and was not able to distinguish Boly's advice from that of active attorneys (i.e., Morey).

The Trial Panel finds the foregoing conduct by Boly constitutes the unlawful practice of law in violation of DR 3-101(B) by providing Ballantyne advice which involved Boly's application of legal principles to Ballantyne's rights, duties, obligations, or liabilities relating to the sex abuse case. *See* OSB Bylaws 20.1(B).

As for the Bar's allegation regarding Boly's referral of Ballantyne to Smith, the Trial Panel is convinced such referral showed a lack of judgment by Boly which led to significant harm to Ballantyne; however, such referral is not found to constitute the unlawful practice of law as defined above.

- (3) Exhibit #13, a fee agreement dated June 26, 2003, is found by the Trial Panel to be prepared by Boly individually on behalf of Ballantyne. Smith and counsel for Boly provided witness testimony, via Boly and Smith individually, that Ballantyne was referred to retired attorney John Brooke to provide independent counsel regarding a potential fee agreement between Smith and Ballantyne. The Trial Panel did not find such testimony to be credible. To the contrary, the Trial Panel finds the Bar met its burden of proof by clear and convincing evidence that Boly independently prepared, without meaningful

assistance by Brooke, said fee agreement on behalf of Ballantyne for presentation to Smith. At trial, there was no credible evidence offered to document Brooke's representation of Ballantyne, or involvement, in the drafting process. Also, the Trial Panel distinguishes the case at bar from *State ex re. Oregon State Bar v. Lenske*, 284 Or 23, 584 P2d 759 (1978), in that *Lenske* involved a disbarred attorney who drafted documents for an active attorney's review and adoption, as opposed to the case at bar where there was no credible evidence offered at trial that Brooke reviewed or adopted the June 26, 2003, fee agreement as his own work.

The Trial Panel finds the foregoing conduct by Boly constitutes the unlawful practice of law in violation of DR 3-101(B) by drafting said fee agreement which involved Boly's application of legal principles to Ballantyne's rights, duties, obligations, or liabilities relating to the sex abuse case. *See* OSB Bylaws 20.1(B).

- (4) The Trial Panel finds there was no credible evidence presented at trial that Boly advised Ballantyne regarding a contingent fee agreement prepared by Smith (Exhibit #29). Thus, the Trial Panel finds no violation of DR 3-101(B) by Boly as it relates to the contingent fee agreement prepared by Smith.

Evidence presented at trial by all parties clearly established Boly attended the follow-up mediation which occurred on or about July 7–10, 2003 at the offices of Schwabe, Williamson and Wyatt. Ballantyne provided credible testimony that Boly was very excited to participate in said mediation. Similarly, the Trial Panel finds Boly's demeanor while testifying at trial to his participation in said mediation corroborates Ballantyne's testimony. Additionally, the record is replete with evidence and testimony regarding Boly's independent research regarding the settlement value of priest sex abuse cases nationwide. Coupled with the fact that Smith had yet to obtain Morey's file at the time of mediation, and Smith had not previously litigated any sex abuse cases, the Trial Panel is convinced Boly offered independent legal analysis and advice to assist both Ballantyne and Smith in reaching settlement at the mediation. Exhibit #14 evidences Boly's significant involvement at mediation, as Boly was a signer to Memorandum of Understanding, which set forth the global settlement terms between the Archdiocese and Ballantyne.

Following mediation on July 21, 2003, counsel for the Archdiocese, Thomas V. Dulcich sent a letter to Smith regarding the Archdiocese's concern over the potential attorney fee litigation between Morey and Smith. Dulcich copied Boly on said letter as, "Jeffrey E. Boly, Esq." *See* Exhibit #23. On July 23, 2003, Boly wrote directly to Dulcich on Ballantyne's behalf discussing substantive settlement provisions and ongoing negotiations. This letter was

drafted for Boly's signature, not Smith's, included Boly's current contact information and was faxed to Dulcich from Boly's home. Further, the record established at trial provided that Boly was included on several pieces of correspondence between the parties' respective counsel in the days following mediation. As such, the Trial Panel finds that Boly did not make clear his inactive status to Dulcich and others involved in the mediation.

The Trial Panel finds the foregoing conduct by Boly constitutes the unlawful practice of law in violation of DR 3-101(B) by providing independent legal analysis and advice at mediation and drafting correspondence related thereto to counsel, all of which involved Boly's application of legal principles to Ballantyne's rights, duties, obligations, or liabilities relating to the sex abuse case. *See* OSB Bylaws 20.1(B).

- (5) Regarding the dismissal of Ballantyne's malpractice lawsuit against Long, the Trial Panel finds the Bar proved by clear and convincing evidence that Boly prepared legal pleadings on behalf of Ballantyne seeking reinstatement of the Long malpractice lawsuit. *See* Exhibits #67 and #68. Further, Boly appeared in Multnomah County Circuit Court, before the Honorable Dale R. Koch, on October 14, 2003, to present the motion, order, and Boly's supporting affidavit for reinstatement of the Long malpractice lawsuit. The record is clear that no other attorneys were present at the October 14, 2003 appearance on behalf of Ballantyne and that Boly was appearing before Judge Koch on behalf of Ballantyne.

The Trial Panel finds the foregoing conduct by Boly constitutes the unlawful practice of law in violation of DR 3-101(B) by drafting legal pleadings on behalf of Ballantyne which involved Boly's application of legal principles to Ballantyne's rights, duties, obligations, or liabilities relating to the Long malpractice lawsuit, and further appearing in circuit court to present said pleadings on Ballantyne's behalf. *See* OSB Bylaws 20.1(B).

IV. DISPOSITION

In determining an appropriate sanction for a lawyer's ethical violations, the Oregon Supreme Court begins with the analytical framework set out in the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991) (Amended 1992) (hereinafter "*Standards*"). Using that framework, the court arrives at an initial presumptive sanction based on: the ethical duty violated; the lawyer's mental state; and the actual or potential injury caused. The court then adjusts that presumptive sanction based on a fourth factor, the presence of aggravating or mitigating circumstances under the *Standards*. Finally, the court considers whether that adjusted sanction is consistent with Oregon case law. *In re Jaffee*, 331 Or 398, 408-09, 15 P3d 533 (2000).

A. **Duty Violated.** The ABA *Standards* consider the unauthorized practice of law a violation of *Standards*, § 7.0 *Violations of Duties Owed as a Professional*. *Jaffe* at 410.

Absent aggravating or mitigating circumstances, the following dispositions apply to this violation:

7.1 **Disbarment:** when a lawyer knowingly engages in the misconduct with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury;

7.2 **Suspension:** when a lawyer knowingly engages in the misconduct and causes injury or potential injury;

7.3 **Reprimand:** when a lawyer negligently engages in misconduct and causes injury or potential injury;

7.4 **Admonition:** when a lawyer engages in an isolated instance of negligence and causes little or no actual or potential injury.

Standards, § 7.0 (Violations of Other Duties Owed As A Professional)

Based upon the foregoing findings and conclusions, the Trial Panel finds Boly violated his duties owed a professional (inactive lawyer) and thus violated ABA *Standards*, § 7.0.

B. **Mental State.** The ABA *Standards* recognize three mental states: intent, knowledge, and negligence. *Jaffe*, 332 Or at 409.

“‘Intent’ is the conscious objective or purpose to accomplish a particular result.

“‘Knowledge’ is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

“‘Negligence’ is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.”

ABA *Standards*, Definitions.

Based upon the foregoing findings and conclusions, the Trial Panel finds Boly acted knowingly when advising Ballantyne at all relevant times relating to the Long malpractice lawsuit and the priest sex abuse case. Further, the Trial Panel finds Boly acted intentionally when appearing in court on behalf of Ballantyne to seeking affirmative relief when Boly was not an active attorney in the state of Oregon.

C. Injury.

“‘Injury’ is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. The level of injury can range from ‘serious’ injury to ‘little or no’ injury...”

“‘Potential injury’ is the harm . . . that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.”

ABA Standards, Definitions.

Based upon the foregoing findings and conclusions, the Trial Panel finds Boly’s conduct at relevant times as pled by the Bar resulted in potential injury to Ballantyne, the legal system, and the legal profession. The Trial Panel is convinced Boly’s conduct from 1999–2010 as it relates to his involvement with Ballantyne, resulted in actual injury to Ballantyne, the legal system, and the legal profession, but the Trial Panel is precluded from considering Boly’s conduct beyond November 2003 pursuant to the Bar’s Formal Complaint.

D. Mitigating / Aggravating Factors.

The *ABA Standards*, § 9.1 provides, “After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.” Based upon the foregoing findings and conclusions, the Trial Panel considers the following aggravating factors:

1. Dishonest or selfish motive. *Standards*, § 9.22(b). Boly’s assistance with two legal matters created a perception that Boly was an active attorney and Boly did not actively seek to correct such misperception.
2. Pattern of misconduct. *Standards*, § 9.22(c). Boly engaged in repeated instances of improperly acting as legal advisor in two different cases and in court-related proceedings.
3. Vulnerability of the victim. *Standards*, § 9.22(h). Ballantyne was an especially vulnerable person.
4. Substantial experience in the practice of law. *Standards*, § 9.22(i). Admitted in 1971, Boly had over twenty years of experience before he transferred to inactive status in 1999.

Pursuant to *ABA Standards*, § 9.32, the Trial Panel considers the following mitigating factors:

1. Absence of prior disciplinary record. *Standards*, § 9.32(a). No evidence was presented at trial relating to any previous disciplinary proceedings involving Boly.

2. Full disclosure and cooperation with proceedings. *Standards*, § 9.32(e). Evidence at trial established Boly was forthcoming with all discovery requests and was cooperative in all aspects of this proceeding.

3. Character or reputation. *Standards*, § 9.32(g). Evidence at trial established Boly was regarded as a very competent lawyer and had a positive reputation during his legal career.

E. Oregon Case Law

The Trial Panel is not aware of any Oregon case law involving an inactive attorney where the only allegation is a violation of DR 3-101(B), the unlawful practice of law. Additionally, the Trial Panel has reviewed the case law cited by the bar and counsel for Boly and the Trial Panel finds such case law is neither directly on point or persuasive.

V. CONCLUSION

Based upon the foregoing findings and conclusions, the Trial Panel having found by clear and convincing evidence Boly violated DR 3-101(B), considered the relevant ABA *Standards*, and evaluated the applicable Oregon case law, the Trial Panel makes the following disposition:

Boly is hereby suspended for one year.

Dated this 14th day of June, 2013.

/s/ Dylan M. Cernitz
Dylan M. Cernitz, Chairperson

Dated this 14th day of June, 2013.

/s/ Theresa L. Wright
Theresa L. Wright

Dated this 14th day of June, 2013.

/s/ Jonathan Levine
Jonathan Levine, Public Member

JACULIN L. SMITH

Attorney at Law and Mediator
5319 SW Westgate Drive, Suite 139
Portland, Oregon 97221

Telephone: (503) 381-0001

E-mail: jaculin@smithx2atlaw.com

September 16, 2015

Via U.S. E-Mail Only

stephanie.a.thompson@doj.state.or.us

Stephanie Antonia Thompson
Client Security Fund Committee

RE: CLIENT SECURITY FUND NO. 2015-23

Claimant : Robert Ballantyne
Lawyer : Jaculin L. Smith

Dear Ms. Thompson:

I am in receipt of the Client Security Fund Application for Reimbursement filed by Robert Ballantyne, alleging a claim against myself, my deceased father Frederick T. Smith, and retired attorney Jeff Boly. I understand that you have been charged with investigating the matter and presenting a report to the Client Security Fund Committee. It is my position that Mr. Ballantyne has no legitimate claim against the Client Security Fund. Your report to the CSF Committee should urge the CSF Committee to deny Mr. Ballantyne's claim.

Mr. Ballantyne has, on a number of occasions, filed claims against attorneys who have assisted him in various matters. My particular experience with Mr. Ballantyne comes from a period when I assisted my father as his secretary / paralegal, or at most, a contract attorney – for which work I was never paid. As I recall, the history of Mr. Ballantyne's case was as follows:

Underlying Claims

Mr. Ballantyne had a claim against a priest and was represented by attorney Michael S. Morey. Mr. Ballantyne became unhappy with Mr. Morey's representation of him and sought advice from his long-time family friend, retired attorney Mr. Boly. Mr. Boly knew my father, Mr. Smith, and put the two of them together. Mr. Ballantyne signed an attorney fee agreement with Mr. Smith after having consulted with an independent attorney in regards to the fee agreement.

Mr. Smith was able to negotiate a settlement with the Archdiocese at a higher number than Mr. Morey was able to reach. Mr. Ballantyne filed suit against Mr. Morey for malpractice with my father as his attorney. Mr. Morey's defense was tendered to the PLF. Mr. Morey filed a counter suit against Mr. Ballantyne seeking a portion of the settlement as Mr. Morey's attorney fees for getting the case to that point. Mr. Ballantyne lost at the Circuit Court level on both cases, and directed that the matters be pursued to the Court of Appeals. Upon losses at that level, Mr. Ballantyne sought review at the Supreme Court level, which was denied. My father was Mr. Ballantyne's attorney for nearly a decade as Mr. Ballantyne sought recourse against Mr. Morey.

Mr. Ballantyne also filed an OSB Disciplinary complaint against Mr. Morey. As I recall, after investigation, no disciplinary action was taken against Mr. Morey.

In the end, pursuant to the terms of the attorney fee agreements Mr. Ballantyne signed with Mr. Morey and Mr. Smith, the majority of the settlement negotiated with the Archdiocese was paid to attorneys Morey and Smith, leaving Mr. Ballantyne with a fraction of the total settlement.

Malpractice Claim

After almost a decade of work, when Mr. Smith had reached the end of all possible avenues without the results that Mr. Ballantyne wanted, Mr. Ballantyne then filed a malpractice claim against Mr. Smith, Mr. Boly and myself in January 2011. It made the front page of the Oregonian. The complaint alleged that because I assisted Mr. Smith and was also an attorney, I was therefore liable for malpractice, but no specific allegations of malpractice were made against me. It was very clear that Mr. Ballantyne had included me in an effort to get at my PLF insurance coverage.

I tendered my defense to the PLF and retained an attorney for possible excess liability. The PLF took the position that the claims against Mr. Smith and myself were not new claims, but that they were the same or related claims to the claim previously made against Mr. Morey. Pursuant to the terms of the PLF Claims Made Policy of 2004, there was a \$300,000 policy limit and with an additional \$25,000 claims expense allowance. When Mr. Morey was sued for malpractice by Mr. Ballantyne in 2004, he tendered his defense to the PLF. In Mr. Morey's defense, not only was the \$25,000 claims expense allowance exhausted, but an additional \$180,000 (approximate) of the liability coverage was expended, leaving approximately \$120,000 liability coverage remaining for the claim against Mr. Smith and myself. Despite the PLF's position, the PLF decided to provide \$25,000 as a claims expense allowance for each of us.

Despite any number of documents wherein Mr. Ballantyne acknowledged I was not his attorney and the lack of specific allegations of wrongdoing against me, the PLF entered into a global settlement agreement with Mr. Ballantyne over my objections. It is my belief the settlement only occurred because Mr. Ballantyne's attorney had cornered the PLF into binding arbitration over the issue of whether the claim against my father and I was a new claim, thus triggering new policy limits, or the same or related claim to the claim against Mr. Morey as the PLF had alleged. I believe the PLF settled because a binding arbitration decision that this was a new claim could potentially open the PLF up to many more claims in other cases. In exchange for Mr. Ballantyne's complete, full and final release of all claims then known or unknown against Mr. Smith and myself, the PLF paid out close to \$210,000 – well over the \$120,000 the PLF asserted was the policy limit at that time. It is my understanding that Mr. Ballantyne later filed additional claims against each of the attorneys that assisted him in his claims against Mr. Smith and myself and that the PLF took the same position in those matters, the difference being that there was no longer any insurance coverage available for those attorneys.

Thereafter, the PLF allocated the percentage of liability between my father and me for purposes of collecting supplemental assessments under the terms of the policy. It is noteworthy that the PLF allocated no liability to me and I have paid no supplemental

assessments, nor has the PLF sought contribution from me for any of the settlement over the policy limits then available.

OSB Disciplinary Action

Mr. Ballantyne also filed a complaint with the OSB Disciplinary office against Mr. Smith, Mr. Boly and I. It is noteworthy that I was never contacted by anyone from the OSB Disciplinary office. To my knowledge, no investigation was ever made into my actions as a lawyer. No charges were brought against me.

Client Security Fund

Now, Mr. Ballantyne has filed a claim with the Client Security Fund and you have been charged with investigating the matter. As to the claim against me, I'm not sure there is much for you to investigate. Mr. Ballantyne's claims against me do not satisfy the terms of the OSB Client Security Fund Rules (Revised 04/14) (hereinafter "CSFR") which must be met in order to make a claim:

- The loss, if any, was not caused by my alleged dishonest conduct. CSFR 2.2
- The loss, if any, was covered by my insurance contract with the PLF and the claim was paid (over my objections). CSFR 2.3
- The loss, if any, did not arise from or because of an established lawyer-client relationship between Mr. Ballantyne and myself. CSFR 2.5.1
- The loss, if any, did not arise from or because of a failure to account for money or property entrusted to me. CSFR 2.5.2
- I did not engage in any dishonest conduct, and was not found guilty of a crime. CSFR 2.6.1
- No civil judgment was entered against me, and even if there was one, the judgment has been satisfied in full by the settlement agreement with the PLF. CSFR 2.6.2
- Mr. Ballantyne is not claiming a loss of \$5,000 or less. Even if he was, I was not disbarred, suspended, or reprimanded in disciplinary proceedings and I have not resigned from the Bar. CSFR 2.6.3
- Mr. Ballantyne has made no effort to collect the amount claimed from me. CSFR 2.7 (Although, if he had made the effort, it would be to no avail.)
- And, pursuant to CSFR 2.8, Mr. Ballantyne failed to file his claim within two years of the latest of the following:
 - the date of my conviction, since there was none; or
 - the date of my disbarment, suspension, reprimand or resignation from the Bar since none of those have taken place; or
 - the date a judgment was obtained against me, since the PLF settled the matter over four years ago; or
 - the date Mr. Ballantyne knew or should have known, in the exercise of reasonable diligence, of his alleged loss since Mr. Ballantyne filed his malpractice claim in January 2011, which itself was almost two years after the termination of Mr. Smith's attorney-client relationship with Mr. Ballantyne in late 2009 or early 2010.

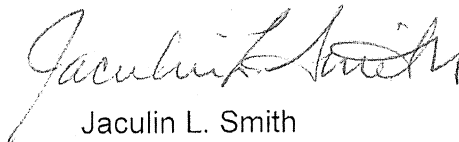
STEPHANIE ANTONIA THOMPSON

September 16, 2015

Page 4

It is my position that Mr. Ballantyne has no legitimate claim against the Client Security Fund. Your report to the Client Security Fund Committee should urge the Committee to deny Mr. Ballantyne's claim.

Respectfully,

A handwritten signature in dark ink, appearing to read "Jaculin L. Smith", written in a cursive style.

Jaculin L. Smith

JLS:ldm

Cc: Richard Helzer, Esq.
Jeff Boly
Kevin O'Connell, Esq.

Priest sex abuse victim's lawyers claim most of his \$900,000 settlement



By **Aimee Green** | [The Oregonian/OregonLive](#)

[Email the author](#) | [Follow on Twitter](#)

on January 04, 2011 at 7:29 PM, updated March 27, 2013 at 3:19 PM

A man who was molested as a child by a Portland priest -- then secured a \$900,000 settlement from the church -- has yet to see a penny more than seven years after the church paid out the money.

In a lawsuit filed this week in Multnomah County Circuit Court, the man alleges that attorneys who represented him in the case managed to claim \$877,000 of the settlement, leaving him with no more than \$23,000. Yet the man, identified only by his initials, G.B., hasn't seen a check for any amount.

According to the suit, G.B. has been living off \$400 to \$500 a month in Social Security disability payments. Little else has been disclosed about G.B., other than he's suffered a lifetime of damage because of the abuse, which occurred while he was a student at All Saints School in Northeast Portland by **the Rev. Thomas Laughlin**. Laughlin was kicked out of the priesthood in 1983 after being convicted of molesting boys.

"He was supposed to get some compensation for what happened to him as a kid, and he didn't," said Jack Polance, the Portland attorney seeking close to \$700,000, plus interest, for G.B. in this week's suit.

The suit reveals how an unusual sequence of events left a victim of childhood sexual abuse with next to nothing. The suit also has upset the legal community, raising questions about the professionalism of at least one of the attorneys involved -- and fueled concerns about potential damage to the public image of attorneys.

David Paul, a prominent Portland attorney who is not related to G.B.'s case but has represented dozens of other victims of sexual abuse, finds the outcome of G.B.'s case disturbing. He said a client's settlement should never be consumed almost entirely by attorneys fees.

"It's wrong legally, it's wrong morally and it's wrong ethically," Paul said. "The client has to be well taken care of."

The standard attorney contingency fee is one-third of a settlement, and it should be stated in a written agreement. If more than one attorney works on a case, the attorneys should hash out how they split that amount, Paul said.

When a settlement is reached, the check is written to the plaintiff's attorney, who keeps it in a trust account for the client. Typically the attorney deducts his fee and costs and gives the rest to the client.

G.B. hired attorney Michael "Mickey" Morey in 2001 to represent him in a suit against the Archdiocese of Portland. Morey worked on the case for 2 1/2 years, and got a \$650,000 settlement offer from the archdiocese. He continued to negotiate for a higher amount, but in July 2003, G.B. fired Morey and hired Portland attorney Frederick T. Smith.

Three days later, Smith negotiated a \$900,000 settlement offer, which G.B. accepted. Smith took one-third of the settlement -- or \$300,000 -- as his fee. But Morey believed he was due a large chunk of that fee because he'd done virtually all the work leading up to the settlement. Smith wouldn't share.

Priest Abuse Cases

Read The Oregonian's previous coverage on priest abuse litigation and the Archdiocese of Portland.

Morey sued his former client, and in 2004, Multnomah County Judge John Wittmayer ruled that Morey had "substantially performed his contractual duties" under his written fee agreement with G.B. and should get \$300,000 of the settlement. Wittmayer also ruled that G.B. must pay \$72,000 in interest, Morey's costs in litigating the sexual abuse case and Morey's costs to hire an attorney to pursue what G.B. owed him.

This week's suit claims that Smith and two other attorneys -- Jeffrey Boly and Jaculin Smith -- gave him bad legal advice by encouraging him to fight Morey every step of the way. The suit states that upon advice of the three attorneys, G.B. appealed the case to the Oregon Court of Appeals and the Oregon Supreme Court. The Court of Appeals again sided with Morey, and the Supreme Court refused to rule on the case. But both courts awarded Morey additional money for his costs.

The years of additional litigation cost G.B. big. By the time it was all over, he was ordered to pay Morey \$527,000.

On top of that, Frederick Smith kept the \$300,000 he thought he was due, even though the suit alleges he didn't have authority to take the money because he didn't have a written contract. The suit also alleges Smith gave \$50,000 from the settlement to the Portland French School in Southwest Portland, where Boly is listed as a member of the school's board of directors. The suit states Smith did that without G.B.'s permission.

Frederick Smith and Boly did not return calls Tuesday seeking comment. Jaculin Smith could not be reached.

Morey, who is now retired, said Tuesday that he was willing to split legal fees for G.B.'s sexual abuse settlement with Frederick Smith, but Smith refused to negotiate.

"I worked very hard on that case for G.B. for nearly 2 1/2 years, and literally at the 11th hour and 59th minute, (Smith) comes in, settles the case and says I was entitled to zero," Morey said.

Of note, G.B.'s suit doesn't fault Morey. That's because Morey was rightfully due payment for his work on the case, said Polance, who filed this week's lawsuit against G.B.'s second set of attorneys.

G.B. filed an ethics complaint against Morey in 2004, when Smith still served as his counsel. The bar dismissed it as without merit.

Last year, Morey filed an ethics complaint against Frederick Smith. The bar is still investigating that complaint.

-- Aimee Green

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Priest sex abuse victim finally gets more of \$900,000 settlement from his Portland lawyers



By **Aimee Green** | [The Oregonian/OregonLive](#)

[Email the author](#) | [Follow on Twitter](#)

on April 19, 2013 at 7:06 PM, updated April 19, 2013 at 10:37 PM

Ten years after a man secured a \$900,000 settlement for abuse as a child by one of Oregon's most notorious pedophile priests, an ugly battle over how much his attorneys got to keep is finally over.

The man's case **came to light two years ago after he filed a lawsuit** saying that his attorneys claimed \$877,000 of his settlement, leaving him with just \$23,000. The news stirred public outrage -- and deeply embarrassed the legal community, which constantly fights the stereotype of greedy, money-grabbing lawyers.

But since then, the man known only as G.B. has managed to recover \$225,000. And though he's better off than he was before, that's far short of the \$600,000 he should have gotten if his attorneys had taken only the standard fee of 33 percent.

"It's just a travesty," said Richard A. Weill, a volunteer trial attorney for the **Oregon State Bar**.

The bar investigated and pursued ethics charges against two Portland attorneys associated with the case -- Frederick T. Smith and Jeffrey Boly -- during a disbarment trial in February. A ruling is expected next month.

Weill said for years, Smith and Boly lied to the man and manipulated him -- a vulnerable adult who relies on Social Security disability checks for his livelihood and who has lifetime psychological injuries from the abuse he suffered as a child.

The man -- identified in court papers by his initials -- trusted the attorneys because Boly was a longtime family friend and Boly introduced him to Smith, Weill said.

G.B. was molested while he was a student at All Saints School in Northeast Portland by the Rev. Thomas Laughlin, who eventually admitted to molesting dozens of boys and was removed from the priesthood.

Twists in the case

The details of the case are convoluted:

In 2001, G.B. hired attorney Michael "Mickey" Morey to represent him in a civil suit against the Archdiocese of Portland. Morey worked on the case for 2 1/2 years and got a \$650,000 settlement offer from the archdiocese. Morey continued to negotiate for a higher amount, but in 2003, G.B. fired Morey and hired Smith.

Three days later, Smith attended his first negotiation session with the archdiocese and obtained the \$900,000 settlement.

"Mr. Smith's entire contribution was showing up to one mediation session and that was it," Weill said. Smith hadn't even read G.B.'s file before the mediation session, Weill said.

Smith took a third of the settlement -- or \$300,000 -- as his fee. But Morey believed he was due most of that fee because he'd done almost all of the work leading up to the settlement. But Smith wouldn't share.

Morey pursued the only legal avenue he had: suing his former client to recover the fee. In 2004, Multnomah County Circuit Judge John Wittmayer ruled that Morey should get \$300,000 of the settlement.

Priest Abuse Cases

Read The Oregonian's previous coverage on priest abuse litigation and the Archdiocese of Portland.

The bar investigation concluded that Smith and Boly encouraged G.B. to appeal to the Oregon Court of Appeals and then the Oregon Supreme Court. The appeals court sided with Morey. The Supreme Court refused to rule on the case.

The years of additional litigation cost G.B. dearly. He was ordered to pay Morey about \$560,000. That included Morey's original \$300,000 fee, interest and Morey's costs to hire an attorney to pursue the fee.

On top of that, Smith kept the \$300,000 he thought he was due. Boly didn't receive any money.

'Some justice'

In January 2011, G.B. filed a lawsuit against Smith and Boly, trying to recover more than the \$23,000 that was left for him when all was said and done.

G.B. then settled with Smith for about \$140,000 after his new attorneys collected their fees -- but the settlement didn't cost Smith anything out of his own pocket. Smith's malpractice coverage paid.

This week, during the first day of trial before a Multnomah County jury, G.B. settled with Boly for \$37,000 after he paid additional attorneys their fees. Boly paid for some of the settlement, but an insurance company paid for most.

In all, G.B. will walk away with about \$225,000 from his settlements with Smith and Boly -- including the \$23,000 he already had and the value of a \$24,000 car that the pair had previously given him.

"Though he didn't get all that he'd lost, he got some justice," said Jan Wyers, a Portland attorney who represented G.B. during this week's trial.

G.B. didn't respond to a request for an interview.

Smith also couldn't be reached for comment because he is in hospital with chronic health problems.

But Boly defended both himself and Smith, saying G.B. was unhappy with Morey's services and it took Smith's skill as a negotiator to get the \$900,000 settlement. Boly said Morey wasn't entitled to the fees he eventually won.

Morey, however, noted that the Oregon State Bar dismissed an ethics complaint filed against him by Smith, determining it was without merit. And, he said, a Multnomah County judge and the Court of Appeals sided with him. What's more, he said, the bar prosecuted Smith and Boly for disbarment.

Weill, the trial attorney for the bar, said he sees Morey as a victim because Smith and Boly attacked his good name.

But the ultimate victim was G.B., Weill said.

"After he was violated in his youth, after suffering so much pain throughout his life, he's violated by these two men who he so trusted," Weill said.


-- Aimee Green

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To : Helen Hirschbiel
From : Robert Ballantyne
Subject: Client Security Fund Claim No. 2015-23 Fred Smith
Date:7-28-16

To whom it may concern.

I am requesting a review of Client Security Fund Claim No. 2015-23 Fred Smith.

I will be seeking counsel to help assist me in this matter. This may take some time.

Thank You
Robert Ballantyne

503 705-1333

4931 NE Alameda
Portland Oregon 97213

RECEIVED

AUG 08 2016

Oregon State Bar
Executive Director

Al Bellamy
4931 NE Alameda
Port OK 97213

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Executive Director

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Helen Hirschbach Oregon State Bar
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OREGON STATE BAR
Client Security - 113
For the Eleven Months Ending Wednesday, November 30, 2016

Description	November 2016	YTD 2016	Budget 2016	% of Budget	November Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$923	\$8,267	\$6,900	119.8%	\$487	\$5,073	62.9%
Judgments	90	630	1,000	63.0%	0	28,300	(97.8%)
Membership Fees	390	225,821	230,000	98.2%	1,980	674,928	(66.5%)
TOTAL REVENUE	1,403	234,718	237,900	98.7%	2,467	708,301	(66.9%)
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	1,036	12,583	32,000	39.3%	2,507	30,156	(58.3%)
Employee Taxes & Benefits - Reg	417	4,675	11,500	40.7%	927	10,393	(55.0%)
TOTAL SALARIES & BENEFITS	1,453	17,258	43,500	39.7%	3,434	40,549	(57.4%)
DIRECT PROGRAM							
Claims	27,145	130,874	200,000	65.4%	6,500	73,517	78.0%
Collection Fees	0	0	1,000	0.0%	747	2,406	(100.0%)
Committees	0	0	150	0.0%	28	98	(100.0%)
Travel & Expense	0	1,349	1,800	74.9%	0	1,760	(23.4%)
EXPENSE	27,145	132,223	202,950	65.2%	7,275	77,781	70.0%
GENERAL & ADMINISTRATIVE							
Office Supplies	0	0	150	0.0%	0	0	0.0%
Photocopying	0	0	50	0.0%	0	5	(100.0%)
Postage	16	127	150	84.9%	15	145	(12.1%)
Professional Dues	0	0	200	0.0%	0	200	(100.0%)
Telephone	16	71	200	35.7%	83	320	(77.7%)
Training & Education	0	545	600	90.8%	0	0	0.0%
Staff Travel & Expense	0	295	1,094	27.0%	0	734	(59.8%)
TOTAL G & A	32	1,038	2,444	42.5%	98	1,404	(26.0%)
TOTAL EXPENSE	28,630	150,519	248,894	60.5%	10,807	119,734	25.7%
NET REVENUE (EXPENSE)	(27,227)	84,199	(10,994)	#####	(8,340)	588,567	(85.7%)
Indirect Cost Allocation	2,655	29,206	31,861	91.7%	2,527	27,797	5.1%
NET REV (EXP) AFTER ICA	(29,882)	54,993	(42,855)	#####	(10,867)	560,770	(90.2%)
Fund Balance beginning of year		1,098,116					
Ending Fund Balance		1,153,108					

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. 2/10/17 BOG Review
2015	39	Boone, Charles P	Morningstar, Jonah	\$ 8,000.00	\$ 8,000.00	Butterfield	9/24/16 CSF stayed.
2016	07	Gonzalez Sierra, Florencio E.	Krull, Julie	\$ 6,000.00	\$ 3,525.00	Dippel	1/30/17 ck req \$3,525
2016	14	Starr, Anna	Krull, Julie	\$ 2,000.00	\$ 1,175.00	Dippel	1/13/17 sent \$1,175
2016	19	Ryan, Christina	Eckrem, John P	\$ 1,500.00	\$ 1,500.00	Braun	11/5/16 CSF denied.
2016	23	Sansome, Dain	Hawes, Jason C.	\$ 12,500.00		Park	11/19/16 BOG deny claim
2016	24	Davis, Madeline	Hunt, John Kevin	\$ 500.00	\$ 500.00	Bennett	1/13/17 sent \$500
2016	26	Sommerauer, Patrizia June	Merrill, Nick	\$ 200.00	\$ 200.00	Braun	11/5/16 CSF denied.
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		Malcolm	11/19/16 BOG deny claim
2016	31	Cline, Russell Warren Brent	Wieselman, Jacob	\$ 300,000.00	\$ 50,000.00	Raher	1/7/17 CSF denied
2016	32	Harbison, Abigail Franky Diane	Eckrem, John P	\$ 2,500.00	\$ 2,500.00	Cooper	11/5/16 CSF denied.
2016	33	Malgarejo, Micaela	Henderson, Paul	\$ 2,535.00	\$ 2,535.00	Thompson	
2016	35	Lopez-Diaz, Marcelino	Ferrua, Franco Dorian	\$ 17,500.00	\$ 12,500.00	Atwood	12/22/16 ck sent \$12,500
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	11/5/16 CSF denied.
2016	38	Bellinger, Joseph Edward	Smith, Davis S.	\$ 2,600.00	\$ 2,600.00	Bennett	1/7/17 CSF denied
2016	40	Shorb, Charles Ray	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00	Atwood	12/22/16 ck sent \$5,000
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	45	Baldrige, Merle	Steinman, Dennis	\$ 11,125.21	\$ 11,125.21	Atwood	1/7/17 CSF denied. Appeal to BOG in April
2016	46	Castellano, Adolfo	Howlett, Bruce M	\$ 7,500.00	\$ 7,500.00	Raher	
2016	47	Bierbrauer, Randy Russell	Foraker, Peggy S	\$ 21,896.19	\$ 21,896.19	Park	
2016	48	Hoodenpyle, Todd A	Dougan, Rebecca	\$ 4,000.00	\$ 4,000.00	Braun	
2017	01	Bostwick, Aaron Paul	Rader, Mark	\$ 8,500.00	\$ 8,500.00	Roy	
	02	McLaren Hall, Rebecca Jean	Merrill, Nick	\$ 2,500.00	\$ 2,500.00	Young	
					\$ 243,091.90		
	Funds available for claims and indirect costs allocation as of November 2016			Total in CSF Account	\$ 1,153,108.00		
				Fund Excess	\$ 910,016.10		

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
From: Legal Ethics Committee
Re: Proposed OSB Formal Opinion 2017-XXX: Client Property, Photocopy Charges for Client Files, Production or Withholding of Client Files

Issue

The Board of Governors must decide whether to adopt the proposed formal ethics opinion regarding lawyer production of client files.

Options

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

Discussion

This proposed opinion from the Legal Ethics Committee is a complete re-write of OSB Formal Opinion 2005-125 *Client Property, Photocopy Charges for Client Files, Production or Withholding of Client Files*, and would replace that opinion in its entirety. The changes to the opinion are intended to address continued confusion among lawyers about what parts of a file the client is entitled to receive, particularly in light of the growing lawyer practice of maintaining client files in electronic formats.

The Legal Ethics Committee has spent many meetings discussing and honing the language of the proposed opinion and recommends that the Board adopt it at this time.

Attachments: Proposed OSB Formal Ethics Op No. 2017-XXX

OSB Formal Op No 2015-125

Project 10-03

REVISED FORMAL OPINION NO. 2016-xxx

Supersedes OSB Formal Op. 2005-125

**Client Property:
Duplication Charges for Client Files,
Production or Withholding of Client Files**

Facts:

Client A terminates Lawyer A while a matter is ongoing. Client A does not owe Lawyer A any fee. Client A asks Lawyer A to provide a copy of the entire file to Client A's new lawyer.

Lawyer B represented Client B in a matter some years ago. Client B now requests a copy of Lawyer B's entire file. Client B does not owe any fee to Lawyer B.

Lawyer A and Lawyer B would like to withhold portions of the client files. Lawyer A and Lawyer B also would like to keep either the original or a copy of what they do provide to Client A and Client B.

Questions:

1. What portions of the client files must Lawyer A and Lawyer B make available to their clients?

2. May Lawyer A and Lawyer B retain a copy of the client files and charge their clients for expenses related to duplicating the files?

3. When may Lawyer A and Lawyer B charge costs related to locating and segregating file documents?

Conclusions:

1. See discussion.

2. See discussion.

3. See discussion.

Discussion:

1. *What Must Be Provided?*

Oregon RPC 1.16(d) provides:

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such

as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.

Oregon RPC 1.15-1(d) provides, in pertinent part:

Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

The term “client file” is not defined in the RPCs and that term is only used in RPC 1.17(b), relating to the sale of a law practice. Historically, lawyers maintained documents or information needed to represent each client in a paper client file, which was typically stored in a single physical location. Information technology has radically altered the form and location of what now may constitute a client file. It is nevertheless useful to think of a client file, regardless of form or location, as the sum total of all documents, records, or information (either in paper or electronic form) that the lawyer maintained in the exercise of professional judgment for use in representing the client.¹

Therefore, as a general proposition, and absent viable attorney liens,² a lawyer is obligated to deliver the entire client file to the former client or forward it to the client’s new counsel upon receiving client consent. *In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988). In most instances, the entire client file will include documents and property that the client provided to the lawyer; litigation materials, including pleadings, memoranda, and discovery materials; all correspondence; all items that the lawyer has obtained from others, including expert opinions, medical or business records, and witness statements. The client file also includes all electronic documents, records, and information that the lawyer maintained for use in the specific client matter, such as email, word-processing documents on a

¹ Compare ABA Formal Ethics Op No 471 (2015) (noting that the majority of jurisdictions follow the “entire file” approach to defining the “papers and property to which the client is entitled,” the entire file approach “assumes that the client has an expansive general right to materials related to the representation and retains that right when the representation ends.”). Other than these provisions and the RPC 1.15-1(a) requirement to maintain certain trust account records, the Rules of Professional Conduct do not identify specific documents or information that a lawyer must maintain in the representation of a client. Other RPC provisions, however, implicitly impose on lawyers an obligation to maintain information and records related to the lawyer’s work for the client. *See, e.g.*, RPC 1.1 (requiring competent representation); RPC 1.2(a) (lawyer may take actions impliedly authorized). Other than documents that were given to the lawyer by the client and documents with original significance (such as wills), a lawyer must exercise professional judgment to determine what documents or information are necessary to provide a client competent and diligent representation.

² OSB Formal Ethics Op No 2005-90; ORS 87.445, 87.476; *Potter v. Schlessor Co.*, 335 Or 209, 63 P3d 1172 (2003).

server, audio files, digital photographs and even text messages.³ Subject to the exceptions discussed below, the entire file includes the lawyer's notes or internal memoranda that may constitute "attorney work-product."

There are a number of circumstances where a lawyer may withhold documents that are contained within the client file. First, the client file maintained by the lawyer may possess documents or information to which the client is not entitled. For example, Lawyer A may store with Client A's documents, a legal memorandum from a prior case where Lawyer A represented Client C and the same or similar issues were present. Because Lawyer A prepared the memorandum in the course of representing Client C, Client A may not be entitled to a copy of the memorandum unless Lawyer A's reliance on the memorandum is relevant to a dispute between Lawyer A and Client A. Indeed, Lawyer A might violate the duty of confidentiality to Client C if Lawyer A provides the memorandum to Client A without at least redacting any confidential information *Cf.* OSB Formal Ethics Op Nos. 2005-96, 2005-81.

Second, a lawyer may possess notes or other communications that do not so much bear on the merits of the client's position in a matter as they do on the lawyer-client relationship. A lawyer might, for example, have emails showing that the lawyer has consulted counsel to explore the lawyer's potential exposure to discipline or malpractice liability to the client. Documents reflecting matters of this type are not part of the client file and need not be produced to the client or provided during a change in representation. *Cf. Crimson Trace Corp. v. Davis Wright Tremaine LLP*, 355 Or 476, 326 P3d 1181 (2014) (holding that the attorney-client privilege as defined in OEC 503 applies to communications between lawyers in a firm and in-house counsel).

Third, a client file may also include internal firm communication relating to administrative matters, such as work assignments, routine conflicts review, client's creditworthiness, time and expense records,⁴ or personnel matters. Such documents are created for internal use primarily for the lawyer's own purpose and need not be produced to the client.

Fourth, a client file may contain electronic documents or information that could be construed as computer metadata, or which would otherwise be too burdensome and expensive to identify, locate and produce in a readable or accessible format. Such data need not be produced as part of the client file.

Fifth, there may be substantive legal reasons, such as law or court order, that prohibit the delivery of certain documents, either in whole or part, to clients.⁵

The Committee cannot say that there are no other possible classes of documents or information that may be withheld. As a general proposition, however, unless there is a valid reason

³ See Oregon RPC 1.0(q), which defines a "writing" as a "tangible or electronic record of a communication or representation * * *." It is worth noting, however, that the production of a "client file" to the client or successor counsel upon request is not judged by the broader discovery standards found in ORCP 36 or Fed. R. Civ. P. 26 that would be applicable in litigation, e.g., a legal malpractice action.

⁴ Note that lawyers still have an obligation to provide an accounting of funds as provided under RPC 1.15-1(d).

⁵ An example might be where disclosure of materials would violate a duty of non-disclosure to another person.

for not providing documents as discussed above, all documents from the client file should be provided.⁶

2. May Lawyer Retain a Copy of the Client File and Charge for Duplication Expenses?

A lawyer has a right to retain a copy of the client file.⁷ The question then is when and under what circumstances the lawyer can charge a client to duplicate all or part of the client file. The lawyer cannot charge for copies of original documents given by the client to the lawyer. The lawyer also cannot charge for copies of original documents prepared by the lawyer for the client and held by the lawyer at the client's request (e.g., the original of a client will or trust agreement). Any copies of such documents to be retained by the lawyer upon providing the original to the client must be made at the lawyer's expense.

With respect to all other documents, the question of duplication expenses depends primarily on the fee agreement between the lawyer and the client. If the fee agreement provides for duplication charges to be paid by the client, there is generally no reason to apply a different standard just because the lawyer-client relationship has ended.⁸ If, on the other hand, the fee agreement provides that the client is entitled to copies of documents without separate charge, the client is entitled to one copy, without charge, of any documents not previously provided to the client. To the extent, however, that a client wants duplicate copies of documents or information previously sent to the client, the lawyer is entitled to charge for those costs.

To the extent that a lawyer has maintained an electronic-only copy of a file, the lawyer may provide the client a copy of the file electronically in the same format in which was maintained, through a thumb-drive, CD or other mechanism sufficiently designed to protect client confidentiality under RPC 1.6.⁹ In some limited situations, such as where an in-custody client may not have regular computer-access, a lawyer may be required to provide a file maintained in an electronic-only format in a format that can be accessed or read by the client.

⁶ A lawyer may, however, produce less than the entire client file with appropriate disclosure and without client objection.

⁷ The Oregon RPCs do not mandate a retention period for client files, although the client file is considered client property that the lawyer must safeguard pursuant to Oregon RPC 1.15-1 during the period the file is retained. Whether and how long a client file must be maintained is a matter of substantive law and therefore 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.

⁸ The only circumstance in which we can presently foresee a different result would be a matter of timing. Suppose that a lawyer-client relationship ends in mid-matter and that an impecunious client needs documents immediately to protect the client's interest. In this circumstance, the lawyer's right to charge for photocopies, like the lawyer's right to a retaining lien more generally, would yield to the client's immediate need in light of Oregon RPC 1.16(d). See OSB Formal Ethics Op No 2005-90. The lawyer would, however, be free to pursue collection of photocopy charges at a later date just as a lawyer who cannot enforce a retaining lien is free to sue for past-due fees.

⁹ See, e.g., OSB Formal Ethics Op No 2016-191.

Finally, some lawyers and law firms use propriety software in the practice of law. Among other things, proprietary software may manipulate, organize and search data, or may populate information into docketing or other programs. Specific licensing agreements between the lawyer and the software provider may dictate the terms under which the data created by the software may be produced, and whether it may be produced at all. To the extent a summary or report can be created by the software, the lawyer should include that as part of the client file. The cost of extraction or conversion of the data to a different proprietary format may be burdensome for a lawyer and, absent an agreement to the contrary, the client is not required to bear that cost.

3. *When May the Lawyer Charge for the Client for Costs Related to Locating and Segregating File Documents?*

A lawyer may not charge clients for costs related to identifying and segregating the materials that the lawyer chooses not to produce. However, a lawyer may charge clients for the costs related to segregating materials that the lawyer is legally prohibited from producing, or if the client has requested only certain portions of the file. Subject to this limitation and to the limitation noted above, a lawyer may charge a client for costs associated with the production of a file to the extent that the lawyer could have charged the client for the same work if the request had been made during the lawyer-client relationship. In addition, a lawyer may charge the client if the lawyer is asked to reproduce documents or information already made available to the client.

As is true in other circumstances, “clearly excessive” or “unreasonable” fees or charges are prohibited. Cf. Oregon RPC 1.5(a), 1.8(i); OSB Formal Ethics Op No 2005-124.

FORMAL OPINION NO 2005-125

Client Property: Photocopy Charges for Client Files, Production or Withholding of Client Files

Facts:

Lawyer *A* is terminated by Client *A* while a matter is ongoing. At the time of the termination, Client *A* does not owe Lawyer *A* any fee. Client *A* then asks Lawyer *A* to provide Client *A*'s new lawyer with a copy of the entire file.

Lawyer *B* represented Client *B* in a matter some years ago. Client *B* now contacts Lawyer *B* and asks Lawyer *B* for a copy of Lawyer's entire file on the matter. No fee is owing from Client *B* to Lawyer *B*.

Lawyer *A* and Lawyer *B* would like to turn over some portions of their client files but would like to withhold other portions. Lawyer *A* and Lawyer *B* also would like to keep either the original or a copy of what they turn over to their clients.

Questions:

1. What portions of their files may Lawyer *A* and Lawyer *B* retain, and what must they make available (with or without photocopy charges) to their clients?
2. When, if at all, may Lawyer *A* and Lawyer *B* charge clients for photocopies?
3. When, if at all, may Lawyer *A* and Lawyer *B* charge their clients for locating and segregating materials to be given to their clients?

Conclusions:

1. See discussion.
2. See discussion.
3. See discussion.

Discussion:

1. *What Must Be Provided?*

Oregon RPC 1.16(c) and (d) provide:

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.

Oregon RPC 1.15-1(d) provides, in pertinent part:

Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

As a general proposition, and absent viable attorney liens,¹ a lawyer is obligated to deliver a former client's entire file to the former client. *See, e.g., In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988). By *entire file*, we mean papers and property that the client provided to the lawyer; litigation materials, including pleadings, memoranda, and discovery materials; all correspondence; all items that the lawyer has obtained from others, including expert opinions, medical or business records, and witness statements. The client file also includes the lawyer's notes or internal memo-

¹ *See* OSB Formal Ethics Op No 2005-90; ORS 87.445; ORS 87.476; *Potter v. Schlessor Co., Inc.*, 335 Or 209, 63 P3d 1172 (2003).

randa that may constitute “attorney work-product.” *See, e.g.,* Minnesota Ethics Op No 13 (1989).

Sometimes, however, the file maintained by a lawyer may include documents to which the client is not entitled. If, for example, the lawyer wrote a memorandum in Case *X* that dealt with a particular issue of law that was also germane to Case *Y*, the common practice is for the lawyer to place a copy of that memorandum in the Case *Y* file. Because, by hypothesis, the memorandum was not prepared in whole or in part for the client in Case *Y*, that client has no right to receive that document. Indeed, the lawyer might well be violating duties of confidentiality or secrecy owed to the client in Case *X* if the memorandum were surrendered to the client in Case *B*. *Cf.* OSB Formal Ethics Op No 2005-96 (rev 2014); OSB Formal Ethics Op No 2005-81 (rev 2014).

At times, lawyer files also may contain documents such as personal notes made by the lawyer that do not so much bear on the merits of the client’s position in a matter as they do on the lawyer-client relationship. A lawyer might, for example, note in a file that the lawyer has consulted the lawyer’s own counsel to explore the lawyer’s potential exposure to discipline or to explore malpractice liability to the client. Documents reflecting matters of this type need not be produced to the client. *Cf.* Oregon RPC 1.6(b)(3) (lawyer may reveal confidential client information “to secure legal advice about the lawyer’s compliance with these Rules”).

There also may also be substantive legal reasons, such as law or court order, that prohibit the delivery of certain documents, either in whole or part, to clients.

We cannot say that there are no other possible classes of documents that may be withheld. As a general proposition, however, we say that unless there is a strong reason for not producing or providing documents, all documents that the client may want and that may be of assistance to the client must be provided.

2. *When Must the Client Pay for Copies?*

A lawyer has a right to retain a copy of the client file.² The question then is when and under what circumstances the lawyer can charge a client to duplicate all or part of the file. The lawyer cannot charge for copies of original documents given by the client to the lawyer. The lawyer also cannot charge for copies of original documents prepared by the lawyer for the client and held by the lawyer at the client's request (e.g., the original of a client will or trust agreement). Any copies of such documents to be retained by the lawyer must be made at the lawyer's expense.

With respect to all other documents, the question of a photocopy fee depends primarily on the nature of the fee agreement between the lawyer and the client. If the fee agreement provided for photocopy charges to be paid by the client while the lawyer-client relationship was in existence, there is generally no reason to provide a different standard just because the lawyer-client relationship has ended.³ If, on the other hand, the nature of the fee agreement between the lawyer and the client were such that the client was entitled to get copies of documents without separate charge, the client would be entitled to one copy, without charge, of any documents not previously provided to the client. To the extent, however, that the client in this latter type of situation wants duplicate

² The Oregon Rules of Professional Conduct do not mandate a retention period for client files, although the client file is considered client property that the lawyer must safeguard pursuant to Oregon RPC 1.15-1 during the period it is retained. The OSB Professional Liability Fund, however, has developed a detailed file-retention schedule based on the nature of the matter involved.

³ The only circumstance in which we can presently foresee a different result would be a matter of timing. Suppose that a lawyer-client relationship ends in mid-matter and that an impecunious client needs documents immediately to protect the client's interest. In this circumstance, the lawyer's right to charge for photocopies, like the lawyer's right to a retaining lien more generally, would have to give way before the client's immediate need in light of Oregon RPC 1.16(d). *See* OSB Formal Ethics Op No 2005-90. The lawyer would, however, be free to pursue collection of photocopy charges at a later date just as a lawyer who cannot enforce a retaining lien is free to sue for past-due fees.

copies of documents or information previously sent to the client, the lawyer is entitled to charge for photocopies.

3. *When May Personnel Charges for Locating and Segregating Files Be Assessed?*

A lawyer may not charge clients for the personnel costs of segregating the materials that the lawyer chooses not to produce. However, a lawyer may charge clients for the personnel costs of segregating materials that the lawyer is legally prohibited from producing, or if the client has requested only certain portions of the file. Subject to this limitation and to the limitation noted above, a lawyer may charge a client for labor costs associated with the production of a file to the extent that the lawyer could have charged the client for the same work if the same request had been made during the lawyer-client relationship. In addition, a lawyer may charge the client for such labor if the lawyer is being asked to reproduce documents or information already made available to the client.

As is true in other circumstances, “clearly excessive” or “unreasonable” fees or charges are prohibited. *Cf.* Oregon RPC 1.5(a); Oregon RPC 1.8(i); OSB Formal Ethics Op No 2005-124.

Approved by the Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 3.4-6 (fees and costs), § 12.4-1 to § 12.5 (client property), § 16.4-3(f) (file retention) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 33, 38, 44–46 (2000) (supplemented periodically); and ABA Model RPC 1.15–1.16.

ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds
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Statistics since inception of program			
\$ 727,220	\$ 518,900	\$ 1,246,120	Total of all Submitted Unclaimed Property
\$ (94,403)	\$ (35,525)	\$ (129,928)	Total of all Claimed Property
\$ (32,648)	\$ -	\$ (32,648)	Total of Property Returned/Forward to Other Jurisdictions
\$ (440,603)	\$ (346,346)	\$ (786,949)	Total Funds Distribututed to Programs
\$ 10,010	\$ -	\$ 10,010	Interest Earned
\$ 169,576	\$ 137,029	\$ 306,605	Balance of Funds on Hand by Fund

Breakdowns by Year

2016			
\$ 43,099	\$ -	\$ 43,099	Funds Collected
\$ (1,641)	\$ (8,366)	\$ (10,007)	Funds Claimed
\$ (50)		\$ (50)	Funds Returned
\$ 41,408	\$ (8,366)	\$ 33,043	Subtotal
\$ (117,500)		\$ (117,500)	Funds Disbursed
\$ 2,382		\$ 2,621	Interest Earned
\$ 243,286	\$ 145,395	\$ 388,681	Previous Year Fund Balance
\$ 169,576	\$ 137,029	\$ 306,845	Fund Balance

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

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

ULTA Annual Report

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

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

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

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

From: Steven R. Powers [\[mailto:SPowers@pfglaw.com\]](mailto:SPowers@pfglaw.com)

Sent: Friday, January 27, 2017 6:10 PM

To: Michael D. Levelle <mlevelle@sussmanshank.com>

Subject: Invitation: Oregon Filipino American Lawyers Association - launch event Feb 28 @ 5:30pm

Hi Mr. Levelle: As you may recall, we met briefly when you attend the OMLA IMAGE Fall CLE that I moderated last October on making the internal case for diversity. I am writing today to invite you to the kickoff event for the newly formed Oregon Filipino American Lawyers Association (OFALA) on February 28th at Perkins Coie. OFALA brings together judges, lawyers, law students, legal professionals, and supporters of its mission to:

- share and validate our experiences as Filipino American legal professionals;
- increase the visibility of Filipino American legal professionals and their accomplishments;
- promote equality and multiculturalism by increasing diversity within the Oregon State Bar and within the broader legal system;
- empower Oregon's Filipino American community by increasing its access to the legal system;
- cultivate relationships between the Oregon Filipino American Lawyers Association and other Filipino American organizations; and,
- celebrate Filipino American culture and heritage

We are also an affiliate of the National Filipino American Lawyers Association (NAFALA).

You may have already seen the event announcement on the OMLA list-serv or on other distribution lists (and I'm sure as OSB President your inbox is inundated with event invites), but the Board wanted to be sure that you got a personal invitation to attend our evening reception. The founding OFALA Board of Directors includes:

- Julia Markley, President
- Honorable Janelle Wipper, President-Elect
- Peter Sabido, Treasurer
- Stephanie Davidson, Secretary
- Gretel Ness, At-Large
- Enrico Tadeo, At-Large
- Steve Powers, At-Large

Finally, I understand that the NAFALA President, Jhanice Domingo, is flying in from New Jersey to attend and two NAFALA board members from Seattle plan to attend as well. I hope you can join us.

To recap, the kickoff event is February 28 from 5:30 - 7:30pm at Perkins Coie. I've attached the flyer with more information and, of course, let me know if you have any questions.

Regards,

-Steve

OREGON STATE BAR INDIAN LAW SECTION

Indian Law Legal Issues in Oregon¹

The goal of the Indian Law Section (ILS) is to encourage a greater understanding of Indian law among Oregon legal professionals and improve the practice of Indian law throughout Oregon. The ILS represents a wide spectrum of attorneys who handle cases, transactions and other matters involving Indian law, including attorneys in private practice, attorneys who work as in-house attorneys for Indian tribes, attorneys for non-profit organizations advocating for tribal rights, federal and state attorneys, and attorneys who serve as tribal court judges for Indian tribes in Oregon. The ILS was organized in 1995 by practitioners working in Indian Country in Oregon and is open to all members of the Bar as well as non-attorneys. Membership can include persons who are attorneys, tribal court judges, tribal leaders and tribal members, or anyone else interested in Indian law issues.

A. Serving Tribal Governments

Many ILS attorneys represent the tribal governments and other tribal entities of Oregon's nine federally recognized Indian tribes and serve as outside or in-house counsel. In this role, these attorneys are called upon to:

1. Ensure that tribal members are safe, have adequate employment opportunities, and access to education and health care.
2. Create and maintain healthy government-to-government relationships between tribal governments and city, county, state, and federal agencies. Ensure consultation with federal and state agencies on all actions which affect tribal members and Indian land.
3. Drive economic development and entrepreneurship on Indian reservations. Ensure that tribal gaming operations are successful, primarily benefit Indian tribes, and remain free from criminal activity.
4. Ensure that federal agencies meet their treaty and trust obligations to Oregon tribes and their members.
5. Empower Oregon tribes to independently administer their own affairs pursuant to the Indian Self-Determination and Education Assistance Act.

¹This document was approved by a majority of the Indian Law Section's Executive Committee. The opinions expressed in this document reflect the views of certain Executive Committee members acting in their personal capacity and do not necessarily reflect the views of that individual's employer or other entities or organizations in which that individual participates.

B. Accountability for Treaty and Trust Obligations

Oregon's Indian tribes and their members enjoy rights negotiated for in treaties with the United States government. These treaties were not a grant of rights to the tribes, but rather a reservation of inherent tribal rights. Likewise, the law of the United States describes a federal trust obligation to Indian tribes which is akin to a fiduciary responsibility. ILS attorneys who represent tribes protect these rights and obligations before various government agencies and in the courts. It is the priority of Indian tribes and their counsel to:

1. Ensure that the U.S. Indian Health Service is fully funded and creates access to health care for Native American families living both on and off Oregon's reservations.
2. Ensure that the U.S. Bureau of Indian Education provides excellent education for tribal children.
3. Ensure that the United States protects the subsistence hunting, gathering and fishing rights that are both vital to native culture and key to meeting the nutritional needs of Oregon's native population.
4. Protect existing Indian land, restore the Indian land base, and maintain an adequate water supply to serve reservation communities.

C. Economic Development in Indian Country

Many ILS attorneys represent tribally owned as well as non-tribal businesses working to create mutually beneficial business relationships with Indian tribes and on Indian land. In this regard, ILS attorneys may:

1. Make non-tribal businesses aware of investment opportunities in Indian Country.
2. Negotiate contracts with Indian tribes that include limited waivers of sovereign immunity, choice of law, and choice of venue.
3. Take advantage of various federal preference and grant programs that promote investment in reservation businesses.

D. Environmental and Energy Law Issues

The dominance of hydroelectric power generation in the Northwest raises energy production and environmental concerns which directly impact Oregon's Indian tribes. Accordingly, Oregon tribes must be consulted and involved in all decisions affecting the natural environment and related to energy production and transmission in Oregon. In addition, Indian tribes and their counsel may work to:

1. Ensure that the Columbia River and its adjacent sites remain free of pollution. Ensure that the CERCLA “Superfund” cleanup operations at the Hanford Nuclear Reservation and the Portland Harbor are effective.
2. Ensure that fish species central to native culture in the Northwest flourish.
3. Participate in revisions to the Columbia River Treaty, the international agreement between Canada and the United States for the cooperative development and operation of the water resources of the Columbia River Basin.
4. Ensure cooperation between federal, state and tribal governments in the siting of energy transmission infrastructure.
5. Advocate for Indian tribes as rate payers in the regulation by the State of investor owned utilities.
6. Develop tribally owned energy generation and distribution infrastructure and participate in the development of and sponsor clean energy projects in Oregon.

E. Criminal Jurisdiction, Child Welfare, Law Enforcement and Tribal Courts

The complicated framework of federal, tribal, and state criminal and police jurisdiction on Indian reservations has resulted in jurisdictional gaps which can leave reservation communities vulnerable to crime. Indian tribal courts are expanding jurisdiction to fill these gaps. The federal Indian Child Welfare Act (ICWA) also protects the rights of tribes and Native American children and parents in state dependency hearings. In this regard, ILS attorneys may work to:

1. Address the need for coordination between state and tribal courts and establish procedures for comity/full faith and credit between tribal and state courts.
2. Establish intergovernmental and inter-agency jurisdictional agreements with law enforcement agencies to eliminate jurisdictional gaps that endanger reservation communities.
3. Address individual tribal members’ need for competent tribal court counsel in child custody matters. Remove financial barriers to tribal participation in ICWA cases by eliminating the *pro hac vice* fee and requirement that out-of-state counsel associate with local counsel in ICWA cases.
4. Address the need of individual tribal members and non-native criminal defendants for competent tribal courts in criminal matters. Design and fund support services and procedures that protect crime victims while also representing the rights of both native and non-native criminal defendants in tribal courts.

5. Hold tribal governments accountable to their members in their own tribal courts under their own laws as well as the federal Indian Civil Rights Act.
6. Represent tribal interests in child welfare matters, ensuring that ICWA rules and guidelines are adhered to in both state and tribal courts, and protect the interests of tribal children and tribal members involved in child welfare cases, in accordance with ICWA.

F. Legal Education

Tribal law predates the United States and continues to this day. Indian Tribes have constantly advocated for their rights throughout United States history, but many Americans, and even attorneys, are unaware of or confused by the nature of tribal rights, tribal law, and federal Indian law. Accordingly, it is incumbent on ILS attorneys, and all members of the Oregon State Bar, to:

1. Familiarize themselves with the sovereign status of Indian tribal governments and of the federal laws and treaties that protect tribal sovereignty and inform decision makers and legislators on these issues.
2. Educate their non-tribal private and government clients about Indian law.
3. Follow legislation and committee reports affecting Indian tribes, including juvenile dependency issues.
4. Advocate that Indian law be taught in Oregon's law schools.
5. Advocate that Indian law subjects be tested in the Oregon State Bar exam.

2016 Program Evaluations

Oregon State Bar
2016 Program Evaluations
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Client Assistance Office (CAO)

Goal Statement

The primary goal of the Client Assistance Office (CAO) is to promptly review and properly process complaints about the conduct of members of the Oregon State Bar. Our secondary goals include preventing violations by educating lawyers and consumers of legal services, assisting lawyers and their clients to resolve issues, and providing legal consumers with access to general information and resources that may assist them to address their concerns about a lawyer.

Program Description

The CAO was established in 2003 to remove the initial screening and evaluation of complaints about lawyer conduct from Disciplinary Counsel. Complaints and inquiries about lawyers are evaluated by three CAO lawyers with administrative support from a staff of two non-lawyer assistants. If CAO's initial evaluation finds sufficient evidence to support a reasonable belief that a lawyer may have violated the rules of professional conduct, the complaint is referred to Disciplinary Counsel for further evaluation accompanied by a brief memo describing the basis for the referral. Otherwise, it is dismissed with a written explanation for the dismissal provided to the complainant. Complainants may request review of a dismissal by General Counsel.

As appropriate and as resources permit, the CAO also provides information and assistance to legal consumers to address simple problems with their lawyers, such as obtaining file materials or resolving communication issues. When the CAO cannot assist, CAO refers the consumer to other agencies or programs that may address their legal concerns.

In addition to responding to inquiries and complaints about lawyers, CAO engages in efforts to prevent misconduct by educating lawyers about their professional responsibilities and, in support of General Counsel, responding to calls from lawyers seeking advice about complying with their ethical duties.

Volunteers/Partnerships

CAO regularly works with a wide range of partners at the bar including General Counsel, Disciplinary Counsel, Public Records, Referral and Information Services, Communications and Public Services, Information and Design Technology, Client Security Fund, Unlawful Practice of Law Committee, and the State Lawyers Assistance Committee. CAO maintains a good relationship with state courts and the Oregon Attorney Assistance Program regarding issues that may be of common concern. CAO also provides ethics training and education to lawyers in bar sections or other groups around the state.

Outcomes and Evaluation

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

Program measures call for CAO to process a high volume of inquiries and complaints in a timely manner. In 2016, CAO opened 2,027 matters and disposed of about 1,938 matters. For purposes

of comparison, CAO opened 1,937 matters in 2015 and disposed of about 1,629. In 2014, CAO opened 1,936 matters and disposed of about 1,783.

In addition to these matters, the CAO staff handles a great deal of telephone calls. Substantive calls handled by the department average over 20 per day.

For inquiries that do not warrant further investigation or require a substantive dismissal, CAO practice is to acknowledge and respond to the inquiry within three days of receipt. For complaints that warrant further investigation or require a substantive dismissal, CAO attempts to review the complaint and take such action within 14 days. In the majority of cases, CAO took that action within 7 days.

Program measures call for CAO to dispose of 70% of complaints and inquiries within sixty days of receipt. In 2016, CAO disposed of about 68% of complaints and inquiries within that time. (56% of all dispositions came within 30 days of receipt.) Average disposition time for all dispositions was 54 days.

Disposition time was a bit slower than in prior years. This likely was a result of an overall increase in matters (and dispositions) and the temporary reduction in lawyer staff recounted above.

Outcome #2: Ensure proper disposition of complaints by making the correct decision to refer to disciplinary counsel or dismiss.

CAO continues to provide high quality analysis in the disposition of matters. Of the 1,938 matters disposed of in 2016, over 281 (14.5%) were referred to Disciplinary Counsel. (Cf. 2015 12.5% and 2014 13.2%). 1,180 matters were dismissed. In a few but significant instances (about 27) CAO was able to contact the lawyer and resolve the issue. In the remaining matters, CAO provided information or a referral to another program.

Program measures state that at least 90% of CAO dismissals should be affirmed on review by General Counsel. In 2016, there were 246 requests for General Counsel review of CAO dismissals. Only six matters were referred to Disciplinary Counsel after review. 97.6% of CAO dismissals were affirmed.

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

For staffing reasons discussed above, lawyers were unable to attend any national conference in 2016. However, CAO staff lawyers attend more than their required MCLE programs and participated in other opportunities to maintain and improve skills. Additionally, staff lawyers consult with each other and review each other's work to maintain quality and help ensure a sound decision making process. The competence of the staff is reflected in the timely and accurate dispositions of matters and the quality of the referral memos and dismissal letters associated with those dispositions.

General Counsel and Disciplinary Counsel staff lawyers meet semi-regularly with CAO's staff lawyers to help ensure consistency of analysis and approach. Weekly CAO staff meetings help

CAO staff to spot and address issues as they arise. CAO staff also attended training sessions to familiarize ourselves with the new AMS system.

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

CAO worked with the Public Information and Communications departments to create an updated program page on the bar's website, including a video explaining our program to the public. CAO attorneys also contributed approximately 24 total hours of continuing legal education presentations in different programs for lawyers around the state. The presentations included ethics school, mandatory abuse reporting, and other subjects related to lawyers' professional responsibilities.

Outcome #5: Identify technological and process improvements to improve department efficiencies.

CAO's continued operation as a mostly paperless office has reduced costs and, especially in connection with public records inquiries, increased the utility of CAO records. CAO staff members intend to apply our energy to improving systems with the advent of the updated AMS.

CLE Seminars Department

Program Goal Statement

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

Program Description

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

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

Volunteers/Partnerships

Volunteers: 345 attorneys and other professionals volunteered as planners and speakers in 2016, some more than once, to fill 436 opportunities.

Partnerships: The CLE Seminars Department cosponsored seminars with OSB sections, OSB Legal Heritage Interest Group and the Washington State Bar Association Creditor-Debtor Rights Section. The CLE Seminars Department also supplemented its original programming with live and online CLE content from six online educational partners: BASF (Bar Association of San Francisco), CLEseminars.com, Georgetown Law CLE, Mesa CLE, Periaktos Productions, and WebCredenza.

Outcomes and Evaluation

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

Measure: *Continue a creative and flexible approach to program and product formats to meet changing member needs and market forces.*

CLE Seminars produced 35 live CLE events during 2016, and almost all of them were available online either as a live webcast or on demand. Most live seminars were still available on hard media (CD and DVD), and the membership had online access to 555.75 hours of streaming video, 72.75 hours of streaming audio, and 218.50 hours of MP3 downloads.

The quality and availability of OSB CLE in a variety of formats, from hard media to online, was supported by member correspondence and calls. Although sales of CD and DVD rentals continue to decrease, it is still a viable format for members, as explained in a letter from an Ashland member:

“I now purchase the programs for 2 reasons: (1) the saving in time and expense associated with traveling from Ashland, Oregon; and (2) the great benefit I receive in listening to part of the programs more than once.”

Another member called the department in the fall regarding his experience with a national sponsor’s CLE offerings. He was so disappointed with the program that he wanted to express what a great job OSB CLE Seminars did and how impressed he was with the programming. The member lives in Lakeview and really appreciated that most of the department’s seminars are available in remote areas. He commented that the department’s customer service and programs were “top notch” and that he was proud to be an OSB member. “Too often people complain, but rarely do they call and inform you when you have done a great job and appreciate what you do.”

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

Measure: Survey attendees, speakers, and sponsors regarding their satisfaction with topics, format, and logistics.

Member satisfaction attending OSB CLE seminars remains high. 89.61% of those who returned seminar evaluations rated the overall quality of the department’s seminars as “excellent” or “very good.” The seminar check-in process was rated as “excellent” or “very good” by 96.36% of those returning evaluations, while 96.39% rated onsite staff as “excellent” or “very good.”

Based upon the Membership Services Department section survey (1-5 scale), the CLE Seminars Department continued to be valued by bar sections. Sections who answered the survey gave the CLE Seminars and staff the following average ratings: courtesy of CLE staff (4.7); assistance with planning and logistics (4.6); timely distribution of notices regarding programs (4.6); and providing accurate information on cosponsoring CLE events (4.2). The difference in rating for the last criteria most likely stemmed from the anticipated changes to section cosponsorship directed by the BOG. As one chair commented, “Kes, Anna, and Karen are really wonderful to work with, very knowledgeable, and always professional. Our Section’s disagreement with CLE cosponsorship has nothing to do with the excellent staff.”

Evaluate revenue-sharing model for programs cosponsored with sections.

The department cosponsored seminars with 20 sections. Of those seminars, 13 generated sufficient revenue from the live seminar to participate in the department's current revenue-sharing programs. This model operated on a per capita basis. The department reviewed section revenue sharing figures for the past three years and developed an alternative model using a percentage basis of net revenue that would provide a section a proportional share of net revenue yet not negatively impact the revenue needed to meet seminar and department expenses. This proportional share would be linked to the finances of the seminar and not the number of attendees, as the current revenue share is calculated.

Promote cosponsorship and other service to sections.

In 2016 CLE Seminars provided registration services for 14 sections that held 20 CLE events. Of those 20 events, two sections, Labor & Employment and Family Law, requested additional event planning services for multi-day events. Different cosponsorship models were proposed under a directive by the BOG but a final cosponsorship system remained in development for the year.

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

Measure: Implement electronic delivery of speaker confirmation letters and documents to reduce paper costs and postage.

In mid-fall the department successfully piloted sending speaker confirmation information electronically, which reduced the amount of postage, bar letterhead, envelopes, and copy paper utilized for each speaker. With more than 400 speaker confirmation packets sent annually, this electronic delivery was poised to create future cost savings.

Measure: Evaluate pricing models and recommend any changes that will enhance ability to achieve budget goals.

Standard seminar registration rates remained static in 2016, while institute pricing saw minimal increases to reflect increased venue costs. In an effort to respond to the financial constraints of many newer OSB members, discounted registration rates for ONLD were instituted for most live seminars sponsored by the department. The discounts ranged from 15% to 40%. Once the bar's new AMS and in-house webcasting platform are in place, other pricing discounts may be possible for live webcasts and on-demand programming.

Measure: Identify and implement efficiencies in processes and logistics. Evaluate staffing needs.

2016 saw significant department staffing changes. With the intra-department promotion of the Seminars Assistant, an opportunity was presented to reevaluate the department's functions

and staffing needs. By utilizing more electronic communication, intermittent temporary employees, and shifting responsibilities to existing department staff, a reduction in overall staff was possible without sacrificing the quality of the CLE program. This reduction resulted in staff cost savings during the last quarter of the year and projected savings for 2017.

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

Measures: Work with CLE planners to encourage recruiting CLE presenters that reflect the diversity of the bar membership; review speaker and planner data each year and maintain statistics.

Based upon the bar's database, the department's 2016 OSB speaker and planner faculty had the following demographics: 59% male, 41% female; 72.5% White, 2.6% Asian, .4% Black, 2% Hispanic, and 1% Native American. In addition, .4% identified themselves as "multi or other," while 21% did not state ethnicity. This is compared to the bar's October, 2016 membership demographics (15,257 active members) of 64% male, 36% female; 65% White, 3% Asian, 1% Black, 1.5% Hispanic, and .5% Native American. Also, 3% identified themselves as "multi or other," and 26% "declined to state their ethnicity."

The geographic diversity of CLE Seminars speakers and planners continued to mirror the state's more populated regions. The majority of the department's 345 CLE speakers came from the following counties: Multnomah (52%), Marion (8%), Clackamas (6%), Washington (4%), and Lane (4%). Nine percent of the department's CLE speakers came from the counties: Benton, Clatsop, Columbia, Crook, Curry, Deschutes, Jackson, Klamath, Lincoln, Linn, Malheur, Polk, Umatilla, Wasco, and Yamhill. Non-Oregon participants (17%) hailed primarily from Washington state.

Measure: Develop CLE program curriculum that addresses diversity and inclusion issues such as implicit bias and white privilege.

Two programs cosponsored by the CLE Seminars Department focused on significant diversity and inclusion issues. At the suggestion of the department director, the 2016 Litigation Institute & Retreat featured a presentation by a Japanese female OSB member who represented another Japanese OSB member whose civil rights had been violated 74 years earlier during WWII under Executive Order 9066. The presentation was very well-received; at the conclusion of the presentation the speaker received a standing ovation, a first in the institute's almost 25-year history.

In the spring of 2016, CLE Seminars and the Multnomah Bar Association (MBA) explored the possibility of including an implicit bias presentation at the MBA annual awards lunch. Due to scheduling conflicts with the speaker, that presentation was not possible. Instead, the planners focused on enhancing the OSB BOG/Multnomah Bar Association fall social. This eventually became a 90-minute CLE panel discussion on diversity in hiring, followed by a networking

reception. Members of the Portland metro area specialty bars and other stakeholders were invited to the event and almost 100 individuals attended the two events.

Communications & Public Services Department

Program Goal Statement

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

Program Description

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

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

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

Volunteers/Partnerships

Volunteers: Approximately 50 members annually serve as authors and sources for member communications and another 100 or so assist annually with public information materials.

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

Outcomes and Evaluation

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

Our primary, ongoing goal is to ensure consistent coverage of bar priorities in the editorial and marketing content of the *Bulletin*, bar website and various electronic newsletters and bulk messaging. In 2016 each issue of the *Bulletin* included columns on legal ethics, law practice management and legal writing. The magazine balances features on substantive law and legal trends with features, profiles and opinion pieces that touch on OSB priority issues:

- Access to Justice: “Linking Health & Law” (medical-legal volunteer partnerships), “Lessons for the next Generation” (civics education), “Creative Charity” (lawyers give back).
- Diversity & Inclusion: “Bowling with Barbarians” (implicit bias), “Strangely Absent from History” (Oregon exclusionary laws), “State-Sponsored Sterilization” (disability discrimination); “Land of Opportunity” (immigrants and refugees in Oregon).
- Future of the legal profession: “A Brave New Legal World” (future of the profession), “South of the Gorge” (rural practice opportunities), “No More Pencils, No More Books” (changes in legal education).
- Sustainability: “A Chuckle in the Chain” (bike commuting).

Information on OSB programs and events are included in the *Bulletin* as well as email communications and the BOG Update e-newsletter. In 2016 the department sent out 34 all-bar emails and had an average open rate of 30% and a click-through rate of 7%, substantially the same as the previous year. Ongoing tests have shown that a specific subject line is more closely correlated with high open rates than the timing of the message, and that messages targeted to specific groups, e.g., new lawyers or section members, have higher open rates. The department continues to develop an appropriate presence on social media, with 45 Facebook posts in 2016 promoting CLEs, job openings, publication of the Capitol Insider and various networking events with photo galleries.

A specific goal for the year was to develop an online version of the *Bulletin* that retains its advertising content, which will be key to retaining ad revenues as more members opt for digital delivery in the future. The new online version debuted in May. An added benefit is that the new production process takes approximately 2 hours to produce, where the former process required 12-14 hours to produce.

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

Along with ongoing design and production work, areas of focus for 2016 were to continue the migration of section websites to a single platform and implement the next stage marketing development for CLE seminars. During 2016 we completed the transition of 26 section sites to the OSB WordPress platform with another 5 sites developed and in review by the sections. Five sites, currently positioned on the public WordPress platform and managed directly by the bar, will be brought over to the OSB platform in 2017. That leaves five sections sites, currently managed independently by the sections, to be migrated in 2017, and discussion has begun with these sections. All of the new sites reinforce the bar's visual brand, are responsive for mobile devices, accessibility ready, with familiar tools that make it easier for volunteers to maintain their sites.

For CLE seminars, staff continued developing new cross-placements with the *Bulletin* and email marketing, plus multiple online placements including the main page carousel, CLE page carousel, member login page and BarBooks. Staff also began developing cross-marketing opportunities between CLE Seminars and Legal Publications, including a combination sale. Additional opportunities will follow upon installation of new association management software in 2017.

An analysis of online sales by delivery type in 2016 shows a continued decline in registration for in-person programs and continuing growth in live webcasts and on-demand products. On-demand products now account for 31% of sales and are our most popular delivery method; revenue from attendance at live programs decreased 14% over 2015 while attendance via live webcast increased 23%. This trend supports our decision to focus on producing more live webcasts and expanding our on-demand library moving forward.

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

The communications department provides legal information to the public in multiple forms, primarily delivered through the bar's website. Most visitors access this information through our Legal Topic Index. Topics are updated on an ongoing basis, and 45 topics were reviewed and revised by lawyer volunteers and a staff editor in 2016. The most viewed legal topic pages were: Landlord/Tenant (169,552) and Referral & Information Services (123,736). Several topics had notable increases in page views over 2015, including Marijuana/Cannabis Law (+ 86%), Employment Law (+ 59%), Rent Increases (+ 56%) and Divorce (+ 50%). Others showed declines, which could indicate declining needs for legal assistance in these areas: Employment Rights for People with Disabilities (- 61%) and Understanding Bankruptcy (- 26%).

Our focus for 2016 was to add more video content to the site, which many members of the public prefer to written content. Greater use of video also has an impact of search engine

rankings, which in turn brings more people to our web page for legal information and resources. Working with the Public Service Advisory Committee, we launched “Legal Q&A,” a series of short (2-3 minutes) videos featuring lawyer volunteers answering a single, common legal questions. The first clips posted featured bar staff explaining the services of the OSB Client Assistance Office, Lawyer Referral Service and Modest Means Program. The latter two were produced in both English and Spanish. By the end of the year 31 completed Legal Q&A videos had been posted on the public pages of the bar’s website and have been viewed more than 1,200 times.

Another goal for 2016 was to revise the guidebook Legal Issues for Older Adults as both a print and web-based product. Sections of the guidebook that duplicated online legal topics were removed, and all remaining chapters were revised by a contract legal editor and reviewed by a staff editor. The revision is now in the production/design stages and will be published in the spring of 2017.

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

Our main focus for 2016 was preparing for and communicating service changes related to the Aptify installation. This included working with the implementation team to make avoid service disruptions during the regulatory compliance cycle. Staff maintained the existing notification process for a final year while working to develop a member-friendly interface, including law firm administrator access, for the new Aptify-based processes in 2017.

Bar leaders remain largely satisfied with communication efforts, offering the following ratings on a 1-5 scale:

- Coverage of section and committee events by OSB Communications -- 4.5
- Public education materials (print, online, video, etc.) -- 4.1
- Courtesy of staff -- 4.8

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

The department has three distinct budgets, each of which posted good results for 2016. Revenues for our online career center, JobTarget, once again exceeded projections. The *Bulletin* continues to support other bar programs and affiliate groups by providing free ad space. The value of donated space to CLE Seminars totaled \$26,600, with an additional value of \$45,970 to other bar programs and affiliates such as the Campaign for Equal Justice.

Disciplinary Counsel's Office

Program Goal Statement

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

Program Description

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

Volunteers/Partnerships

Volunteers: The State Professional Responsibility Board, which is responsible for making charging decisions and overseeing the ensuing prosecution, is comprised of eight lawyers and two public members. The lawyer members are representative of the seven bar regions; the public members are at-large. The Disciplinary Board is comprised of 67 geographically-assigned lawyers and public members from whom trial panelists who serve as adjudicatory officers are selected. DCO also occasionally enlists a volunteer bar member to serve as lead counsel in a disciplinary matter. Other members of the bar may serve as attorney monitors in both diversions and probations.

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

Outcomes and Evaluation

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

DCO met or exceed most of its timeline targets in 2016. In the areas where the targets were not met, the delay was typically a consequence of the complexity of the matter or challenges in obtaining the responding lawyer's response.

<i>Step</i>	<i>Target</i>	<i>2016 Average</i>
Initial Action	14 days from receipt	12 days
Probable cause decision	4 months from receipt	77 days
Recommendation to SPRB	9 months from receipt	7.3 months
SPRB review of staff dismissals	90% upheld	100%
File formal complaint	60 days from SPRB authorization	124 days
Request trial panel	120 days from formal complaint	139 days
Resolve 70% without trial		53%
Initial trial setting	Within 6 months of assignment to a trial panel	11 of 18
Prevail in 90% of formal cases		100%

Outcome #2: Increase bar and public contacts

During 2016, outside speaking opportunities continued at a pace consistent with the prior year. Outreach to the larger legal community will continue as a priority.

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

Diversion under Oregon BR 2.10 continues to be an option considered by the SPRB in eligible cases. Both DCO and SPRB are mindful that the facts of a case and the circumstances of a respondent lawyer must be such that there is an identifiable condition or issue that can be impacted by remedial action in order for diversion to be a successful outcome. An administrative staff member monitors all diversions, probations, conditional admissions, and conditional reinstatements and a single staff attorney handles any enforcement measures that arise from failures to abide by diversionary or probationary terms. The form language of diversion agreements and stipulated probationary orders form are under continued review. As of the end of 2016, 36 different matters are being monitored.

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

In March of 2016, the Board of Governors reviewed and voted on all but two recommendations made by the Disciplinary System Review Committee (DSRC) regarding changes to the Bar Rules that govern the attorney discipline system. After two subsequent discussions at later meetings, another recommendation was approved, which would, if adopted by the court, result in the establishment of a professional adjudicator who would chair all trial panels and perform many functions now performed by the statewide Disciplinary Board chair. Between March and November, work was done on rule language to implement the proposed recommendations. In November, the BOG tabled until January a vote on the rule language to be proposed to the court.

Outcome #4: Process regulatory work in timely manner

In 2016, DCO timely processed 504 pro hac vice applications; 14 arbitration registrations; 1112 status transfers, which included 285 resignations and 159 reinstatements; and issued 1,036 good standing certificates. Staff responded to 2,076 public records requests by providing more than 3,801 copies and 140 computer disks of records. Response time was generally within 24 hours.

Outcome #5: Continue with technology improvements

During 2016, DCO staff members participated in the development and planned launch of the new association management software. DCO continues to enhance, through currently available technology and software, the extent to which documentation is stored and transmitted electronically, in order to reduce paper and postage costs and render records more readily accessible through means other than a paper file, working with IDT to make incremental refinements in the disciplinary database. The continued growth of records pertaining to Oregon courts that are searchable electronically has continued to render the investigation of court records more efficiently accomplished, which has positively impacted disciplinary investigations. Public records requests are increasingly responded to electronically as well.

Outcome #6: Conduct a successful Ethics School

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

2016 Program Measures

Diversity & Inclusion

Goal Statement

The goal of the Diversity & Inclusion Department of the Oregon State Bar is to support the mission of the Oregon State Bar: by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. The Department serves this mission by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice.

Program Description

In 1975, the Oregon State Bar established the Affirmative Action Program (AAP) with the goal of “achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon, while at the same time not lowering the standards for admittance...”¹ At that time, there were 27 racial/ethnic minority attorneys in Oregon (.5%). The AAP served only racial/ethnic minority participants through 1998 (466 active OSB racial/ethnic minority members—4.1%). In 1998, eligibility for AAP programs was split—anyone (regardless of race/ethnicity) who could help the program achieve its mission was eligible to apply for programming. Opportunities for Law in Oregon (OLIO) was created as the only program focused on outreach to recruit and retain historically underrepresented racial and ethnic minority law students in Oregon. Historically, OLIO has been funded primarily by private donations and grants.

In August 2011, the bar changed the name of the Affirmative Action Program to the Diversity & Inclusion Department (D&I) and expanded its role to work strategically and in collaboration with OSB leaders to advance diversity and inclusion in all aspects of the OSB’s mission. In 2012, bar leaders developed a definition for diversity and inclusion, and articulated a compelling business case statement explaining why it is important. In 2013, D&I led the bar’s effort to create a Diversity Advisory Council (DAC), which developed and presented a draft Diversity Action Plan (DAP) to the Board of Governors (BOG). The BOG adopted the DAP during its November 2013 meeting. The DAP is a three-year plan that identifies goals, strategies and action items to advance diversity and inclusion in all the bar’s mission areas, including within its internal operations.

In 2013, D&I also continued to assess, administer and enhance the existing OSB D&I Programs with the support of the Advisory Committee on Diversity and Inclusion (ACDI), formerly known as the Affirmative Action Committee (AAC). (The BOG renamed the AAC to the ACDI in 2013 to reflect the bar’s expanded definition of diversity.) This work entailed reducing the expense associated with the 2013 OLIO Orientation conference and examining whether the eligibility criteria for 1L students should be expanded during the 2014 OLIO Orientation.

¹ The OSB sees the inclusion of racial and ethnic minorities in the legal profession as essential to ensuring that Oregon has a talented pool of lawyers to serve the diverse needs of clients, communities, and businesses.

In November 2013, the House of Delegates approved a funding increase to support the bar's diversity and inclusion work for the first time in 23 years.

In 2014, in addition to on-going assessment and improvement of its pipeline programs, D&I focused on supporting bar leaders to implement the bar's Diversity Action Plan year one goals, strategies and action items. After a year of study, the OLIO Orientation eligibility was expanded in 2014.

In 2015 the DAC presented a year one DAP implementation report to the Board of Governors. Efforts in 2015 focused on revising the DAP and implementing year two strategies and action items to achieve our goals.

Volunteers/Partnerships

Volunteers: D&I works with a variety of volunteers, principally the members of the ACDI and the Diversity Section, as well as leaders of Oregon's specialty bar organizations.

Partnerships: To promote its mission the Department partners with the three Oregon law schools, local bar associations, OSB Sections and Committees, the judiciary, public and private firms, Oregon's specialty bar associations and various colleges, universities and community organizations.

Outcomes

Outcome #1: Develop and implement a mandatory online demographic data updating mechanism to increase the percentage of bar members who disclose their race and ethnicity.

Measure: 75% of bar members disclose their race and ethnicity by 2016.
As of the end of 2016, 74.5% of OSB members reported their race and ethnicity, which virtually achieved our program measure for this outcome. A table of the changes from 2014 to 2016 is below:

	2014	2015	2016
Reporting	10,335 (↑ 1,693)	11,183 (↑ 848)	11,251 (↑ 68)
Declined to State	4,826 (↓ 1,610)	3,995 (↓ 831)	3,853 (↓ 142)
Total Members	15,161 (↑ 163)	15,178 (↑ 17)	15,104 (↓ 74)
% Reporting	68.2% (↑ 10.7%)	73.7% (↑ 5.5%)	74.5% (↑ 0.8%)

Outcome #2 Create an online version of the bar's Diversity Story Wall Exhibit. Develop updated content for the online exhibit on a yearly basis.

Measure: Successfully launch the online exhibit in 2015.

Throughout 2016, we continued to maintain and update the online Diversity Story Wall to include 2007 entries for Judge Youlee You (the first female Asian-American judge in Multnomah County and Oregon); Judge Mustafa T. Kasubhai (the first South East Asian and Middle Eastern Judge in Lane County); Judge Valerie Love (the first Asian Pacific American female to serve in Lane County); and Judge Clara Rigmaiden (the first Latina to serve in the Lane County).

Outcome #3: Hold an OLIO alumni reunion and build a strong OLIO alumni network.

Measure: Organize and hold the first reunion in 2015.

In 2016, the OLIO Alumni Reunion Committee formally joined the Advisory Committee on Diversity & Inclusion (ACDI) as the OLIO Alumni Subcommittee, where it is currently chaired by OLIO alumna Claudia Groberg. During its initial meetings, the OLIO Alumni Subcommittee determined its scope of activities and its priorities in the short and long term, which included holding social events and an awards dinner every few years.

For the short term, the subcommittee sent out an outreach email to its known list of OLIO alumni to solicit volunteers to join the subcommittee and successfully recruited 5 attorneys interested in helping the subcommittee in the future.

Outcome #4: Support and encourage OLIO orientation participants to take the Oregon Bar Exam and practice in Oregon.

Measure: 35% of OLIO Orientation participants who graduate from law school become Oregon Bar members by April of the year after they graduate.

To evaluate whether we achieved this program measure in 2016, we reviewed the progress of our OLIO 1L students from 2012, who were projected to graduate in 2015 under a three-year law program. Of our OLIO 2012 1Ls who graduated in 2015, 37.9% of them applied for the Oregon Bar Exam and successfully passed by April 2016 (the year after they graduated). Based on these numbers, we achieved this program measure for 2016.

Outcome #5: Implement Rural Opportunity Fellowship. Track and monitor the progress of the first recipient. Expand the program to two fellowships in 2016 and cultivate four rural employment sites for potential fellows.

Measure: Program implemented and a successful placement occurs.

The D&I Department increased the number of Rural Opportunities Fellowship from one to two in 2016. However, only one student from an Oregon law school applied for this program, and despite receiving a Rural Opportunities Fellowship, chose to pursue employment outside of rural Oregon. However, as a direct result of this underutilization of the Rural Opportunities Fellowship Program, the D&I made changes to the implementation of this Fellowship so that (1) the Rural Opportunities Fellowship is a supplemental award of \$3,360 to an existing \$5,000 Public Honors Fellowship, so that in case a student secures a public position in Oregon, but not in rural Oregon, s/he forfeits only the supplemental \$3,360 and can still utilize the Public Honors Fellowship; and (2) the remaining funding for all of D&I's three fellowship programs were consolidated under the Public Honors Fellowship Program, to be evaluated by the ACDI.

General Counsel's Office

Goal Statement

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

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

Program Description

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

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

General Counsel's Office also administers the Fee Dispute Resolution Program, a voluntary mechanism for resolving fee disputes between bar members and their clients, or between bar members. Participants may have their disputes submitted to either mediation or arbitration. Arbitrations are heard by a single arbitrator or a panel of three arbitrators, depending on the amount in dispute. Three-arbitrator panels are comprised of two lawyers and a public member. All mediators and arbitrators are volunteers. The party requesting mediation or arbitration pays a modest fee. Mediators prepare the agreement when the mediation results in resolution of the dispute. Arbitration decisions are binding on the parties, subject to only limited court review.

General Counsel's Office provides administrative support to the Unlawful Practice of Law Committee, which investigates complaints of unlawful practice by persons who are not

members of the Oregon State Bar. Based on the Committee's recommendation, the bar is authorized by statute to seek injunctive relief against unlawful practitioners. The Committee also issues informational letters as appropriate, and engages in public education and outreach through, among other things, the issuance of advisory opinions.

General Counsel's Office provides ethics assistance to bar members, responding to approximately 4,000 telephone requests, 400 e-mail requests, and 20 requests for advice letters each year. General Counsel staff are regular contributors to the Bulletin and to continuing legal education programs of the bar and other organizations. General Counsel's Office serves as a resource to the OSB Legal Ethics Committee, as requested by the CEO/Executive Director, in development of formal ethics opinions and proposed amendments to the Oregon Rules of Professional Conduct. General Counsel provides staff support to special task forces studying rules of professional conduct for lawyers and, occasionally, judges.

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

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

Finally, beginning in mid-2016, General Counsel's Office assumed oversight of the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2).

Volunteers/Partnerships

General Counsel's Office partners with a variety of members and others in fulfilling its responsibilities. When insurance does not provide coverage, we attempt to recruit members to represent the bar on a *pro bono* or reduced fee basis to help with the more complex non-disciplinary litigation in which the bar is involved. The bar also receives legal representation on employment and some other legal matters either *pro bono* or at reduced fees. Members of the Legal Ethics, State Lawyers Assistance and UPL Committees are all volunteers, including the public members; the same is true of the panelists for the Fee Dispute Resolution Program and the public and lawyer members of the Disciplinary Board. General Counsel's Office also frequently partners with Oregon lawyers, specialty and local bar associations, and the Professional Liability Fund to provide continuing legal education programs.

Outcomes

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

The Bar suffered no adverse outcomes in connection with its non-disciplinary and UPL litigation in 2016 and all such litigation was timely processed.

The bar brought one civil injunction in a UPL matter; the bar was aptly represented by *pro bono* counsel. The case resulted in a favorable settlement. The bar, represented by in house counsel, also brought one collection action against a lawyer with a substantial outstanding Client Security Fund judgment; that action resulted in a favorable settlement.

In 2016, four new lawsuits were filed against the OSB and its employees in federal district court. Of the federal lawsuits, in house counsel obtained one dismissal and three cases were never served on the bar. Two of the federal matters were appealed to the Ninth Circuit Court of Appeals. The appeals were handled in house and the Ninth Circuit affirmed the dismissals. Two additional federal matters that appealed to the Ninth Circuit Court of Appeals over three years ago remain pending before the court.

In 2016, two new lawsuits were filed against the OSB and its employees in state court. The bar handled one matter in house, and obtained a dismissal. The other matter was never served on the bar and remains pending.

The bar obtained dismissal of a remaining state court matter, which was originally filed in 2015, through a motion for summary judgment. The bar was aptly represented in that matter by insurance defense counsel.

In 2016, the bar's legal service program was named as a creditor in a significant *cy pres* judgment entered in a class action lawsuit. When that judgment was appealed, the bar retained counsel on a reduced flat-fee basis to represent the bar's interests on appeal. The appeal is ongoing.

An issue with PERS arose last year that presents potential liability for the OSB and PLF. It appears, however, that the matter may reach resolution before the end of the year.

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

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

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

Fee dispute resolution activity continues to be steady, with a total of 86 petitions filed in 2016. The fee dispute program has continued to receive positive feedback from participants.

Because the Fee Dispute Resolution Program is voluntary, approximately 40% of the petitions are closed without resolution, either because of no response from the respondent, or a respondent's open refusal to participate.

In 2016, the Program Administrator opened 32 fee mediation matters; eight of those matters resolved in mediation. Three matters that were mediated were later arbitrated.

In 2016, the Program Administrator opened 19 fee arbitration matters. Of those matters, nine cases resulted in fee arbitration hearings and ten cases resolved prior to a hearing.

In September 2016, the Board of Governors convened a Fee Mediation Task Force to seek feedback and recommendations on the fee mediation component of the Fee Dispute Resolution Program. The Task Force will make its recommendations to the Board in early 2017.

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

This service continues to be one of the most highly valued by members, at least based on the informal feedback received. Call volume continues at a high level (approximately 20-25 calls/day) and nearly every call is answered the day it is received. Written inquiries are also nearly always addressed the day they are received, and no later than three business days from the date of receipt. GCO attorneys attended the ABA's National Conference on Professional Responsibility in 2016 and participated in other activities to keep them abreast of developments in the field. Members continue to complement GCO's regular Bulletin articles and CLE presentations and the office is recognized as a valuable resource on issues of professional responsibility.

The Legal Ethics Committee presented one new formal ethics opinions to the Board of Governors in 2016, and has nearly completed its updates to existing formal ethics opinions based on the amendments to the rules of professional conduct adopted prior years.

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

The UPL Committee received 47 complaints in 2016, which significant reduction from the 74 complaints received in 2015. The Committee continues to resolve complaints in a timely manner; most cases are resolved within six months.

The Committee continues to focus more time and energy on strengthening its relationships and coordinating enforcement efforts not only with the Oregon Department of Justice and local law enforcement, but also with the American Immigration Lawyers Association (AILA), the

U.S. Immigration and Customs Enforcement, and the Secretary of State with the goal of enhancing outreach to and protection of vulnerable populations.

In 2016, the Committee has focused significant effort on public outreach and education. In addition to publishing online and print versions of pamphlets on *notario* fraud (in Spanish and Russian), the Committee formed a subcommittee focused entirely on its outreach and education efforts. In 2016, staff participated in two community events where it promoted the bar's efforts to stop notario fraud.

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

The Disciplinary Board Clerk function enhances the integrity of the disciplinary process by separating the Disciplinary Board's operations from Disciplinary Counsel's Office. There have been no significant errors or unfavorable incidents; on the contrary, the DB Clerk typically provides more service to Disciplinary Board members than is contemplated by the position and consistently receives high praise for the service provided.

Timelines for opinions and other responses from trial panels and regional chairs are not always met, an undoubted (and perhaps unavoidable) consequence of relying on volunteers with full-time jobs. Records management is accurate and timely, and efforts continue toward an entirely electronic filing process. General Counsel responded to a high number of inquiries in 2016 and provided procedural guidance to Disciplinary Board members and State Chair.

General Counsel hosted a Disciplinary Board Conference in 2016 for all Disciplinary Board members which was attended by 58 people. Evaluations reflect that the conference was valuable; the Conference will be held on an annual basis as a way of training the new volunteers for their role.

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

The Client Assistance Office continues to meet its program measures for timely and accurate disposition of complaints. Details can be found in the CAO Program Evaluation. The number of appeals from CAO dismissals continues to be high, but the number of "reversals" is very small, indicating that CAO is conducting the appropriate analysis of complaints received.

General Counsel's Office received 230 requests for review of CAO decisions in 2016, for an average rate of 19 appeals per month. This represents a significant increase over 2015, when the average rate of appeals was only 14 appeals per month.

In 2016, General Counsel's Office made decisions on 246 CAO referrals, for an average of 20.5 a month. General Counsel referred six matters to Disciplinary Counsel's Office for further review. The average number of days it takes for General Counsel's Office to complete its

appellate review has improved since 2015, with the implement of new appellate decision forms and streamlined review processes.

Outcome #7: Assist the SLA Committee in appropriate handling of referrals.

In 2016, the Committee received approximately seven new regular referrals, and continued to monitor approximately four other regular referrals from prior years. Committee referrals come from other lawyers, members of the public, judges and the SPRB.

The Committee promptly conducted its initial investigations and made determinations about whether to assert jurisdiction and monitor lawyers. Typically, delay only occurred when the Oregon Attorney Assistance Program notified the Committee that the referred lawyer is fragile, such that immediate contact by the Committee may result in physical harm to the lawyer. During the monitoring time, Committee members maintained close and regular contact with the referred lawyer. The Committee closed approximately five regular cases after investigation with a finding of no jurisdiction, and closed approximately four regular cases after taking jurisdiction.

In addition to these regular referrals, the Committee evaluates and monitors lawyers who are referred from Disciplinary Counsel's Office as part of the conditional admission/reinstatement and diversion/probation process. In 2016, the Committee was named as a disciplinary monitor for four lawyers who were placed on probation, and continued to monitor five existing probation referrals. No lawyer entered into a diversion agreement this year, but the Committee continued to monitor one lawyer pursuant to a diversion agreement. The Committee was named to monitor two new lawyers who were conditionally admitted to practice; the Committee continues to monitor two lawyers who were previously conditionally admitted. The Committee completed monitoring in three disciplinary cases (two diversions; one probation) this year.

In 2016, General Counsel focused on providing training and information to Committee members about age-related cognitive impairments.

Outcome #8: Manage the receipt and distribution of Unclaimed Lawyer Trust Account (ULTA) funds appropriated to legal services pursuant to ORS 98.368(2).

General Counsel's Office assumed responsibility for the ULTA program in mid-2016, and has been working to document business processes. With the assistance of the Accounting Department, the office kept accurate accounting records of ULTA funds received by the bar and paid to claimants.

General Counsel's Office promptly responded to regular inquiries from lawyers and members of the public about the program processes. The Office filed monthly ULTA reports with the Accounting Department and quarterly ULTA reports with the Department of State Lands. We are preparing to submit an ULTA Annual Report to the Board of Governors and Department of State Lands later this month.

Human Resources Department

Program Goal Statement

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

Program Description

The Human Resources Department provides direct service for all employment, training and development, performance appraisal, staff and member benefit administration, policy development, workers' compensation, and all safety-related activities for all bar departments and personnel. The department ensures compliance with federal and state human resources and safety requirements. Department administrative staff directly assists other Executive Services departments and staff with secretarial and administrative support when requested.

Volunteers/Partnerships

Partnerships: Vendors are used to provide training and products that come with service agreements. The bar utilizes professional insurance brokers to review current policies and advise on market conditions when securing workers' compensation, health, and employment practices coverage. The bar and PLF create a group, where practicable, for health insurance and employee assistance program contracts to ensure best rate premiums.

Outcomes and Evaluation

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

Measures: Timely completion of process
Effective pre-screening to identify sufficient pool of qualified candidates
Successful retention
Assist directors with succession planning

There were 23 open positions in 2016. Recruitment for four positions has not started as the positions and needs are being evaluated. Three positions remain unfilled. Of the twelve filled

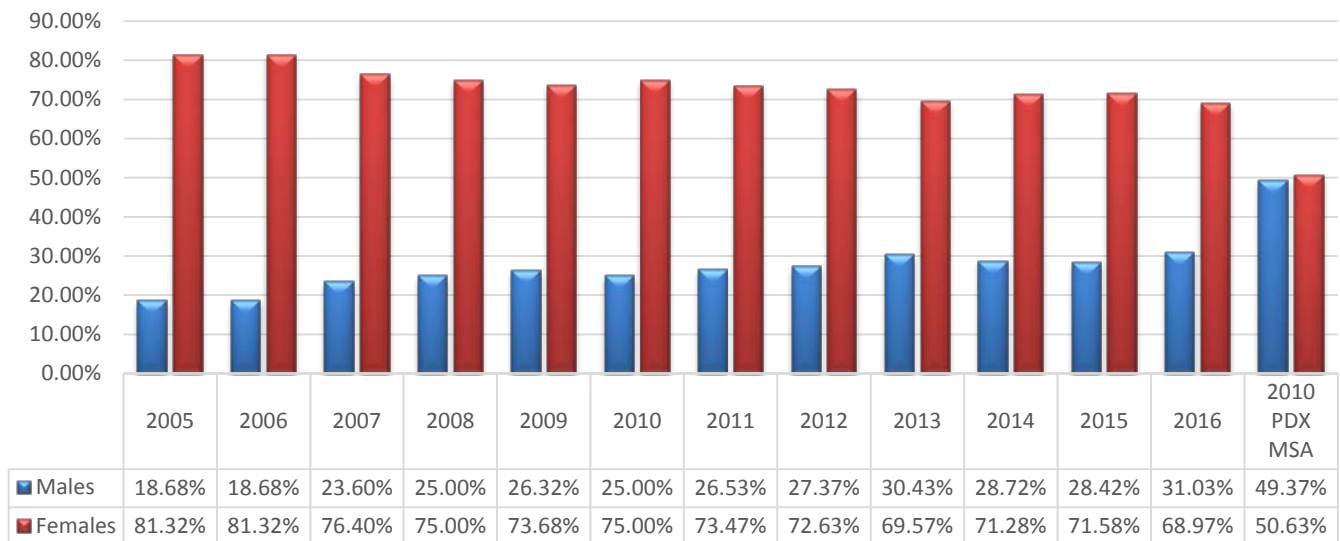
positions, nine were filled from the outside and three were internal fills. Eight of the external hires remain employed with the bar.

2016 Open Positions

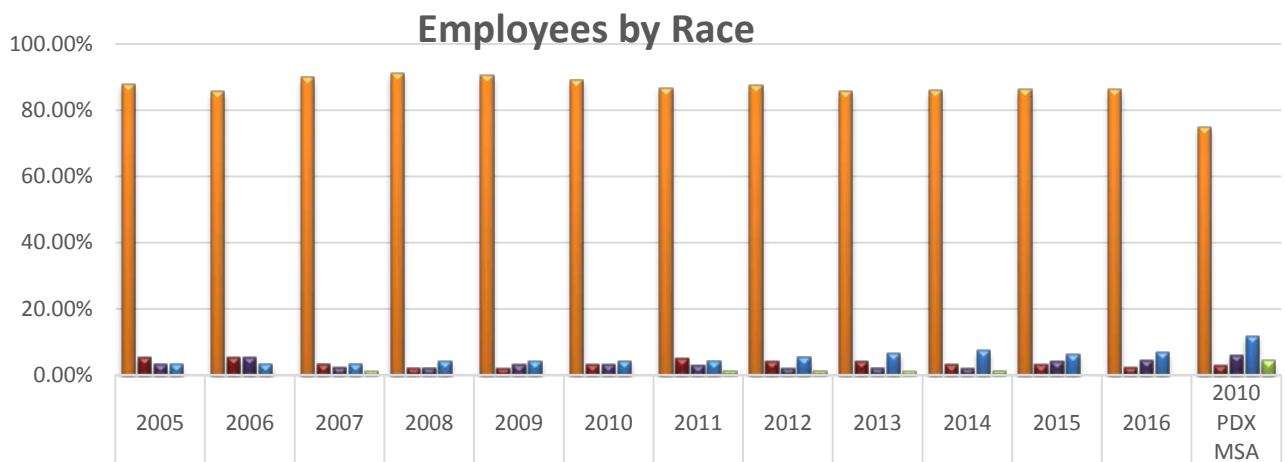
Position Title	Exempt or Non Exempt	Date Recruitment Started	Date Offer Accepted	No. of Days Open	Internal or External Fill	Still Employed	Race	Sex
Accountant	Non Exempt							
Accounting Specialist – A/P	Non Exempt	Position Closed	n/a	n/a	n/a	n/a	n/a	n/a
Administrative Assistant – OLF/LSP	Non Exempt	08/31/16	11/03/16	64	External	Yes	Caucasian	F
Admissions Manager	Exempt							
Assistant Director – OLF/LSP	Exempt	09/08/16	12/12/16	98	External	Yes	Caucasian	M
Assistant Disciplinary Counsel - Investigation	Exempt	04/13/16	05/13/16	30	Internal	Yes	Caucasian	F
Assistant General Counsel and Client Assistance Office Attorney	Exempt	05/19/16	08/25/16	98	External	Yes	Caucasian	M
CLE Customer Service Specialist	Non Exempt	06/13/16	07/20/16	37	Internal	Yes	Hispanic	M
CLE Seminars Assistant	Non Exempt							
CLE Seminars Event Coordinator	Non Exempt	04/18/16	04/18/16	0	Internal	Yes	Caucasian	F
CLE Seminars Marketing Specialist	Non Exempt							
Controller	Exempt	01/21/16	01/27/16	6	External	Yes	Caucasian	M
Director of Diversity & Inclusion	Exempt	08/19/16	12/06/16	109	External	Yes	Hispanic	M
Facilities Assistant	Non Exempt	Position Closed	n/a	n/a	n/a	n/a	n/a	n/a
OLF & LSP Coordinator/Accountant	Non Exempt	Position Closed	n/a	n/a	n/a	n/a	n/a	n/a
Public Affairs Administrative Assistant	Non Exempt	09/16/16	12/19/16	94	External	Yes	Caucasian	F
Referral & Information Services Assistant	Non Exempt	03/30/15	01/11/16	269	External	No	Asian	F
Referral & Information Services Assistant	Non Exempt	01/25/16	01/29/16	4	External	Yes	Caucasian	F
Referral & Information Services Assistant	Non Exempt	10/13/16						
Referral & Information Services Assistant	Non Exempt	11/15/16						
Referral & Information Services Assistant - Bilingual	Non Exempt	07/06/16	08/23/16	48	External	Yes	Hispanic	M
Referral & Information Services Assistant - Bilingual	Non Exempt	08/31/16						
Referral & Information Services Assistant - Bilingual	Non Exempt	10/13/16						

During 2016, the bar hired eight new employees and, of those eight, four were males. Of the fifteen employees who left in 2016, four were males: one left to pursue his dream of becoming a police officer; one relocated to Washington, D.C.; two, who were part time, left for a full-time position. The female employee population decreased by seven and the male population remained the same. The 2016 average turnover rate for males was 1.19% and 1.42% for females. In 2016, the bar hired four females and eleven females left the bar.

Employees by Gender



The bar continues to focus on increasing the diversity of the applicant pool through outreach to the community, agencies, publications, and websites directed toward a more diverse community. In 2016, the bar hired eight employees: one Asian, one Hispanic, and six Caucasians. Fifteen staff left the bar in 2016: one was African-American, one was Asian, one was Hispanic, and twelve were Caucasian. Overall, bar staff decreased to 87. The 2016 average turnover rate for Caucasians was 1.26%, 2.78% for African-Americans, 1.67% for Asians, and 1.39% for Hispanics. The African-American employee left for a position in a different field, the part time Hispanic employee left for a full-time position, and the Asian employee left to attend law school full time.



While we continued to struggle with filling RIS Assistant positions in 2016, average days to fill all positions decreased by 2.43 days. Hiring exempt staff in 2016 decreased by 16 days and decreased for non-exempt staff by 2.43 days. Eight positions remain open at year end: Admissions Manager, two Referral & Information Services Assistant – Bilingual and one non-bilingual, Accountant, CLE Seminars Assistant, Facilities Coordinator and CLE Seminars Marketing Specialist. The Accountant and the two CLE Seminars positions are being re-evaluated for departmental needs.

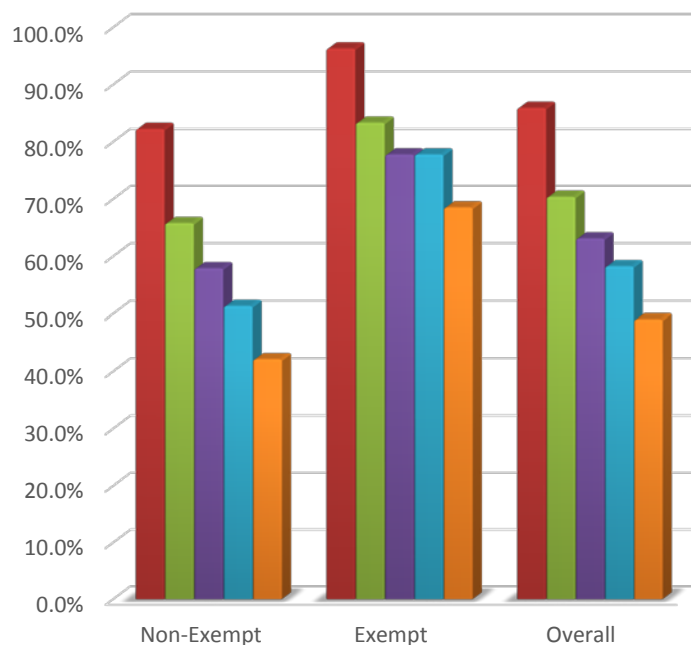
Number of Days to Hire

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of Filled Positions	21	15	18	19	13	7	8	24	12	19	15	22	12
Average Days to Fill	56.65	69.67	74.06	76.64	102.46	65.00	22.88	55.42	64.42	65.00	76.47	51.18	48.75
Variance (Days)	NA	13.02	4.39	2.58	25.82	(37.46)	(42.12)	32.54	9	.58	11.47	(25.29)	(2.43)
Number of Filled Non-Exempt Positions	17	8	13	14	11	5	5	21	12	13	11	15	7
Average Days to Fill	60.40	57.63	70.77	69.72	82.82	63.60	23.2	57.57	70.09	44.77	75.18	37.58	35.29
Variance (Days)	NA	(2.77)	13.14	(1.05)	13.10	(19.22)	(40.4)	34.37	12.52	(25.32)	30.41	(37.60)	(2.29)
Number of Filled Exempt Positions	4	7	5	5	2	2	3	3	1	6	4	7	5
Average Days to Fill	46.40	83.43	82.60	96.00	210.50	72.00	22.33	40.33	2	108.83	63.75	83.80	67.60
Variance (Days)	NA	37.03	(.83)	13.40	114.50	(138.5)	(49.67)	18.00	(16.00)	106.83	(45.08)	20.05	(16.20)

Retention Rates of New Hires tracks the to-date retention rate of employees hired since November 2003. During this period, 206 positions have been filled and 107 of those employees have left the bar. Only thirteen have left for the sole reason of leaving for another job. Twenty-two employees have been involuntarily terminated by the bar (three completed a limited duration assignment). The remaining left voluntarily due to geographic relocation, increased commuting expenses, full-time employment, family decisions, health issues, returning to college, internships, entering the military, retirement, and following their dreams, including starting their own businesses or changing career paths.

Exempt position retention rates tend to be more stable as more exempt employees are in chosen careers for which they have dedicated education and training. Non-exempt staff tend to be in a job where there is more ease of movement, including career or life changes.

Retention Rates of New Hires Since November 2003



■ < 1 Yr Retention Rate ■ >= 1 Yr Retention Rate ■ >= 2 Yrs Retention Rate ■ >= 3 Yrs Retention Rate ■ >= 4 Yrs Retention Rate

Annual Average Turnover Rate

2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
.85%	1.55%	1.46%	.73%	.54%	.62%	1.07%	1.21%	1.27%	0.73%	1.24%	1.36%

Headcount

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Exempt Staff	46	45	45	39	38	39	41	40	39	42	42	41
Non-Exempt Staff	45	45	45	53	57	53	57	55	53	52	53	46
Total Staff	91	90	90	92	95	92	98	95	92	94	95	87
Total FTE	82.972	81.975	84.85	86.275	89.05	85.675	88.95	86.275	84.40	87.10	89.35	83.325

There were two retirements in 2016. As of today, there are eleven employees eligible for full retirement. Four of those employees are directors or managers. Two people will retire in 2017. There are three or four other possibilities.

Employees Eligible for Full Retirement	July 2009		Jan 2010		Jan 2011		Jan 2012		Jan 2013		Jan 2014		Jan 2015		Jan 2016		Jan 2017	
	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
Less than one year	10	9	11	10	10	9	9	9	13	12	11	10	11	10	12	11	13	11
Less than one year to five years	18	17	19	18	20	18	18	18	26	25	23	21	20	19	26	25	15	13
Less than one year to ten years	32	29	33	31	37	34	36	35	41	39	40	37	38	36	39	37	14	12

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

Measures: Identify and arrange at least four all-staff presentations each year on issues such as wellness, personal finance, retirement planning, workplace harassment, and diversity.
Assist directors and managers to identify and organize appropriate areas of training specific to their needs.

This listing does not recognize external training opportunities staff attended through their own department's budget.

2016 Staff Training Opportunities

Name of Seminar	Date of Seminar	Cost of Seminar	Employees Invited
Path to Financial Peace of Mind	January 2016	\$0	All staff
Disaster Preparedness	February 2016	\$0	All staff
Making Tax Returns Less Taxing	February 2016	\$0	All staff
CPR (adult & child)/AED/First Aid/Blood-borne Pathogens	May 2016	\$1076	All staff and PLF
Business Writing and Emailing	May 2016	\$29.95	All staff
Miranda: More than Words	May 2016	\$0	All staff and PLF
Implicit Bias	June 2016	\$500	All staff - mandatory
The Aging of the Legal Profession	June 2016	\$29.95	All staff
Whole Person Wellness: Improving Mental Health in the Workplace	September 2016	\$0	All staff
Eye Health in the Work Place	October 2016	\$0	All staff
Project Management	November 2016	\$500	Directors and Managers

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

Measures: Oversee the work of the Safety Committee
 Collaborate with the CFO on security issues
 Coordinate periodic safety and security training for staff
 Monitor liability coverages and update as appropriate
 Provide regular guidance to directors and managers on staff management

All interested staff were trained during the annual first aid, CPR (adult and child), automated external defibrillator, and blood-borne pathogen seminar. We have 12 OSB employees trained for emergencies. Training for new certifications was provided to OSB and PLF staff.

The Safety Committee met once each quarter. The committee reviewed the injury one employee who had a picture fall on her as she climbed the main stairs, computer eye strain, walkers using the sidewalks in the parking lot, sun glare on computer screens, and a visitor's health emergency.

"Tip of the Month" continued throughout 2016 as employment law updates and HR tips were provided to managers and directors at the quarterly meetings. Topics for 2016 included:

- How to Deliver Bad News
- Is Your Age Bias Showing
- 7 Questions to Ask Employees during Coaching Conversations
- How to Write Performance Goals
- HR Urban Legends
- All Managers Can Face Personal Liability for Leave Mistakes
- Jeff Sapiro's Parting Words
- 3 Cardinal Rules to Document Discipline
- The Art of Giving Positive Feedback
- How to Keep Your New Hire from Failing
- Managing the Legal Way
- Employee References
- Lead with Positivity
- What Employers Can and Cannot Say
- The Employee Problem Solver
- Hold That Friend Request

The 2016 Employment Practices Liability (EPL) policy was renewed for \$9,451 per year reflecting a 3.63% increase. The EPL policy carries the same \$2,000,000 limit, \$15,000

deductible, third-party coverage, and directors and officers liability insurance (D&O). The EPL industry is experiencing a rise in employment practice claims as a trailing effect from the recent economic state. As a result, the rates increased across their book of business for not-for-profit organizations. The D&O coverage's deductible increased from \$15,000 to \$25,000 per claim due to increased notices of possible D&O claims, one of which had a \$23,000 payment.

The workers' compensation policy renewed with an \$8,964 premium reflecting a decrease of 9.43%. In addition, we received a \$2,508 dividend. Our experience modification factor decreased from 0.86 to 0.80. This is a contributing factor to the premium decrease.

Insurance Coverage and Activity

	WORKERS' COMPENSATION INSURANCE					EMPLOYMENT PRACTICES LIABILITY INSURANCE		
Policy Period	Workers' Compensation Claims	Annual Premium	Variance	Dividend Received	Experience Modification Factor	Employment Practices Liability Claims	Annual Premium	Variance
2004 to 2005	1	\$8,450	(4.3%)	n/a	.79	1	\$9,765	(10.49%)
2005 to 2006	1	\$10,474	24.00%	n/a	.80	0	\$11,237	15%
2006 to 2007	0	\$9,819	(6.25%)	n/a	.82	0	\$8,633	(23.17%)
2007 to 2008	5	\$10,136	(0.015%)	\$1,123	.87	0	\$8,643	0.12%
2008 to 2009	2	\$9,873	(2.59%)	n/a	.88	0	\$8,224	(4.85%)
2009 to 2010	0	\$9,982	1.10%	n/a	1.04	0	\$7,961	(3.20%)
2010 to 2011	4	\$9,633	(3.5%)	\$3,832	1.07	0	\$8,119	1.98%
2011 to 2012	1	\$9,425	(2.16%)	\$3,268	1.09	0	\$6,928	(14.67%)
2012 to 2013	0	\$9,681	2.71%	\$3,655	0.98	0	\$6,880	(.69%)
2013 to 2014	1	\$10,447	7.92%	\$2,920	0.99	0	\$8,095	17.66%
2014 to 2015	0	\$10,514	0.64%	\$2,969	0.97	0	\$8,713	7.63%
2015 to 2016	0	\$9,897	(5.87%)	\$2,133	0.86	0	\$9,120	4.67%
2016 to 2017	1	\$8,964	(9.43%)	\$2,508	0.80	0	\$9,451	3.63%

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

Measures: Monitor and update personnel policies as needed, including recommending new policies and practices.

The following employee policies and procedures were revised and distributed to all employees in 2016.

- Employee Emergency and Security Handbook
- Policy 2.1 Nature of Employment
- Policy 2.3 Selection of Employees
- Policy 2.10 Equal Employment Opportunity (EEO)
- Policy 3.2 Severe Weather or Emergency Closure
- Policy 5.4 Sick Time (formerly 7.7 Sick Leave)
- Policy 6.1 Discipline and Termination
- Policy 6.2 Standards of Conduct for Bar Employees
- Policy 6.4 Harassment and Intimidation
- Policy 6.7 Dress Policy
- Policy 6.10 Political Activity and Personal Opinions

Policies and guidelines were written for transgender employees. That work is on hold as the bar makes bigger decisions related to the same issue, but the foundation has been laid.

The Safety Committee continues to be active with quarterly meetings. The PLF sends a representative to the meetings. There has been little need for action by the committee. Some of their activity is described in Outcome #3.

Legal Publications Department

Program Goal Statement

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

Program Description

Building on a history of service that began in the 1950s when OSB published its first legal handbook, Legal Publications provides Oregon attorneys with the basic reference tools they need to practice law in a variety of areas. In 2016, print publications were continued primarily on a pre-order basis. All publications, together with one PLF publication and the Disciplinary Board Reporter, are online as BarBooks™, available to all OSB active members as a benefit of membership. In 2016, we upgraded the BarBooks™ platform to be responsive and accessible on different electronic devices such as tablets and smartphones.

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

Volunteers/Partnerships

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

Partnerships: The Legal Publications Department is in partnership with the judiciary through preparation of Uniform Civil and Uniform Criminal Jury Instructions used by the courts. The department also occasionally works with sections both formally and informally to produce new publications and revisions. In 2016, the department began working with the Military and Veterans Law Section on a new publication.

Outcomes and Evaluation

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

Measures: Actual revenue and expense are within reasonable percentage of budget.

Increased editor page counts.

Evaluation: **[Note:** Final 2016 financial statements are not yet available, so this is a preliminary evaluation based on estimates from Nov. 2016 financial statements and Great Plains queries.]

Actual revenue for 2016 fell short of budget by approximately \$90,000 for print books, but exceeded budget by \$4,575 for BarBooks™ and \$8,520 for royalties [not counting all December royalties]. The BarBooks™ revenue is from law libraries, the three Oregon law schools, and staff accounts for firms. The royalties are for licensing of our jury instructions and books to Bloomberg, LexisNexis, and Thomson Reuters.

The primary reason for the shortfall in print book revenue is the dropping sales of books across the board as more members decide to access Legal Publications resources on BarBooks™. With the exception of *Oregon Administrative Law*, which had a budget of only \$3,600, every other book released in 2016 failed to meet budget, bringing in on average 55% of budgeted revenue. In addition, *Juvenile Law* and *Elder Law*, both scheduled for release in late 2016, were delayed to 2017 because not all chapters were received from volunteer authors. Budgeted revenue for these two books was \$48,250. The department released two unplanned titles that were created in-house to make up some of the shortfall. The *Oregon RPCs Annotated* enjoyed moderate success and helped defer the 42% shortfall in *Oregon Ethics Opinions* revenue. The other title, the *Joint Oregon & Washington Cannabis Codebook*, brought in an extra \$18,765 in un-budgeted revenue. Unfortunately, due to a shipping error most of the revenue will be booked in 2017 instead of 2016.

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

- Printing expenses were 80% of budget, primarily because of the two books that were not printed.
- Indexing expenses were only 45% of budget primarily because there were no indexing costs for the books that were not completed, and there were no indexing costs for the *Oregon RPCs Annotated*, the *Cannabis Codebook*, or the *Oregon Administrative Law* supplement.

Overall, the direct program expense of the department was approximately \$14,000 below, or only 80% of, the budgeted direct program expense, and the general & administrative expense was approximately 80% of budget.

The total page count of books completed in 2016 was 6,778. An additional 477 pages of *Environmental Law*, *Juvenile Law: Dependency*, *Administering Trusts in Oregon*, and *2016 Legislation Highlights* were posted to the BarBooks™ online

library, for a total of 7,255 published pages. Several jury instructions and ethics opinions were also posted to BarBooks™ and will be included in the 2016 page count when they are published in print form. This continues the trend of publishing in the range of 7,000 pages per year, rather than 5,000 pages per year, that began in 2012.

In addition, 145 CLE Seminars handbooks, including 26 titles from 2016 programs, were added to BarBooks™. Some are posted as PDF only, but where they contain significant original text they were posted to the searchable portion of the library.

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

Measures: Publish new titles and updates to existing titles according to an established schedule.

Continue working with IDT to make BarBooks™ format user-friendly.

Develop new publications in conjunction with OSB Sections as appropriate.

Assess membership views on content quality and ease of use, by survey or otherwise.

Evaluation: In 2016, the Legal Publications Department released a complete revision of three titles, two new books titled *Oregon Rules of Professional Conduct Annotated* and the *Joint Oregon & Washington Cannabis Codebook*, supplements for *Oregon Administrative Law*, *Uniform Civil Jury Instructions*, and *Uniform Criminal Jury Instructions*, and the *Disciplinary Board Reporter*.

In 2014, the Legal Publications Department launched its new e-Books project as part of the Diversity Action Plan. The department published e-Books on Amazon.com, each of which includes a Quick Resource Guide on how to find an attorney; eight e-Books were published in the Family Law Series and six were published in the Consumer Law Series. No further titles were published in 2015 pending analysis of the success of the project. At the end of 2015, total revenue for the year from e-Books was only \$129. It was determined that other projects took priority over creating new e-Books. However, links were added to the OSB website to the Amazon site in 2016 and revenue from e-Books increased to \$290 for the year. In anticipation of the launch of the new Aptify e-Store, it was determined that it would be more beneficial to work towards a plan to sell e-Books directly from the OSB rather than on Amazon in the future.

A significant revamp was done on BarBooks™ during 2016. The site was reprogrammed to make it responsive across device platforms and to

accommodate the addition of CLE Seminars handbooks to the library. Following extensive beta testing, the new site was launched in June. Most of the feedback from members has been positive, though a few have expressed dislike of some aspects of the new site that can't be changed without abandoning the responsive platform.

Because of the effort put into the 2016 revamp, the BarBooks™ wiki project has been mothballed for now. In addition, the planned transition from the current book-to-online model to an online-to-book model has been mothballed as well.

Outcome #3: Protect OSB's intellectual property rights.

Measure: Maintain records of copyright agreements from authors, and verify copyright notices on published documents.

Evaluation: Legal Publications has obtained a signed Volunteer License Agreement from every author for all books published in 2016. These agreements are maintained electronically organized by book so that they can be easily accessed if needed.

Legal Publications has also filed a copyright registration for each book published in 2016. Although our authors retain their copyright in their individual chapters, OSB claims a copyright in the collected work.

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

In addition, *Oregon RPCs Annotated*, which we published in 2016, was previously published by Oregon Law Institute. OLI had not updated or revised the publication in several years. Before proceeding with our publication, we sought and retained permission from OLI to take over the project, thereby avoiding any claim of copyright infringement against the bar.

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

Measures: Author demographics mirror OSB demographics as nearly as possible.

Develop standards for and assist editorial board with selection of diverse authors.

Evaluation: In 2016, author and editor group was again smaller than in previous years because of the in-house generated projects. The demographics varied quite a bit from the OSB racial demographics in most categories. There is room for increased participation of most racial minorities in this important volunteer role.

Efforts have continued to increase participation by racial minorities by soliciting assistance from the Diversity & Inclusion Department and bringing this important issue to the attention of editorial review boards who select authors.

Racial Demographics for 2016	Authors & Editors	Active Members
Asian	1.2%	2.7%
Black	1.2%	0.8%
Hispanic	0.0%	1.6%
Native Americans	0.0%	0.4%
Multi or Other	2.4%	3.8%
White	76.2%	65.1%
Declined to state	19.0%	25.5%

In 2016, the gender breakdown of Legal Publications authors and editors showed a significant increase in the number of female volunteers, as compared with the membership breakdown that remained steady.

Gender Demographics for 2016	Authors & Editors	Active Members
Female	39%	36%
Male	61%	64%

The Legal Publications Department has supported the bar's commitment to diversity and inclusion in other ways. In particular, every attempt has been made to ensure that diversity issues are considered in the selection of our marketing graphics.

Legal Services Program

Goal Statement

The goal of the Legal Services Program is to use the statutory appropriated revenue designated under ORS 9.572 and 9.577 and other funds granted from the Oregon Legislature to fund an integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers and the Loan Repayment Assistance Program (LRAP).

Program Description

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

As part of the compliance phase, the Director of the LSP conducts an accountability process and facilitates integration of services between the various legal services providers. The Director also works with other funders, the private bar and other organizations in a statewide collaboration to improve access to civil justice in Oregon. The Director also serves as Executive Director of the Oregon Law Foundation. The dual role enhances the collaboration between the OLF, the LSP and other legal services funding sources.

The LSP includes the Pro Bono Program. Under the general supervision of the Director, a part-time Pro Bono Coordinator works with the OSB Pro Bono Committee to develop and implement strategies that will create a statewide culture of pro bono and greater participation by the private bar. The LSP also manages the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2) and distribution of pro hac vice funds received pursuant to ORS 9.241 (3).

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

Volunteers/Partnerships

The Legal Services Program Committee is comprised of seven attorney and two public member volunteers. The LRAP Advisory committee is comprised of nine attorney volunteers. The Pro Bono Committee is comprised of eighteen attorney volunteers.

Outcomes and Evaluation

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

Measures: Timely distribution of statutory appropriated revenue and other funding sources.

Successful collaboration with legal service providers and OSB Public Affairs Department to enhance legislature's understanding of legal services funding.

The LSP continues to distribute the statutory allocated funds to legal aid on a monthly basis totaling \$5,950,000 annually. In addition, the LSP paid out \$257,700 in pro hac vice funds to the legal aid providers in 2016.

The LSP also continues to receive and hold unclaimed funds from lawyer trust accounts and to hold funds from the Strawn Farmers class action received in 2014. The LSP Committee recommended disbursing funds received during the annual cycle amounting to \$117,500. This included approximately \$110,000 from the Ben Franklin Litigation Account collected in 2015. Two-thirds of the Strawn Farmers class action had been distributed previously and due to the number of claims made against those funds the LSP determined that no additional funds should be disbursed. The LSP recommended that the remainder of these funds be held in reserve and reviewed each year to determine whether it remains reasonable given the amount of claims received over time.

In addition to the ongoing funds collected each year the LSP Committee forwarded two recommendations to the BOG to disburse General Fund dollars appropriated from the 2015 and 2016 Legislative Sessions.

- The 2015 Legislative Session appropriated \$600,000 to the LSP for legal aid. The LSP recommended distributing the funds to legal aid based on poverty population. The LSP also recommended that the funds be distributed in two parts with one payment in March 2016 and the other in January 2017 to accommodate new funding developments such as a reduction in the federal appropriation.
- The 2016 Legislative Session appropriated \$200,000 in General Fund dollars to the LSP to be distributed to the four legal aid programs for services relating to housing issues.

In 2015, the Oregon legislature adopted HB 2700 which directs 50% of unclaimed class action funds (cy pres funds) to legal aid programs through the LSP. Although passing HB 2700 was an exciting event for legal aid, it is not believed to solve legal aid's funding shortfall. There are not many class actions filed in Oregon making cy pres funds unpredictable and infrequent. The LSP received \$30,000 from a cy pres award in 2016 and are still being held. The LSP continues to monitor the BP class action case which is now at the Oregon Court of Appeals.

The Director of Legal Services participated on the Legal Aid Strategic Planning Committee. It first met in September 2015 and continued until May 2016. It was charged with drafting a proposed long-term strategic plan to guide the programs in providing efficient and effective services in future years. The Advisory Committee members included representatives from the legal aid programs, the OSB, OLF, CEJ, the Office of the Governor and Oregon Supreme Court.

The Director of Legal Services was also part of the group that planned and implemented the Access to Justice Forum in September. It was an all-day forum with sessions that provided information on the justice gap, current efforts to close the justice gap, and ideas from both within Oregon and from other states to address the gap.

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

Measures: Monitor and report on implementation of new reporting and evaluation system; recommend refinements as appropriate.

The Legal Service Program Accountability Process was conducted in 2015. The providers each completed and submitted a Self-Assessment Report that included both a narrative portion and a statistical portion for services provided in 2014. The information gathered and assessed was used to generate a draft Accountability Report. The Accountability Report was forwarded and accepted by the BOG in April 2016 and not 2015 which is the usual process. The delay was due to the ongoing review of Lane County Law and Advocacy Center (LCLAC).

In 2016 The LSP Committee continued to monitor and receive updates from the subcommittee established in 2015 to review delivery of legal services at LCLAC. The subcommittee concluded its work and forwarded a report and recommendations to the Director of Legal Services Program and the LSP Committee. The report and recommendations were also presented to the executive directors and board members for LCLAC, and several meetings occurred, culminating in a joint decision by LCLAC and the Oregon Law Center to merge their programs. The merger completion date was December 31, 2016.

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

Measures: Identify additional organizations or programs that meet eligibility standards.
Continue working on proposal to allow MCLE credit for pro bono work.
Continue developing creative ways for law students and members to contribute pro bono services.
Explore further ideas to encourage pro bono work.
Explore ways to highlight the organizations through which attorneys can volunteer to provide pro bono work.

Staff continues to work with organizations to help them through the certification process. The OSB has 19 Certified Programs. These Certified Programs allow Active Pro Bono attorneys, government-employed attorneys and House Counsel further options for engaging in pro bono work. One new program received Certification in 2016 and two additional programs are likely to receive Certification in early 2017.

The Bar supports the Certified Pro Bono Programs in their efforts to recruit and support lawyers who do pro bono work. The Bar now organizes quarterly meetings for the Certified Programs, during which the Programs learn from each other the best ways to further the pro bono mission.

The 2016 Pro Bono Fair was very well-attended. It featured three free CLEs, 15 pro bono providers or support organizations, and the Pro Bono Challenge Awards Ceremony, hosted by OSB Past-President Richard Spier. The Awards Ceremony portion of the evening was well

attended. A smaller event took place in Bend, with one CLE and an acknowledgement of pro bono volunteers.

Staff continues to work with the ONLD and the MBA on promoting and supporting pro bono work. Staff serves on the Legal Aid Services of Oregon Pro Bono Committee and helps select the LASO/OLC pro bono award winners.

The Pro Bono Committee worked on a proposal to allow MCLA credit for pro bono work and in 2016 that became a reality.

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

Measures: Develop a membership outreach plan regarding LRAP and eligibility criteria.
 Continue to identify and implement ways to increase available funds.
 Continue to refine a membership outreach plan regarding LRAP and eligibility criteria.
 Encourage more experienced public service attorneys to apply for the LRAP loans.

For 2016, no changes were recommended for the Policies and Guidelines, although the Advisory Committee recommended changes to the application to ensure that the fullest financial information was available for each applicant. 39 Public Service attorneys applied for an OSB LRAP loan. 23 of the applicants were selected to receive loans ranging from \$2,000 to \$7,500. The Marketing Plan has been honed and is quite successful in reaching public service lawyers throughout the state and with varying backgrounds and jobs. Many very experienced public service attorneys have applied for the LRAP loans in the last few years.

Minimum Continuing Legal Education

Program Goal Statement

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

Program Description

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

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

Volunteers/Partnerships

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

Outcomes and Evaluation

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

In 2016, staff completed the processing of 4,684 compliance reports for the period ending 12/31/2015. 90% of the reports were reviewed by staff within ten business days of receipt. Notices of Noncompliance were sent to 444 members on March 3, 2016, which was 30 days after the filing deadline.

For the 2016 reporting period, 4,890 compliance reports were sent via email or regular mail in October 2016.

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

90% of all applications for accreditation were processed within 30 days of receipt of the completed application. For the majority of the year, applications were processed within 3-4 weeks of receipt in our office. During the peak months of January and December 2016, applications were processed only for those members who had a reporting period that just recently ended or a reporting period ending soon (12/31/2015 reporting period for apps processed in January 2016 and 12/31/2016 reporting period ending for apps processed in December 2016). In February and March 2016, all other applications received in December 2015 and January 2016 were processed. After that time, we were back on track to process applications within 3-4 weeks of receipt. (The longer processing time is due to removing the 30 day deadline to process applications from the MCLE Regulations and, for the first time in many years, not hiring temporary help in the MCLE Department during the peak of the compliance cycle.)

Outcome #2: Assure that MCLE Rules, Regulations and procedures facilitate compliance by members.

OSB's MCLE Rules are among the most flexible and generous in the country, allowing for a wide range of programs and accredited activities from which members can meet their requirement. 7,780 programs were accredited between January 1 and December 31, 2016. Many members complete their entire requirement by screening online programs.

Several amendments to the MCLE Rules and Regulations became effective on September 1, 2016. One change allows members to claim credit for various activities including teaching, legal research and writing, and grading a bar exam question without having to submit an accreditation application beforehand. The accreditation standards for these activities have not changed but not requiring members to submit applications should make it less cumbersome for them to claim credit for these activities.

Another major change is that members can now claim credit for certain volunteer activities and programs dealing with business development and marketing of legal services. No accreditation application is required in order to claim credit for these activities. Allowing credit (up to 6 in a three-year reporting period) for these activities encourages members to provide pro bono representation. Allowing credit for business development and marketing activities should be particularly helpful for members new to the practice of law as they learn how to set up a law office and make a living.

With the implementation of our new association management software in the summer of 2017, compliance reporting and submission of accreditation applications will be easier for members and sponsors.

Telephone and email inquiries from members and sponsors are almost always answered in less than 24 hours. Members are nearly universally complimentary about the helpful and courteous assistance provided by staff.

The audit of 2015 reports was completed by the end of June 2016. Notices of Noncompliance were sent to three members as a result of the audit.

In May 2016, thirteen members (.003%) were suspended for failure to meet their MCLE obligations. The standard for this outcome is less than 1% of the reporting group suspended for non-compliance.

Several MCLE reminders about upcoming deadlines were posted in the electronic Bar News or *Bulletin* in 2016. In early 2016, an FAQ about 2016 reporting requirements and deadlines was posted on the website. In July, email reminder notices were sent to members about their upcoming reporting period deadline. In March and December, email reminders were sent to new admittees about their introductory access to justice credit requirement.

In preparation for the new software, the Supreme Court approved several amendments to the MCLE Rules, which were effective September 1, 2016. Members were notified about these amendments via our website, in *Bulletin* notices and email notices.

Media Relations

Program Goal Statement

The OSB Media Relations Program advances the bar's mission of serving justice through long-term partnerships with statewide media to increase public understanding of the law, the courts, the legal profession, and the rule of law.

Program Description

Media relations works with statewide news outlets in a variety of forums:

- **Expert sources.** The bar is a relied-upon source of expert sources to provide explanation and analysis of any story with a law-related element.
- **Spokesperson on bar policies.** Staff is the key point of contact for news outlets on stories relating directly to the OSB. This may include promotion of stories regarding bar policies or priorities; support of the OSB's legislative agenda; and explanation of OSB's performance of its regulatory function.
- **Media Training.** OSB staff frequently consults with bar members on working effectively with media, either in seeking positive press or handling negative press.
- **Support of the Judicial Branch.** The bar has a policy for responding to unjust judicial criticism, particularly when the judicial canons may restrict a judge's ability to offer explanation to the public. We also frequently consult with individual judges on managing high-profile cases, and on how judges can play a role in the public outreach and education objectives shared by the OSB and the OJD.
- **Advise leadership on media issues.** Media relations staff serves as the primary advisor to staff and board leadership on media-related issues.
- **Liaison to the Bar Press Broadcasters Council.** Staff plays a key leadership role on this joint council between the OSB, and Oregon Newspaper Publishers Association and the Oregon Association of Broadcasters.

Volunteers/Partnerships

Volunteers: Approximately 200 members serve on our list of media sources in specific areas of law. They are regularly called by the OSB Media Relations staff to play a public education role in assuring media explanations of law and legal issues is as accurate as possible. The annual Building a Culture of Dialogue event each March involves direct participation from roughly 50 individuals. And the Bar Press Broadcasters Council has 12 lawyer volunteers, working closely with the 12 media volunteers.

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

Outcomes and Evaluation

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

Media relations staff strives to make contact with every major media outlet annually, to offer the OSB as a resource in coverage of all law-related stories. Staff in 2016 continued to have regular (weekly) contact with the Oregonian, both on direct bar-related stories and in assisting with myriad law-related stories. Staff was also consulted on a regular basis by Oregon Public Broadcasting, Portland Tribune, Willamette Week and the four television stations in Portland.

Staff also had regular contact with newspapers in Salem, Eugene, Medford, Bend and Pendleton, as well as many small newspapers around state. In addition to providing expert sources, staff reached out directly to editorial staff to revisit the multi-faceted role the OSB is willing to play in assisting journalists in coverage of law-related stories.

Media relations staff works with journalists on average approximately two to four times per week, and during a major breaking news story approximately five to six times per day.

Media relations staff also manages the regular coverage of the Oregon State Bar as a regulatory body. At any given time there are typically between eight and 15 discipline cases being tracked by media, with staff providing regular update and explanation. In late 2016 there was also some coverage of changes proposed by the Disciplinary System Review Committee, which continues into 2017.

Generally, the OSB does not proactively push discipline stories out via press release or otherwise. The exception, however, is when the OSB files for a suspension of a law license while charges are pending, due to a significant threat of public harm. In those cases, the OSB was able to get multiple stories printed specifically in communities where a public threat existed. Although difficult to quantify, we expect that this media attention helped some potential clients from further harm in some limited cases.

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

Staff continues to maintain and update a list more than 200 bar members with expertise in specific areas of law who are skilled and comfortable serving as sources for media. Staff offers regular training and/or consultation with our media volunteers.

Examples of some of the bigger stories where multiple media outlets sought bar members for guidance would be the stories related to the occupation of the Malheur National Wildlife

Refuge and the related criminal trials; a civil right lawsuit filed against the Attorney General; SEC fraud charges against Lake Oswego firm Aequitas; stories regarding housing crises in several Oregon cities; a natural gas explosion in Portland and numerous stories about local and national elections.

Media Relations staff played an ongoing role with county efforts to communicate with the media and public about the new Multnomah County Courthouse. Kateri served on the Outreach committee, and also facilitated a community dialogue about what several diverse community leaders sought in both the courthouse and the justice system.

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

Staff reaches out to bar members regularly to identify important trend and issue stories that may be of value to the community, and works closely with media in getting those stories covered in substantive fashion.

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

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

Although 2016 did not see the bar push a major piece of legislation akin to the 2015 effort on the Cy Pres bill, media relations and public affairs staff closely coordinated on messaging on several priorities, most notably on issue of court funding and court facilities.

This year also saw the Bar Press Broadcasters Council push forward significant amendments to UTCR 3.180, which governs electronic recording in court rooms, often referred to as the “cameras in court” rule. This was an arduous drafting process involving judges, lawyers, and media representatives. OSB continues to provide the staffing support for the drafting committee. The rule changes were accepted by the UTCR committee in the fall, and now are in a period of public comment, where they are generating considerable discussion among the circuit judges. Media relations staff will continue to work towards an inclusive and constructive amendment process.

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

The media relations program is one of the key players in assuring the public that the OSB is diligently pursuing its public protection role. This requires maintaining an open and transparent relationship with our media partners, and efficient response to time-sensitive inquiries.

The Oregon State Bar is routinely recognized by media as one of the most responsive public bodies in the state. Part of this is due to the vast majority its records being subject to public disclosure. Yet the timeliness of access to records, and the accessibility of staff to discuss and inform regarding OSB business continues to contribute to a foundation of trust.

Member Services

Program Goal Statement

The Member Services Department advances the OSB's mission by providing professional networking and leadership development opportunities for bar members through administration and support to its committees, sections and the Oregon New Lawyers Division.

Program Description

The Member Services Department conducts recruitment for all lawyer and non-lawyer volunteer positions and coordinates the selection of all BOG appointed positions. The department is responsible for ensuring the integrity of the bar's elections and judicial preference polls, managing the associate and law student membership programs, and maintaining the Defense Counsel Panel.

The department provides full administrative support to the bar's 43 sections, 17 committees, and assists the Oregon New Lawyers Division develop and administer programs of value to new lawyers and law students. The department offers county bar associations support for communication efforts and membership tracking.

The Member Services Department administers the Loan Repayment Assistance Program which was created in 2007 in recognition of the substantial educational debt and the financial barrier it creates for lawyers who wish to pursue a career in public service law.

The department includes the reception team which is the first point of contact for member and public inquiries. Meeting room request for internal and external groups are coordinated by the reception staff as well as all member and firm address changes.

Volunteers/Partnerships

Volunteers: Approximately 900 members and non-lawyer volunteers serve on the various bar groups the department supports. In addition, 50 members of the Oregon New Lawyers Division contribute time to develop activities and programs for the division's membership through its executive committee and six subcommittees.

Partnerships: The Member Services Department partners with OSB Board of Governors, sections, committees, county and specialty bar associations. The Oregon New Lawyers Division partners with the Multnomah Bar Young Lawyers Section and the American Bar Association.

Outcomes and Evaluation

Outcome #1: Members have diverse array of high-quality and cost-effective professional networking and leadership opportunities that advance the mission and goals of the OSB.

Section membership continues to be a popular resource for bar members seeking professional development and networking opportunities within their practice area. In 2016 membership rates for sections remained at a steady level with just over 8,000 members joining one or more sections for nearly 18,000 total memberships purchased.

The review of section services, member benefits, and alternative formats continued in 2016 with a few executive committee officers providing input for the Board of Governors to consider in the spring of 2017. Plans to implement section CLE policy changes were delayed based on feedback provided during the House of Delegates meeting and modified staged implementation of the new association management software.

In an effort to continue meeting the needs of recently admitted practitioners, the Oregon New Lawyers Division (ONLD) hosted several networking events throughout the state. For many of these they partnered with an OSB section or local or specialty bar organization. In addition to the monthly lunch CLE programs, the ONLD hosted a half-day CLE program to educate members about advocating for youth immigrants seeking legal status in the United States. A two-day training program was held in the fall and focused on topics of interest to new litigation practitioners. The program included speakers with diverse backgrounds and received high marks from members who attended.

In partnership with President-Elect Levelle, the department hosted two outreach conference calls with county bar association presidents. Creating an opportunity for open dialog provided bar leaders a chance to discuss trends in their areas, seek feedback and support on a variety of topics, and expand their understanding of services available to each association. As a result the department was able to provide resources to two county bars as they developed their own bylaws, assist one county bar with board elections, and expand the broadcast email communication services offered.

Outcome #2: Effective volunteer recruitment and retention for the organization.

Maintaining an adequate and diverse pool of lawyer and non-lawyer volunteer candidates remains a top priority. The department continues to support the BOG Board Development Committee with outreach to a variety of law-related groups, including minority and specialty bar organizations, during the application cycle. More than 200 members were appointed to a bar group this year, nearly all of which came from the 350 volunteers who submitted an online application.

The selection process for BOG-appointed positions continues to evolve under the Board Development Committee's guidance. In the fall of this year the committee drafted a policy outlining how current or prior disciplinary matters factor into appointment consideration. Full implementation of the policy requires bylaw changes which are slated for BOG consideration in February of 2017.

Ensuring a diverse pool of non-lawyer volunteer candidates continues as a focus for the department and the BOG Board Development Committee. As a result of increased outreach efforts and ongoing relationship building with community organizations, the overall number of public member volunteer applicants increased by 27% over last year. Of those who applied, 54% self-identified as a racial or ethnic minority, 7% indicated they had a disability, and 4% indicated a sexual orientation other than heterosexual.

Evaluating the effectiveness of the Volunteer Defense Counsel Panel was a new focus in 2016. The goal of the program is to provide a resource for accused lawyers when complaints are referred to the

Disciplinary Counsel's Office. The list of panel members is primarily made available upon request through the Member Services Department but the Professional Liability Fund and Oregon Attorney Assistance Program also offer the resource when necessary. In recent years there has been an increase in requests for the resource list. Approximately 30 requests are made through the department each year but the PLF and OAAP do not track their requests. On average about 20 volunteers participate on the panel. After connecting with panel members and obtaining feedback from accused attorneys, in the coming year greater effort will be placed on increasing the number of panel members, particularly those from rural areas of the state.

Outcome #3: Maximize the number of LRAP loans awarded and ensure guidelines and policies facilitate the program goals.

Based on a recommendation from the LRAP Advisory Committee, the BOG approved increasing the applicant salary cap to \$65,000 in 2015. While no changes were recommended to the policies and guidelines in 2016, improvements were made to the application to ensure complete financial information was available for the Advisory Committee when evaluating applicants.

Of the 39 public service attorneys who applied for an LRAP loan, 23 were selected to receive loans ranging from \$2,000 to \$7,500. In the last year there has been an increase in the number of experienced public service attorney applicants based on increased outreach to this member demographic. Outreach to rural members also resulted in an increase in applicants from around the state, especially those with varying backgrounds and jobs.

Outcome #4: Excellent customer service to the membership, bar groups, and staff.

Efforts in this area focused on integrating the bar's reception staff into the department and establishing procedures to handle new tasks assigned to the department. Most notably, the department assumed the role of managing all external meeting room bookings and maintenance of all company and firm database records.

Implementation of the bar's new association management software remains a priority for the department. Most of the department staff serve as an application owner or subject matter expert for at least one application module. Staff have and will continue to dedicate significant amounts of time to testing and refining requirements for the launch of Aptify in 2017.

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

Outcome #5: Events and services are cost-effective and conducted in fiscally responsible manner.

There are three program budgets within the department: Loan Repayment Assistance Program, Member Services and the Oregon New Lawyers Division. Each are expected to close 2016 within their projections. Most notable efficiencies came once reception staff was incorporated into the department. After evaluating staffing needs based on meeting room reservations, policies were changed to reduce the frequency and use of full time staff providing weekend host coverage.

New Lawyer Mentoring Program

Program Goal Statement

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

Program Description

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

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

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

Volunteers/Partnerships

Since its inception, approximately 3900 bar members have engaged with the program. Each year sees roughly 500 matched pairs moving through the program. Members of the appellate courts and the Oregon Bench Bar Commission on Professionalism have been active participants in our social events, and regular supporters of the program's mission. The NLMP relied on an advisory committee of 12 volunteer bar members in 2016, who worked on policy, events, and program enhancements. That committee was essential in the program's creation and early evolution. As the program reached a more mature state, the committee was less engaged and the BOG moved to sunset the committee at the end of 2016.

The NLMP partners primarily with OSB Sections and committee leadership, county and specialty bars, Inns of Court, the Oregon Bench Bar Commission on Professionalism, and the Oregon Judicial Department.

Outcomes and Evaluation

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

Bar members are engaged with the New Lawyer Mentoring Program as committee members, CLE speakers, and active program participants (mentors and new lawyers). Since its inception, 2,349 bar members have volunteered to serve as mentors, and 1,561 new lawyers have completed the program. In 2016 specifically, approximately 417 new lawyers completed the program, with the same number of mentors actively engaged. We recruited 182 new mentors into the program.

Although those volunteer numbers are gratifying, recruiting new mentors continues to be a key area of focus for the program. In order to make the most effective matches, the program needs a significant surplus of mentors each year. In 2016, the program made strides in increasing its volunteers in the immigration law arena, which had been an area of need. Additionally, we reached out through sections to areas of high need, most notably business law mentors in Multnomah County. Finally, we established a connection with the Oregon Chapter of American Immigration Lawyers Association (AILA) to address another area of particularly high need.

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

From its inception, two months has been the aspirational goal for connecting new lawyers with a mentor. This was a struggle for the first few years, but we have been largely successful in meeting this goal for the past two years.

That said, we do still have long wait times in select geographic locations and practice areas, and are still encumbered by a dearth of mentors in certain categories. Thus, Outcome Number Two is directly connected to Outcome Number One, and our recruitment objectives this year must address those areas where we continue to see deficits that significantly impact wait time.

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

This year, the program began to establish more effective partnerships with several specialty bars and sections, an effort that should continue into 2017. It should be particularly effective to have the NLMP more closely aligned with the ONLD, and this may facilitate other partnerships that are in early stages. The partnership with OWLS has helped us match mentors and new lawyers who have a like interest in that organization. A similar matching partnership with other specialty bars could help them with recruiting, while increasing our chances of effective matches on a personal/organic level. It also opens the door for increased programming and networking, which is an expressed desire of our New Lawyer participants.

2016 Program Measures

Public Affairs Department

Program Goal Statement

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

Program Description

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

The focus of the Public Affairs Department (PAD) during 2016 has been legislative advocacy in the short session of the Oregon Legislature, outreach to the bar, legislators, and advocates in preparation for the upcoming long legislative session in 2017, and continued monitoring and support of the Oregon eCourt implementation and judicial funding.

Volunteers/Partnerships

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

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

Outcomes and Evaluation

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

The focus of the Public Affairs Department (PAD) during 2016 has been legislative advocacy in the short session of the Oregon Legislature, outreach to the bar, legislators, and advocates in preparation for the upcoming long legislative session in 2017, and continued monitoring and support of the Oregon eCourt implementation and judicial funding.

In the 2016 session, the bar's priorities were adequate funding for the judicial department, indigent defense and legal services as the bar's highest legislative priorities for 2016. The department was involved in the following activities in connection with these priorities.

- Supported a successful BOG reception in Salem during the legislative session with an impressive turnout of legislative leaders and bar members.
- Supported the Public Defense Services Commission's request for pay parity for indigent defense providers.
- Supported the Oregon Judicial Department's request for an increase in judicial salaries.
- Supported the Oregon Judicial Departments request for funding for the implementation of Oregon eCourt.

During the 2016 session the bar identified three bar priority bills generated by work groups and task forces during the 2015 interim: SB 193 (Advance Directives), SB 1554 (Digital Assets) and HB 4128 (Notario Fraud). The department worked with sections and general counsel to provide testimony in support of these measures in both chambers, met with legislators, and worked out amendments when necessary. The Digital Assets bill and the Notario Fraud bill successfully passed and were signed by the Governor while the Advance Directive bill will be reintroduced during the 2017 legislative session.

In addition, the bar supported and provided testimony on a number of bills and funding requests including:

- Supported the Oregon Department of Justice request for funding for an Elder Abuse Prosecutor and Investigator.
- Supported HB 4009 which established Minoru Yasui Day.
- Supported legislation from the Oregon Law Commission including legislation from the Juvenile Court Records Work Group and the Probate Modernization Work Group.

During the 2016 legislative session, the bar engaged on two bills which could have affected the practice of law.

HB 4067 significantly expanded protections and created an affirmative defense for whistleblowers in state agencies and some nonprofits in Oregon. The bar successfully

worked with the bill's proponents to protect the attorney-client privilege and confidential communications by amending the bill prior to passage.

HB 4093 would have allowed some counties to institute up to a 15 percent surcharge on court filing fees and a \$5 fee on fines and violations to raise funds for courthouse construction and renovation. The bar successfully worked with legislators, stakeholders, and the Oregon Judicial Department to remove the 15 percent surcharge from the bill pending a more in-depth conversation about funding court facilities and Oregon eCourt.

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

PAD staff worked closely with sections to keep members informed about legislation that could affect the practices of their members. For the 2016 legislative session, the PAD implemented a new internal bill tracking software system. The system, developed in partnership with the bar's information technology department, allowed PAD staff to track bills as they moved through the legislative process. This system also provides bar sections and groups with the ability to identify, track, and review proposed legislation. Staff helped sections navigate the process by which sections receive authority to take positions on legislation.

Since the end of the short session, the public affairs staff has worked with volunteer authors and editors to produce a comprehensive review of the 2016 session designed to apprise practitioners of changes in virtually all practice areas—2016 Legislation Highlights. To prepare for the 2017 regular session, public affairs staff met with section executive committees and other bar groups to discuss the process by which groups may submit legislative proposals for bar sponsorship, and offered to help these groups through the process.

PAD worked closely with sections to keep members informed about legislation that could affect the practice of their members. Prior to the legislative session, PAD staff reached out to the 42 sections to discuss the legislative process, how to engage in the process and helped identify a legislative contact for each section.

In April, the Public Affairs Committee (PAC) hosted the Oregon State Bar's Legislative Forum where nine sections and groups submitted 15 legislative proposals for the 2017 Legislative Session. The department worked with sections and general counsel to develop legislative concepts, draft bill language, and build consensus within the bar's membership and external stakeholders. The BOG and five sections will be sponsoring seven law improvement bills during the 2017 legislative session.

In addition, Public Affairs staff worked with five sections to address issues that did not culminate in legislative proposals. Over the last year, the PAD has assisted four sections

with rulemaking, educational efforts, and outreach to agencies and stakeholders stemming from five law improvement proposals.

In February, the OSB hosted a very successful BOG reception in Salem during the February legislative session with an impressive turnout of legislative leaders and bar members. In addition, the PAD director accompanied the bar president and an Oregon delegation to the ABA Lobby Day on Capitol Hill in April.

Public Affairs published 11 issues of the Capitol Insider this year, a newsletter on legislative and public affairs issues of interest to bar members. More than one third of the active bar membership has chosen to receive this monthly newsletter. In addition, public affairs collaborated with the Bulletin on articles about the implementation of Oregon eCourt.

The department published a 2016 edition of Legislative Highlights, a comprehensive overview of 2016 legislation organized by practice area.

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

Outcome #3: Assure operational efficiency.

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

Referral and Information Services

Program Goal Statement

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

Program Description

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

Outcomes and Evaluation

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

Total call volume from the public increased 1.75% in 2016 with a total of 74,393 calls. Even with increased volume, RIS was able to provide service to more callers and capture more referrals by focusing on reducing the number of callers who abandon the call queue due to long wait times. By maintaining adequate FTE devoted to the phones, only 3% of callers abandoned an RIS call queue in 2016.

A new training schedule was implemented for staff in 2014 and continued throughout 2015 and 2016, with every staff meeting now including a substantive law overview for a different area of law to ensure staff is making accurate referrals. Enhanced training has reduced errors among staff, and use of instant messaging software has helped staff assist each other with referral questions without interrupting active client calls. RIS staff also updated the staff guide used to train new employees. Finally, RIS staff updated the department's resource guide that is used to

provide callers with community organizations that may be able to offer assistance. The guide contains approximately 200 different organizations and community resources and is organized by area of law. The guide will be made available to other legal service providers and will eventually be hosted on the bar's public website.

Maintaining a full RIS staff was a challenge in 2016, with three .5 FTE positions currently remaining open. Working with the HR department, RIS created new advertisements for the open positions that emphasize the benefits of working for the bar and the team-oriented environment of the RIS department. The BOG also approved a .5 FTE increase for the RIS department in order to move all accounting responsibilities into RIS and out of the Accounting Department. This change should improve the department's ability to track remittance payments and make invoice adjustments for the panelists.

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

The public-oriented focus for 2016 was to continue increasing traffic to the OSB website, including the Legal Help page, to inform potential clients about available resources. Throughout 2016, RIS worked with the Communications & Public Services Department to continue the pilot Craig's List and Google Ad Words campaigns. Staff posted a "Need Legal Help?" message at various times on Craig's List. The posting included an embedded link to the "Legal Help" page on the bar's website.

At the same time RIS Staff started two Google Ad Word campaigns. The first campaign, "OSB Website," focused on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, "RIS," focused on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. This campaign is coordinated with the release of "Legal Q & A" videos that are produced by the Communications Department. The "key words" used in the ads are the same as the legal topic covered in the videos. This dual approach should draw increased traffic to the OSB website and the online referral page.

Overall call volume increased in 2016, reaching 74,393 calls and 4,676 online referral requests. RIS made 47,772 total referrals – a 2.8% increase in referrals over the previous year. The totals by program area are:

LRS	44,677
Modest Means	2,925
Problem Solvers	136
Military Assistance	34

Outreach to members remained focused on current panelists; with total LRS registration remaining stable in 2016, no active recruitment of new panelists was warranted. However, the MMP is in need of new panelists in some under-served areas, such as Eastern Oregon and some

parts of the coast. RIS staff is working with the Creative Services Department to create several MMP recruitment advertisements for the Bar Bulletin in order to boost attorney participation.

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

Following up on the BOG's directive to explore Modest Means Program expansion, RIS worked with the Public Service Advisory Committee (PSAC) to begin preliminary efforts to create Modest Means panels for Elder Law and Appellate Law. RIS staff met with both sections to gauge attorney interest in participating in these areas of law at a reduced rate. RIS staff and the PSAC will continue these efforts in 2017 with the goal of creating a pilot project.

In 2016 the PSAC voted unanimously to make a recommendation to the BOG on a global change to percentage fees in the form of a \$200 "trigger" amount. If a referral does not result in the panelist earning and collecting at least \$200 on the case, the attorney will not pay a remittance to the bar. The BOG's Budget and Finance Committee will review this recommendation in early 2017. Implementation of the trigger will require approximately 40 hours of programming by the IT department. Depending on the timeline of the AMS implementation, the trigger may be delayed significantly.

Unforeseen circumstances caused the RIS Department to develop its own referral software at the start of 2015. Since the go-live date on April 22, 2015, RIS has made more than 80,000 referrals in the new system with virtually no issues. Bringing the software in-house allowed RIS to implement several new features, including single sign-on with the bar's website, enhanced reporting speed, and a more user-friendly payment system. Member feedback has been uniformly positive since implementation, and the bar is saving \$7,500 per year in fees that were paid to a third-party software developer. RIS staff will continue monitoring the new system and making improvements where needed.

In April 2016, the Board of Governors approved the creation of a Futures Task Force with the following charge:

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

The task force is currently reviewing existing bar programs including the LRS and MMP. Task Force recommendations could include changes to these programs in order to increase access to justice. The RIS Manager is a member of the task force and will continue providing statistics and input throughout 2017, as well as assisting in any program changes directed by the BOG.

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

In 2016 LRS collected \$703,209 in percentage fee revenue, which represents \$5,860,075 in business generated for panelists. 2016 LRS registration revenue was \$107,120 – about \$10,000 less than average. Therefore, total LRS revenue for 2016 was \$810,329. Based on recommendations of staff and the PSAC, the BOG elected to make no changes to the LRS fee structure for the 2016-2017 program year. As stated above, consideration of a threshold amount that would trigger application of percentage fees (with the effect of keeping brief service matters exempt from percentage fees) will be considered by the BOG in 2017.

The combination of registration and percentage fee revenue resulted in a net revenue for the third time in the program's history (2014 and 2015 being the first two), exceeding budget projections. Total revenue since percentage fee implementation is \$2,845,870, which represents \$19,650,000 in business generated for LRS panelists.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2107
Memo Date: January 25, 2016
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

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

- Accepted the Form B resignation from Bend lawyer *Lane D. Lyons*.
- Accepted the Form B resignation from Portland lawyer *Jeffrey Scott Milstein*.
- Issued an opinion in *In re Rankin Johnson, IV*, accepting this Portland lawyer's stipulation to a 4-year suspension, 30 months stayed, 3-year probation.
- Issued an opinion in *In re Eric M. Bosse*, accepting this Newberg lawyer's stipulation to a 24-month suspension.
- Accepted the Form B resignation from Bend lawyer *Alex West*.
- Issued an order in *In re Dale Maximiliano Roller*, suspending this Salem lawyer during the pendency of his disciplinary proceedings.

b. Disciplinary Board

No appeal was filed in the following cases and the trial panel opinions are now final:

- *In re Shawn E. Abrell* of Portland (1-year suspension).
- *In re Sara Lynn Allen* of Lake Oswego (60-day suspension, formal reinstatement, and restitution).

Two Disciplinary Board trial panel opinions have been issued since November 2016:

- A trial panel recently issued an opinion in *In re Samuel A. Ramirez* of LaPine (1-year suspension) for conduct involving competence, diligence, and conflict of interest.

- A trial panel recently issued an opinion in *In re Sandy N. Webb* formerly of Portland (2-year suspension) for conduct involving trust account violations.

In addition to these trial panel opinions, the Disciplinary Board approved a stipulation for discipline in: *In re Rick Inokuchi* of Gold Beach (60-day suspension), *In re Sarah A. Baldwin* of Salem (reprimand), *In re Gary I. Grenley* of Portland (reprimand), *In re Edward T. LeClaire* of Portland (120-day suspension, all but 30 days stayed, 2-year probation), *In re Theodore C. Coran* of Salem (120-day suspension, all but 30 days stayed, 3-year probation), *In re Timothy MPM Pizzo* of St. Helens (reprimand), *In re Rose L. Hubbard* of Tigard (reprimand), and *In re Cole Chase* of Klamath Falls (6-month suspension, all stayed, 18-month probation).

The Disciplinary Board granted the bar's petition to revoke the probation of Eugene lawyer *Andrew J. Lopata* and impose his 90-day suspension that was stayed in 2015.

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 James R. Kirchoff – 2-year suspension; accused appealed; awaiting briefs
In re Dale Maximiliano Roller – 4-year suspension; accused appealed; under advisement (submitted on the record)

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 Gary B. Bertoni – November 17, 2016
In re Jonathan G. Basham – December 5-7, 2016
In re Steven L. Maurer – December 13-14, 2016
In re Kathleen Y. Rinks – January 9, 2017 (sanctions memo filed)
In re Travis W. Huisman – January 18, 2017

3. Trials.

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

In re Willard Merkel – April 14, 2017
In re Dana C. Heinzelman – May 9-11, 2017
In re James C. Jagger – May 18, 2017

4. Diversions.

The SPRB approved the following diversion agreements since October 2016:

In re Michael B. McCord – October 22, 2016

In re Rebecca Z. May – December 1, 2016

In re Mark Thomas McLeod – December 1, 2016

In re William P. Koontz – January 1, 2017

5. Admonitions.

The SPRB issued 7 letters of admonition in December 2016 and January 2017. The outcome in these matters is as follows:

- 7 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 #):

MONTH	2012	2013	2014	2015	2016
January	46/49	21/21	29/31	18/19	30/30
February	27/27	23/23	24/25	28/28	38/38
March	38/39	30/30	41/45	22/22	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	39/39
November	18/18	25/26	19/19	24/25	26/27
December	26/26	19/19	21/23	20/20	25/28
TOTALS	350/359	341/349	336/352	298/302	371/382

As of January 1, 2017, there were 208 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 38% are less than three months old, 24% are three to six months old, and 38% are more than six months old.

DME/rh

Oregon State Bar
Meeting of the Board of Governors
November 19, 2016
Open Session Minutes

President Ray Heysell called the meeting to order at 1:05 p.m. on November 19, 2016. The meeting adjourned at 4:00 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, Josh Ross, Kerry Sharp, Richard Spier, Kate von Ter Stegge, Charles Wilhoite, and Elisabeth Zinser. Not present was Tim Williams. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Kay Pulju, Kateri Walsh, Dani Edwards, Judith Baker, and Camille Greene. Also present was Carol Bernick, PLF CEO, Tim Martinez, PLF, Colin Andries, ONLD Chair, Kaori Tanabe, ONLD Chair-elect, and 2017 BOG members: Eric Foster, Eddie Medina, Tom Peachey, Liani Reeves, and Traci Rossi.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as presented, by consensus.

2. 2017 President & President-elect Elections

At the request of Mr. Heysell, the board unanimously confirmed Ms. Nordyke as 2017 President-elect.

At the request of Mr. Heysell, the board unanimously confirmed Mr. Levelle as 2017 President.

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

A. Policy and Governance Committee

The Policy & Governance Committee will focus in 2017 on review of the function related to diversity, equity and inclusion. Mr. Levelle reported that the Committee began its review with an overview of Diversity & Inclusion programs, and noted that diversity, equity and inclusion ought to be a part of the strategies for all other bar functions.

Mr. Levelle reported that the committee reviewed a proposed strategic action plan for 2017, and recommended they work on it and present it to the board for action next year.

B. Board Development Committee

Ms. Nordyke presented the committee's recommendations for several committee and board appointments. **[Exhibit A]**

Motion: The board voted in favor of accepting the committee recommendations. The motion passed.

C. Budget and Finance Committee

Mr. Mansfield acknowledged receipt of the audit report of the bar's combined 2014 and 2015 financial statements from Moss Adams LLP. The new accounting requirement to account for unfunded liability of the pension expense shows a lower revenue than previously calculated.

Mr. Mansfield presented the committee's motion to approve the 2017 OSB budget.

[Exhibit B] He noted that bar application numbers and bar passage rates have decreased, foreshadowing a possible revenue shortfall in the next couple of years, which could result in the need to tap into reserve funds, make budget cuts, or increase member fees.

Motion: The board voted unanimously in favor of the committee motion to approve the 2017 OSB budget. The motion passed.

D. Public Affairs Committee

Mr. Ross gave a general update on legislative activity and presented the committee motion to adopt the 2017 legislative priorities: support court funding; supporting legal services; and the OSB law improvement package. **[Exhibit C]**

Motion: The board voted unanimously in favor of the committee motion to adopt the 2017 legislative priorities. The motion passed.

Mr. Ross presented the committee motion to adopt the 2017 legislative guidelines. **[Exhibit D]**

Motion: The board voted unanimously in favor of the committee motion to adopt the 2017 legislative guidelines. The motion passed.

4. Professional Liability Fund

Ms. Bernick gave an update on the PLF financials.

Ms. Bernick asked the board to approve the proposed 2017 Pro Bono Coverage Plan. There are changes to the plan. **[Exhibit E]**

Motion: Mr. Mansfield moved, Mr. Ramfjord seconded, and the board voted to approve the 2017 Pro Bono Coverage Plan. Mr. Chaney and Mr. Bachofner abstained.

Ms. Bernick asked the board to approve the 2017 budget. **[Exhibit F]:**

Motion: Mr. Greco moved, Mr. Mansfield seconded, and the board voted to approve the budget as presented. Mr. Chaney and Mr. Bachofner abstained.

Ms. Bernick asked the board to approve the revisions to PLF Policies 7.300, 7.600, and 4.350. **[Exhibit G]**

Motion: Mr. Mansfield moved, Mr. Greco seconded, and the board voted to approve the policy revisions. Mr. Chaney and Mr. Bachofner abstained.

Ms. Bernick asked the board to approve the 2017 Excess Base Rate. **[Exhibit H]**

Motion: Mr. Greco moved, Mr. Mansfield seconded, after much discussion the board voted to approve the 2017 Excess Base Rate. Mr. Chaney and Mr. Bachofner abstained.

Mr. Martinez outlined the details and effects of the changes to the allocation of assets. Ms. Bernick asked the board to approve the following reallocation of investment portfolio assets [Exhibit I]:

- 10% from Diversified Inflation Strategies
- +4% US Equity
- +2% International Equity
- +4% Core Fixed Income

Motion: Mr. Greco moved, Mr. Ramfjord seconded, and the board voted to approve the reallocation of assets. Mr. Chaney and Mr. Bachofner abstained.

5. OSB Committees, Sections, Councils and Divisions

A. Discipline System Review Committee

Ms. Evans asked the board to approve the changes to the bar rules for publication and comment before submitting to the Supreme Court for adoption. [Exhibit J]

Motion: Mr. Greco moved, Mr. Ross seconded, to table the matter in order to give board members more time to read the rule revisions. Ms. Evans asked for a chance to explain. Mr. Greco withdrew his motion and Mr. Ross withdrew his second.

Ms. Evans explained some of the most significant rule changes in detail. Mr. Ross asked for clarification of changes that would change the course of action for current procedures. He was satisfied with Ms. Evans' explanations. Ms. Zinser recommend that a few board members perform a detailed review of the rule changes to be presented to the board in January 2017 if the motion to table is approved. Mr. Ramfjord reminded the board that they approved the report that recommended these rule changes and should be confident in Ms. Evans' recommendations.

Motion: Mr. Greco moved, Mr. Ross seconded, and the board voted to table the vote until January 2017. Ms. von Ter Stegge and Ms. Rice were opposed.

B. Oregon New Lawyers Division Report

In addition to the written report, Mr. Andries introduced Kaori Eder who is the 2017 ONLD Chair. Ms. Eder is looking forward to the new year and likes to get things done and will encourage BOG members to help them reach out to high school students to increase bar membership.

C. LRAP Advisory Committee

Removed from agenda.

D. New Lawyer Mentoring Program

Ms. Walsh asked the board to sunset the New Lawyer Mentoring Committee. The committee played an essential role in creating a successful program, and providing staff with ongoing guidance in its first years of operation. [Exhibit K]

Motion: Mr. Bachofner moved, Ms. Nordyke seconded, and the board voted unanimously to sunset the New Lawyer Mentoring Committee.

E. Client Security Fund Committee

Claim 2016-35 FERRUA (Lopez-Diaz)

Ms. Hierschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$12,500 to Marcelino Lopez-Diaz for his loss resulting from the conduct of attorney Franco Ferrura. **[Exhibit L]**

Claim 2016-31 MILSTEIN (Connolly)

Ms. Hierschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$18,170 to Joseph A. Connolly for his loss resulting from the conduct of attorney Jeffrey S. Milstein. **[Exhibit M]**

Claim 2016-23 HAWES (Sansome)

Ms. Hierschbiel 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 N]**

Claim 2016-30 McCART (Mandelberg)

Ms. Hierschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of the claim, as presented in her memo. **[Exhibit O]**

Motion: Mr. Ramfjord moved, Mr. Greco seconded, and the board voted unanimously to approve the committee's recommendations on CSF claims: 2016-35 FERRUA (Lopez-Diaz); 2016-31 MILSTEIN (Connolly); 2016-23 HAWES (Sansome); and 2016-30 McCART (Mandelberg).

Claim 2016-40 GERBER (Shorb)

Ms. Hierschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$5,000 to Charles Ray Shorb for his loss resulting from the conduct of attorney Susan Gerber. **[Exhibit P]**

Motion: Mr. Ramfjord moved, Mr. Greco and the board voted to approve the committee's recommendation on CSF claim 2016-40 GERBER (Shorb). Ms. Nordyke and Ms. von Ter Stegge abstained.

Ms. Hierschbiel presented the committee's financials and claim status for information purposes.

F. Legal Ethics Committee

Ms. Hierschbiel presented the committee's request that the board consider the recommendation of the Legal Ethics Committee ("LEC") to amend Oregon RPC 7.3(a). **[Exhibit Q]** The board has the option to put this out for public comment before submission to the House of Delegates for approval. The board discussed referring the proposed rule change to the Futures Task Force Regulatory Committee. Mr. Greco noted that the proposed amendment was consistent with the recommendations of the 2009 Advertising Task Force.

Motion: Mr. Mansfield moved, Mr. Bachofner seconded, and the board voted to approve the amendments as recommended by the committee. Mr. Ross abstained.

Ms. Hierschbiel presented the committee's request that the board consider the recommendation of the Legal Ethics Committee ("LEC") to amend OSB Formal Ethics Op No. 2005-110. **[Exhibit R]**

Motion: Ms. Nordyke moved, Ms. von Ter Stegge seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

G. Other

Mr. Heysell presented a summary of the 2016 House of Delegates meeting. Mr. Heysell asked the board to 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.

[Exhibit S]

Motion: Mr. Spier moved, Ms. Costantino seconded, and the board voted 8-7 to postpone implementation of the CLE co-sponsorship policy until 2018. In favor was Ms. von Ter Stegge, Ms. Costantino, Mr. Chaney, Mr. Bachofner, Mr. Greco, Mr. Sharp, and Ms. Rastetter. Opposed was Mr. Mansfield, Mr. Ramfjord, Mr. Wilhoite, Mr. Levelle, Ms. Nordyke, Mr. Ross and Ms. Zinser. Mr. Heysell voted in favor of the motion to break the tie.

Motion: Ms. Nordyke moved, Mr. Gratchner seconded, and the board voted 11-3 to form a committee to discuss options moving forward. Mr. Mansfield, Mr. Ramfjord, and Mr. Ross were opposed.

Ms. Nordyke, Ms. Costantino, and Mr. Bachofner volunteered to be on the committee. Ms. Hirschbiel will send a list of committee members to the board.

Ms. Baker updated the board on the need for a Legal Needs Study. The Oregon Law Foundation grants committee will fund the study.

Ms. Baker informed the board on the denial of the Access to Justice Grant.

6. Consent Agenda

A. Report of Officers & Executive Staff

Report of the President
None.

Report of the President-elect
None.

Report of the Executive Director
As written.

Director of Regulatory Services
As written.

MBA Liaison Report
None.

Motion: Mr. Greco moved, Ms. von Ter Stegge seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

7. Closed Sessions – see CLOSED Minutes

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

8. **Good of the Order (Non-action comments, information and notice of need for possible future board action)**

None.

DRAFT

**Oregon State Bar
Board of Governors Meeting
November 19, 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.

DRAFT

OREGON STATE BAR

Board of Governors Agenda

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

Action Recommended

During the November 19 meeting the Board Development Committee selected the following members for appointment:

Bar/Press/Broadcasters Council

Members with terms expiring 12/31/2019:

Josh Nasbe
Robert Johnson
Scott Healy

Loan Repayment Assistance Committee

Members with terms expiring 12/31/2019:

Alan Rapleyea
Elaine Brown

Pro Bono Committee

Chair: Shalini Vivek

Secretary: Stephen Galloway

Members with terms expiring 12/31/2017:

Shalini Vivek

Christo de Villers, Advisory Member

Members with terms expiring 12/31/2019:

Mary Beth Allen
Rachel Anne Woods Arnold
David B. Avison
Laura Westmeyer
John C. Clarke
Matthew W. dos Santos
Heather Kemper, Advisory Member

Public Service Advisory Committee

Chair: Shayna Rogers

Secretary: Diana Winther

Members with terms expiring 12/31/2019:

Janay Haas
Loretta Mabinton
Emily Pringle
Jovanna Patrick

Uniform Civil Jury Instructions Committee

Chair: Kimberly Sewell

Secretary: Jeffrey Armstead

Members with terms expiring 12/31/2018:

Daniel Le Roux

Ulanda Watkins

Members with terms expiring 12/31/2019:

Jeffrey Young
David Park
Anthony Kuchulis
Katie Jo Johnson
Karen B. Dawson
Eva Marotrigiano

Unlawful Practice of Law Committee

Chair: Erin Fitzgerald

Chair-Elect: Jay Bodzin

Secretary: Mary Briede

Members with terms expiring 12/31/2020:

Amy Cook
Dylan Potter

Oregon Law Center Board of Directors

Lou Savage
Michael Mason
Wayne Belmont
Amy Edwards
Ed Goodman
Gayle Patterson
Manuel Perez

Legal Aid Services of Oregon Board of Directors

Lou Savage
Michael Mason
Wayne Belmont
Amy Edwards
Ed Goodman
Gayle Patterson
Manuel Perez

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

Disciplinary Board

Region 3:

Joel Benton, term expires 12/31/2019

Region 4:

Deena Bothello, term expires 12/31/2019

Matt McKean, term expires 12/31/2019

OREGON STATE BAR

Board of Governors Agenda

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

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

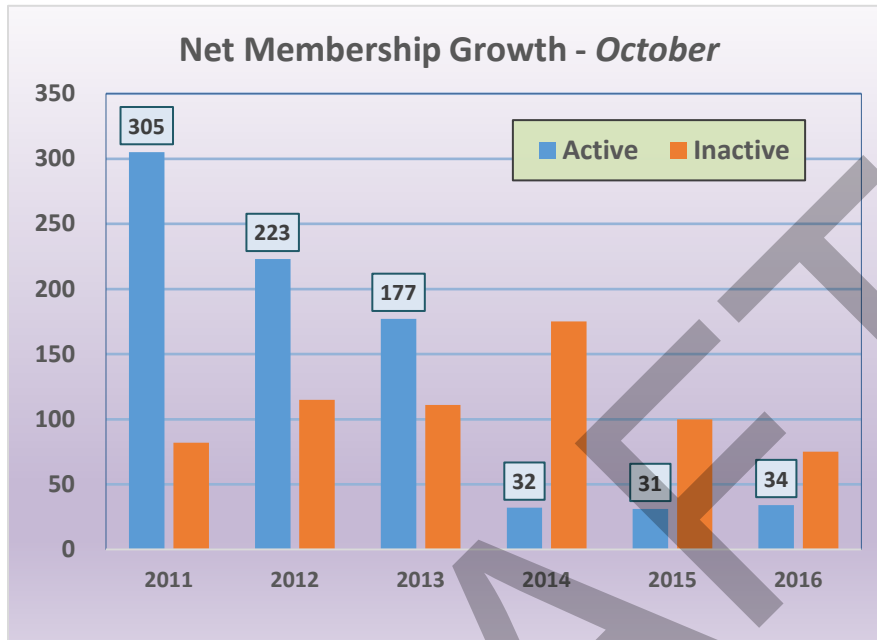
- This version of the 2017 Budget Report includes staff preparation of all the line item program and department budgets.
- The report will first be reviewed by the Budget & Finance Committee prior to the board meeting of the same date.
- The Board of Governors will formally act on the approval of the 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

Department / Program	Revenue	Sal & Benefits	Direct Program	Gen & Admin	Total Expense	Indirect Costs	Net Revenue
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)
TOTAL PROGRAMS	\$4,426,765	\$7,110,880	\$1,999,272	\$300,185	\$9,410,337	\$2,425,256	(\$7,408,828)
ALLOCATIONS:							
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)
TOTAL OPERATIONS	\$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)
TOTAL GENERAL FUND	\$13,119,634	\$8,895,100	\$4,206,178	\$434,594	\$13,535,872	(\$171,419)	(\$244,819)
DESIGNATED FUNDS:							
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)
TOTAL ALL FUNDS	\$20,294,634	\$9,395,800	\$10,689,293	\$481,715	\$20,566,808	\$0	(\$272,174)

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	2022	
REVENUE									
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	
	Tranfer 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	
EXPENDITURES									
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
REVENUE							
RENTAL INCOME							
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
TOTAL REVENUE	841,523	868,437	924,256	938,068	954,886	974,609	936,435
EXPENDITURES							
OPERATING EXPENSE							
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
DEBT SERVICE							
Interest	678,884	663,158	646,462	628,739	609,924	589,951	568,749
TOTAL OPERATING EXPENSES	1,653,652	1,664,318	1,657,062	1,658,739	1,654,724	1,659,951	1,654,349
ICA to Operations	(160,459)	(160,459)	(165,300)	(165,300)	(165,300)	(165,300)	(169,400)
NET EXPENSES	1,493,193	1,503,859	1,491,762	1,493,439	1,489,424	1,494,651	1,484,949
NET REVENUE/(EXPENSE) - FC Place	(\$651,670)	(\$635,422)	(\$567,506)	(\$555,371)	(\$534,538)	(\$520,042)	(\$548,514)
ACCRUAL TO CASH ADJUSTMENT							
SOURCES OF FUNDS							
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							
USES OF FUNDS							
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)
NET CASH FLOW - FC Place	(\$394,494)	(\$391,672)	(\$340,452)	(\$341,040)	(\$239,022)	(\$334,499)	(\$434,173)

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
FUNDS AVAILABLE							
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
SOURCES OF FUNDS							
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		
Projected HIGHER Net Operating Revenue	0						
USES OF FUNDS							
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						
CHANGE IN FUNDS AVAILABLE	980,460	(29,528)	(12,852)	(476,340)	(90,022)	(459,999)	(781,573)
Funds Available - End of Year	\$2,436,460	\$2,406,932	\$2,394,080	\$1,917,740	\$1,827,718	\$1,367,719	\$586,145
RESERVE REQUIREMENT							
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
Total - Reserve Requirement	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
RESERVE VARIANCE							
Over/(Under) Reserve Requirement	\$1,436,460	\$1,406,932	\$1,394,080	\$917,740	\$827,718	\$367,719	(\$413,855)
RECONCILIATION CASH to ACCRUAL	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

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.

OSB Public Affairs Committee

2017 Legislative Session Guidelines

The Public Affairs Committee is committed to advancing the bar's mission to protect the public, improve the administration of justice, promote respect for the rule of law and increase access to justice. To that end, the Public Affairs Committee supports the following legislative goals:

1. Protect the public, the administration of justice and the rule of law.
2. Create meaningful access to justice and provide information about the law, legal issues, and the civil and criminal justice system.
3. Make Oregon laws more internally consistent and more uniform.
4. Improve the ability of attorneys to competently serve the interests of the citizens of the state.
5. Support a fair and effective criminal justice system.
6. Ensure efficient, competent and ethical delivery of legal services.
7. Promote the protection of privileged and confidential information while promoting access and education regarding public records.
8. Provide appropriate information and assistance regarding ethical issues to legislators, especially legally-trained legislators.
9. Improve the juvenile justice system and encourage better coordination between the different components of the system.
10. Foster diversity, equity and inclusion among legal service providers and in the justice system.

OREGON STATE BAR

Board of Governors Agenda

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

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

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

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 7th and 8th 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>
Total	51.23 FTE	50.44 FTE

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”¹ 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.

¹ 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>
<u>Revenue</u>						
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>
<u>Expenses</u>						
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>
Net Income (Loss)	<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>
Number of Full Pay Attorneys	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>
<u>Expenses</u>						
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>
Full Time Employees	43.83	49.53	49.78	51.23	51.23	51.73
Number of Full Pay Attorneys	7,155	7,048	6,950	7,009	6,943	6,950
Non-personnel Expenses	\$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 ACTUAL</u>	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<u>Expenses</u>						
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	0	0	5,372	0	0	28,000
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>
Administration Department FTE	8.00	8.00	9.00	9.00	9.00	9.00
CHANGE IN OPERATING EXPENSES:						
Decrease from 2016 budget		-1.96%				
Increase from 2016 Projections		3.04%				

	2013 <u>ACTUAL</u>	2014 <u>ACTUAL</u>	2015 <u>ACTUAL</u>	2016 <u>BUDGET</u>	2016 <u>PROJECTIONS</u>	2017 <u>BUDGET</u>
<u>Expenses</u>						
Salaries	\$584,637	\$576,354	\$558,824	\$606,727	\$606,719	\$638,854
Benefits and Payroll Taxes	199,808	200,385	213,598	198,568	193,091	216,495
Travel	544	1,311	755	2,500	2,500	2,500
Financial Audit	22,600	22,800	22,800	23,000	22,600	23,000
Training	<u>1,687</u>	<u>4,487</u>	<u>792</u>	<u>3,000</u>	<u>3,000</u>	<u>1,500</u>
Total Operating Expenses	<u>\$809,276</u>	<u>\$805,336</u>	<u>\$796,768</u>	<u>\$833,795</u>	<u>\$827,910</u>	<u>\$882,349</u>
Allocated to Excess Program	<u>(\$111,674)</u>	<u>(\$90,264)</u>	<u>(\$109,729)</u>	<u>(\$115,779)</u>	<u>(\$110,648)</u>	<u>(\$124,241)</u>
Accounting Department FTE	5.90	7.90	7.90	7.90	7.90	7.90
CHANGE IN OPERATING EXPENSES:						
Decrease from 2016 Budget		5.82%				
Decrease from 2016 Projections		6.58%				

**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>
Expenses						
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>3,500</u>	<u>3,000</u>	<u>3,500</u>
Total Operating Expenses	<u>\$1,829,743</u>	<u>\$2,016,547</u>	<u>\$2,117,267</u>	<u>\$2,241,396</u>	<u>\$2,207,634</u>	<u>\$2,216,331</u>
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>
Loss Prevention Department FTE (Includes OAAP)	11.83	13.58	14.08	13.83	13.83	14.83
CHANGE IN OPERATING EXPENSES:						
Increase from 2016 Budget		-1.12%				
Increase from 2016 Projections		0.39%				

	2013 <u>ACTUAL</u>	2014 <u>ACTUAL</u>	2015 <u>ACTUAL</u>	2016 <u>BUDGET</u>	2016 <u>PROJECTIONS</u>	2017 <u>BUDGET</u>
<u>Expenses</u>						
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
CHANGE IN OPERATING EXPENSES:						
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 ACTUAL</u>	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<u>Capital Items</u>						
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 ACTUAL</u>	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2016 PROJECTIONS</u>	<u>2017 BUDGET</u>
<u>Revenue</u>						
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	330,352	218,440	(23,272)	170,879	215,467	131,809
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>
<u>Expenses</u>						
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	0	0	18,641	20,000	38,250	40,000
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>
Allocated Depreciation	<u>\$30,056</u>	<u>\$24,366</u>	<u>\$16,980</u>	<u>\$17,200</u>	<u>\$16,980</u>	<u>\$18,000</u>
Net Income	<u>(\$82,907)</u>	<u>(\$183,700)</u>	<u>(\$242,829)</u>	<u>(\$189,600)</u>	<u>(\$149,863)</u>	<u>(\$178,699)</u>
Allocated Employee FTE	3.74	3.44	3.48	3.48	3.75	3.75
Number of Covered Attorneys	2,193	2,395	2,025	2,125	2,128	2,298
CHANGE IN OPERATING EXPENSES:						
Increase from 2016 Budget		5.76%				
Increase from 2016 Projections		5.03%				

OREGON STATE BAR

Board of Governors Agenda

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

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 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.~~

(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

Meeting Date: November 18, 2016

Memo Date: October 20, 2016

From: Carol J. Bernick, PLF CEO

Re: 2017 Excess Base Rate

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

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)

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	13.0% 17%	20.0% 24%	27.0% 31%
International Equities	10.0% 12%	19.0% 21%	28.0% 30%
Fixed Income	16.0% 20%	22.0% 26%	28.0% 32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	10.0% 5%	15.0% 5%	20.0% 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)

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)

5.250 **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

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)

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. .[i/]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 to] To 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]ourt.

(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~~[7]~~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 filing 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]he 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 stipulation¹ 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.]

[(c)][(d)] Form of Answer. The respondent's[accused's] answer shall be responsive to the formal complaint filed. General denials 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[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]* serv*[e]ing 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*[T]*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[In 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]ourt 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, serving 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[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
_____, Respondent[Accused])	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: _____)
(Name) _____)

FORM A
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: _____)
)
Complaint as to the)
Conduct of _____)
Respondent[*Accused*])

No. _____

REQUEST FOR
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

Meeting Date: November 19, 2016
Memo Date: November 15, 2016
From: Kateri Walsh, Director, Media Relations &
New Lawyer Mentoring Program
To: OSB Board of Governors

Action Recommended

Sunset the New Lawyer Mentoring Committee.

Background

The New Lawyer Mentoring Committee was established following the Oregon Supreme Court's adoption of a mandatory mentoring requirement for all new lawyers beginning in 2011.

The committee played an essential role in creating a successful program, and providing staff with ongoing guidance in its first years of operation. Among other actions, the committee helped restructure the curriculum after the first year in response to feedback, and assisted in creation of a Law Firm Certification Policy to streamline administrative requirements for firms with their own structured mentoring programs.

The OSB BOG and staff are continuously working to assure that volunteers are used efficiently, and in service that is both meaningful and rewarding. In the past 24 months, as the NLMP has continued to mature, the advisory committee has played a less active role in continued development. After inviting input from committee members this fall, the volunteers were all in agreement that it is appropriate to sunset the committee at this time.

Notwithstanding this recommendation, bar staff would like to have access to volunteers who are willing to be informal advisors, particularly current or recent participants in the program. This would assure that practicing members can continue to advise on new developments or innovations in the NLMP. Several members of the current committee, and several additional program participants, have volunteered to play this role on an as-needed basis.

The staff is thankful to both the BOG and the bar members who served on this committee, for their invaluable role in creating a new program that will ultimately touch almost every member of the Oregon State Bar.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2016
From: Helen Hierschbiel, CEO/Executive Director
Re: CSF Award Recommended for Payment
FERRUA (Lopez-Diaz) 2016-35

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2016
From: Helen Hierschbiel, CEO/Executive Director
Re: CSF Award Recommended for Payment
MILSTEIN (Connolly) 2016-31

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.¹ 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

¹ 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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2016-23 HAWES (Sansome) Request for BOG Review

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 trial¹ 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

¹ 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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2016
From: Helen Hierschbiel, Executive Director
Re: CSF Claim No. 2016-30 MCCART (Mandelberg) Request for BOG Review

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.

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2016
From: Helen Hierschbiel, CEO/Executive Director
Re: CSF Award Recommended for Payment
GERBER (Shorb) 2016-40

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

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) A lawyer shall not solicit professional employment by any means 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.~~

OREGON STATE BAR

Board of Governors Agenda

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*

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2016
From: Helen M. Hirschbiel, Executive Director
Re: OSB Section CLE Co-Sponsorship

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

**Oregon State Bar
Special Open Session of the Board of Governors
January 6, 2017
Minutes**

President Michael Levelle called the meeting to order at 11:05 a.m. on January 6, 2017. The meeting adjourned at 11:30 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, Kerry Sharp, and Kate von Ter Stegge. Not present were Chris Costantino and Elisabeth Zinser. Staff present were Helen Hierschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Mark Johnson Roberts, and Camille Greene.

1. Call to Order

2. Swearing In

Mr. Levelle swore in new board members Eric Foster, Eddie Medina, Tom Peachey, Liani Reeves and Traci Rossi.

3. Amendments to Bar Rules of Procedure

Ms. Evans presented the letter from William Blair objecting to the recommendation that the BOG retain the regional chairs and eliminate the statewide chair. Ms. Evans also presented her written response. **[Exhibit A]**

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously in favor of approving the revisions to the bar rules. The Supreme Court has asked Oregon State Bar to submit these proposed revisions to the membership for comment before submitting to the court.

4. Closed Sessions – see CLOSED Minutes

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

Motion: Ms. Reeves moved, Mr. Ramfjord seconded, and the board voted unanimously to approve the UPL request for authority to file suit against B.L. Perkins to obtain an injunction.

5. Good of the Order (Non-action comments, information and notice of need for possible future board action)

Mr. Levelle suggested that the board, at the next regular board meeting, discuss possible topics for generative discussions throughout the coming year.

**Oregon State Bar
Board of Governors Meeting
January 6, 2017
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law

Ms. Hollister presented the UPL Committee's request for authority to file suit and obtain an injunction against B.L. Perkins.

Motion: Ms. Reeves moved, Mr. Ramfjord seconded, and the board voted unanimously to approve the UPL request.

DRAFT



Native American Youth and Family Center

5135 NE Columbia Blvd, Portland, OR 97218 | p 503.288.8177 | f 503.288.1260 | nayapdx.org

RECEIVED

NOV 28 2016

November 16, 2016

Camille M Greene
PO Box 231935
Tigard, OR 97281-1935

Oregon State Bar
Executive Director

Dear Camille,

Thank you for joining us at our 13th Annual Gala and Auction, the largest celebration of Native American heritage month in the Northwest. Over the past thirteen years you and our community partners, Tribal leaders, elected officials and those dedicated to the educational and life success of our youth, families, and Elders have gathered to celebrate community and a shared history.

The event was sold-out, with more than 500 guests who enjoyed beautiful silent and live auctions, NAYA Youth Dancers and drummers and a lovely Native- inspired meal. A NAYA employee shared her moving full-circle journey with all of us, reminding us of the invaluable role NAYA plays for so many community members. A former veteran, she left her abusive husband and she and her two children became homeless subsequently. She sought help through NAYA's veteran housing services and was placed in a new home soon after. Not only did NAYA help her to find shelter for her family, but now she is employed with us, offering similar services to others.

Thank you for supporting NAYA with your gift. If you have any questions about NAYA or the Gala, please feel free to contact our Development Manager, JR Lilly, at (503) 288-8177 ext. 277, or jrlilly@nayapdx.org. Accept my sincere thanks for your investment in the Native American community.

Kw'aianuu shamash (I am thankful to you),

Paul Lumley, *Yakama Tribe*
NAYA Family Center, Executive Director

Youth Centered • Family Driven • Elder Guided

**RECEIVED****NOV 28 2016****Oregon State Bar
Executive Director**

**Native American Youth and Family Center
Gala & Auction 2016
November 11, 2016**

Receipt for Camille M Greene

Thank you for your contribution to the Native American Youth and Family Center during our 13th Annual Gala & Auction. We are glad you joined us for Oregon's largest celebration of Native American Heritage Month.

Bidder #:

Camille M Greene
PO Box 231935
Tigard, OR 97281-1935

Purchases:

Pkg.#	Package Name	Qty.	Sale Price
605	Individual Ticket (4 admissions)	4	\$1,000.00
GRAND TOTAL:			\$1,000.00

Payments:

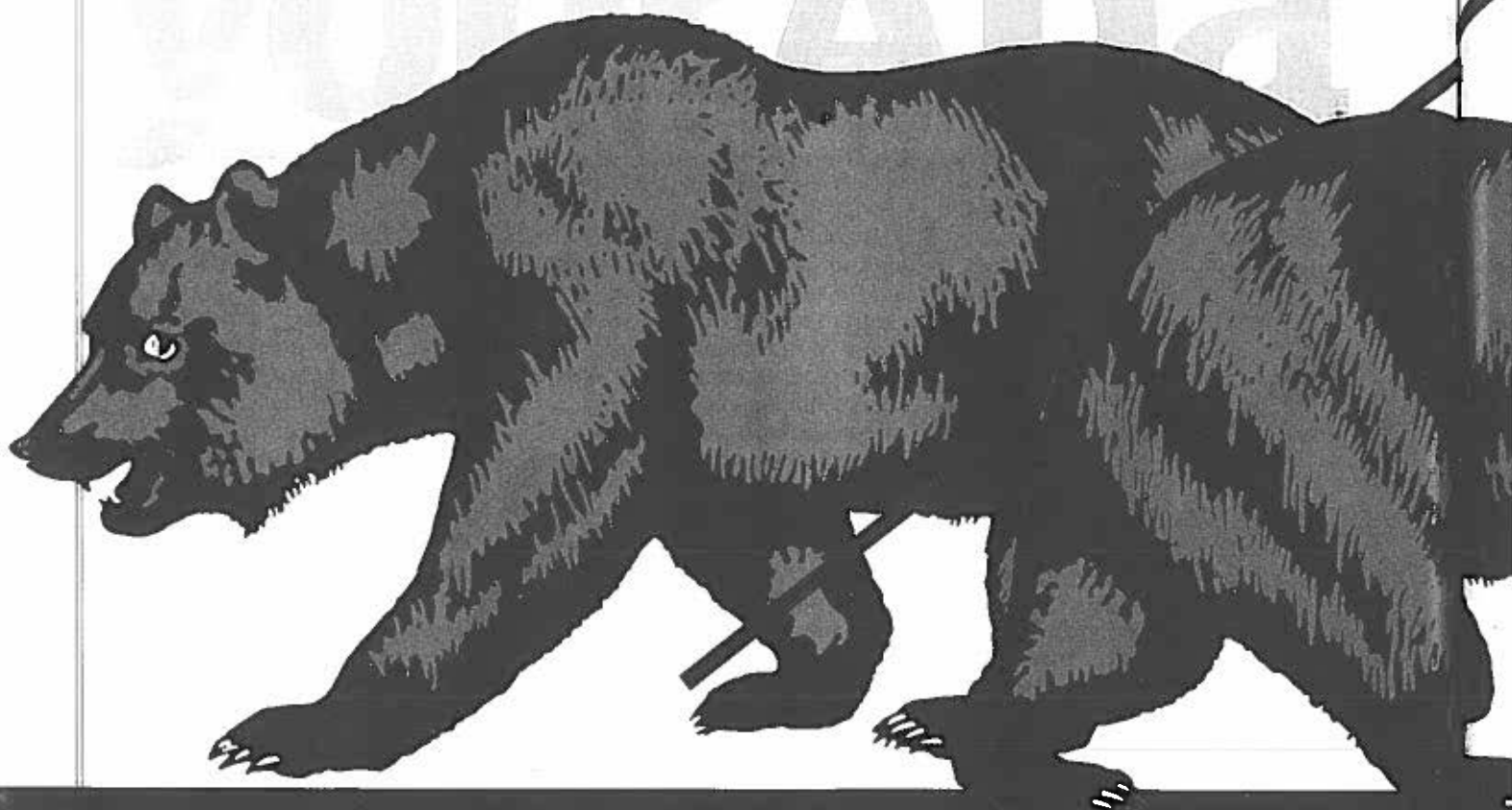
Date	Payment Type	Check/Card Ref	Amount
09/13/16	Credit Card Online		\$1,000.00
Total Payments:			\$1,000.00

Total Due: \$0.00

If you have any questions please contact our Development Manager, JR Lilly by email jrlilly@nayapdx.org or call (503) 288-8177 ext. 277.

The amount of any contribution that is tax deductible is limited to the excess of any money over the value of goods or services provided. The above values are estimations by the donor and do not necessarily reflect the fair market value of the item at the time of sale.

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CALIFORNIA

UNDER FIRE FROM THE LEGISLATURE, STATE BAR FACES THE POSSIBILITY OF BEING DIVIDED INTO TWO SEPARATE ENTITIES

BY LORELEI LAIRD

In April 2016, the judiciary committee of the California Assembly, one of the two bodies that make up the state's legislature, called a hearing on what's normally a routine bill to authorize the State Bar of California to collect dues for the coming year. But this hearing wasn't so routine.

One by one, members of the committee castigated the bar for a series of recent scandals. Members were particularly upset by the revelation, brought anonymously to the legal press, that complaints alleging unauthorized practice of law had been gathering dust in a drawer.

Ultimately, the Assembly voted to tie 2017's dues to major governance changes at the bar, including a study into de-unifying its trade association and regulatory functions. But then the bill got to the Senate, where key lawmakers opposed those proposed reforms. Despite several rounds of negotiations between legislative leaders and Chief Justice Tani Cantil-Sakauye, no bill was passed by the time the legislature adjourned on Aug. 31. (The bar is the administrative arm of the California Supreme Court.)

The legislature's failure to authorize collection of dues doesn't pose an immediate threat to the bar or its key operations, including attorney discipline. The bar has reserve funding to get it through the first four months of 2017, and the supreme court ordered interim dues in November, though at a slightly lower amount than 2016's dues.

But the underlying debate about the future of the California bar is far from settled. That means 2017 could see a new round of reform proposals, pushback and threats to the state's attorney

been discovered. Although bar policy required that the complaints be read within 20 days, the *Daily Journal* said, the majority had gone more than two months without an assignment.

That news came less than a year after a report from the California state auditor

criticized the bar for lax discipline. Indeed, the California Supreme Court sent back 27 cases decided in 2011, the state auditor's summary said. The bar ultimately handed down harsher sanctions (including five disbarments) in 21 of those cases.

And then there are the antitrust concerns. Under the U.S. Supreme Court's 2015 decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, state licensing boards don't have immunity from antitrust lawsuits when they are controlled by active members of the profession being regulated. The court held that, to have immunity, state agencies must have either a majority of nonparticipants making decisions or meaningful state supervision.

This is important, according to professor Robert Fellmeth of the University of San Diego School of Law. He studies state regulation and antitrust concerns and says he believes *North Carolina State Board* could expose the bar to antitrust lawsuits from people who failed California's

notoriously difficult bar exam. Damages could run into millions of dollars, he wrote to state legislators.

"The bar's system of regulation is basically indefensible. It is controlled by attorneys in cartel fashion," says Fellmeth, who served as a court-appointed monitor of the bar between 1987 and 1992. "Lawsuits will come, certainly with treble damages and fees a part of it, [and] they will succeed."

The fact that the state bar is supervised by the California Supreme Court is good enough to offset potential antitrust actions, says Hannah-Beth Jackson of Santa Barbara, who chairs the Senate Judiciary Committee. "I believe that there is no antitrust concern because in California, the supreme court is the overseer," says Jackson, a Democrat.

Fellmeth strongly disagrees. Under *North Carolina State Board*, he says, state supervision must be active—"underline the word active, capitalize it and put it in bold"—and the California Supreme Court doesn't meet that standard.

In September, Cantil-Sakauye directed the state bar leadership to come up with a policy for bringing any decisions that might raise antitrust concerns to the high court. Elizabeth Rindskopf Parker, the bar's executive director, said in October that the bar's general counsel was studying how to implement this order.

All of these issues played into the legislative battle over the dues bill. The assembly unanimously approved a bill that would have mandated a nonlawyer majority on the bar's board of trustees to address the antitrust problem, and created a commission to study splitting the bar into a state agency that regulates lawyers and a separate private, voluntary trade group.

But the bill foundered in the Senate against strong opposition from Jackson and Cantil-Sakauye. And a major sticking point in negotiations, Stone and Jackson say, was the study to split the bar into two separate entities.

Stone says some in the assembly would have voted for de-unification right away. Jackson, for her part, felt that less drastic reforms should be given time to work first. In the end, Stone offered what he saw as a compromise, but Jackson did not accept it, and the legislative session ended with

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SPLIT

discipline system. Meanwhile, a U.S. Supreme Court decision means the bar could face a hugely expensive antitrust lawsuit.

BAD NEWS BAR

Assembly member Mark Stone, a Democrat from Santa Cruz who chairs the judiciary committee that held the raucous hearing, says the chief concern of legislators is that the bar isn't adequately protecting the public—by law, its highest priority.

There is some basis for that concern. Last spring, someone provided documents to the *Los Angeles Daily Journal*, a legal-industry newspaper, showing that about 300 abandoned complaints about possible cases of unauthorized practice of law had

ABA Notices

AMENDMENTS TO THE ABA CONSTITUTION AND BYLAWS

The Constitution and Bylaws may be amended only at the Annual Meeting upon action of the House of Delegates. The next meeting is Aug. 14-15 in New York City. The deadline for any ABA member to submit proposals is March 10. For details, visit ABAJournal.com/magazine, Your ABA, ABA Announcements.

Mary T. Torres
ABA Secretary

2017 BOARD OF GOVERNORS ELECTION

The Secretary hereby gives notice that at the 2017 Midyear Meeting, the Nominating Committee will announce nominations for district and at-large positions on the ABA Board of Governors for three-year terms beginning at the conclusion of the 2017 Annual Meeting. The deadline for filing nomination petitions

is Jan. 6. For the list of district and at-large positions, and election rules and procedures, go to ambar.org/bogelection and click Board of Governors Election.

NOTICE BY THE SECRETARY

The Nominating Committee will meet during the 2017 Midyear Meeting in Miami on Feb. 5, beginning with the business session at 9 a.m. and immediately followed by a forum to hear from candidates seeking nomination at the 2018 Midyear Meeting. This portion of the meeting is open to Association members. The Committee will then vote in closed session on nominations for officers and members of the Board of Governors of the Association for terms beginning at the close of the 2017 Annual Meeting. Contact Leticia D. Spencer at 312/988-5160 or leticia.spencer@americanbar.org with questions.

Mary T. Torres
ABA Secretary

California Split

Continued from page 63

no dues bill being passed.

The issue is likely to be back, and Dennis Mangers is a major reason why. Mangers, who recently stepped down after six years as a nonlawyer member of the state bar's board of trustees, may be the state's most prominent backer of de-unification.

Right now, the bar "is trying to be a trade association and a regulatory body on behalf of the people, and it's not doing either very well," says Mangers, a former state legislator. The bar's board of trustees has 19 members: 13 lawyers and 6 nonlawyers.

Mangers believes bar leadership is often more concerned about internal politics on the trade group side than its public protection mission. Meanwhile, the bar's status as a state regulatory agency puts substantial restrictions on its trade group work.

DISSENT IN THE SECTIONS

The state bar's sections—which, like ABA sections, are voluntary and organized around practice areas—also are chafing under state-agency rules. In 2015, the legislature subjected sections to the state's open meetings law, requiring them to announce every mass email and conference call 10 days in advance and open them to the public, even if they aren't terribly relevant to government. This year, bar leaders forbade sections from paying for alcohol at functions, disrupting the plans of at least two sections.

Donna Parkinson of Sacramento, a former chair of the bar's business law section, says some sections are so unhappy that they agreed in October to study how they'd be affected by de-unification, staying with the existing structure or a third structure. The business law and taxation sections are for separating, she says, and the business law section has even created a California Lawyers Guild in anticipation of a split.

Parker, the executive director, says the bar is being cautious about de-unification, but is "certainly looking at" splitting off certain functions.

Cantil-Sakauye has said publicly that she, like Jackson, would rather see how current governance reforms work before considering de-unification. Mangers says he believes the chief justice may think de-unification is inevitable—but, for separation of powers reasons, doesn't want it to come from the state legislature.

Separation of powers certainly came up in negotiations over the failed bar dues bill. Jackson says it's critical for the legislature to recognize that separation of powers constrains what it can do with the bar. But Stone says that won't constrain the assembly in 2017.

"Our obligation as a coequal branch of government is oversight, and that's part of the checks and balances between and among the branches," says Stone. "And we feel the bar's public protection obligation is not being met." ■

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