

Oregon State Bar
Meeting of the Board of Governors
 June 23, 2017
 Red Lion Hotel, Pendleton, OR
Open Session Agenda

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

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 pm on June 23, 2017. Items on the agenda will not necessarily be discussed in the order as shown.

Friday, June 23, 2017, 12:00 pm

1. Call to Order

2. Strategic Areas of Focus for 2017

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|--|-----------------------------|--|
| <p>A. Futures Task Force Reports & Recommendations</p> <p>1. Regulatory Committee [Hon. Chris Garrett]</p> <p>2. Innovations Committee [John Grant]</p> | <p>Action</p> | <p>Exhibit</p> |
| <p>B. Oregon Law Foundation [Ms. Hirschbiel for Ms. Baker]</p> <p>1. Legal Needs Survey – BOG Participation</p> | <p>Action</p> | <p>Exhibit</p> |
| <p>C. Diversity & Inclusion Action Plan Update [Mr. Puente]</p> <p>1. Approval of Changes to ACDI Committee Charge</p> | <p>Action</p> | <p>posted 6/22</p> |
| <p>D. Policy & Governance Committee [Ms. Nordyke]</p> <p>1. Update re: Review of New Lawyers Programs</p> <p>2. Update re: Section CLE Co-Sponsorship</p> | <p>Inform</p> <p>Inform</p> | <p>posted 6/22</p> <p>updated 6/22</p> |

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

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| <p>A. Policy & Governance Committee [Ms. Nordyke]</p> <p>1. Legal Heritage Interest Group Charge Amendments</p> | <p>Action</p> | <p>Exhibit</p> |
| <p>B. Ad Hoc Awards Committee Formation [Ms. Pulju]</p> | <p>Action</p> | <p>Exhibit</p> |
| <p>C. Board Development Committee [Mr. Ramfjord]</p> <p>1. Appointments to Bar Groups and Affiliated Boards</p> | <p>Action</p> | <p>Handout</p> |
| <p>D. Budget & Finance Committee [Mr. Chaney]</p> <p>1. Financial Update</p> <p>2. Selection of Auditor for 2016-17 OSB Financial Statements</p> | <p>Inform</p> <p>Action</p> | <p></p> <p>Exhibit</p> |

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| E. | Public Affairs Committee [Ms. Rastetter] | | |
| 1. | Legislative Update | Inform | |
| 2. | Juvenile Dependency Standards Report | Action | Exhibit |
| F. | Appellate Screening Special Committee [Mr. Ramfjord] | | |
| 1. | BOG items from Appellate Screening Committee [Ramfjord] | Inform | Exhibit |
| 4. | Professional Liability Fund [Ms. Bernick] | | |
| A. | General Update | Inform | Exhibit |
| B. | April 30, 2017 Financial Update | Inform | Exhibit |
| 5. | OSB Committees, Sections, Councils and Divisions | | |
| A. | Oregon New Lawyers Division Report [Mr. Morton for Ms. Eder] | Inform | Exhibit |
| 6. | Report of Officers & Executive Staff | | |
| A. | President's Report [Mr. Levelle] | Inform | |
| B. | President-elect's Report [Ms. Nordyke] | Inform | |
| C. | Executive Director's Report [Ms. Hierschbiel] | Inform | Exhibit |
| D. | Director of Regulatory Services [Ms. Evans] | Inform | Exhibit |
| E. | MBA Liaison Report [Mr. Ramfjord] | Inform | |
| 7. | Consent Agenda | | |
| A. | Client Security Fund Committee [Ms. Hierschbiel] | | |
| 1. | Request for Review | | |
| a) | HOWLETT (Castellano) 2016-46 | Action | Exhibit |
| 2. | CSF Financial Reports and Claims Paid | Inform | Exhibit |
| B. | Legal Ethics Committee [Ms. Hierschbiel] | | |
| 1. | Approval of EOP 2017-XXX Real-Time Electronic Contact | Action | Exhibit |
| C. | Approve Minutes of Prior BOG Meetings | | |
| 1. | Regular Session April 14, 2017 | Action | Exhibit |
| 2. | Special Open Session May 12, 2017 | Action | Exhibit |
| 8. | Closed Sessions – <u>CLOSED</u> Agenda | | |
| A. | Executive Session (pursuant to ORS 192.660(2)(f) and (h) and ORS 192.690(1)) | | |
| 1. | General Counsel/UPL Report | | |
| 9. | 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.

FUTURE

THE FUTURE OF LEGAL SERVICES IN OREGON



OSB Futures Task Force

Executive Summary | June 2017

“It will not do for Bar members to stand still or to rage against the tide as the world around us evolves.”

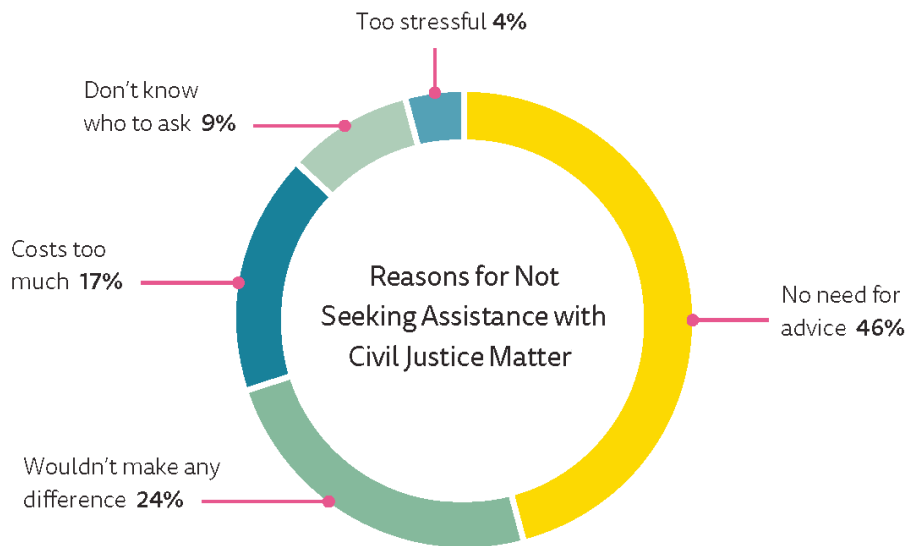
OSB Advertising Task Force Report (2009)

I. Background

The legal services market has entered a period of intense disruption. Technological advances are transforming how we deliver legal services, resolve legal disputes, and engage in legal learning. Consumers of legal services—including sophisticated corporations¹ as well as individual clients—are demanding more for less and are apt to employ self-help rather than to hire a professional.

Many lawyers are so accustomed to thinking of the law as a “full service” profession—where a client with an incipient legal issue engages a lawyer or law firm to provide a full complement of legal services until the “matter” is concluded—that it is difficult to imagine legal services being provided any other way. But they are. The future is here. Oregonians are using websites not merely to gather information about lawyers, but to actually obtain legal advice. Services traditionally provided in person-to-person interactions between lawyers and clients are now being offered by online providers such as LegalZoom and Avvo.² Customized legal forms, short telephonic consultations, and advice via chat are all available at the touch of a button. Consumers are bypassing the traditional full-service lawyer-client relationship in favor of “unbundled” legal services—limited-scope legal services that enable consumers to pick and choose the services or tasks for which they are willing to pay. Or, they are bypassing the lawyer-client relationship altogether and using “intelligent” online software to create their own wills, trusts, and other “routine” legal documents that they believe are sufficient to meet their needs.

Consumers are voting with their wallets. The alternative legal services market has quickly become a multibillion dollar industry. And why not? Consumers naturally want to resolve their legal issues efficiently and cost-effectively, as they do any other problem. Commoditization of services and the instant availability of information at the click of a mouse now set their expectations; they demand easy access to qualified lawyers and legal resources as well as transparent, competitive pricing. And it is more tempting to simply not hire a lawyer, because the Internet’s infinite amount of knowledge on any subject makes a do-it-yourself approach seem feasible for many legal matters.



Sandefur, Rebecca. *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*. University of Illinois at Urbana-Champaign: American Bar Foundation, August 8, 2014.

Against this backdrop, one might think that the public is finding it easier than ever to access legal services. It is startling, therefore, to learn that the increased availability of *information* about the law and legal services has done nothing to reduce the access-to-justice gap. The American Bar Association Commission on the Future of Legal Services recently found that “[d]espite sustained efforts to expand the public’s access to legal services [over the past century], significant unmet needs persist” and that “[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.”³ Specific findings from the Commission include:

*Low-income Americans receive inadequate or no professional legal help for **86%** of the civil legal problems they face in a given year.*

Legal Services Corporation,
The Justice Gap, 2017

- As of the last census, 63 million people, or one-fifth of the population, met the financial requirements for legal aid, yet funding for the Legal Services Corporation (the primary vehicle for federal legal aid funding) is inadequate. “[I]n some jurisdictions, more than eighty percent of litigants in poverty are unrepresented in matters involving basic life needs, such as evictions, mortgage foreclosures, child custody disputes, child support proceedings, and debt collection cases.”⁴

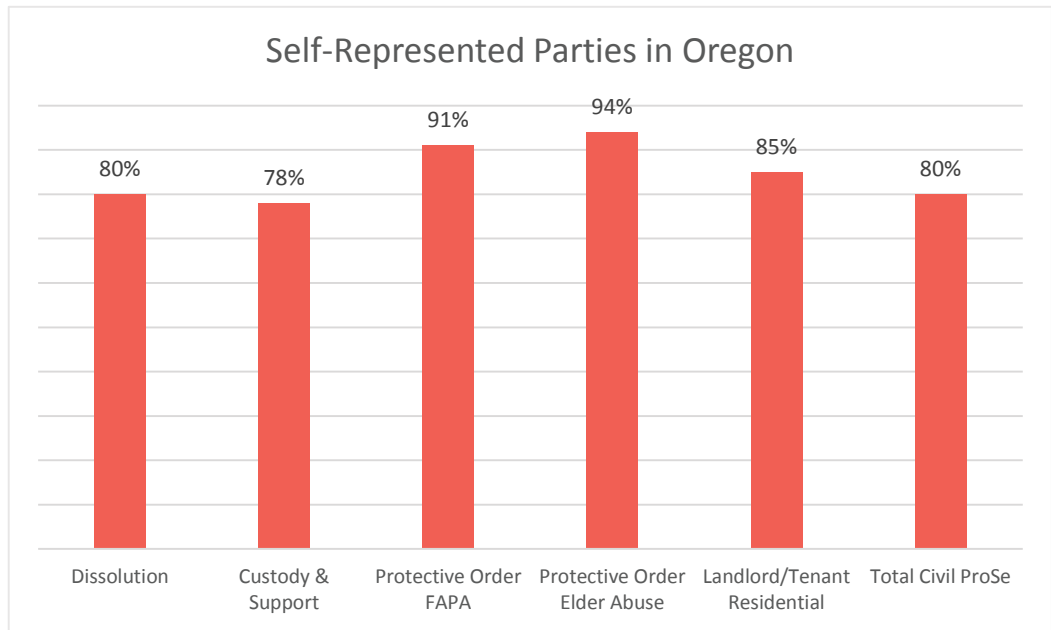
- Access to justice is not just a problem for the poor. One study showed that “well over 100 million Americans [are] living with civil justice problems, many involving what the American

Bar Association has termed ‘basic human needs,’” “including matters related to shelter, sustenance, safety, health, and child custody.”⁵

- Although financial cost is the most often cited reason for not seeking legal services,⁶ awareness may play an even larger role. The study found that “[i]ndividuals of all income levels often do not recognize when they have a legal need, and even when they do, they frequently do not seek legal assistance.”⁷ And when financial cost is an issue, it is not only direct costs “but also indirect economic costs, such as time away from work or the difficulty of making special arrangements for childcare.”⁸
- Pro bono and “low bono” efforts are insufficient to meet the needs of low- and moderate-income Americans. “U.S. lawyers would have to increase their pro bono efforts ... to over nine hundred hours each to provide some measure of assistance to all households with legal needs.”⁹ Nor have other programs across the country designed to offer assistance to this population significantly narrowed the access-to-justice gap.¹⁰

Within this context, new lawyers remain un- and underemployed.¹¹ Total student debt burdens now average in excess of \$140,000¹²—challenging new lawyers’ ability to sustain traditional law practices that might address some of the unmet legal need—while legal education remains essentially unchanged

The effect of the access-to-justice gap on the court system is staggering. A 2015 study by the National Center for State Courts found that more than 75 percent of civil cases featured at least one self-represented party.¹³ According to Oregon Judicial Department data from 2016, approximately 80 percent of family court cases involved at least one self-represented litigant. In residential eviction proceedings, it is rare to see a lawyer anywhere—only about 15 percent of residential eviction proceedings involve lawyers. Instead, landlords are commonly represented by property managers, and tenants represent themselves.



Oregon Judicial Department, Oregon Circuit Courts Self-Represented Parties (2016).

Moreover, data shows that Oregon's access-to-justice gap disproportionately affects the most vulnerable among us. As reported at the 2016 Oregon Access to Justice Forum, people of color, homeless people, domestic violence survivors, physically disabled people, and the elderly have greater-than-average civil legal needs but are still woefully underserved. The Campaign for Equal Justice estimates the combined legal aid providers in Oregon can meet only 15 percent of the total civil legal needs of Oregon's poor. According to a survey, the biggest reason (17 percent) why low-income Oregonians did not seek legal aid was the belief that nothing could be done about their legal problems. And, given the limited resources available, that may not be wrong.

In short, three powerful forces are converging to disrupt the legal services market. First, more people than ever need legal services and are not getting them. Second, people believe that their legal needs should be capable of being served in ways different, and more cost-effective, than the traditional model. Oregonians' expectations are changing. Third, new providers are stepping in to fill that void.

Lawyers and nonlawyer entrepreneurs see the legal market as ripe for innovation. Lawyers are reaching out to solicit business through websites, blogs, and social media; increasingly relying on online advertising and referral services to connect them with prospective clients; and using web-based platforms to offer limited-scope consultations or services to clients who have been referred to them by third parties. All the while, tech businesses, awash in venture capital, have developed online service delivery models ranging from the most basic form providers to sophisticated referral networks. Online services offer to draft a pleading,¹⁴ write a will,¹⁵ or apply for an immigration visa,¹⁶ all from the comfort of a consumer's living room or mobile device.

Indeed, innovation is necessary both to meet the consumer need and for lawyers to stay competitive. The ABA Commission Report decried members of the legal profession for clinging to outdated business models and resisting change. Specifically, the Commission found that "[t]he traditional law practice business model constrains innovations that would provide greater access to, and enhance the delivery of, legal services."¹⁷ For example, the Commission recognized the conflict of interest inherent in hourly billing, where efficiency in delivering legal services can be rightfully seen as adverse to short-term revenue.¹⁸ In the long term, however, firms that have taken a proactive approach to alternative fee arrangements have retained their profitability.¹⁹

The relentless growth of technology and the effects of globalization are upending the legal services market, feeding innovation, exposing inefficiencies, and presenting opportunities for growth. While market disruption and rapid change do not spell the end of lawyering, they do demand an evolution in the manner and methods by which lawyers provide legal services, and the way in which those services are regulated.

II. Creation of Oregon State Bar Futures Task Force

The legal profession is nothing if not conservative. Lawyers are schooled in precedent, consistency, and risk avoidance. Yet, as noted in the ABA Futures Commission Report on the Future of Legal Services, “The justice system is overdue for fresh thinking about formidable challenges. The legal profession’s efforts to address those challenges have been hindered by resistance to technological changes and other innovations.”²⁰

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

“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.”

The Board split the Futures Task Force into two committees: a Legal Innovations Committee, focused on the tools and models required for a modern legal practice, and a Regulatory Committee, focused on how to best regulate and protect the public in light of the changing legal services market. The charges, findings, and recommendations of the two committees follows.

III. The Regulatory Committee

A. The Regulatory Committee Charge

The Regulatory Committee was charged to examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the Board regarding the role the Bar should play, if any, in regulating such delivery models. The Board requested a report containing the following information:

- A summary of what exists at present, both in terms of existing legal service delivery models and regulatory structures for those models;
- A discussion of the consumer-protection and access-to-justice implications presented by these models and regulatory structures;
- An analysis of the stakeholders involved, including (1) the vendors that have an interest in exploring innovative ways to deliver legal services to consumers, (2) the lawyers who

are interested in utilizing these innovative service delivery models, and (3) the regulatory entities that are responsible for ensuring adequate protection for consumers in this quickly evolving legal services market;

- Specific recommendations for proactive steps OSB should take to address these new models (e.g., should OSB propose amendments to the Oregon Rules of Professional Conduct, the OSB Rules of Procedure, or state law); and
- A proposed strategic response in the face of unexpected action at the legislature or elsewhere.

B. Findings of the Regulatory Committee

The Regulatory Committee recommendations are based on the following findings:

1. Oregonians need legal advice and legal services to successfully resolve problems and to access the courts.
2. Consumers are increasingly unwilling or unable to engage traditional full-service legal representation.
3. A significant number of self-represented litigants choose not to hire lawyers, even though they could afford to do so.
4. Self-help resources are crucial and must be improved, even as we take steps to make professional legal services more accessible.
5. Subsidized and free legal services, including legal aid and pro-bono representation, are a key part of solving the access-to-justice gap, but they remain inadequate to meet all of the civil legal needs of low-income Oregonians.
6. Despite the existence of numerous under- and unemployed lawyers, the supply of legal talent is not being matched with the need.
7. Oregonians' lack of access to legal advice and services leads to unfair outcomes, enlarges the access-to-justice gap, and generates public distrust in the justice system.
8. For-profit online service providers are rapidly developing new models for delivering legal services to meet consumer demand.
9. To fully serve the Bar's mission of promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice, we must allow and encourage the development of alternate models of legal service delivery to better meet the needs of Oregonians.

C. Recommendations of the Regulatory Committee

Based on its findings, the Regulatory Committee makes three broad recommendations, each with several subparts. The purpose of this summary is to identify and briefly describe each recommendation. For a more complete explanation of the recommendations, readers should refer to the accompanying workgroup reports, which have been approved by and reflect the views of the Committee as a whole.

RECOMMENDATION 1:

IMPLEMENT LEGAL PARAPROFESSIONAL LICENSURE

Oregon should establish a program for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in (1) family law and (2) landlord-tenant proceedings.

The accompanying report reviews and analyzes developments in other jurisdictions, particularly Arizona, California, Colorado, Nevada, New York, Utah, Washington, and Ontario, Canada. We reviewed a wide variety of materials on paralegal regulation and the problem of self-represented litigants, considered arguments for and against licensing paraprofessionals, and discussed the elements of a licensing program that would be appropriate for Oregon.

The most compelling argument for licensing paraprofessionals is that the Bar's other efforts to close the access-to-justice gap have continued to fall short. We must broaden the options available for persons seeking to obtain legal services, while continuing to strive for full funding of legal aid and championing pro bono representation by lawyers. By adopting a form of paraprofessional licensing, Oregon will not be assuming the risk of being ahead of the pack. Instead, the workgroup report shows that Oregon is well-placed to benefit from the experience, trial, and error of six distinct paraprofessional programs.

Our proposal would allow limited practice by paraprofessionals in two of the highest-need areas—family law and landlord-tenant—and only in limited types of proceedings where clients are by and large unrepresented. Clients who need other kinds of legal help, have complex cases, or desire representation in court for any reason will still need lawyers.

Contrary to the commonly held belief, we are convinced that licensing paraprofessionals in the manner proposed would not undermine the employment of lawyers. First, the need for routine, relatively straightforward family law and landlord-tenant representation is vast, and lawyers are electing not to perform this high-volume, low-pay work. Second, data from existing programs demonstrates that lawyers and licensed paraprofessionals may choose to work together because they can provide tiered and complementary services based on the complexity of a client matter. Given the significant underutilization of legal services, paraprofessionals may actually create on-ramps to lawyer representation for consumers who do not realize they need legal services. Finally, there is simply no evidence that when paraprofessionals are introduced into the legal market, lawyers are harmed. For all of these reasons, the legal profession need not fear innovative service delivery models.

Given the inherent complexity of launching a paraprofessional licensing program, we recommend the Board appoint an implementation committee to formulate a detailed implementation plan for licensing paraprofessionals consistent with the recommendations in this report.

1.1 An applicant should be at least 18 years old and of good moral character.

Attorneys who are suspended, resign Form B, or are disbarred from practicing law should not be eligible for a paraprofessional license.

1.2 An applicant should have an associate's degree or higher and should graduate from an ABA-approved or institutionally accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program.

1.3 Measures should be enacted to protect consumers who rely on newly licensed paraprofessionals. The measures should require that applicants be 18 years old and of good moral character and meet minimum education and experience requirements. The measures should also require that licensees carry malpractice insurance, meet continuing legal education requirements, and comply with professional rules of conduct like those applicable to lawyers.

1.4 Applicants should have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney.

1.5 Licensees should be required to comply with professional rules of conduct modeled after the rules for attorneys.

1.6 Licensees should be required to meet continuing legal education requirements.

1.7 To protect the public from confusion about a licensee’s limited scope of practice, licensees should be required to use written agreements with mandatory disclosures.

Licensees also should be required to advise clients to seek legal advice from an attorney if a licensee knows or reasonably should know that a client requires services outside of the limited scope of practice.

1.8 Initially, licensees should be permitted to provide limited legal services to self-represented litigants in family law and landlord-tenant cases. Inherently complex proceedings in those subject areas should be excluded from the permissible scope of practice.

1.9 Licensees should be able to select, prepare, file, and serve forms and other documents in an approved proceeding; provide information and advice relating to the proceeding; communicate and negotiate with another party; and provide emotional and administrative support to the client in court. Licensees should be prohibited from representing clients in depositions, in court, and in appeals.

1.10 Given the likely modest size of a paraprofessional licensing program, the high cost of implementing a bar-like examination, and the sufficiency of the education and experience requirements to ensure minimum competence, we do not recommend requiring applicants to pass a licensing exam. If the Board of Governors thinks that an exam should be required, we recommend requiring applicants to pass a national paralegal certification exam.

1.11 To administer the program cost-effectively, we recommend integrating the licensing program into the existing structure of the Bar, rather than creating a new regulatory body.

RECOMMENDATION 2:

REVISE RULES OF PROFESSIONAL CONDUCT TO REMOVE BARRIERS TO INNOVATION

Alternative legal service delivery models, which harness technology to offer limited-scope services to consumers in lieu of the traditional model of full-service legal practice, are here to stay.

The regulatory response to this development around the country has been mixed. Some state bar associations have been very resistant to change, electing to double down on traditional regulation methods through restrictive ethics opinions and reactive lawsuits. But these efforts have not stemmed the tide of change. The lesson we draw from those experiences is that resistance from the Bar will not lead Oregonians to passively accept the status quo; the future is here. Leadership from the Bar is essential to ensure that, as the market for legal services evolves, our profession retains its commitment to protecting the consumer. We believe that there are opportunities to

embrace new models of practice, leverage technological advances, and begin to close the access-to-justice gap without compromising that historical commitment.

If the Bar is to stay true to its goals of protecting the public and seeking to increase and improve access to justice, the Bar’s regulatory framework must be flexible enough to allow some space for innovation and new ideas to grow. We recommend a short list of modest changes, which will loosen restrictions on lawyer advertising and facilitate innovation by allowing more economic partnership between lawyers and nonlawyers, particularly licensed paraprofessionals.

2.1 Amend current advertising rules to allow in-person or real-time electronic solicitation, with limited exceptions. By shifting to an approach that focuses on preventing harm to consumers, the Bar can encourage innovative outreach to Oregonians with legal needs, while promoting increased protection of the most vulnerable. The proposed amendments to the Oregon Rules of Professional Conduct would secure special protections for prospective clients who are incapable of making the decision to hire a lawyer or have told the lawyer they are not interested, or when the solicitation involves duress, harassment, or coercion.

2.2 Amend current fee-sharing rules to allow fee sharing between lawyers and lawyer referral services, with appropriate disclosure to clients. Currently, only Bar-sponsored or nonprofit lawyer referral services are allowed to engage in fee-sharing with lawyers. Rather than limit market participation by for-profit vendors, the Bar should amend the Oregon Rules of Professional Conduct to allow fee sharing between all referral services and lawyers, while requiring adequate price disclosure to clients and ensuring that Oregon clients are not charged a clearly excessive legal fee.

2.3 Amend current fee-sharing and partnership rules to allow participation by licensed paraprofessionals. If Oregon implements paraprofessional licensing, it should amend the Oregon Rules of Professional Conduct to allow fee sharing and law firm partnership among regulated legal professionals. Any rule should include safeguards to protect lawyers’ professional judgment. The Board should also direct the Legal Ethics Committee to consider whether fee sharing or law firm partnership with other professionals who aid lawyers’ provision of legal services (e.g., accountants, legal project managers, software designers) could increase access to justice and improve service delivery.

2.4 Clarify that providing access to web-based intelligent software that allows consumers to create custom legal documents is not the practice of law. Together with this effort, seek opportunities for increased consumer protections for persons utilizing online document creation software.

RECOMMENDATION 3:

IMPROVE RESOURCES FOR SELF-NAVIGATORS

Numbers do not lie. In Oregon, and nationwide, more and more people in our legal system are self-represented. Some self-represented litigants choose their path because they cannot afford a lawyer; others simply believe a lawyer is not needed or will only make their legal issues unduly complicated. While lawyers have a professional duty to continue to strive to fully fund legal aid and provide pro bono representation to the indigent, some Oregonians will always appear in court without a lawyer. Recognizing this fact, the Bar should seek to improve the

experience of self-navigators and should recognize this work as another method to narrow the access-to-justice gap.

- 3.1 Coordinate and integrate key online resources utilized by self-navigators.** Establish a committee with representatives from the three stakeholder groups—the Oregon Judicial Department (OJD), the Bar, and legal aid—to coordinate and collaborate on the information available on their respective websites, including cross-links when appropriate.
- 3.2 Create self-help centers in every Oregon courthouse.** The Oregon State Bar and OJD should consider proposing or supporting the creation of self-help centers to assist self-navigators, including the use of dedicated and trained court staff and volunteers. The goal should be self-help centers in every court in Oregon.
- 3.3 Continue to make improvements to family law processes to facilitate access by self-navigators.** Implement the recommendations of OJD’s State Family Law Advisory Committee regarding family law improvements to assist self-navigators. Seek to improve training and ensure statewide consistency in training to family court facilitators.
- 3.4 Continue to make improvements to small-claims processes to facilitate access by self-navigators.** Implement the recommendations from the 2016 Access to Justice Forum regarding small-claims process. Support changes to provide better courthouse signage, instruction, and education for consumers.
- 3.5 Promote availability of unbundled legal services for self-navigators.** Educate lawyers about the advantages of providing unbundled services, including the existence of new trial court rules. Provide materials on unbundled services to Oregon lawyers (through the OSB website, the Bar Bulletin, local bars, specialty bars, and sections), including ethics opinions, sample representation and fee agreements, and reminders about blank model forms that can be printed from OJD’s website.
- 3.6 Develop and enhance resources available to self-navigators.** While OSB, OJD, and legal aid have made strides in providing information that is useful for self-navigators, we must continue to improve existing resources and develop new tools.

IV. The Innovations Committee

A. The Innovations Committee Charge and Process

The Innovations Committee was charged with the study and evaluation of how OSB might be involved in and contribute to new or existing programs or initiatives that serve the following goals:

- Help lawyers establish, maintain, and grow sustainable practices that respond to demonstrated low- and moderate-income community legal needs;
- Encourage exploration and use of innovative service delivery models that leverage technology, unbundling, and alternative fee structures in order to provide more affordable legal services;
- Develop lawyer business management, technology, and other practice skills; and
- Consider the viability of a legal incubator program.

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

B. Findings of the Innovations Committee

The Innovations Committee agrees with the findings of the Regulatory Committee and also finds that:

1. The profession in general, and the Bar in particular, would benefit from a substantially stronger focus on the gathering, dissemination, and use of data-based evidence to support and monitor progress toward its mission, values, and initiatives.
2. The Bar is underutilizing and undermarketing the Lawyer Referral Service, which is one of its most successful programs over the past several years for connecting moderate-means Oregonians with qualified legal help.
3. Law schools, the Bar, and other legal education providers are not doing enough to prepare lawyers for the realities of modern legal practice or to encourage lawyers to learn and adopt needed skills related to technology, project and practice management, and business management.

C. Recommendations of the Innovations Committee

RECOMMENDATION 4:

EMBRACE DATA-DRIVEN DECISIONMAKING

4.1 Adopt an official policy embracing data-driven decision making (DDDM). As the Bar looks to invest time and resources in various initiatives, including the recommendations of this Task Force, it is important that Bar leadership and the Board of Governors emphasize the importance of using data to give context to—and measure the effectiveness of—those initiatives. Specifically, we recommend grounding each and every Bar initiative in the Bar’s mission, values, and functions, and establishing what the business world refers to as SMART (Specific, Measurable, Achievable, Realistic, Time-Based) goals around them. Additionally, to the extent that it is not already consistently doing so, we recommend that the Bar establish a DDDM framework for defining all new (and, where feasible, ongoing) initiatives.

4.2 Adopt a formal set of key performance indicators (KPIs) to monitor the Bar’s values. Without measurement, the Bar’s values risk languishing as nice-to-express sentiments instead of concrete commitments. The Board of Governors should consider commissioning a special committee of the BOG to work with Bar leadership in establishing an initial set of KPIs and determining a timeframe for periodically evaluating them.

4.3 Adopt an open-data policy. We recommend that the Bar, and also, ideally, the judiciary, adopt a formal open-data policy. While we do not go so far as to recommend specific language for this policy, we recommend that the Board of Governors convene a working group to propose a specific policy for the Bar, with an implementation target of January 2018.

4.4 Provide a dedicated resource responsible for data collection, design, and dissemination Many successful businesses now have a chief data officer or chief information officer in addition to, or sometimes as an expansion of, the role of chief technical officer. As the availability of data increases and its potential uses proliferate, and in order to enable the other recommendations of this subcommittee, we believe a dedicated resource will be necessary.

RECOMMENDATION 5:

EXPAND THE LAWYER REFERRAL SERVICE AND MODEST MEANS PROGRAM

5.1 Set a goal to increase the number of inquiries to the Lawyer Referral Service (LRS) and Modest Means Program (MMP); adequately fund the Referral and Information Services department (RIS) to achieve the goal. The Oregon State Bar should set a goal of increasing the number of inquiries to the LRS and MMP—and, by extension, the corresponding number of referrals to Oregon lawyers—by 11 percent per year for the next four years, and should adequately fund the RIS to achieve this goal. While we do not offer an opinion on the specific amount of money that would be necessary to reinvest in the programs in order to meet this 11 percent per annum growth target, we recommend that the BOG request a proposal from the program’s managers.

5.2 Develop a blueprint for a “Non-Family Law Facilitation Office” that can become a certified OSB pro bono program housed within the circuit courts of Oregon.

RECOMMENDATION 6:

ENHANCE PRACTICE MANAGEMENT RESOURCES

6.1 Develop a comprehensive training curriculum to encourage and enable Oregon lawyers to adopt modern law practice management methods. Specifically, we recommend that the OSB CLE Seminars Department—in cooperation with the PLF, Bar Sections, Specialty Bars, or whomever else they deem appropriate—be tasked with developing a comprehensive Modern Practice Management training curriculum for Oregon lawyers comprised of no less than two hours of education in each of the following areas: automation, outsourcing, and project management.

RECOMMENDATION 7:

REDUCE BARRIERS TO ACCESSIBILITY

7.1 Promote the provision of limited-scope representation Specifically, we recommend that the Bar set a target of increasing the number of lawyers providing unbundled legal services in Oregon by 10 percent per year over the next four years. We believe that such a goal will result in improved access to justice for Oregonians.

7.2 Promote the use of technology as a way to increase access to justice in lower income and rural communities. In addition to training lawyers in private practice on the effective use of technology to reach low-income and rural communities, the Bar should encourage and support the courts in their efforts to provide more online, user-friendly, resources for the public and opportunities to participate in court proceedings by video.

7.3 Make legal services more accessible in rural areas. In addition to leveraging technology to create better access to legal services and the courts, we recommend hosting two summits—one in eastern Oregon and one on the coast—to discuss barriers that are germane to rural communities and share what programs, initiatives, or activities have worked to improve access.

7.4 Promote efforts to improve the public perception of lawyers. The Bar should expand public outreach that highlights lawyers as problem-solvers, community volunteers, and integral to the rule of law.

RECOMMENDATION 8:

ESTABLISH A BAR-SPONSORED INCUBATOR/ACCELERATOR PROGRAM

We recommend that the OSB create a consortium-based incubator/accelerator program that will serve Oregon’s low- and moderate-income populations—specifically, those individuals whose income falls between 150 and 400 percent of the federal poverty level. The program goals would be to provide legal services to those clients, to help new lawyers build sustainable practices to meet client need, and to operate as a center for innovation dedicated to identifying, developing, and testing innovative methods for the delivery of legal services into the future.

In recent years, many different law school and consortium-based incubator and/or accelerator programs have cropped up across the country, all seeking to address the persistent issue of how to bridge the justice gap for underserved lower- and moderate-income individuals who cannot afford traditional legal services but who do not qualify for legal aid. These programs come in different forms—some operating as stand-alone incubators sponsored by a consortium of private stakeholders; others operating solely under the auspices of a law school or state bar association. All, however, accomplish two goals: (1) they create a space—often for newer lawyers—to provide direct legal services to low and moderate-income individuals (the “incubator”), and (2) they create a platform for using, developing, testing, and disseminating innovative methods to making those legal services more accessible and affordable to clients in that target market (the “accelerator”).

As part of our inquiry into determining whether Oregon might benefit from a similar model, we catalogued and reviewed the resources currently available for low and moderate-income Oregonians and for new lawyers seeking to develop their legal practices. Both fall short; based on that review, we have concluded that Oregon does not have sufficient legal resources for low and moderate-income populations and that it remains challenging for lawyers to build practices to meet the needs of that market in a sustainable way.

The accompanying report describes our investigation and reviews examples of existing incubator/accelerator programs in more detail. It also includes a catalogue of the programs we researched and reviewed, a summary of the challenges we identified with other incubator/accelerator programs, and a detailed proposal for how Oregon might create an incubator/accelerator model that is structured to avoid those challenges.

Further to that recommendation, we request that the BOG and the OSB do the following:

8.1 Dedicate staff resources. We recommend that the BOG and the OSB commit staff equivalent to one FTE dedicated to managing the incubator/accelerator project. That one FTE might come from existing OSB staff, if available.

8.2 Form a program development committee. We recommend that the BOG and the OSB form a program development committee dedicated to implementing the incubator/accelerator program. One committee member should be a full-time OSB staff member. Other members would represent stakeholder organizations, including law schools; legal nonprofits; private law firms; LASO; and the law, business, and technology communities generally.

8.3 Formulate the incubator/accelerator program details. OSB staff, together with the planning development committee, should take the following additional steps toward developing Oregon’s operating incubator/accelerator program.

Coordinate with stakeholders. The committee should convene a meeting of program stakeholders, including representatives of private law firms, law schools, members of the bar, nonprofit legal services entities, and LASO, among others.

Create a business plan. The committee should develop a plan for startup and continuing financing of the proposed program. Sources of funding might include community stakeholders (including law, business, and technology companies), vendors, grant programs, and client fees.

Create a marketing plan The committee should develop a plan for marketing the services of the incubator program. This could include marketing through existing channels or developing new ways for reaching moderate-income Oregonians and educating the public about the program scope and resources.

Identify program hosts. We envision that the for-profit law firms in Portland and across the state will host incubator participants and provide training, mentoring, and other office resources. The program development committee should develop a plan to market, identify, and obtain commitments from those firms.

Identify options for office space This includes office space for both the program staff and incubator participants. This task overlaps with the identification of program hosts, as many law firm hosts should include, as part of their commitment, office space for the participant(s) they host.

Design a program application process. The committee should design an application process for the participant/fellows, which will include drafting job descriptions, creating an application and review process, and developing a plan to advertise the program and solicit applications.

Develop a mechanism for assessment program success. The committee should identify the best metric for measuring the success of both the incubator and accelerator components of the program. To do so, the Committee might consider metrics such as number of matters addressed by program participants, populations

served, financial success of new lawyer participants, and extra-program use of accelerator innovations.

We request that the planning development committee finalize the program, curriculum, and stakeholders by fall of 2017, with applications ready to go out in the spring of 2018. The BOG, the OSB, and the committee should aim to start the incubator/accelerator program in the fall of 2018.

V. Conclusion

The question is not whether legal services will be provided differently than in decades past. The question is whether it will occur with the active engagement of a Bar that is willing to rethink longstanding assumptions and embrace emerging technology and new legal service delivery models, or whether, as in some other states, the Bar will try to resist the forces of change. Efforts to resist change will likely be unsuccessful. The appointment of this Task Force reflects the Bar's recognition that adhering to the status quo is not really a choice at all.

We look forward to working with the Board of Governors, the Oregon judiciary, and other stakeholders to implement these recommendations in the months to come.

Respectfully Submitted,
OSB Futures Task Force

The relentless growth of technology and the effects of globalization are upending the legal services market, feeding innovation, exposing inefficiencies and presenting opportunities for growth.

OSB Futures Task Force

Oregon
State
Bar

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Endnotes

- 1 Corporate clients continue to move work in house, turn to nontraditional legal services providers, and harness technology to reduce legal spending, according to the Altman Weil *Law Firms in Transition 2016* survey. Altman Weil, Inc., *Law Firms in Transition 2016: An Altman Weil Flash Survey* (May 2016), available at <http://www.altmanweil.com/LFIT2016/>.
- 2 In addition to the well-known LegalZoom, more recent entrants into the online self-help legal space include Avvo Answers (in conjunction with its better-known lawyer rating service), Rocket Lawyer, Docracy, and Shake Law, among many others.
- 3 Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States*, 11 (American Bar Association 2016), available at http://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf. In June 2017, the Legal Services Corporation released a new report, finding that 86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help. Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (2017), available at <http://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>. The report was prepared by NORC at the University of Chicago for Legal Services Corporation in Washington, DC.
- 4 *Id.* at 12, citing Number of Attorneys for People in Poverty, National Center for Access to Justice, available at <http://justiceindex.org/>, archived at (<https://perma.cc/89C2-6EC5>).
- 5 *Id.* (parentheticals omitted), quoting Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. Rev. 433, 466 (2016) and citing ABA House of Delegates Resolution 112A (adopted Aug. 2006), available at https://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/whitepapers.html, archived at (<https://perma.cc/R7HC-RSAN>).
- 6 *Id.* at 15.
- 7 *Id.* at 14.
- 8 *Id.* at 15.
- 9 *Id.* at 14 (quoting Gillian K. Hadfield, *Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets*, *Daedalus* 5 (2014)).
- 10 *Id.*
- 11 The “Great Recession” that began in December 2007 had a particularly striking impact on private law firms. In its 2017 Report on the State of the Legal Market, the Center for the Study of the Legal Profession at the Georgetown University Law Center summarized that “[o]verall, the past decade has been a period of stagnation in demand growth for law firm services, decline in productivity for most categories of lawyers, growing pressure on rates as reflected in declining realization, and declining profit margins.” Thus, private law firms sharply curtailed—and even stopped—hiring. *Above The Law* reports that 38 percent of 2016 law school graduates were unable to secure a full-time position in the legal profession. <http://abovethelaw.com/law-school-rankings/top-law-schools/>.
- 12 See <http://abovethelaw.com/2015/08/how-are-lawyers-managing-their-law-school-debt-most-will-never-be-able-to-pay-it-off/>.
- 13 National Center for State Courts, State Justice Initiative, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts* (2015) at iv, available at <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.
- 14 See <https://www.legalpleadingtemplate.com/>
- 15 See <https://www.rocketlawyer.com/document/legal-will.rl#/>
- 16 See <https://visabot.co/>
- 17 Commission on the Future of Legal Services, *supra* note 3, at 16.
- 18 *Id.*
- 19 Altman Weil, Inc., *supra* note 1, at i.
- 20 Commission on the Future of Legal Services, *supra* note 3, at 8–9. A number of states—including California, Florida, Michigan, New York, and Utah—have convened futures commissions, modeled on the ABA’s effort, to examine ways to innovate and respond to emergent change in the legal services market. Our Task Force reviewed these reports and recognizes the significant contributions of the many states that preceded us in approaching these challenges.

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FUTURES TASK FORCE

Reports and Recommendations of the

REGULATORY COMMITTEE *(See page 3)*

and

INNOVATIONS COMMITTEE *(see page 61)*

June 2017

The **Executive Summary** is available here:

www.osbar.org/_docs/resources/taskforces/futures/FuturesTF_Summary.pdf

**OSB FUTURES TASK FORCE
REGULATORY COMMITTEE | REPORT AND RECOMMENDATIONS**

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RECOMMENDATION NO. 1.2: An applicant should have an associate’s degree or better and should graduate from an ABA-approved or institutionally accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program..... 17

RECOMMENDATION NO. 1.3: Applicants should have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney. 19

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RECOMMENDATION NO. 1.5: Licensees should be required to comply with professional rules of conduct modeled after the rules for attorneys..... 20

RECOMMENDATION NO. 1.6: Licensees should be required to meet continuing legal education requirements. 20

RECOMMENDATION NO. 1.7: To protect the public from confusion about a licensee’s limited scope of practice, licensees should be required to use written agreements with mandatory disclosures. Licensees also should be required to advise clients to seek legal advice from an attorney if a licensee knows or reasonably should know that a client requires services outside of the limited scope of practice. 20

SCOPE OF THE LICENSE 21

<i>RECOMMENDATION NO. 1.8: Initially, licensees should be permitted to provide limited legal services to self-represented litigants in family-law and landlord-tenant cases. Inherently complex proceedings in those subject areas should be excluded from the permissible scope of practice.</i>	21
<i>RECOMMENDATION NO. 1.9: Licensees should be able to select, prepare, file, and serve forms and other documents in an approved proceeding; provide information and advice relating to the proceeding; communicate and negotiate with another party; and provide emotional and administrative support to the client in court. Licensees should be prohibited from representing clients in depositions, in court, and in appeals.</i>	22
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PARAPROFESSIONAL WORKGROUP REPORT & RECOMMENDATIONS

Introduction

Twenty-five years ago, a task force of the Oregon State Bar developed a proposal for licensing nonlawyers to provide limited legal services to the public in civil cases.¹ The task force cited a report noting that a significant number of people of modest and lower incomes lacked access to legal services. For lack of consensus, however, the task force declined to make any recommendation for or against the proposal, and the OSB's Board of Governors took no further action.

At the time of that 1992 report, seven other states had considered or were considering similar proposals.² A commission of the State Bar of California undertook the most comprehensive study and recommended the adoption of a rule authorizing nonlawyers to provide limited legal services in bankruptcy, family-law, and landlord-tenant proceedings.³ As one member of the state bar's Board of Governors explained at the time, supporters of the proposed rule argued that legal technicians could fill an access-to-justice gap because "[a] lot of people need legal assistance and have no place to go."⁴ The state bar's Board of Governors voted down the recommendation. The resistance from California's lawyers was typical of responses in other states. But things began to change. By 2003, both California and Arizona were authorizing qualified nonlawyers to prepare, file, and serve legal documents without attorney supervision.

Washington joined the conversation in 2012, when that state's supreme court, citing the need to address the "wide and ever-growing gap in necessary legal and law related services for low and moderate income persons," approved by rule a new, limited form of legal practitioner known as a "limited license legal technician" (LLLT).⁵ Several states took note, appointing committees or task forces to evaluate the Washington model and to make recommendations. The Oregon State Bar (OSB) appointed such a task force, which submitted a final report in 2015 that discussed the merits of a licensing scheme like Washington's but declined to make a recommendation.⁶ No further action was taken, until the OSB's Board of Governors convened the present Task Force.

We now present the latest effort to address whether Oregon should license nonlawyers to provide a limited and defined scope of legal services. In early 2017, the Regulatory Committee of this Legal Futures Task Force formed a Paraprofessional Workgroup "to explore the licensing of paraprofessionals including LLLTs, paralegals and document preparers." The workgroup's members and advisors include people who participated in the 2015 task force as well as others new to the subject. Members met regularly from January through April to discuss this issue. The full Regulatory Committee

¹ OSB LEGAL TECH. TASK FORCE, REPORT TO THE BOARD OF GOVERNORS (1992).

² *Id.* at 3.

³ *Id.*

⁴ David Weintraub, "Calif. Dreaming: Expanded role for non-lawyer specialists considered," *ABA Journal* (June 1989) (quoting Frank Winston, a then-member of the California bar's Board of Governors).

⁵ Order No. 25700-A-1005, In the Matter of the Adoption of New APR 28—Limited Practice Rule for License Limited Legal Technicians (Wash. 2012) ("LLLT Order"), available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

⁶ OSB LEGAL TECHNICIAN TASK FORCE, FINAL REPORT TO THE BOARD OF GOVERNORS (2015).

heard presentations on paraprofessional licensing programs from officials in Utah, Washington, and Canada.

The workgroup reviewed and discussed developments in other jurisdictions, particularly Arizona, California, Colorado, Nevada, New York, Utah, Washington, and Ontario, Canada. We reviewed a wide variety of materials on the regulation of paralegals and the challenges facing self-represented litigants, and engaged in detailed discussions about the arguments for and against licensing paraprofessionals and the elements of a licensing program that would be appropriate for Oregon. We present our recommendations below, followed by an explanation of those recommendations.

GENERAL RECOMMENDATION 1: IMPLEMENT PARAPROFESSIONAL LICENSING PROGRAM

After careful consideration, the workgroup recommends that the OSB's Board of Governors:

- **Appoint a committee to develop a detailed implementation plan for licensing paraprofessionals consistent with the recommendations in this report.** The implementation plan would include draft rules of admission, practice, and professional conduct for approval by the Supreme Court and adoption by the Board of Governors.
- **Propose amendments to ORS chapter 9 to provide for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants.** We recommend that the subject areas of such a license be limited, initially, to (1) family law and (2) landlord-tenant proceedings, where the number of self-represented litigants is high and the need for more providers of legal services is acute. We recommend further consideration of other subject areas, specifically including debt-collection. The amendments should authorize the evaluation of applicants, the regulation of licensees, and the assessment of fees.
- **Enact measures to protect consumers who rely on newly licensed paraprofessionals.** Require that applicants be 18 years old and of good moral character and meet minimum education and experience requirements. Require that licensees carry malpractice insurance, meet continuing legal education requirements, and comply with professional rules of conduct like those applicable to lawyers.

Why License Paraprofessionals?

The large number of self-represented litigants is not a new crisis but is a continuing one. Seventeen years ago, the OSB commissioned a detailed study on the state of access to justice in Oregon.⁷ The study found “a great need for civil legal services for low and moderate income people”

⁷ D. MICHAEL DALE, THE STATE OF ACCESS TO JUSTICE IN OREGON, PART I: ASSESSMENT OF LEGAL NEEDS i (2000).

that was not adequately met.⁸ Then, as now, the greatest needs were in family-law and housing advocacy.

The 2000 study on legal needs in civil proceedings found that “[p]art of that need can be met by providing advice and other limited services short of full representation.”⁹ Judges reported that there was “great unmet need for advice, review of documents, and drafting decrees without the lawyer necessarily appearing for the client in court.”¹⁰ Judges also expressed frustration with self-represented litigants’ “poorly drafted pleadings,” “situations in which a party is obviously unaware of important rights,” and challenges that arise when self-represented parties try to present evidence in court.¹¹ In eviction actions, “judges thought that tenants in most cases can represent themselves reasonably well in court, but often need advice about possible defenses to eviction, how to enter an appearance, and how to present evidence at trial.”¹²

The bench and the bar have long promoted pro bono work by attorneys, but the 2000 study found that pro bono services addressed less than five percent of the need.¹³ Around the same time, the Family Law Legal Services Commission recommended promoting unbundled legal services—also known as limited-scope representation—as an affordable option for low-income litigants.¹⁴ By 2007, however, little had changed. The State Family Law Advisory Committee acknowledged that self-representation in family-law cases would continue “because no other alternative exists.”¹⁵ That Committee concluded that, “rather than bemoaning the loss of a traditional model of justice that involved two attorneys who case-managed the litigation,” the model itself must be redesigned to meet the needs of self-represented litigants.¹⁶ The Oregon Judicial Department’s 2016 data on self-represented litigants in the Oregon Circuit Courts reinforces the fact that the number of self-represented litigants have only increased.¹⁷

Other states struggling with the same problem have agreed. In New York, more than 2.3 million self-represented litigants “must navigate the complexities of the state’s civil-justice system without the assistance of counsel in disputes over the most basic necessities of life.”¹⁸ A task force concluded that self-representation leads to higher costs of litigation, reduced likelihood of settlement, and a drain on court resources at the expense of the system as a whole.¹⁹ Dissatisfied with this state of affairs, the

⁸ *Id.*

⁹ The study was not advocating for limited licensing of paraprofessionals. Like other states, Oregon has focused on trying to increase pro bono representation and unbundled services, advocating for legal-aid funding, and developing self-help resources available online and through the courts.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 9-10.

¹² *Id.* at 10.

¹³ *Id.* at ii.

¹⁴ OJD STATE FAMILY LAW ADVISORY COMMITTEE, SELF-REPRESENTATION IN OREGON’S FAMILY LAW CASES 2 (2007).

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ See Oregon Circuit Court Data on *Pro Se* and Self-Represented Litigants (2016), at APPENDIX B.

¹⁸ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2012).

¹⁹ *Id.*

Court's Chief Judge, Jonathon Lippman, has proposed using nonlawyers to bridge "the gaping hole."²⁰ He has argued that qualified nonlawyer specialists in a limited area of practice can be at least as effective as generalist lawyers.²¹

In 2013, the New York City Bar Association reached the same conclusion.²² After studying the provision of legal services by nonlawyers in other states and countries, the Association's task force questioned the traditional view that all "legal tasks are inherently too complicated for performance by nonlawyers."²³ The following year, New York City launched three pilot programs to test the use of nonlawyer "navigators" in eviction and debt-collection proceedings. In two of the pilot programs, nonlawyer volunteers receive training and supervision to provide "for-the-day" assistance at the courthouse. The third pilot program uses trained caseworkers employed by a nonprofit organization to provide "for-the-duration" assistance in eviction proceedings. A recent study by the National Center for the State Courts shows promising results. In one of the pilot programs, tenants who received nonlawyer assistance were 87 percent more likely to have their affirmative defenses recognized by the court.²⁴ In the "for-the-duration" pilot program, no tenant who received help was evicted.²⁵

While New York is testing its volunteer program, Washington has begun licensing paraprofessionals committed to a long-term legal career. In 2012, the Washington Supreme Court authorized the limited practice of law by licensed legal technicians. The court observed that thousands of self-represented litigants struggle every day to navigate Washington's complex, overburdened, and underfunded legal system. The problem has expanded beyond the very low-income population that legal aid is designed to help, to include a growing number of moderate-income people who cannot afford or choose not to hire lawyers and search instead "for alternatives in the unregulated marketplace."²⁶ Like Oregon, Washington long ago implemented innovative programs, including self-help centers, court facilitators, and a statewide legal self-help website. But the "significant limitations" of these programs and the "large gaps" in available services result in a substantial unmet need.²⁷ The Washington court worried that the public will increasingly "fall prey to the perils" of unregulated and untrained nonlawyers.²⁸ Citing the state bar's failure to address the problem, Chief Justice Barbara Madsen said that the Washington State Supreme Court "had to take a leadership role and say the

²⁰ Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, ABA JOURNAL, Jan. 1, 2015, available at: http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap.

²¹ *Id.*

²² NEW YORK CITY BAR ASSOC., NARROWING THE JUSTICE GAP: ROLES FOR NONLAWYER PRACTITIONERS 30 (2013) ("NEW YORK REPORT").

²³ *Id.* at 4.

²⁴ REBECCA L. SANDEFUR AND THOMAS M. CLARKE, ROLES BEYOND LAWYERS: SUMMARY, RECOMMENDATIONS AND RESEARCH REPORT 4 (2016).

²⁵ *Id.* at 5.

²⁶ LLLT Order at 5.

²⁷ *Id.*

²⁸ *Id.*

incredible unmet need is more than we can tolerate.”²⁹ Despite initial opposition, Justice Madsen noted that the Washington State Bar Association is now “wholly on board” with working to ensure the success of the program, which is now in its third year of issuing licenses.³⁰

Despite the support of the Washington Supreme Court and the Washington State Bar Association, some Washington attorneys remain skeptical about licensing paraprofessionals.³¹ Three objections seem to predominate. The first (voiced often in Washington) is that licensing paraprofessionals will take jobs away from lawyers. One obvious response is that the essence of the problem is the large number of litigants who either *cannot or will not* hire a lawyer.³² The number of such litigants has been ballooning for a quarter century; underemployed lawyers have made no dent in the demand for legal services. A second response, which we embrace, is that the licensure of paraprofessionals should be limited to specific subjects and types of proceedings. Clients who need other legal help, have complex cases, or desire representation in court will still need lawyers. In Washington, once the licensing program was implemented, lawyers stopped objecting when they realized “that clients going to an LLLT are not the ones who will come to lawyers for services.”³³

A second objection to licensing paraprofessionals is that state bars should, instead, try to increase the availability of unbundled legal services, pro bono and reduced-fee services, and self-help materials. In Oregon, one of the reasons for the resistance to paraprofessional licensure in 1992 was the hope that those other approaches could meaningfully reduce the growing number of self-represented litigants. Twenty-five years later, we must admit that that hope was misplaced. The problem is growing worse. The OSB’s 2000 study on legal needs in civil proceedings found that our continuing failure to provide access to justice is the failure of a core American value that has caused low- and moderate-income families to lose faith in Oregon’s legal system.³⁴ Survey respondents who sought but were unable to obtain legal assistance were left with “extremely negative” views of our system

²⁹ Ralph Schaefer, *Not Every Problem Needs a Lawyer According to Chief Justice*, TULSA LEGAL & BUSINESS NEWS, Sept. 8, 2015.

³⁰ *Id.*

³¹ Lawyers in Utah provided similar feedback – 60 percent of attorneys surveyed by the Utah futures commission disagreed or strongly disagreed with licensing paraprofessionals to provide limited legal services.

³² For example, in Ontario, Canada, where licensed paralegals have been licensed since 2007 and exist in large numbers (over 7,000 at last count), there has continued to be a steady rise in the number of attorneys licensed to practice law, even as the number of licensed paralegals continues to increase. *Compare* The Law Society of Upper Canada, *2008 Annual Report Performance Highlights* at 7, available at http://www.lsuc.on.ca/media/arep_full_08.pdf, and The Law Society of Upper Canada, *2016 Annual Report*, available at <http://annualreport.lsuc.on.ca/2016/en/the-professions/membership-statistics.html>. Moreover, average attorney fees have continued to increase even as large numbers of licensed paralegals entered the legal market. *Compare* Canadian Lawyer Magazine, *The Going Rate* (June 2016), available at http://www.canadianlawyermag.com/images/stories/pdfs/2016/CL_June_16-Survey.pdf, and Canadian Lawyer Magazine, *The Going Rate* (2008), available at http://www.canadianlawyermag.com/images/stories/pdfs/Surveys/2008/03CL_legal%20fees%20survey.pdf. Moreover, studies show that the thousands licensed paralegals in Ontario have had a meaningful impact on improving access to justice. *See generally* LAW SOCIETY OF UPPER CANADA, REPORT TO THE ATTORNEY GENERAL OF ONTARIO PURSUANT TO SECTION 63.1 OF THE LAW SOCIETY ACT 26 (2012).

³³ Schaefer, *supra* note 27, at 1.

³⁴ DALE, *supra* note 6, at 10.

(significantly worse than the opinions of those who received at least some help).³⁵ After more than two decades, new innovations are required. Public attention to the problem has sharpened. If the state bar does not act, the legislature might.

A third objection, or at least note of caution, is that the limited-scope license may not be attractive to enough people to justify the regulatory effort. We find reasons, however, to believe that licensed paraprofessionals will be drawn to this new market opportunity and that low- and moderate-income Oregonians will benefit from it.³⁶

First, to be successful, licensees will have to package their services at prices that low- and moderate-income litigants can afford. Current market conditions suggest that attorneys have little incentive to offer low flat fees and unbundled services when there is enough full-service work at market rates. When there is not enough high-paying work in one area, attorneys can and do change practice areas, something licensed paraprofessionals would not be able to do. Furthermore, because licensees will be able to provide only limited services, they will not be able to compete if they attempt to charge the same rates as full-service attorneys. Even an unsophisticated litigant will prefer to hire an attorney over a limited-license practitioner if the cost is the same. Unlike attorneys, licensees will be highly incentivized to provide lower cost, unbundled services.

Second, licensees should be able to provide services at a lower cost. Unbundling has long been promoted by the bench and the bar as a way for attorneys to provide affordable services to low- and moderate-income litigants. Licensed paraprofessionals, almost by definition, provide unbundled services. Unlike attorneys (who bill by the hour for the detailed research, analysis, drafting, and court preparation necessary for more complex cases), licensed paraprofessionals will be assisting in routine matters requiring less time and often involving simple, repetitive tasks. Also, a traditional paralegal who gets licensed and sets up a solo practice will not have the same earnings expectations as an attorney who sets up a solo practice. Even if the overhead were the same, the net income that each must earn to find the practice economically viable will be different.

Neither of these predictions is wishful thinking. The third and best reason to think that a limited-scope practice will be economically viable in Oregon is that the model *has* been working in other jurisdictions for many years. Licensed document preparers have been successfully operating businesses in California and Arizona for more than 14 years and in Nevada for 3 years. Ontario, Canada has been licensing paralegals to independently represent clients in a wide range of routine proceedings since 2007.

³⁵ *Id.* at 38.

³⁶ To measure sentiment for the program among future and current paralegals, we sent surveys to paralegal students at Portland Community College and to members of the Oregon Paralegal Association. Most respondents favored licensing paraprofessionals, and a majority of students said they were likely or somewhat likely to apply for a license. By contrast, three-quarters of the paralegals said they were not likely to apply, many saying they were not interested in family law or landlord-tenant law or do not work at a firm that does either. The vast majority of respondents agreed that licensees should meet minimum education and experience requirements and be required to carry malpractice insurance, comply with rules of professional conduct, and take continuing legal education.

Models for Licensing Paraprofessionals

Four states and Ontario, Canada currently allow licensed or registered paraprofessionals to offer limited legal services without attorney supervision. A fifth state, Utah, is expected to begin licensing paraprofessionals as early as 2017. Although each jurisdiction is somewhat unique from the others, generalizations can be made.

In each jurisdiction, the scope of practice is limited, and licensees are subject to regulatory requirements like those for attorneys. All but one program require an applicant to meet minimum education and experience requirements. Most programs require graduation from an accredited paralegal studies program, substantive law-related work experience, or both. Most programs require applicants to carry a bond or malpractice insurance, to comply with rules of professional conduct, and to meet continuing education requirements.

In all jurisdictions but Ontario, there is an emphasis on preparing documents. At a minimum, in each jurisdiction a licensed paraprofessional can complete, file, and serve forms and provide general legal information. While some programs allow licensed paraprofessionals to give limited legal advice or to assist with negotiation, only one jurisdiction authorizes a paraprofessional to represent a client in court.

What follows is a more detailed description of the program in each jurisdiction. For convenience, a side-by-side comparison of the general features is attached as Appendix A.

Arizona

Arizona has been licensing paraprofessionals, called “legal document preparers,” since 2003, when the Arizona Supreme Court exempted certified legal-document preparers from the prohibition on the unauthorized practice of law. Individuals and entities that provide document-preparation services may be certified.³⁷ The Board of Legal Document Preparers issues certificates and performs essential regulatory functions.³⁸ Fees and assessments are paid into a special fund.³⁹

Legal-document preparers can prepare, file, record, and serve legal documents for any self-represented person in any legal matter and may provide general information about legal rights, procedures, or legal options.⁴⁰ Legal-document preparers may not provide any “specific advice, opinion, or recommendation” about legal rights, remedies, defenses, options, or strategies, and they are not authorized to negotiate on behalf of clients or to appear in court proceedings.⁴¹ To become a legal-document preparer, applicants must meet minimum education and experience requirements. Generally, applicants must have a high school diploma or a GED plus two years of law-related work experience, a bachelor’s degree plus one year of experience, or a paralegal certificate from an accredited program.⁴²

³⁷ ARIZ. CODE OF JUD. ADMIN. § 7-208(B).

³⁸ ARIZ. CODE OF JUD. ADMIN. §§ 7-208(D)(4), § 7-201(D)(5)(c).

³⁹ ARIZ. CODE OF JUD. ADMIN. § 7-208(D)(2).

⁴⁰ ARIZ. CODE OF JUD. ADMIN. § 7-208(F)(1).

⁴¹ ARIZ. CODE OF JUD. ADMIN. § 7-208(F)(1).

⁴² ARIZ. CODE OF JUD. ADMIN. § 7-208(E)(3)(b)(6).

They also must pass an examination and a background check.⁴³ Once certified, legal-document preparers are subject to a code of conduct and must complete 10 hours of continuing education each year.⁴⁴

California

In 2000, California enacted a law creating two categories of licensed paraprofessionals: (1) legal document assistants (LDAs) and (2) unlawful detainer assistants (UDAs). LDAs are authorized to prepare a wide variety of legal documents. UDAs provide “advice and assistance” to landlords and tenants in eviction proceedings.⁴⁵

Both LDAs and UDAs must meet education and experience requirements like those in Arizona, but no examination or background check is required.⁴⁶ An LDA or UDA simply registers in the county where the principal place of business is located,⁴⁷ files a \$25,000 bond,⁴⁸ and thereafter completes 15 hours of continuing education every two years.⁴⁹ LDAs are authorized to complete in a ministerial manner, file, and serve any legal document selected by a client.⁵⁰ They also may provide “general published factual information” about “legal procedures, rights, or obligations” if the information is written or approved by an attorney.⁵¹ LDAs and UDAs may not provide any kind of advice, explanation, opinion, or recommendation about possible legal rights, remedies, defenses, options, or strategies.⁵² Both must use an approved written agreement that includes mandatory disclosures about the limited scope of practice.⁵³ If a client requires assistance beyond that scope of practice, the LDA or UDA must inform the client that the client requires the services of an attorney.⁵⁴

In 2015, a California task force on civil-justice strategies recommended that the state bar consider adopting a more expansive program, like Washington’s.⁵⁵ To date, the state bar has not acted on that recommendation.

Nevada

⁴³ ARIZ. CODE OF JUD. ADMIN. § 7-208(E)(3).

⁴⁴ ARIZ. CODE OF JUD. ADMIN. §§ 7-208(F)(2), (G)(2).

⁴⁵ CAL. BUS. & PROF. CODE § 6400(a); *see also* CAL. CODE REGS. tit. 16, § 3850, *et seq.*

⁴⁶ CAL. BUS. & PROF. CODE § 6402.1.

⁴⁷ CAL. BUS. & PROF. CODE § 6402.

⁴⁸ CAL. BUS. & PROF. CODE § 6405.

⁴⁹ CAL. BUS. & PROF. CODE § 6402.2.

⁵⁰ CAL. BUS. & PROF. CODE § 6400(d)(1).

⁵¹ CAL. BUS. & PROF. CODE § 6400(d)(2).

⁵² CAL. BUS. & PROF. CODE § 6400(g).

⁵³ CAL. CODE REGS. tit. 16, § 3950.

⁵⁴ CAL. BUS. & PROF. CODE § 6401.6.

⁵⁵ CAL. STATE BAR, CIVIL JUSTICE STRATEGIES TASK FORCE: REPORT AND RECOMMENDATIONS (2015).

A 2013 Nevada law authorized individuals to register as a document-preparation service and to provide limited legal help to self-represented persons. Unlike other states, this limited practice of law is regulated by the Secretary of State, rather than by the courts or the state bar.⁵⁶

The requirements for registration and renewal are modest compared to other jurisdictions. Applicants must pass a background check, but they are not required to satisfy any educational or experience requirements or to pass an examination. Although registrants must file a \$50,000 bond with the Secretary of State⁵⁷ and are prohibited from engaging in deceptive practices,⁵⁸ there are no detailed rules of professional conduct and no continuing education requirements.

Registrants are authorized to prepare and submit pleadings, applications, and other documents in an immigration or citizenship proceeding or in any proceeding “affecting the legal rights, duties, obligations or liabilities of a person.”⁵⁹ Registrants also may prepare wills and trusts⁶⁰ and provide published factual information about legal rights, obligations, and procedures, if that information was written or approved by an attorney.⁶¹ The statute also mandates the use of written agreements with mandatory disclosures about the limited scope of practice.⁶²

Although registrants are authorized to prepare a wide range of legal documents, they may not offer other legal services. Registrants are expressly prohibited from communicating a client’s position to another person; negotiating a client’s rights or responsibilities; appearing on behalf of a client in court; or providing any advice, explanation, opinion, or recommendation about a client’s legal rights, remedies, defenses, options, or the selection of documents or strategies.⁶³

Washington

In 2014, Washington’s first prospective LLLTs enrolled in approved courses at law schools, and the first graduates were licensed in 2015.⁶⁴ Applicants must have an associate’s degree or better, and must complete 45 hours of paralegal studies and 15 hours of family-law-specific course work from a law school or a paralegal program approved by either the ABA or the LLLT Board.⁶⁵ Washington’s work-experience requirement is substantial: eligible applicants must have 3,000 hours of law-related work

⁵⁶ NEV. REV. STAT. § 240A.250, *et seq.*

⁵⁷ NEV. REV. STAT. §§ 240A.110(3), 240A.120.

⁵⁸ NEV. REV. STAT. § 240A.240.

⁵⁹ NEV. REV. STAT. §§240A.030(1)(a), 240A.040(2)–(3).

⁶⁰ NEV. REV. STAT. § 240A.040(1).

⁶¹ NEV. REV. STAT. § 240A.240(6).

⁶² NEV. REV. STAT. §§ 240A.180, 240A.190.

⁶³ NEV. REV. STAT. § 240A.240.

⁶⁴ REPORT OF THE LIMITED LICENSE LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE FIRST THREE YEARS 4 (2016).

⁶⁵ ADMIS. TO PRAC. RULE 28(D)(3).

experience under the supervision of an attorney.⁶⁶ Applicants also must pass three separate examinations and a background check.⁶⁷

Once licensed, LLLTs must comply with requirements like those in other states, including obtaining malpractice insurance, complying with rules of professional conduct, and completing 10 hours of continuing education each year.⁶⁸ Currently, LLLTs may provide limited legal services in only one practice area: family law.⁶⁹ Even within the approved practice area, LLLTs may not assist clients with more complex issues, including de facto parentage or nonparental-custody actions or cases involving the Indian Child Welfare Act, property division, bankruptcy, anti-stalking orders, certain major parenting-plan modifications, UCCJEA jurisdiction issues, and disputed relocation actions.⁷⁰

Like licensed paraprofessionals in other states, LLLTs may select, complete, file, and serve approved family-law pattern forms.⁷¹ LLLTs also may explain the relevance of facts, inform clients about court procedures, review and explain documents received from the opposing party's attorney, and perform legal research.⁷² However, an LLLT may not draft other legal documents or letters to third parties setting forth legal opinions, unless the document or letter is first reviewed and approved by a Washington-licensed attorney.⁷³

Other legal services traditionally provided by attorneys remain off-limits to LLLTs. The rules do not authorize LLLTs to provide legal advice beyond explaining forms, documents, and procedures. LLLTs are expressly prohibited from negotiating the client's rights, attending depositions, appearing in court, and initiating or responding to appeals.⁷⁴ Washington is considering expanding the scope of services to better meet the needs of clients and to increase judicial efficiency, but, at present, the services that an LLLT may perform are relatively limited.⁷⁵

⁶⁶ ADMIS. TO PRAC. RULE 28(E)(2).

⁶⁷ ADMIS. TO PRAC. RULE 28(E)(1); APP. REG. 5(D).

⁶⁸ ADMIS. TO PRAC. RULE 28(I).

⁶⁹ ADMIS. TO PRAC. RULE 28, APP. REG 2(B)(3). Washington may soon authorize a second area of limited practice in "Estate and Healthcare Law," to address unmet need for services to seniors and "people of all ages who are disabled, planning ahead for major life changes, or dealing with the death of a relative." Washington Limited License Legal Technician Board, Memorandum to the Board of Governors, January 9, 2017.

⁷⁰ ADMIS. TO PRAC. RULE 28, APP. REG. 2(B)(3).

⁷¹ ADMIS. TO PRAC. RULE 28(F)(6).

⁷² ADMIS. TO PRAC. RULE 28(F)(1)-(3), (5), (7).

⁷³ ADMIS. TO PRAC. RULE 28(F)(8).

⁷⁴ ADMIS. TO PRAC. RULE 28(H); APP. REG. 2(B)(3).

⁷⁵ See WASHINGTON LLLT BOARD, MEETING MINUTES (November 17, 2016) (reporting the recommendation of the Family Law Advisory Committee to expand the scope of permitted services); see also UTAH PARALEGAL PRACTITIONER STEERING COMMITTEE, MINUTES 7 (July 21, 2016) (reporting that Washington may permit LLLTs to talk to opposing counsel when appropriate and to appear in court solely to assist clients in answering questions of fact).

By early 2017, only 20 LLLTs had been licensed, about half of whom remained employed by law firms.⁷⁶ Reportedly, a large number of students are enrolled in courses required for licensing, but no firm numbers were available.

Utah

Inspired by Washington, the Utah Supreme Court convened a task force in May 2015 to study whether Utah should develop a similar program.⁷⁷ The Chair, Justice Himonas, described the task as the examination of “a market-based, supply-side solution to the unmet needs of litigants.”⁷⁸ While expressly acknowledging the value of lawyers, the task force recognized that self-represented litigants in areas “where the law intersects everyday life” need information, advice, and assistance that they are not getting despite years of promoting pro bono and low-cost services.⁷⁹

Ultimately, the task force recommended licensing paraprofessionals to provide limited legal services in three specific areas. Describing its report as a “planning blueprint,” the task force recommended that the Utah Supreme Court appoint a steering committee to develop a detailed implementation plan.⁸⁰ The Utah Supreme Court accepted the recommendations, and the steering committee is expected to complete its work in 2017. The first “paralegal practitioners” could be licensed as early as the end of the year.⁸¹

Although the final rules are still being drafted, the task force’s report, meeting minutes of the steering committee, and rule drafts disclose many details of the new program. Applicants must be of good moral character and pass an examination.⁸² They must have at least an associate’s degree and would be required to complete a paralegal studies program from an accredited institution, including approved practice-area course work.⁸³ For substantive law-related work experience, the task force concluded that Washington’s bar was too high.⁸⁴ Utah will require 1,500 hours of law-related work experience that would include both paralegal work and law school internships, clinical programs, and clerkships.⁸⁵ Once licensed, paralegal practitioners would be required to comply with rules of professional conduct modeled on those for lawyers and to meet continuing legal education requirements.⁸⁶

⁷⁶ See WASH. STATE BAR ASSOC., LLLT DIRECTORY, at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Directory>.

⁷⁷ UTAH SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING, REPORT AND RECOMMENDATIONS 7 (2015) (“UTAH REPORT”).

⁷⁸ Justice Deno Himonas and Timothy Shea, *Licensed Paralegal Practitioners*, 29 UTAH BAR JOURNAL 16 (2016).

⁷⁹ UTAH REPORT, *supra* note 73, at 7.

⁸⁰ *Id.* at 7.

⁸¹ Himonas and Shea, *supra* note 74, at 19.

⁸² UTAH REPORT, *supra* note 73, at 36.

⁸³ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (July 21, 2016).

⁸⁴ UTAH REPORT, *supra* note 73, at 29 (describing Washington’s requirements as “so arduous that it remains to be seen whether LLLTs can provide services at rates significantly less than those provided by lawyers”).

⁸⁵ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (August 18, 2016).

⁸⁶ UTAH REPORT, *supra* note 73, at 36.

Utah will license paraprofessionals to provide limited legal services for three types of proceedings: family law, eviction, and debt collection. Family-law cases will be limited to those for temporary separation, divorce, paternity, cohabitant abuse, civil stalking, custody and support, and name changes.⁸⁷ For those types of proceedings, licensees will be able to select, prepare, file, and serve only court-approved forms and, when no pattern form exists, provide only “general information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies.”⁸⁸

Although the scope of services will be “centered on completing forms,”⁸⁹ Utah will nevertheless “take a bolder step” than other states.⁹⁰ Within an approved area, if a pattern form exists, then a licensee may have “extensive authority” to give advice about how to complete the form, to explain supporting documents, and to “advise about the anticipated course of the proceedings.”⁹¹ A licensee may be authorized to explain the other party’s documents and “to counsel and advise a client about how a court order affects the client’s rights and obligations.”⁹² Licensees will be able to represent clients in both mediated and nonmediated negotiations⁹³ and, if required, may be authorized to prepare a written settlement agreement.⁹⁴

The boldness ends at the courthouse steps. The task force concluded that eliciting testimony and advocacy in hearings “is at the heart of what lawyers do” and should be “reserved for a licensed lawyer.”⁹⁵ Therefore, licensees will not be allowed to present arguments, question witnesses, or otherwise represent a client in court.

Ontario

While the Washington and Utah programs are innovative in the United States, Ontario (Canada) began licensing paraprofessionals in 2007 to provide full legal services for several discrete types of proceedings. Ontario’s program is a useful comparator, because it is structurally similar to the Washington and Utah programs but has been operating much longer. The most notable difference is that, for approved types of proceedings, licensed paralegals perform all tasks that lawyers traditionally perform, including representing clients in court.

⁸⁷ *Id.* at 8.

⁸⁸ *Id.* at 32.

⁸⁹ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES 2 (July 21, 2016).

⁹⁰ UTAH REPORT, *supra* note 73, at 30.

⁹¹ *Id.* at 32.

⁹² *Id.* at 33.

⁹³ PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (August 18, 2016).

⁹⁴ UTAH REPORT, *supra* note 73, at 33.

⁹⁵ *Id.* at 21.

Licensees may represent clients in four general types of proceedings: small-claims proceedings, provincial offenses before the Ontario Court of Justice,⁹⁶ summary-conviction proceedings,⁹⁷ and proceedings before administrative tribunals (including landlord-tenant and immigration matters).⁹⁸ A licensed paralegal may select, draft, complete, or revise any legal document for use in the proceeding; provide advice about any legal rights or responsibilities related to the proceeding; and negotiate legal rights and responsibilities on the client's behalf.⁹⁹ Licensees also may go to court and advocate for their clients.

Applicants must graduate from an accredited paralegal program, which must include general studies, paralegal studies, and a 120-hour field-work requirement. In addition to a background check, applicants must pass an examination that tests their knowledge of substantive and procedural law, professional responsibility, ethics, and practice management. Once licensed, paralegals must maintain malpractice insurance, comply with professional rules of conduct, and meet continuing education requirements.¹⁰⁰

In 2012, Ontario completed a five-year review of the program, finding that the program had been successful and “provided consumer protection while maintaining access to justice.”¹⁰¹ The review also found a high degree of client satisfaction—74 percent of clients surveyed were satisfied or very satisfied with the paralegal services they received, and 68 percent thought the services were a good value.¹⁰² In late 2016, the Attorney General issued a lengthy report recommending that the scope of the paralegal license be expanded to include certain family-law matters.¹⁰³ The proposal remains under review.

Other States

At least two other jurisdictions have recently considered licensing paraprofessionals. Both jurisdictions decided instead to develop a court “navigator” program, using nonlawyer volunteers to provide limited legal services in eviction and debt-collection proceedings.

As noted, in 2013 the New York City Bar Association studied the potential role of nonlawyers in addressing the access-to-justice gap, surveying jurisdictions inside and outside of the United States and reviewing paid and volunteer nonlawyer participation in the legal-services market. Among other

⁹⁶ Provincial offenses are minor noncriminal offenses, including traffic violations and violations of municipal ordinances, like excessive noise complaints.

⁹⁷ Summary-conviction proceedings are limited to those in which the maximum penalty is no greater than six months in prison and/or a \$5,000 fine.

⁹⁸ LAW SOC'Y ACT, BY-LAW 4, § 6(2).

⁹⁹ *Id.*

¹⁰⁰ The requirements are contained in By-Law 4 to the Law Society Act, but a useful summary of the requirements is available at: <http://www.lsuc.on.ca/licensingprocessparalegal.aspx?id=2147495377>.

¹⁰¹ LAW SOCIETY OF UPPER CANADA, REPORT TO THE ATTORNEY GENERAL OF ONTARIO PURSUANT TO SECTION 63.1 OF THE LAW SOCIETY ACT 26 (2012).

¹⁰² *Id.* at 25.

¹⁰³ JUSTICE ANNEMARIE E. BONKALO, FAMILY LEGAL SERVICES REVIEW (2016) (reviewing at great length the need and appropriate role for nonlawyers' assistance in family-law matters).

proposals, the Association recommended that New York adopt “some form of Washington State’s legal technician model.”¹⁰⁴ Despite the recommendation, New York is instead running three simultaneous pilot programs to test the use of volunteer court navigators in eviction and debt-collection proceedings.¹⁰⁵

In 2015, an advisory committee of the Colorado Supreme Court formed a Limited License Legal Technician Subcommittee to study whether Colorado should implement some form of the Washington program. The subcommittee met at least four times through early 2016, with members expressing interest in developing a nonlawyer assistance program of some kind but preferring the New York navigator model.¹⁰⁶ After determining that the greatest area of need is help negotiating settlements and preparing for trial in eviction and debt-collection cases, the subcommittee was renamed and is now developing a pilot program that, if adopted, will use nonlawyer volunteers to advocate for unrepresented litigants in settlement negotiations and to assist them in preparing for court.¹⁰⁷

Essential Elements of an Oregon Model

We do not recommend that Oregon adopt wholesale any of the other models discussed above. Instead, for every element of the program design, we separately weighed the advantages, disadvantages, costs, and benefits of various alternatives, including alternatives not considered by other states. We also considered critiques of existing programs and proposals to improve them.

In making recommendations, we aimed to balance three competing interests: (1) increasing access to justice by creating a viable, effective model for providing limited legal services; (2) protecting consumers from unqualified, negligent, or unethical practitioners; and (3) cost-effectiveness.

Any model for limited-scope licensure must address at least these questions: What minimum qualifications should a licensee have? How do we protect clients and the public? What is the proper scope of the license? All three questions are related. If the scope of the license is very limited, then the risk to clients is commensurately lower, and the minimum qualifications and regulatory scheme should reflect that lower risk. Some jurisdictions have, in our view, missed the mark on that calculus, imposing substantial barriers to entry and expensive regulatory burdens while authorizing licensees to do little more than complete, file, and serve standard forms. We believe a well-tailored Oregon paraprofessional licensing program has the potential to attract many qualified applicants. In addressing these questions, we considered the types of proceedings in which a high number of self-represented litigants participate; the complexity of those proceedings; the types of services that self-represented litigants say they want, need, and are willing to pay for; and whether a well-educated and experienced paraprofessional could provide those services competently.

We also concluded that the most we could realistically achieve, given the time constraints of this task force, would be to propose the essential elements of a paraprofessional licensing program, creating a “planning blueprint” for implementation by a future committee. In Utah, it has taken more than a year

¹⁰⁴ NEW YORK REPORT, *supra* note 20, at 30.

¹⁰⁵ SANDEFUR AND CLARKE, *supra* note 22.

¹⁰⁶ LTD. LICENSE LEGAL TECH. SUBCOMM., COLORADO SUP. CT. ADV. COMM., MEETING MINUTES (January 22, 2016).

¹⁰⁷ PROVIDERS OF ALT. LEGAL SERV. SUBCOMM., COLORADO SUP. CT. ATTY REG. ADV. COMM., MEMORANDUM (February 7, 2017).

for a committee four times the size of our workgroup to draft detailed rules and a plan to implement the essential recommendations of the task force. We endorse Utah’s careful approach. Therefore, we recommend that the Board of Governors appoint a committee to draft, for approval by the Oregon Supreme Court, detailed rules of admission, practice, and professional conduct consistent with the following specific recommendations.

Minimum Qualifications

RECOMMENDATION NO. 1.1: An applicant should be at least 18 years old and of good moral character. Attorneys who are suspended, resign Form B, or are disbarred from practicing law should not be eligible for a paraprofessional license.

Because licensed paraprofessionals will be authorized to engage in the limited practice of law, they should be required to meet the same minimum age and character requirements as attorneys, as set forth in ORS 9.220. Specifically, an applicant should be at least 18 years old and of good moral character. Attorneys who are suspended for disciplinary reasons, resign Form B while discipline is pending, or disbarred from the practice of law should also be prohibited from engaging in the *limited* practice of law. Suspended, resigned Form B, or disbarred lawyers therefore should not be eligible to apply for a paraprofessional license.

RECOMMENDATION NO. 1.2: An applicant should have an associate’s degree or higher and should graduate from an ABA-approved or institutionally-accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program.

To ensure that licensees will have the general knowledge and skills required to provide limited legal services, we recommend imposing minimum education requirements. Although an education requirement seems appropriate, not everyone agrees. For example, the 1992 Oregon task force emphasized the need for license affordability.¹⁰⁸ Similarly, Nevada’s program does not require a degree of any kind. Even the amount of general education required is subject to debate. Arizona and California require only a high school diploma or a GED for applicants with at least two years of law-related experience. In contrast, Washington and Utah require applicants to have an associate’s degree or better.

Although affordability is clearly important, we concluded that it is equally (or more) important to ensure that licensees will have the general knowledge and skills necessary to competently provide services without attorney supervision. We also believe that a high school diploma, although perhaps sufficient for mere document preparation, may not be enough when the approved scope of services is broader. In short, we agree with Washington and Utah that an associate’s degree is the appropriate minimum degree.

Applicants with only the minimum amount of required experience will be better prepared for practice if they also have some formal legal education. Paralegal studies programs prepare a person for a professional career in the law. The core curriculum includes both practical skills and legal theory and

¹⁰⁸ OSB LEGAL TECH. TASK FORCE, *supra* note 1, at 8.

covers essential subjects like civil procedure, legal ethics, and legal research. Programs also offer courses in family law, real-property law, and other practice areas in which paralegals are commonly employed. Most programs terminate with an associate's degree, a bachelor's degree, or a paralegal certificate. For comparison's sake, although attorneys today study the law at a postgraduate level, until the 1960s, the standard was only an undergraduate bachelor of law degree.¹⁰⁹ We concluded that, like other jurisdictions, Oregon should require applicants to have a degree or a certificate from an ABA-approved or institutionally accredited paralegal studies program.

To ensure that licensees will have adequate knowledge of each area in which the licensee will practice, applicants should be required to complete subject-matter-specific course work. Washington, for example, requires applicants to have instruction in a licensee's approved practice area.¹¹⁰ The state's LLLT Board determines the key concepts or topics that practice-area instruction must include and the number of credit hours required.¹¹¹ Washington also designed an entirely new curriculum. Initially, only Washington law schools could offer the approved courses, which increased the cost substantially, limited the ability of students to get financial aid, and required students to move near one of the law schools for the length of the program. Washington has since amended its rules to allow community colleges to offer the approved curriculum.¹¹²

We agree with requiring course work, but we do not recommend the Washington approach. Licensees will offer limited services to a finite market, which will create a practical limit on the likely number of applicants. Designing an entirely new paralegal studies program for future licensees is not cost-effective or practical for Oregon. Two ABA-approved paralegal programs are currently in Oregon, including one at Portland Community College. Those institutions already have expertise in designing and implementing high-quality educational programs for paralegals, and they can offer subject-matter courses as part of their existing programs. We recommend that an implementation committee reach out to these institutions early to explore their interest in developing an approved subject-matter course that would adequately prepare potential licensees for limited practice.¹¹³

Finally, we recommend exempting two categories of applicants from the requirement of graduation from a qualified paralegal studies program. First, applicants with a J.D. degree already have more formal legal education than a paralegal studies program offers, making the requirement redundant. Second, paralegals with a high level of experience should be exempt. Washington and Ontario, for example, adopted waivers for certain paralegals with many years of experience working under the supervision of an attorney. We recommend a lower experience threshold than the 10 years that Washington requires. For comparison, to apply for the industry-recognized Professional Paralegal certification from the National Association for Legal Professionals, an applicant must have five years of

¹⁰⁹ David Perry, *How Did Lawyers Become 'Doctors'? From the L.L.B. to the J.D.*, 4 PRECEDENT 26 (2013).

¹¹⁰ ADMIS. TO PRAC. RULE 28(D)(3)(c).

¹¹¹ *Id.*

¹¹² THOMAS M. CLARKE AND REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN (2017).

¹¹³ One of the institutions reached out to the workgroup when they learned about our work, but there was not enough time to engage in any meaningful discussion about developing appropriate practice-area courses.

paralegal experience.¹¹⁴ Although the exact scope of the exemption should be left to an implementation committee to decide, we believe that five years of full-time paralegal experience under the supervision of an attorney should be an adequate substitute for obtaining a certificate from a qualified paralegal studies program.¹¹⁵

RECOMMENDATION NO. 1.3: Applicants should have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney.

Most attorneys learn to practice law on the job and not before. Ideally, attorneys would learn under the supervision or mentorship of a more experienced attorney, but often that is not the case. There is no reason to follow the “learn on the job” model when licensing paraprofessionals. We therefore recommend that applicants should have at least one full year (1,500 hours) of substantive law-related experience working under the supervision of an attorney.¹¹⁶ The experience should be acquired in the two years preceding the date of application for the license.¹¹⁷

Washington requires two years’ worth of experience. Given the proposed requirement that applicants have a college degree and formal legal education, including approved subject-matter coursework, we believe that one year’s equivalent of substantive law-related experience under attorney supervision is adequate.

Regulatory Requirements for Licensees

Attorneys are subject to an array of regulatory requirements meant to protect consumers from incompetent or unethical practitioners. Attorneys must comply with detailed rules of professional conduct, carry malpractice insurance, and meet continuing legal education requirements. Other than Nevada, all jurisdictions that license paraprofessionals subject them to the same or similar requirements that are imposed on attorneys. We recommend that Oregon do the same.

RECOMMENDATION NO. 1.4: Licensees should be required to carry liability insurance in an amount to be determined.

Arizona is the only jurisdiction that does not require licensed paraprofessionals to carry professional liability insurance or to obtain a bond. Even Washington, which does not require attorneys to carry insurance, requires LLLTs to be insured. To protect those who may be harmed by the negligent

¹¹⁴ NALS CERTIFICATION RESOURCE MANUAL 5 (2016).

¹¹⁵ If at least one year (1,500 hours) of the attorney-supervised, substantive law-related experience was completed in the prior two years, the applicant would also satisfy the minimum experience requirement.

¹¹⁶ Most applicants will meet the requirement by working as a paralegal under attorney supervision, but the rule should be drafted to recognize other appropriate, attorney-supervised work experience like, for example, a clerkship by a law school graduate.

¹¹⁷ At a presentation on the workgroup’s progress on April 14, 2017, a member of the OSB Board of Governors suggested requiring the applicant to obtain a written certification from the supervising attorney. Washington has a similar requirement, and the workgroup unanimously agreed that the Oregon rules should include a similar provision.

provision of legal services, we recommend that licensees be required to carry malpractice insurance in an amount to be determined, preferably through the Professional Liability Fund.

RECOMMENDATION NO. 1.5: Licensees should be required to comply with professional rules of conduct modeled after the rules for attorneys.

Every jurisdiction other than California requires licensed paraprofessionals to comply with a code of conduct, although Nevada requires only that licensees refrain from certain deceptive practices. In Washington, Utah, and Ontario, the rules of conduct for paraprofessional licensees are substantially identical to the rules of conduct for attorneys. To protect the public from unethical practitioners, and to promote the integrity and reputation of licensed paraprofessionals, we recommend that licensees be required to comply with rules of conduct substantially the same as the Rules of Professional Conduct that apply to Oregon lawyers.

RECOMMENDATION NO. 1.6: Licensees should be required to meet continuing legal education requirements.

Requiring continuing legal education will assist licensees “in maintaining and improving their competence and skills and in meeting their obligations to the profession,” just like attorneys.¹¹⁸ Therefore, we recommend that licensees be required to complete a minimum number of hours of continuing legal education in each reporting period.¹¹⁹ In determining the number of hours and required topics, the implementation committee should take into account the cost and availability of affordable CLE programs that will be relevant to the licensees’ limited scope of practice.

RECOMMENDATION NO. 1.7: To protect the public from confusion about a licensee’s limited scope of practice, licensees should be required to use written agreements with mandatory disclosures. Licensees also should be required to advise clients to seek legal advice from an attorney if a licensee knows or reasonably should know that a client requires services outside of the limited scope of practice.

Licensing paraprofessionals will introduce a new type of legal-services provider into the market. The public cannot be presumed to know the difference between an attorney and a limited-license paraprofessional. To avoid confusion, we recommend that licensees be required, as they are in other jurisdictions, to use written fee agreements with mandatory disclosures explaining that licensees are not attorneys and describing the limited scope of services that a licensee may provide.

Furthermore, it is inevitable that, in some cases, a client will require legal services that are beyond the licensee’s limited scope of practice. Licensees should not be allowed to remain silent, but should be required to affirmatively recommend that a client seek legal advice from an attorney when the licensee knows or reasonably should know that a client requires legal services outside of the licensee’s scope of practice.

¹¹⁸ OSB MINIMUM CONTINUING LEGAL EDUCATION RULES AND REGULATIONS (2016).

¹¹⁹ The details of the rule, including the reporting period and required subjects, should be left to the implementation committee to decide, but the workgroup believes that a requirement equating to 10 hours per year should be sufficient given the limited areas of practice.

Scope of the License

People will employ licensed paraprofessionals only if the licensees can provide legal services that consumers need and want. Oregon consumers are already able to access an extensive online library of pattern forms in the area of family law. To be useful to self-represented litigants, licensees must be able to do more than simply complete and file pattern forms. The question is, how much more should licensees be permitted to do?

Licensees will, of necessity, be specialists. Their practices will be narrowly limited to certain types of routine matters for which they will have education, training, and experience before they are fully licensed to provide paraprofessional services. Just like attorneys, they will learn more and become more skilled with each month and year of practice, preparing the same forms, answering the same questions, and assisting in the same types of matters day after day. Licensees will carry liability insurance, comply with professional rules of conduct, and participate in continuing education. Such licensees will not be casual volunteers or shady, unlicensed document preparers advertising in corners of the internet. Licensed paraprofessionals will be skilled professionals, providing limited but much-needed assistance to the large number of individuals who have been unhappily navigating the court system alone, without attorneys, for decades.

For these reasons, the scope of the license should be commensurate with the needs of self-represented litigants and requirements should be imposed on applicants and licensees to ensure their competence and integrity in practice. Licensees should be able to provide fairly robust out-of-court legal services, but should be narrowly confined to certain routine proceedings in which overwhelming numbers of litigants are self-represented.

RECOMMENDATION NO. 1.8: Initially, licensees should be permitted to provide limited legal services to self-represented litigants in family-law and landlord-tenant cases. Inherently complex proceedings in those subject areas should be excluded from the permissible scope of practice.

Many observers have called for the licensing a legal paraprofessional, who would serve as the legal equivalent of a nurse practitioner, and meet all of a person's "basic" legal needs. That may be the future of the law—a world in which all attorneys are specialists and all "routine" legal work is performed by well-qualified but less expensive nonlawyers. For present purposes, however, we focused on the acute, demonstrable need in two areas: family law and housing law.

The numbers of self-represented litigants in these areas are staggering. In 86 percent of Oregon family-law cases, one or both litigants are unrepresented.¹²⁰ In landlord-tenant cases, the numbers are even higher. Despite more than two decades of efforts to encourage pro bono and unbundled legal services, the problem has grown. As a joint family-law task force concluded in 2011, the high number of self-represented litigants has become a permanent feature of Oregon's legal system.¹²¹ Our immediate goal is to better meet the legal needs of these litigants.

¹²⁰ OSB, *supra* note 5, AT 4.

¹²¹ OSB/OJD JOINT TASK FORCE ON FAMILY LAW FORMS AND SERVICES, REPORT 4 (2011).

Oregon has been a leader in this area. Since 2000, Oregon courts have used family-law facilitators—court-supervised nonattorney staff, who help self-represented litigants select, complete, file, and serve pattern forms and provide general information, including information about court procedures. Unstable funding, limited availability, and the fear of engaging in the unauthorized practice of law get in the way of such efforts. But the proven success of family-law facilitators in Oregon and other states suggests that knowledgeable and experienced paralegals can make a meaningful difference.

In landlord-tenant matters, nonlawyers already participate, but only on behalf of landlords. These nonlawyer representatives are repeat players who know the laws and understand the procedures, giving landlords a significant advantage over most tenants. Tenants have no choice but to represent themselves or to hire an attorney. Most self-represent. Early results from the New York Navigator pilot program show that even inexperienced volunteers with a little training can have a significant positive impact. Tenants who received nonlawyer assistance were 87 percent more likely to have their affirmative defenses recognized by the court.¹²²

In light of the clear access-to-justice gap in family law and housing law, we recommend that the OSB move toward the licensure of paraprofessionals for limited practice in those areas. A third subject area worthy of consideration is debt collection. Utah is moving in that direction, and the 1992 and 2015 Oregon task forces thought debt-collection cases might be appropriate for limited assistance. In New York City, debt collection is one of the two areas of focus for the navigator pilot programs. Although, for reasons of time, we were unable to give debt collection the same attention that we gave family law and housing law, we recommend this for further study.

With respect to family law, we recommend that certain proceedings be excluded from the scope of the limited license due to their inherent complexity, such as de facto parentage or nonparental-custody actions, disposition of debt and assets if one party is in a bankruptcy, and custody issues involving the Indian Child Welfare Act. In Utah, the scope of practice for family law will be limited to proceedings for divorce, paternity, temporary separation, cohabitant abuse, civil stalking, custody and support, and name change.¹²³ Washington has a more extensive list of specific exclusions within otherwise-approved family-law matters.¹²⁴ In drafting the rules, an implementation committee should include any exclusions that are reasonable and necessary to protect self-represented litigants, but should keep in mind that for most self-represented litigants, the alternative to receiving assistance from a licensee will be receiving no assistance at all. Washington has already begun to rethink some of its exclusions.

RECOMMENDATION NO. 1.9: Licensees should be able to select, prepare, file, and serve forms and other documents in an approved proceeding; provide information and advice relating to the proceeding; communicate and negotiate with another party; and provide emotional and administrative support to the client in court. Licensees should be prohibited from representing clients in depositions, in court, and in appeals.

¹²² SANDEFUR AND CLARKE, *supra* note 22, at 4.

¹²³ UTAH REPORT, *supra* note 73, at 30.

¹²⁴ ADMIS. TO PRAC. RULE 28, REG. 2(B)(3).

Many task forces, committees, and observers have embraced the idea of licensing paraprofessionals, but even proponents wrestle with the proper scope of the license. As attorneys, we are trained to see nuance and complexity in even the simplest disputes. We take a custom approach to every matter, preferring to control all aspects of the case from intake to appeal. Studies show that self-represented litigants in routine matters often cannot afford, or do not want, the level of service that attorneys provide.¹²⁵ In matters that self-represented litigants perceive as simple or low risk, like an uncontested divorce, they often make a reasonable cost-benefit assessment and decide not to hire an attorney. At the same time, they report a willingness to pay for lower-cost, limited assistance to help them navigate the process.

In deciding what licensees should be permitted to do, we considered what their education, training, and experience will prepare them to do and what self-represented litigants need and want the licensees to do in the approved types of proceedings.

At a bare minimum, licensees should be permitted to select, prepare, file, and serve model forms and other documents in an approved type of proceeding. Even mere document preparers in other states can do that much. But if that is all a licensee can do, there may be little reason to hire one. Oregon already has extensive family-law model forms, and many forms may now be completed and filed through an automated online interview process. If no model form is available, there are an endless array of websites with free or low-cost forms and documents.

What self-represented litigants need is not ministerial form-filling assistance, but help selecting the forms and understanding what the forms require and how that information will be used. They need help understanding what information to gather and where to find it. They need help understanding the process, from filing to entry of the judgment. They need to know what to expect at a hearing, what to bring, how to dress and act, and how to organize their paperwork to present to the court. Without an attorney to ask, self-represented litigants are left to rely on advice from friends and family; to scour the internet for information, which is often irrelevant or wrong; and, worst of all, to hire unlicensed and unregulated nonlawyers who advertise low-cost legal help. Therefore, we recommend that licensees be authorized to provide legal information and advice in connection with approved proceedings.

Self-represented litigants also need help communicating and negotiating with other parties. For example, at the first appearance in eviction proceedings, the parties are encouraged to negotiate stipulated agreements, if appropriate. The tenant, never having seen one before, may have no idea whether the offered terms are reasonable or whether she should (or even may) ask for something better. Some self-represented litigants are poorly educated; some have limited English proficiency; and many may be too overwhelmed, afraid, or angry to communicate or negotiate effectively. In Utah, anyone can represent a person in a mediated negotiation, so licensees will also be able to do so. But Utah's implementation committee has decided that licensees also should be able to communicate with and represent clients in nonmediated negotiations. In Washington, licensees are prohibited from representing clients in mediations, but Washington is already working on eliminating that restriction.

¹²⁵ See, e.g., IAALS, *CASES WITHOUT COUNSEL: RESEARCH ON EXPERIENCES OF SELF-REPRESENTATION IN U.S. FAMILY COURT* (2016).

We recommend that Oregon, like Utah, allow licensees to communicate and negotiate with another party in an approved proceeding.

Finally, licensed paraprofessionals should be allowed to provide emotional and administrative support to their clients in court. When individuals represent themselves, they are already at a great disadvantage. They often have no idea what to expect at a hearing. For most litigants and even many attorneys, appearing in court is intimidating and stressful. It can be difficult for self-represented litigants to stay focused on the proceeding while also trying to take notes, sort through pages of documents, or just figure out where in a document to find the information the judge requested. Licensees should be empowered to help self-represented litigants be better prepared and more effective in court.¹²⁶

Ontario, Canada is the only jurisdiction studied by the workgroup that allows licensed paraprofessionals to appear and argue on behalf of clients in court. Licensees in Ontario represent clients in summary-conviction proceedings and in the Ontario Court of Justice, where licensees defend clients charged with municipal offenses. Other states that license paraprofessionals, including both Washington and Utah, prohibit licensees from representing clients in depositions, in court, and in appeals. We agree that those functions should continue to be provided only by licensed attorneys.

Other Recommendations

RECOMMENDATION NO. 1.10: Given the likely modest size of a paraprofessional licensing program, the high cost of implementing a bar-like examination, and the sufficiency of the education and experience requirements to ensure minimum competence, we do not recommend requiring applicants to pass a licensing exam. If the Board of Governors thinks that an exam should be required, we recommend a national paralegal certification exam.

The most difficult decision we wrestled with is whether to require applicants to pass a test similar to the bar exam for lawyers. Other jurisdictions require one. Testing, however, is of debatable utility in weeding out good practitioners from bad ones, in part because exams do not test all relevant skills, such as the ability to communicate and negotiate effectively.¹²⁷ It is precisely those skills that will be important for licensed paraprofessionals practicing in housing law and family law. As discussed above, we recommend that applicants be required to complete approved subject-matter coursework and have at least one year of substantive law-related work experience under the supervision of an attorney. Those requirements are stricter than what exist for a new attorney who intends to practice

¹²⁶ The recommendation is similar to a New York task force proposal to allow licensed and regulated nonlawyers to provide emotional and administrative support in court, which the task force called “a humane and modest step forward.” NEW YORK REPORT, *supra* note 20, at 3. New York’s proposal was inspired by so-called “McKenzie Friends” in the United Kingdom. McKenzie Friends are support individuals—including friends, family, and trained volunteers—who appear in court with self-represented litigants to take notes, provide moral support, and provide “quiet advice.” *Id.* at 22.

¹²⁷ For a brief, accessible summary of the debate over the bar exam, see Elizabeth Olson, *Bar Exam, the Standard to Become a Lawyer, Comes Under Fire*, NEW YORK TIMES, March 19, 2015, available at: <https://www.nytimes.com/2015/03/20/business/dealbook/bar-exam-the-standard-to-become-a-lawyer-comes-under-fire.html>.

family law and, in our view, are a better guarantor of minimum competence for paraprofessionals, who have a very limited scope of practice.

Then there is the cost of testing. We learned that developing and administering a well-designed test for paraprofessional applicants would be the single greatest expense that the bar would incur in implementing this program.¹²⁸ Realistically, the number of applicants each year is likely to be too small, at least initially, to enable the bar to recover those costs.

For those reasons, after extensive discussion, we do not recommend requiring a paraprofessional licensing exam.

We recognize, however, that, for some people, a core belief in testing may outweigh these concerns. If the Board of Governors or the implementation committee determines that some form of testing should be required, we recommend exploring the use of a national paralegal certification exam as an alternative to designing and administering a new, Oregon-specific exam. There are three recognized national paralegal organizations¹²⁹ that have developed such certification exams.¹³⁰

RECOMMENDATION NO. 1.11: To administer the program cost effectively, we recommend integrating the licensing program into the existing structure of the bar, rather than creating a new regulatory body.

When Ontario decided to license and regulate paralegals who engage in the limited practice of law, a heated debate erupted. Paralegals wanted to form their own body and self-regulate, as attorneys do. The Law Society of Upper Canada, the equivalent of a state bar, argued that no other organization was better suited to regulate the practice of law. The Law Society prevailed, and five years after the Law Society Act was passed, licensed paralegals were reporting a high degree of satisfaction.¹³¹ Ontario made the right choice.

The Oregon State Bar is the organization that is most qualified by knowledge and experience to design and administer a licensing program for the limited practice of law by paraprofessionals. Creating an entirely new body to regulate a small number of licensees is neither cost effective nor necessary. Because implementing a licensing program will require collaboration among the Board of Governors, the

¹²⁸ To create an effective high-stakes examination for paraprofessionals, the bar would need to hire test designers and psychometricians to develop and test the examination. The bar also would incur costs in administering a proctored, high-stakes exam semi-annually or annually.

¹²⁹ The three organizations are NALS, the National Association of Legal Assistants (NALA), and the National Federation of Paralegal Associations (NFPA).

¹³⁰ Membership is not required to sit for any of the exams, though applicants must meet minimum eligibility requirements and pay fees of approximately \$300 for nonmembers. In Washington, one of the examinations that LLLT applicants must pass is NFPA's Paralegal Core Competency Exam, a multiple-choice examination that tests, among other things, a paralegal's knowledge of legal terminology, civil procedure, legal ethics, and areas of substantive law.¹³⁰ NALA and NALS exams cover the same types of topics but include both multiple-choice questions and a writing component. The workgroup did not reach any conclusion about which national exam is best.

¹³¹ LAW SOCIETY OF UPPER CANADA, *supra* note 98, at 26.

Board of Bar Examiners, the Oregon Supreme Court, and the Oregon Legislature, further input from those stakeholders is required.

Conclusion

After 25 years of watching the access-to-justice gap grow, it is time to begin filling it. Licensing paraprofessionals will not solve the problem, but it can greatly ameliorate it. We urge the Board of Governors to adopt these recommendations.

APPENDIX A: Licensed Paraprofessional Programs Comparison Chart

Licensed Paraprofessional Programs						
Title	Arizona	California	Nevada	Utah ¹	Washington	Ontario, CA
Practice Area(s)	Legal Document Preparer	Legal Document Assistant and Unlawful Detainer Assistant	Document Preparation Service	Licensed Paralegal Practitioner	Limited License Legal Technician	Licensed Paralegal
Education and Experience	Minimum education Required course work	Varies by work experience n/a	Varies by work experience n/a	n/a n/a	Associates degree Paralegal studies, practice area course	Associates degree Paralegal studies, practice area course
Licensing Exam	Law-related work experience	0-2 years, varies by educational degree	0-2 years, varies by educational degree	n/a	1,500 hours	3,000 hours
Insurance/Bond	Yes	No	Bond	No	Yes	Yes
Rules of Conduct	Yes	No	No, but deceptive practices prohibited	TBD	Insurance	Insurance
Scope of services	Select forms	No	Yes	Yes	Yes	Yes
	Complete pre-approved forms	Yes	Yes	Yes	Yes	Yes
	Draft other legal forms	Yes	No	No	Yes, if approved by attorney	Yes
	File and serve forms	Yes	Yes	Yes	Yes	Yes
	Provide legal information	Yes	Yes, only approved published materials	Not addressed	Yes	Yes
	Provide legal advice	No	No	No	Yes, limited in scope	Yes, limited in scope
	Negotiate on client's behalf	No	No	No	Yes, in mediation	No
	Appear in court	No	No	No	No	No
Other	Trust accounts	No	No	No	Yes	Yes
	Continuing education	Yes	Yes	No	Yes	Yes
Stature/Rule	Oversight	LDP Board	Dept. of Consumer Affairs, Counties	Secretary of State	Board (TBD)	LLT Board
	ACIA 7-208	CA Bus. & Prof. Code §6400 et seq	NRS 240A	Draft Rule 14-802	APR 28	Paralegal Standing Committee
						Law Society Act

¹ Utah's program has not yet launched, but a special committee appointed by the Supreme Court completed extensive pre-implementation work in 2016 and early 2017.

APPENDIX B: Oregon Circuit Court Cases with Representation, OJD (2016)

	w/ Representation	% w/ Representa- tion	w/o Representation	Identified as ProSe	% UnRep & ProSe	Total Cases
Domestic Relations						
Dissolution	6,219	20%	12,044	12,783.00	80%	31,046
Annulment	33	38%	25	30.00	63%	88
Filitation	720	32%	1,390	155.00	68%	2,265
Domestic Relations Other	3	21%	0	11.00	79%	14
Petition Custody/Support/Visitation	1,752	22%	3,195	3,008.00	78%	7,955
Separation	8	32%	6	11.00	68%	25
Civil						
Property - General	1,864	55%	1,432	91.00	45%	3,387
Civil Appeal from Lower Court	4	44%	5	0.00	56%	9
Contract	38,795	58%	27,822	624.00	42%	67,241
Tort - General	288	83%	56	1.00	17%	345
Property - Foreclosure	6,102	33%	12,395	120.00	67%	18,617
Injunctive Relief	798	74%	248	27.00	26%	1,073
Tort - Malpractice Legal	154	91%	13	3.00	9%	170
Tort - Malpractice Medical	847	87%	124	8.00	13%	979
Tort - Products Liability	259	77%	78	1.00	23%	338
Tort - Wrongful Death	363	89%	42	3.00	11%	408
Protective Orders						
Protective Order - FAPA	1,782	9%	15,336	2,635.00	91%	19,753
Protective Order - Elder Abuse	351	6%	4,448	895.00	94%	5,694
Protective Order - Foreign Restraining Order	4	9%	42	0.00	91%	46
Protective Order - Sexual Abuse	24	11%	166	23.00	89%	213
Protective Order - Stalking	416	8%	4,516	492.00	92%	5,424

Landlord/Tenant						
Landlord/Tenant - General	436	37%	744	13.00	63%	1,193
Landlord/Tenant - Residential	7,843	15%	45,307	456.00	85%	53,606
Landlord/Tenant - Appeal	6	55%	4	1.00	45%	11
Small Claims						
Small Claims - Appeal	2	17%	9	1.00	83%	12
Small Claims - General	798	1%	119,575	3,511.00	99%	123,884
Total Number of Parties	69,871	20%	249,022	24,903.00	80%	343,796

Data Explanation:

This chart displays whether any party had representation, or not, within the cases from the case categories requested. Therefore, the data is presented not on a case basis, but on a party basis. For instance, if both the plaintiff and respondent were represented it would count as "2" in the w/representation count. If only one party was represented then it would count as "1" in the represented column and "1" in the w/o representation column.

Alternative Legal Services Delivery Workgroup Report & Recommendations

It has become axiomatic that the legal-services market is evolving and will continue to evolve. Although market changes are being felt industry wide, the pace of change is particularly acute with respect to an historically underserved market segment—individuals and small businesses.

These changes are being driven by several factors. First, technological advances have allowed consumers in this market segment to bypass the traditional attorney-client relationship. Driven by the desire to resolve their legal issues efficiently and at the least possible cost, these consumers are increasingly likely to search the internet, rely on online lawyer reviews to locate a match, and seek out unbundled legal services.¹³² Alternatively, they avoid lawyers altogether and rely on web-based software to create customized forms and documents to meet their legal needs. Online commoditization of services now sets their expectations; they demand instant access to qualified lawyers and legal resources as well as transparent, competitive pricing.

Second, both lawyers and nonlawyer businesses see the potential in this market segment, and are stepping into the void. Lawyers are reaching out to solicit business through websites, blogs, and social media; increasingly relying on online advertising and referral services to connect them with prospective clients; and using web-based platforms to offer limited-scope consultations or services to clients who have been referred to them by third parties. Nonlawyer businesses have developed online service-delivery models ranging from the most basic form providers to sophisticated referral networks.

The Oregon State Bar Board of Governors directed the Legal Futures Task Force to consider how it may “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.” The Regulatory Committee directed this workgroup to consider whether and to what extent our current regulatory framework should be refined in light of the changing market.

I. Summary of Recommendations

We make the following four recommendations to the Committee as a whole:

RECOMMENDATION 2:

REVISE RULES OF PROFESSIONAL CONDUCT TO REMOVE BARRIERS TO INNOVATION

2.1 Amend current advertising rules to allow in-person or real-time electronic solicitation, with limited exceptions. By shifting to an approach that focuses on preventing harm to consumers, the bar can encourage innovative outreach to Oregonians with legal needs, while promoting increased protection of the most vulnerable. The proposed amendments to the Oregon Rules of Professional Conduct would secure special protections for prospective clients who are incapable of making the decision to hire a lawyer or have told the lawyer they are not interested, or when the solicitation involves duress, harassment or coercion.

¹³² As noted in the accompanying Self-Navigation Workgroup Report & Recommendations, *infra*, not all self-represented litigants are aware of the option to seek out unbundled services, even though this is a growing segment of the legal market.

2.2 Amend current fee-sharing rules to allow fee-sharing between lawyers and lawyer referral services, with appropriate disclosure to clients. Currently, only bar-sponsored or nonprofit lawyer referral services are allowed to engage in fee-sharing with lawyers. Rather than limit market participation by for profit vendors, the bar should amend the Oregon Rules of Professional Conduct to allow fee-sharing between all referral services and lawyers, while requiring adequate price disclosure to clients, and ensuring that Oregon clients are not charged a clearly excessive legal fee.

2.3 Amend current fee-sharing and partnership rules to allow participation by licensed paraprofessionals. If Oregon implements paraprofessional licensing, it should amend the Oregon Rules of Professional Conduct to allow-fee sharing and law firm partnership among regulated legal professionals. Any rule should include safeguards to protect lawyers’ professional judgment. The Board should also direct the Legal Ethics Committee to consider whether fee-sharing or law firm partnership with other professionals who aid lawyers’ provision of legal services (e.g. accountants, legal project managers, software designers) could increase access-to-justice and improve service delivery.

2.4 Clarify that providing access to web-based intelligent software that allows consumers to create custom legal documents is not the practice of law. Together with this effort, seek opportunities for increased consumer protections for persons utilizing online document creation software.

A discussion of our process and recommendations follows.

Workgroup Process and Guiding Principles

We began our work by gathering information about the new entrants in the market, reviewing the existing regulatory structure. We also were mindful of the mission of the Oregon State Bar and the Regulatory Objectives proposed by the American Bar Association, which include protection of the public; delivery of affordable and accessible legal services; and the efficient, competent, and ethical delivery of such services.

We then focused on the following points of tension between the existing regulatory framework and various alternative legal-services delivery models currently in the market (with a brief nod to what we could reasonably see on the horizon):

- Whether the lawyer advertising rules’ prohibition on in-person and real-time electronic solicitation unduly hinders access to legal services.
- Whether the prohibition on fee sharing with nonlawyers unduly restricts legal-referral services, thereby frustrating consumers’ ability to find legal help.
- Whether paraprofessionals, if licensed by the Oregon State Bar, should be allowed to share fees and engage in partnerships with lawyers.
- Whether lawyers should be allowed to take part in alternative business structures.
- Whether the provision of online legal-form creation using “intelligent” interactive software constitutes the unlawful practice of law, and if so, whether that is desirable.

As we worked through these issues, we were mindful of two things.

First, any recommendations should be consistent with the mission of the Oregon State Bar, “to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.”

Second, because the Board of Governors’ Policy & Governance and Public Affairs Committees have found the ABA Model Regulatory Objectives for the Provision of Legal Services to be “consistent with the mission and objectives” of the Oregon State Bar, we also believe that those ABA objectives—which were specifically designed to provide a framework to jurisdictions considering how to approach the regulation of “nontraditional” legal services¹³³—are appropriate guiding principles for our work.

The ABA Model Regulatory Objectives for the Provision of Legal Services are:

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
- D. Transparency regarding the nature and scope of legal services to be provided, credentials of those who provide them, and the availability of regulatory protections
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of privileged and confidential information
- H. Independence of professional judgment
- I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
- J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system

We believe that the recommendations in this report, as amplified below, are consistent with both the ABA’s stated objectives and the mission of our state bar.

The Future is Here

For more than a decade, citing technological innovation, the access-to-justice gap, and consumer dissatisfaction with the status quo, legal futurists have advocated for the creation of new models for delivering legal services. In 2017, it is time for even the least tech-oriented among us to sit up and take note.

As observed by the 2016 ABA Commission on the Future of the Legal Profession,

“The legal landscape is changing at an unprecedented rate. In 2012, investors put \$66 million dollars into legal service technology companies. By 2013, that figure was \$458

¹³³ The ABA adopted the Model Regulatory Objectives in February 2016, and suggested that courts “be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court’s existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.” ABA RESOLUTION 105 (February 2016).

million.¹³⁴ One source indicates that there are well over a thousand legal tech startup companies currently in existence.”¹³⁵

ABA Resolution 105 (February 2016). Growth in this market segment is exponential. A January 2017 report concluded that, “despite not being recognized widely as a cohesive segment of the legal services market,” alternative legal-services providers account for “\$8.4 billion in legal spending.”¹³⁶

Much of this change is driven by consumers who are demanding access to legal services in the same manner and with the same convenience as they purchase other services and products—a phenomenon that one well-respected commentator calls the “Uberization of Legal Services.”¹³⁷ A 2015 report from the Georgetown Law Center similarly noted:

“In the six and a half years since the onset of the Great Recession, the market for legal services has changed in fundamental – and probably irreversible – ways. Perhaps of greatest significance has been the rapid shift from a sellers’ to a buyers’ market, one in which clients have assumed control of all of the fundamental decisions about how much legal services are delivered and have insisted on increased efficiency, predictability, and cost effectiveness in the delivery of the services they purchase.”¹³⁸

All indicators suggest that these changes are here to stay.

By “alternative legal-services providers,” we mean those that “present an alternative to the traditional idea of hiring an attorney at a law firm to assist in every aspect of a legal matter.”¹³⁹ These services are “alternative” because they “are delivered via a model that departs from the traditional law firm delivery model”—“for example, by using contract lawyers, process mapping, or web-based technology.”¹⁴⁰

The catalog of such providers is vast, and growing. Many have a stated objective to serve the needs of both legal consumers and law firms. New services include the following: rating and reviewing of lawyers (e.g., [Avvo](#), [LawyerReviews](#), [Lawyerratingz](#), [Yelp](#)); referring consumers to lawyers and providing price quotes (e.g., [Avvo](#), [RocketLawyer](#), [LawGives](#), [LawKick](#), [LawNearMe](#), [LegalMatch](#), [PrioriLegal](#)); offering unbundled, fixed-fee legal services (e.g., [Avvo](#), [DirectLaw](#), [LawDingo](#), [LawGo](#), [LegalHero](#), [LawZam](#), [LegalZoom](#), [RocketLawyer](#)); providing customized legal forms (e.g., [LegalZoom](#), [RocketLawyer](#)); locating contract lawyers (e.g., [Axiom](#), [Hire an Esquire](#),

¹³⁴ Joshua Kubick, *2013 was a Big Year for Legal Startups; 2014 Could Be Bigger*, TECHCO (Feb. 14, 2015), available at <http://tech.co/2013-big-year-legal-startups-2014-bigger-2014-02>.

¹³⁵ See Angellist, *Legal Services*, available at <https://angel.co/legal>.

¹³⁶ Thomson Reuters Legal Executive Institute, The Center for the Study of the Legal Professional at Georgetown University Law Center and Saïd Business School at the University of Oxford, *Alternative Legal Service Providers: Understanding the Growth and Benefits of These New Legal Providers* (January 2017), at i.

¹³⁷ Richard Granat, *The Uberization of Legal Services* (June 19, 2015) available at <http://www.elawyringredux.com/2015/06/articles/law-startups/the-uberization-of-legal-services/>.

¹³⁸ Georgetown Law, *Center for the Study of the Legal Profession’s 2015 Report on the State of the Legal Market*, available at <http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/FINAL-Report-1-7-15.pdf>.

¹³⁹ This definition of Alternative Legal Service Providers is taken from the January 2017 study, *supra* at note 136.

¹⁴⁰ *Id.*

CounselOnCall); providing e-discovery and legal process support (e.g, clio, QuisLex, Veritas); and providing targeted legal information and advice in specific areas, such as immigration (e.g, Bridge US), traffic court (e.g, Fixed), and business formation and intellectual property (e.g, SmartUpLegal).

As we learned more about this market, we were fortunate to hear presentations from representatives of Avvo and LegalZoom. They provided valuable information about the market segment that they are attempting to serve, the controls that they have in place, and their regulatory concerns. Although we take a different perspective on some issues, it was extremely valuable to learn how they work and what gaps they seek to fill in the market.

We also learned that Oregon lawyers and consumers are actively engaged in these new markets. The Bar’s General Counsel has received numerous inquiries from Oregon lawyers regarding whether various models of alternative legal-services providers are consistent with the Oregon Rules of Professional Conduct. Providers’ websites show that Oregon lawyers and law firms are participating in meaningful numbers. Although it is not possible to quantify the volume of such services being provided to Oregon consumers, both LegalZoom and Avvo count hundreds of Oregon attorneys as participants in their programs.

How We Regulate Today

Any proposal for revising our regulatory framework must account for the respective roles played by the Oregon Supreme Court, the Oregon State Bar, the Department of Justice, the Secretary of State, and the Department of Consumer and Business Services.

A. Regulation of Lawyers

Legal services offered by Oregon lawyers are regulated by both the Oregon Supreme Court (which has inherent, constitutional, and statutory authority to regulate the practice of law) and the Oregon State Bar (which is a statutory instrumentality of the judicial branch).

i. Oregon Supreme Court

“No area of judicial power is more clearly marked off and identified than the courts’ power to regulate the conduct of the attorneys who serve under it. This power is derived not only from the necessity for the courts’ control over an essential part of the judicial machinery with which it is entrusted by the constitution, but also because at the time state constitutions, including our own, were adopted the control over members of the bar was by long and jealously guarded tradition vested in the judiciary.”

Ramstead v. Morgan, 219 Or 383, 399, 347 P2d 594 (1959).

The Oregon Supreme Court’s regulatory authority with respect to the practice of law is grounded in both separation-of-powers considerations under Article III, section 1, of the Oregon Constitution, *see, e.g., State ex rel. Acocella v. Allen*, 288 Or 175, 180, 604 P2d 391 (1979), and the doctrine of inherent power, *see, e.g., Sadler v. Oregon State Bar*, 275 Or 279, 286, 550 P2d 1218 (1976). *See also, e.g.,* ORS 9.529 (“The grounds for denying any applicant admission or reinstatement or for the discipline of attorneys set forth in ORS 9.005 to 9.757 are not intended to limit or alter the inherent power of the Supreme Court to deny any applicant admission or reinstatement to the bar or to discipline a member of the bar.”).

The Oregon Supreme Court is empowered to admit, regulate, and discipline lawyers. The court promulgates the Oregon Rules of Professional Conduct and Rules for Admission, and the court is the ultimate arbiter of what constitutes the practice of law in Oregon.

ii. The Oregon State Bar

The Oregon State Bar is an instrumentality of the judicial branch. ORS 9.010(2). Among other things, the Bar administers the lawyer admissions and disciplinary systems. ORS 9.210 (admissions); ORS 9.534 (discipline).

The Bar brings enforcement actions against Oregon lawyers for violation of the Oregon Rules of Professional Conduct, which are promulgated by the Oregon Supreme Court. These rules apply to any Oregon lawyer who is a member of the Oregon State Bar, including those who offer legal services online or through alternative delivery models. Of particular relevance to this report are the rules that regulate lawyer advertising (*see* RPC 7.1–7.5) and, with limited exception, prohibit lawyers from engaging in fee sharing or forming partnerships with nonlawyers (*see* RPC 5.4).

B. Regulation of Nonlawyers Providing Legal Services

The current framework for the regulation of persons and businesses other than lawyers and law firms engaged in legal-services delivery includes the Oregon State Bar, but primarily relies on other players. The primary purpose of this framework is to prevent individuals without law licenses from harming consumers.

i. Oregon State Bar

The Bar has authority to investigate the unlawful practice of law and to seek civil injunctions to prevent harm by nonlawyers engaged in the practice of law. ORS 9.160. Apart from this limited authority, however, the Bar does not have authority to regulate nonlawyers.

The Oregon State Bar’s Referral & Information Service helps connect Oregon’s legal consumers with lawyers and disseminates information about available legal resources.¹⁴¹

ii. Oregon Department of Justice

The Department of Justice has authority over consumer fraud and unfair trade practices, including allegations pertaining to the unauthorized practice of law, mortgage-foreclosure fraud, and other unconscionable quasi-legal practices. The Department has the authority to seek civil relief for unfair trade practices, including negotiating an assurance of voluntary compliance.¹⁴²

¹⁴¹ More information about the Bar’s Lawyer Referral Service is available at https://www.osbar.org/public/legalinfo/1171_LRS.htm.

¹⁴² Further information on the Oregon Department of Justice’s Consumer Protection efforts is available at <http://www.doj.state.or.us/consumer/pages/index.aspx>.

iii. Oregon Secretary of State

The Secretary of State regulates individuals with notary commissions. The Secretary of State accepts complaints regarding notaries who misrepresent their scope of authority by claiming the ability to practice law or holding themselves out as *notarios publicos*.¹⁴³

iv. Oregon Department of Consumer and Business Services

The Department of Consumer and Business Services (DCBS) regulates persons and entities that offer legal insurance, perform debt collection, and offer debt-management services.¹⁴⁴ The DCBS does not, however, directly regulate lawyers or legal-referral services. The DCBS does not require Oregon lawyers who engage in debt collection or debt management to obtain a license to do so if their activity is incidental to the practice of law. *See, e.g.*, ORS 697.612(3)(b) (“An attorney licensed or authorized to practice law in this state, if the attorney provides a debt management service only incidentally in the practice of law.”).

RECOMMENDATION 2.1: Advertising Rules

2.1 The Bar should amend current advertising rules to allow in-person or real-time electronic solicitation, with limited exceptions for prospective clients who are incapable of making the decision to hire a lawyer or who have told the lawyer that they are not interested, or when the solicitation involves duress, harassment, or coercion.

We turned our attention first to the advertising rules for lawyers, because they have a profound impact on how lawyers engage with prospective clients online. *See* RPC 7.1–7.5.

For some time, the Bar has been engaged in an effort to modernize these rules, based in part on concerns regarding constitutionality. A 2009 Advertising Task Force made recommendations that ultimately resulted in the 2013 adoption by the Oregon Supreme Court of amendments to Rule 7.1, principally on the ground that the existing rules were overbroad and under-inclusive. The amended rule removed certain restrictions on the manner of lawyer advertising and placed the regulatory focus on false and misleading content.

Within the last year, the Oregon Supreme Court has also adopted changes in advertising rules that replaced the requirement that lawyers include their complete office address in all advertising with a simple requirement for “contact information,” RPC 7.3, and removed the requirement that lawyers who engage in targeted advertising must label their advertising as “Advertising Material,” RPC 7.2(c).

Even with these significant changes in place, we believe that the advertising rules require further revision.

The 2009 Advertising Task Force concluded that “Article I, Section 8 of the Oregon Constitution prevents the blanket prohibition against in-person or real-time electronic solicitation of clients by lawyers or their agents or employees that is presently contained in RPC 7.3.” The changes discussed above left that part of the rule intact. In its current form, Rule 7.3 permits lawyers to engage in in-person or real-time electronic

¹⁴³ Further information on the Oregon Secretary of State’s regulation of notary publics and efforts to prevent abuse by notarios publicos is available at <http://sos.oregon.gov/business/Pages/notary-public-notario-publico.aspx>.

¹⁴⁴ More information about the Division of Financial Regulation is available at <http://dfr.oregon.gov/Pages/index.aspx>.

solicitation *only* if the prospective client is a lawyer, a close personal friend, or an individual with whom the lawyer has a past professional relationship.

Historically, the rule against in-person and real-time electronic solicitation was thought necessary to avoid overreaching by lawyers, particularly when such solicitation was directed at unsophisticated or vulnerable prospective clients. We conclude, however, that such legitimate consumer-protection concerns can be protected by a more narrowly tailored rule that reflects the reality of the current market and that does not implicate free-speech protections under Article I, section 8. This is particularly the case with real-time solicitation, where the contact is not face to face. We are not convinced that online solicitation poses the same risks as those created (at least arguably) by some in-person solicitation, and it indisputably hinders consumers’ ability to find appropriate legal assistance.

Consequently, we endorse the Legal Ethics Committee’s proposed amendment to Rule 7.3 (which has been adopted by the Board of Governors), which would amend Rule 7.3 as follows:

RULE 7.3 SOLICITATION OF CLIENTS

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

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

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

- ~~“(a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person who is the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;~~
- ~~“(b) the [person who is the] target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~
- ~~“(c) the solicitation involves coercion, duress or harassment.”~~

~~(c) 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.~~

Although we recommend adopting these changes that have already been approved by the Board of Governors, we do observe that the language of Rule 7.3 might be more clear if it referred to the “subject” of the solicitation, rather than the “target.”

We also observe that amending Rule 7.3 would have no effect on the current *statutory* restrictions on in-person solicitation in personal-injury cases.¹⁴⁵ We recommend that stakeholders continue to evaluate the constitutional status of that restriction.

RECOMMENDATION 2.2: Amend Lawyer-Referral Services Fee-Sharing Rules

2.2 The Bar should amend current fee-sharing rules to allow fee-sharing agreements between lawyers and lawyer-referral services, with appropriate disclosure to clients.

Oregon lawyers are generally prohibited from “giv[ing] anything of value to a person for recommending the lawyer’s services,” RPC 7.2(b), subject to exceptions for advertising and the usual charges of a lawyer-referral service, RPC 7.2(b)(1)–(2).¹⁴⁶ Similarly, Rule 5.4 prohibits lawyers from sharing a legal fee with a nonlawyer, including an advertiser or referral service, unless the referral service is a bar-sponsored or not-for-profit service. RPC 5.4(b)(5).

The historical justification for such prohibitions has been a concern that allowing lawyers to split fees with nonlawyers and to pay for referrals would potentially compromise the lawyer’s professional judgment. For example, if a lawyer agreed to take only a small portion of a broader fee paid to one who recommends the lawyer’s services, that modest compensation arguably could affect the quality of the legal services. Similarly, a percentage-fee arrangement could reduce the lawyer’s interest in pursuing more modest claims.

We acknowledge that important concern, and we do not propose discarding regulation of lawyers’ fee arrangements. We do believe, however, that the current rule is ill-suited to a changing market in which online, for-profit referral services may be the means through which many consumers are best able to find legal services. Innovative referral-service models that could assist in shrinking Oregon’s access-to-justice gap should not be stifled by a rule that was written for a very different time.

Rather, borrowing from the approach taken for attorney fee splits in Rule 1.5(d), we suggest a revision that balances the legitimate historical concerns with relaxed regulation by requiring written disclosure of the fact of the fee split and the manner of its calculation. Because the rules should also continue to ensure that any fee is reasonable, we further recommend new wording that essentially prohibits the overall fee shared by a lawyer and a referral service from being clearly excessive as defined in RPC 1.5.

Finally, we note that, despite the existence of Rule 5.4, Oregon lawyers are currently participating in an online attorney-client “matchmaking” service that has been found by other bars to be referral services that engage in the improper sharing of fees.¹⁴⁷ Although the Oregon State Bar has not squarely addressed this issue, and no bar complaints have yet been filed arising from such activity, it is entirely possible that

¹⁴⁵ ORS 9.500 provides, “No person shall solicit within the state any business on account of a claim for personal injuries to any person, or solicit any litigation on account of personal injuries to any person within the state, and any contract wherein any person not an attorney agrees to recover, either through litigation or otherwise, any damages for personal injuries to any person shall be void.”

¹⁴⁶ Rule 7.2(b)(2) was amended on January 1, 2017, to remove the requirement that the lawyer-referral service be “not for profit.”

¹⁴⁷ See Pa. Bar Ass’n Comm. on Legal Ethics & Prof’l Responsibility, Formal Op. 2016-200, 9/16; Ohio Supreme Court Board of Professional Conduct Op. 2016-3; South Carolina Ethics Op. 16-06 (2016).

the Bar will soon be required to decide whether lawyers who participate in popular online attorney-client matchmaking services are engaged in unethical conduct. This is yet another reason to carefully examine the continuing utility of Rule 5.4 in its current form.

Accordingly, we recommend that Rule 5.4 be amended to provide:

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(5) a lawyer may pay the usual charges of a lawyer-referral service, including sharing legal fees with the service ~~pay the usual charges of a bar-sponsored or operated not-for-profit lawyer referral service,~~ only if:

(i) the lawyer communicates to the client in writing at the outset of the representation the amount of the charge and the manner of its calculation, and

(ii) the total fee for legal services rendered to the client combined with the amount of the charge would not be a clearly excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

In addition, we recommend that Rule 7.2 be amended to provide:

RULE 7.2 ADVERTISING

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

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

(1) pay the usual charges of a legal_service plan or a lawyer-referral service in accordance with Rule 5.4;

This proposed change to Rule 5.4 would equal the playing field between for-profit, nonprofit, and bar-sponsored lawyer-referral services. It would allow for-profit referral services to take advantage of the same fee-sharing exception currently offered to bar-sponsored and nonprofit lawyer-referral services, but would ensure consumer protection through fee-sharing disclosures and a requirement that the overall fee not be clearly excessive.

We discussed at length whether, in addition to written disclosure as discussed above, lawyers should be required to obtain a client’s informed consent to share a legal fee with a lawyer-referral service. This approach would be consistent with other approaches taken when there is some concern that a lawyer’s fiduciary duty of loyalty to the client could be implicated by self-interest or a relationship with a third party. *See, e.g.,* RPC 1.5(d) (fee splitting among lawyers not at the same firm); RPC 1.7(a)(2) (material limitation conflict); RPC 1.8(a) (business transactions with clients). Although we have stopped short of

making that recommendation, we note that our proposal could be easily amended to require informed consent, should the Board wish to do so.

Taken together, these proposed changes to RPC 5.4 and RPC 7.2 would allow lawyers to use a broader range of referral services, while increasing price transparency for consumers and continuing to ensure an overall reasonable fee.

RECOMMENDATION 2.3: Allow Alternative Business Structures with Licensed Paraprofessionals

2.3 If and when the Board pursues a licensed paraprofessional program, the Bar should amend current fee-sharing and partnership rules to allow participation by licensed paraprofessionals. We recommend further consideration of allowing similar participation by other types of professionals who aid lawyers' provision of legal services.

With limited exception, the Oregon Rules of Professional Conduct prohibit nonlawyer ownership of law firms, RPC 5.4(b), (d); nonlawyer direction of a lawyer's professional judgment, RPC 5.4(c); and sharing legal fees with nonlawyers, RPC 5.4(a). These restrictions are intended to guard against the practice of law by nonlawyers, the sharing of client confidences with people not bound by the Oregon Rules of Professional Conduct, and the risk that a nonlawyer could interfere with a lawyer's independent professional judgment. Hazard, G., Hodes, W., & Jarvis, P., *The Law of Lawyering*, §48.02 (4th ed. 2015).

We now join numerous other jurisdictions in questioning whether these prohibitions are the most appropriate means for protecting the interests of consumers, and whether the rules should be liberalized to account for new, alternative business structures.

The ABA Commission on the Future of Legal Services, in its April 8, 2016, Issues Paper Regarding Alternative Business Structures (ABS), defined the term *alternative business structures* to include "business models through which legal services are delivered in ways that are currently prohibited by Model Rule 5.4."¹⁴⁸

The Commission observed that "[a] variety of ABS structures exist in other jurisdictions, and they have three principal features that differentiate them from traditional law firms":

- "First, ABS structures allow nonlawyers to hold ownership interests in law firms. The percentage of the nonlawyer ownership interest may be restricted (as in Italy, which permits only 33% ownership by nonlawyers) or unlimited (as in Australia).
- Second, ABS structures permit investment by nonlawyers. Some jurisdictions permit passive investment, while other jurisdictions permit nonlawyer owners only to the extent that they are actively involved in the business.
- Third, in some jurisdictions, an ABS can operate as a multidisciplinary practice (MDP), which means that it can provide non-legal services in addition to legal services."¹⁴⁹

¹⁴⁸ The ABA Futures Commission's Alternative Business Structures Issues Paper (April 8, 2016) is available in full at http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf.

¹⁴⁹ *Id.*

The Commission further reported that, as of April 2016, two jurisdictions in the United States (Washington State and the District of Columbia), and many foreign jurisdictions (Australia, England, Wales, Scotland, Italy, Spain, Denmark, Germany, Netherlands, Poland, Spain, Belgium, Quebec, British Columbia, Ontario, and Singapore) permitted some form of ABS.¹⁵⁰

A powerful reason to consider loosening the restrictions of Rule 5.4 is that some of its purposes are already served by other rules. The Bar’s former General Counsel has pointedly asked whether the provisions of Rule 5.4 are “arguably redundant and unnecessary”:

“[L]awyers are already prohibited by RPC 5.5(a) from assisting someone in the unlawful practice of law. In addition, RPC 1.6(c) provides a more general requirement that lawyers ‘make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.’ In other words, lawyers who work with nonlawyers have a duty to ensure that those nonlawyers maintain the confidentiality of client information. Moreover, RPC 5.3 requires that lawyers who have supervisory authority over nonlawyers to ‘make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.’”¹⁵¹

A. Paraprofessional Ownership

If the Board adopts our Committee’s recommendation to implement a paraprofessional licensing program, then we recommend that such licensees be allowed to share legal fees with and participate in ownership of law firms, with appropriate safeguards to protect lawyers’ independence of professional judgment.

This recommendation accords with what Washington has done. In 2015, Washington adopted Rule of Professional Conduct 5.9, which allows “Limited Licensed Legal Technicians” to share fees with lawyers and to form partnerships with lawyers under certain circumstances. That rule provides:

“RPC 5.9 BUSINESS STRUCTURES INVOLVING LLLT AND LAWYER OWNERSHIP

(a) Notwithstanding the provisions of Rule 5.4, a lawyer may:

- (1) share fees with an LLLT who is in the same firm as the lawyer;
- (2) form a partnership with an LLLT where the activities of the partnership consist of the practice of law; or

(3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which an LLLT owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.

(b) A lawyer and an LLLT may practice in a jointly owned firm or other business structure authorized by paragraph (a) of this rule only if:

- (1) LLLTs do not direct or regulate any lawyer’s professional judgment in rendering legal services;

¹⁵⁰ *Id.*

¹⁵¹ Helen Hirschbiel, *The Wave of the Future? Alternative Law Practice Business Structures*, THE OREGON STATE BAR BULLETIN (November 2015) available at <http://www.osbar.org/publications/bulletin/15nov/barcounsel.html>.

- (2) LLLTs have no direct supervisory authority over any lawyer;
- (3) LLLTs do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and
- (4) lawyers with managerial authority in the firm expressly undertake responsibility for the conduct of LLLT partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Rule 5.1.”

In our view, this rule change strikes an appropriate balance between respecting the primary role and responsibility of lawyers, while removing overly strict barriers to new service models that may lead to the delivery of legal services at a lower cost to more consumers. If Oregon goes in the direction of licensing paraprofessionals, we recommend adoption of a similar new rule that essentially exempts such licensees from the prohibitions under Rule 5.4.

B. Ownership by Other Supporting Professionals

In addition to licensed paraprofessionals, it is worth considering whether other types of professionals who aid lawyers should be able to participate in sharing fees and owning businesses with lawyers. Such professionals may include legal-project managers, business executives, accountants, and people with technological expertise. *See, e.g.*, D.C. Rule of Professional Conduct 5.4(b).

Although the information we received relating to this issue was by and large anecdotal, it is undoubtedly the case that some people with high-level skills may be unwilling to partner with lawyers on innovative alternative legal-services delivery models because they are ineligible to own an equity stake in a law firm.¹⁵² This barrier may have a negative impact on innovation within the legal market, inhibiting the creation of models that could better serve the needs of legal consumers. The issue merits further study and should be referred to the Legal Ethics Committee.

C. ABS Pilot Program

One alternative legal-services provider suggested to our Committee that the Oregon Supreme Court explore creating a “pilot program,” temporarily suspending the operation of Rule 5.4 to allow the development of pilot-ABS entities. Although the idea is interesting, we are unaware of a clear path for creating such a pilot program. There is no established process for the creation of temporary or interim Oregon Rules of Professional Conduct.

D. Summary

We believe that allowing economic partnerships between lawyers and licensed paraprofessionals (if such a program is established) is an important but relatively modest step toward liberalizing the rules to promote innovation of new models for delivering legal services. Although we do not specifically recommend further changes to allow alternative business structures at this time, we believe that this is the wave of the

¹⁵² Not all evidence of the impact and utility of ABSs is anecdotal. For instance, the Solicitors Regulation Authority of the United Kingdom has been licensing Alternative Business Structures since 2007, and has published data on how ABS licensees are providing increased access to lower-income-client groups and how the licensees are engaged in the legal market. *See e.g.* Solicitors Regulation Authority, *Research on alternative business structures (ABSs)* (May 2014), available at <http://www.sra.org.uk/documents/sra/research/abs-quantitative-research-may-2014.pdf>.

future and that the Bar should continue to actively consider which provisions in Rule 5.4 are necessary for consumer protection and which provisions otherwise may be worthy of amendment in some fashion.

RECOMMENDATION 2.4: Address Online Form Creation

2.4 The Bar should seek clarification whether providing access to web-based intelligent software that allows consumers to create custom legal documents is not the practice of law, and should seek opportunities to incorporate increased consumer protections.

The legal-services market is seeing significant growth in the availability of online form providers. Unlike “standard” forms, these services may involve the creation of a customized document through “intelligent” software that engages the customer in an interactive question-and-answer process.

The obvious question is whether such providers are engaged in the practice of law in Oregon. The Oregon Supreme Court has generally drawn a distinction between *selling* standardized legal forms—which is not considered the practice of law—and *selecting* particular forms for a customer—which is considered the practice of law. In *Oregon State Bar v. Gilchrist*, 272 Or 552, 538 P2d 913 (1975), the state bar alleged that several individuals had engaged in the practice of law through the advertising and sale of do-it-yourself divorce kits. The Court held:

“We conclude that in the advertising and selling of their divorce kits the defendants are not engaged in the practice of law and may not be enjoined from engaging in that practice of their business. We conclude, however, that all personal contact between defendants and their customers in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms, and filling out any part of the forms, or suggesting or advising how the forms should be used in resolving the particular customer's marital problems does constitute the practice of law and must be and is strictly enjoined.”

Gilchrist, 272 Or at 563–564, 538 P2d at 919. Although *Gilchrist* was decided several decades before the advent of “intelligent” form-creation software, these new providers, to the extent that they are engaging consumers in an interactive information-gathering process, may implicate the court’s emphasis on “recommendation” and “assistance in...filling out any part of the forms.” The question is unsettled.

Even so, we must recognize the utility of empowering self-navigators to craft forms themselves when they lack the means or ability to hire legal counsel (or simply wish not to). Harnessing technology to enable self-navigators to create forms that meet their specific needs undoubtedly supports the Bar’s goal of increasing access to justice. The Oregon Judicial Department itself has recognized this, and is presently developing a catalog of intelligent forms, called iForms, for self-represented litigants.¹⁵³

On the other hand, we believe that such forms may not be appropriate for all consumers, particularly when complex legal issues are involved. We believe, in short, that the Bar should embrace the trend toward intelligent form-creation software, balanced by appropriate consumer protections.

¹⁵³ The Workgroup is of the opinion that the Oregon Judicial Department has the inherent authority to offer forms to litigants appearing before Oregon courts and that, as a separate branch of government, the courts should not be subject to any regulation of their ability to provide such forms.

Accordingly, we recommend that the Bar take the position that the sale of customized legal forms by providers of “intelligent” software is generally not the practice of law, and that the Bar also pursue several specific consumer protections so that:

- (1) The consumer is provided with a means to see the blank template or the final, completed document before finalizing a purchase of that document.
- (2) An Oregon licensed attorney has approved each aspect of any legal document offered to Oregon consumers, including each and every potential part thereof that may appear in the completed document, and the logical progression of the questions presented to the Oregon consumer.
- (3) The consumer has the ability to confirm that an Oregon attorney completed the review.
- (4) The provider has confirmed that the consumer understands that the forms or templates are not a substitute for the advice or services of an attorney before the consumer may complete the form and prior to the purchase of the form.
- (5) The provider discloses its legal name and physical location and address to the consumer.
- (6) The provider does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the consumer.
- (7) The provider does not require the consumer to agree to jurisdiction or venue in any state other than Oregon for the resolution of disputes between the provider and the consumer.
- (8) The provider has a consumer-satisfaction process.
- (9) The provider does not require the consumer to engage in binding arbitration.
- (10) The provider provides adequate protections for the consumer’s personally identifiable data.
- (11) Any terms and conditions required by the provider are fully, clearly, and conspicuously displayed to the consumer in simple and readily understood language.

Such protections could, presumably, be appropriately enforced through existing mechanisms, such as the Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*

SELF-NAVIGATORS WORKGROUP REPORT & RECOMMENDATIONS

INTRODUCTION: DEFINING THE PROBLEM AND POTENTIAL SOLUTIONS

As addressed elsewhere in this Task Force report, the number of self-navigators (i.e., self-represented litigants) in Oregon's courts has grown and continues to grow.¹⁵⁴ Our Task Force proposes ways to reduce that number. However, it is important to recognize that, even if we succeed in increasing access to affordable legal services, some litigants will continue to be self-represented out of necessity or by choice. Regardless of whether self-representation is desirable in and of itself, it is desirable that self-navigators have access to resources that can make their journey through the court system as efficient and painless (for themselves and others) as possible. Thus, the purposes of this workgroup were to gather information about existing Oregon resources for self-navigators, how those resources could be accessed, and to identify areas for improvement.

We reviewed current data and literature regarding self-navigation and gathered information about how other states have addressed this issue. We also heard presentations by the Oregon Judicial Department (OJD), the OSB Lawyer Referral Service (LRS), Legal Aid, the Washington County law library, and two Oregon Circuit Court judges.

A framework for analysis began with several core questions: What resources are available for self-navigators in Oregon? What gaps or barriers exist in the availability or accessibility of information? How can we do better?

We tested the availability and accessibility of on-line resources from the standpoint of consumers in the following areas: landlord tenant, family law, small claims, and collections. We studied past efforts in Oregon and elsewhere that have discussed options for addressing needs, including the development of courthouse Self-Help Centers. Some of the groups in Oregon and elsewhere studying or highlighting the problems for self-navigators include the State Family Law Advisory Committee (SFLAC), the Conference of Chief Justices' Civil Justice Improvements Committee¹⁵⁵ and ideas from the September 2016 Oregon Access to Justice Forum.¹⁵⁶ In some cases, the recommendations of other groups may be incorporated here, and efforts have been made to acknowledge these ongoing efforts.

¹⁵⁴ Data on current statistics on self-representation in Oregon courts is included in the chart entitled Oregon Circuit Court Cases with Representation (2016), *supra* at Paraprofessional Regulation Report & Recommendations, Appendix B.

¹⁵⁵ In 2016, the Conference of Chief Justices' Civil Justice Improvements Committee released a Civil Justice Initiative (CJI) report with 13 recommendations intended to reduce cost and delay in civil litigation and improve customer service to litigants, including self-navigators. Among other things, the CJI report details national trends about the increasing number of cases with one or more self-represented litigants, and persistent issues that arise for those litigants and the courts. Oregon is in the initial stages of a statewide effort to evaluate the CJI report. We note that recommendations made in this report may similarly address concerns raised in the CJI report, and ongoing statewide CJI efforts also may continue to address self-navigator issues in the Oregon courts.

¹⁵⁶ Materials for the Summit include information on family law, self-help centers, small claims and other information on self-help and can be found on the Campaign for Equal Justice website: <http://www.cej-oregon.org/pdfFiles/ATJ%20Forum/2016-09-08%20ATJ%20Forum%20-%20ALL%20MATERIALS.pdf>.

RECOMMENDATION 3: IMPROVE RESOURCES FOR SELF-NAVIGATORS

We made six recommendations aimed at improving access to justice for self-navigators in Oregon.

3.1 Coordinate and integrate key online resources utilized by self-navigators.

Establish a committee with representatives from the three stakeholder groups -- Oregon Judicial Department (OJD), the bar, and Legal Aid -- to coordinate and collaborate on the information available on their respective websites, including cross-links when appropriate.

3.2 Create self-help centers in every Oregon courthouse. The Oregon State Bar and OJD should consider proposing or supporting the creation of Self-Help Centers to assist self-navigators, including the use of dedicated and trained court staff and volunteers. The goal should be Self-Help Centers in every court in Oregon.

3.3 Continue to make improvements to family law processes to facilitate access by self-navigators. Implement the recommendations of the OJD's State Family Law Advisory Committee regarding family-law improvements to assist self-navigator. Seek to improve training and ensure statewide consistency in training to family-court facilitators.

3.4 Continue to make improvements to small claims processes to facilitate access by self-navigators. Implement the recommendations from the 2016 Access to Justice Forum regarding small claims process. Support changes to provide better courthouse signage, instruction, and education for consumers.

3.5 Promote availability of unbundled legal services for self-navigators. Educate lawyers about the advantages of providing unbundled services, including the existence of new trial court rules. Provide materials on unbundled services to Oregon lawyers (OSB website, Bar Bulletin and through local, specialty bars and section), including ethics opinions, sample representation and fee agreements, and reminders about blank model forms that can be printed from OJD's website.

3.6 Develop and enhance resources available to self-navigators. While OSB, OJD and legal aid have made strides in providing information that is useful for self-navigators, we must continue to improve existing resources and develop new tools.

During our work, we attempted to identify existing entities that are well-positioned to implement these recommendations. In some cases, it may be prudent to assign an on-going group—whether within the Bar, the OJD, or elsewhere—that can meet periodically to review the implementation of recommendations, if adopted.

RECOMMENDATION 3.1: Coordinate and integrate key online resources utilized by self-navigators.

Oregon has three robust websites that provide legal information to self-navigators. They are the Oregon Judicial Department's website and corresponding court websites,¹⁵⁷ the Oregon State Bar's public website,¹⁵⁸ and Oregon legal aid organizations' informational website, Oregon Law Help¹⁵⁹.

These existing resources are heavily used by Oregonians. Oregon Law Help has almost 750,000 page views a year; and the OJD homepage also has about 750,000 views each year, excluding access from the courthouses. The Bar's public site has more than one million page views a year. While these three websites link to each other, in some cases, the information is outdated, and in others, the link creates a dead end, without linking back to court forms or other key resources such as the Oregon Lawyer Referral Service.

In recent years, OJD has launched interactive forms ("iForms") on its website; this effort is ongoing. In addition, OJD's "Self-Help" page, its Family Law Website, and individual court websites provide information about court proceedings, contact information, and links to other external resources. Beginning in June 2017, OJD is rolling out a staged overhaul of its own website and the individual court websites, to make them more cohesive, user-friendly, and mobile-device friendly.

OJD also currently provides courthouse terminals to permit access to public case information, and most courts also have an eFiling terminal for attorneys. New courthouse construction projects are looking ahead to expanding the use of court terminals or kiosks for both lawyers and self-represented litigants, but final planning is not yet confirmed. The availability of additional kiosks, in any court or statewide, depends in large part on funding.

The Oregon State Bar's website provides legal information on a variety of topics, as does Oregon Law Help. The bar's website (information available to the public tab) provides a wealth of information on legal topics, but only lists three subject areas under the "Do It Yourself" Heading: restraining order hearings, small claims court, and summary dissolution. The Bar is in the process of updating its website as a part of a management system software upgrade.

The quantity and quality of online information is impressive, but more needs to be done to make this information more accessible. Some states have created a single website that serves as a central repository for legal self-help website information. We considered whether Oregon should similarly consolidate its self-help resources onto one website. The idea of a primary website for self-navigators has advantages, but we ultimately rejected this approach for the following reasons: 1) because it is unlikely that any of the three current stakeholders would give up their sites, the creation of a fourth self-help website might only duplicate effort and create confusion; 2) each stakeholder's website has a slightly different emphasis and has certain strengths directed at different audiences; and 3) moving to one central website would likely be costly and these resources could be better spent elsewhere. (It should be noted that both OJD and the OSB quickly made some changes to their websites in response to this group's work.) Rather than create a new website, we recommend the following specific steps for improving and coordinating the online resources now available:

157 The Oregon Judicial Department's primary website is available at <http://www.courts.oregon.gov/ojd/pages/index.aspx>.

158 The Oregon State Bar's public website is available at <https://www.osbar.org/public/>.

159 Oregon legal aid's website is available at <http://oregonlawhelp.org/>.

- Establish a committee with representatives from the three stakeholder groups (OJD, OSB, and Legal Aid), to coordinate and collaborate on the information available on their respective websites, including cross-links when appropriate.¹⁶⁰ Their work should include:
 - Providing updated information about new content or formatting on each group's website, particularly where new cross-links can be created or stale cross-links should be removed;
 - Seeking the assistance of lawyers and public members who can assist with testing access to self-navigation tools on various legal subject areas and make recommendations to the stakeholders for improvement;
 - Considering the expertise of each stakeholder (for example, Legal Aid is likely to have the most thorough information available to tenants in landlord tenant disputes);
 - Creating higher visibility for these three primary websites;
 - Providing opportunities on the websites for public input and feedback¹⁶¹; and
 - Encouraging the three primary websites to include clear links for finding legal services.

RECOMMENDATION 3.2: Create self-help centers in every Oregon courthouse.

Self-help forms and access to the internet are a step in the right direction in increasing access to justice, but more individualized help is needed. As explained in a California report,

“Although technology can increase the efficiency and reach of legal assistance and provide innovative methods of providing legal information, it cannot substitute for the in-person assistance of attorneys and other self-help center staff. Self-represented litigants need much more than just written information or Web sites or computer kiosks.”¹⁶²

The need for individualized attention puts a strain on existing court staff. Oregon judges have described the administrative challenges and ethical dilemmas that they face, including balancing neutrality with ensuring that a litigant has a meaningful opportunity to be heard.

In response to the drain on court staff and barriers faced by self-represented litigants in the area of family law, many states adopted family law facilitation programs. The Oregon Legislature created the family-law facilitation program in 1997. Family-law facilitator program staff may provide “educational materials, court forms, assistance in completing forms, information about court procedures,” and referrals to other agencies and resources. ORS 3.428. Employees or others who provide services to litigants through the program are not engaged in the practice of law. ORS 3.428(4). The program operates under the supervision of the family-court department or the presiding judge.

160 At the least, the Work Group recommends that each of the stakeholder groups appoint a designated staff person who can work with designated staff from the other groups to discuss and coordinate content and link updates.

161 Because providing a comment section seems to signal that people should post the details of their legal problem, the best approach may be to ask, “Is this page helpful?”

162 Judicial Council of California/Administrative Office of the Courts, *Equal Access Fund—A Report to the California Legislature* (March 2005), available at <http://www.courts.ca.gov/documents/Equal-Access-Fund-March-2005.pdf>.

The facilitators—who are not lawyers—provide in-person assistance to litigants in family-law cases, such as reviewing forms, providing information about court processes, providing post-hearing support, and providing community-resource reference information. They do not provide legal advice.

The programs differ, from minimal hours in some judicial districts to full support in others. All programs provide assistance with routine family-law cases, and some also provide assistance with FAPA and other restraining orders, as well as with probate and minor guardianships. By statute, the court-facilitator programs are limited to family-law cases, ORS 3.428. There is currently a draft proposal to expand the facilitator program beyond its current family-law scope.

It is helpful to understand why individuals self-represent and what their experiences are. A recent study, entitled *Cases without Counsel: Research on Experiences of Self-Representation in U.S. Family Court*, by the Institute of the Advancement of the American Legal System, studied why individuals self-represent and their experiences in doing so.¹⁶³ About three-fourths of the participants in the study, which included participants in Multnomah County family-law cases, represented themselves because they simply could not afford legal representation or because they had other financial priorities. Another one-fourth, however, expressed a preference for self-representation, even if they had financial resources to pay for a lawyer. “The underlying sentiments driving litigants’ preference to self-represent included the relationship between the parties, agreement between the parties, a desire to retain control, and a do-it-yourself mentality,” at 18. The *Cases without Counsel* study went on to address how disadvantages play out when individuals choose to represent themselves in family-law cases, including a negative impact in the case and an already stressful process becoming even more stressful. And, of the cases studied, about one half of the litigants had some assistance from a lawyer, but most of those litigants were dissatisfied with the help they received.

In a companion publication, *Cases Without Counsel: Our Recommendations after Listening to the Litigants*, the project made several additional recommendations to courts, bar associations, and legal-services providers about how to improve the experiences of self-navigators.¹⁶⁴ Many of these recommendations are incorporated in this Workgroup Report.

To improve the experiences of self-navigators in other areas of law, many states and foreign countries have developed self-help centers, providing assistance beyond family-law facilitation programs. The California courts started their Self-Help Centers more than 10 years ago, and they now exist in every California judicial district. California’s Self-Help Centers should serve as a model in Oregon.¹⁶⁵

The California model essentially expanded that state’s family-law facilitator program to also address landlord-tenant issues, debt-collection issues, conservatorships, restraining orders, guardianships, small claims, simple probate issues, and traffic citations. Not all grantees cover these areas. Courts are

163 Natalie Ann Knowlton et al., Institute of the Advancement of the American Legal System, *Cases without Counsel: Research on Experiences of Self-Representation in U.S. Family Court* (May 2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf.

164 Natalie Anne Knowlton, Institute of the Advancement of the American Legal System, *Cases without Counsel: Our Recommendations after Listening to the Litigants* (May 2016), available at http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf.

165 For an educational video about the creation and operation of California Self-Help Centers, see a video created by the Judicial Council of California and the Public Welfare Foundation entitled “Learning about Legal Self-Help,” available at <http://www.publicwelfare.org/civil-legal-aid/>.

provided with basic technology and space to operate, including computer terminals and video playback equipment and appropriate signage.

When individuals arrive at the Self-Help Center, a triage clerk assesses the appropriateness of the problem and typically refers the case to an attorney or paralegal, called an “expeditor.” That person provides more substantive help. Self-Help Centers do not provide legal advice, but instead provide information and education. They do not screen for conflicts, income eligibility, or legal status.

Assistance from Self-Help Center staff is provided in-person; by telephone; in workshops; in classes; and via telephone hotlines, videoconferencing, e-mail, or other methods of communication. Staff must be able to provide assistance and referrals.

We make recommendations below based on what we believe will be best practices, recognizing that limitations on resources and scarcity of funding will undoubtedly affect what type of Self-Help Centers ultimately may be created. We feel strongly that funding for Self-Help Centers should not compete with, or nor interfere with funding for Oregon’s Legal Aid programs, which are grossly underfunded and are currently under threat of losing federal funding (about 30% of funding).

Recommendations:

- The Oregon State Bar should consider proposing or supporting legislation that, to the extent needed, would permit the creation of Self-Help Centers to assist self-navigators, including the use of dedicated and trained court staff and volunteers. The goal should be to have Self-Help Centers in every court in Oregon.¹⁶⁶
- Key areas for providing service should include family law, landlord-tenant, consumer issues (specifically, debt collection), and small claims, with possible future expansion into other areas, such as guardianships, conservatorships, and probate. Additionally, any practical barriers to providing assistance on traffic-court matters should be removed.
- Self-Help Centers should be available to help self-navigators regardless of income eligibility.
- When possible, a lawyer should supervise Self-Help Center staff and volunteers.¹⁶⁷
- All staff or volunteers providing assistance should complete training (a certification process) in each subject area in which he or she will provide assistance to customers in Self-Help Centers, and training should be standardized and made available via webinar.
- Law students should be encouraged to volunteer or be employed as staff in Self-Help Centers, but academic credit is not recommended for these programs, and law students should be required to undergo the same training and certification as any other staff or volunteer.¹⁶⁸
- Self-Help Center staff and volunteers (including lawyers) would not provide legal advice. Nonetheless, clear signage should reiterate that no attorney-client relationship is being formed and that confidentiality and privilege do not apply. The current court-facilitator

¹⁶⁶ Janice Morgan, Executive Director of Legal Aid Services of Oregon, and an advisor to the group abstained from discussing or supporting any legislative proposals, as is required by her position and federal funding.

¹⁶⁷ The workgroup recognized that this rule may need to provide for local flexibility, as lawyers may not be available to supervise court-facilitators in rural areas.

¹⁶⁸ The Workgroup acknowledged that law school accrediting authorities require close supervision by faculty and that the mission of providing appropriate supervision for academic credit would be an expenditure of additional resources.

statute, ORS 3.428(4), states that “an employee or other person providing services to litigants through a family-law facilitation program as provided in this section is not engaged in the practice of law in this state for purposes of ORS 9.160.” It is anticipated that any Oregon Self-Help Center legislation would contain similar wording.

- Self-Help Center staff and volunteers would not appear in court on behalf of a party.
- Self-Help Center staff and volunteers would make appropriate referrals to lawyers or other legal professionals when the types of services that the Self-Help Center can provide are not sufficient.
- Self-Help Centers should be housed in convenient locations for the courts and customers, and should be open during hours that are convenient for customers.
- Self-Help Centers should be equipped with appropriate resources and technology—including computer stations, video play-back equipment, access to conference rooms for training, and written materials.
- The courts and Self-Help Center staff and volunteers should work closely with the local bar, legal aid programs, and other stakeholders who strive to provide access to justice to Oregonians.
- To the extent that lawyers act as volunteers in Self-Help Centers, special efforts should be made to ensure that pro bono lawyers will not participate in the representation of either party outside of the Self-Help Center. Avoiding the appearance of impropriety is important to maintaining the integrity of the justice system. Oregon RPC 6.5, the rule of professional conduct related to lawyer service for nonprofit and court-annexed limited legal services programs, should be reviewed to determine its potential application to lawyers who volunteer in Self-Help Centers, and whether amendments are appropriate.
- Implement and/or review the 2007 recommendations by the SFLAC after further input and evaluation by the SFLAC.
- To the extent that full-service Self-Help Centers are not feasible at this time in Oregon, the workgroup nonetheless recommends:
 - Expanding the scope of ORS 3.428 to include areas other than family law.
 - Launching a pilot program for further implementation and modification as additional resources become available.

RECOMMENDATION 3.3:

Continue to make improvements to family law processes to facilitate access by self-navigators.

According to 2016 OJD data, approximately 80 percent of litigants in dissolution and custody cases are self-represented. As previously noted in this report, the Oregon courts have long recognized that self-represented litigants in family-law cases face barriers and create a drain on court resources. The

family-law facilitator program under ORS 3.428, was established to help address this problem.¹⁶⁹ All but one of the Oregon judicial districts (i.e., Columbia County) currently have family law facilitation programs in place, in conjunction with both the local court and the OJD's family law Program. In addition, the Oregon Judicial Department's State Family Law Advisory Committee (SFLAC) makes recommendations to improve the family-law process for self-represented litigants.

In Oregon, two recent changes are aimed at improving the experiences of self-represented family-law litigants: (1) changes to UTC 8.110 regarding unbundled legal services and (2) the development of informal domestic-relations trials.

A new Uniform Trial Court Rule, UTCR 8.110, which became effective in August 2016, sets out certain notice and service requirements that apply if unbundled legal services are used in family-law cases. These requirements will also soon apply to all civil cases.¹⁷⁰

More informal proceedings will soon become available to litigants in certain family-law cases. Self-navigators with trials in domestic-relations cases will soon be able to choose whether to proceed with a formal trial or to proceed with an "Informal Domestic Relations Trial" (IDRT) under a new Uniform Trial Court rule that is scheduled to become effective on August 1, 2017 (UTCR 8.120). IDRTs permit parties—whether represented by counsel or not—to present their sides of the case in a more informal way. Cross-examination is not permitted, witnesses generally are not allowed to appear (except for approved experts), the rules of evidence (but not the right to appeal) are waived, and only the judge is permitted to ask questions. If both parties opt for an IDRT, then one will be held; otherwise, if one or both parties opt for a traditional trial, then a traditional trial will be held. Deschutes County Circuit Court has been piloting IDRTs successfully for several years, and the OJD anticipates that IDRTs will be a useful option for parties in uncomplicated cases involving marital assets, as well as in certain other cases.

The OJD's SFLAC is another group that makes recommendations to assist self-navigators. The SFLAC is a statutory, legislatively created committee whose members are appointed by the Chief Justice. The SFLAC's charge is to inform the OJD, the Chief Justice, and the State Court Administrator about reforms that would benefit the management of family conflict in the judicial system. The SFLAC has a standing Self-Represented Litigants Subcommittee that meets each month.

In 2007, the SFLAC issued a comprehensive report and made seven recommendations for improvements.¹⁷¹ Many of these recommendations have been implemented or partially implemented, but others—such as the creation of a Self-Represented Litigants Task Force—have stalled due to lack of funding. Some of the workgroup's recommendations in this report are similar to earlier outstanding recommendations from the SFLAC's 2007 report, and the 2007 report otherwise shows that issues for self-navigators have persisted for many years in the courts.

169 See discussion of family-law facilitator programs *supra* in Recommendation 3.2.

170 The UTCR Committee has recommended, and the Chief Justice has approved, applying those same requirements to all civil cases, effective August 2017 (to be enacted as a new UTCR 5.170).

171 See State Family Law Advisory Committee (SFLAC) of the Oregon Judicial Department, *Self-representation in Oregon's Family Law Cases: Next Steps* (September 2007), available at https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/downloads/final_report_on_self_representation_090607.authcheckdam.pdf.

At the request of one member of the Regulatory Committee, who also serves on the SFLAC, the Workgroup reviewed materials describing Australian "Family Relationships Centres" (FRCs), which are designed to attempt to serve families in crisis by offering an array of services at reasonable cost in a consumer-friendly location. The model is "an early intervention strategy to help parents manage the transition from parenting together to parenting apart in the aftermath of separation, and are intended to lead to significant cultural change in the resolution of post-separation parenting disputes." Patrick Parkinson, *The Idea of Family Relationship Centres In Australia*, 51 Family Court Review 2 (April 2013), 195-213. The Australian model also includes an online mediation program. FRCs in Australia are publicly funded but privately run facilities that offer mediation, legal services, financial services, counseling, parent education, and the like in a single location. The SFLAC continues to review the Australian model and the feasibility of implementing portions of that model in Oregon. The workgroup concluded that this approach would likely require fundamental changes to family law in Oregon and was beyond the scope and expertise of this Workgroup. The OJD's SFLAC has voted to study this model and may be making a related recommendation to the Chief Justice.

Many of the recommendations in this workgroup report apply to family law—increasing interactive court forms, increasing information on websites, and increasing the number of lawyers to help with unbundled legal services:

- Support the recommendations of the SFLAC regarding family-law improvements to assist self-navigators.
- Improve training and ensure statewide consistency in training to family-court facilitators, especially regarding the parameters of their work.¹⁷²

RECOMMENDATION 3.4:

Continue to make improvements to small claims processes to facilitate access by self-navigators.

More than 54,000 small-claims cases were filed in 2016 statewide, almost double the number of family-law cases filed, and three times the number of landlord-tenant cases. Many of our recommendations are based on the observation of one lawyer who sat in on small claims proceedings in 14 Oregon counties,¹⁷³ as well as on recommendations by a panel presented at the September 2016 Oregon Access to Justice Forum on Self-Represented Parties in Small Claims and Consumer Law.¹⁷⁴ They are the following:

- Information about fee waivers and deferrals should be more prominently displayed on all websites, and judges and clerks should be trained on fee deferrals and waivers in small-

172 The workgroup noted that training in the existing family-law facilitator program could be improved. The biggest concern discussed by the workgroup, and also supported by a review of court-facilitator programs, is that facilitators are so concerned about the practice-of-law prohibition that they do not feel comfortable providing assistance. *See also, Cases without Counsel Study*, page 27–28, *supra* at note 163 which found a similar problem expressed by both litigants and court staff.

173 Janay Haas, *It Can be a Jungle Out There: A Litigants View of Small Claims Court*, OREGON STATE BAR BULLETIN (June 2014), available at <http://www.osbar.org/publications/bulletin/14augsep/smallclaims.html>.

174 Hon. Steven A. Todd, Judge Pro Tem, Richard Slottee, and Bret Knewtson, "Self-Represented Parties in Small Claims and Consumer Law," Access to Justice Forum (2016), available at <http://www.cej-oregon.org/pdfFiles/ATJ%20Forum/2016-09-08%20ATJ%20Forum%20-%20ALL%20MATERIALS.pdf>.

claims cases and other cases. (Discussion is underway at the OJD about various statewide issues relating to fee waivers and deferrals).

- Improve courthouse signage about the location of small claims hearings and the location of the clerk's office.
- Provide instructions so that small-claims litigants understand that their case is not the only one scheduled for a certain time, so they should plan to arrive on time and then wait their turn and plan their day accordingly.¹⁷⁵
- Information available to self-navigators should make clear that, in limited cases, lawyers may appear in small-claims court.
- Explore whether the limits on small claims should be increased.
- Consider whether claimants should be able to be represented by trained and certified nonlawyers or lawyers in cases in which the opposing party, typically a corporation, is represented by either a lawyer or a trained representative.
- Update county-court websites to link to interactive forms.¹⁷⁶
- Consider recommendations proposed by a panel at the September 2016 Oregon Access to Justice Forum that deal with small-claims and consumer cases.¹⁷⁷ In particular, the workgroup recommends supporting the following recommendations:
 - Require that an affidavit or declaration be attached to the complaint showing proof of assignment, debits and credits, date and form of last communication with defendant in an attempt to resolve the claim, and statement about exemptions from judgment.
 - Extend the 14-calendar-day period to respond to the complaint to a longer time.
 - Include in service documents a clear and conspicuous notice that the defendant can request additional time to respond by sending a letter to the court.
 - Set up mediation before the time that the defendant must respond to the complaint.
 - Establish a small-claims court monthly explanation program, like that of the Oregon State Bar's Debtor Creditor Section Pro Bono Bankruptcy Clinic. Utilize the services of pro bono volunteer attorneys and law students to provide explanation and advice.

RECOMMENDATION 3.5: Promote availability of unbundled legal services for self-navigators.

Low-income Oregonians may qualify to receive free legal assistance from Legal Aid. In fact, about 84% of the time, Legal Aid lawyers are able to help clients resolve their issues with just brief advice and

¹⁷⁵ OJD is currently working on a change to its instructions, as a response to this preliminary recommendation.

¹⁷⁶ OJD is the process of updating all county-court webpages and will be using a standard page template to link to forms and other information.

¹⁷⁷ In particular, the workgroup recommends reviewing the recommendations contained in the presentation on *Self-Represented Parties in Small Claims and Consumer Law*, which are available in the materials at 344–361, available at <http://www.cej-oregon.org/pdfFiles/ATJ%20Forum/2016-09-08%20ATJ%20Forum%20-%20ALL%20MATERIALS.pdf>.

service—most of the time helping clients resolve their issues without having resort to the courtroom or litigation. As explained by Janice Morgan, Executive Director of Legal Aid Services of Oregon, such an outcome is not necessarily by design, but, in many cases, is simply a result of the lack of resources to provide all services that may be needed. In fact, Oregon’s Legal Aid programs can meet only about 15% of the legal needs of the poor in civil matters, and therefore must limit its work to the highest priority areas (typically food, shelter, income maintenance, and safety from domestic violence), and also must often limit the level of service that it provides. Legal Aid does try to supplement its services through pro bono assistance and self-help materials, including self-help classes. In addition to legal aid, there are other Oregon organizations that provide representation to low- or middle-income individuals in discrete areas of representation (immigration law, family law, and employment law) for free or for a reduced fee, but the needs of this population are not being met.

The OSB’s Lawyer Referral Service (LRS) has panels of lawyers available to provide assistance to self-navigators, although those services may not be clearly identified as such from a consumer standpoint, are not prominent on the LRS’s website that is visible to consumers, and are not prominent in the enrollment application for lawyers. Consumers may be frustrated by the lack of information about lawyer assistance, including a lack of transparency about the fees.

The LRS’s Modest Means Program is very popular with Oregonians (it receives approximately 30,000 calls per year), but, due to limitations on the number of lawyers willing to take reduced-fee cases and the strict eligibility requirements for the program, only 3,000 clients are placed each year. There appear to be some barriers, both financial and otherwise, to significantly expanding the Modest Means Program. Third-party vendors (like AVVO and Legal Zoom) may be working to fill some of these needs; although they advertise legal services to self-navigators, those referrals are made only to lawyers who have joined those networks.

Unbundled legal services—that is, the provision of agreed-on, discrete legal services to a client by a lawyer—is another resource available to self-navigators who otherwise would proceed without counsel. In the past, the provision of unbundled legal services was viewed unfavorably; although it is unlikely that that perception continues today, it does not appear that lawyers market these types of services. For individuals who do not qualify by either income or priority area, little information is available about the numbers of lawyers in the private bar who currently provide unbundled services to self-navigators, and there are few lawyers who advertise services in this way. Oregon has taken steps within the last year to clarify that unbundled legal services are permitted. A new Uniform Trial Court Rule, UTCR 8.110, which became effective in August 2016, sets out certain notice and service requirements that apply if unbundled legal services are used in family-law cases, and the UTCR Committee has recommended, and the Chief Justice has approved, applying those same requirements to all civil cases, effective August 2017 (new UTCR 5.170). The new UTCRs may prompt an increased use of unbundled legal services and in advertising that type of representation to potential clients.

The following recommendations are intended to encourage Oregon lawyers in private practice to assist self-navigators:

- Educate lawyers about the advantages of providing unbundled services, including the existence of new trial-court rules.
- Provide materials on unbundled services to Oregon lawyers (on the OSB’s website; in the Bar Bulletin; and through local, specialty bars and sections), including ethics opinions,

- sample representation and fee agreements, and reminders about blank model forms that can be printed from the OJD's website.
- Develop sample business plans for new lawyers, including information about how to incorporate unbundled services. Disseminate this information with other messages and materials to new lawyers.
 - Offer a CLE program to private lawyers about how to market unbundled legal services to self-navigators. Such a CLE program also might be of interest to the New Lawyers Division.
 - Support the efforts of the OSB Public Service Advisory Committee (PSAC) to expand the Modest Means Program and subject areas for unbundled services through the LRS, and make these services more prominent and visible to both consumers and lawyers.
 - Encourage the PSAC to explore methods to increase the visibility of limited-scope representation to self-navigators on the LRS, the OSB's website, and through other bar outreach efforts.
 - Continue efforts to recruit more lawyers to help self-navigators through the LRS, especially in areas that are underserved. This includes recruiting lawyers for the Modest Means Program, particularly in those geographic areas that are underserved.
 - Consider expansion of the Modest Means Program.

The availability of limited legal assistance from licensed paralegals also would benefit self-navigators. The Paraprofessional Regulation Workgroup of the OSB's Futures Task Force's Regulatory Committee has made a separate recommendation on that topic.

RECOMMENDATION 3.6: Continue to develop and enhance resources available to self-navigators.

While OSB, OJD and legal aid have made huge strides in publishing information that is useful to self-navigators, we must continue to develop and enhance available resources.

- Continue developing interactive forms and materials on the OJD's website.¹⁷⁸
- Seek feedback from self-navigators on whether online materials are helpful.¹⁷⁹
- Continue the efforts of OSB staff to expand the information on the OSB's public website to include more topics under "Do It Yourself," even if this is just a cross-reference to Oregon Law Help or other resources.
- Continue the efforts of OSB staff to expand and update the OSB's web pages to include links to other sources (e.g., small-claims information is outdated and does not mention or link to the OJD's interactive forms).

178 To date, the OJD offers interactive form packets for small claims, residential Forcible Entry and Detainer (FED) evictions, satisfaction of money awards, applying for or renewing a Family Abuse Prevention Act (FAPA) restraining order, dissolution, separation, unmarried parents, and parenting plans. The OJD's next iForms release will include an updated FAPA packet, followed by family-law modifications and temporary orders. Other forms are in the process of being evaluated for interactive form development, including some nonfamily-law forms.

179 Because providing a comment section may encourage consumers to share the details of their legal problem, the best approach may be to include a one-question survey, merely asking "Is this page helpful?" as many websites do.

- Continue ongoing efforts to redesign local courts' web pages.
- Educate lawyers about the resources that are available for self-navigators. This could include regularly targeting bulleted and website information to new lawyers through the OSB's swearing-in packets or the OSB's New Lawyer Mentoring Program materials.
- Train lawyers on how to interact with self-represented individuals (the Multnomah County Bar Association recently presented a CLE program on this topic).
- Expand the visibility of help to self-navigators through the OSB's Lawyer Referral Service.
- Support the efforts of legal aid in making printed materials available in libraries, as well as through community partners and social-service agencies.
- Consider placing kiosks that can link to courthouses in rural areas where travel to the county courthouse poses a barrier to the access of justice.¹⁸⁰
- Expand the number of self-help classes available on various legal topics, either through court programs, legal aid, or other stakeholders.
- Provide a gap analysis to see what forms and resources should be developed.
- Catalog existing short do-it-yourself videos for self-navigators. Some are available through the various stakeholders' websites. Ask the OSB to evaluate whether members could volunteer to create additional videos where gaps exist.
- Consider developing visual materials and new technologies, such as online interactive tools about how to prepare for a court proceeding.¹⁸¹
- Review materials to confirm that they are easy to understand and aimed at an appropriate grade level in terms of reading ability (ideally at no higher than an 8th grade reading level).

180 Kiosks are used by some states as a way to connect individuals in rural areas to the court where travel distance to the courthouse is difficult. Arizona is one such example. See Alicia Davis, *et al.*, *2014-2018 Mohave County Courts, Arizona Strategic Plan*, available at <http://www.mohavecourts.com/whatsnew/StrategicPlan.pdf>.

181 Examples of effective visual materials can be found in *Cases without Counsel, supra*, at note 163.

**OSB FUTURES TASK FORCE
INNOVATIONS COMMITTEE | REPORT AND RECOMMENDATIONS**

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Futures Task Force Innovations Committee Report and Recommendations

Introduction

The Innovations Committee took an innovative approach to its work, leading by embracing the discomfort of trying something new. As directed in its charge, the committee began by identifying and cataloguing the resources that currently exist for new lawyers and underserved low- and moderate-income Oregonians. Those resources have been summarized in Appendix A to this report.

Next the committee brainstormed a number of areas to address and voted on which areas to devote time and resources. Subcommittees emerged through self-forming teams, and those teams dove into the research and findings evident in each subsection of this report.

Throughout the process, the team operated using project management tools that, at least so far, are more common to the business world than to the legal world. First, from an accessibility standpoint, the team adopted teachings from Federal agency 18F regarding engaging remote teams. Although the majority of the team members were in the greater Portland area, we use a “remote-first” approach to discussions so that those from more diverse geographic regions did not have their experience diminished (relative to the rest of the team) due to their geography. This meant that nearly all meetings were conducted exclusively telephonically, with screen sharing over the internet as needed for demonstrations and communication.

The report itself was built in Sprints, a tool that comes from the Agile project management methodology known as Scrum. This method placed an early emphasis on “minimum viable product” for each report section, with subsections developing iteratively over the course of subsequent sprint periods. We also conducted periodic retrospectives (another Scrum technique) to ensure that team members were feeling comfortable with the methodology. To manage the sprints, we used the technology tool Trello, and the cards for each report subsection (including items considered but not acted upon) can be found at <https://trello.com/b/X7N86Kki>.

RECOMMENDATION NO. 4: Embrace Data-Driven Decision Making

In modern business—both in public and private enterprise, and in fields from healthcare to law enforcement to education—data-driven analysis is being used to drive substantial and measurable improvements in the delivery of products and services. According to a recent *Forbes* magazine article,¹ “the McKinsey Global Institute indicate that data driven organizations are 23 times more likely to acquire customers, six times as likely to retain those customers, and 19 times as likely to be profitable as a result.”²

¹ <http://www.forbes.com/sites/adigaskell/2016/10/28/becoming-a-data-driven-organization>

² <https://www.mckinseyonmarketingandsales.com/sites/default/files/pdf/Datamatics.pdf>. Note that the reported numbers show *exponential* improvement from organizations with a data-driven focus; those businesses aren’t a mere 23% more likely to acquire customers, they are 2300% better at it than their non-data-oriented counterparts.

While customer acquisition and retention isn't necessarily the primary focus of the Oregon State Bar (OSB), the improvement in results from data-driven approaches can be imputed more broadly.

And the sales analogy may actually be better than it first appears. To some extent, the Access to Justice and Access to Legal Services gaps can be thought of as a failure to attract "customers" (clients) to the products and services being offered by the members of the Bar (lawyers). This could be because those customers don't see our products and services as adequate to their needs, because they don't perceive those services as offering good value for the price point, because the cost of available offerings is out of their fiscal reach, or any number of other reasons. Without data to guide us, however, we are only guessing at answers.

In order to identify new initiatives that may assist lawyers and Oregonians with unmet legal needs, the working group examined the state of available data, select prior analysis and analysis from other jurisdictions, and tools and methodologies used by businesses and other professions. As a result of this analysis, we offer the following recommendations:

RECOMMENDATION 4.1: The OSB should adopt an official policy embracing Data-Driven Decision Making. As the Bar looks to invest time and resources in various initiatives, including the recommendations of this Task Force, it is important that Bar leadership and the Board of Governors (BOG) emphasize the importance of using data to give context to—and measure the effectiveness of—those initiatives. Specifically, we recommend grounding each and every Bar initiative in the Bar's Mission, Values, and Functions,³ and establishing what the business world refers to as SMART goals⁴ around them.

Additionally, to the extent that it is not already consistently doing so, we recommend that the Bar establish a Data-Driven Decision Making (DDDM) framework for defining all new (and, where feasible, ongoing) initiatives with the following elements:

- A concise statement of how the initiative furthers the Mission of the Bar, under which Function(s) of the Bar is the initiative being enacted, and which Values of the Bar the initiative is meant to support.
- For each supported Value identified, a statement describing the specific ways in which the initiative will help the Bar further that value.
- For each goal of the initiative, a statement of the current-state situation with respect to that goal, including data sources and other evidence that support the need for the initiative. Where specific data sources are unavailable or unworkable,⁵ the statement should acknowledge the extent to which supporting evidence is anecdotal or circumstantial in nature.
- For each goal of the initiative, a further statement indicating the things that will be measured (whether by existing or new data sets)—and the cadence for measurement—to gauge whether that goal is being achieved.

³ Available at https://www.osbar.org/_docs/resources/OSBMissionStatement.pdf

⁴ Originally articulated by Doran, G. T. "There's a S.M.A.R.T. way to write management's goals and objectives." *Management Review*. AMA FORUM. 70 (11): 35–36 (1981). The elements of the SMART acronym can vary by organization, but we take them to mean Specific, Measurable, Actionable, Realistic, and Time-bound.

⁵ If, for example, accessing or analyzing the data would be prohibitively expensive.

- A plan for conducting periodic check-ins on progress towards the initiative’s goals, including but not limited to a formal after-action review⁶ to capture lessons learned and opportunities for improvement.

Finally, we recommend that the Board of Governors review the charters of each of the Bar’s committees and task forces to ensure that each group is responsible for and accountable to a measurable standard in pursuing its objectives. Each set of standards, respective to each committee, should be articulated in the context of the Bar’s Mission, Values, and Functions, and should provide for an existing or proposed data source for measuring progress towards the committees’ goals. Further, each committee should report on its progress towards its specific goals as part of its annual report to the Board of Governors.⁷

RECOMMENDATION 4.2: The OSB should adopt a formal set of Key Performance Indicators to monitor the state of its Values. Without measurement, the Bar’s values risk languishing as nice-to-express sentiments instead of concrete commitments. In determining the effectiveness of delivery of legal services to and meeting the legal needs of Oregonians, there are many resources currently available but they are often disaggregated and/or difficult to assess. The courts and legal aid collect information, as do the Bar’s lawyer referral services and the Professional Liability Fund (PLF).

By adopting a set of Key Performance Indicators (KPIs) that reflect the health of each of its Values over time, the Bar will be more responsive to the needs of Oregonians, and more agile in responding to those needs. Wherever feasible, the Bar should take care to identify and monitor leading (or predictive) as well as lagging indicators with respect to each of its Values. The Board of Governors should consider commissioning a special committee of the BOG to work with Bar leadership in establishing an initial set of KPIs and determining a timeframe for periodically evaluating them.

RECOMMENDATION 4.3: The OSB and the Oregon Judiciary should adopt an Open-Data Policy. Data acquisition is not a project but a principle. When considering the effectiveness of programs—whether existing or newly adopted—measurement depends upon the availability of adequate data. In addition to directed data collection or data analysis, ongoing data creation and acquisition should be a principle, done according to existing standards for data collection, and used as a tool empowering data-driven decisions.

At the same time, some of the most promising examples the working group identified of leverage-multipliers involved “civic hacking” events. These events are made possible through “open government” initiatives where data created or collected by civic entities is easily accessible, freely available, and formatted using a common and open paradigm.

We recommend that the Bar, and also, ideally, the Judiciary, adopt a formal Open-Data Policy. While we do not go so far as to recommend specific language for this policy, we note that models

⁶ Sometimes also referred to as a lessons learned session, a debrief, a postmortem, a postpartum, or a retrospective (among other terms).

⁷ https://www.osbar.org/_docs/leadership/committees/CommitteeAnnualReport.pdf

are available through the State of Oregon,⁸ the City of Portland,⁹ the U.S. Federal Government,¹⁰ and civic organizations like the Civic Commons project¹¹ and the Sunlight Foundation.¹² We recommend that the BOG convene a working group to propose a specific policy for the Bar, with an implementation target of January 2018.

RECOMMENDATION 4.4: The OSB should have a dedicated resource responsible for data collection, design, and dissemination. Many successful businesses now have a chief data officer or chief information officer in addition to, or sometimes as an expansion of, the role of chief technical officer. As the availability of data increases and its potential uses proliferate, and in order to enable the other recommendations of this subcommittee, we believe a dedicated resource will be necessary. Though we offer no opinion whether such a role would rise to a “c-level” manager, we do believe that any such resource will need to have sufficient power to influence and enforce data-related mandates and general data principles as adopted by the Board of Governors.

RECOMMENDATION NO. 5:

Expand the Lawyer Referral Service and Modest Means Programs

One of the OSB’s five strategic goals is to foster public understanding of and access to legal information, legal services, and the justice system. In service of this goal, the OSB has a Referral and Information Services Department (RIS), which offers several programs that help both the public and Oregon lawyers.

Primary among these programs is the Lawyer Referral Service (LRS), which has quietly become one of the Bar’s great successes of the past several years. Since the LRS changed to a percentage-based fee model in 2012, Oregon lawyers who utilize the program have earned over \$22M in fees and, in 2016, returned \$815,000 in revenues to the OSB. The program is now one of the top five largest referral services in the U.S., each year handling roughly 80,000 contacts from Oregonians in need of legal help and making nearly 50,000 referrals to the program’s independent lawyers.

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 to 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.

The RIS already has significant infrastructure in place. The programs utilize a robust technology system for handling and routing incoming requests (calls and emails), have a skilled team of 10 individuals who provide legal information and lawyer referrals to Oregonians in need of legal services, and a large repository of legal information and resources on the Bar’s public website¹³ that performs well from a

⁸ <https://data.oregon.gov/tps://data.oregon.gov/https://data.oregon.gov>

⁹ <http://www.portlandonline.com/shared/cfm/image.cfm?id=275696>; <https://www.portlandoregon.gov/28130>

¹⁰ <https://project-open-data.cio.gov>

¹¹ <http://wiki.civiccommons.org>

¹² <https://sunlightfoundation.com/opendataguidelines>

¹³ <http://www.osbar.org/public/legalinfo.html>

Search Engine Optimization (SEO) standpoint.¹⁴ Even with these successes, however, we believe that the RIS programs, especially the LRS, are substantially underutilized.

For one, although the information set on the website is vast, its design and usability is not consistent with modern standards and expectations. Although the program has plans to improve many areas of the site, information technology resources at the OSB are limited and currently stretched thin because of the bar's focus on implementing new (and much-needed) association management software.

What's more, although the program generates significant positive cash flow for the Bar, the majority of its revenues—nearly \$315,000 per year—are redirected to subsidize other Bar programs. While we recognize the importance of this income source in holding down license fees and supporting various Bar initiatives, we believe that the needs of Oregonians would be better served by reinvesting a larger percentage of LRS revenues back into RIS programs designed to further close the Access to Justice gap.

To that end, and in furtherance of the committee's charge, the committee makes the following recommendations:

RECOMMENDATION 5.1: The OSB should set a goal of increasing the number of inquiries to the LRS and MMS—and, by extension, the corresponding number of referrals to Oregon lawyers—by 11% per year for the next 4 years, and should adequately fund the RIS to achieve this goal. While we do not offer an opinion on the specific amount of money that would be necessary to reinvest in the programs in order to meet this 11% per annum growth target, we recommend that the BOG request a proposal from the program's managers taking into account:

- a. An appropriate amount with which to increase the marketing and brand awareness of the LRS and MMS to Oregonians in need of legal help through appropriate and cost-effective channels;
- b. An appropriate amount for improving the usability and design of program materials, including its websites. This amount should include, if necessary, the hiring of outside resources to expedite such efforts in order to meet the growth target;
- c. An appropriate amount for human resources, including staff compensation, expansion, training, benefits, and other expenditures necessary to ensure that the teams can adequately support the increased target volume;
- d. An appropriate amount for marketing-to and recruiting-of additional lawyers to provide services through the LRS and MMS; and
- e. Any other amounts deemed necessary to meet the growth target.

If successful, this 11% per annum increase¹⁵ would result in the program handling at least 120,000 inquiries by 2021 (a 50% improvement over current figures). Corresponding revenues generated by the program should grow to over \$1.2M in the same time frame. Of course specific return on investment for these efforts will depend on the costs of expanding the system; however, given the revenue-positive nature of the LRS program and the demonstrated need exemplified by

¹⁴ The OSB has a multi-purpose site and had 2.67 million unique visitors last year, and the public-pages of the site were viewed 1.4 million times.

¹⁵ N.B. The LRS had an 11% increase in referrals volume from 2014 to 2015 on a 3.5% increase in call volume. Referrals increased just 2.8% on a call volume increase of 1.7% from 2015–16.

Access to Justice gap data, we anticipate that these efforts will have a net positive impact on the Bar's finances.

RECOMMENDATION 5.2: Explore and develop a blueprint for a “Nonfamily Law Facilitation Office,” which can become a certified OSB pro bono program housed within the circuit courts of Oregon.

- a. Provide live web streaming instructional clinics by and through participating lawyers in different areas of the law that can be viewed in the Facilitation office and by others in remote rural areas over the internet.

**RECOMMENDATION NO. 6:
Enhance Practice Management Resources**

Oregon State Bar membership records show that approximately ____ of lawyers in Oregon are solo practitioners. Those who do so without legal support or assistance face significant challenges.

The OSB Professional Liability Fund has a robust on-line library of publications, forms, checklists, sample letters and other practice aids, all available at no additional cost to Oregon lawyers. In addition, the PLF employs four practice management advisors who are available to conduct group trainings, as well as provide one-on-one confidential assistance with office systems and management. In addition, the OSB Solo and Small Firm Section conducts an annual two-day continuing legal education program that focuses primarily on law practice management improvement.

These resources are invaluable to Oregon's solo practitioners. In order to help lawyers adapt to the changes in the practice of law, it is our recommendation that these resources be enhanced as follows:

RECOMMENDATION 6.1: The OSB should develop a comprehensive training curriculum to encourage and enable Oregon lawyers to adopt modern law-practice management methods, including (but not limited to) automation, outsourcing, and project management.

Lawyers who practice without legal-support staff have to wear multiple hats. They are their own office manager, project manager, bookkeeper, administrative assistant, receptionist, and paralegal. These lawyers end up performing many tasks that are mundane, repetitive and time-consuming. Automation, outsourcing, and project management can help attorneys successfully practice law, particularly with the aid of technology.

Specifically, we recommend that the OSB CLE Seminars Department—in cooperation with the PLF, Bar Sections, Specialty Bars, or whomever else they deem appropriate—be tasked with developing a comprehensive Modern Practice Management training curriculum for Oregon lawyers comprised of no less than two hours of education in each of the following areas:

a) Automation

Automation is using technology to reduce the amount of time and effort it manually takes to perform a task. Many tasks that lawyers perform can be done more quickly and accurately with the use of software, add-ons or existing computer programs. Even the use of checklists, procedures, and rules can streamline time-consuming projects.

Automation helps lawyers:

- *Increase efficiency.* Attorneys perform many tasks that are not billable. These tasks involve performing the same steps or processes repeatedly. By automating certain tasks and processes, attorneys will free up their time to do billable work.
- *Stay competitive.* The high costs of traditional legal services are prohibitive to many clients. Online legal service providers like LegalZoom appeal to clients because they offer an affordable fee structure and an alternative way to deliver legal services. To be competitive, lawyers need to reduce their rates while increasing the value of the services they provide. Automation allows the lawyer to reduce overheads and expenses, which will make reduced prices more attainable. Costs will logically go down when lawyers don't need to spend a lot of time doing work that can be automated.
- *Provide better client services.* When lawyers streamline their tasks and processes through automation, they can focus their time and efforts on what they do best: providing personalized legal advice to clients. Spending time to connect with clients and understand their legal issues will result in better client services.

Automation assists lawyers with those tasks they perform repeatedly. For example, of all the tasks that lawyers have to do, writing is a task that lawyers perform the most. Writing can be automated in many ways, including by the use of:

- Document automation software like TheFormTool, Pathagoras or HotDocs to create new documents based on information that lawyers entered only once.
- Text automation to create abbreviations for commonly used words, phrases or boilerplate languages to simplify the writing process. Examples of text automation software include Breevy, PhraseExpress or TextExpander (for Mac).
- Speech recognition software like Dragon NaturallySpeaking to automatically transcribe recorded speech into text to create memos, emails, letters, and take notes. Microsoft and Apple have built-in speech recognition software in their computers, tablets, and smartphones. This allows lawyers to compose text messages or emails with their voice instead of typing.

Further, larger tasks that involve multiple steps like client intake, tracking time and billing, can be streamlined using a practice management software.

b) Legal Outsourcing

Legal outsourcing is the use of legal support services from a third party outside of the law firm. The rise of new technologies, combined with the client's expectations for lawyers to provide quality services faster and cost efficiently, has forced lawyers to consider outsourcing legal work to other lawyers and nonlawyers. Outsourcing of legal work can come in a variety of ways: 1) Hiring companies to perform managerial tasks, such as bookkeeping and billing; 2) Hiring companies to do small project such as printing, copying, scanning records; 3) Hiring contract attorneys outside of the firm; 4) Hiring Legal Process Outsourcing (LPO) companies, including some that are offshore.

Legal outsourcing helps lawyers:

- *Level the Playing Field.* Helps level the playing field by putting together a team of lawyers and nonlawyers with different skill sets on a per-project basis without incurring the overhead. Once the project ends, the small firm disbands the team and incurs no additional labor costs.

- *Promote Growth.* Allows the attorneys to gain time to grow the practice and manage higher case load. Often, small firms and especially solo practitioners are constantly overwhelmed by the demands of handling substantive, administrative and business aspects of their practices. By outsourcing, the attorney may make time to engage in activities that will help the practice grow and make it sustainable.
- *Improve Profitability* - Can improve return on investment, eliminate worries about absenteeism and productivity, reduce training and administrative burdens, and shift responsibility for employment taxes, insurance premiums and the like to outside providers.
- *Improve Efficiency.* Helps meet client's expectation for faster, cheaper and more effective representation. Outsourcing work that another person or company can do more efficiently and effectively than the firm's personnel offers a way to reduce costs and increase value to the clients. The firm may not necessarily charge the out-of-pocket cost but could charge the rate agreed upon with the client in the retainer agreement. This arrangement potentially creates a win-win situation since the attorney may profit from the outsourced work while the client may be benefiting from better services at a lower cost. The attorney will be paying less than the cost of employing an associate.
- *Provide Mentoring Opportunities* - Helps solo practitioners or new attorneys do work for experienced attorneys, who will oversee the new attorneys' work.

Some of the work that law firms and lawyers do that can benefit from outsourcing include:

- Mailroom and copy
- Reception and hospitality
- Document processing
- Records management
- Collection process
- IT
- Marketing including web development
- Business intelligence and research
- Billing process
- Human Resources
- Data security
- Secretarial Services
- Finance, accounting and data entry
- Legal research
- Draft of pleadings
- Document review

There is a growing trend in the legal market to outsource legal work, and this trend is expected to continue to grow at a fast pace. Encouraging and educating lawyers on legal outsourcing will help lawyers remain competitive in the evolving legal market.

c) Project Management

Along with automation and outsourcing, project management can help lawyers provide legal

services in a productive and cost-effective manner. Project management is a way to plan, organize, and manage multiple tasks to achieve a specific outcome. Whether lawyers are solos or partners or associates in a firm, they all contend with competing demands and deadlines. Knowing how to manage small tasks or big projects is essential to delivering services within the timing and budgetary constraints imposed by clients and others. Project management provides a structure in which to perform legal work.

The work that lawyers perform is considered a “project” that has a finite beginning and end. Project management involves planning, executing, monitoring and controlling the various components of the project. It allows lawyers to break a project down into tasks and subtasks that can be assigned and tracked. Technology is critical to project management. Instead of emailing status reports and documents back and forth, a project management software can serve as a platform for all communication and collaboration. Applications like Asana, Basecamp, Mavenlink, Trello, SmartSheet, and Podio, can be used to share information and to create checklists, flowcharts, timelines, or dashboards that show the individual steps to be done, who is doing them, and their status.

When lawyers streamline their practice by properly managing projects with an effective system, they do not waste time deciding on the next step or otherwise reinventing the wheel. The result is greater efficiency and predictability in handling projects from start to finish. Lawyers also benefit from improved workflow that will help them deliver legal services in a consistent manner. Using project management software to collaborate with others and to track the progress of a project increases efficiency by keeping everyone on the same page. The improved teamwork and communication lead to enhanced relationship and trust on all sides. Another benefit of project management is the reduced costs for clients when projects are effectively planned out and implemented.

Areas that can benefit from project management include:

- *Litigation.* Matters in litigation typically go through multiple phases that are ripe for project management intervention. Project management tools can be used to manage the lifecycle of a case so lawyers can better control each phase of the litigation, adhere to budgets, and meet deadlines.
- *Transactional practice.* Like litigation, transactional work goes through a common lifecycle. While each transactional matter may be unique, the process of handling different matters may not be. This process can be standardized using project management to increase efficiency and reduce costs.
- *In-house practice.* Practice management tools can provide general counsels a framework to structure work within their legal department and with outside counsels to achieve the right outcome for their clients while still holding everyone accountable to timelines and budget constraints.

In addition, non-legal volunteer work that lawyers perform, such as work on bar associations or committees, may be planned, organized, implemented, and monitored with project management tools.

We recommend that the above training curriculum be developed during the remainder of 2017 with a target of first presenting the materials in the first quarter of 2018. Special care should be taken to ensure that the training be affordable to all Oregon lawyers, and that it be easily accessible to lawyers throughout the state.

RECOMMENDATION NO. 7: Reduce Barriers to Accessibility

The accessibility subcommittee focused on innovations that have the potential to reduce barriers to access legal services. Initially a separate subcommittee was formed to study access to legal services in rural communities. Because of the overlap of the work of that subcommittee and the accessibility subcommittee, the two subcommittees were combined.

The subcommittee makes recommendations in the following areas: (1) unbundling legal services, (2) use of technology, (3) rural access, and (4) perception of lawyers.

RECOMMENDATION 7.1: The OSB should promote the provision of limited-scope representation, also known as unbundled legal services.¹⁶

We recommend that the Bar set a target of increasing the number of lawyers providing limited-scope representation (also known as unbundled legal services) in Oregon by 10% per year over the next four years.¹⁷ We believe that such a goal will result in improved access to justice for Oregonians. Specifically, the Bar should encourage more Oregon lawyers to provide unbundled legal services, by:

- Educating lawyers about the advantages of providing unbundled services.
- Providing materials on unbundled services to Oregon lawyers (OSB website, Bar Bulletin, and through local, specialty bars and sections) including ethics opinions, sample representation and fee agreements, and reminders about blank model forms that can be printed from OJD's website.
- Developing and disseminating sample business plans for new lawyers, including information about how to incorporate and publicize unbundled services.
- Offering a CLE about how to develop and market unbundled legal services.
- Expanding the subject areas for unbundled services through the Lawyer Referral Service and making these services more prominent and visible to both consumers and lawyers. Increase the visibility of unbundled legal services on the LRS, the OSB website, and through other bar outreach.
- Recruiting more lawyers to provide unbundled legal services through the LRS, especially in areas that are underserved. This includes recruitment of lawyers for the Modest Means Program, particularly in those geographic areas that are underserved.
- Considering expansion of the Modest Means Program.
- Continuing to support the development of standardized electronic court forms, which help attorneys to provide cost-effective unbundled services.

Bar associations, courts, academicians, and others have conducted dozens of studies in recent

¹⁶ These recommendation echo the recommendations of the Self-Navigators' Subcommittee of the Futures Task Forces' Regulatory Committee and the Practice Management Resources committee above.

¹⁷ We are unaware of solid figures concerning the current number of Oregon Lawyers offering unbundled legal services, and, consistent with the Data Driven Decision Making recommendation above, we recommend that the Bar commission a survey to establish a data set to measure progress against.

years examining the reasons why individuals with legal problems go unrepresented. Those studies have found that cost is one of the most significant barriers, particularly for low- and moderate-income consumers. Other commonly cited factors include a desire to have a voice in the process (i.e., to tell their story to the court in their own words) and concern about how representation by an attorney will affect the ongoing relationship of the parties. Many litigants who cited the last two reasons also indicated, however, that they would have welcomed some competent legal advice or assistance to enable them to better represent themselves. Limited-scope legal assistance can increase access to justice for all of these litigants, by reducing the costs of legal assistance and by improving the quality of self-representation.

Oregon already permits lawyers to provide limited-scope representation, or unbundled legal services, and has taken steps to clarify that unbundled legal services are permitted. Oregon Rule of Professional Conduct 1.2(b) provides that a lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A Uniform Trial Court Rule, UTCR 8.110, which became effective in August 2016, sets out certain notice and service requirements that apply if unbundled legal services are used in family law cases. The UTCR Committee recently approved applying those same requirements to all civil cases, tentatively effective August 2017 (new UTCR 5.170, currently pending final adoption by the Chief Justice).

The Bar could also enhance two programs that it currently operates that are consistent with unbundled practices. The OSB Lawyer Referral Service (LRS) is a nonprofit program that provides referrals statewide in every major area of the law. Panelists agree to provide LRS referred clients with an initial half-hour consultation for no more than \$35. Panelists and clients may also agree to additional consultation or representation at agreed-upon rates. The LRS Modest Means Program is a referral panel for moderate-income Oregonians in which participants provide a \$35 half-hour consultation and also agree to provide any ongoing representation for a reduced fee. The Modest Means Program is only available for family law, criminal defense, foreclosure, and landlord-tenant matters at the trial court level (appeals are not covered by the program) and does not have participants in all geographic areas in Oregon. It is popular with consumers but only 3,000 clients are placed each year due to limitations on the number of lawyers willing to take reduced fee cases and the strict eligibility requirements for the program.

RECOMMENDATION 7.2: The OSB should more actively promote the use of technology as a way to increase access to justice in lower income and rural communities.

The Bar should more actively promote the use of technology as a way to increase access to justice in lower income and rural communities. Specifically, it should consider the following initiatives:

- Providing opportunities for attorneys in private practice to learn about existing and new technology to reduce costs, such as delivering legal services by streamlining their law practice through automation, document assembly, virtual office, video conferencing, client portals, and other technological innovations.
- Encouraging the courts to continue providing online interactive resources, including interactive forms and document-assembly tools to assist clients in compiling and completing forms.
- Providing an instant chat program built into the Bar's and courts' websites to assist visitors find what they need. Visitors to the websites can click a "LiveChat" or "LiveHelp" to open a chat

application to ask a trained specialist questions about where to find resources. The staff person would provide relevant links or instructions during business hours. If clients ask a legal question, the staff person would refer them to the OSB Lawyer Referral Service and provide other resources.

- Encouraging the courts to provide opportunities to conduct court proceedings through video conferencing in civil procedural cases or hearings that involve few witnesses and documents. The use of videoconferencing can reduce the costs and burdens for parties and witnesses who have difficulties personally appearing in court due to geographic distance, lack of transportation, employment needs, childcare issues, and other challenges. Videoconference allows the parties to have full view of the courtroom and feel they are still a part of the process.

Technology has done a lot for the legal profession. It has simplified word processing, legal research, and other time-consuming tasks. It has provided lawyers with software to automate their law practice such as client intake, document assembly, and time and billing. Now lawyers have cloud computing and data analytics. But technology can do more than make the practice of law easier and more profitable for lawyers. It can help increase access to justice to low- and moderate-income communities. Technological innovation in other industries has reduced the cost of products and services and made them more accessible to a broader range of customers and clients.

Evolving technologies in the legal profession include electronic filing of court documents; expanded use of electronic forms, including TurboTax-like form-preparation software; use of Skype and videoconferencing; secure online platforms for the exchange of documents; document- and knowledge-management software; project-management software; and practice-specific software for litigation, bankruptcy, family law and other practices. These and other technological innovations have the potential to reduce the costs of legal services and expand access to legal services for Oregonians of limited means. The Bar has already undertaken initiatives to promote technological innovation, through its involvement in eCourt, electronic forms development, CLEs on technology, and other efforts. The Bar's efforts should be expanded to encourage the use of technology to make online resources more useful and easier for clients to locate, give clients alternative ways to participate in the legal process, and help lawyers reduce the costs of delivering legal services.

RECOMMENDATION 7.3: Make legal services more accessible in rural areas.

The Bar should more actively adopt and promote efforts to make legal services more accessible in rural areas, by:

- Cutting down on geographic barriers. The Bar should take a closer look at utilizing technology to reduce the barriers of travel costs and missed work for litigants.
- Pooling urban resources and leveraging technology to bring urban attorneys to remote areas by video conference.
- Working with local libraries in rural areas to create hubs for hosting videoconferencing, printing court documents, or filing court documents.
- Hosting a summit or roundtable with local bar associations and leaders in rural communities to discuss barriers that are germane to rural communities, as well as to hear what is working and what is not. The Bar should consider hosting two summits/roundtables—one somewhere east of the Cascades and one on the coast.

- Consider developing a Rural Lawyer Section of the Bar or a rural-lawyer listserv for the exchange of ideas.
- Taking a closer look at how pro bono programs are currently utilizing technology to access rural areas (e.g., the Miller Nash pro bono program).

The American Bar Association noted that of the 500 poorest counties in the country, 459 are rural.¹⁸ Access to legal services is not the only problem facing rural communities, but it certainly is one of them. Because of the differences between rural and urban communities, when addressing access-to-justice-issues, the Bar should specifically include a separate focus on rural needs and implement programs specific to the problems facing rural communities.

Rural access issues include geography, a shortage of lawyers in rural areas, conflict issues for lawyers practicing in sparsely populated areas, economic means to hire a lawyer, and failure of individuals to identify that they have a legal issue.

In 2001 the Oregon Law Center acknowledged that rural communities of Oregon could benefit from pro bono legal-services delivery models that are region specific.¹⁹ Many rural communities are independently addressing access-to-justice issues either proactively or reactively (for the former, see for example, Deschutes County, which recently formed an Access to Justice Committee that is focused on increasing the public’s access to attorneys, documents, and information through the use of local libraries). The time is ripe to revisit these issues with a larger summit or roundtable for local bar associations and local leaders in rural communities to share ideas.

Likewise, we are coming into a time when use of technology is starting to bring down some of the geographic barriers that constrain access to justice. Technology can assist in both reducing the need to physically come to the court as well as put individuals in rural communities in touch with attorneys outside their current geographic area. Pooling urban resources and leveraging technology to bring urban attorneys to remote areas by videoconference should be explored further.

RECOMMENDATION 7.4: Improve the public perception of lawyers.

The Bar should expand public outreach that highlights lawyers as problem-solvers, community volunteers, and integral to the rule of law. The Bar should promote efforts to improve the public perception of lawyers, by specifically considering the following:

- Increasing public outreach. For example, a public outreach program could be put together in conjunction with expanding marketing efforts tailored to reach individuals utilizing the lawyer referral service and modest means.
- A campaign for attorneys to “support access to justice for all Oregonians” can be statewide and have positive ramifications on attorney perception, well beyond assisting individuals who are facing issues with access.
- Considering a CLE on reframing the ways in which attorneys present their message to the public. Encourage a movement from “pit-bull litigators” to “problem solvers.”

¹⁸ ABA Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, *Rural Pro Bono Delivery: A Guide to Pro Bono Legal Services in Rural Areas*, 11 (Am Bar Ass’n 2003), available at http://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/aba_rural_book.pdf

¹⁹ *Id.* at 54.

- Increase media coverage of pro bono accomplishments and good work that is done by lawyers.
- Consider ways in which the Bar can have greater opportunities to interact with the public outside the attorney-client relationship.
- Consider new ways to honor and recognize attorneys who—through their actions and work—help shape a changing perception of attorneys in their community

Regardless of the reason, public perception is negative towards attorneys (and has been for quite some time). The Institute for the Advancement of the American Legal System recently found that one of the themes among public perception is that attorneys increase conflict and animosity between parties.²⁰ As such, some litigants specifically chose not to seek help from an attorney because they feel it is the best way to maintain or achieve an amicable relationship with the other party.²¹

Efforts should be made across the Bar to refocus the perception of the attorney’s role in the community. Robust access-to-justice efforts by the Bar as a whole has secondary gains that have not been thoroughly explored, including changing the general public perception (not just those who are helped).

²⁰ Honoring Families Initiative, *Cases Without Counsel: Our Recommendations After Listening to the Litigants*, 30 (Institute for the Advancement of the American Legal System 2016).
http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf.

²¹ Ironically, attorneys who previously practiced out of state and subsequently move their practice to Oregon, often attest that the level of collegiality in Oregon far exceeds what they previously experienced. Indeed, as compared to other states, the Oregon bar is downright collegial and professional

Appendix A

Existing Resources for New Lawyers

Oregon State Bar (OSB) Resources

The OSB has a number of programs and resources for new lawyers to help them with their law practices.

New Lawyer Mentor Program (NLMP). Established in 2011, the program recruits experienced lawyers to mentor lawyers in their first year of practice through the completion of an individualized curriculum. The curriculum covers public service and bar service, professionalism, ethics, law office management, working with clients, career satisfaction and work/life balance, and practice area activities.

<http://www.osbar.org/nlmp>.

Oregon New Lawyers Division (ONLD). This division of the OSB offers a variety of programs to assist new lawyers with the transition from law student to lawyer. Every OSB member age 36 or younger or has practiced for six years or less (which totals 25 percent of the bar) automatically is made a member of the ONLD. The ONLD sponsors free and low-cost CLEs and networking events; encourages new lawyers to engage in pro bono, public service, and bar activities; and sponsors the PSPS internship program.

<http://www.osbar.org/onld>.

Practical Skills in Public Service (PSPS). An ONLD initiative, the PSPS program was created in 2011 in response to the challenging economy and its effects on the legal community. The program matches unemployed and underemployed lawyers with participating nonprofit and government organizations with the goal of helping new lawyers gain practical skills.

<http://www.osbar.org/onld/practicalskills.html>.

Diversity & Inclusion (D&I) Program. This OSB program offers fellowships, grants, scholarships, and stipends for law students and new lawyers who advance the mission of the D&I Office.

<http://www.osbar.org/diversity>.

Ethics Hotline. OSB General Counsel's Office offers guidance to all lawyers regarding their ethical obligations. <http://www.osbar.org/ethics/>.

Lawyer-to-Lawyer Program. This program will provide any Oregon lawyer the names and phone numbers of three "Resource Lawyers" who are willing to answer practice-related questions over the phone. <https://www.osbar.org/docs/forms/ltol.pdf>.

General Section Memberships. Each OSB section offers list serves, which are commonly used by new lawyers seeking advice from experienced practitioners. <http://www.osbar.org/sections>.

Bar Program Discounts for New Lawyers. The OSB offers the program discounts for new lawyers, including discounts on membership fees, CLE fees, lawyer referral service participation fee, and section membership fees.

OSB Professional Liability Fund (PLF) Resources

The PLF offers a range of free and confidential services to all lawyers, many of which directly benefit new lawyers in establishing and managing their law practices. <https://www.osbplf.org/>.

Practice Management Advisors. One-on-one help with establishing a law practice, office management, client relations, financial management, office systems, time management, technology and closing a law practice.

Free CLE seminars. Extensive library of CLEs focused on practice management and malpractice avoidance; annual three-day, 20-credit “Learning the Ropes” offered at minimal cost for live attendance, no cost for DVD/audio products.

Practice Aids. Over 400 practice aids including checklists, forms and templates covering both substantive areas and practice management.

Software Discounts. Discounts on software for practice management, conflict checks, editing, business productivity, and client management.

Publications. Lawyers have free access to a *Guide to Setting Up & Running Your Law Office*, *Guide to Setting up & Using your Trust Account*, *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, *Oregon Statutory Time Limitation Handbook*, *In Brief* quarterly newsletter, *InPractice* blog, and other resources.

Conference Room. Free use of a downtown Portland conference room and a list of free or low cost conference rooms around the state.

University of Oregon School of Law Resources

The University of Oregon School of Law offers a number of clinic and externship programs to law students. <https://law.uoregon.edu/explore/clinics/>; <https://law.uoregon.edu/explore/externships-home>.

Business Law Clinic. In the Business Law Clinic, which is housed at the law school, students have the opportunity to assist in representing business clients in a simulated law firm environment. Through intensive training under direct supervision, the clinic teaches students the skills necessary to practice transactional law. In the course of a semester, each clinic student assists in representing two businesses. Clinic students are responsible for all aspects of the representation from the initial meeting with the client to the final meeting in which the students present and explain the legal work performed. Types of legal work performed at the clinic include business entity formation, review and drafting of contracts for the sale of services or products, and advice on laws affecting various types of businesses.

Civil Practice and Advanced Civil Practice Clinics. Students represent low-income clients through Lane County Legal Aid and often appear in court or contested case hearings, advocating for clients in social security, welfare, food stamp, public housing, or unemployment benefits matters.

Criminal Defense Clinic. Student defenders conduct client and witness interviews, investigations, and plea negotiations and help defend clients in a range of misdemeanor prosecutions. Practical and hands-on, this clinic prepares students for the realities of criminal defense work.

Criminal Prosecution Clinic and Advanced Criminal Prosecution Clinic. The Criminal Prosecution Clinic, which is housed at the Lane County District Attorney’s Office, offers students the opportunity to prepare and try minor criminal cases under the supervision of an attorney and to assist senior prosecutors on

felony cases.

Domestic Violence and Advanced Domestic Violence Clinics. Students get hands-on experience representing victims of domestic violence and stalking in contested protective order hearings. From office intake to court appearances, the clinics prepare students to be effective client advocates.

Environmental Law Clinics. Students participate in creative and successful litigation on behalf of conservation groups, individuals, and local governments who seek to preserve and restore natural resources in the West. Students learn how to work up cases, prepare expert witnesses, write persuasive motions and memoranda, and appear at oral argument.

Nonprofit Clinic. Interdisciplinary teams of graduate students in Law, Public Policy, and Conflict Resolution assess the organizational health of selected nonprofit organizations (NPOs) in the areas of management, governance, conflict resolution, and legal compliance. The clinic provides detailed recommendations for improving governance, reviews NPO's legal instruments, and advises on actions needed to assure compliance.

Child Advocacy Externships. Give students experience during the summer for Oregon juvenile court judges and practitioners. Those who work with judges do research, prepare for, and observe all types of hearings in juvenile delinquency and dependency cases, and work on a major law reform project under the judge's direction. Students placed with practitioners are involved in all areas of the attorneys' practices.

Domestic Violence Externship. Students work at the Klamath Falls LASO (Legal Aid Services of Oregon) office where they represent domestic violence survivors in a range of matters, including FAPA orders, stalking orders, family law, housing, and employment issues. The externship exposes students to the challenges faced by low-income, rural victims of violence, and provides students valuable in-court experience.

Lewis & Clark Law School Resources

Lewis & Clark Law School offers a number of clinic and externship programs to law students. <https://law.lclark.edu/clinics/>; http://law.lclark.edu/offices/career_services/externships/.

Animal Law Clinic. Students in the Animal Law Clinic conduct research, represent clients, work on clinic projects, and work with attorneys outside the clinic to develop the field of animal law and encourage consideration of the interests of animals in legal decision making. Their work includes: research, transactional work, litigation, and strategic planning. Where possible, students also shadow local lawyers, work with lawyer practitioners around the country, observe legal proceedings, and conduct field work to better understand the problems facing animals.

Criminal Justice Reform Clinic. The mission of the CJRC is to dismantle systemic discrimination in the criminal justice system especially as it relates to underserved communities. Projects have included addressing wrongful convictions and innocence; criminal justice reform including death penalty, amicus, and Eighth Amendment work; and legal issues facing individuals returning to the community from incarceration.

Earthrise Law Center. This is the domestic environmental law clinic at Lewis & Clark. Its goals are to advance efforts to protect the environment by serving as a resource for public interest organizations needing legal representation and to train and educate law students through direct involvement in complex environmental and natural resource issues.

Lawyering Program. The law school's Lawyering program gives students the skills necessary to investigate, analyze, and communicate legal issues, policies, practices and arguments. Students learn the elements of legal writing, analysis and research, craft written and oral arguments, and hone their skills to make them more successful advocates. The lawyering professors are experienced and well-respected in their field and focus on hands-on learning opportunities in smaller, more intimate class settings.

Low-Income Taxpayer Clinic. Students represent taxpayers of lesser means in controversies with the Internal Revenue Service, including audits and appeals before that agency, and trials and hearings before the U.S. Tax Court. Students work under the supervision of an experienced tax attorney who is a full-time member of the law school faculty. The clinic accepts for representation only cases that maximize the student's opportunities to learn and develop practical lawyering skills.

National Crime Victim Law Institute. Students work closely with attorneys on a wide range of victims' rights related issues. They provide technical support to victims' rights attorneys and advocacy organizations through legal writing and research, as well as participate in the drafting of amicus curiae briefs.

Small Business Legal Clinic. Law students working under the direction of an experienced, licensed attorney represent small and emerging businesses in transactional (not litigation) matters.

Willamette University College of Law Resources

Willamette University College of Law offers a number of clinic and externship programs to law students. <http://willamette.edu/law/programs/clp/index.html>;
<http://willamette.edu/law/programs/externship/index.html>.

Business Law Clinic. Students provide transaction services to non-profit executives and emerging small businesses.

Child and Family Advocacy Clinic. Students work to advance legal protections that provide stability to the family structure and nurture children's healthy development. Clinic participants provide pro bono legal representation to individual children and families in crisis.

Human Rights and Immigration Clinic. Students represent clients seeking asylum for persecution they suffered abroad or victims of trafficking. Students have also worked on a variety of cases under the Alien Tort Statute and the Torture Victim Protection Act, which allow non-citizens to bring tort claims for violation of the law of nations in U.S. federal courts.

Trusts and Estates Clinic. Students represent clients who need non-tax estate planning. Most clinic clients, whether single or married, have children who are too young to manage property themselves. Other clients have adult children, are childless, or are terminally ill or elderly.

Multnomah Bar Association Resources

Young Lawyers Section. Plans regular CLE series emphasizing practical skills for young lawyers. In 2017, the MBA will host the Young Litigators Series, a series of CLE programs providing fundamental instructions on the basics of practice management and litigation.

MBA Solo Small Firm Committee. Develops CLE programs that are of particular interest to solo and small firm practitioners.

Existing Resources for Low- and Moderate-Income Oregonians

Civil Legal Aid Organizations: Legal Aid Services of Oregon, Oregon Law Center, Center for Non-Profit Legal Services

Low-income clients in Oregon can receive free civil legal services through three non-profits that are part of an integrated delivery system that is designed to provide relatively equal levels of high quality client services in all 36 Oregon counties. There are two statewide programs, Legal Aid Services of Oregon and the Oregon Law Center, and one countywide program, the Center for Non-Profit Legal Services in Medford.

The three legal aid nonprofits join with the Oregon State Bar, the courts and others to routinely engage in strategic planning to allocate resources to efficiently and effectively serve clients and to adjust to changing client demographics and needs. They provide services in high-priority cases relating to food, shelter, medical care, income maintenance and physical safety. Currently the most common case types are family law (most cases involve domestic violence), housing, consumer, income maintenance, employment, health and individual rights. Legal aid provides a full range of legal assistance, from simple advice and limited services to litigation, negotiated settlements and representation in administrative proceedings.

Oregon's legal aid programs currently serve approximately 22,000 low-income and elderly Oregonians a year from offices located in 17 communities. Low-income clients must generally be at or below 125% of the federal poverty level to qualify.

Legal Aid also operates numerous pro bono programs around the state that serve clients with a wide variety of legal issues, including family law, elder law, bankruptcy and other consumer issues, landlord/tenant, criminal records expungements, tax issues, simple estate planning and uncontested guardianships.

Legal aid has a client education website, <http://oregonlawhelp.org/> that provides extensive information about the most common legal problems faced by low-income families, including protections from abuse, housing law, family law, and legal issues affecting seniors and people with disabilities. Legal aid provides classes, booklets, and hotlines to help low-income individuals learn about their rights and responsibilities so they can avoid or quickly resolve potential legal disputes.

OSB Lawyer Referral Services/Modest Means Program

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.

Call Handling

Total call volume from the public increased 1.75% in 2016 with a total of 74,393 calls. Even with increased volume, the Referral & Information Services Department (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. Due to this effort, only 3% of callers abandoned an RIS call queue in 2016. Although this represents a .04% increase over 2015, the department was down 1.5 FTE for the entire year. Despite the lack of staff, the abandoned call ratio is a vast improvement from 2008, when the department was fully staffed, receiving 6% less calls, and losing 10.11% of callers.

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 updated the department training guide in order to train new employees in a more uniform and efficient manner. RIS staff also 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.

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. Totals by program area are:

LRS	44,677
Modest Means	2,925
Problem Solvers	136
Military Assistance	34

The gap between calls and referrals is due to the fact that RIS functions both as a referral service and an information center. As stated above, over the years RIS has compiled a massive resource guide that staff members use to assist callers who may benefit from community resources, charities or government agencies. RIS is currently updating the guide and transferring it into a format that can be posted on the bar's public website.

Marketing

The public-oriented focus for 2015-2016 was to increase traffic to the OSB website, including the Legal Help page, to inform potential clients about available resources. Throughout 2015, 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. These campaigns have resulted in a combined 7,767 clicks and 2,534,987 impressions in 2015. This in turn resulted in a 6% increase in visits to the RIS "finding the right lawyer" web page, with 86,780 visits in 2015.

During 2016 the Communications Department began filming a "Legal Q&A" video series and posting the videos to the OSB public website. As videos are uploaded, a Google Ad campaign focusing on the same area of law is initiated in order to draw additional traffic to the OSB public website (which includes a link to our online referral request form).

Finally, RIS has revised the publication "Legal Issues for Older Adults." The publication will be provided to the public in both hard copy and electronic formats as part of our grassroots outreach to legal stakeholders and the public. The guide will be available in English, Spanish, Russian, Vietnamese, Mandarin and Korean.

Outreach to members remains focused on current panelists; with total 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.

Modest Means Expansion

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.

Disability Rights Oregon (DRO)

DRO provides advocacy and legal services to people with disabilities who have an issue related to their disability and that falls within their goals and priorities. They focus on cases that will make positive changes for the community, cases where a person is at risk of long-term harm, services to minority, rural and other underserved communities, and information and materials for self-advocacy.

<https://droregon.org/>.

Youth Rights & Justice

Lawyers with YRJ represent children in the foster care system, parents in dependency, and youth in juvenile court. Services generally are limited to Multnomah County, with the exception of appellate legal services, which extend statewide. <http://www.youthrightsjustice.org/>.

Oregon Court Self-Help Center

The Oregon Judicial Department has established a page on its website called the "Self-Help Center" which directs self-represented parties to a number of resources, including interactive forms for family law, small claims, residential FED, and FAPA cases. The OJD has plans to continue adding to this forms bank. <http://www.courts.oregon.gov/help/Pages/default.aspx>.

Catholic Charities Immigration Legal Services

Catholic Charities provides high quality immigration legal services to low income immigrants and refugees, and engages in public education, training and community outreach in order to promote justice for all newcomers and conditions for their full participation in American society.

http://www.catholiccharitiesoregon.org/services_legal_services.asp.

Catholic Charities Low Income Taxpayer Clinic

Provides free representation to resolve personal income tax concerns with the Internal Revenue Service and sometimes with the Oregon Department of Revenue.

Immigration Counseling Service (ICS)

To receive services from ICS, individual's income must be below 200% of the federal poverty line. ICS provides direct legal services to asylees, refugees, and assistance with DACA, T&U visas, a deportation defense. <http://ics-law.org/>.

Lutheran Community Services Northwest Immigration Counseling and Advocacy Program

Provides low-cost immigration counseling to the Portland Metro's refugee and immigrant populations. Immigration Counseling is provided by or supervised by accredited representatives who have been given permission to give immigration advice by the U. S. Board of Immigration Appeals (BIA). ICAP counsels immigrants and refugees about their rights and responsibilities pertaining to their immigration status, helps clients with all immigration forms and applications, and represents clients before the U.S.C.I.S. and Immigration Court. Their staff and counselors can serve clients in English, Spanish, Russian, Vietnamese, Korean and Arabic. <http://www.lcsnw.org/services.html>.

Refugee Disability Benefits Oregon (RBDO)

RBDO provides direct representation of refugees on social security disability applications. <http://www.rdbo.org/refugee-disability-benefits-of-oregon/>.

Portland State University Student Legal Services

Provides free legal services to current PSU students in a variety of areas of law, including, bankruptcy, employment, personal injury, expungement, immigration, landlord-tenant, small claims, traffic, family, and consumer. <https://www.pdx.edu/sls/home>.

St. Andrew Legal Clinic (SALC)

St. Andrew Legal Clinic is a public interest law firm established in 1979 that provides legal services to low- and moderate-income individuals with family law needs. It charges fees on a sliding scale, based on income, family size, and ability to pay. It serves Multnomah, Washington, Clackamas, Columbia and Yamhill counties with ten lawyers and ten staff (which includes an executive director and development director). The clinic provides full-service representation to approximately 380 clients and limited-scope representation to an additional 240 clients on an annual basis. <http://www.salcgroup.org/>.

Victim Rights Law Center (VRLC)

Established in 2003, the VRLC is a nonprofit law firm that provides free legal services to victims of rape and sexual assault in the areas of privacy, safety, immigration, housing, education, employment and financial stability, in order to help rebuild their lives. The VRLC serves Multnomah, Washington, and Clackamas Counties, in addition the state of Massachusetts. The Oregon office has seven lawyers and a program coordinator. In addition to providing direct legal services, the VLRC also provides training and mentorship to pro bono lawyers, policy advising to the United States Department of Justice, and training for university administrators and law enforcement about sexual assault response. Oregon's office provides direct representation to approximately 200 victims per year. <https://www.victimrights.org/>.

Pro Bono Services

A number of formal and informal pro bono programs exist in Oregon, not all of which are catalogued in this Appendix. The OSB maintains a list of certified pro bono programs, which can be found on the OSB website here: <https://www.osbar.org/probono/VolunteerOpportunities.html>.

Legal Aid Services of Oregon also maintains a list of pro bono opportunities in the Portland metro area, which can be found on the LASO website here: <https://lasoregon.org/getinvolved/item.5774-PortlandMetroProBonoOpportunities>.

**RECOMMENDATION NO. 8:
Establish a Bar-sponsored Incubator/Accelerator Program**

Over the past six months, the Incubator/Accelerator Program Subcommittee (“the subcommittee”) has been investigating the potential for the Oregon State Bar (OSB) to develop an incubator/accelerator program aimed at creating additional resources for underserved low- and moderate-income Oregonians and helping new lawyers to develop the skills they need to practice law for these clients. We began by cataloging the existing legal resources available in Oregon for low- and moderate-income Oregonians, including law school clinics and programs, various OSB resources, nonprofits, and other legal aid programs. We also researched existing incubator programs nationwide, taking note of different models, foundational needs, and lessons learned.

Based on our research, and our evaluation of the OSB’s existing resources for underserved lower- and moderate-income Oregonians and new lawyers, we recommend that the OSB establish a consortium-based incubator/accelerator program. To further that goal, we request that the Board of Governors dedicate staff and form a Program Development Committee to implement that program.

A summary of our investigation, and a detailed summary of potential next steps, follows.

I. Legal Needs of Modest Means Oregonians

Certain programs currently existing in Oregon give us a general understanding of the legal needs of low- and moderate-income Oregonians, and national programs likewise provide data from which we can infer the needs of modest means individuals in our region. Using data from the OSB’s Lawyer Referral Service, for example, we know that the number of Oregonians in need of assistance is significant—in 2016 alone, the Lawyer Referral Service and Modest Means programs received 74,393 phone calls and 4,676 emailed requests for assistance. Broken down by subject area, those calls most frequently sought legal assistance for issues of family law, landlord/tenant law, debtor/creditor law and general torts.

Both the American Bar Association (“ABA”) and the National Center for State Courts (“NCSC”) recently have published reports confirming the Oregon’s experience with its Lawyer Referral Service and Modest Means programs is not unique. In 2016, for instance, the ABA published its Report on the Future of Legal Services in the United States,¹ which concluded that unmet legal needs persist across the country, and often are more to satisfy for the moderate-income population (who not only face similar needs, but also do not qualify for legal aid services). Those needs often fall within what the ABA has termed “basic human needs” categories, including shelter (e.g., eviction proceedings), sustenance (denials of government payments/benefits), health (private insurance, Medicaid, or Medicare claims), and family/child custody. The ABA study further reports that “conservative estimates . . . suggest as many as half of American households are experiencing at least one significant civil justice situation at any given time,” and that over “four-fifths of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.”

¹ American Bar Association, *Report on the Future of Legal Services in the United States* (2016), available at https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf.

The National Center for State Courts similarly described the “civil litigation landscape” in its recent report entitled *Call to Action: Achieving Justice for All—Recommendations to the Conference of Chief Justices* by the Civil Justice Improvements Committee.²

Those reports also describe the related statistics regarding unemployed or underemployed lawyers—and particularly recent law school graduates—in and across America. As once reported by *The New York Times*, 43 percent of all 2013 law school graduates did not have full-time legal jobs nine months after graduation. The ABA’s Commission on the Future of Legal Services reported that that paradox continues to exist today.

II. Existing Resources in Oregon

We began our investigation by identifying and cataloguing the resources that currently exist for new lawyers and underserved low- and moderate income Oregonians. Those resources are summarized in **Appendix A** to this report.

III. Incubator Programs Generally

Over the past few years, many different law school and consortium-based incubator programs have been established across the country, all seeking to address the persisting issue of how to bridge the justice gap for underserved lower- and moderate-income individuals who cannot afford traditional legal services but who do not qualify for legal aid. As we conducted our investigation and researched those programs, we catalogued, reviewed, compared, and evaluated the various models those incubator programs have taken and the pros and cons of several of them.

The first incubator program was created in 2007 at the City University of New York, and the American Bar Association currently has identified a total of 60 incubator programs across the United States. In August 2016, the ABA published a *Comprehensive Survey of Lawyer Incubators*, which catalogued program characteristics, identified resources and services provided, and predicted the viability of these programs going forward. We address portions of the ABA report in the discussion that follows.

According to a report prepared locally by Don Friedman, Theresa Wright, and Lisa Kenn in June 2016, incubator programs traditionally have taken two forms:

Law-School-Based Legal Incubator. This type of incubator is wholly formed and supported by an ABA-accredited law school. The law school operates and funds the incubator, the incubator is not a separate financial or organizational entity, and it is managed by a member of the law school’s faculty. These incubators are often located at the law school or in space provided by the law school. About one-half of the incubator programs catalogued in the ABA’s Online Incubator Director operate under the auspices of an affiliated law school.

Collaborative/Consortium-Based Legal Incubator. This type of incubator is formed and supported by a collaboration or consortium of interested parties. These parties can be

² National Center for State Courts, *Call to Action: Achieving Justice for All—Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee* (2016), available at <https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Report-Web.ashx>.

any combination of state or county bar associations, legal aid organizations, nonprofit startups, for-profit law firms, ABA accredited law schools, etc. They typically are separate financial entities, many with their own nonprofit status. They typically are managed by a limited staff, often including an executive director, pro bono coordinator, and support personnel. The State Bar of Georgia, for example, in collaboration with Georgia's five ABA-accredited law schools, recently launched a highly comprehensive collaborative model legal incubator program called Lawyers for Equal Justice (LEJ).

A. Existing Models

A few examples of successful incubator programs are worth describing in fuller detail. The following examples include both free-standing incubator projects sponsored and operated by a handful of stakeholders, and incubator models operating solely under the auspices of a law school or bar association. These are just a few examples; a summary of existing incubator on a state-by-state basis can be found on the ABA's website.

Chicago-Kent Incubator Program

The Solo & Small Practice Incubator (SSPI) at the Illinois Institute of Technology's Chicago-Kent College of Law is a one-year program designed to offer a select group of entrepreneurial-minded recent IIT Chicago-Kent graduates with valuable experience and ongoing training to help build their professional careers as solo or small firm legal practitioners. The program is intended to accelerate the successful development of newly admitted lawyers in an incubator environment. SSPI encourages and supports its graduates by providing substantive and skills training workshops, coaching in marketing and business development, mentoring support, networking opportunities, and many other resources. Participants are also provided with a working space and basic office fixtures. SSPI participants spend 5 to 10 hours per week with their matched clinical faculty or alumni mentor in the mentor's solo or small practice firm. Time spent in the mentors' firms provide participants with additional experiential training and assists in further enhancing participants' professional careers. There is no fee to participate in the program.

In addition to the working base and office fixtures, the out-of-pocket costs to maintain and facilitate the program, because of its relatively lean structure, are minimal. Those costs generally are limited to occasional snacks, and workshops and trainings, and office supplies.

Justice Entrepreneurs Project (JEP), Chicago, IL

This is an 18-month incubator program for new lawyers (less than 5 years of practice) serving low- to moderate-income clients. The JEP solicits proposals from new attorneys who want to open their own law practices but lack the training and resources to do so. The new lawyers spend the first six months of their fellowship volunteering at legal aid as a way to gain experience in their practice area, while receiving training in areas such as accounting and business. Then, with the support of the program, they begin taking on their own, paying clients—the lower- and moderate-income clients who do not qualify for legal aid—using a fee-for-service arrangement that those clients can afford. The “incubator” provides office space and other resources, which are crucial for the young lawyers as they build their client bases and skills. The program is funded by community partners in law, technology, and business.

The JEP describes itself as a network of independent lawyers who are committed to making quality legal services accessible and affordable for regular people. Its target focus is on serving the legal needs of low- and moderate-income clients whose income is too high to qualify for legal aid but too low to afford

legal assistance in the traditional legal market. The JEP target market is generally defined as people earning between 150 and 400 percent of the federal poverty level.

Substantively, the JEP concentrates on areas of law in which the legal market does not provide sufficient access for low and moderate-income people, including family, housing, consumer, immigration, and criminal law.

The JEP uses innovative methods to make legal assistance more accessible and affordable for clients in the target market and to reach those clients, including:

1. Fixed fees and other alternatives to the billable hour to provide greater fairness, flexibility, transparency and certainty to clients;
2. Limited scope or unbundled representation, when appropriate, to provide clients with additional options for representation; and
3. Using technology to create efficiencies in practice that benefit the client and the practice of law.

One full-time staff member of the Chicago Bar Foundation serves as director of the JEP. An advisory board consists of members from all areas of the legal community, including private firms.

Legal Innovators for Tomorrow (LIFT), New Orleans, LA

LIFT is also an 18-month incubator program developed for new lawyers (again, with less than 5 years of practice) serving low- to moderate-income clients. The LIFT program operates under two models—an incubator, and an accelerator. Participants in the “accelerator” program receive a variety of benefits designed to “accelerate” the development of their legal practices, including legal and practice management training, free resources, mentoring, and networking. The Participants in the “incubator” program have access to subsidized office space at the New Orleans Family Justice Center and focus their practice on domestic violence law and the legal needs of domestic violence survivors. Incubator program participants also receive free resources, mentoring, networking, training, and case referrals.

LIFT attorneys typically maintain their own solo law practice separate and apart from the LIFT program. LIFT is a partnership between the New Orleans Family Justice Center, Southeast Louisiana Legal Services, the Justice & Accountability Center of Louisiana, the State Bar Association, and a handful of other private contributors.

Court Square Law Project, New York, NY

The Court Square Law Project is a collaboration between the NYC Bar Association and the City University of New York School of Law. The project exists to provide legal services to moderate-income clients and jobs to recent law school graduates. The program has been operational since February 2016.

The Court Square Law Project operates under the auspices of the bar association and the law school. Participants are considered part of a single law “firm,” and the firm is staffed by law school faculty and law school contract or administrative staff. The firm has two full-time attorneys, one program coordinator, and up to 20 fellows per year. Each fellow spends 1-2 years in the program.

The Court Square Law Project is funded by the law schools, the bar association, foundation support, grants, donations, and client fees. Their website reports that nine “Founding Sponsor” law firms each contributed \$100,000 in start-up funding for the project. Participants practice in many areas but

provide services only to moderate-income clients. Services are provided for flat fees where possible, and on an unbundled basis where possible.

B. Oregon Models

At least three legal incubator programs currently exist in Oregon.

The Commons Law Center (formerly, Catalyst Law Institute) is a new, nonprofit legal accelerator program that plans to provide services solely in the areas of estate planning, nonprofit formation, family law, and small business startup legal services. They provide sliding scale and fixed-fee services (depending on service type) to clients whose income falls between 125 and 400 percent of the federal poverty level.

The Commons Law Center expects to announce its first class of participants in its legal fellows program in the fall of 2017. The fellows program will consist of three full-time, salaried fellows who will focus on providing legal services as well as community engagement and education to fulfill the program's mission. That mission is to revolutionize access to and delivery of basic legal services, information, and support for underserved people, businesses, and nonprofits. Although the program is designed to be self-sustaining through legal fees generated for services, it is currently engaged in fundraising to support its start-up costs and initial expenses.

The accelerator is using business process methods like Agile and Lean Startup to define its initial service offerings. It is also implementing technology tools like modern Customer Relationship Management (CRM), automated document assembly, and helpdesk-style knowledge management software in an effort to improve the number of matters that a typical lawyer can handle with high-quality results. The program intends to share its findings and methods in a free and open-source manner to allow other lawyers and programs to build upon its successes and learn from its shortcomings.

LIT-Lab—Legal Innovation and Technology Lab. This is a group of lawyers, technologists, entrepreneurs, and concerned citizens who convene through Meetup.com several times a year to discuss innovative developments, technical or otherwise, in the legal industry. It is affiliated with the international Legal Hackers movement,³ a consortium of people engaged in “civic hacking”⁴ to improve access to justice, often through technology. Although the informal LIT-Lab group primarily is organized around information sharing and discussing new developments, its members frequently advocate solutions to legal programs in order to maximize the value of legal resources and level the playing field at a reasonable cost to all parties.

Legal Empowerment Accelerator Project. A Safe Place Family Justice Center is a public-private partnership that provides comprehensive services under one roof to survivors of domestic and sexual violence in Clackamas County. Currently, A Safe Place helps meet survivors' crucial need for legal services through partnerships with LASO and Victim Rights Law Center. Those agencies provide high-quality, survivor-centered services but meet only a fraction of the expressed need due to eligibility requirements, capacity, and demand. CWS seeks to expand essential legal assistance for survivors of domestic and sexual violence through the creation of the Legal Empowerment Accelerator Project

³ Legal Hackers, <https://legalthackers.org>.

⁴ The term “hacking” in this context has the positive connotation of “clever improvements,” as shown on mainstream sites like lifehacker.com.

(LEAP). This accelerator program would give new lawyers the opportunity to provide a determined amount of free and low cost (“low bono”) services to clients of A Safe Place during the course of a 12- to 18-month program. In exchange for their efforts, they would gain professional experience while working in a supportive legal environment.

LEAP participants will apply through their law schools, which will select cohort members in consultation with an advisory board. The project director, an attorney with experience in legal matters that survivors commonly face, will provide mentoring, support, and expertise to the participating lawyers, both in the substantive and procedural aspects of practice and in law office management. The program will provide office space and equipment to the participants in an office complex near A Safe Place. The participants will be responsible for paying bar dues and the required bar malpractice insurance through the OSB’s PLF.

Participating lawyers agree to provide a set number of hours of free and reduced-cost services each month to clients referred from A Safe Place. They will also be free to take other cases of any kind, with the exception of criminal defense. Although participating lawyers operate as solo practitioners, clients will be screened for conflicts of interest. The project director will be an employee of CWS, but the participating lawyers will practice as their own independent law firm.

III. Lessons Learned from Existing Incubators

In its August 2016 Comprehensive Study of Lawyer Incubators,⁵ the ABA reported that existing incubators faced the following as some of their biggest challenges:

- Serving clients on a very limited budget,
- Having more clients than resources,
- Reaching clients within the justice gap,
- Evaluation,
- Participation and competence, and
- Streamlining redundant processes.

When ranked from most challenging to least challenging, incubator programs reported that program sustainability was their biggest challenge. Incubator programs across the country operate on an average annual budget of \$50,000, with a range of budgets running from just under \$50,000 to over \$1,000,000.

The same programs identified the following as issues they would focus on in the future to more effectively implement their program components:

- Tools for evaluating and measuring success,
- Syllabi and course materials for JD law practice management curricula,
- Post-grad incubator/residency and non-profit program curricula,
- Group negotiations for free/discounted goods and services,

⁵ ABA Standing Committee on the Delivery of Legal Services, 2016 Comprehensive Survey of Lawyer Incubators (2016), https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/lis_del_comprehensive_survey_lawyer_incubators.authcheckdam.pdf.

- Eligibility to obtain tools/assistance from a consortium-organized best practices task force on effective uses of technology.

Although we certainly should be aware of these lessons learned as we move forward with an Oregon incubator project, our subcommittee also believes that the issues identified above can be avoided with the right incubator model, structure, and plan. We believe, for example, that involving and encouraging the participation (financially and substantively) of Oregon’s for-profit private law firms could be important, because it could significantly decrease program costs and increase sustainability on a longer-term basis. We also believe that the program should develop, early on, mechanisms for evaluating and measuring success on a program-wide basis; business models incorporating various fixed or sliding-scale fee structures; and curricula to help facilitate participant transition from incubator to practice, among other content, to help increase both short- and long-term program success.

V. Oregon Incubator/Accelerator Recommendation

As noted above, **Appendix A** of this report summarizes the resources currently available in Oregon for new lawyers seeking to develop their legal practices, as well as resources available to moderate-income clients seeking legal services in various substantive areas. Based on our review of the scope of those programs, we have concluded that Oregon does not have sufficient legal resources available to low- and moderate-income Oregonians. Moreover, although Oregon has some programming available for new lawyers, and that programming provides some opportunities for new lawyers develop their skills through pro bono representation, there are few, if any, income-generating opportunities for new lawyers to do so.

We therefore recommend that the OSB create an incubator/ accelerator program that will serve Oregon’s lower- and moderate-income population—specifically, those individuals whose income falls between 150 and 400 percent of the federal poverty level. The program will serve both to provide necessary legal services and to create income-generating practice opportunities for unemployed or underemployed new lawyers. It will also operate as a center for innovation dedicated to identifying, creating, and testing innovative methods for the delivery of legal services, which will then be made available on an open-source platform to the OSB membership.

We recommend that Oregon’s incubator have the essential components described below:

1. **Staff:** We anticipate that, during the startup and operations phases, the incubator will require one or two full-time staff members who are dedicated to this effort. Those staff members may, but need not, have their offices at the Oregon State Bar.
2. **Consortium-Based:** We believe that a consortium-based legal incubator would best address and/or avoid some of the sustainability challenges that many other incubator programs have faced. A consortium-based program would depend heavily on the participation and resources of various stakeholders. Those stakeholders include the OSB, law schools, existing nonprofit and legal aid organizations, and Oregon’s for-profit private law firms:

The **OSB’s** membership in this consortium is central. It will spearhead the formation of the Program Development Committee (discussed more below) and its dedicated staff members would create and operate the incubator and accelerator programs on a long-term basis. We also recommend that is, as noted below, whether it could provide no-cost or reduced-cost

PLF coverage or CLE credit to incubator participants. Finally, as discussed also below, members of the OSB's Solo & Small Firm Practice Section might be valuable members of the Program Development Committee and could provide input on the incubator curriculum, mentorship to participants, and feedback on the viability of potential accelerator projects.

The **University of Oregon School of Law** has already demonstrated its willingness to and interest in participating as a member of the consortium. We recommend that the OSB reach out to **Lewis & Clark Law School** and **Willamette University School of Law** as soon as is practicable and inquire whether those schools are also interested in membership. As members of the consortium, the law schools could provide alumni or staff mentors, participant training, office space, or academic support for the incubator curriculum.

Private, for-profit law firms across the state would also play an important role. They will provide the financial resources to ensure that the incubator program can continue through the years. They can also host program participants, which would include providing office space, other administrative resources, mentoring, and training to the incubator participants.

We expect that participation from each of the stakeholders identified above will provide the resources necessary to allow Oregon's incubator/accelerator to operate in a sustainable way, without requiring significant outside fundraising that might otherwise divert funding from existing legal aid programs.

- 3. Incubator Component:** The incubator component of this program will allow new lawyers take on roles providing direct legal services to lower- and moderate-income clients. Participants in the program would be based in law firms or in other dedicated office space, ideally in an environment in which other practicing lawyers are available for day-to-day mentoring and engagement. Each incubator participant would develop his or her practice using the program resources and, if at a law firm or other "host" organization, in partnership with the host. The participant's practice would focus on the delivery of services that fulfill unmet legal needs of moderate-income clients. Program hosts may be located across the State. At least one incubator participant should practice in a rural area.
- 4. Accelerator Component:** Staff members dedicated to operating the incubator program will also manage the accelerator program, which will operate together with and alongside the incubator program and will focus on identifying, developing, testing, and disseminating creative and innovative strategies and ideas for the delivery of legal services to underserved and moderate-income populations. (A few strategies and ideas currently being explored in Oregon and around the country, for example, include using new technologies to make legal information more accessible or affordable, using mediation and other non-adversarial approaches to problem solving, creative fee-for-service arrangements, "unbundling" legal services, legal process outsourcing, and development of mobile applications.) The accelerator component will also learn about and strategizing with new technologies in a way that furthers the delivery of legal services to moderate-income populations, and, to that end, might coordinate with existing programs—such as LIT Lab—to identify potential projects. We recommend that the accelerator also network and collaborate with other disciplines and industries—law, business, and technology—to share ideas and identify potential solutions.

Note that the accelerator component of this proposal is designed to serve not only the members of the incubator program, but also the OSB's general membership. Its goal will be to use the incubator participants to develop and test ideas and strategies before they are disseminated more broadly. Once they have been tested, those ideas and strategies should be packaged so that they may easily be translated to members of the bar in other practice models and subject areas. The OSB staff members tasked with managing the accelerator program will work with program participants and practicing OSB members to facilitate the best method for dissemination. Those methods might include, among others, an annual report or open-source web platform. Note further that the law schools may have some interest in participating in or helping to develop potential accelerator projects and should be involved in the design of this program component.

5. **Mentoring and professional skills development:** The incubator/accelerator program should use the OSB's existing resources and membership to develop a mentoring program for incubator participants. The mentoring program should focus on developing substantive legal skills, writing skills, networking skills, and professional and business development skills. The mentoring program will last throughout the participant's tenure with the incubator. The OSB should also consider providing opportunities through existing OSB-sponsored networking events and collaborating with other bar associations to provide reduced-cost access to networking events hosted by those associations.
6. **CLE and PLF:** The OSB should consider options to provide program participants with no-cost or reduced-cost CLE and PLF coverage.

V. Recommended Next Steps

The OSB should take the following next steps moving forward.

1. **Dedicate Existing Staff Resources:** We recommend that the BOG and OSB consider a limited staffing commitment of one FTE as project manager for the incubator/accelerator program. That one FTE might be available from existing OSB staff. As the program develops, the OSB should coordinate with the law schools to determine and satisfy additional staffing needs and should consider whether more funding should be dedicated to the incubator/accelerator programs.
2. **Form a Program Development Committee:** We also recommend that the BOG establish a Program Development Committee ("Committee") dedicated to implementing the incubator/accelerator program. One Program Development Committee member should be the full-time OSB staff member referred to above. The law schools should also be represented on the Committee. Other Program Development Committee members should be leaders from the law, business, and technology communities. The Committee should reflect diverse perspectives and include representatives of the other various stakeholder organizations, including nonprofits, private law firms, and LASO.
3. **Formulate the Incubator/Accelerator Program Details.** OSB staff, together with the Planning Development Committee, should take, among other things, the following additional steps toward developing an operating incubator/accelerator program.

- Coordinate with stakeholders. As soon as is practicable, the Committee should convene a meeting of program stakeholders and facilitate their involvement in the planning process going forward.
- Create a business plan. Using business plans from other incubator programs as a guide, coupled with resources from business or technology incubator programs, the Committee should develop a plan for startup and continuing financing of the proposed program. Sources of funding might include community stakeholders (including legal, business, and technology companies), vendors, grant programs, and client fees. The steering committee should create an ongoing business plan, including financing assumptions, projected surplus or deficit, break-even analysis, projected cash flow and balance sheets, etc.
- Create a marketing plan. The Committee should develop a plan for marketing the services of the incubator program. This could include marketing through existing channels or developing new ways for reaching moderate-income Oregonians and educating the public about the program scope and resources.
- Identify program hosts. We envision that the for-profit law firms in Portland and across the state will host incubator participants and provide training, mentoring, and other office resources. The Program Development Committee should develop at the outset a plan to market, identify, and obtain commitments from those firms.
- Identify options for office space. This includes office space for both the program staff and incubator participants. This task will overlap with the identification of program hosts, as many hosts (particularly law firms) should include, as part of their commitment, office space for their respective participant.
- Program application process. The Committee should develop an application process for the participant/fellows program, which will include drafting job descriptions, establishing an application and review process, and developing a plan to advertise the program applications.
- Develop mechanism for assessment program success. The Committee should identify the best metric for measuring the success of both the incubator and accelerator components of the program. To do so, the Committee might consider metrics such as number of matters addressed by program participants, populations served, financial success of new lawyer participants, extra-program use of accelerator innovations, etc.

4. Follow Up: The Planning Development Committee should move forward according to the following timeline:

Fall 2017: Program is finalized, curriculum determined, law schools involved and prepared to offer the program to students.

Spring 2018: Incubator participant applications go out and selection process begins.

Fall 2018: Incubator program starts.



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OREGON STATE BAR
Board of Governors Agenda

Meeting Date: June 23, 2017
Memo Date: July 12, 2017
From: Oregon Law Foundation
Re: Civil Legal Needs Study

Action Recommended

Approve a \$10,000 contribution to the Oregon Law Foundation's Civil Legal Needs Study focusing on Oregonians up to 125% of the poverty guideline.

Background

One of the Oregon State Bar's statutory mandates is to manage the filing fee funds appropriated for the legal services providers in Oregon and to ensure that providers comply with the OSB Legal Services Program Standards and Guidelines for operation of legal aid programs. See ORS 9.572. Among other things, the Standards and Guidelines require civil legal aid providers to deliver services that are responsive to the needs of the community of potential clients. The providers, in partnership with the Bar, the Campaign for Equal Justice, the Oregon Law Foundation, and community partners, maintain ongoing knowledge of the legal needs of low-income Oregonians through their strategic planning process. In addition to this ongoing effort, it is important to conduct a periodic comprehensive point-in-time civil legal study. A civil legal needs study provides the opportunity to produce an independent, quantitative measure of needs, to compare needs throughout the state, and to make sure the ongoing process is not missing new or developing legal issues or sub-communities. In short, it assists the bar with fulfilling its statutory mandate.

Perhaps more importantly, a comprehensive civil legal needs study helps support legal aid. The most recent civil legal needs study was completed over 17 years ago in 2000. With that study, legal service providers have set priorities that are responsive to client needs. Additionally, the Bar, the Campaign for Equal Justice, the Oregon Law Foundation, and others have used the 2000 study to advocate for legislative support and to raise private funds to support legal services for low-income individuals. For all of these purposes to be most effective, current and accurate information is required. The economy and population of Oregon have fundamentally changed since the publication of the 2000 study making a new study a necessity.

Over 2014 and 2015, the state of Washington conducted a similar new civil legal needs study and found that the number and variety of legal issues experienced by low-income individuals had changed from their most recent prior study in 2003. We similarly expect that there have been changes in the number and variety of legal needs in Oregon since our 2000 legal needs study. Further, differences from Washington's 2014 survey are also expected as the economy has continued to change.

At the beginning of 2017, the Oregon Law Foundation began planning a new study to update our understanding of the civil legal problems experienced by low-income Oregonians. A scoping group comprised of representatives from the Bar, the Campaign for Equal Justice, legal aid providers, the Oregon Supreme Court, and the Oregon Law Foundation came together and agreed upon a scope of a new legal needs study. The scoping group engaged Portland State University as a research partner and supplier of technical expertise. Together, with PSU, the scoping group designed a research methodology focusing on the population up to 125% of the federal poverty guideline. The study will focus on collecting 1,500 responses from this population randomly sampled statewide from census blocks with a high poverty population. The target number of responses will allow the study to compare needs between sub-groups of the poverty population.

In total, the study is budgeted to cost \$270,000 to \$290,000. The largest portion of the funding for the study will come from investment gains on Oregon's portion of the Bank of America mortgage settlement fund. The Oregon Judicial Department has already contributed \$10,000 toward the cost.

The Oregon Law Foundation would like the OSB to at least match the Oregon Judicial Department's contribution to the cost of the study. Such a contribution would not only free OLF funds for direct legal services, but it would show the bar's commitment to partnering with other stakeholders to improve access to justice. Perhaps most importantly, helping to fund a civil legal needs study would fit squarely within the bar's mission to increase access to justice.

Why limit the survey to 125% of the poverty guideline?

When constructing a survey or analyzing data, the questions and the questioners are as important as the data¹.

Sections and committees of the bar over the last several years have proposed an assortment of questions and surveys that might provide insight into the legal needs and willingness to pay for legal services of Oregonians well in excess of the poverty guideline. Due to the methodology of the 2017 civil legal needs study, it is not feasible to expand the present study to cover higher income levels.

The target for the 2017 civil legal needs study that the Oregon Law Foundation is conducting is to measure the number and variety of legal issues experienced by lower income individuals and to be able to compare differences in need based on demographic characteristics. In order to accomplish this, a high response rate of 1,500 respondents is being used² and a random

¹ Asking questions late in the analysis process, or endlessly mining data sets for correlations is known as data dredging or p-hacking and by random chance leads to meaningless correlations, sometimes to comic effect like the strong correlation that is present between the divorce rate in Maine and the US per capita consumption of margarine: <http://www.tylervigen.com/spurious-correlations>

² In order to get a 95% confidence level and a 5% confidence interval, to make conclusions about the Oregon population of about 4,000,000 as a whole, only 384 responses are needed; however, to make conclusions about

selection of Oregonians from high poverty census blocks is being used. This sampling means we will get results that are most meaningful for the poorest Oregonians living in communities that are most hit by poverty.

Collecting surveys from higher income individuals in the high poverty census blocks is not a viable way to expand the survey. This kind of expansion would give results biased by the sampling method that would be of limited applicability to the Oregon population as a whole. Asking higher income individuals to return the survey would also generate 4,000+³ responses above 125% of the poverty guideline producing a cost of \$80,000+ due to the survey incentivizing responses with a cash award. Statistically significant conclusions can be made from 384 responses, so this would produce far more responses than needed at a far higher price from a too limited sample.

Expanding the sampling method to draw randomly from the state as a whole is also not a viable way to expand the survey. Randomly sampling respondents from the state at large would gather good data from all income levels, but in order to get the 1,500 respondents below 125% of the federal poverty guideline, a significant increase in sample size would be required. Approximately 20% of the Oregon population is at or below 125% of the federal poverty guideline. To get the 1,500 desired responses would require a total response set of 7,500—1,500 below 125% of the poverty guideline and 6,000 above. That would cost \$120,000 more in response incentives; additionally, the sample size would have to be higher to get that number of responses increasing printing, mailing, processing, and other costs. This method of expanding the survey would produce even more responses than the previously excessive method at an even higher cost.

The best and most cost effective method of gathering the specific information needed from the low-income population and the information bar sections and commissions desire from the broader public is to conduct civil legal needs surveys, plural. The survey instrument that the Oregon Law Foundation is using will be available to bar sections and commissions to use and modify for their own studies.

Conclusion

The OLF low-income civil legal needs study is well targeted at the poverty population of the state of Oregon. Due to the methodology needed to fully study the poverty population, it is not possible to expand the low-income legal needs study to the population at large. The total cost of the low-income civil legal needs study is between \$270,000 and \$290,000. It is important for the Oregon State Bar to contribute to the cost of this study.

sub groups, a sample of about 384 would be needed for each sub-group making up more than 0.1% of the population of Oregon.

³ Based on the screening-only response rate of the recent Washington legal needs study.

OREGON STATE BAR

BOG Policy & Governance Committee

Meeting Date: June 23, 2017
From: Jonathan Puente, Director of Diversity and Inclusion
Re: Revisions to the Advisory Committee on Diversity and Inclusion Charge

Action Recommended

Consider the Advisory Committee on Diversity and Inclusion (ACDI) request to amend their charge.

Background

Over the past years the Diversity and Inclusion Department at the Oregon State Bar has worked in conjunction with the ACDI to implement a variety of programs aimed at increasing the diversity of the Oregon State Bar. For example, members of the ACDI review and score applications for a variety of scholarship and grant programs intended to recruit and retain a diverse network of attorneys to practice in Oregon and serve traditionally underserved populations. The Committee also provides vision, advises the Diversity and Inclusion Department staff, and is a strong program advocate. The ACDI is in the process of reorganizing itself in order to more effectively serve Oregon's diverse legal community and meet the mission and goals of the Oregon State Bar. This proposed amendment to the charge represents a first step to that end.

The OSB's primary program for recruiting and retaining diverse legal talent to meet the needs of all Oregonians is Opportunities for Law in Oregon (OLIO). Started in 1997, OLIO is currently open to Oregon law students who can contribute to the bar's historically or currently underrepresented membership; who have experienced economic, social, or other barriers; who have a demonstrated interest in increasing access to justice; or who have personally experienced discrimination or oppression. The program begins with an orientation that provides a diverse group of Oregon's first-year law students with the opportunity to interact with each other, and with upper division students, judges and leaders who will serve as their mentors and role models. During orientation, students meet a diverse community of supporters committed to helping them succeed. The curriculum focuses on sharpening existing skills and providing new skills to help ensure success in law school and beyond. Students receive valuable information on networking, study skills and Oregon bar exam preparation. OLIO participants also have opportunities to reconnect throughout the year at several OLIO events, including a bowling networking event (BOWLIO), an employment retreat and a spring social.

This program has helped to create community for its participants over the last twenty years and holds great significance for many within Oregon's diverse legal community. The ACDI has been a key resource in assisting the Oregon State Bar and the Diversity and Inclusion Department in planning and organizing OLIO. In addition, many other volunteers have helped with the program by participating in the events and mentoring its students. In order to recognize those individuals who have significantly impacted and contributed to the OLIO program, the ACDI recommends that its charge be amended to allow it to establish and give an award in the name of OLIO's founder, Stella Kinue Manabe. The proposed criteria for the award are as follows:

The Stella Kinue Manabe Award recognizes an individual who has demonstrated outstanding commitment to the Oregon State Bar's Opportunities for Law in Oregon (OLIO). OLIO, initially created by Ms. Manabe, has been nationally recognized as an innovative recruitment and retention program for Oregon law students who come from underrepresented backgrounds. The recipient of the Stella Kinue Manabe Award shall be an individual who has made outstanding contributions toward OLIO through:

- Significant and/or sustained participation in the bar's OLIO programs, including the signature orientation program, employment retreat, or other OLIO educational or networking events; or
- Significant and/or sustained efforts to mentor and support OLIO students and alumni.

In addition, the ACDI recommends that the charge be updated to remove and replace outdated terminology. The proposed changes are shown below.

CHARGE FOR THE ADVISORY COMMITTEE ON DIVERSITY & INCLUSION

General:

The Diversity & Inclusion Advisory Committee serves as a key resource to assist the OSB in advancing diversity and inclusion in all the bar's mission areas, programs and activities. The Committee and its members shall:

Specific:

1. Provide input and recommendations to assist the Diversity & Inclusion Department Director and/or BOG in developing, implementing, monitoring and improving strategic initiatives to advance diversity and inclusion in the OSB. ~~analysis and evaluation of the program to the program manager and/or BOG.~~
2. Serve as volunteers for Diversity & Inclusion program elements, activities and strategic initiatives. ~~Make recommendations to the program manager regarding how the program can be improved.~~
3. Serve as ambassadors for the OSB to the legal community and public, including acting as a resource for speaking engagements and CLE programs related to the OSB's Diversity and Inclusion initiatives. ~~Serve as volunteers for program elements.~~
1. ~~Increase the number of AAP participants.~~
2. ~~Increase the number of AAP student participants who attend and complete law school in Oregon.~~
3. ~~Increase the number of AAP participants who pass the Oregon bar examination.~~
4. ~~Increase number of career placements in Oregon.~~
5. ~~Increase number of ethnic minority lawyers who remain in Oregon practice for at least five years.~~
6. ~~Increase awareness of the value of diversity in the legal profession.~~

4. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, [the Membership Service Award](#), [the President's Diversity and Inclusion Award](#), [the Edwin J. Peterson Professionalism Award](#), [the Diversity & Inclusion Department's Stella Kinue Manabe Award](#), ~~[Affirmative Action Awards](#)~~, ~~[the Joint Bench Bar Professionalism Award](#)~~ and any other state, local and national awards for lawyers who make a contribution to serving the legal needs of Oregonians.

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: June 23, 2017
From: Dani Edwards, Director of Member Services
Re: Initial Review of Oregon New Lawyers Division

Action Recommended

Identify areas for further review of the Oregon New Lawyers Division.

Background

The bar will conduct a survey of new lawyers in the fall to determine how well their needs are being served, with results available in advance of the annual board retreat. The Policy & Governance Committee will identify areas of interest and issues to be explored in the survey. As background, staff are providing comprehensive information on the current state of OSB programs and services directed toward new lawyers. Below is an initial review of the Oregon New Lawyers Division with information about ONLD Programs and potential areas for further review by the committee.

ONLD Overview

The ONLD was created in 1991, and became fully-funded by the OSB in 1994. It was initially created to meet the needs of new lawyers and encourage their participation in bar governance. At that time it was difficult for new lawyers to become members of bar groups because the number of potential volunteers greatly outnumbered the available volunteer positions. ONLD members are now fairly well represented on OSB Sections and Committees, with 22% of Section Executive Committee members being ONLD members, and 29% of OSB Committee members being ONLD members. Approximately 25% of OSB members are members of the ONLD; membership is automatic for all OSB members who have practiced in Oregon for six or fewer years or are under the age of 37.

The ONLD's goals are to:

- Provide opportunities for career development and skill enhancement
- Provide opportunities for community service and public outreach
- Provide opportunities for leadership
- Promote professionalism within the legal profession
- Provide opportunities to realize work/life balance
- Promote opportunities for involvement with the Oregon State Bar
- Promote relationships between lawyers of various ages and experience levels
- Promote diversity within the legal profession
- Provide continuing legal education opportunities targeted toward the needs of new lawyers
- Provide opportunities for law students transitioning from law school in the practice of law
- Promote opportunities where the division is uniquely positioned to provide services to new lawyers

Activities and Programs of the ONLD are developed and executed by the ONLD Executive Committee and its six subcommittees. The executive committee is made up of eleven members – one member from each of the seven OSB Regions and four at-large members. It is governed by a chair, chair-elect, secretary, and treasurer, all of whom are elected by the ONLD membership at the annual meeting. The six subcommittees and their work are:

Continuing Legal Education

The CLE Subcommittee has two co-chairs and an additional three to five members, generally. This Subcommittee organizes low cost CLE seminars geared specifically toward new lawyers. Annual projects include the monthly Portland Brown Bag Lunch Series, special programs on various hot topics, and the economical Super Saturday Program, recently moved from the fall to early summer to better coordinate with the PLF Learning the Ropes Seminar.

The Brown Bag series holds 12 to 18 hour-long seminars annually with approximately 15 attendees at each. There is no expense to these programs and revenue averages \$100 per program. The special programs have included topics on litigation, family law, and legal writing. Attendance at these programs averages close to 30 attendees. In most cases the programs break even with attendees covering the entire expense for their attendance.

The most recent Super Saturday (held on June 3) new attorneys the opportunity to receive five MCLE credits by attending one-hour seminars selected from the 15 sessions provided in three topic tracks. In the last 10 years attendance has slowly declined, once at an average of 90 participants, attendance is now averages 55. The program remains a break even event.

Law Related Education

This subcommittee has three members, and offers new lawyers the opportunity to help members of the public learn about the legal system. Projects include the longstanding high school essay contest, with an average of 60 participants from 20 different schools, and a recently-added middle school Law Day art contest with only one entry the first year and 18 entries the second year. Expenses for these projects include the award money (\$1,400 for six winners) and printing and mailing costs (average of \$1,200 per year). However, in 2017 the ONLD discontinued printing and mailing contest information and plans to focus on use of social media and direct contact with schools throughout the state.

Law School Outreach

The Chair, four attorney members and three law student representatives of this subcommittee focus on meeting the needs of law students and recent graduates as they make the transition from student to lawyer. Projects include law school career presentations as well as social events and educational programming at each law school, each spring and fall. This subcommittee partners with the University career services or student life associations to present these events.

Member Services and Satisfaction

With a goal of bringing new lawyers from around the state together and providing a network for professional and social interaction, this subcommittee, with a Chair and 10 members, sponsors monthly after-work socials in Portland and quarterly socials in other areas around the state. These socials range from 15 to 30 attendees. Many socials are co-hosted with one or more section, specialty bar, or county bar association. On average, each co-hosted social costs \$120 and ONLD-only socials cost \$240.

For several years the subcommittee sponsored a rafting trip in Maupin but based on liability concerns the ONLD transitioned to hosting a more upscale social event called the Sunset Cruise. This 2-3 hour event welcomes on average 95 judges, lawyers, and law students to a summer networking cruise on the Willamette River. Attendees pay a partially-subsidized rate, and the 2016 event ran a net expense of \$2,800.

A reception for new bar members and their families is hosted by this subcommittee after each swearing-in ceremony with an annual cost of \$800. Finally, the Subcommittee works to create family-friendly social and networking opportunities, such as the 2016 family hike and picnic with 5 ONLD members and their families.

Practical Skills

The Practical Skills chair and the six other members of the subcommittee organize opportunities for new lawyers to gain practical skills while providing legal services to people in need. The *Law College Program* and the *Practical Skills through Public Service Program* are the major activities for this group. The *Law College Program* provides in-depth training on particular areas of law, such as litigation, immigration, or legal writing. The *PSPS* connects brand new lawyers with public service organizations for long-term, committed volunteer opportunities designed to provide the new lawyer with needed skills and the public service organization with support. Since its creation in 2011, over 100 new lawyers have been matched with the 20 participating organizations. In recent years the number of new lawyer applicants has decreased, possibly a result of the change in job market.

Pro Bono

This subcommittee has four active members. It identifies pro bono needs not being addressed by other organizations and suggests ONLD programs and proposals to enhance delivery of legal services to the indigent. The subcommittee is the driving force behind the Pro Bono Challenge and the Pro Bono Celebration held each October. That event features the Pro Bono Challenge Awards, a Pro Bono Fair, and three, free pro bono-related CLEs. This past year, the Pro Bono Subcommittee hosted a Wills for Heroes event for first responders and, in conjunction with the Practical Skills Subcommittee, hosted a Special Immigrant Juveniles Status (SIJS) CLE, attended by 35 attorneys, providing them with four hours of CLE credit, and the skills to represent under-served juvenile immigrants.

Recent ONLD Focus

The ONLD strives to support the new breed of solo practitioner in a variety of ways. It created the "Practice Drive" which provides templates for various types of letters, pleadings, etc. for new lawyers across the state to review and alter to fit their needs. The documents provided on the "Practice

Drive” include client engagement and disengagement letters, office manuals, examples of client communication letters, opening-a-law-office check-lists, adoption forms, bankruptcy forms, guardianship checklist and forms, and so much more. The “Practice Drive” contains 629 files and provides a thorough library for any new practitioner.

The ONLD recently turned its attention to two timely topics: 1) The creation of a Summit focusing on the Future of Rural Practice, in conjunction with the Washington State Bar’s New Lawyer Division; and 2) A series of CLEs focused on Uncommonly Discussed Veterans’ Issues, working with the Military and Veterans’ Section and the Oregon Department of Veterans Affairs.

The ONLD is also developing a series of podcasts, with a target audience of law students and new lawyers. The podcast will showcase a different theme each month—for example the October podcast will focus on pro bono, to coincide with the ABA’s Celebrate Pro Bono week. Each podcast will include a topical overview of current legal affairs, a VIP interview in a segment entitled “Remember the time when . . .” and an overview of upcoming events.

ONLD Revenue and Expenses

Annual expenses for the ONLD total around \$200,000. Program revenue, most of which comes from CLE registration fees, is approximately \$5,000. Staff salaries and benefits, equivalent to .8 FTE, is approximately \$70,000, ICA is just under \$50,000 and direct program expenses are approximately \$82,000.

General Breakdown of ONLD Expenses

Description	Expense Purpose	
	Events	Administrative
Lawyers in Rural Areas Task Force	\$3,500	
Marketing/Outreach	\$7,250	
Board Meetings/Annual Meeting	\$36,800	
Board Conference Attendance	\$14,500	
Special Events	\$18,200	
Other	\$1,600	
Administrative Costs		\$780
OSB Staff Travel & Expense		\$2,000
Totals	\$81,850	\$2,780

Potential Areas of Discussion

Below are some areas the BOG may want to consider as the survey and the review of all new lawyer program progresses.

ONLD Structure

The executive committee and subcommittee structure reflects the organization of the BOG and its various advisory committees. This was an intentional decision when the ONLD began, and served a goal of preparing new lawyers for future involvement with OSB committees and other bar groups. As bar demographics and volunteer participation have shifted over the years, the ONLD committee structure may be outdated.

The group's pro bono committee has significant overlap with the OSB Pro Bono Committee, and the CLE Committee's goals may need to be realigned with the Board of Governor's changing goals for delivery of CLE seminars. Similarly, the ONLD's Law Related Education subcommittee was created to mirror the charge of the OSB's Law Related Education Committee; the OSB committee was sunsetted some time ago because its activities were duplicative with the Classroom Law Project. Other areas of potential overlap: The goals and activities of the Law School Outreach subcommittee are similar to projects of the Board of Bar Examiners, OSB Diversity & Inclusion Department and the Oregon Bench & Bar Commission on Professionalism. The "Practice Drive" project is similar in nature to programs sponsored by the PLF and its practice management advisors.

One of the strengths of the ONLD is its ability to be nimble and energetic. Historically the executive committee has been responsive to changes within the profession, developing programs to meet the needs of new lawyers in the changing economy. As needs change, the challenge has been in sunseting programs no longer at the forefront of members' needs.

As mentioned above, approximately 25% of OSB members are ONLD members by default. The total number of active ONLD members in Oregon is 3,280. The total number of ONLD executive committee and subcommittee members is 53.

CLE Seminars & Networking

Most ONLD events serve two distinct goals: providing networking opportunities for new lawyers and offering members free and low-cost CLE seminars. The ONLD partners with sections, local bars and specialty bars for many of its CLE and networking events. It also takes care to make programs available across the state, including simulcasting CLEs from the Pro Bono Celebration to five satellite locations and other special programs such as the 2016 Southern Oregon Summer Social, which welcomed summer clerks to the area.

Further review of how ONLD activities in this area align with current BOG priorities may be warranted. Past survey results indicate that new lawyers are more interested in networking opportunities than low-cost CLE (perhaps because the latter is more readily available). Data on the type of networking activities most valued by new lawyers, as well as feedback on the effectiveness of current networking efforts, would be helpful in evaluating future efforts.

Executive Committee Expenses

A major expense area for the ONLD is travel and conferences. Many of the in-state travel expenses are geared toward networking and CLE events outside the Willamette Valley. The ONLD Executive Committee travels to other cities for its executive committee meetings (generally in combination with local CLE seminar/networking opportunities).

Out-of-state travel and related expenses primarily benefit the leadership development of executive committee members. The ONLD sends approximately three representatives to each of the four annual ABA Young Lawyers Division meetings.

Section Feedback on CLE Co-Sponsorship

Regarding the “compromise” noted below, our Section remains interested in any proposal being considered by the Bar, but at this point, does not have specific comments regarding the “compromise” proposal. Section members did note that CLE accessibility is important and supports efforts to maintain/improve accessibility for all members of the Bar ...

- Carson Bowler, Administrative Law Section Chair

The Agricultural Law Section of the Oregon State Bar (OSB) writes to request that the Board of Governors reconsider the requirement for sections to use OSB registration services for all CLE events put on by sections.

We were recently informed that the OSB plans to require all sections to utilize OSB’s registration services for all CLE events put on by the section. While the cost of the service will vary, there is a minimum fee of \$100 that would apply to free CLE events. The Agricultural Law Section has strived to offer a robust range of CLE courses to our members at no cost. This includes 2-4 brownbag lunches each year and an annual four-hour CLE course.

While we understand and accept the registration requirement for longer CLE programs, we do not think it makes sense for hour-long, free CLE programs. Our brownbag CLEs are put together at no cost to the Section or the participants, and have always had a relatively informal registration requirement. This has allowed us to put together a number of these CLEs each year and allow attendees flexibility in attending. As a result, our brown bags have been well-attended and very popular with our members. If these events now cost the Section \$100 to put together, we would either need to incorporate that cost into our fee structure or pass it along to individual attendees. Either way, it will likely result in either fewer CLE programs put on or fewer attendees at each CLE.

Additionally, for a program as small and informal as a brownbag CLE, we do not think \$100 is fair to ask of sections when we could easily bear the registration burden ourselves at no cost. Our brownbag CLEs typically attract 10-20 attendees, which doesn’t warrant investment in an outside registration service. We ask that you reconsider the decision to require sections to use OSB’s registration services for no cost or low cost CLEs that are under two hours in length. Thank you for your consideration and please let us know if you have any questions.

- Mary Anne Nash, Agricultural Law Section Chair

Thank you for reaching out for the Construction Section’s comments regarding the proposed CLE co-sponsorship compromise generally described below. Please note, the below comments are not an official or adopted response of the Section, but rather an amalgamation of comments from Section board members taken from over time regarding the ongoing discussion of co-sponsorship.

Our Section has long prided itself on presenting creative CLEs unique to our Section’s subject matter. Within our Section’s rather specialized area of law, our members include a wide variety of lawyers, from large downtown Portland law firms representing Fortune 500 clients and insurance companies to small-town solo practitioners representing small family businesses and individuals. Our Section has sought to balance subject matter and reach out to members across the state. This effort is embodied in our Section’s tradition of periodically holding “Sticks and Bricks” CLEs at or near construction projects or places of note. Locations in recent years have included the Matthew Knight arena here in Eugene, a manufacturing operation in Bend, and a presentation in the Salem-area followed by an open reception at a Frank Lloyd Wright house.

So, against this background, here are the comments on the co-sponsorship compromise: Of those who have voiced an opinion, the concept of CLE co-sponsorship is generally not well-received.

The co-sponsorship proposal by the Bar, in the view of some board members, is the externalization of the Bar's costs to achieve the Bar's broader objectives, generally at the expense of our Section's objectives in putting on CLEs that are faithful to a unique aspect that virtually all of our Section member's client base have in common: Construction projects. The uncertainty of added increased expenses, while committing a substantial share of CLE revenue to the Bar will have (and since the discussion began about two years ago, has had) a chilling effect on our Section's flexibility to provide diverse and interesting CLEs in different locations. Our Section has traditionally handled preparation and presentation of CLEs without much Bar assistance, realizing significant cost savings and flexibility to "take a chance" on traveling to non-Portland metro area locations (such as Eugene, Bend and Salem). Having served on a CLE subcommittee, a lot of work goes into planning these "field-trip" CLEs. The greatest challenge, in large part, it is the uncertainty of coordinating CLEs at places other than the OSB building with the traditional OSB vendors. The hard work of these subcommittees, however, has generally yielded some excellent results.

Another point that I think bears some relationship to the CLE co-sponsorship discussion is the disfavor the Bar has placed on Sections carrying significant balances from year to year (without much definition about what this means to my recollection). While I have not reviewed other Section budgets, our Section membership fees are among the lowest, we have provided new lawyer and judge CLE scholarships and we usually have an end of the year open reception for members. We run (in my opinion) a pretty tight ship. Yet our Section is regularly encouraged at year-end to lower our carry-over funds that could be used in CLE production. So, the co-sponsorship proposal seems to be a "front end" limitation to funding creativity in putting on CLEs when we already have a general "back end" limitation on the Section's year to year operations.

So in summary, the planning and execution of the Section's CLE(s) is usually by far our Section's largest and certainly most difficult task, in large part due to the difficulties of forecasting revenue and expenses. Yet it often times can be the most rewarding and unique aspect of our member's experience with the Section. Therefore, the limitations created by the proposed co-sponsorship mandating revenue sharing, requiring use of higher cost services provided by the Bar (rather than our own membership) and the related issue of discouraging excessive year-end balances together makes it a lot harder to put on the types of fun and interesting CLEs that our members have traditionally enjoyed.

As far as constructive suggestions, the comments and general sense I have received are that the Bar should use a carrot through incentives, not the stick, to achieve the Bar's broader objective of accessibility and creating a stock of CLEs for replay. I (personally) would comment that the Bar's objectives of accessibility and recording for subsequent use are not lost on this Eugene solo practitioner, nor many of our members. I know our Section CLE subcommittee inquired a few years ago about video-access at a non-traditional locations (the Salem location) and the answer I recall was the cost was prohibitive and would have to be borne by the Section. Perhaps the Bar could incentivize use of the bar facility, or provide video services. Obviously, the Bar's CLE section has expenses like every other business (profit or not), and over time, expenses may increase for various reasons. But if my perception of the co-sponsorship proposal is correct, perhaps it should perhaps simply be called what it is – an increase in fees to cover certain expenses. Rather than assessing uncertain fees that chill our one of our Section's primary activities, perhaps the Bar could consider a fee assessed in an even-handed and predictable way that can be planned for on a yearly budget. Obviously, no one likes paying more, but if

it is going to happen, at least implement it in a way that does not chill the quality and creativity of perhaps the most significant and impactful activity of our Section from year to year.

- Douglas Gallagher, Construction Law Section Co-Chair

Added to the BOG materials on June 20: The Corporate Counsel Section's Executive Committee has discussed the OSB proposal for co-sponsoring CLEs, etc. and has the following feedback:

1. We support the proposal that we give OSB the opportunity to co-sponsor a longer program every two years.
2. We support the proposed \$100 flat administrative fee for shorter programs but would like it even better if it applied for up to 5 or 6 short programs a year (instead of 4).
3. We support OSB's effort to build library of longer programs that members can watch after the fact. But, we strongly encourage OSB to expanding opportunities for real-time participation in both shorter and longer programs by video conference. For instance, the SSFP Section worked through OSB to get a contract with Zoom so SSFP members can participate in the monthly one hour "Brown Bag" CLE programs. We would like to do the same. Rather than each section negotiating separately with Zoom, perhaps OSB can use the SSFP contract as a starting point for negotiating a master contract with Zoom with each section assigned a sub-account?

- Amy Blumenberg, Corporate Counsel Section Chair

For the record: The Debtor-Creditor Section has long used the OSB's CLE co-sponsorship services and plans to continue doing so. Thus we have no objections to the policy.

I would also mention, as EC Member and 2017 Section Chair, that the services provided by Karen Lee, Sarah Hackbart, and the whole team there at the OSB are consistently excellent and very much appreciated. It would be very difficult to operate properly and effectively without that support.

- Clarke Balcom, Debtor-Creditor Section Chair

Please accept this email as the Government Law section's feedback to the Bar's proposed CLE co-sponsorship policy. Since Dani was on our call today when this issue was discussed, she can probably explain our thoughts as well or better than I, but the Government Law section believes that the proposed policy will achieve the intended goals and is fully supportive of its implementation. Historically, the Government Law section co-sponsors one CLE with the Bar every year, and our experience in doing that has been superb to say the least. We look forward to continuing to do so in the future (in fact, one of the questions was to ensure that we were not limited to only one co-sponsorship opportunity every three years). The section also expressed its appreciation to the Bar for maintaining flexibility in that we also typically sponsor one CLE event every year on our own.

- Chad Jacobs, Government Law Section Chair

The Labor & Employment Section executive committee appreciates that you and Chris Costantino took time yesterday to attend our executive committee meeting and answer our questions. The L&E executive committee understands and agrees with the importance of providing programming available to members throughout Oregon, developing a CLE library, and using technology to accomplish these goals. We appreciate that the Board of Governors paused the implementation of the CLE co-sponsorship requirement, re-examined the goals of CLE co-sponsorship, and considered section perspectives and feedback. After you and Chris had left, we had a thoughtful and open conversation about how this proposal may impact the CLE programs our Section provides its members.

The L&E Section places a high value on OSB CLE Seminar services, both in the available ala cart/unbundled options (e.g. registration and material support) and the assistance of knowledgeable staff. A few years ago, the L&E executive committee examined ways to increase section membership and quickly learned that our membership expects high quality, focused CLE programming at low cost. Throughout the year, we identify program topics of interest to our members and explore ways to put on those programs at no cost/low cost. Many of these programs are shorter programs such as “breakfast briefings” and programs less than four hours in duration, some of which we co-sponsor with other sections. The CLE Seminars ala cart/unbundled service options allow our section to offer those programs expected by our membership.

The Labor & Employment Section understands that the current co-sponsorship proposal does not alter or modify the CLE Seminar ala cart/unbundled service options which are very important to the L&E Section. Based on that understanding, the L&E executive committee supports the current co-sponsorship proposal requiring sections to co-sponsor CLE once every three years.

- Lisa Amato, Labor & Employment Law Section Chair

Minutes from the section’s April meeting: Laura [Craska Cooper] then explained why the new proposal wouldn’t resolve the concerns identified by the RELU section for our Summer Conference (wanting continuity with a consistent planner; flexibility on collection and spending of sponsorship and advertising revenue; ability to comp more than 4 or 6 members of the planning committee; ability to pay travel expenses for speakers closer than 50 miles; etc.). Pat [Ihnat] asked Helen [Hierschbiel] if it would be possible to avoid co-sponsorship on the Summer Conference if the RELU Section continues to co-sponsor the Spring Forum and the luncheon series, considering that both of these events would give the Bar at least as much materials as the Summer Conference would, and likely more since the co-sponsorship would be annual instead of once every three years. Helen agreed that it was a good compromise, and she will pass it along to the BOG when members consider feedback from the sections.

- Patricia Ihnat, Real Estate and Land Use Section Chair

The executive committee of the Technology Law Section met and discussed this proposal. Technology Law is very supportive of efforts to use technology to reach bar members outside of the Portland metro region, as well as those with special needs, with relevant content and information in a format that increases accessibility. While the committee didn’t have any particular comments regarding the proposal, I did want to acknowledge that the Technology Law Section has been very pleased with co-sponsoring our annual CLE with the bar for many years.

Speaking for myself, I would hope that we continue to see content developed by sections for the benefit of all bar members. That would include digital distribution, accessibility, and effective use of technology for delivery. The proposal seems well designed to accomplish these objectives.

- Leigh Gill, Technology Law Section Chair

Section chair, chair-elect, and treasurers:

Thanks to all of you who provided feedback on section policies related to alternative structures, fund balances, and CLE programing. Comments received from several sections have been reviewed by the Board of Governors. The BOG Policy and Governance Committee's April and June meeting included discussion of the ongoing accumulation of section funds.

As you may recall from my prior communication, at the end of 2005 the pooled amount of section funds was approximately \$508,000; by the end of 2015 it had reached approximately \$734,000. Accumulation of excessive reserves is not a best practice for membership organizations. Dues should be used to support the mission and goals of a section and are best spent on benefits for current members. Despite the efforts of many sections to "spend down," nearly half of all sections still have reserves exceeding two years of annual dues revenue. At the end of 2016 your section was among this group.

The BOG has not made a policy decision regarding section fund balances but it remains an area of concern. One year from now the BOG will review section fund balances again to determine if a reserve policy is needed. I hope you will discuss this issue with your executive committee and consider ways to use excess funds for the benefit of your membership. Other sections have accomplished this goal by modifying their CLE programs to cover the cost of lunch, offering scholarships, or contracting with national speakers. You might also consider sponsoring a social event or reducing section membership dues.

Thank you for your attention to this matter.

Helen Hirschbiel, CEO/Executive Director

hhirschbiel@osbar.org

(503) 620-0222 ext. 361

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 23, 2017
From: Vanessa Nordyke, Policy & Governance Committee Chair
Re: Revisions to the Legal Heritage Interest Group Charge

Action Recommended

Approve the Policy & Governance Committee's recommendation to revise the Legal Heritage Interest Group's charge.

Background

Over the last three years the Secretary of State's Office has lead a fundraiser to pay for the repair and preservation of the Oregon State Constitution. Efforts to reach the ambitious \$100,000 goal have primarily focused on coin drives from schoolchildren and contributions from the public.

The Legal Heritage Interest Group recently learned of the fundraising project and wants to support the effort by informing OSB members, sections, and firms of the opportunity to donate. If the BOG approves the interest group's request, plans to support the fundraiser include publishing an article in *The Bulletin*, and sending communications to OSB sections, specialty bars, and law firms. Subsequent meetings with interested groups will also be scheduled upon request.

Historically OSB committees have focused any fundraising efforts on internal projects and programs. Allowing this group to support an external fundraising effort would be an expansion of the traditional committee scope. However, individuals and groups interested in making donations would be directed to the Secretary of State's fundraising website (<http://sos.oregon.gov/archives/Pages/constitution-challenge.aspx>) ensuring no funds pass through the OSB.

Additions and deletions to the original assignment are indicated by underlining (new) or strikethrough (deleted).

LEGAL HERITAGE INTEREST GROUP CHARGE

General:

Promote and communicate history and accomplishments of the Oregon State Bar and its members to interested groups.

Specific:

1. Compile a list of known sources and resources pertaining to the history of the Oregon State Bar, and pursue efforts to collect written and oral histories.
2. Develop topics and recruit authors for articles in the OSB *Bulletin's* Legal Heritage column.
3. Develop seminars in connection with the Legal Heritage meetings.
- 3-4. Support historical projects of the OSB and other law-related organizations.
- 4-5. Solicit nominations for the annual OSB awards and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

Limitations:

Utilize the funds provided by the BOG in the budget, continue to seek additional funds.—Continue to pursue co-publication of *Serving Justice* with the Oregon Historical Society.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 23, 2017
Memo Date: June 8, 2017
From: Kay Pulju, Communications & Public Services Director
Re: Formation of BOG Awards Committee

Action Recommended

Form a committee, to be chaired by OSB President Michael Levelle, to review nominations for the bar's annual awards and develop recommendations for the full board.

Background

Every year the board forms an ad hoc committee of members interested in the annual awards selection process. Committee members receive a complete package of nomination materials for review, then meet by conference call to discuss the nominees and develop recommendations for the board. The committee may hold a second meeting, by phone or in person, if necessary. Additional information, including awards history and criteria, will be presented to committee members.

The 2017 Awards Luncheon will be held on October 25, which is more than a month earlier than in recent years. The committee will need to present its recommendations for BOG approval on July 21.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 22-23, 2017
Memo Date: June 14, 2017
From: Rod Wegener, CFO
Re: Selection of Auditors for 2016-2017 OSB Financial Statements

Action Recommended

Selection of Moss Adams as the auditors of the 2016-2017 OSB financial statements.

Background

The bar's financial statements for 2016 and 2017 are subject to audit by an independent CPA firm. For the past five audits the bar has been audited by Moss Adams and the bar could consider distributing a RFP for the selection of a potentially new auditing firm. The recommendation for retaining Moss Adams to perform the 2016-2017 audit is coming from the bar's CFO to the Budget & Finance Committee for approval by the Board of Governors.

Bylaw Requirement: The practice for several years has been to audit the bar's statements every two years per bylaw 7.102: "(T)he books of the bar must be audited at least biennially, unless otherwise directed by the Board."

Past Selection Practices: Years ago the audit was conducted by the Audits Division of the Secretary of State's office. Since 2003 the bar has been audited by small regional firms or by Moss Adams, a larger west coast firm.

A RFP to select an auditor was distributed in 2007 and 2013 and at each time the Committee recommended and the BOG approved the selection of Moss Adams.

Audit Fee: The audit fee for the 2014-2015 audit was \$38,600.

Relationship with the State Secretary of State Audits Division: Even though the bar's audit is not performed by the state's Audits Division, the bar is required to send its annual financial reports to the Chief Justice. In 2007, the Audits Division of the Secretary of State's office wrote:

"We authorize the Oregon State Bar to contract directly with a firm to audit the Oregon State Bar's financial statements. This authorization is granted for a period of five years, through the report for the period ending December 31, 2012."

In July 2013, the bar received this email from the Director of the Secretary of State Audits Division:

"You have requested permission to engage an outside, independent firm to audit the Oregon State Bar's financial statements.

We authorize the Oregon State Bar to contract directly with a firm to audit the Oregon State Bar's financial statements. This authorization is granted for a period of ten years, through the report for the period ending December 31, 2022.

Although we do not see an audit of the Oregon State Bar as conflicting with or overlapping any anticipated work from our office, the contract should provide access to the Oregon Audits Division to working papers prepared by the contractor. Our responsibility to assure that audits meet statutory requirements continues, and access to working papers may assist us in assuring quality work.”

Why Moss Adams for the 2016-2017 Audit: The request for the selection of the auditor is forthcoming earlier than past years and is the first reason for the selection of Moss Adams. At post-audit review of the last audit bar accounting staff and Moss Adams agreed that since the audit is for a two year period preparing an interim review of the first year (2016) during 2017 would expedite the process when the field work is done in 2018 and reduce time in analyzing data which is two years old when the field work typically is performed. If selected Moss Adams will perform some field work for fiscal 2016 in July.

The second reason for staying with Moss Adams involves the bar’s Accounting Department staff. In 2018 when the majority of the field work will be performed, employment at the bar of three of the four staff in the Accounting Department will be less than one year and the fourth about two years. A combination of a new audit firm and new staff would not lead to an efficient exercise for either party.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 23, 2017
Memo Date: June 9, 2017
From: Kathleen Rastetter, Public Affairs Committee Chair
Re: Specific Standards for Representation in Juvenile Dependency Cases

Action Recommended

- 1) Adopt the updated The Specific Standards for Representation in Juvenile Dependency.

Background

The Specific Standards for Representation in Juvenile Dependency Cases (hereinafter “Performance Standards”) were first promulgated by the Oregon State Bar in 1996 and were approved by Oregon State Bar Board of Governors. In May of 2006, the Board accepted revisions to the 1996 standards and in 2014 the Dependency and Delinquency Standards were further updated.

During the 2015 Legislative Session, the Legislature passed [Senate Bill \(SB\) 555](#). The bill created a Task Force charged with recommending models for legal representation in juvenile court proceedings. The Task Force, made up of 18 members with input from numerous interested parties, met over ten months and issued the [Oregon Task Force on Dependency Representation Report](#) (hereinafter the “Report”) in July 2016. The Report included a variety of recommendations focused on improving services for children, parents, and practitioners in the juvenile dependency system, including updating the “Specific Standards for Representation in Juvenile Dependency Cases.”

In the fall of 2016, at the direction of the Oregon State Bar Board of Governors, a work group was created to address the issues raised by the Report by updating the performance standards for representation in juvenile dependency cases. This work group included members from academia as well as from both private practice and public defender offices.

Task force members were Lea Ann Easton, Dorsey & Easton LLP (Chair); Amy Benedum, Oregon Judicial Department; Linn Davis, Oregon State Bar; Susan Grabe, Oregon State Bar; Joseph Hagedorn, Hagedorn Law; Leslie Harris, University of Oregon School of Law; the Honorable Megan Jacquot, Oregon Judicial Department; Amy Miller, Oregon Public Defense Services; Angela Sherbo, Youth, Rights & Justice; Shannon Storey, Office of Public Defense Services; Elizabeth Wakefield, Metropolitan Public Defenders, Inc.; and Inge Wells, Oregon Department of Justice. This task force drafted the Performance Standards update presented to the Board for approval.

Oregon State Bar

Specific Standards for Representation in Juvenile Dependency Cases

June __, 2017

Foreword

The Oregon State Bar has assisted in the development and dissemination of the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases (hereafter, the performance standards) since 1996. In order for the performance standards to continue to serve as valuable tools for practitioners and the public, they must be current and accurate in their reference to federal and state laws and they must incorporate evolving best practices.

The Foreword to the original performance standards noted that “[t]he object of these [g]uidelines is to alert the attorney to possible courses of action that may be necessary, advisable, or appropriate, and thereby to assist the attorney in deciding upon the particular actions that must be taken in a case to ensure that the client receives the best representation possible.” This continues to be the case, as does the following, which was noted in both the Foreword in the 2006 revision and the Foreword to the 2009 post-conviction standards:

“These guidelines, as such, are not rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. Some of the guidelines incorporate existing standards, such as the Oregon Rules of Professional Conduct, however which are mandatory. Questions as to whether a particular decision or course of action meets a legal standard of care must be answered in light of all the circumstances presented.”

We hope that the revised Performance Standards, like the originals, will serve as a valuable tool both to the new lawyer or the lawyer who does not have significant experience in criminal and juvenile cases, and to the experienced lawyer who may look to them in each new case as a reminder of the components of competent, diligent, high quality legal representation.

MICHAEL D. LEVELLE

Michael D. Levelle
Oregon State Bar President

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Report of the Specific Standards for Representation in Juvenile Dependency Cases

Summary and Background

In September of 1996, the Oregon State Bar Board of Governors approved the Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases. In May of 2006, the Board accepted revisions to the 1996 standards and in 2014 the Dependency and Delinquency Standards were further updated.

During the 2015 Legislative Session, the Legislature passed Senate Bill (SB) 555. The bill created a Task Force charged with recommending models for legal representation in juvenile court proceedings. The Task Force, made up of 18 members with input from numerous interested parties, met over ten months and issued the Oregon Task Force on Dependency Representation Report (hereinafter the “Report”) in July 2016. The Report included a variety of recommendations focused on improving services for children, parents, and practitioners in the juvenile dependency system, including updating the “Specific Standards for Representation in Juvenile Dependency Cases.”

In the fall of 2016, at the direction of the Oregon State Bar Board of Governors, a work group was created to address the issues raised by the Report by updating the performance standards for representation in juvenile dependency cases. This work group included members from academia as well as from both private practice and public defender offices. Task force members were Lea Ann Easton, Dorsey & Easton LLP (Chair); Amy Benedum, Oregon Judicial Department; Linn Davis, Oregon State Bar; Susan Grabe, Oregon State Bar; Joseph Hagedorn, Hagedorn Law; Leslie Harris, University of Oregon School of Law; the Honorable Megan Jacquot, Oregon Judicial Department; Amy Miller, Oregon Public Defense Services; Angela Sherbo, Youth, Rights & Justice; Shannon Storey, Office of Public Defense Services; Elizabeth Wakefield, Metropolitan Public Defenders, Inc.; and Inge Wells, Oregon Department of Justice.

The following pages include a new, fourth version of the juvenile dependency performance standards produced by the juvenile dependency task force. These standards are recommended to replace what is currently published on the Oregon State Bar website, “Specific Standards for Representation in Juvenile Dependency Cases.”

The goal of this task force was to create a revised set of standards that was both easy for the practitioner to read and understand and also provide relevant detail and explanations as necessary. Updates to the Standards include:

- Adding language addressing communication via social media
- Adding language addressing special immigrant juvenile cases/immigrant family cases,
- Adding language addressing cross-over standards for parent and child attorneys,
- Adding language addressing prepetition standards for the parent's lawyer,
- Adding language addressing the use of a *Balfour* brief,
- Clarification of the role of a child's appellate counsel in the child attorney standard,
- Clarification regarding appellate representation and ineffective assistance of counsel, and
- Correcting clerical errors and inconsistencies.

Throughout the process of creating these revised standards, the task force has sought input from practitioners and judges and has incorporated suggestions when appropriate.

The Obligations of the Lawyer for Children begins on page 3.

The Obligations of the Lawyer for Parents begins on page 51.

The appendices begin on page 98.

THE OBLIGATIONS OF THE LAWYER FOR CHILDREN IN CHILD PROTECTION PROCEEDINGS WITH ACTION ITEMS AND COMMENTARY

STANDARD 1 – ROLE OF THE LAWYER FOR THE CHILD

- A. The role of the child-client’s lawyer is to ensure that the child client is afforded due process and other rights and that the child client’s interests are protected. For a child client with full decision-making capacity, the child-client’s lawyer must maintain a normal lawyer-client relationship with the child client, including taking direction from the child client on matters normally within the child client’s control.

Action:

Consistent with Oregon Rules of Professional Conduct (Oregon RPC) 1.14, the child-client’s lawyer should determine whether the child client has sufficient maturity to understand and form a lawyer-client relationship and whether the child client is capable of making reasoned judgments and engaging in meaningful communication.

Action:

The child-client’s lawyer must explain the nature of all legal and administrative proceedings to the extent possible, and, given the child client’s age and ability, determine the child client’s position and goals. The child’s lawyer also acts as a counselor and advisor. This involves explaining the likelihood of achieving the child client’s goals and, when appropriate, identifying alternatives for the child client’s consideration. In addition, the lawyer should explain the risks, if any, inherent in the child client’s position. Once the child client has settled on positions and goals, the lawyer must vigorously advocate for the child client.

Action:

The child-client’s lawyer should not confuse inability to express a preference with unwillingness to express a preference. If an otherwise competent child client chooses not to express a preference on a particular matter, the lawyer should determine if the child client wishes the lawyer to take no position in the proceeding or if the child client wishes the lawyer or someone else to make the decision. In either case, the lawyer is bound to follow the child client’s direction.

Action:

The child-client's lawyer may not request the appointment of a court-appointed special advocate (CASA) or other advocate for the child's best interests when the child client is competent to make decisions.

Commentary:

When a child client has the capacity to instruct a lawyer, the lawyer-client relationship is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction, confidentiality, diligence, competence, loyalty, and communication and the duty to provide independent advice.

A child client's ability to express a preference constitutes a threshold requirement for determining ability to instruct a lawyer. When a lawyer can discern the child client's preference through investigation rather than eliciting the child client's own verbally articulated position, the lawyer must advocate for that preference.

When a child client is capable of instructing the lawyer, decisions that are ultimately the child client's to make include whether to:

1. Contest, waive trial on petition, negotiate changes in or testify about the allegations in the petition;
2. Stipulate to evidence that is sufficient to form a basis for jurisdiction and commitment to the custody of the Department of Human Services (hereinafter "agency");
3. Accept a conditional postponement or dismissal; or
4. Agree to specific services or placements.

As with any client, the child-client's lawyer may counsel against the pursuit of a particular position sought by the child client. Without unduly influencing the child client, the lawyer should advise the child client by providing options and information to assist the child client in making decisions. The lawyer should explain the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child client, other family members, and future legal proceedings. The lawyer should recognize that the child client may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the lawyer should ensure that the decision the child client ultimately makes reflects the child client's actual position.

- B. For a child client with diminished capacity, the child-client's lawyer should maintain a normal lawyer-client relationship with the child as far as reasonably possible and take**

direction from the child client as the child develops capacity. A child client may have the capacity to make some decisions but not others.

Commentary:

The question of diminished capacity should not arise unless the child-client's lawyer has some reason to believe that the child client does not have the ability to make an adequately considered decision. A child's age is not determinative of diminished capacity.

The assessment of a child's capacity must be based upon objective criteria, not the personal philosophy or opinion of the child-client's lawyer. The assessment should be grounded in insights from child development science and should focus on the child client's decision-making process rather than the child client's choices. Lawyers should be careful not to conclude that a child client suffers diminished capacity from a child client's insistence upon a course of action that the child-client's lawyer considers unwise or at variance with their views. For example, the decision of a 13-year-old to return home to a marginally fit parent may not be in the child's best interests, but the child client may well be competent to make that decision.

In determining whether a child client has diminished capacity, the *Report of the Working Group on Determining the Child's Capacity to Make Decisions*, 64 Fordham L Rev 1339 (1996), suggests that a child-client's lawyer may consider the following factors:

1. A child client's ability to communicate a preference;
2. Whether a child client can articulate reasons for the preference;
3. The decision-making process used by a child client to arrive at the decision (e.g., is it logical, is it consistent with previous positions taken by the child client, does the child client appear to be influenced by others, etc.); and
4. Whether a child client appears to understand the consequences of the decision.

A child client may have the ability to make certain decisions, but not others. For example, a child client with diminished capacity may be capable of deciding that they would like to have visits with a sibling, but not be capable of deciding whether they should return home or remain with relatives on a permanent basis. The child-client's lawyer should continue to assess the child client's capacity as it may change over time.

- C. When it is not reasonably possible to maintain a normal lawyer-client relationship generally or with regard to a particular issue, the child-client's lawyer should conduct a thorough investigation and then determine what course of action is most consistent**

with protecting the child client in the particular situation and represent the child client in accordance with that determination. This determination should be based on objective facts and information and not the personal philosophy or opinion of the child-client's lawyer.

Action:

When the child client is incapable of directing the lawyer, the child-client's lawyer must thoroughly investigate the child client's circumstances, including important family relationships, the child client's strengths and needs, and other relevant information, and then determine what actions will protect the child client's interests in safety and permanency.

Action:

In determining what course of action to take when the child client cannot provide direction, the child-client's lawyer must take into consideration the child client's legal interests based on objective criteria as set forth in the laws applicable to the proceeding, the goal of expeditious resolution of the case, and the use of the least restrictive or detrimental alternatives available.

Commentary:

If the child client is able to verbalize a preference but is not capable of making an adequately considered decision, the child client's verbal expressions are an important factor to consider in determining what course of action to take. The child client's needs and interests, not the adult's or professional's interests, must be the center of all advocacy. The child-client's lawyer should seek out opportunities to observe and interact with the very young child client. It is also essential that lawyers for very young children have a firm working knowledge of child development and special entitlements for children under age five.

The child-client's lawyer may wish to seek guidance from appropriate professionals and others with knowledge of the child, including the advice of an expert.

- D. When the child-client's lawyer reasonably believes the child client has diminished capacity, is at risk of physical, sexual, psychological or financial harm, and cannot adequately act in their own interest, the child-client's lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the child client.**

Action:

Information relating to the representation of a child with diminished capacity is protected by Oregon RPC 1.6 and Oregon RPC 1.14. When a child with diminished

capacity is unable to protect themselves from substantial harm, Oregon RPC 1.14 allows the child-client's lawyer to take action to protect the child client. Oregon RPC 1.6 and Oregon RPC 1.14(c) implicitly authorize the child-client's lawyer to reveal information about the child client, but only to the extent reasonably necessary to protect the child client's interests.

Action:

The child-client's lawyer should choose the protective action that intrudes the least on the lawyer-client relationship and is as consistent as possible with the wishes and values of the child client.

Action:

In extreme cases, that is, when the child client is at risk of substantial physical harm and cannot act in his or her own interest and when the child-client's lawyer has exhausted all other protective action remedies, the lawyer may request the court to appoint a best-interest advocate such as a CASA to make an independent recommendation to the court with respect to the best interests of the child client.

Action:

When a child client has been injured or suffers from a disability or congenital condition that results in the child client having a progressive illness that will be fatal and is in an advanced stage, is in a coma or persistent vegetative state, or is suffering brain death, the child-client's lawyer should consult with the parent if appropriate. Further, the lawyer should consider seeking appointment of a guardian *ad litem*, under the juvenile and probate code in a consolidated case, with the authority to consent to medical care, including the provision or withdrawal of life sustaining medical treatment pursuant to ORS 127.505 et seq.

Commentary:

This standard implements paragraph (b) of Oregon RPC 1.14, which states the generally applicable rule that when a client has diminished capacity and the lawyer believes the client is at risk of substantial harm, the lawyer may take certain steps to protect the client, such as consulting with family members or protective agencies and, if necessary, requesting the appointment of a guardian *ad litem*.

Substantial harm includes physical, sexual, financial, and psychological harm. Protective action includes consultation with family members or professionals who work with the child client. Lawyers may also utilize a period of reconsideration to allow for an improvement or clarification of circumstances or to allow for an improvement in the child client's capacity.

Ordinarily, under Oregon RPC 1.6, unless authorized to do so, the child-client's lawyer may not disclose information related to representation of the child client. When taking protective action pursuant to this section, the child-client's lawyer is implicitly authorized to make necessary disclosures, even when the child client directs the lawyer to the contrary. However, the lawyer should make every effort to avoid disclosures if at all possible. When disclosures are unavoidable, the lawyer must limit the disclosures as much as possible. Prior to any consultation, the lawyer should consider the impact on the child client's position and whether the individual receiving the information is a party who might use the information to further the party's own interests. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the child client's interests before discussing matters related to the child client. If any disclosure by the lawyer will have a negative impact on the child-client's case or the lawyer-client relationship, the lawyer must consider whether representation can continue and whether the lawyer-client relationship can be re-established.

Requesting the judge to appoint a court-appointed special advocate (CASA) or other best-interest advocate may undermine the relationship the child-client's lawyer has established with the child client. It also potentially compromises confidential information the child client may have revealed to the lawyer. The lawyer cannot ever become the best-interest advocate, in part due to confidential information that the lawyer receives in the course of representation. Nothing in this section restricts a court from independently appointing a best-interest advocate when it deems the appointment appropriate.

- E. The child-client's lawyer should not advise the court of the lawyer's determination of the child client's capacity, and, if asked, should reply that the relationship between the child client and the lawyer is privileged.**

Commentary:

The child-client's lawyer's assessment of a child client's capacity to direct the case is a confidential matter that goes to the heart of the lawyer-client relationship. Even though sometimes judges want to know whether the child-client's lawyer is acting at the child client's direction or is making a substituted judgment, the lawyer should not provide this information, since doing so fundamentally undermines the lawyer's ability to be an effective advocate for the child client.

STANDARD 2 – RELATIONSHIP WITH THE CHILD CLIENT

- A. The child-client's lawyer should ensure that the child client is aware that they have a trial lawyer and should communicate regularly and effectively with the child client.**

Action:

The child-client's lawyer should make an initial contact with the child client within 24 hours of appointment and, when feasible, conduct an initial interview within 72 hours. During the first meeting with the child client, the child-client's lawyer must explain the lawyer's role.

Action:

At the first meeting the child-client's lawyer should provide the child client with contact information in writing and establish an effective system for the child client to communicate with the lawyer. The child-client's lawyer should explain that even when the lawyer is unavailable, the child client should leave a message. The child-client's lawyer should respond to the child client's messages within a reasonable time.

Action:

The child-client's lawyer should meet with the child client regularly throughout the case. The meetings should occur well before any hearings, not at the courthouse just minutes before the case is called before the judge. The child-client's lawyer should ask the child client questions to obtain information to prepare the case and strive to create a comfortable environment so the child client can ask the trial lawyer questions. The child-client's lawyer should use these meetings to prepare for court as well as to counsel the child client concerning issues that arise during the course of the case. Information obtained from the child client should be used to propel the investigation. The child-client's lawyer should work collaboratively with the child client to ascertain independent sources to corroborate the child client's information.

Action:

After the first meeting, the child-client's lawyer should have contact with the child client:

1. before court hearings, case status and pretrial conferences, mediations, and Citizen Review Board (CRB) reviews;
2. before any important decision affecting the child-client's life;
3. in response to contact by the child client;
4. following (and, when possible, before) significant transitions, including but not limited to, initial removal and changes in placement;
5. when a significant change of circumstances must be discussed with the child client or when a child-client's lawyer learns of emergencies or significant events affecting the child client; and

6. at least quarterly.¹

Action:

The child-client's lawyer should ensure a qualified interpreter is involved when the child-client's lawyer and child client are not fluent in the same language.

Action:

The child-client's lawyer should be available for in-person meetings or telephone calls to answer the child client's questions and address the child client's concerns. The child-client's lawyer and child client should work together to identify and review short- and long-term goals, particularly as circumstances change during the case.

Commentary:

Establishing and maintaining a relationship with the child client is the foundation of representation. It is often more difficult to develop a relationship and trust with a child client than with an adult client. Meeting with the child client personally and regularly allows the child-client's lawyer to develop a relationship with the child client and to assess the child client's circumstances. The child client's position, interests, needs, and wishes change over time. The child-client's lawyer cannot be fully informed of such changes without developing a relationship through frequent contacts.

In order to provide competent representation, the child-client's lawyer should initially meet with the child client in the child's environment to understand the child client's personal context, unless the child client indicates that he or she does not want this. The benefits of meeting with an older child client who can convey information and express the client's wishes are obvious. However, meeting with younger children, including preverbal children, is equally important. Oregon RPC 1.14 recognizes the value of the child client's input and further recognizes that varying degrees of input from children at different developmental stages may occur. In addition, preverbal children can provide valuable information about their needs through their behavior, including their interactions with their caretakers and other children or adults.

The child-client's lawyer should determine whether developing and maintaining a lawyer-client relationship requires that the meetings occur in person in the child client's environment or whether other forms of communication, such as a telephonic or electronic communication, are sufficient.

¹ The extraordinary circumstances under which the child client's trial lawyer may have contact with a child client less than quarterly include situations when the child client is "on the run" and the child's whereabouts are unknown, when there is strong evidence that the child client will be adversely affected by communicating with the child-client's lawyer, or when the child client refuses to communicate with the lawyer.

It is important that the child-client's lawyer, from the beginning of the case, is clear with the child client that the child-client's lawyer works for the child client, is available for consultation, and wants to communicate regularly. This will help the child-client's lawyer support the child client, gather information for the case, and learn of any difficulties the child client is experiencing that the child-client's lawyer might help address. The child-client's lawyer should explain to the child client the benefits of bringing issues to the lawyer's attention rather than letting problems persist.

The child-client's lawyer should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the child client are interviewing the child client. The child-client's lawyer should become familiar with interpreter services that are available for out-of-court activities such as client conferences, provider meetings, etc.

B. The child-client's lawyer should communicate with the child client in a developmentally and culturally appropriate manner.

Action:

The child-client's lawyer should explain to the child client in a developmentally appropriate way all information and ascertain the child client's position on the information. This includes the result of all court hearings and administrative proceedings, which will assist the child client in having maximum input in determining the client's position. Interviews should be conducted in private.

Action:

The child-client's lawyer should be aware of the child client's cultural background and how that background affects effective communication with the child client.

Commentary:

The child-client's lawyer should be adept at giving explanations, asking developmentally and culturally appropriate questions, and interpreting the child client's responses in such a manner as to obtain a clear understanding of the child client's preferences. This process can and will change based on the age, cognitive ability, and emotional maturity of the child client. The child-client's lawyer needs to take the time to explain thoroughly and in a way that allows and encourages the child client to ask questions and that ensures the child client's understanding.

In addition to communicating with the child client, the child-client's lawyer should review records and consult with appropriate professionals and others with knowledge of the child client. The child-client's lawyer also may find it helpful to observe the child client's interactions with foster parents, birth parents, and other significant individuals.

This information will help the child-client's lawyer to better understand the child client's perspective, priorities, and individual needs, and will assist the child-client's lawyer in identifying relevant questions to pose to the child client.

C. The child-client's lawyer should show respect and act professionally with the child client.

Action:

The child-client's lawyer should support the client and be sensitive to the child client's individual needs. The child-client's lawyer may be the child client's only advocate in the system and should act accordingly.

Commentary:

Often lawyers practicing in juvenile court are a close-knit group who work and sometimes socialize together. Maintaining good working relationships with other participants in the child welfare system is an important part of being an effective advocate. The child-client's lawyer, however, should be vigilant against allowing the lawyer's own interests in relationships with others in the system to interfere with the lawyer's primary responsibility to the child client. The child-client's lawyer should not give the impression to the child client that relationships with other lawyers are more important than the representation the child-client's lawyer is providing the child client. The child client must feel that the child-client's lawyer believes in, and is actively advocating on, the child's behalf.

D. The child-client's lawyer must abide by confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the child client.

Action:

The child-client's lawyer must fully explain to the child client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality. If the child-client's lawyer determines that the child client is unable to make an adequately considered decision with respect to waiver, the lawyer must act with respect to waiver in a manner consistent with, and in furtherance of, the child client's position in the overall litigation.

Commentary:

Gaining the child client's trust and establishing ongoing communication are two essential aspects of representing the child client. The child-client's lawyer should also explain that the child-client's lawyer is available to intervene when the child's client's relationship with an agency or provider is not working effectively. The child-client's

lawyer should be aware of the child client's circumstances, such as whether the child client has access to a telephone, and tailor the communication system to the individual child client. For example, it may involve telephone contact, communication through a third party, or electronic communication when the child client agrees to it.

Action:

Consistent with the child client's interests and goals, the child-client's lawyer must seek to protect from disclosure confidential information concerning the child client.

Action:

The child-client's lawyer may only report abuse or neglect discovered through lawyer-client communication only if the child client consents to the disclosure.

Commentary:

Under ORS 419B.010, lawyers are mandatory child abuse reporters. However, a lawyer is not required to report if the information that forms the basis for the report is privileged.

Under ORS 419B.010(1), "An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client." Lawyers should consult with the General Counsel's Office at the Oregon State Bar when they face a close question under these rules.

Action:

The child-client's lawyer should try to avoid publicity connected with the case that is adverse to the child client's interests. The child-client's lawyer should be cognizant of the emotional nature of these cases, the confidential nature of the proceedings, and the privacy needs of the child client. The child-client's lawyer should protect the child client's privacy interests, including asking for closed proceedings when appropriate. The child-client's lawyer must be aware that Article I, Section 10 of the Oregon constitution limits the ability for closed proceedings.

Action:

The child-client's lawyer should discuss with the child client the potential consequences of communicating via electronic communication or broadcasting over social media.

Commentary:

Communicating with the child client and other parties through electronic communication may be the most effective means of maintaining regular contact.

However, the child-client's lawyer should also understand the pitfalls associated with communicating sensitive case history and material electronically. Not only can electronic communication create greater misunderstanding and misinterpretation, it can also become documentary evidence in later proceedings. The child-client's lawyer should be aware that the use of electronic communication may require special precautions in particular circumstances.

Communication through social media raises additional confidentiality concerns. The child-client's lawyer should alert the child client that anything that is part of a public posting is accessible to, and can be used by, opposing counsel. Additionally, it may be helpful to inform the child client that opposing counsel (or their agent) may request to see the child's private information or information set behind privacy settings. If this happens, the child client should not agree or accept the request and should contact the child-client's lawyer immediately. Under Oregon RPC 4.3, the attorney's contact with a represented child client may be a violation of rules of ethics.

While social media may be a convenient way to locate and communicate with the child client, the child-client's lawyer and child client should be aware that communications may not be confidential or protected by attorney-client privilege.

E. The child-client's lawyer must avoid conflicts of interest, and should avoid the appearance of a conflict of interest.

Action:

A child-client's lawyer, or a lawyer associated in practice, must not represent two or more clients who are parties to the same or consolidated juvenile dependency cases or closely related matters unless it is clear there is no conflict of interest between the parties as defined by the Oregon Rules of Professional Conduct. The child-client's lawyer should follow Oregon RPC 1.7 to 1.13 relating to conflicts of interest and duties to former clients.

Commentary:

The child-client's lawyer should be especially cautious when accepting representation of more than one child. The child-client's lawyer should avoid representing multiple siblings when their interests may be adverse and should never represent siblings when it is alleged that one sibling has physically or sexually abused another sibling.

In analyzing whether a conflict of interest exists, the child-client's lawyer must consider whether pursuing one client's objectives will prevent the lawyer from pursuing another client's objectives, and whether confidentiality may be compromised. Conflicts of interest among siblings are likely if one child is allegedly a victim and the other(s) are

not, if an older child is capable of directing the representation but a younger child is not, or if older children object to the permanency plan for younger children.

The child client may not be capable of consenting to multiple representations even after full disclosure. For the child client incapable of considered judgment or unable to execute any written consent to continued representation in a case of waivable conflict of interest, the child-client's lawyer should not represent multiple parties.

F. The child-client's lawyer should advocate for actions necessary to meet the child client's educational, health, cultural, and mental health needs.

Action:

Consistent with the child client's wishes, the child-client's lawyer should identify the child client's needs and seek appropriate services (by court order if necessary) to access entitlements, to protect the child client's interests, and to implement an individualized service plan. These services should be culturally competent, community-based whenever possible, and provided in the least restrictive setting appropriate to the child client's needs. These services may include, but are not limited to:

1. Family preservation-related prevention or reunification services;
2. Sibling and family visitation;
3. Domestic violence services, including treatment;
4. Medical and mental health care;
5. Drug and alcohol treatment;
6. Educational services;
7. Recreational or social services;
8. Housing;
9. Semi-independent and independent living services for youth who are transitioning out of care and services to help them identify and link with permanent family connections; and
10. Adoption services.

Action:

Consistent with the child client's wishes, the child-client's lawyer should ensure that a child client receives the most appropriate and least restrictive services to address any physical, mental, or developmental disabilities. These services may include, but should not be limited to:

1. Special education and related services;
2. Supplemental security income (SSI) to help support needed services;
3. In-home, community-based behavioral health treatment or out-patient psychiatric treatment;
4. Therapeutic foster or group home care; and
5. Residential/in-patient behavioral health treatment.

G. The child-client's lawyer should take appropriate actions on collateral issues.

Action:

The child-client's lawyer should inquire regarding prior delinquency, status offense, or criminal history. The child-client's lawyer should advise the child client to contact the lawyer immediately if the child client is contacted by law enforcement, school authorities, or is otherwise under investigation.

Action:

The child-client's lawyer should identify and preserve relevant evidence related to mental health, cognitive functioning, disability, medical treatment, family history, and other mitigating factors.

Action:

Whenever possible, the child-client's lawyer in the dependency case should also represent the child client in the delinquency case. If the child client has two individual lawyers, they should collaborate regarding case strategy.

Commentary:

The purpose of identifying crossover cases should be to, wherever possible, prevent crossover from dependency into delinquency systems; to assure, whenever possible, that the intervention is based on the child client's conditions and circumstances and the child client is placed in the least restrictive setting possible; and when dual system involvement is necessary, to ensure a coordinated streamlined response to the overlapping issues that bring the child client into multiple legal systems.

Action:

If a child-client's lawyer, in the course of representing a child client under the age of 18, becomes aware that the child client has a possible claim for damages that the child client cannot pursue because of the child's age or disability, the child-client's lawyer should consider asking the court that has jurisdiction over the child client to either

appoint a guardian *ad litem* (GAL) for the child client to investigate and take action on the possible claim or issue an order permitting access to juvenile court records by a practitioner who can advise the court whether to seek appointment of a GAL to pursue a possible claim.

Action:

The child-client's lawyer may pursue, personally or through a referral to an appropriate specialist, issues on behalf of the child client, administratively or judicially, even if those issues do not specifically arise from the court appointment. Examples include:

1. Delinquency or status offender matters;
2. SSI and other public benefits;
3. Custody;
4. Paternity;
5. School and education issues;
6. Immigration issues;
7. Proceedings related to the securing of needed health and mental health services; and
8. Child support.

Commentary:

The child-client's lawyer may request authority from the appropriate authority to pursue issues on behalf of the child client, administratively or judicially, even if those issues do not specifically arise from the court appointment. Such ancillary matters may include special education, school discipline hearings, mental health treatment, delinquency or criminal issues, status offender matters, paternity, probate, immigration matters, medical care coverage, SSI eligibility, youth transitioning out of care issues, postsecondary education opportunity qualification, and tort actions for injury. If the child client might be eligible for Special Immigrant Juvenile Status, the child-client's lawyer should consider consulting with a dependency attorney experienced in these cases and, if appropriate, consulting with an immigration attorney.² If the child client appears eligible for Special Immigrant Juvenile Status, the child's trial attorney should advocate for immigration representation by the agency, if relevant. If the child client does not qualify for representation by the agency in the immigration matter, the child-

² If the child client is eligible for court-appointed counsel at state expense, the child client's trial lawyer should consider seeking funding from the Office of Public Defense Services for consultation with an immigration attorney.

client's lawyer should consider attempting to locate an immigration attorney to represent the child client.

The child-client's lawyer does not have an ethical duty to represent the child client in these collateral matters when the terms of the lawyer's employment limit duties to the dependency case. However, the child-client's lawyer may have a duty to take limited steps to protect the child client's rights, ordinarily by notifying the child-client's legal custodian about the possible claim unless the alleged tortfeasor is the legal custodian. In the latter case, ordinarily the child-client's lawyer adequately protects the child client by notifying the court about the potential claim. Whether this solution will work depends on whether a lawyer capable of assessing the potential tort claim is available to be appointed by the court. A juvenile court judge might well expect the child-client's lawyer to recommend someone to whom the case could be referred. In this situation, the child-client's lawyer should research the other lawyer's reputation and communicate clearly to the court and to the child client that the child's lawyer is turning the work over to the receiving lawyer and is not vouching for the receiving lawyer's work or monitoring the receiving lawyer's progress in pursuing the claim. For more information, see Oregon Child Advocacy Project, When a Child May Have a Tort Claim: What's a Child's Court-Appointed Attorney to Do? (2010).

STANDARD 3 – TRAINING REQUIREMENTS FOR COMPETENT REPRESENTATION OF CHILD CLIENTS

- A. The child-client's lawyer must provide competent representation to a child client. Competent representation requires the legal knowledge, skill, training, experience, thoroughness, and preparation reasonably necessary for the representation. The lawyer should only accept an appointment or retainer if the lawyer is able to provide quality representation and diligent advocacy for the child client.**

Action:

The child-client's lawyer in a dependency case should obtain and maintain proficiency in applicable substantive and procedural law and stay current with changes in constitutional, statutory, and evidentiary law, and local or statewide court rules.

Action:

The child-client's lawyer in a dependency case should have adequate time and resources to competently represent the child client, including maintaining a reasonable caseload and having access to sufficient support services.

Commentary:

As in all areas of law, it is essential that the child-client's lawyer learn the substantive law as well as local practice. The child-client's lawyer should be familiar with the Office of Public Defense Services, Qualification Standards for Court-Appointed Counsel, Standard 4(7). Lawyers should consider the contractually mandated training requirements as a floor rather than a ceiling and actively pursue additional training opportunities. Newer lawyers are encouraged to work with mentors for the first three months and, at a minimum, should observe or co-counsel each type of dependency hearing from shelter care through review of permanent plan before accepting appointments.

The child-client's lawyer should acquire working knowledge of all relevant state and federal laws, regulations, policies, and rules.

Action:

The child-client's lawyer must read and understand all state laws, policies, and procedures regarding child abuse, neglect, and other related matters, including but not limited to the following:

1. Oregon Revised Statutes (ORS) chapters 419A, 419B, and 419C, Oregon Juvenile Code;
2. ORS chapter 418, Child Welfare Services;
3. ORS 418.925–418.945, Refugee Child Act;
4. Oregon Revised Statutes concerning paternity, guardianships, and adoption;
5. ORS 417.200–417.260, Interstate Compact on Placement of Children, and Oregon Administrative Rules;
6. ORS 109.701–109.990, Uniform Child Custody Jurisdiction and Enforcement Act, and Oregon Administrative Rules;
7. The basic structure and functioning of the Department of Human Services and the juvenile court, including court procedures, the functioning of the CRB and CASA programs; and
8. Indian Child Welfare Act 25 USC §§ 1901 -1963; Bureau of Indian Affairs Guidelines; and Oregon Administrative Rules.

Action:

The child-client's lawyer must be thoroughly familiar with Oregon evidence law and the Oregon Rules of Professional Conduct.

Action:

The child-client's lawyer must be sufficiently familiar with the areas of state and federal law listed in Appendix A so as to be able to recognize when they are relevant to a case and they should be prepared to research these and other applicable issues.

The child-client's lawyer should have a working knowledge of child development, family dynamics, placement alternatives case and permanency planning, and services for children and families in dependency cases.

Action:

The child-client's lawyer should become familiar with normal growth and development in children and adolescents as well as common types of condition and impairments.

Action:

The child-client's lawyer should be familiar with the range of placement options in dependency cases and should visit at least two of the following:

1. A shelter home or facility;
2. A foster home;
3. A group home;
4. A residential treatment facility; or
5. A state child or adolescent psychiatric ward.

Action:

The child-client's lawyer must be familiar with case-planning and permanency-planning principles, and with child welfare and family preservation services available through the agency and available in the community and the problems they are designed to address. The child-client's lawyer is encouraged to seek training in the areas listed in Appendix B.

Commentary:

The child-client's lawyer should know the kinds and types of services within their communities that serve children and parents. Based on the conditions and circumstances that brought the child client and the child's family into the dependency system, the child-client's lawyer should identify the services that will help remove the

barriers to reunify the child client with the parent. The child-client's lawyer should consult with the child client about such services and whether the services address the child client's needs. The child-client's lawyer should be aware of cultural issues within the child-client's community and be prepared, in appropriate circumstances, to advocate that services be made available that are culturally appropriate and meet the child client's unique conditions and circumstances.

STANDARD 4 – GENERAL PRINCIPLES GOVERNING CONDUCT OF THE CASE

A. The child-client's lawyer should actively represent the child client in the preparation of a case as well as at hearings.

Action:

The child-client's lawyer should develop a theory and strategy of the case to implement at hearings, including the development of factual and legal issues.

Action:

The child-client's lawyer should advocate for the child client both in and out of court.

Action:

The child-client's lawyer should inform other parties and their representatives that they are representing the child client and that the lawyer expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child client and the child's family. When necessary, the child-client's lawyer should also remind other lawyers involved in the case that the child client has a lawyer and, therefore, they should not communicate with the child client without the child-client's lawyer's permission.

Commentary:

Regardless of any alignment of position among the child client and other parties, the child-client's lawyer should develop the lawyer's own theory and strategy of the case and ensure that the child client has an independent voice in the proceeding. The child-client's lawyer should not be merely a fact finder, but rather should zealously advocate a position on behalf of the child client. Although the child client's position may overlap with the position of one or both parents, third-party caretakers, or the agency, the child-client's lawyer should be prepared to present the child client's position independently and to participate fully in any proceedings.

B. When consistent with the child client's interest, the child-client's lawyer should take every appropriate step to expedite the proceedings.

Commentary:

Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased, or other requests by the child client may be granted. If a hearing is continued and the case is delayed, momentum may be lost and the child client's permanency delayed. Additionally, the Adoption and Safe Families Act (ASFA) timelines continue to run despite continuances.

C. The child-client's lawyer should cooperate and communicate regularly with other professionals in the case.

Action:

The child-client's lawyer should communicate with lawyers for the other parties, CASA, the caseworker, foster parents, and service providers to learn about the child client's progress and the child's views of the case, as appropriate.

Action:

The child-client's lawyer should respond promptly to inquiries from other parties and their representatives.

Commentary:

The child-client's lawyer must have all relevant information to represent a child client effectively. This requires open and ongoing communication with the other lawyers and service providers working with the child client, parent, and family.

The child-client's lawyer must be aware of local rules about discovery and must always seek the consent of the attorney for a represented party before speaking with that party.

The child-client's lawyer should be especially mindful of confidentiality requirements when communicating with other parties, service providers, and lawyers.

D. The child-client's lawyer or the lawyer's agent may not contact a represented party without the consent of the party's lawyer(s).

Oregon RPC 4.2 requires that before a child-client's lawyer, or a nonlawyer staff person under the supervision or direction of the lawyer (Oregon RPC 5.3), may speak to a represented party on the "subject of the representation," she or he must obtain the consent of the represented party's lawyer. In dependency cases this most frequently

arises when the child-client's lawyer wishes to visit and talk with the client who is in the physical custody of a represented party (usually a parent). Assuming a child client is old enough to speak privately with the lawyer, it is possible to limit conversation with the represented party to pleasantries and a request to speak privately with the child client. When the child client is younger, it would be almost impossible not to discuss the "subject of the representation" with the parent, as the subject matter is the child client. The child-client's lawyer must have permission in the latter instance. In the former, (older child) the child-client's lawyer should, as a professional courtesy, notify the parent's lawyer that they will be making a visit to the child client and will speak to the parent only to schedule and facilitate a private conversation with the child client. Of course, even in the case of an older child, the child-client's lawyer could seek consent to have additional conversation with the represented party. The child-client's lawyer should be careful not to disclose confidential information or to elicit any information from the parent on the subject of the representation unless consent has been given.

The agency is often unrepresented in dependency cases and in those instances Oregon RPC 4.2 does not prevent a child-client's lawyer from talking to the caseworker or other staff. When the agency is represented by counsel in a particular case, the child-client's lawyer may not talk with a caseworker without the agency lawyer's permission. If the child-client's lawyer is unsure whether an agency attorney has been retained in a particular case, the child-client's lawyer should ask the caseworker.

E. The child-client's lawyer should engage in case planning and advocate for a permanency plan and social services that will help achieve the child client's goals in the case.

Action:

A child-client's lawyer who plans to attend meetings about the case should be aware that other represented parties may be present without their lawyers and should take necessary steps to comply with the Rules of Professional Conduct.

A child-client's lawyer who does not plan to attend meetings about the case should be aware that other represented parties will attend with their lawyers at the meeting and thus should take steps to protect the client's interests.

Action:

The child-client's lawyer should determine the child client's goals and advocate consistently with those goals.

Action:

The child-client's lawyer should advocate for the child client to receive any needed services in which the child client is willing to participate.

Action:

After investigation and consultation with the child client, the child-client's lawyer should advocate for the child client's placement with the child's preferred care provider, if any, and in the least restrictive, culturally appropriate, and most familiar setting possible.

Action:

Whenever possible, the child-client's lawyer should use a social worker as part of the child-client's team to help determine an appropriate case plan, evaluate suggested social services, and act as a liaison and supporter of the child client with the service providers when appropriate.

Action:

The child-client's lawyer should consider whether one or both of the parents' lawyers or CASA might be an ally on placement, service, or visitation issues. If so, the child-client's lawyer should solicit their assistance.

Commentary:

When the child client wishes to be reunited with a parent, the child-client's lawyer should advocate for services for the child client and parent that will facilitate reunification. If the child client does not want to return to a parent, but the child-client's lawyer concludes that reunification will be the initial case plan, it may be appropriate for the child-client's lawyer to also advocate for appropriate services to the parent, since failure to provide necessary services is likely simply to delay the case.

The child-client's lawyer should ensure that the child client's plan for permanency addresses not only the permanency goal but also the child client's developmental, medical, emotional, educational, and independent living needs. Permanency includes minimizing the child client's disruptions during the child's time in care and ensuring trauma-informed treatment, decision-making, and transition planning.

Depending on the age and maturity of the child client, the child client may have a placement preference or have an existing relationship with a relative or adult friend that can be certified as a placement for the child client. The child-client's lawyer should advocate for the child client's preferred placement and ensure the agency fully explores placements suggested by the child client.

F. If the child client’s goal is reunification with the parent, the child-client’s lawyer should advocate strongly for frequent visitation in a family-friendly setting.

Action:

When the child client desires visits and when necessary, the child-client’s lawyer should seek court orders to compel the child welfare agency to provide appropriate visitation for the child client, consistent with the child client’s wishes. The child-client’s lawyer may also need to take action to enforce previously entered orders.

Action:

The child-client’s lawyer should advocate for an effective visiting plan consistent with the child client’s wishes. Courts and the agency may need to be encouraged to develop visitation plans that best fit the needs of the individual family. Factors to consider in visitation plans include:

1. Developmental age of child;
2. Frequency;
3. Length;
4. Location;
5. Child’s safety;
6. Types of activities; and
7. Visit coaching—having someone at the visit who could model effective parenting skills.

Commentary:

Frequent high-quality visitation is one of the best predictors of successful reunification between a parent and a child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the child-client’s lawyer seek a visitation order that will allow the best possible visitation. The child-client’s lawyer should advocate that visits be unsupervised if safe for the child client or at the lowest safe level of supervision; for example, families often are more comfortable when relatives, family friends, clergy, or other community members are recruited to supervise visits rather than caseworkers.

The child-client’s lawyer should advocate for visits to occur in family-friendly locations, such as in the family’s home, parks, libraries, restaurants, place of worship, or other community venues, and at the child client’s activities.

STANDARD 5 - PREPETITION

- A. The child-client's lawyer should actively represent the child client to achieve the child client's goals during the prepetition phase of a dependency case.**

Action:

The child-client's lawyer should counsel the child client about his or her rights in the investigation stage as well as the realistic possibility of achieving the child client's goals.

Action:

The child-client's lawyer should discuss available services and help the child client gain access to those in which they wish to participate.

Action:

If a child client would likely be eligible for appointed counsel at state expense if the subject of a juvenile court dependency petition and prepetition representation is necessary to preserve and protect the rights of the child client, the child-client's lawyer may seek approval from the Office of Public Defense Services (OPDS) for funding to commence representation prior to court appointment. Contact OPDS for more information.

Commentary:

A child client may seek the services of a lawyer regarding a situation that could be the basis for a dependency case before a petition is filed, or the child client may be referred for such services by a community agency or other source. If the child-client's lawyer agrees to represent the child client, the goal of representation should depend on the child client's wishes when the child client is capable of instructing the lawyer or expressing a preference. Sometimes this may mean avoiding having a petition filed, while other times it may mean filing a petition. For example, an adolescent in conflict with his or her parents might seek the help of a lawyer to determine whether to file a petition under ORS 419B.100 in an attempt to resolve the problem, or an undocumented child might seek representation to obtain a dependency adjudication as a step toward obtaining a favorable immigration status.³

During the prepetition phase of a dependency case, the child-client's lawyer has the opportunity to work with the child client and help the child client fully understand the issues and the child client's chances of securing desired outcomes. The child-client's lawyer also has the chance to encourage the agency to make reasonable efforts to work

³ The attorney for a child in a dependency case may also learn of a law enforcement investigation regarding the child client. See Standard 6 for a discussion of the attorney's responsibilities in this situation.

with the family, rather than filing a petition, when that is consistent with the child client's ultimate goals. During this phase, the child-client's lawyer should work intensively to explore all appropriate services, including assistance with legal problems involving housing, public benefits, services for children, domestic violence, and alternate placement plans that might resolve the case.

If the child client is removed from the parent's home, the child-client's lawyer should determine with the child client whether it is in the best interests of the child client to have visits with the parent(s) and, if so, how frequent those visits should be and where the visits should occur.

If the child client is removed, the child-client's lawyer may prepare the case by proposing early evaluations of the parent(s) and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child client.

The child-client's lawyer should ensure that the child client receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.

The child-client's lawyer should work to prevent any unnecessary interruption in the child client's education and ensure that educational services for the child client will be appropriate.

STANDARD 6 – INVESTIGATION

- A. The child-client's lawyer should conduct a thorough, continuing, and independent review and investigation of the case, including obtaining information, research, and discovery to prepare the case for trial and hearings.**

Action:

The child-client's lawyer should not rely solely on the disclosure information provided by the agency caseworker, the state, or other parties as the investigation of the facts and circumstances underlying the case.

Action:

The child-client's lawyer should review the case record of the child client and the supplemental confidential file, and the case record of the child-client's siblings when permitted by the juvenile code, Oregon Rules of Professional Conduct, and other confidentiality statutes.

Action:

The child-client's lawyer should contact lawyers for the other parties and CASAs for background information.

Action:

The child-client's lawyer should contact and meet with the parents, legal guardians, or caretakers of the child with permission of their lawyer(s).

Action:

The child-client's lawyer should obtain necessary releases of information in order to thoroughly investigate the case.

Action:

The child-client's lawyer should review relevant photographs, video or audio tapes, and other evidence. When necessary, the child-client's lawyer should obtain protective orders to keep information confidential once obtained.

Action:

The child-client's lawyer should research and review relevant statutes and case law to identify defenses and legal arguments to support the child-client's case.

Action:

If the child client is not a U.S. citizen and does not have Lawful Permanent Resident status, the child-client's lawyer should determine if the child client likely qualifies for Special Immigrant Juvenile status. To qualify, the child client must either:

1. be subject to the juvenile court's jurisdiction under ORS 419B.100; or
2. be placed by the juvenile court in the custody of an agency or department of the state or an individual or entity appointed by the juvenile court.

At the disposition, the court must find that reunification with one or both of the parents is not viable due to abuse, neglect, abandonment, or similar basis under state law. The court must be able to find that it is not in the child client's best interest to return to their home country. If these guidelines seem to apply to the child client, the child-client's lawyer should obtain an immigration consultation.

Action:

The child-client's lawyer should interview individuals involved with the child client and the parent such as:

1. Domestic partners;
2. Educators;
3. Friends;
4. Neighbors; and/or
5. Church members.

Action:

The child-client's lawyer should determine whether obtaining independent evaluations or assessments of the child client is needed for the investigation of the case.

Action:

The child-client's lawyer should attend treatment, placement, and administrative hearings involving the child client and parent as needed.

Commentary:

In conducting the investigation and utilizing its results to formulate a legal course of action on behalf of a child client, the child-client's lawyer must also utilize that information to understand the child client in a larger context as a multidimensional being. The child-client's lawyer must become familiar with the client's world, maintain an open mind regarding the client's differences, and ensure objective assessment of the child client's circumstances, desires, and needs in the context of the child client's connection to family, culture, and community. To achieve the child client's individualized goals for the legal proceeding, within the bounds of confidentiality, the child-client's lawyer should encourage, when advantageous to the child client, the involvement of family and community resources to resolve the issues the child client and family face.

1. School personnel;
2. Neighbors;
3. Relatives;
4. Caseworkers;
5. Foster parents and other caretakers;
6. Mental health professionals;
7. Physicians;
8. Law enforcement personnel; and

9. The parent(s).

The child-client's lawyer should be familiar with procedures to obtain funds for evaluation or assessment of the child client.

Action:

The child-client's lawyer should work with a team that includes investigators and social workers to prepare the child-client's case. If necessary, the child-client's lawyer should petition the OPDS for funds.

Commentary:

If possible, the child-client's lawyer should work with a team that includes social workers and investigators who can meet with the child client and assist in investigating the underlying issues that arise as cases proceed. If not possible, the child-client's lawyer is still responsible for gaining all pertinent case information, while being mindful of not becoming a witness.

B. The child-client's lawyer should review the child-client's agency case file.

Action:

The child-client's lawyer should ask for and review the agency case file as early during the course of representation as possible and at regular intervals throughout the case.

Action:

After reviewing the agency file, the child-client's lawyer should determine if any records or case notes of any social worker or supervisor have not been placed in the file and move to obtain those records as well either through informal or formal discovery.

Commentary:

Even if the child-client's lawyer is voluntarily given contents of the agency file in paper or electronic format, the child-client's lawyer should also look at the actual file in the agency office and request disclosure of all documents relating to the case from the agency, since it may have additional items not given to the lawyer. If requests to obtain copies of the agency file are unsuccessful or slow in coming, the child-client's lawyer should pursue formal disclosure under the statute. If the agency case file is inaccurate, the child-client's lawyer should seek to correct it. The lawyer must read the case file and request disclosure of documents periodically because information is continually being received by the agency.

C. The child-client’s lawyer should obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and respond to requests for documents from other parties.

Action:

The child-client’s lawyer should comply with disclosure statutes and use the same to obtain names and addresses of witnesses, witness statements, results of evaluations, or other information relevant to the case. The child-client’s lawyer should obtain and examine all available discovery and other relevant information.

Commentary:

As part of the discovery phase, the child-client’s lawyer should review the following kinds of documents:

1. Social service records, including information about services provided in the past, visitation arrangements, the plan for reunification, and current and planned services;
2. Medical records;
3. School records;
4. Evaluations of all types;
5. Housing records; and
6. Employment records.

D. The child-client’s lawyer should have potential witnesses, including adverse witnesses, interviewed by an investigator or other appropriately trained person. If appropriate, witnesses should be subpoenaed.

Action:

When appropriate, the child-client’s lawyer, or another trained and qualified person, should observe visitations between the parent and the child client.

Action:

If an investigative report is written, and the child-client’s lawyer intends to call the individual as a witness, the child-client’s lawyer must comply with the disclosure requirements of ORS 419B.881.

Commentary:

It is a good practice to have interviews conducted by an investigator employed by the child-client's lawyer. However, if the child-client's lawyer conducts the interview, a third person such as a member of the child-client's lawyer's office should be present so that the third person can be used at trial to impeach the witness.

- E. The child-client's lawyer should consult with the child client well before each hearing, in time to use the child client's information for the case investigation.**

Commentary:

Often, the child client is the best source of information for the child-client's lawyer and the lawyer should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the child-client's lawyer should explain lawyer-client confidentiality to the child client. The child-client's lawyer may need to work hard to gain the child client's trust, but if a trusting relationship can be developed, the child-client's lawyer will be a better advocate for the child client. The investigation will be more effective if guided by the child client, as the child client generally knows firsthand what occurred in the case.

STANDARD 7 – COURT PREPARATION

- A. The child-client's lawyer should develop a case theory and strategy to follow at hearings and negotiations.**

Action:

Once the child-client's lawyer has completed the initial investigation and discovery, including interviews with the child client, the child-client's lawyer should develop a strategy for representation.

Commentary:

The strategy may change throughout the case, as the child client, or parent, makes or does not make progress, but the initial theory is important to assist the child-client's lawyer in staying focused on the child client's wishes and on what is achievable. The theory of the case should inform the child client's lawyer's preparation for hearings and arguments to the court. It should also be used to identify what evidence is needed for hearings and the steps to move the case toward the child client's ultimate goals.

- B. The child-client's lawyer should timely file all pleadings, motions, objections, and briefs, and research applicable legal issues and advance legal arguments when appropriate.**

Action:

The child-client's lawyer must file answers and responses, motions, objections, and discovery requests and responsive pleadings or memoranda that are appropriate for the case. The pleadings and memoranda must be thorough, accurate, and timely. The pleadings must be served on all lawyers or unrepresented parties.

Action:

When a case presents a complicated or new legal issue, the child-client's lawyer should conduct the appropriate research before appearing in court. The child-client's lawyer should be prepared to distinguish case law that appears unfavorable.

Action:

If it would advance the child-client's case, the child client's lawyer should present a memorandum of law to the court.

Commentary:

Filing motions, pleadings, and memoranda benefit the child client. This practice highlights important issues for the court and builds credibility for the child-client's lawyer. In addition to filing responsive papers and discovery requests, the child-client's lawyer should seek court orders when that would benefit the child client; for example, filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable and active efforts obligations. When out-of-court advocacy is not successful, the child-client's lawyer should not wait to bring the issue to the court's attention. Arguments in child welfare cases are often fact-based. Nonetheless, lawyers should ground their argument in statutes, Oregon Administrative Rules (OARs), and case law. Additionally, while nonbinding, law from other jurisdictions can be used to persuade a court.

At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. The child-client's lawyer should preserve legal issues for appellate review by making a record, even if the argument is unlikely to prevail at trial level.

Appropriate pretrial motions include but are not limited to:

1. Discovery motions;
2. Motions challenging the constitutionality of statutes and practices;
3. Motions to strike, dismiss, or amend the petitions;
4. Motions to transfer a case to another county;

5. Evidentiary motions and motions *in limine*;
6. Motions for additional shelter hearings;
7. Motions for change of venue;
8. Motion to consolidate; and
9. Motion to sever.

NOTE: Under ORS 28.110 when a motion challenges the constitutionality of a statute, it must be served on the Attorney General.

Action:

The child-client's lawyer should make motions to meet the child client's needs pending trial.

Action:

If applicable, the child-client's lawyer should advocate that the court enter an order with the appropriate findings for the child's Special Immigrant Juvenile Status petition, in consultation with the child's immigration attorney.

Commentary:

Examples of such motions include:

1. Motion for family reunification services;
2. Motion for medical or mental health treatment;
3. Motion for change of placement;
4. Motion to increase parental or sibling visitation;
5. Motion seeking contempt for violations of court orders; and
6. Motion to establish, disestablish, or challenge paternity pursuant to ORS 419B.395 and its cross-references.

C. The child-client's lawyer should promote and participate in settlement negotiations and mediation to resolve the case quickly.

Action:

The child-client's lawyer should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the child client's goals.

Commentary:

The child-client's lawyer should use suitable mediation resources. The child-client's lawyer should consult the child client in a developmentally appropriate way prior to any settlement becoming binding. The ultimate settlement agreement must be consistent with the child client's wishes.

The facts to which the parties admit will frame the court's inquiry at all subsequent hearings as well as what actions the parties must take, the services provided, and the ultimate outcome.

A written, enforceable agreement should be prepared whenever possible, so that all parties are clear about their rights and obligations. The child-client's lawyer should ensure agreements accurately reflect the understandings of the parties. If appropriate, the child-client's lawyer should request a hearing or move for contempt if orders benefiting the child are not obeyed.

- D. The child-client's lawyer should explain to the child client, in a developmentally appropriate manner, what is expected to happen before, during, and after each hearing and facilitate the child client's attendance at hearings when appropriate.**

Action:

Prior to a hearing, the child-client's lawyer should discuss with the child client its purpose, what is likely to happen during the hearing, and whether the child client will attend.

Commentary:

Children over the age of 12 must be served by summons under ORS 419B.839 (1)(f). If the child client is not properly served with the summons, the child-client's lawyer should consider whether a motion to dismiss is appropriate. If the child client will attend the hearing, the child-client's lawyer should meet with the child client to explain what will happen at the hearing and to prepare for it.

The child-client's lawyer for a child client younger than 12 years of age, and in some cases for a child client older than 12, should determine, through consultation with the child client and the child-client's therapist, caretaker, or other knowledgeable person(s), how the child client is likely to be affected by attending a hearing. If the child-client's lawyer concludes that attendance might be detrimental to the child client, the child-client's lawyer should meet with the child client to discuss this concern. The discussion should include how best to minimize the potential detrimental effects on the child client. Whether to attend the hearing is a decision for the child client if the client is able to direct the child-client's lawyer on this issue.

Action:

When the child client wishes to attend the proceedings, the child-client's lawyer must request that the agency, as the child's legal custodian, transport the child client to the hearing.

Action:

When appropriate, the child-client's lawyer should ask that the agency provide support for the child client to minimize adverse impacts of the hearing on the child client.

Commentary:

The child-client's lawyer should ask the agency to provide necessary support for the child client during the hearing. One example of such support is requesting that the agency have personnel accompanying the child client to and from the hearing who will be able to remain with the child client throughout the hearing and during any breaks.

E. The child-client's lawyer should identify, locate, and prepare all witnesses.

Action:

The child-client's lawyer, in consultation with the child client to the extent developmentally appropriate, should develop a witness list well before a hearing or trial. The child-client's lawyer should not assume the agency will call a potential witness, even if the witness is named on the agency's witness list. The child-client's lawyer should, when possible, contact the potential witnesses to determine if they can provide helpful testimony and issue a subpoena to such witnesses.

Action:

When appropriate, witnesses should be informed that a subpoena is on its way. The child-client's lawyer should also ensure the subpoena is served. The child-client's lawyer should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the child client.

Action:

The child-client's lawyer should set aside time to fully prepare all witnesses in person before the hearing. The child-client's lawyer should remind the witnesses about the court date.

Commentary:

Witnesses may be people with direct knowledge of the allegations against the parent, service providers working with the parent, or individuals from the community who could testify generally about the family's situation.

When appropriate, the child-client's lawyer should consider working with other parties who share the child client's position when developing the child-client's witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of a hearing. The child-client's lawyer should review ORS 419B.899 and ORS 419B.902 and local supplemental rules for the proper process and time to issue subpoenas.

Witnesses are often nervous about testifying in court. The child-client's lawyer should thoroughly prepare the witnesses so the witnesses feel comfortable with the process and understand the scope of their testimony. Preparation generally includes rehearsing the specific questions and answers expected on direct, and anticipating the questions and answers that might arise on cross-examination.

F. The child-client's lawyer should identify, secure, prepare, and qualify expert witnesses when needed. When possible, the child-client's lawyer should interview opposing counsel's experts.

Action:

Often a case requires multiple experts with different expertise, such as medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The child-client's lawyer should consider whether the opposing party is calling expert witnesses and determine whether the child client needs to call any experts on behalf of the child client to respond to the opponent's experts.

Action:

When opposing counsel plans to call expert witnesses, the child-client's lawyer should seek to interview the witnesses in advance. The child-client's lawyer should scrupulously comply with standing orders of the juvenile court regarding contact with court-ordered evaluators.

Commentary:

By contacting opposing counsel's expert witnesses in advance, the child-client's lawyer will know what evidence will be presented against the child client and whether the expert has any favorable information that might be elicited on cross-examination. The child-client's lawyer will be able to discuss the issues with the child client, prepare a defense, and call experts on behalf of the child client, if appropriate. Conversely, if the child-client's lawyer does not talk to the expert in advance, the child-client's lawyer could be surprised by the evidence and unable to represent the child client competently.

G. In consultation with the child client, the child-client’s lawyer should determine whether to call the child client to testify. When the child client will offer testimony or will be called by another party, the child-client’s lawyer should prepare the child client to testify.

Action:

The child-client’s lawyer should decide whether to call the child client as a witness, although the child-client’s lawyer is bound by the wishes of a child client capable of considered judgment. The decision should consider the child client's need or desire to testify, the necessity of the child client's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child client, the child client's developmental ability to provide direct testimony and withstand possible cross-examination, and any repercussions of testifying, including but not limited to the possible emotional and psychological effect of testifying on the child client and on the possible reunification of the family.

Action:

The child-client’s lawyer must be familiar with the current law and empirical knowledge about children clients’ competency, memory, and suggestibility and, when appropriate, attempt to establish the competency and reliability of the child client.

Commentary:

There is no minimum age below which a child client is automatically incompetent to testify. To testify as a witness, the child client must have the capacity to observe, adequate intelligence, adequate memory, ability to communicate, an awareness of the difference between telling truth and falsehood, and understand that she or he must tell the truth as a witness. The court should make the determination of the child client’s competency as a witness under the applicable rules of evidence prior to the child client’s testimony. If necessary, the child-client’s lawyer should present expert testimony to establish competency or reliability or to rehabilitate any impeachment of the child client on those bases.

While testifying is undoubtedly traumatic for many children, it is therapeutic and empowering for others. The child-client’s lawyer should take all reasonable steps to reduce the likelihood of the child client being traumatized from testifying. The decision about the child client's testifying must be made based on the individual child client’s abilities, circumstances, and need for the child client’s testimony. If the child client has a therapist, the therapist should be consulted both with respect to the decision itself and assistance with preparing the child client to testify.

If the child client does not wish to testify or would be harmed by being forced to testify, the child-client's lawyer should seek a stipulation of the parties not to call the child client as a witness or file a motion pursuant to ORS 419B.310 to take the testimony of the child client outside the presence of the parent(s) and other parties.

Action:

The child-client's lawyer should prepare the child client to testify and seek to minimize any harm that testifying will cause to the child client.

Commentary:

Unlike a criminal proceeding or delinquency proceeding, the child client can be called as a witness by any other party to the proceeding. Thus, regardless of the child client's desire to testify, they may be called as a witness by another party to the proceeding. The child-client's lawyer needs to be aware of the potential that the child client will be called as a witness and take steps necessary to prepare the child client as a witness.

The child-client's lawyer's preparation of the child client to testify should include attention to the child client's developmental needs and abilities, as well as to accommodations that should be made by the court and other lawyers including the necessity of filing a motion pursuant to ORS 419B.310 to take the child client's testimony outside the parents' presence.

The child-client's lawyer should familiarize the child client with the courtroom and the process for testifying including the likelihood that the child-client's lawyer will also ask questions to reduce potential harm to the child client. The child-client's lawyer should also prepare the child client for the possibility that the judge may render a decision against the child client's wishes, which will not be the child client's fault.

STANDARD 8 - HEARINGS

A. The child-client's lawyer should prepare for and attend all hearings, including pretrial conferences.

Action:

The child-client's lawyer must prepare for and attend all hearings and participate in all telephone and other conferences with the court.

The child client's position may overlap with the positions of one or both parents, third-party caretakers, or the agency. Nevertheless, the child-client's lawyer should participate fully in every hearing and not merely defer to the other parties. The child-client's lawyer should be prepared to state and explain the child client's position at each hearing.

Commentary:

The child-client's lawyer's participation in pretrial proceedings may improve case resolution for the child client. Failing to participate in the proceedings may harm the child client's position in the case. Therefore, the child-client's lawyer should be actively involved in this stage.

Becoming a strong courtroom lawyer takes practice and attention to detail. The child-client's lawyer must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The child-client's lawyer should seek out training in trial skills and watch other lawyers to learn from them. Presenting and cross-examining witnesses are skills with which the child-client's lawyer must be comfortable. In particular, examining or cross-examining a child requires unique skills.

Action:

If the court proceeds in the absence of the child-client's lawyer, the lawyer should consider filing a motion to set aside.

Commentary:

If the child-client's lawyer has a conflict with another courtroom appearance, the child-client's lawyer should notify the court and the other parties and request a short continuance. The child-client's lawyer should avoid having another lawyer stand in to represent the child client in court if the other lawyer is unfamiliar with the child client or case.

B. The child-client's lawyer should request the opportunity to make opening statements and closing arguments.

Action:

The child-client's lawyer should make opening statements and closing arguments in the case to frame the issues around the child-client's lawyer's theory of the case and to ensure the judge understands the issues from the child client's perspective.

Commentary:

In many child abuse and neglect proceedings, lawyers waive the opportunity to make opening statements and closing arguments. However, these opportunities can help shape the way the judge views the case and therefore can help the child client. They may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a

number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them.

It is important to be able to read the judge. The child-client's lawyer should move along when the judge is tracking the argument and elaborate on the areas that appear to need more attention.

C. The child-client's lawyer should prepare and make all appropriate motions and evidentiary objections. The child-client's lawyer must be aware of the need to make a record for appeal.

Action:

The child-client's lawyer should make appropriate motions and evidentiary objections to advance the child client's position during the hearing. If necessary, the child-client's lawyer should file memoranda of points and authorities in support of the child client's position on motions and evidentiary issues. The child-client's lawyer should always be aware of preserving legal issues for appeal.

Commentary:

It is essential that the child-client's lawyer understand the applicable rules of evidence and all court rules and procedures. The child-client's lawyer must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of expert witnesses, the competence of the child or other witness, or raising the issue of the child welfare agency's lack of reasonable or active efforts).

D. If the child client testifies, the child-client's lawyer should ensure that questions to the child client are phrased in an age and culturally appropriate manner.

Action:

The child-client's lawyer should take into consideration the law and research regarding children's testimony, memory, and suggestibility in developing questions for the child witness. The information a child gives in interviews and during testimony is often misleading because adults may not understand how to ask children developmentally appropriate questions nor how to interpret answers properly. The child-client's lawyer must become skilled at recognizing the child client's developmental limitations. It may be appropriate to present expert testimony on the issue and even to have an expert present during a young child's testimony to point out developmentally inappropriate phrasing.

E. The child-client's lawyer should present and cross-examine witnesses and prepare and offer exhibits.

Action:

The child-client's lawyer must be able to effectively present witnesses to advance the child client's position. Witnesses must be prepared in advance and the child-client's lawyer should know what evidence will be presented through the witnesses. The child-client's lawyer must also be skilled at cross-examining opposing parties' witnesses. The child-client's lawyer must know how to offer documents, photos, physical objects, electronic records, etc. into evidence.

Action:

At each hearing, the child-client's lawyer should advocate for the child client's goals, keeping in mind the case theory.

F. The child-client's lawyer should ensure that findings of fact, conclusions of law, and orders that benefit the child client are included in the court's decision.

Action:

The child-client's lawyer should advocate for appropriate services and request that the court state its expectations of all parties on the record.

Action:

The child-client's lawyer must be familiar with the standard forms and ensure that they are completed correctly and that findings beneficial to the child client are included.

Action:

The child-client's lawyer should consider preparing proposed findings of fact and conclusions of law to frame the case and ruling for the judge.

Commentary:

Framing the case for the judge may result in orders that are more favorable to the child client, preserve appellate issues, and help the child-client's lawyer clarify desired outcomes before a hearing begins. The child-client's lawyer should offer to provide the judge with proposed findings and orders in electronic format. When an opposing party prepares the order, the child-client's lawyer should review it for accuracy before it is submitted to the judge for signature.

STANDARD 9 – POST HEARINGS

A. The child-client’s trial lawyer should review court orders to ensure accuracy and clarity and review with the child client.

Action:

At the conclusion of the hearing, the child-client’s trial lawyer should request and obtain a copy of the written order or judgment to ensure it reflects the court’s verbal order. If the order or judgment is incorrect, that is, it does not reflect the court’s verbal rulings, the child-client’s trial lawyer should take whatever steps are necessary to correct it to the extent that the corrections are beneficial to the child client.

Action:

Once the order or judgment is final, the child-client’s trial lawyer should provide the child client with a copy of the order or judgment, if age appropriate, and should review the order or judgment with the child client to ensure the child client understands it and the obligations of all of the parties under the order or judgment. If the child client is unhappy with the order or judgment, the child-client’s lawyer should counsel the child client about any options to appeal, or, when the order was entered by a referee, request a rehearing pursuant to ORS 419A.150, but should explain that the order is in effect unless a stay or other relief is secured. It is important to remember, when explaining the court’s decision and the child client’s options, that communication with a child client should be developmentally and culturally appropriate. See Standard 2C.

Commentary:

The child client may be upset or frightened about being involved in the child welfare system and a court order that is adverse to the child client could add stress and frustration. It is essential that the child-client’s trial lawyer take the time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the child client. The child-client’s lawyer should counsel the child client about all options, including appeal.

The child-client’s trial lawyer should take reasonable steps to ensure the child client and all other parties comply with court orders and should continuously assess whether the case needs to be brought back to court.

Action:

If the child client is attempting to comply with the order but any other party is not meeting that party’s responsibilities, the child-client’s trial lawyer should approach the other party and seek assistance on behalf of the child client. If necessary, the child-client’s lawyer should request a hearing to review the order and the other party’s

noncompliance or take other steps to ensure that appropriate social services are available to the child client.

Commentary:

The child-client's trial lawyer should play an active role in assisting the child client in complying with court orders, ensuring that other parties comply and in obtaining visitation and any other social services. The child-client's trial lawyer should speak with the child client regularly about progress and any difficulties the child client is encountering with the implementation of the court order or service plan. If the agency neglects or refuses to offer appropriate services, especially those ordered by the court, the child-client's lawyer should file appropriate motions, including those for an expedited hearing, for a change in the visitation plan, to compel disclosure of information or material, or for contempt.

When the agency does not offer appropriate services, the child-client's trial lawyer should be familiar with independent providers that could render services to the child and provide the information to the court to be included in the service plan.

C. The child-client's trial lawyer should move the court to modify or set aside an order or judgment when appropriate.

Action:

If an order or judgment adversely affects the child client, the child-client's trial lawyer should advise the client of the remedies, which include moving to modify or set aside the order or judgment. ORS 419B.923 permits a motion to modify or set aside an order or judgment in instances of clerical error, excusable neglect, and newly discovered evidence. Although other reasons may be permitted under the "include, but are not limited to" language of the statute, the extent of the trial court's discretion is not yet completely determined.

The motion must be filed within a "reasonable time" and may be filed while an appeal is pending. The child-client's trial lawyer should consider filing both the motion and referring the case for appeal when the time limitations make that necessary. In that instance, the motion must be served on the appellate court.

Additionally, a motion to modify or set aside an order or judgment may be made to assert a claim of inadequate assistance of counsel, which also may be made on direct appeal. When this issue may be the basis for a motion to modify or set aside, a request for a rehearing or an appeal to the court of appeals, the child-client's trial lawyer should be cognizant of all of the possible deadlines and immediately move the court to substitute counsel.

D. The child-client’s trial lawyer should consider and discuss the possibility of appeal or rehearing with the child client.

Action:

The child-client’s trial lawyer should immediately consider and discuss with the child client, preferably in person, the possibility of appeal when a court’s ruling is contrary to the child client’s position or interests. Regardless of whether the child-client’s lawyer believes an appeal is appropriate or that there are any viable issues for appeal, the child-client’s trial lawyer should advise the child client—at the conclusion of each hearing—that they have a right to appeal from any adverse order or judgment resulting from a jurisdictional hearing, review hearing, permanency hearing, or termination-of-parental-rights trial.

Further, if the hearing was held before a juvenile court referee, the child-client’s trial lawyer should advise the child client that the client is entitled to a rehearing before a juvenile court judge. Under ORS 419A.150(4), unless a rehearing is requested within 10 days following the entry of the referee’s order, the order will become final. Whether to seek a rehearing of a referee’s order or to pursue a direct appeal in the appellate courts is always the child client’s decision.

Commentary:

When discussing the possibility of an appeal, the child-client’s trial lawyer should explain both the positive and negative effects of an appeal, including how the appeal could affect the child client’s goals. For instance, the appellate court could reverse the juvenile court and vindicate the child client’s position. Further, under ORS 19.360, the filing of a notice of appeal vests the appellate court with jurisdiction to stay the juvenile court’s orders while the appeal is pending. Alternatively, an appeal could delay the case for a long time.

E. If the child client decides to appeal, the child-client’s trial lawyer should timely and thoroughly facilitate the appointment of an appellate lawyer for the child client.

Action:

The child-client’s trial lawyer should take all steps necessary to facilitate appointing an appellate lawyer; for example, the child’s court-appointed trial lawyer should refer the case for appeal to the Office of Public Defense Services (OPDS) and comply with that office’s referral procedures. The child’s court-appointed trial lawyer should work with the appellate lawyer and identify for the appellate lawyer: the parties to the case (for example whether there are any intervenors), appropriate issues for appeal, and promptly respond to all requests for additional information or documents necessary for

the appellate lawyer to prosecute the appeal. The child’s court-appointed trial lawyer should promptly comply with the court’s order to return exhibits necessary for appeal.

Commentary:

Pursuant to ORS 419A.200(4), the child-client’s trial lawyer must file the notice of appeal or if court-appointed, the child-client’s trial lawyer may discharge their duty to file the notice of appeal by referring the case to the Juvenile Appellate Section of the OPDS using the on-line referral form and complying with OPDS procedures.

- F. The child-client’s trial lawyer should monitor the progress of an appeal taken by another party to the juvenile case and continuously evaluate whether the child client should participate in the appeal.**

Action:

As a party to the underlying juvenile case, the child-client’s trial lawyer should monitor the appeal by reviewing the log of filings and the filed documents through the electronic Appellate Case Management System.

Oregon Rule of Appellate Procedure (ORAP) 2.22 requires that a party eFiling documents in a dependency case must use the “notification information” function of the appellate courts’ eFiling system to notify the attorney for any person who was a party in the juvenile court pursuant to ORS 419B.875(1)(a)(A)–(C), (H), or ORS 419B.875(1)(b). Notification must be made to each attorney whose client has not been designated a party in the notice of appeal and to each attorney whose client has not filed a notice of intent to participate in the appeal under ORAP 2.25(3).

ORAP 2.22 explains that the notification will notify the attorney that the document has been eFiled, but will not permit the attorney to view the document unless the attorney has juvenile case permissions in the Appellate Case Management System.

In order to access the documents, the child-client’s trial lawyer should obtain, complete, and submit a “Request for Access” form to the State Court Administrator.

Action:

The child-client’s trial lawyer should regularly monitor the electronic notifications and review the filed documents, when appropriate, and evaluate whether the child client should file a notice of intent to participate. Court-appointed counsel may do so by referring the case to the OPDS using the process explained in subsection E above.

STANDARD 10 – APPEALS ISSUES FOR CHILD’S LAWYER

- A. The child-client’s appellate lawyer should communicate with the child client.**

Action:

The child-client's appellate lawyer should consult with the child client in an age appropriate fashion as soon as possible to confirm that the child client wishes to pursue the appeal and to advise the child client about the appellate process, including relevant timelines.

If the child client is of diminished capacity, and it is not reasonably possible to obtain direction from the child client, the child-client's appellate lawyer should determine what the child client would decide if the child was capable of making an adequately considered decision. Among the ways to determine this is to consult with the child-client's trial lawyer.

The child-client's appellate lawyer should not be bound by the determinations of the child client's position and goals made by the child-client's trial lawyer and should independently determine the child client's position and goals on appeal.

Commentary:

The child-client's trial lawyer should consider whether undertaking representation of the same child client on direct appeal protects the child client's interests on appeal. Representation of the child client on appeal by the child-client's trial lawyer potentially deprives the child client of an independent audit of the quality of the representation by the child-client's trial lawyer and, because a claim of inadequate assistance of counsel may be available on direct appeal, could implicate Oregon RPC 1.7(a)(2).

Action:

The child-client's appellate lawyer should explain to the child client the difference between representation for appeal and ongoing representation in the dependency case. Because the dependency case will almost always be ongoing during the appeal, the child-client's appellate lawyer and the child-client's trial lawyer should consult and collaborate as necessary to advance the child client's interests in both cases.

Action:

The child-client's appellate lawyer and the trial lawyer should be thoughtful about their respective roles and relationship with the child client. For example, the child-client's trial lawyer should be careful to safeguard the appeal by consulting with the child-client's appellate lawyer prior to upcoming hearings and immediately notifying the child-client's appellate lawyer should the court enter any new order or judgment to determine whether the new judgment should be referred for appeal. The child-client's appellate lawyer should consult with the child-client's trial lawyer about the issues

raised in the opening brief and offer to consult about properly raising issues at upcoming hearings.

Action:

The child-client's appellate lawyer should advise the child client about the limited scope of the lawyer's representation and, should the child client have concerns about the ongoing case, the child-client's appellate lawyer should refer the child client to the client's trial lawyer. Ideally, the child-client's trial lawyer and appellate lawyer will work collaboratively and strategically to obtain the best result for the child client. For example, the child-client's appellate lawyer may assist the child-client's trial lawyer in identifying issues to litigate at upcoming hearings and in properly preserving issues for a subsequent appeal if the child client does not prevail at trial.

B. Unless the child-client's trial lawyer has filed the notice of appeal, the child-client's appellate lawyer must do so within the prescribed time limits.

Action:

The child-client's appellate lawyer must comply with statutory and rule requirements in filing the notice of appeal.

When the child-client's trial lawyer has filed the notice of appeal before the child-client's appellate lawyer has assumed the representation, the appellate lawyer should promptly obtain and thoroughly review the notice of appeal for any jurisdictional or other defects, including whether the decisional document appealed from is an appealable judgment pursuant to ORS 419A.205.

Commentary:

Under ORS 19.270, a proper notice of appeal is a jurisdictional requirement. Consequently, the notice must satisfy both statutory requirements found in ORS 19.250, ORS 19.255, and ORS 419A.200(3), and in the Oregon Rules of Appellate Procedure found in ORAP 2.05, ORAP 2.10, and ORAP 2.22 in order to prosecute the appeal.

ORS 419A.200(5) permits the child-client's appellate lawyer to move the court for leave to file a late notice of appeal after the statutory 30-day time limit (up to 90 days after entry of judgment). A motion to file a notice of appeal after the 30-day period, to be successful, must demonstrate (1) that the failure to file a timely notice of appeal was not personally attributable to the child, and (2) "a colorable claim of error" exists in the proceeding from which the appeal is taken.

C. Prosecuting or defending the appeal: Issue selection and briefing.

Action:

The child-client's appellate lawyer should thoroughly review the judgment to ensure that it comports with the requirements of the juvenile code; for example, the requirements of a valid permanency judgment found under ORS 419B.476(5).

The child-client's appellate lawyer should review the trial court record and any opposing briefs, identify and research issues, and prepare and timely file and serve the brief on behalf of the child client. The brief should reflect relevant case law and present the best legal arguments available under Oregon and federal law to advance the child client's position. Novel legal arguments that might develop favorable law in support of the child client's position should also be advanced if available.

The child-client's appellate lawyer should, when appropriate, send a copy of the filed brief to the child client who is able to read, and to the child-client's trial lawyer.

Commentary:

The child-client's appellate lawyer has considerable authority over the manner in which an appeal is presented. It is that lawyer's responsibility to exercise his or her professional judgment to raise issues that, in the lawyer's judgment, will provide the best chance of success on appeal—even when the child client disagrees with the appellate lawyer's judgment about which arguments are most likely to advance the client's position.

If the child client insists on advancing a theory that the court-appointed appellate lawyer determines is not meritorious or uses too much of the allotted word limit so that better arguments cannot be effectively advanced, the court-appointed appellate lawyer should determine the strategy for the opening brief based on professional skill and judgment and consider counseling the child client to advance their arguments in a supplemental *pro se* brief pursuant to ORAP 5.92.

ORAP 5.90(4) allows the filing of a *Balfour*-type brief with the argument section to be drafted by the child client in a juvenile case when an appellate lawyer has been appointed. If the child-client's appellate lawyer, after consultation with the child client, is unable to identify any meritorious issues on appeal, the court-appointed appellate lawyer may consider filing a brief pursuant to ORAP 5.90(4). Before the child-client's appellate lawyer embarks on this course of action, the child-client's appellate lawyer must determine whether, in his or her professional judgment, the confidentiality constraints and ethical dilemmas caused by the unique circumstances involved in this type of case can be overcome.

D. Prosecuting or defending the appeal – Oral Argument.

Action:

The child-client's appellate lawyer should determine whether to request an oral argument. The child client should be informed of the lawyer's decision, and if an oral argument has been requested, the child-client's appellate lawyer should inform the child client when the oral argument will occur. If appropriate, the child-client's appellate lawyer should make arrangements for the child client to attend the oral argument.

Commentary:

As with the determination of which issues to raise on direct appeal, the child-client's appellate lawyer must exercise his or her professional judgment in determining whether to present oral argument to the appellate court.

Action:

If oral arguments are scheduled, the child-client's appellate lawyer should be thoroughly prepared to present the case to the court and to answer the court's questions.

E. Communicating the result of the appeal.

Action:

The child-client's appellate lawyer should communicate the result of the appeal and its implications in an age appropriate fashion to the child client. If the child has the ability to read and comprehend the decision, a copy of the appellate decision should be provided to the child client. The child-client's appellate lawyer should also communicate the result of the appeal to the child-client's trial lawyer and provide a copy of the appellate decision as well as any needed consultation.

F. Petitioning for Review in the Oregon Supreme Court.

Action:

The child-client's appellate lawyer should consider whether to petition for review in the Oregon Supreme Court and advise the child client about such a petition. Whether to petition for review is ultimately the child client's decision unless the child client is of diminished capacity.

Commentary:

When the child client is of diminished capacity, and it is not reasonably possible to obtain direction from the child client, the child-client's appellate lawyer should determine what the child client would decide if the child were capable of making an adequately considered decision and proceed according to that determination.

THE OBLIGATIONS OF THE LAWYER FOR PARENTS IN CHILD PROTECTIVE PROCEEDINGS WITH ACTION ITEMS AND COMMENTARY

STANDARD 1 – ROLE OF THE LAWYER FOR PARENTS

- A. The parent-client’s lawyer must maintain a normal lawyer-client relationship with the parent client, including advocating for the parent client’s goals and empowering the parent client to direct the representation and make informed decisions.**

Action:

The parent-client’s lawyer must understand the parent client’s goals and pursue them vigorously. The parent-client’s lawyer should explain that the lawyer’s job is to represent the parent client’s interests and regularly inquire as to the parent client’s goals, including ultimate case goals and interim goals. The lawyer should explain all legal aspects of the case including the advantages and disadvantages of different options. At the same time, the lawyer should be careful not to usurp the parent client’s authority to decide the case goals.

Commentary:

Since many parent clients distrust the child welfare system, the parent-client’s lawyer must take care to distinguish himself or herself from others in the system so the parent client can see that the parent-client’s lawyer serves the parent client’s interests. The lawyer should be mindful that a parent client often feels disempowered in child welfare proceedings and should take steps to make the parent client feel comfortable expressing goals and wishes without fear of judgment. The lawyer should clearly explain the legal issues as well as expectations of the court and the Department of Human Services (hereinafter “agency”), and potential consequences of the parent client failing to meet those expectations. The lawyer has the responsibility to provide expertise and to make strategic decisions about the best ways to achieve the parent client’s goals, but the parent client is in charge of deciding the case goals and the lawyer must act accordingly.

- B. When representing a parent client with diminished capacity because of age, mental impairment, or for some other reason, the parent-client’s lawyer should, as far as reasonably possible, maintain a normal lawyer-client relationship with the parent client. A parent client may have the capacity to make some decisions but not others.**

Action:

The parent-client's lawyer must be aware of the parent client's mental health status and be prepared to assess whether the parent client can assist with the case.

Commentary:

Lawyers representing parents must be able to determine whether a parent client's mental status (including mental illness and mental intellectual disability or developmental delay) interferes with the parent client's ability to make decisions about the case. The parent-client's lawyer should be familiar with any mental health diagnosis and treatment that a parent client has had in the past or is presently undergoing (including any medications for such conditions). The lawyer should get consent from the parent client to review mental health records and to speak with former and current mental health providers. The lawyer should explain to the parent client that the information is necessary to understand the parent client's capacity to work with the lawyer.

- C. When it is not reasonably possible to maintain a normal lawyer-client relationship generally or with regard to a particular issue, the parent-client's lawyer should conduct a thorough investigation and then determine what course of action is most consistent with protecting the parent client's interests in the particular situation and represent the parent client in accordance with that determination. This determination should be based on objective facts and information and not the lawyer's personal philosophy or opinion.**
- D. When the parent-client's lawyer reasonably believes that the parent client has diminished capacity; is at risk of physical, financial, or other harm unless action is taken; and cannot adequately act in the parent client's own interest, the parent-client's lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the parent client.**

Action:

The parent-client's lawyer should choose the protective action that intrudes the least on the lawyer-client relationship and is as consistent as possible with the parent client's wishes and values.

Action:

In extreme cases, that is, when the parent client is at risk of substantial physical harm and cannot act in his or her own interest and when the parent-client's lawyer has

exhausted all other protective action remedies, the lawyer may request the court to appoint a guardian *ad litem*.

Commentary:

Information relating to the representation of a parent client with diminished capacity is protected by Oregon RPC 1.6 and Oregon RPC 1.14. When a parent client with diminished capacity is unable to protect himself or herself from substantial harm, Oregon RPC 1.14 allows the parent-client's lawyer to take action to protect the parent client. Oregon RPC 1.6(a) and Oregon RPC 1.14(c) implicitly authorize the parent-client's lawyer to reveal information about the parent client, but only to the extent reasonably necessary to protect the parent client's interests.

It is generally accepted that it is error for a court to proceed without appointment of a guardian *ad litem* for a party when facts strongly suggest the party has diminished capacity and is unable to meaningfully assist the party's lawyer. Similarly, it is a due-process violation to fail to appoint a guardian *ad litem* for a parent client with diminished capacity in a termination-of parental-rights proceeding. However, under Oregon State Bar Formal Opinion No. 2005-159, the parent-client's lawyer must maintain as regular a lawyer-client relationship as possible and adjust representation to accommodate a parent client's limited capacity. This is not inconsistent with Oregon RPC 1.14, which states that when a client has diminished capacity and the lawyer believes the client is at risk of substantial harm, the lawyer may take certain steps to protect the client. Such steps may include consulting with family members or protective agencies or, if necessary, requesting the appointment of a guardian *ad litem*.

Information relating to the representation of a parent client with diminished capacity is protected by Oregon RPC 1.6. When taking protective action, the parent-client's lawyer is implicitly authorized under Oregon RPC 1.6(a) to reveal information about the parent client, but only to the extent reasonably necessary to protect the parent client's interests. Consequently, and as a general proposition, lawyers for a parent should not invade a typical parent client's rights beyond the extent to which it reasonably appears necessary for the parent-client's lawyer to do so. In other words, a parent-client's lawyer should request a guardian *ad litem* for a parent client only when the client consistently demonstrates a lack of capacity to act in his or her own interests and it is unlikely that the parent client will be able to attain the requisite mental capacity to assist in the proceedings in a reasonable time.

According to a 1986 Ninth Circuit case, *United States v. 30.64 Acres*, 795 F2d 796 (9th Cir 1986), counsel for other parties to the proceeding may be obligated to advise the court of the parent client's incompetence. If it appears

during the course of proceedings that a party may be suffering from a condition that materially affects his ability to represent himself (if *pro se*), to consult with his lawyer with a reasonable degree of rational understanding . . . or otherwise to understand the nature of the proceedings . . . that information should be brought to the attention of the court promptly.

30.64 Acres, 795 F2d at 805.

When a guardian *ad litem* is appointed for a parent client, under ORS 419B.234(3)(a) the guardian *ad litem* must consult with the parent-client's lawyer. Under ORS 419B.234(3)(d), the guardian *ad litem* also has the statutory authority to control the litigation and provide direction to the parent-client's lawyer on decisions that would ordinarily be made by the parent client in the proceeding. Further, under ORS 419B.234(5), the parent-client's lawyer is required to follow such directions provided by the guardian *ad litem*, but must inquire at every critical stage of the proceedings as to whether the parent client's competence has changed. If appropriate, the parent-client's lawyer must request removal of the guardian *ad litem*.

STANDARD 2 – RELATIONSHIP WITH PARENT CLIENT

A. The parent-client's lawyer should meet and communicate regularly and effectively with the parent client.

Action:

The parent-client's lawyer should make an initial contact with the parent client within 24 hours of appointment and, when feasible, conduct an initial interview within 72 hours. During the first meeting with the parent client, the parent-client's lawyer must explain the lawyer's role.

Action:

The parent-client's lawyer should ensure that the parent client understands how to contact the lawyer and that ongoing contact is integral to effective representation of the parent client. The lawyer should explain that even when the lawyer is unavailable, the parent client should leave a message. The lawyer should respond to the parent client's messages within a reasonable time. The lawyer should provide the parent client with contact information in writing and establish a message system that allows regular lawyer-client contact.

Action:

After the first meeting, the parent-client's lawyer should have contact with the parent client before court hearings and Citizen Review Board (CRB) reviews, in response to contact by the parent client, when a significant change of circumstances must be discussed with the parent client, or when the lawyer is apprised of emergencies or significant events affecting the child.

Action:

The parent-client's lawyer should ensure that a qualified interpreter is involved when the lawyer and parent client are not fluent in the same language.

Action:

The parent-client's lawyer should be available for in-person meetings or telephone calls to answer the parent client's questions and address the parent client's concerns. The lawyer and the parent client should work together to identify and review short- and long-term goals, particularly as circumstances change during the case.

Commentary:

The parent-client's lawyer should give the parent client time to ask questions and consider alternatives. The lawyer should obtain information from the parent client about the following: the parent client's prior contacts with the agency; the parent client's knowledge about the allegations of the petition; the accuracy of information supporting the petition; alternative or amended allegations that should be sought as part of the negotiations with the parties; services provided before removal or intervention (i.e. In-Home Safety and Reunification Services "ISRS"); reasons for removal or intervention; services the parent client feels would have avoided the need for removal; alternatives to removal, including relative placements, in-home services, or removal of a person who allegedly endangers the child from the parent-client's and child's home; current efforts to reunify the family; family history, including paternity issues, if any, and identity of prior caretakers of the child; services needed by the child, each parent, or guardian; the parent client's concerns about placement; the parent client's long- and short-term goals; and current visitation and the parent client's desires concerning visitation.

The parent-client's lawyer should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the parent client are interviewing the parent client. The lawyer should become familiar with interpreter services that are available for out-of-court activities such as client conferences, provider meetings, etc.

- B. The parent-client’s lawyer should counsel the parent client about all legal matters related to the case, including specific allegations against the parent client, the parent client’s rights in the pending proceeding, any orders entered against the parent client, and the potential consequences of failing to obey court orders.**

Action:

The parent-client’s lawyer should clearly explain the allegations made against the parent client; what is likely to happen before, during, and after trial and each hearing; and ascertain the parent client’s position on the allegations.

Action:

The parent-client’s lawyer should explain what steps the parent client can take to increase the likelihood of reuniting with the child. Specifically, the lawyer should discuss in detail the steps necessary to obtain the parent client’s desired outcome.

Action:

The parent-client’s lawyer should provide or ensure that the parent client is provided with copies of all petitions, court orders, service plans, and other relevant case documents, including reports regarding the child except when expressly prohibited by law, rule, or court order.

Action:

If the parent client has difficulty reading, the parent-client’s lawyer should read the documents to the parent client. In all cases, the lawyer should be available to discuss and explain the documents to the parent client.

Action:

The parent-client’s lawyer must advise the parent client of the parent’s rights, the lawyer’s role and responsibilities, the role of each participant in the system, and alternatives and options available to the parent client.

Commentary:

The parent-client’s lawyer’s job extends beyond the courtroom. The lawyer should be a counselor as well as a litigator. The lawyer should be available to talk with the parent client to prepare for hearings and to provide advice and information about ongoing concerns. Open lines of communication help to ensure a parent client gets answers to questions and the lawyer gets the information and documents the lawyer needs.

Issues to discuss include: referrals to available resources in the community to resolve domestic relations issues; the consequences of selecting one option over another in

light of applicable timelines, including the impact of the timelines established by the Adoption and Safe Families Act (ASFA); the impact of concurrent case planning required under the ASFA on the case and the parent client's participation in such planning; and the consequences of the parent client failing to appear in particular proceedings.

The parent-client's lawyer should help the parent client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. The parent client needs to understand these issues to make appropriate decisions for the child's care.

The parent-client's lawyer and the parent client should identify barriers to the parent client engaging in services such as employment, transportation, financial issues, inability to read, and language differences. The lawyer should work with the parent client, caseworker, and service provider to remove those barriers and advocate with the child welfare agency and court for appropriate accommodations.

C. The parent-client's lawyer should work with the parent client to develop a case timeline and calendar system.

Action:

At the beginning of a case, the parent-client's lawyer should develop a timeline that reflects projected deadlines and important dates and a calendar system to remember the dates.

Commentary:

The parent-client's lawyer should provide the parent client with a timeline, outlining known and prospective court dates, service appointments, deadlines, and critical points of lawyer and parent contact. The lawyer should record federal- and state-law deadlines in the case timeline.

The parent client should be encouraged to create a system for keeping track of important dates and deadlines related to the case. This helps the parent client stay focused on accomplishing the service-plan goals and meeting court-imposed deadlines.

D. The parent-client's lawyer should show respect and act professionally with the parent client.

Commentary:

Often lawyers practicing in juvenile court are a close-knit group who work and sometimes socialize together. Maintaining good working relationships with other participants in the child welfare system is an important part of being an effective advocate. The parent-client's lawyer should not give the impression to the parent client

that relationships with other lawyers are more important than the representation the parent-client's lawyer is providing the parent client. The parent client must feel that the lawyer believes in the client and is actively advocating on the parent client's behalf. The lawyer may be the parent client's only advocate in the system.

E. The parent-client's lawyer must abide by confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the parent client.

Action:

The parent-client's lawyer should understand the laws and rules governing confidentiality. Consistent with the parent client's interests and goals, the lawyer must seek to protect from disclosure confidential information concerning the parent client.

Commentary:

Gaining the parent client's trust and establishing ongoing communication are two essential aspects of representing the parent client. The parent client may feel angry and believe that all of the lawyers in the system work with the child welfare agency and against that parent client. It is important that the parent-client's lawyer, from the beginning of the case, is clear with the parent client that the lawyer works for the parent client, is available for consultation, and wants to communicate regularly. This will help the lawyer support the parent client, gather information for the case, and learn of any difficulties the parent client is experiencing that the lawyer might help address. The lawyer should explain to the parent client the benefits of bringing issues to the lawyer's attention rather than letting problems persist. The lawyer should also explain that he or she is available to intervene when the parent client's relationship with an agency or provider is not working effectively. The lawyer should be aware of the parent client's circumstances, such as whether the parent client has access to a telephone, and tailor the communication system to the individual parent client. For example, it may involve telephone contact, communication through a third party, or electronic communication when the parent client agrees to it.

Commentary:

Confidential information contained in a parent client's substance abuse treatment records, domestic violence treatment records, mental health records, and medical records is often at issue in dependency cases. Disclosure of confidential information may adversely affect the parent client's chances of achieving his or her goals. For this reason, it is crucial for the parent-client's lawyer to advise the parent client promptly as to the advantages and disadvantages of releasing confidential information, and for the

lawyer to take all steps necessary to protect the parent client's privileges and rights to confidentiality.

Commentary:

The parent-client's lawyer should be aware of any allegations of domestic violence in the case and not share confidential information about an alleged or potential victim's location.

The parent-client's lawyer should read the provisions of local court rules, state and federal law governing confidentiality of records and documents in juvenile court proceedings, and understand which records and documents are confidential under applicable law. The lawyer must appreciate the existing conflict or tension that exists about what documents and records that the lawyer can give to the parent client and which the lawyer cannot. The lawyer must understand that this is an evolving area of the law and regularly review the statutes and case law in this area.

Action:

The parent-client's lawyer should discuss with the parent client the potential consequences of communicating via electronic communication or broadcasting over social media.

Commentary:

Communicating with the parent client and other parties through electronic communication may be the most effective means of maintaining regular contact. However, the parent-client's lawyer should also understand the pitfalls associated with communicating sensitive case history and material electronically. Not only can electronic communication create greater misunderstanding and misinterpretation, it can also become documentary evidence in later proceedings. The lawyer should be aware that the use of electronic communication may require special precautions in particular circumstances.

Communication through social media raises additional confidentiality concerns. The parent-client's lawyer should alert the parent client that anything that is part of a public posting is accessible to, and can be used by, opposing counsel. Additionally, it may be helpful to inform the parent client that opposing counsel (or the counsel's agent) may request to see the client's private information or information set behind privacy settings. If this happens, the parent client should not accept and should contact the lawyer immediately. Under Oregon RPC 4.3, the attorney's contact with a represented parent client may be a violation of rules of ethics. While social media may be a convenient way to locate and communicate with the parent client, the parent-client's

lawyer and the parent client should be aware that communications may not be confidential or protected by attorney-client privilege.

Action:

The parent-client's lawyer should meet with the parent client regularly throughout the case. The meetings should occur well before any hearings, not at the courthouse just minutes before the case is called before the judge. The lawyer should ask the parent client questions to obtain information to prepare the case and strive to create a comfortable environment so the parent client can ask the lawyer questions. The parent-client's lawyer should use these meetings to prepare for court as well as to counsel the parent client concerning issues that arise during the course of the case. Information obtained from the parent client should be used to propel the investigation. The lawyer should work collaboratively with the parent client to ascertain independent sources to corroborate the parent client's information.

F. The parent-client's lawyer must avoid conflicts of interest and should avoid the appearance of conflicts of interest.

Action:

The parent-client's lawyer, or a lawyer associated in practice, should not represent two or more clients who are parties to the same or consolidated juvenile dependency cases or closely related matters unless it is clear there is no conflict of interest between the parties as defined by the Oregon Rules of Professional Conduct. The parent-client's lawyer should follow Oregon RPC 1.7 to 1.13 relating to conflicts of interest and duties to former clients.

Commentary:

In most cases, lawyers should not represent both parents in a dependency case. Even in cases in which there is no apparent conflict at the beginning of the case, conflicts may arise as the case proceeds. If this occurs, the lawyer will likely be required to withdraw from representing both parents. This could be difficult for the parents and delay the case.

Under Oregon RPC 1.7(a), when analyzing whether a conflict of interest exists, the lawyer must consider whether:

(1) the representation of one [parent] will be directly adverse to another [parent];

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

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

There are, however, conditions under which, notwithstanding a current conflict, representation is allowed under Oregon RPC 1.7(b). These conditions include:

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

G. The parent-client’s lawyer should act in a culturally competent manner and with regard to the socioeconomic position of the parent client throughout all aspects of representation.

Action:

The parent-client’s lawyer should learn about and understand the parent client’s background, determine how that has an effect on the parent-client’s case, and always show the parent client respect. The lawyer should understand how cultural, linguistic, and socioeconomic differences impact interaction with the parent client, and should interpret the parent client’s words and actions accordingly.

Commentary:

Clients and other parties involved in the child welfare system are a diverse group. Each person comes to this system with a set of values and expectations, but it is essential that each person try to learn about and understand the backgrounds of others. Race, ethnicity, gender, gender identity, sexual orientation, and socioeconomic position all have an impact on how a person acts and reacts in a particular situation. The parent-client’s lawyer should not impose his or her values onto the parent client, but instead, work with the parent client within the context of the client’s culture and socioeconomic position. The court and child welfare agency have expectations of parents concerning treatment of their children, and the parent-client’s lawyer must strive to explain these expectations to the parent client in a sensitive way. The lawyer should vigorously defend against the court and agency imposing their values onto the parent client, and should advocate for court orders and agency requests that respect the parent client’s background, culture, and socioeconomic status. The lawyer should be familiar with the

Indian Child Welfare Act (25 USC § 1901 et seq.) and the Refugee Child Welfare Act (ORS 418.925–418.945), and ensure that these laws are applied when appropriate.

H. The parent-client’s lawyer should take diligent steps to locate and communicate with a missing parent client and decide representation strategies based on that communication.

Action:

The parent-client’s lawyer should attempt to locate and communicate with a missing parent client.

Action:

If communication is established with the parent client, the parent-client’s lawyer should formulate positions that the lawyer should take at hearings, and to understand what information the parent client wishes the lawyer to share with the child welfare agency and the court.

The parent-client’s lawyer should inform the parent client that if the parent does not appear at a hearing to which the parent has not been summoned or ordered to appear, the lawyer will exercise his or her best judgment about whether to advocate for the parent client’s last known position, remain silent, and/or request a continuance.

The parent-client’s lawyer should inform the parent client that if the parent client fails to appear for any hearing on a petition to establish jurisdiction or terminate parental rights to which the parent client has been summoned or ordered to appear, the court has no discretion to allow the lawyer to appear on the merits of the case on the parent client’s behalf and that the court may allow the other parties to proceed in the parent client’s absence.

Action:

If a parent fails to attend a hearing, the parent-client’s lawyer may appear to explain the parent client’s failure to appear and move to continue the hearing.

Action:

If the parent client fails to attend a hearing to which the parent has not been summoned or ordered to appear, the parent-client’s lawyer should assess whether the parent client’s interests are better served by advocating for the parent client’s last clearly articulated position, or declining to state a position in further court proceedings, and act accordingly.

Action:

If the parent client fails to appear after being summoned or ordered to appear for any hearing on a petition to establish jurisdiction or terminate parental rights, the court has no discretion to allow the parent-client's lawyer to appear on the merits of the case on the parent client's behalf and the court may allow the other parties to proceed in the parent client's absence. However, the lawyer may appear for the purpose of raising any available procedural objections to the court proceeding in the parent client's absence.

Action:

After a prolonged period without contact with the parent client, the parent-client's lawyer should consider withdrawing from representation.

Commentary:

To represent a parent client adequately, the parent-client's lawyer must know what the parent client wishes. If the parent client is out of contact with the lawyer, it is important that the lawyer take diligent steps to locate the parent client to determine the parent client's wishes.

In attempting to locate the parent client, the parent-client's lawyer should recall that (1) the attorney-client relationship continues, and (2) the lawyer's ethical obligation to maintain the parent client's confidences and secrets continues. The lawyer should be mindful that his or her inquiries may reveal confidential or secret information to others, including other parties and the court and could be detrimental to the parent client. If the lawyer has gotten prior permission to speak with others about the parent's contact, they may choose to attempt contact via those avenues.

If the parent-client's lawyer has prior permission from the parent client, diligent steps to locate a parent client include speaking with the parent-client's family, the caseworker, the foster care provider and other service providers, and checking court records and jail rosters. It may include sending mail to the parent-client's last known address.

If the parent-client's lawyer is unable to find and communicate with the parent client after initial consultation, the lawyer should assess what action would best serve the parent client's stated interest in the litigation. This decision must be made on a case-by-case basis. Absent extraordinary circumstances, the lawyer should take a position consistent with the parent client's last clearly articulated position. However, if a parent client fails to appear after being summoned or ordered to appear for any hearing on a petition to establish jurisdiction or terminate parental rights, the lawyer may not appear and defend the merits of the petition on the parent client's behalf. However, the lawyer may raise any available procedural objections to the court proceeding in the parent client's absence.

The parent-client's lawyer should be familiar with the grounds and procedures for motions to set aside juvenile court orders and judgments under ORS 419B.923 as well as the time requirements.

I. The parent-client's lawyer must be aware of the unique issues an incarcerated parent client faces in order to provide competent representation to the incarcerated parent client.

Action:

The parent-client's lawyer should counsel the parent client as to any effects incarceration has on the agency's obligations.

Action:

The parent-client's lawyer should be prepared to argue against the agency's motion to be relieved of the requirements to make reasonable efforts— or active efforts if the Indian Child Welfare Act (ICWA) applies— toward reunification.

Action:

The parent-client's lawyer may need to advocate for reasonable/active efforts to be made for the incarcerated parent client and to assist the parent client and the agency caseworker in accessing services. The lawyer should assist the parent client by advocating both with the agency and the jail or correctional facility for these services.

Action:

The parent-client's lawyer should know Oregon's statutory and case law concerning incarceration as a basis for termination of parental rights.

Action:

The parent-client's lawyer should counsel the parent client on the importance of maintaining regular contact with the child while incarcerated. The lawyer should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the incarcerated parent's prison counselor.

Action:

The parent-client's lawyer may need to visit the incarcerated parent client in jail or prison or engage in more extensive phone or mail contact than with other clients. The lawyer should be aware of the challenges to having a confidential conversation with the parent client and must attempt to obtain a confidential setting for meetings with the parent client.

Action:

The parent-client's lawyer should advise the client that phone calls are recorded and that letters and electronic communication are read and monitored. Information gleaned from these communications can be used against the parent client in this case.

Action:

If the parent client wants to be transported to court for a hearing, the parent-client's lawyer should move the court for a transport order to do so. If the parent client does not want to be present, or if having the parent client present is not possible, the lawyer should explore what other means are available to have the parent client participate, such as by telephone or video conference. The lawyer should obtain any necessary court order and make the necessary arrangements for the parent client to participate in the hearing.

Commentary:

Arranging the parent client's appearance in court may require the parent-client's lawyer to take action well in advance of the hearing or trial. The lawyer should find out from the parent client if the parent wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the parent client may prefer to stay at the prison rather than lose his or her privileges. The lawyer should explain to any parent client hesitant to appear that the case will proceed without the parent client's presence and discuss the potential consequences of the parent client's decision not to attend the proceeding.

The parent-client's lawyer may need to contact the prison or jail to facilitate the parent client's participation, in person or otherwise, and take steps necessary to effectuate that the parent client appears. Different jurisdictions may have different practices or options to appear.

Action:

The parent-client's lawyer should communicate with the parent's criminal defense lawyer about issues related to self-incrimination and concerns about delaying the dependency case to strengthen the criminal case or vice versa.

Commentary:

The parent-client's lawyer should be particularly diligent when representing an incarcerated parent client. The lawyer should make efforts to visit an incarcerated parent client at the correctional institution in which the client is incarcerated as soon as possible after being appointed. The purpose of visiting the incarcerated parent client at the correctional facility is to establish an attorney-client relationship and engage the

parent client in case preparation. The lawyer should know why the parent client is incarcerated, the length of the parent client's incarceration, and post-incarceration release requirements if applicable, particularly any potential restrictions or limitations on contact with children. If the parent client is incarcerated as a result of an act against the child or another child in the family, the child welfare agency may seek an order excusing the agency from making reasonable efforts, allowing the case to be fast-tracked toward other permanency goals. If the parent client opposes this step, the parent-client's lawyer must oppose such a motion.

The parent-client's lawyer should help the parent client identify potential kinship placements and relatives who can provide care for the child while the parent client is incarcerated. The lawyer should understand the implications of the ASFA for an incarcerated parent client.

If the parent client will be incarcerated for a lengthy period, and the child is not placed with the parent-client's relatives, the parent-client's lawyer should ensure that any potential placement options for the child with a relative of the parent client, or other caretaker proposed by the parent client, are made known to the agency and explored thoroughly.

Obtaining services such as substance abuse treatment or parent or job training while in jail or prison is often difficult. The parent-client's lawyer should learn about and advocate for available resources, contact the services, and attempt to get the support of the agency and the child's lawyer. Without services, it is unlikely the parent client will be reunified with the child upon discharge from prison.

An incarcerated parent client's contact with the child should generally, at a minimum, include cards and letters. In some instances, prisons may have technology such as videoconferencing or Skype that can be used for parent-child visitation. Because the time to process the required visitation paperwork varies from institution to institution, the parent-client's lawyer should begin the process of filling out and filing the forms to allow visitation between the parent client and the client's children as soon as possible. The lawyer should also consult with the agency caseworker and the parent-client's Department of Corrections (DOC) counselor on ways to expedite approval of the parent client's request for visitation.

Some prisons, such as Coffee Creek Correctional Facility in Wilsonville, Oregon, have a specialized unit for incarcerated parents and their children in a supported, child-friendly environment. If the parent client agrees, the parent-client's lawyer should advocate for transfer of the parent client to such a program as well as encouraging visits with the child through these programs.

J. The parent-client’s lawyer should take appropriate actions on collateral issues.

Action:

The parent-client’s lawyer should be aware of collateral issues arising during the course of representation of the parent client and identify such issues and, if able, counsel the parent client on options for advocacy on such issues. Examples include:

1. Pending criminal matters;
2. Supplemental Security Income (SSI) and other public benefits;
3. Custody;
4. Paternity;
5. Immigration issues;
6. Child support;
7. Options to secure health and mental health services; and
8. Challenges to agency administrative findings including denial of benefits or findings of abuse and neglect.

Commentary:

The parent-client’s lawyer does not have an ethical duty to represent the parent client in these collateral matters when the terms of the lawyer’s appointment or employment limit the lawyer’s representation to the dependency case. The lawyer must be aware of the ethical obligation to avoid providing legal advice on areas of law with which the lawyer is unfamiliar. In some circumstances, the lawyer may have a duty to take limited steps to protect the parent-client’s rights, such as asserting the parent-client’s Fifth Amendment right to remain silent pending potential criminal prosecution.

STANDARD 3 – TRAINING REQUIREMENTS FOR COMPETENT REPRESENTATION OF PARENT CLIENTS

- A. The parent-client’s lawyer must provide competent representation to a parent client. Competent representation requires the legal knowledge, skill, training, experience, thoroughness, and preparation reasonably necessary for the representation. The lawyer should only accept an appointment or retainer if the lawyer is able to provide quality representation and diligent advocacy for the parent client.**

Action:

The parent-client's lawyer in a dependency case should obtain and maintain proficiency in applicable substantive and procedural law and stay current with changes in constitutional, statutory, and evidentiary law and local or statewide court rules.

Action:

The parent-client's lawyer in a dependency case should have adequate time and resources to competently represent the parent client, including maintaining a reasonable caseload and having access to sufficient support services.

Commentary:

As in all areas of law, it is essential that the parent-client's lawyer learn the substantive law as well as local practice. The lawyer should be familiar with the Office of Public Defense Services, Qualification Standards for Court Appointed Counsel, standard 4(7). Lawyers should consider the contractually mandated training requirements as a floor rather than a ceiling, and actively pursue additional training opportunities. Newer lawyers are encouraged to work with mentors for the first three months and, at a minimum, should observe or co-counsel each type of dependency hearing from shelter care through review of permanent plan before accepting appointments.

B. The parent-client's lawyer should acquire working knowledge of all relevant state and federal laws, regulations, policies, and rules.

Action:

The parent-client's lawyer must read and understand all state laws, policies, and procedures regarding child abuse, neglect, and other related matters, including but not limited to the following:

1. Oregon Revised Statutes (ORS) chapters 419A, 419B and 419C, Oregon Juvenile Code;
2. ORS chapter 418, Child Welfare Services;
3. ORS 418.925–418.945, Refugee Child Act;
4. Oregon Revised Statutes concerning paternity, guardianships, and adoption;
5. ORS 417.200–417.260, Interstate Compact on Placement of Children, and Oregon Administrative Rules;
6. ORS 109.701–109.990, Uniform Child Custody Jurisdiction and Enforcement Act, and Oregon Administrative Rules;

7. The basic structure and functioning of the Department of Human Services and the juvenile court, including court procedures, the functioning of the CRB and court-appointed-special-advocate (CASA) programs; and
8. Indian Child Welfare Act, 25 USC §§ 1901–1963; Bureau of Indian Affairs Guidelines; and Oregon Administrative Rules.

Action:

The parent-client’s lawyer must be thoroughly familiar with Oregon evidence law and the Oregon Rules of Professional Conduct.

Action:

The parent-client’s lawyer must be sufficiently familiar with the areas of state and federal law listed in Appendix A so as to be able to recognize when they are relevant to a case, and the lawyer should be prepared to research the laws when they are applicable.

- C. The parent-client’s lawyer should have a working knowledge of placement alternatives, child development, family dynamics, and parental discipline, as well as case and permanency planning, and services for children and families in dependency cases.**

Action:

The parent-client’s lawyer must be familiar with case-planning and permanency-planning principles and with child welfare and family preservation services available through the agency and available in the community and the problems they are designed to address. The lawyer is encouraged to seek training in the areas listed in Appendix B.

Commentary:

The parent-client’s lawyer should know the kinds and types of services within the client’s communities that serve parents and children. Based on the conditions and circumstances that brought the parent client and the client’s child into the dependency system, the lawyer should identify the services that will help remove the barriers to reunification for the parent client and the client’s child (ren). The lawyer should consult with the parent client about such services and whether the services address the client’s needs. The lawyer must be aware of cultural issues within the parent-client’s community and be prepared, in appropriate circumstances, to advocate that services be made available to a parent client that are culturally appropriate, and meet the parent client’s unique conditions and circumstances.

STANDARD 4 – GENERAL PRINCIPLES GOVERNING CONDUCT OF A CASE

- A. The parent-client’s lawyer should actively represent the parent client in the preparation of a case, as well as at hearings.**

Action:

The parent-client’s lawyer should develop a theory and strategy of the case to implement at hearings, including the development of factual and legal issues.

Action:

The parent-client’s lawyer should identify family members and professionals who may already be, or who may become, a stable and long-term resource for the family and/or a placement for the child.

Action:

The parent-client’s lawyer should inform other parties and their representatives that the lawyer is representing a parent client and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child’s family.

- B. The parent-client’s lawyer should, when consistent with the parent client’s interest, take every appropriate step to expedite the proceedings.**

Commentary:

Delaying a case often increases the time a family is separated and can reduce the likelihood of reunification. Appearing in court often motivates parties to comply with orders and cooperate with services. When a judge actively monitors a case, services are often put in place more quickly, visitation may be increased, or other requests by the parent client may be granted. If a hearing is continued and the case is delayed, the parent client may lose momentum in addressing the issues that led to the child’s removal or the parent client may lose the opportunity to prove compliance with case plan goals. Additionally, the ASFA timelines continue to run despite continuances.

- C. The parent-client’s lawyer should cooperate and communicate regularly with other professionals in the case.**

Action:

The parent-client's lawyer should communicate with lawyers for the other parties, the CASA, the caseworker, and service providers to learn about the parent client's progress and their views of the case, as appropriate.

Action:

The parent-client's lawyer should respond promptly to inquiries from other parties and their representatives.

Commentary:

The parent-client's lawyer must have all relevant information to effectively represent the parent client. This requires open and ongoing communication with the other lawyers and service providers working with the parent client, the child, and family.

The parent-client's lawyer must be aware of local rules about discovery and must always seek the consent of the attorney for a represented party before speaking with that party.

When communicating with other parties, service providers, and lawyers, the parent-client's lawyer should be especially mindful of confidentiality requirements.

D. The parent-client's lawyer or the lawyer's agent may not contact represented parties without the consent of their lawyer(s).

Commentary:

The agency often appears unrepresented in dependency cases and in those instances Oregon RPC 4.2 does not prevent a parent-client's lawyer from talking to the caseworker or other staff. When the agency is represented by counsel in a particular case, the parent-client's lawyer may not talk with a caseworker without the agency lawyer's permission. If the parent-client's lawyer is unsure whether the Department of Justice has been retained in a particular case, the parent-client's lawyer should ask the caseworker.

E. The parent-client's lawyer should engage in case planning and advocate for social services in which the parent client wishes to participate.

Action:

A parent-client's lawyer who plans to attend case-planning meetings should be aware that other represented parties may be present without their lawyers and should take necessary steps to comply with the Rules of Professional Conduct.

A parent-client's lawyer who does not plan to attend case-planning meetings should be aware that other represented parties will attend with their lawyers at the meeting and should take steps to protect the client's interests.

Action:

The parent-client's lawyer should counsel the parent client about the advantages and disadvantages of engaging in services before the court orders the client to engage in such services and determine whether the parent client is willing to engage in services. If the parent client is willing to engage in services, the lawyer should advocate for those services.

Action:

The parent-client's lawyer should ensure the parent client asks for and receives needed services. The lawyer should not agree to services that are beyond the scope of the case. The services in which the parent client is engaged must be tailored to the parent client's needs and not merely hurdles over which the parent client must jump (e.g., if the client is taking parenting classes, the classes must be relevant to the underlying issue in the case).

Action:

Whenever possible, the parent-client's lawyer should use a social worker as part of the parent-client's team to help determine an appropriate case plan, evaluate social services suggested for the parent client, and act as a liaison and advocate for the parent client with the service providers.

Action:

The parent-client's lawyer should consider whether the child's lawyer or the CASA might be an ally on placement, service, or visitation issues. If so, the lawyer should solicit their assistance.

Action:

Pursuant to ORS 419B.389, the parent-client's lawyer who believes that financial, health, or other problems will prevent or delay the parent client's compliance with a court order, must inform the court of the relevant circumstances as soon as reasonably possible. If appropriate, the lawyer should also seek relief from the order under ORS 419B.923.

Commentary:

For a parent client to succeed in a child welfare case, the parent client should receive and cooperate with social services and maintain strong bonds with the child. It is therefore necessary that the parent-client's lawyer does whatever is possible to obtain appropriate services for the parent client and then counsel the parent client about participating in the services. Examples of services common to child welfare cases include: evaluations; family preservation or reunification services; medical and mental health care; drug and alcohol treatment; domestic violence prevention, intervention, or treatment; parenting education; education and job training; housing; child care; and funds for public transportation so the parent client can attend services.

F. The parent-client's lawyer should advocate strongly for frequent visitation in a family-friendly setting.

Action:

When necessary, the parent-client's lawyer should seek court orders to compel the child welfare agency to provide frequent, unsupervised visitation to the parent client. The lawyer may also need to take action to enforce previously entered orders.

Action:

The parent-client's lawyer should advocate for an effective visiting plan and counsel the parent client on the importance of regular contact with the child. Courts and the agency may need to be encouraged to develop visitation plans that best fit the needs of the individual family. Factors to consider in visitation plans include:

1. Developmental age of child;
2. Frequency;
3. Length;
4. Location;
5. Supervision;
6. Types of activities; and
7. Visit coaching - having someone at the visit who could model effective parenting skills.

Commentary:

Frequent high-quality visitation is one of the best predictors of successful reunification between a parent and child. Often visits are arranged in settings that are uncomfortable and inhibiting for families. It is important that the parent-client's lawyer seek a visitation order that will allow the best possible visitation. The lawyer should advocate that visits be unsupervised or at the lowest possible level of supervision; for example, families often are more comfortable when relatives, family friends, clergy, or other community members are recruited to supervise visits rather than caseworkers.

The parent-client's lawyer should advocate for visits to occur in the most family-friendly locations possible, such as in the family's home, parks, libraries, restaurants, places of worship, or other community venues.

The parent-client's lawyer for an incarcerated parent must be aggressive in ensuring frequent, high-quality visitation. In general, visits in prison are governed by the Department of Corrections directives, which are available online. The lawyer may need to be personally familiar with the visitation rules and visiting rooms of a particular prison to be an effective advocate for the parent client.

STANDARD 5 – PREPETITION

- A. The parent-client's lawyer should actively represent the parent client to achieve the client's goals during the prepetition phase of a dependency case.**

Action:

The parent-client's lawyer should counsel the parent client about the client's rights in the investigation stage as well as the realistic possibility of achieving the parent client's goals.

Action:

The parent-client's lawyer should discuss available services and help the parent client engage in those in which the parent client wishes to participate.

Action:

If a parent client would likely be eligible for appointed counsel at state expense if served with a juvenile court petition, and prepetition representation is necessary to preserve and protect the rights of the parent client, the parent-client's lawyer may seek approval from the Office of Public Defense Services (OPDS) for funding to commence representation prior to court appointment. Contact OPDS for more information.

Commentary:

A parent client may seek the services of an attorney regarding a situation that could be the basis for a dependency case before a petition is filed, or the parent client may be referred for such services by a community agency or other source. If the parent-client's lawyer agrees to represent the parent client, the goal of representing a parent client in the prepetition phase of the case is often to deter the agency from deciding to file a petition or to deter the agency from attempting to remove the client's child if a petition is filed.

During the prepetition phase of a dependency case, the parent-client's lawyer has the opportunity to work with the parent client and help the client to fully understand the issues and the parent client's chances of securing desired outcomes. The lawyer also has the chance to encourage the agency to make reasonable efforts to work with the family, rather than filing a petition. During this phase, the lawyer should work intensively to explore all appropriate services, including assistance with legal problems involving housing, criminal case matters, public benefits, services for children, domestic violence, and alternate placement plans that might resolve the case. The lawyer should explore opportunities for substantive case meetings such as case-planning meetings or case reviews and, when appropriate, attend those meetings. The lawyer should acknowledge that the parent client may be angry that the agency is involved with the parent-client's family, and help the client develop strategies so that the client does not express that anger toward the caseworker in ways that may undermine the parent client's goals.

If the child is removed from the parent-client's home, the lawyer should advocate for frequent visitation in a family-friendly setting, consistent with the parent client's direction.

If the child is removed, the parent-client's lawyer may prepare the case by proposing early evaluations of the parents and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child.

If consistent with the parent client's direction, the parent-client's lawyer should ensure that the child receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.

If consistent with the parent client's direction, the parent-client's lawyer should work to prevent any unnecessary interruption in the child's education and ensure that educational services for the child will be appropriate.

STANDARD 6 – INVESTIGATION

- A. The parent-client’s lawyer should conduct a thorough, continuing, and independent review and investigation of the case, including obtaining information, research, and discovery in order to prepare the case for trial and hearings.**

Action:

The parent-client’s lawyer must thoroughly prepare each case including working with investigators and social workers to prepare the case. If necessary, the parent-client’s lawyer should request funds from the OPDS for the investigation.

Action:

The parent-client’s lawyer should review the case record of the parent client and the supplemental confidential file, and the case record of the child’s siblings when permitted by the juvenile code, Oregon Rules of Professional Conduct, and other confidentiality statutes.

Action:

The parent-client’s lawyer should contact lawyers for the other parties and any CASA for background information.

Action:

The parent-client’s lawyer should contact and meet with the child, with permission of the child’s lawyer.

Action:

The parent-client’s lawyer should obtain necessary releases of information in order to thoroughly investigate the case.

Action:

The parent-client’s lawyer should review relevant photographs, video or audio recordings, and other evidence. When necessary, the lawyer should obtain protective orders to keep information confidential once obtained.

Action:

The parent-client’s lawyer should research and review relevant statutes and case law to identify defenses and legal arguments to support the parent-client’s case.

Action:

The parent-client's lawyer should review the internet presence or personas for parties and witnesses.

Action:

The parent-client's lawyer should interview individuals involved with the parent client and the child, such as:

1. Domestic partners;
2. Educators;
3. Friends;
4. Neighbors; or
5. Church members.

Action:

The parent-client's lawyer should determine whether obtaining independent evaluations or assessments of the parent client is needed for the investigation of the case.

Action:

The parent-client's lawyer should attend treatment, placement, and administrative hearings involving the parent client and child as needed.

Commentary:

If possible, the parent-client's lawyer should work with a team that includes social workers and investigators who can meet with the parent client and assist in investigating the underlying issues that arise as the case proceeds. If not possible, the lawyer is still responsible for gaining all pertinent case information, being mindful of not making himself or herself a witness.

A thorough investigation is an essential element of preparation. The lawyer cannot rely solely on what the agency caseworker reports about the parent client. Rather, the lawyer should review the agency file; meet with the parent client as soon as possible and thoroughly interview the parent client for information pertaining to the issues; and contact and interview any potential witnesses, including, but not limited to service providers who work with the parent client and or the parent-client's child or family, relatives who can discuss the parent client's care of the child client, community supports

such as clergy, neighbors, child care providers, the child client's teacher, or other natural supports who can clarify information relevant to the case.

B. The parent-client's lawyer should review the child's agency case file.

Action:

The parent-client's lawyer should ask for and review the agency case file as early during the course of representation as possible and at regular intervals throughout the case.

Action:

After reviewing the agency file, the parent-client's lawyer should determine if any records or case notes of any caseworker or supervisor have not been placed in the file and move to obtain those records as well either through informal or formal discovery.

Commentary:

Even if the parent-client's lawyer is voluntarily given the contents of the agency file in paper or electronic format, the lawyer should also look at the actual file in the agency office and request disclosure of all documents relating to the case from the agency, since the department may have additional items not given to the lawyer. If requests to obtain copies of the agency file are unsuccessful or slow in coming, the lawyer should pursue formal disclosure under the statute. If the agency case file is inaccurate, the parent-client's lawyer should seek to correct it. The lawyer must read the case file and request disclosure of documents periodically because information is continually being received by the agency.

C. The parent-client's lawyer must obtain all necessary documents, including copies of all pleadings and relevant notices filed by other parties, and respond to requests for documents from other parties.

Action:

The parent-client's lawyer should comply with disclosure statutes and use the same to obtain names and addresses of witnesses, witness statements, results of evaluations, or other information relevant to the case. The lawyer should obtain and examine all available discovery and other relevant information.

Commentary:

As part of the discovery phase, the parent-client's lawyer should review the following kinds of documents:

1. Social service records, including information about services provided in the past, visitation arrangements, the plan for reunification, and current and planned services;
2. Medical records;
3. School records;
4. Evaluations of all types;
5. Housing records; and
6. Employment records.

D. The child’s lawyer should have potential witnesses, including adverse witnesses, interviewed by an investigator or other appropriately trained person. If appropriate, witnesses should be subpoenaed.

Action:

If the parent-client’s lawyer conducts a witness interview, the lawyer should do so in the presence of a third person who can be available to appear as a witness at trial.

Commentary:

It is a good practice to have interviews conducted by an investigator employed by the parent-client’s lawyer. However, if the lawyer conducts the interview, a third person, such as a member of the lawyer’s office, should be present so that the third person can be used at trial to impeach the witness.

E. The parent-client’s lawyer should consult with the parent client well before each hearing, in time to use the parent client’s information for the case investigation.

Commentary:

Often, the parent client is the best source of information for the parent-client’s lawyer and the lawyer should set aside time to obtain that information. Since the interview may involve disclosure of sensitive or painful information, the lawyer should explain lawyer-client confidentiality to the parent client. The lawyer may need to work hard to gain the parent client’s trust, but if a trusting relationship can be developed, the lawyer will be a better advocate for the parent client. The investigation will be more effective if guided by the parent client, as the parent client generally knows firsthand what occurred in the case.

STANDARD 7 – COURT PREPARATION

- A. The parent-client’s lawyer should develop a case theory and strategy to follow at hearings and negotiations.**

Action:

Once the parent-client’s lawyer has completed the initial investigation and discovery, including interviews with the parent client, the lawyer should develop a strategy for representation.

Commentary:

The strategy may change throughout the case, as the parent client makes or does not make progress, but the initial theory is important to assist the parent-client’s lawyer in staying focused on the parent client’s wishes and on what is achievable. The theory of the case should inform the lawyer’s preparation for hearings and arguments to the court. It should also be used to identify what evidence is needed for hearings and the steps to move the case toward the parent client’s ultimate goals.

- B. The parent-client’s lawyer should timely file all pleadings, motions, objections, and briefs, and research applicable legal issues and advance legal arguments when appropriate.**

Action:

The parent-client’s lawyer must file answers and responses, motions, objections, and discovery requests, and responsive pleadings or memoranda that are appropriate for the case. The pleadings and memoranda must be thorough, accurate, and timely. The pleadings must be served on all the lawyers or unrepresented parties.

Action:

When a case presents a complicated or new legal issue, the parent-client’s lawyer should conduct the appropriate research before appearing in court. The lawyer should be prepared to distinguish case law that appears unfavorable.

Action:

If it would advance the parent-client’s case, the parent-client’s lawyer should present a memorandum of law to the court.

Commentary:

Filing motions, pleadings, and memoranda benefits the parent client. The parent-client's lawyer who actively litigates issues highlights important issues for the court and builds credibility for himself or herself. In addition to filing responsive papers and discovery requests, the lawyer should seek court orders when that would benefit the parent client; for example, filing a motion to enforce court orders to ensure the child welfare agency is meeting its reasonable/active efforts obligations. When out-of-court advocacy is not successful, the parent-client's lawyer should not wait to bring the issue to the court's attention. Arguments in child welfare cases are often fact-based. Nonetheless, the lawyer should ground argument in statutes, Oregon Administrative Rules (OARs), and case law. Additionally, although nonbinding, law from other jurisdictions can be used to persuade a court.

At times, competent representation requires advancing legal arguments that are not yet accepted in the jurisdiction. The parent-client's lawyer should preserve legal issues for appellate review by making a record, even if the argument is unlikely to prevail at the trial level.

Appropriate pretrial motions include but are not limited to:

1. Discovery motions;
2. Motions challenging the constitutionality of statutes and practices;
3. Motions to strike, dismiss, or amend the petitions;
4. Motions to transfer a case to another county;
5. Evidentiary motions and motions *in limine*;
6. Motions for additional shelter hearings;
7. Motions for change of venue;
8. Motions to consolidate; and
9. Motions to sever.

Note: Under ORS 28.110, when a motion challenges the constitutionality of a statute, it must be served on the Attorney General.

Action:

The parent-client's lawyer should make motions to meet the parent client's needs pending trial.

Commentary:

Examples of such motions include:

1. Motion for family reunification services;
2. Motion for medical or mental health treatment;
3. Motion for change of placement;
4. Motion to increase parental or sibling visitation;
5. Motion seeking child support or waiver of obligation to pay child support;
6. Motion seeking contempt for violations of court orders; and
7. Motion to establish, disestablish, or challenge paternity pursuant to ORS 419B.395 and its cross-references.

C. With the parent client's permission, and when appropriate, the parent-client's lawyer should engage in settlement negotiations and mediation to resolve the case quickly.

Action:

The parent-client's lawyer should, when appropriate, participate in settlement negotiations to promptly resolve the case, keeping in mind the effect of continuances and delays on the parent client's goals.

Commentary:

Negotiation and mediation often result in detailed agreement among parties about actions the participants must take. Generally, when agreements have thoroughly been discussed and negotiated, all parties, including the parent client, feel as if they had a say in the decision and are more willing to adhere to a plan. Mediation can resolve a specific conflict in a case, even if it does not result in an agreement about the entire case. Negotiated agreement about facts sufficient to allow the court to enter jurisdictional findings can move a case along more swiftly.

Action:

The parent-client's lawyer should be trained in mediation and negotiation skills and be comfortable resolving cases outside a courtroom setting when consistent with the parent client's position. With the agreement of the parent client, the lawyer should share information about services in which the parent client is engaged and provide copies of favorable reports from service providers. This information may affect settlement discussions.

Action:

The parent-client's lawyer must communicate all settlement offers to the parent client and discuss their advantages and disadvantages with the client. Specifically, the parent-client's lawyer should fully explain to the parent client the rights that would be waived by a decision to admit to facts sufficient to establish jurisdiction, including the impact of timelines established by ORS 419B.470 *et. seq.*

Action:

The parent-client's lawyer should explain to the parent client the conditions and limits of the settlement and the effect of the settlement, especially when admissions made to allegations could give rise to a criminal charge or finding of aggravated circumstances or extreme conduct. These admissions could affect future actions such as domestic relations proceedings, immigration proceedings, criminal proceedings, or termination-of-parental-rights petitions.

Action:

It is the parent client's decision whether to settle. The parent-client's lawyer must be willing to try the case and not compromise solely to avoid the hearing.

Commentary:

While the parent client may admit to facts, they cannot stipulate to jurisdiction. Jurisdiction is a legal conclusion for the judge to determine.

The facts to which the parent client admits will frame the court's inquiry at all subsequent hearings as well as what actions the parent client must take, the services provided, and the ultimate outcome. Thus, the parent-client's lawyer must take care to ensure that the factual admissions made by the parent client are specific and limited to the allegations in the petition.

A written, enforceable agreement should be prepared whenever possible, so that all parties are clear about their rights and obligations. The parent-client's lawyer should ensure agreements accurately reflect the understandings of the parties. The lawyer should request a hearing or move for contempt, if appropriate, if orders benefiting the parent are not obeyed.

D. The parent-client's lawyer should thoroughly prepare the parent client to testify.

Action:

The parent-client's lawyer should discuss and practice the questions that the lawyer will ask the parent client, as well as types of questions the parent client should expect opposing counsel to ask. The lawyer should help the parent client think through the best way to present information, familiarize the parent client with the court setting, and offer guidance on logistical issues regarding getting to court on time and appropriate court attire.

Commentary:

Testifying in one's own case can be affirming, but it also can be intimidating without sufficient preparation. The parent-client's lawyer should be attuned to the parent client's comfort level about the hearing, and ability to testify accurately and persuasively. The lawyer should provide the parent client with a written list of questions that the lawyer will ask, if this will help the parent client.

Unlike in a criminal proceeding, a parent client generally cannot invoke the right not to testify in a dependency case unless the parent client's testimony would potentially expose the client to criminal liability.

E. The parent-client's lawyer should identify, locate, and prepare all witnesses.

Action:

The parent-client's lawyer, in consultation with the parent client, should develop a witness list well before a hearing or trial. The lawyer should not assume the agency will call a witness, even if the witness is named on the agency's witness list. The lawyer should, when possible, contact the potential witnesses to determine if they can provide helpful testimony and issue a subpoena to such witnesses.

Action:

When appropriate, witnesses should be informed that a subpoena is on its way. The parent-client's lawyer should also ensure the subpoena is served. The lawyer should subpoena potential agency witnesses (e.g., a previous caseworker) who have favorable information about the parent client.

Action:

The parent-client's lawyer should set aside time to fully prepare all witnesses in person before the hearing. The lawyer should remind the witnesses about the court date.

Commentary:

Witnesses may be people with direct knowledge of the allegations against the parent client, service providers working with the parent client, or individuals from the community who could testify generally about the parent client's strengths.

When appropriate, the parent-client's lawyer should consider working with other parties who share the parent client's position when creating a witness list, issuing subpoenas, and preparing witnesses. Doctors, nurses, teachers, therapists, and other potential witnesses have busy schedules and need advance warning about the date and time of the hearing. The parent-client's lawyer should review ORS 419B.899, ORS 419B.902, and local supplemental rules for the proper process and time to issue subpoenas.

Witnesses are often nervous about testifying in court. The parent-client's lawyer should thoroughly prepare the witnesses so they feel comfortable with the process. Preparation generally includes rehearsing the specific questions and answers expected on direct and anticipating the questions and answers that might arise on cross-examination.

- F. The parent-client's lawyer should identify, secure, prepare, and qualify expert witnesses when needed. When possible, the lawyer should interview opposing counsel's experts.**

Action:

Often a case requires multiple experts with different expertise, such as medicine, mental health treatment, drug and alcohol treatment, or social work. Experts may be needed for ongoing case consultation in addition to providing testimony at trial. The parent-client's lawyer should consider whether the opposing party is calling expert witnesses and determine whether the parent client needs to call any experts on behalf of the parent client to respond to the opponent's experts.

Action:

When opposing counsel plans to call expert witnesses, the parent-client's lawyer should seek to interview the witnesses in advance. The parent client should scrupulously comply with standing orders of the juvenile court regarding contact with court-ordered evaluators.

Commentary:

By contacting opposing counsel's expert witnesses in advance, the parent-client's lawyer will know what evidence will be presented against the parent client and whether the

expert has any favorable information that might be elicited on cross-examination. The lawyer will be able to discuss the issues with the parent client, prepare a defense, and call experts on behalf of the parent client, if appropriate. Conversely, if the lawyer does not talk to the expert in advance, the lawyer could be surprised by the evidence and unable to represent the parent client competently.

STANDARD 8 – HEARINGS

A. The parent-client’s lawyer should prepare for and attend all hearings, including pretrial conferences.

Action:

The parent-client’s lawyer must prepare for and attend all hearings and participate in all telephone and other conferences with the court.

The parent client’s position may overlap with the positions of the child, another parent, third-party caretakers, or the agency. Nevertheless, the parent-client’s lawyer should participate fully in every hearing and not merely defer to the other parties. The lawyer should be prepared to state and explain the parent client’s position at each hearing.

Commentary:

The parent-client’s lawyer’s participation in pretrial proceedings may improve case resolution for the parent client. Failing to participate in the proceedings may disadvantage the parent client. Therefore, the lawyer should be actively involved in this stage.

Becoming a strong courtroom lawyer takes practice and attention to detail. The parent-client’s lawyer must be sure to learn the rules about presenting witnesses, impeaching testimony, and entering evidence. The lawyer should seek out training in trial skills and watch other lawyers to learn from them. Presenting and cross-examining witnesses are skills with which the lawyer must be comfortable. In particular, examining or cross-examining a child requires unique skills.

Action:

If the court proceeds in the absence of the parent-client’s lawyer, the lawyer should consider filing a motion to set aside.

Commentary:

If the parent-client’s lawyer has a conflict with another courtroom appearance, the lawyer should notify the court and the other parties and request a short continuance.

The lawyer should avoid having another lawyer stand in to represent the parent client in court if the other lawyer is unfamiliar with the parent client or the case.

B. The parent-client’s lawyer should take the opportunity to make opening statements and closing arguments.

Action:

The parent-client’s lawyer should make opening statements and closing arguments in the case to frame the issues around the lawyer’s theory of the case and ensure the judge understands the issues from the parent client’s perspective.

Commentary:

In many child abuse and neglect proceedings, lawyers waive the opportunity to make opening statements and closing arguments. However, these opportunities can help shape the way the judge views the case and therefore can help the parent client. They may be especially critical, for example, in complicated cases when information from expert witnesses should be highlighted for the judge, in hearings that take place over a number of days, or when there are several children and the agency is requesting different services or permanency goals for each of them.

It is important to be able to read the judge. The parent-client’s lawyer should move along when the judge is tracking the argument and elaborate on the areas that appear to need more attention.

C. The parent-client’s lawyer should prepare and make all appropriate motions and evidentiary objections. The lawyer must be aware of the need to make a record for appeal.

Action:

The parent-client’s lawyer should make appropriate motions and evidentiary objections to advance the parent client’s position during the hearing. If necessary, the lawyer should file memoranda of points and authorities in support of the parent client’s position on motions and evidentiary issues. The lawyer should always be aware of preserving legal issues for appeal.

Commentary:

It is essential that the parent-client’s lawyer understand the applicable rules of evidence and all court rules and procedures. The lawyer must be willing and able to make appropriate motions, objections, and arguments (e.g., objecting to the qualification of

expert witnesses, the competence of child or other witnesses, or raising the issue of the agency's lack of reasonable/active efforts).

D. The parent-client's lawyer should present and cross-examine witnesses and prepare and offer exhibits.

Action:

The parent-client's lawyer must be able to effectively present witnesses to advance the parent client's position. Witnesses must be prepared in advance and the lawyer should know what evidence will be presented through the witnesses. The lawyer must also be skilled at cross-examining opposing parties' witnesses. The lawyer must know how to offer documents, photos, physical objects, electronic records, etc. into evidence.

Action:

At each hearing the parent-client's lawyer should advocate for the parent client's goals, keeping in mind the case theory.

E. The parent-client's lawyer should ensure that findings of fact, conclusions of law, and orders that benefit the parent client are included in the court's decision.

Action:

The parent-client's lawyer should advocate for appropriate services and request that the court state its expectations of all parties on the record.

Action:

The parent-client's lawyer must be familiar with the standard forms and ensure that they are completed correctly and findings beneficial to the parent client are included.

Action:

The parent-client's lawyer should consider preparing proposed findings of fact and conclusions of law to frame the case and ruling for the judge.

Commentary:

Framing the case for the judge may result in orders that are more favorable to the parent client, preserve appellate issues, and help the parent-client's lawyer clarify desired outcomes before a hearing begins. The lawyer should offer to provide the judge with proposed findings and orders in electronic format. When an opposing party prepares the order, the parent-client's lawyer should review it for accuracy prior to it being submitted to the judge for signature.

STANDARD 9 – POST HEARING

A. The parent-client’s trial lawyer should review court orders to ensure accuracy and clarity and review with the parent client.

Action:

At the conclusion of a hearing, the parent-client’s trial lawyer should request and obtain a copy of the written order or judgment to ensure it reflects the court’s verbal order. If the order or judgment is incorrect, that is, it does not reflect the court’s verbal rulings, the parent-client’s trial lawyer should take whatever steps are necessary to correct it to the extent that the corrections are beneficial to the parent client.

Action:

Once the order or judgment is final, the parent-client’s trial lawyer should provide the parent client with a copy of the order or judgment and should review the order or judgment with the parent client to ensure that parent client understands it and the client’s obligations under the order. If the parent client is unhappy with the order or judgment, the lawyer should counsel the parent client about any options to appeal, or, if the order was entered by a referee, request a rehearing pursuant to ORS 419A.150, but should explain that the order is in effect unless a stay or other relief is secured.

Commentary:

The parent client may be angry about being involved in the child welfare system and a court order that is adverse to the parent client could add stress and frustration. It is essential that the parent-client’s trial lawyer take the time, either immediately after the hearing or at a meeting soon after the court date, to discuss the hearing and the outcome with the parent client. The lawyer should counsel the parent client about all options, including appeal.

B. The parent-client’s trial lawyer should take reasonable steps to ensure the parent client and all other parties comply with court orders and should continuously assess whether the case needs to be brought back to court.

Action:

If the parent client is attempting to comply with the order but any other party is not meeting that party’s responsibilities, the parent-client’s trial lawyer should approach the other party and seek assistance on behalf of the parent client. If necessary, the lawyer should request a hearing to review the order and the other party’s noncompliance or take other steps to ensure that appropriate social services are available to the parent client.

Commentary:

The parent-client's trial lawyer should play an active role in assisting the parent client in complying with court orders, ensuring that other parties comply, and in obtaining visitation and any other social services. The lawyer should speak with the parent client regularly about progress and any difficulties the parent client is encountering with the implementation of the court order or service plan. If the agency neglects or refuses to offer appropriate services, especially those ordered by the court, the lawyer should file appropriate motions, including those for an expedited hearing, for a change in the visitation plan, to compel disclosure of information or material, or for contempt.

When the agency does not offer appropriate services, the parent-client's trial lawyer should consider making referrals to independent social service providers.

C. The parent-client's trial lawyer should move the court to modify or set aside an order or judgment when appropriate.

Action:

If an order or judgment adversely affects the parent client, the parent-client's trial lawyer should advise the client of the remedies, which include moving to modify or set aside the order or judgment. [ORS 419B.923](#) permits a motion to modify or set aside an order or judgment in instances of clerical error, excusable neglect, and newly discovered evidence. Although other reasons may be permitted under the "include, but are not limited to" language of the statute, the extent of the trial court's discretion is not yet completely determined.

The motion must be filed within a "reasonable time" and may be filed while an appeal is pending. The parent-client's trial lawyer should consider filing both the motion and referring the case for appeal when the time limitations make that necessary. In that instance, the motion must be served on the appellate court.

Additionally, a motion to modify or set aside an order or judgment may be made to assert a claim of inadequate assistance of counsel, which also may be made on direct appeal. When this issue may be the basis for a motion to modify or set aside, a request for a rehearing, or an appeal to the court of appeals, the parent-client's trial lawyer should be cognizant of all of the possible deadlines and immediately move the court to substitute counsel.

D. The parent-client's trial lawyer should consider and discuss the possibility of appeal or rehearing with the parent client.

Action:

The parent-client's trial lawyer should immediately consider and discuss with the parent client, preferably in person, the possibility of appeal when a court's ruling is contrary to the parent client's position or interests. Regardless of whether the lawyer believes an appeal is appropriate or if there are any viable issues for appeal, the lawyer should advise the parent client—at the conclusion of each hearing—that the client has a right to appeal from any adverse order or judgment resulting from a jurisdictional hearing, review hearing, permanency hearing, or termination-of-parental-rights trial.

Further, if the hearing was held before a juvenile court referee, the parent-client's trial lawyer should advise the parent client that the client is entitled to a rehearing before a juvenile court judge. Under ORS 419A.150(4), unless a rehearing is requested within 10 days following the entry of the referee's order, the order will become final. Whether to seek a rehearing of a referee's order or to pursue a direct appeal in the appellate courts is always the parent client's decision.

Commentary:

When discussing the possibility of an appeal, the parent-client's trial lawyer should explain both the positive and negative effects of an appeal, including how the appeal could affect the parent client's goals. For instance, the appellate court could reverse the juvenile court and vindicate the parent client's position. Further, under ORS 19.360, the filing of a notice of appeal vests the appellate court with jurisdiction to stay the juvenile court's orders while the appeal is pending. Alternatively, an appeal could delay the case for a long time.

- E. If the parent client decides to appeal, the parent-client's trial lawyer should timely and thoroughly facilitate the appointment of an appellate lawyer for the parent client.**

Action:

The parent-client's trial lawyer should take all steps necessary to facilitate appointing an appellate lawyer; for example, the parent's court-appointed trial lawyer should refer the case for appeal to the OPDS and comply with that office's referral procedures. The parent's court-appointed trial lawyer should work with the appellate lawyer and identify for the appellate lawyer: the parties to the case (for example whether there are any interveners), appropriate issues for appeal, and promptly respond to all requests for additional information or documents necessary for the appellate lawyer to prosecute the appeal. The trial lawyer should promptly comply with the court's order to return exhibits necessary for appeal.

Commentary:

Pursuant to ORS 419A.200(4), the parent-client’s trial lawyer must file the notice of appeal or, if court-appointed, the trial lawyer may discharge his or her duty to file the notice of appeal by referring the case to the Juvenile Appellate Section of the OPDS using the online referral form and complying with OPDS procedures.

- F. The parent-client’s trial lawyer should monitor the progress of an appeal taken by another party to the juvenile case and continuously evaluate whether the parent client should participate in the appeal.**

Action:

As a party to the underlying juvenile case, the parent-client’s trial lawyer should monitor the appeal by reviewing the log of filings and the filed documents through the electronic Appellate Case Management System.

Oregon Rule of Appellate Procedure (ORAP) 2.22 requires that a party eFiling documents in a dependency case must use the “notification information” function of the appellate courts’ eFiling system to notify the attorney for any person who was a party in the juvenile court pursuant to ORS 419B.875(1)(a)(A) to (C), (H), or ORS 419B.875(1)(b). Notification must be made to each attorney whose client has not been designated a party in the notice of appeal and to each attorney whose client has not filed a notice of intent to participate in the appeal under ORAP 2.25(3).

The rule explains that the notification will notify the attorney that the document has been eFiled, but will not permit the attorney to view the document unless the attorney has juvenile case permissions in the Appellate Case Management System.

To access the documents, the parent-client’s trial lawyer should obtain, complete, and submit a “Request for Access” form to the State Court Administrator.

Action:

The parent-client’s trial lawyer should regularly monitor the electronic notifications and review the filed documents, when appropriate, and evaluate whether the parent client should file a notice of intent to participate. Court-appointed counsel may do so by referring the case to the OPDS using the process explained in subsection E. above.

STANDARD 10 – APPEALS ISSUES FOR PARENT’S LAWYER

- A. The parent-client’s appellate lawyer should communicate with the parent client.**

Action:

The parent-client's appellate lawyer should consult with the parent client as soon as possible to confirm that the client wishes to pursue a direct appeal and advise the parent client of the appellate process including relevant timelines.

The parent-client's appellate lawyer should not be bound by the determinations of the parent-client's trial lawyer and instead should take direction from the parent client.

Commentary:

The parent-client's trial lawyer should consider whether undertaking representation of the same parent client on direct appeal protects the parent client's interests on appeal. Representation of the parent client on appeal by the parent-client's trial lawyer potentially deprives the parent client of an independent audit of the quality of the representation by the trial lawyer and, because a claim of inadequate assistance of counsel may be available on direct appeal, could implicate Oregon RPC 1.7(a)(2).

Action:

The parent-client's appellate lawyer should explain to the parent client the difference between representation for appeal and ongoing representation in the dependency case. Because the dependency case will almost always be ongoing during the appeal, the parent-client's appellate lawyer and the parent-client's trial lawyer should consult and collaborate as necessary to advance the parent client's interests in both cases.

Action:

The parent-client's appellate lawyer and the trial lawyer should be thoughtful about their respective roles and relationship with the parent client. For example, the trial lawyer should be careful to safeguard the appeal by consulting with the appellate lawyer prior to upcoming hearings and immediately notifying the appellate lawyer should the court enter any new order or judgment to determine whether the new judgment should be referred for appeal. The appellate lawyer should consult with the trial lawyer about the issues raised in the opening brief and offer to consult about properly raising issues at upcoming hearings.

Action:

The parent-client's appellate lawyer should advise the parent client about the limited scope of the lawyer's representation and, should the parent client have concerns about his or her ongoing case, the appellate lawyer should refer the parent client to the client's trial lawyer. Ideally, the trial lawyer and the appellate lawyer will work collaboratively and strategically to obtain the best result for the parent client. For

example, the appellate lawyer may assist the trial lawyer in identifying issues to litigate at upcoming hearings and in properly preserving issues for a subsequent appeal if the parent client does not prevail at trial.

B. Unless the parent-client’s trial lawyer has filed the notice of appeal, the parent-client’s appellate lawyer must do so within the prescribed time limits.

Action:

The parent-client’s appellate lawyer must comply with statutory and rule requirements in filing the notice of appeal.

When the parent-client’s trial lawyer has filed the notice of appeal before the parent’s appellate lawyer has assumed the representation, the appellate lawyer should promptly obtain and thoroughly review the notice of appeal for any jurisdictional or other defects, including whether the decisional document appealed from is an appealable judgment pursuant to ORS 419A.205.

Commentary:

Under ORS 19.270, proper notice of appeal is a jurisdictional requirement. Consequently, the notice must satisfy both statutory requirements found in ORS 19.250, ORS 19.255, and ORS 419A.200(3), and the Oregon Rules of Appellate Procedure found in ORAP 2.05, ORAP 2.10, and ORAP 2.22 in order to prosecute the appeal.

ORS 419A.200(5) permits an appellate lawyer to move the court for leave to file a late notice of appeal after the statutory 30-day time limit (up to 90 days after entry of judgment). A motion to file a notice of appeal after the 30-day period, to be successful, must demonstrate that (1) the failure to file a timely notice of appeal was not personally attributable to the parent, *and* (2) “a colorable claim of error” exists in the proceeding from which the appeal is taken.

C. Prosecuting or defending the appeal: Issue selection and briefing.

Action:

The parent-client’s appellate lawyer should thoroughly review the judgment to ensure that it comports with the requirements of the juvenile code; for example, the requirements of a valid permanency judgment found under ORS 419B.476(5).

The parent’s appellate lawyer should review the trial court record and any opposing briefs, identify and research issues, and prepare and timely file and serve the brief on behalf of the parent client. The brief should reflect relevant case law and present the best legal arguments available under Oregon and federal law to advance the parent

client's position. Novel legal arguments that might develop favorable law in support of the parent client's position should also be advanced if available.

The parent-client's appellate lawyer should send a copy of the filed brief to the parent client and to the parent-client's trial lawyer.

Commentary:

The parent-client's appellate lawyer has considerable authority over the manner in which an appeal is presented. It is that lawyer's responsibility to exercise his or her professional judgment to raise issues that, in the lawyer's judgment, will provide the best chance of success on appeal—even when the parent client disagrees with the appellate lawyer's judgment about which arguments are most likely to advance the client's position.

If the parent client insists on advancing a theory that the court-appointed appellate lawyer determines is not meritorious or uses too much of the allotted word limit so that better arguments cannot be effectively advanced, the court-appointed appellate lawyer should determine the strategy for the opening brief based on professional skill and judgment and consider counseling the parent client to advance the client's arguments in a supplemental *pro se* brief pursuant to ORAP 5.92.

ORAP 5.90(4) allows the filing of a *Balfour*-type brief with the argument section to be drafted by the parent client in a juvenile case in which an appellate lawyer has been appointed. In the event that the parent-client's appellate lawyer, after consultation with the parent client, is unable to identify any meritorious issues on appeal, the court-appointed appellate lawyer may consider filing a brief pursuant to ORAP 5.90(4). Before the parent-client's appellate lawyer embarks on this course of action, the appellate lawyer must determine whether, in his or her professional judgment, the confidentiality constraints and ethical dilemmas caused by the unique circumstances involved in this type of case can be overcome.

D. Prosecuting or defending the appeal – Oral Argument.

Action:

The parent-client's appellate lawyer should determine whether to request an oral argument. The appellate lawyer should inform the parent client of whether the lawyer intends to present oral argument or submit the case on the briefs. If the lawyer intends to present an oral argument, the lawyer should inform the parent client of the date, time, and place scheduled for oral argument.

Commentary:

As with the determination of which issues to raise on direct appeal, the parent-client's appellate lawyer must exercise his or her professional judgment in determining whether to present oral argument to the appellate court.

Action:

If oral arguments are scheduled, the parent-client's appellate lawyer should be thoroughly prepared to present the case to the court and to answer the court's questions.

E. Communicating the result of the appeal.

Action:

The parent-client's appellate lawyer should communicate the result of the appeal and its implications, and provide the parent client with a copy of the appellate decision. The appellate lawyer should promptly communicate with the parent-client's trial lawyer and assist the trial lawyer with interpreting the appellate court's decision and preparing for the next trial level event.

F. Petitioning for Review in the Oregon Supreme Court.

Action:

If the parent client does not prevail on direct appeal in the Oregon Court of Appeals, the parent-client's appellate lawyer may petition for review in the Oregon Supreme Court. Whether to petition for review in the Oregon Supreme Court is ultimately the parent client's decision.

APPENDIX A –

ANCILLARY AREAS OF LAW WITH WHICH LAWYERS SHOULD BE SUFFICIENTLY FAMILIAR TO RECOGNIZE THEIR RELEVANCE TO PARTICULAR CASES

- (1) State laws and rules of civil procedure;
- (2) State laws and rules of criminal procedure;
- (3) State laws and rules of administrative procedure;
- (4) State laws concerning public benefits, education, and disabilities;
- (5) State laws regarding domestic violence;
- (6) State domestic relations laws, especially those regarding paternity, guardianships, and adoption;
- (7) The rights a client might have as a result of being the victim of a crime;
- (8) Indian Child Welfare Act of 1978 (ICWA), Pub. L. No. 95-608, 92 Stat. 3069 (codified as amended at 25 U.S.C. §§ 1901–1963); ICWA regulations in 2016, which took effect on December 12, 2016. 81 Fed. Reg. 38,778 (June 14, 2016); and Bureau of Indian Affairs Guidelines (2016);
- (9) Individuals with Disabilities Education Act (IDEA), Pub. L. No. 91-230, 84 Stat. 191 (1970);
- (10) Interstate Compact on Placement of Children (ICPC);
- (11) The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) and the Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, 94 Stat. 3568;
- (12) Titles IV-B and IV-E of the Social Security Act, including the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended at 42 U.S.C. §§ 620–679); and the ASFA Regulations, 45 C.F.R. pts. 1355, 1356, 1357;
- (13) Child Abuse Prevention and Treatment Act (CAPTA), Pub. L. No. 93-247, 88 Stat. 4 (1974);
- (14) Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008);
- (15) McKinney-Vento Homeless Assistance Act, Pub. L. No. 100-77, 101 Stat. 482 (1987) (codified as amended at 42 U.S.C. §§ 11431–11435);
- (16) Multiethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Adoption Provisions of 1996 (MEPA-IEP), 42 U.S.C. § 622(b)(9) (1998); 42 U.S.C. § 671(a)(18) (1998); 42 U.S.C. § 1996b (1998);
- (17) Foster Care Independence Act of 1999 (FCIA), Pub. L. No. 106-169, 113 Stat. 1822;
- (18) Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (1982);
- (19) Family Education Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. 99;
- (20) Health Insurance Portability and Accountability Act of 1996 (HIPPA), Pub. L. No. 104-191 § 264, 110 Stat. 1936 (codified as amended, in relevant part at 42 U.S.C. § 1320d-2);
- (21) Public Health Service Act, 42 U.S.C. § 290dd-2 and 42 C.F.R. pt. 2 (pertaining to confidentiality of individual information);
- (22) Immigration laws relating to child welfare and child custody;
- (23) ORS 419B.851(3), statutory implementation of the Vienna Convention on Consular Relations, April 24, 1963, Article 36, regarding service of process, and 8 C.F.R. § 236.1;

- (24) The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption;
- (25) The International Parental Kidnapping Crime Act of 1993 (IPKCA), Pub. L. No. 103-173, 107 Stat. 1998 (codified as amended at 18 U.S.C. § 1204).
- (26) The Hague Convention on the International Aspects of Child Abduction Act, implemented by ICARA, 42 U.S.C. § 11603 *et seq.*;
- (27) The Hague Convention on the Service of Judicial and Extrajudicial Documents Abroad
- (28) Refugee Child Welfare Act, ORS 418.925-945

APPENDIX B –

ADDITIONAL AREAS IN WHICH LAWYERS SHOULD SEEK TRAINING

- (1) Stages of child development and patterns of growth as related to child abuse and neglect;
- (2) Physical and mental health risks factors associated with children’s placement in foster care;
- (3) Racial and ethnic disparities in child dependency cases;
- (4) Cultural and ethnic differences as they relate to child-rearing;
- (5) Substance abuse and resources for substance abusing families;
- (6) Domestic violence, its effect on parents, children, and families and appropriate resources;
- (7) Family preservation services;
- (8) Resources for the diagnosis and treatment of sexual abuse, physical abuse, and emotional abuse;
- (9) Resources for the treatment and recognition of nonorganic failure to thrive;
- (10) Educational, mental health, and other resources for special-needs children, including infants and preschoolers;
- (11) The appropriateness of various types of placement;
 - a. The efforts that should be made to ensure a smooth, timely transition between placements;
 - b. The effect of the placement on visitation by parents, siblings, and other relatives and on the services needs of the child;
 - c. The transracial, transcultural, and language aspects of the placement;
- (12) The importance of placing siblings together when appropriate;
- (13) Risk assessment prior to reunification;
- (14) The use and appropriateness of psychotropic drugs for children;
- (15) Government benefits available in dependency cases, such as Social Security payments including nonneedy relative grants, AFDC, and AFDC-FC, adoption assistance programs, and crime victims programs;
- (16) Transition plans and independent living programs for teens, including emancipation issues;
- (17) Accessing private insurance for services.

APPENDIX C:

CHECKLISTS FOR SPECIFIC HEARINGS FOR LAWYERS FOR CHILDREN:

A. SHELTER HEARINGS:

1. Discovery: Obtain copies of all relevant documents including, but not limited to:
 - a. Shelter report;
 - b. Police report(s); and
 - c. Prior child welfare referrals.
2. Child client interview: If the child client is present or available by phone, take time to talk with the child before the shelter hearing. Talk with the child client about:
 - a. Purpose of the hearing;
 - b. Placement preference if applicable;
 - c. Educational needs (identify home school);
 - d. Visitation; and
 - e. Child client's preferred outcome.

Ask for a recess or a continuance if necessary.

3. Assist the child client in exercising his or her right to an evidentiary hearing to require the Department of Human Services (hereinafter the "agency") to demonstrate to the court that the child client can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process before adjudication.
4. When appropriate, present facts and law regarding:
 - a. Jurisdictional sufficiency of the petition;
 - b. Appropriateness of venue;
 - c. Applicability of Indian Child Welfare Act (ICWA);
 - d. Applicability of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);
 - e. Adequacy of notice provided to parties and tribes if applicable;
 - f. Establishment of paternity;
 - g. Why continuation of the child client in the home would be contrary to his or her welfare or why it is not in the best interest or welfare of the child client to be removed;
 - h. Whether reasonable or active efforts were made to prevent removal;
 - i. Whether diligent efforts have been made to place the child client with family;
 - j. Maintaining the existing school unless it is in the best interest of the child client to change schools;
 - k. Whether reasonable and available services can prevent or eliminate the need to separate the family;

- l. Whether the placement proposed by the agency is the least disruptive and most family-like setting that meets the needs of the child client; and
 - m. The possibility of placement with appropriate noncustodial parents and relatives and corresponding diligent-efforts requirement.
- 5. If ICWA applies, consult with the child client about transferring the case to tribal court and take appropriate action.
- 6. When appropriate, request temporary orders including, but not limited to:
 - a. Temporary restraining orders, including orders expelling an allegedly abusive parent from the home;
 - b. Orders governing future conduct of the parties (for example, not discussing allegations with the child client, remaining clean and sober while the child client is present, etc.);
 - c. Visitation orders that are reasonable and flexible and take into consideration the child client's age and activities. Orders that specify the frequency and manner of visitation may be appropriate. *See* ORS 419B.337(3) (the juvenile court may order that the agency provide a certain number of visits weekly and that the visits be supervised or unsupervised); and OAR 413-070-0830 (parents and children have the right to visit as often as reasonably necessary; insufficient agency resources are not justification for lack of visitation);
 - d. Orders for child support;
 - e. Orders for the agency to investigate relatives and friends of the family as potential placements or to place sibling groups together;
 - f. Orders for the agency to provide appropriate treatment for the child client;
 - g. Orders permitting return of the child client prior to the jurisdictional hearing; and
 - h. Orders maintaining attendance at existing school.
- 7. Review the order with the child client or, if appropriate, with the child client's care provider if the child client has diminished capacity:
 - a. Discuss reviewability of shelter order:
 - 1) Orders by referees can be reviewed by a sitting judge;
 - 2) Right (and process) to appeal; and
 - 3) Possibility of pursuing a writ of habeas corpus.
 - b. Review the consequences of not abiding by the order.

B. JURISDICTION/ADJUDICATION HEARING:

- 1. Review and prepare materials (including fact and legal argument) available at the trial, including all pleadings, discovery, and investigate reports, as well as relevant statutes, case law, and the evidence code.

2. Create a draft outline of:
 - a. Opening and closing statements;
 - b. Direct and cross-examination plans for all witnesses and, if necessary, prepare the child client to testify; and
 - c. Findings of fact and conclusions of law to be requested at the conclusion of the hearing.
3. If the agency makes an amendment to the petition make sure there is sufficient notice and time to argue the amended allegation(s). Request a continuance if necessary.
4. Ensure that the child client is informed of and understands the nature, obligations, and consequences of the decision, and the need for the child client to cooperate with the trial court's orders. Explain the child client's rights and the possibilities of posttrial motions to reconsider, set aside, modify, or review the jurisdictional finding, as well as the right to appeal. Explain the consequences of violating the trial court's order and the continuing jurisdiction of the court and, if the child client has diminished capacity and it is appropriate to do so, discuss the court's order with the child client's care provider.
5. After the jurisdictional hearing or adjudication:
 - a. Carefully review the judgment and advise the child client about potential issues for appeal;
 - b. Advise the child client in writing of the timelines for filing a notice of appeal; and
 - c. If court appointed and you do not wish to represent the child on appeal, you must timely refer the case to Office of Public Defense Services (OPDS) pursuant to OPDS procedures.

C. DISPOSITION HEARINGS:

1. Explain to the child client the nature of the hearing, the issues involved, and the alternatives open to the court.
2. When the court has found sufficient evidence to support jurisdiction, when appropriate, ask the court to not exercise jurisdiction and move to dismiss the petition on the ground that jurisdiction is not in the best interests of the child client because the child client and his or her family do not require supervision, treatment, or placement.
3. Investigate all sources of evidence that will be presented. A child client's trial lawyer has an independent duty to investigate the child client's circumstances, including such factors as previous history, family relations, and any other information relevant to disposition.
4. Ensure that all reasonably available and mitigating factors and favorable information is presented to the court.

5. During the disposition hearing:
 - a. Advocate for the least restrictive disposition possible that can be supported and is consistent with the child client's needs and desires;
 - b. Request that the court order the agency to provide services and set concrete conditions of return of the child client to the parent;
 - c. Present evidence on whether the reasonableness or unreasonableness of the agency's efforts were active or reasonable;
 - d. Request a no reasonable/no active efforts finding if appropriate;
 - e. Request an order identifying specific services needed to ameliorate the jurisdictional bases. Services may include (but are not limited to):
 - 1) Family preservation services;
 - 2) Medical and mental health care;
 - 3) Drug and alcohol treatment;
 - 4) Parenting education;
 - 5) Housing;
 - 6) Recreational or social services;
 - 7) Domestic violence counseling;
 - 8) Anger-management counseling;
 - 9) Independent living services;
 - 10) Sex-offender treatment; and
 - 11) Other individual services.
 - f. Ensure the order includes a description of actions to be taken by the parent client to correct the identified problems as well as a timetable for accomplishing the changes required;
 - g. Request specific visitation orders covering visitation between the child client and the parent, between siblings, and between the child and other significant persons;
 - h. Request that the court appoint an educational advocate (surrogate parent) for the child client;
 - i. Seek child support orders; and
 - j. Seek to ensure continued representation of the child client at all future hearings and reviews (set date for next proceeding).
6. After the disposition hearing:
 - a. Ensure that the child client is informed of and understands the nature, obligations, and consequences of the dispositional decision, and the need to cooperate with the dispositional orders;
 - b. Explain the child client's rights and possibilities of posttrial motions to reconsider, set aside, modify, or review the disposition, as well as the right to appeal; and
 - c. Explain the consequences of violating the dispositional order and continuing jurisdiction of the court.

D. REVIEW HEARINGS AND CITIZEN REVIEW BOARD (CRB) REVIEWS:

1. The child client is entitled to request reviews in the case as issues arise. Seek a review to request return of the child client when any event happens that may significantly affect the need for continued placement. Also request a review when court intervention is necessary to resolve a dispute over such matters as visitation, placement, or services.
2. Conduct appropriate investigation to prepare for the review, which may include:
 - a. Reviewing agency files and the report prepared for the review and obtaining all relevant discovery;
 - b. Interviewing the child client prior to the hearings and obtaining supplemental reports and information for the child client prior to the hearing;
 - c. Interviewing the caseworker to determine his or her assessment of the case, the case plan, the child client's placement and progress, and the parent's cooperation and progress;
 - d. Contacting other agencies and professionals who are providing services to the child client or parents and seeking appropriate documentation to verify the progress by the child client;
 - e. Interviewing other potential witnesses, which may include relatives, neighbors, school personnel, and foster parents; and
 - f. Subpoenaing needed witnesses and records.
3. During review hearings and CRB reviews:
 - a. Present information supporting the child client's position and whether the parties are taking the necessary steps to achieve the chosen plan in a timely fashion.
 - b. Consider submitting a written memorandum on behalf of the child client. You should specifically address:
 - 1) Whether there is a current basis for jurisdiction to continue;
 - 2) Whether there is a need for continued placement of the child client;
 - 3) Whether the agency is making reasonable or active efforts to rehabilitate and reunify the family or to achieve another permanent plan;
 - 4) Why services have not been successful to date;
 - 5) Whether the court-adopted plan for the child client remains the best plan;
 - 6) Whether the agency case plan or service agreement needs to be clarified or modified;
 - 7) The child client's position on the development of the concurrent case plan;
 - 8) The appropriateness of the child client's placement; and
 - 9) Whether previous court orders regarding visitation, services, and other case related issues should be modified.

4. After review hearings and CRB reviews, carefully review the order from the hearing with the child client and discuss the child's option to review, including appellate review of any final orders.
5. Ask the court to schedule a subsequent hearing (unless wardship terminated).

E. PERMANENT PLANNING HEARINGS:

1. Consider requesting that the court schedule a permanency hearing in furtherance of the child client's goals.
2. Conduct an independent investigation as described in section D. In addition, be prepared to address what the long-term plan for the child client should be, including:
 - a. A specific date on which the child client is to be returned home;
 - b. A date on which the child client will be placed in an alternative permanent placement;
 - c. Whether the child client will remain in substitute care on a permanent or long-term basis; and
 - d. Whether substitute care will be extended for a specific time, with a continued goal of family reunification.
3. During the permanency hearing:
 - a. Request sufficient court time to adequately present the child client's position, including live witness testimony;
 - b. Present evidence on what the permanent plan for the child should be, including whether to continue toward a plan of family reunification, a motion to dismiss, or implementation of a concurrent plan;
 - c. Consider submitting a written permanency memorandum in support of the child client's position; and
 - d. Request specific findings and orders that advance the child client's position, including but not limited to a specific extension of time for reunification and the specific services and progress required during that time.
4. Carefully review the court order from the permanency hearing with the child client including, if appropriate, the option to seek review of the order and appellate review of any final orders.

F. TERMINATION OF PARENTAL RIGHTS HEARINGS:

1. In preparation for a termination trial the child client's trial lawyer should:
 - a. Thoroughly review the entire record of the case, carefully analyzing court orders and CRB findings and recommendations;

- b. Completely and independently investigate the case, paying particular attention to issues unique to termination, such as the adoptability of the child client and whether termination of parental rights is in the child client's best interest, including:
 - 1) The child client's relationship with his or her parents;
 - 2) The importance of maintaining a relationship with the child client's siblings and other relatives;
 - 3) The child client's ability to bond to an adoptive resource; and
 - 4) Preserving the child client's cultural heritage.
 - c. Prepare a detailed chronology of the case to use in case presentation and in developing a theory and strategy for the case;
 - d. Research termination statutes and case law, with particular attention to constitutional issues, and prepare trial memorandum if necessary;
 - e. Obtain and review records to be submitted to the court and prepare objections or responses to objections to these documents;
 - f. Subpoena and carefully prepare witnesses;
 - g. If the child client will be called as a witness, carefully prepare the child client to testify at the termination trial;
 - h. Evaluate evidentiary issues and file motions *in limine* as appropriate and lay proper evidentiary foundations as needed during trial;
 - i. Be aware of the heightened standard of proof in termination cases—clear and convincing evidence for most cases, and beyond a reasonable doubt in cases covered by the ICWA;
 - j. Be prepared to present evidence of or address the agency's failure to adequately assist the parent or child client;
 - k. Evaluate and be prepared if necessary to move to recuse or disqualify the trial judge; and
 - l. Be aware of alternatives to termination of parental rights, including but not limited to guardianship and open adoption to achieve permanency for the child client.
2. The child client's trial lawyer should meet with the child client to discuss the termination petition and determine the child client's position on termination of parental rights.
 3. The child client's trial lawyer should discuss alternatives to trial with the child client, including voluntary relinquishments of parental rights, open adoption agreements, postadoption contact agreements, guardianship, other planned permanent-living agreements, conditional relinquishments, and continuance of the trial. If the child client wishes to pursue an alternative to trial, the child client's trial lawyer should advocate for the child client's position.
 4. In preparation for and during the termination trial, the child client's trial lawyer should be:
 - a. Prepared to submit a trial memorandum in support of the child client's position;
 - b. Prepared to offer or agree to stipulations regarding the evidence;

- c. Prepared to offer and stipulate to facts;
 - d. Prepared to examine witnesses both on direct and cross-examination;
 - e. Prepared to lay the proper evidentiary foundations;
 - f. Prepared to make opening and closing statements; and
 - g. Create an adequate record of the case and preserve any issues appropriate for appeal.
5. After the termination-of-parental-rights trial, the child client's trial lawyer should:
- a. Carefully review the judgment and advise the child client about potential issues for appeal;
 - b. Advise the child client in writing (if developmentally appropriate) of the timelines for filing a notice of appeal; and
 - c. If the child client's trial lawyer is court appointed, the lawyer must timely refer the case to Office of Public Defense Services (OPDS) pursuant to OPDS procedures.

APPENDIX D:

CHECKLIST FOR SPECIFIC HEARINGS FOR LAWYERS FOR PARENTS:

A. SHELTER HEARINGS:

1. Discovery: Obtain copies of all relevant documents including, but not limited to:
 - a. Shelter report;
 - b. Police report(s); and
 - c. Prior child welfare referrals.

2. Parent client interview: If the parent client is present or available by phone, take time to talk to the parent client before the shelter hearing. Talk with the parent client about:
 - a. Purpose of the hearing;
 - b. Risk of self-incrimination;
 - c. Placement options if applicable;
 - d. Safety service providers to prevent removal; and
 - e. Visitation.

Ask for a recess or a continuance if necessary.

3. If appropriate, assert the parent client's Fifth Amendment and other constitutional rights;

4. Assist the parent client in exercising his or her right to an evidentiary hearing to require the Department of Human Services (hereinafter the "agency") to demonstrate to the court that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process before adjudication;

5. When appropriate, present facts and law regarding:
 - a. Jurisdictional sufficiency of the petition;
 - b. Appropriateness of venue;
 - c. Applicability of the Indian Child Welfare Act (ICWA);
 - d. Applicability of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);
 - e. Adequacy of notice provided to parties and tribes if applicable;
 - f. Establishment of paternity;
 - g. Why continuation of the child in the home would be contrary to the child's welfare or why it is not in the best interest or welfare of the child to be removed;
 - h. Whether reasonable or active efforts were made to prevent removal;
 - i. Whether diligent efforts have been made to place the child with family;
 - j. Maintaining the existing school unless it is in the best interest of the child to change schools;

- k. Whether reasonable and available services can prevent or eliminate the need to separate the family;
 - l. Whether the placement proposed by the agency is the least disruptive and most family-like setting that meets the needs of the child; and
 - m. The possibility of placement with appropriate noncustodial parents and relatives and corresponding diligent-efforts requirement.
6. If ICWA applies, consult with the parent client about transfer of the case to tribal court and take appropriate action.
7. When appropriate, request temporary orders including, but not limited to:
- a. Temporary restraining orders, including orders expelling an allegedly abusive parent from the home;
 - b. Orders governing future conduct of the parties (for example, not discussing allegations with the child, remaining clean and sober while the child is present, etc.);
 - c. Orders for any services for parent client agreed-on before adjudication;
 - d. Visitation orders that are reasonable and flexible and take into consideration the child's age and activities. Orders that specify the frequency and manner of visitation may be appropriate. *See* ORS 419B.337(3) (the juvenile court may order that the agency provide a certain number of visits weekly and that the visits be supervised or unsupervised); and OAR 413-070-0830 (parents and children have the right to visit as often as reasonably necessary; insufficient agency resources are not justification for lack of visitation);
 - e. Orders for child support. Be prepared to rebut the presumption—argue inability to pay and treatment costs are more valuable to the child. *See* ORS 25.245 and ORS 25.280;
 - f. Orders for the agency to investigate relatives and friends of the family as potential placements or to place sibling groups together;
 - g. Orders for the agency to provide appropriate treatment for the child;
 - h. Orders permitting return of the child prior to the jurisdictional hearing; and
 - i. Orders maintaining attendance at existing school.
8. Review the order with the parent client:
- a. Discuss reviewability of shelter order:
 - 1) Orders by referees can be reviewed by a sitting judge;
 - 2) Right (and process) to appeal; and
 - 3) Possibility of pursuing a writ of habeas corpus.
 - b. Review the consequences of not abiding by the order.
9. Review the safety plan and the consequences for not following the order. If the court sets conditions of the child's placement, explain to the parent client, and any third party, the conditions and potential consequences of violating those conditions. Seek review of shelter-

care decisions as appropriate and advise the parent client or any third parties of changes in conditions for pretrial placement that would be likely to get the court to agree with the parent client's plan.

10. At the conclusion of the shelter hearing, after discussing items 8 and 9 (above) with the parent client, schedule an initial office appointment with the parent client. The appointment should be scheduled to be as convenient as possible for the parent client and should not interfere with the parent client's visitation (if the child has been removed) or other obligations. The timing should also allow enough time for the receipt of discovery and other information necessary for a productive discussion of the case.

When the attorney appearing at the shelter hearing will be the parent client's assigned trial lawyer, the parent client should be provided, in writing, the contact information of the parent client's trial lawyer and the date, time, and location of the office appointment.

When the attorney appearing at the shelter hearing will not be the parent client's assigned trial lawyer (as is sometimes the case with large consortia or public defender firms) the parent client should be provided, in writing, the contact information for a staff person who will be able to provide the parent client with the name of the parent's assigned trial lawyer and the date, time, and location of the office appointment. As soon as the parent client's case is assigned to his or her attorney, the staff of the parent client's trial lawyer should contact the parent client, by phone and email, to schedule the initial interview.

When feasible, the initial interview should occur within 72 hours of appointment.

B. JURISDICTION/ADJUDICATION HEARING:

1. Review and prepare materials (including fact and legal argument) available at the trial, including all pleadings, discovery, and investigate reports, as well as, relevant statutes, case law, and the evidence code.
2. Create a draft outline of:
 - a. Opening and closing statements;
 - b. Direct and cross-examination plans for all witnesses; and
 - 1) Prepare the parent client to testify; and
 - 2) If there is potential for criminal liability, advise the client whether to answer specific questions or assert the client's Fifth Amendment right not to answer specific questions;
 - c. Findings of fact and conclusions of law to be requested at the conclusion of the hearing.
3. If the agency makes an amendment to the petition, make sure there is sufficient notice and time to defend the amended allegation(s). Request a continuance if necessary.

4. Ensure that the parent client is informed of and understands the nature, obligations, and consequences of the decision, and the need for the parent client to cooperate with the trial court's orders. Explain the parent client's rights and the possibilities of posttrial motions to reconsider, set aside, modify, or review the jurisdictional finding, as well as the right to appeal. Explain the consequences of violating the trial court's order and the continuing jurisdiction of the court.
5. After the jurisdictional hearing or adjudication:
 - a. Carefully review the judgment and advise the parent client about potential issues for appeal;
 - b. Advise the parent client in writing of the timelines for filing a notice of appeal; and
 - c. If you are court appointed, you must timely refer the case to Office of Public Defense Services (OPDS) pursuant to OPDS procedures.
6. If the parent client fails to appear at the hearing and you have been relieved as counsel, promptly notify the parent client of the entry of the judgment, the availability of posttrial motions, and the right to appeal. If the parent client seeks to contest the judgment, immediately contact the court to request reappointment and thereafter promptly file the necessary pleadings on behalf of the parent client.

C. DISPOSITION HEARINGS:

1. Explain to the parent client the nature of the hearing, the issues involved, and the alternatives open to the court.
2. When the court has found sufficient evidence to support jurisdiction, when appropriate, ask the court to not exercise jurisdiction and move to dismiss the petition on the ground that jurisdiction is not in the best interests of the child because the child and family do not require supervision, treatment, or placement.
3. Investigate all sources of evidence that will be presented. A parent client's trial lawyer has an independent duty to investigate the parent client's circumstances, including such factors as previous history, family relations, economic conditions, and any other information relevant to disposition.
4. Ensure that all reasonably available and mitigating factors and favorable information is presented to the court.
5. During the disposition hearing, when appropriate,:
 - a. Advocate for the least restrictive disposition possible that can be supported and is consistent with the parent client's needs and desires;
 - b. Request that the court order the agency to provide services and set concrete conditions of return of the child to the parent client;

- c. Present evidence on whether the reasonableness or unreasonableness of the agency's efforts were active or reasonable;
 - d. Request a no reasonable/no active efforts finding if appropriate;
 - e. Request an order identifying specific services needed to ameliorate the jurisdictional bases. Services may include (but are not limited to):
 - 1. Family preservation services;
 - 2. Medical and mental health care;
 - 3. Drug and alcohol treatment;
 - 4. Parenting education;
 - 5. Housing;
 - 6. Recreational or social services;
 - 7. Domestic violence counseling;
 - 8. Anger-management counseling;
 - 9. Independent living services;
 - 10. Sex-offender treatment; and
 - 11. Other individual services.
 - f. Ensure the order includes a description of actions to be taken by the parent client to correct the identified problems as well as a timetable for accomplishing the changes required;
 - g. Request specific visitation orders covering visitation between the child and the parent client, between siblings, and between the child and other significant persons;
 - h. Request that the court appoint an educational advocate (surrogate parent) for the child(ren);
 - i. Seek child support orders; and
 - j. Seek to ensure continued representation of the parent client at all future hearings and reviews (set date for next proceeding).
6. After the disposition hearing:
- a. Ensure that the parent client is informed of and understands the nature, obligations, and consequences of the dispositional decision, and the need for the parent client to cooperate with the dispositional orders;
 - b. Explain the parent client's rights and the possibilities of posttrial motions to reconsider, set aside, modify, or review the disposition, as well as the right to appeal; and
 - c. Explain the consequences of violating the dispositional order and continuing jurisdiction of the court.

D. REVIEW HEARINGS AND CITIZEN REVIEW BOARD REVIEWS:

- 1. The parent client is entitled to request reviews in the case as they arise. Seek a review to request return of the child when any event happens that may significantly affect the need

for continued placement. Also request a review when court intervention is necessary to resolve a dispute over such matters as visitation, placement, or services.

2. Conduct appropriate investigation to prepare for the review, which may include:
 - a. Reviewing agency files and the report prepared for the review and obtaining all relevant discovery;
 - b. Interviewing the parent client prior to the hearings and obtaining supplemental reports and information for the parent client prior to the hearing;
 - c. Interviewing the caseworker to determine his or her assessment of the case, the case plan, the child's placement and progress, and the parent client's cooperation and progress;
 - d. Contacting other agencies and professionals who are providing services to the child or parent(s) and seeking appropriate documentation to verify the progress by the parent client;
 - e. Interviewing other potential witnesses, which may include relatives, neighbors, school personnel, and foster parents; and
 - f. Subpoenaing needed witnesses and records.
3. During review hearings and CRB reviews:
 - a. Present information supporting the parent client's position and whether the parties are taking the necessary steps to achieve the chosen plan in a timely fashion.
 - b. Consider submitting a written report on behalf of the parent client. Specifically address the following:
 - 1) Whether there is a current basis for jurisdiction to continue;
 - 2) Whether there is a need for continued placement of the child;
 - 3) Whether the agency is making reasonable or active efforts to rehabilitate and reunify the family or to achieve another permanent plan;
 - 4) Why services have not been successful to date;
 - 5) Whether the court-adopted plan for the child remains the best plan;
 - 6) Whether the agency case plan or service agreement needs to be clarified or modified;
 - 7) The parent client's position on the development of the concurrent case plan;
 - 8) The appropriateness of the child's placement; and
 - 9) Whether previous court orders regarding visitation, services, and other case related issues should be modified.
4. After review hearings and CRB reviews, carefully review the order from the hearing with the parent client and discuss the parent client's option to review, including appellate review of any final orders.
5. Ask the court to schedule a subsequent hearing (unless wardship terminated).

E. PERMANENT PLANNING HEARINGS:

1. Consider requesting that the court schedule a permanency hearing in furtherance of the parent client's goals.
2. Conduct an independent investigation as described in section D.

In addition, be prepared to address what the long-term plan for the child should be, including:

- a. A specific date on which the child is to be returned home;
 - b. A date on which the child will be placed in an alternative permanent placement;
 - c. Whether the child will remain in substitute care on a permanent or long-term basis; and
 - d. Whether substitute care will be extended for a specific time, with a continued goal of family reunification.
3. During the permanency hearing:
 - a. Request sufficient court time to adequately present the parent client's position, including live witness testimony;
 - b. Present evidence on what the permanent plan for the child should be, including whether to continue toward a plan of family reunification, a motion to dismiss, or implementation of a concurrent plan;
 - c. Consider submitting a written permanency memorandum in support of the parent client's position; and
 - d. Request specific findings and orders that advance the parent client's position, including but not limited to a specific extension of time for reunification and the specific services and progress required during that time;
 4. Carefully review the court order from the permanency hearing with the parent client including, if appropriate, the option to seek review of the order and appellate review of any final orders.

F. TERMINATION OF PARENTAL RIGHTS HEARINGS

1. In preparation for a termination trial, the parent client's trial lawyer should:
 - a. Thoroughly review the entire record of the case, carefully analyzing court orders and CRB findings and recommendations;
 - b. Completely and independently investigate the case, paying particular attention to issues unique to termination, such as the adoptability of the child and whether termination of parental rights is in the child's best interest, including:
 - 1) The child's relationship with the parent client;
 - 2) The importance of the maintaining a relationship with the child's siblings and other relatives;
 - 3) The child's ability to bond to an adoptive resource; and

- 4) Preserving the child's cultural heritage.
 - c. Prepare a detailed chronology of the case to use in case presentation and in developing a theory and strategy for the case;
 - d. Research termination statutes and case law, with particular attention to constitutional issues, and prepare trial memorandum if necessary;
 - e. Obtain and review records to be submitted to the court and prepare objections or responses to objections to these documents;
 - f. Subpoena and carefully prepare witnesses;
 - g. Carefully prepare the parent client to testify at the termination trial;
 - h. Advise the parent client of the consequences of failing to appear at a mandatory court appearance in a termination proceeding;
 - i. Evaluate evidentiary issues and file motions *in limine* as appropriate and lay proper evidentiary foundations as needed during the trial;
 - j. Be aware of the heightened standard of proof in termination cases—clear and convincing evidence for most cases, and beyond a reasonable doubt in cases covered by the ICWA;
 - k. Be prepared to present evidence of or address the agency's failure to adequately assist the parent client;
 - l. Evaluate and be prepared if necessary to move to recuse or disqualify the trial judge;
 - m. Be aware of alternatives to termination of parental rights, including but not limited to guardianship and open adoption to achieve permanency for the child; and
 - n. Assess the sufficiency of service, particularly regarding alternative service, and file objections as appropriate.

2. The parent client's trial lawyer should meet with the parent client to discuss the termination petition and the consequences of an involuntary judgment of termination of parental rights.

3. The parent client's trial lawyer should discuss alternatives to trial with the parent client, including voluntary relinquishments of parental rights, open-adoption agreements, postadoption contact agreements, guardianship, other planned permanent living agreements, conditional relinquishments, and continuance of the trial. If the parent client wishes to pursue an alternative to trial, the lawyer should advocate for the parent client's position.

4. The parent client's trial lawyer should discuss with the parent client the ramifications of nonappearance at a mandatory proceeding and should be prepared to appropriately advocate for the parent client if he or she fails to appear at a mandatory court proceeding.

5. In preparation for and during the termination trial, the parent client's trial lawyer should be:

- a. Prepared to submit a trial memorandum in support of the parent client's position;
 - b. Prepared to offer or agree to stipulations regarding the evidence;
 - c. Prepared to offer and stipulate to facts;
 - d. Prepared to examine witnesses both on direct and cross-examination;
 - e. Prepared to lay the proper evidentiary foundations;
 - f. Prepared to make opening and closing statements; and
 - g. Create an adequate record of the case and preserve any issues appropriate for appeal.
6. After the termination-of-parental-rights trial, the parent client's trial lawyer should:
- a. Carefully review the judgment and advise the parent client about potential issues for appeal;
 - b. Advise the parent client in writing of the timelines for filing a notice of appeal; and
 - c. If the parent client's trial lawyer is court appointed, the lawyer shall timely refer the case to the Office of Public Defense Services (OPDS) pursuant to OPDS procedures.

May 25, 2017

Governor Kate Brown
State Capitol Building
900 Court St. NE, Suite 254
Salem, OR 97301

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Dear Governor Brown:

The Oregon State Bar's Appellate Screening Committee has completed its review of the candidates who have applied for appointment to the Oregon Court of Appeals and who agreed to disclose their application materials to the OSB. Pursuant to OSB Bylaws, the Committee has conducted an in-depth review of each application and candidate, including in-person interviews of all candidates who opted to participate in the process.

The Committee's review process is intended to provide you with relevant, reliable, and descriptive information to help inform your appointment decision. As instructed by OSB Bylaws, our recommendation of candidates as "highly qualified" is based on "the statutory requirements of the position, as well as information obtained in the review process, and the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service." A "highly qualified" recommendation is intended to be objective, and the Committee's decision not to identify any specific candidate as "highly qualified" should not be viewed as a finding that the person is unqualified. A "highly qualified" recommendation is intended to reflect the candidate's overall ability to serve on the court.

The Board of Governors is pleased that members from around the state, including a public member, serve on the Appellate Screening Committee. We also deeply appreciate the assistance and leadership of your counsel and your office during this process.

Pursuant to OSB Bylaw 2.703, the Oregon State Bar Board of Governors* has approved the following list of candidates deemed "highly qualified" for appointment to the Oregon Supreme Court:

Allen, Beth A.
Aoyagi, Robyn
Bloom, Benjamin
Bunch, William
Crowther, Joshua
Ferry, David
Hellman, Kristina
Hill, Norman
Hoesly, Cody
James, Bronson D.
Kamins, Jackie
Lannet, Ernest
Mooney, Jodie
Perry, Kenneth
Powers, Steven R.
Quinn, Julene
Runkles-Pearson, PK
Ryan, Melissa
Simrin, Andy
Storey, Shannon
Talcott, Brian

The Board of Governors appreciates that there were many qualified candidates for the positions and that the review process presented a challenging task. According to OSB Bylaw 2.700, the list of the “highly qualified” candidates will be posted on the OSB webpage. Also pursuant to OSB Bylaws, we will gladly respond to any requests from your office as to whether certain other candidates meet a “qualified” standard.

Sincerely,

MICHAEL D. LEVELLE

Michael D. Levelle
OSB President



Per Ramfjord
OSB Board of Governors
Appellate Screening Committee Chair

cc: Ben Souede, General Counsel, Office of the Governor
Misha Isaak, Deputy General Counsel, Office of the Governor


*Please note that BOG member Liani Reeves has abstained from all discussion and votes related to the review of judicial candidates.



CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE: May 25, 2017
TO: PLF Board of Directors
FROM: Betty Lou Morrow and Carol J. Bernick
RE: Paperless Assessment



Beginning with the 2018 assessment cycle, the PLF will be sending all billing and exemption notifications to Oregon attorneys electronically. Up to now, all billing statements, including installment and reminders, were mailed at an estimated cost to the PLF of \$32,000.

The OSB has been paperless for their billing cycle for over five years. Both Rod Wegener (CFO) and Anna Zanolli (CREATIVE SERVICES MANAGER) at the OSB provided helpful information to us as we make this transition.

All Oregon lawyers are required by OSB rules to maintain a current email with the Bar. The PLF will send all its assessment communications to OSB members via that required primary email address.

To date, the PLF has run a test email to identify Bar members with invalid email addresses. Of over 14,000 members, only 53 came back with invalid addresses. We will be forwarding those addresses to the Bar for their follow up.

We have also done, or will do the following to communicate to members about the transition to paperless:

- Include an insert in paper Installment Notices mailed June 6, Sept. 6, and Oct. 6 notifying members about transition to paperless.
- Email Blast to all members notifying of paperless assessment/exemption on July 20 and Oct. 30.
- Notification to members who are subject to OSB 1.11 (ATTACHED)
- Notify Office Administrators of firms larger than 15 attorneys
- Post a notice on the PLF Website starting May 10.
- Send assessment and exemption notice in early November 2017 with options to pay/file exemption on line or print forms and mail in.

Memo To: PLF Board of Directors

May 25, 2017

Page 2

The committee working on this transition is comprised of staff from accounting, IT, communications, and website production. We are building on each other's strengths to have a smooth transition to a paperless assessment cycle.

If you have any thoughts, recommendations, or general input, please feel free to contact me.

CJB/clh

Attachment

**Oregon State Bar
Professional Liability Fund
Financial Statements
4/30/2017**

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

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
4/30/2017**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$11,136,973.76	\$3,108,204.46
Investments at Fair Value	51,728,839.77	55,122,607.96
Assessment Installment Receivable	6,275,116.95	5,858,896.00
Due from Reinsurers	5,090.72	45,149.05
Other Current Assets	98,735.18	101,740.45
Net Fixed Assets	638,387.29	782,837.79
Claim Receivables	27,181.82	18,745.34
Other Long Term Assets	<u>5,950.00</u>	<u>6,400.00</u>
TOTAL ASSETS	<u>\$69,916,275.49</u>	<u>\$65,044,581.05</u>

LIABILITIES AND FUND POSITION

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$75,888.34	\$7,772.83
Due to Reinsurers	\$1,140,861.78	\$356,103.25
PERS Pension Liability	2,804,381.04	2,110,907.00
Liability for Compensated Absences	414,472.04	397,427.82
Liability for Indemnity	13,681,356.20	15,277,628.62
Liability for Claim Expense	14,309,878.30	15,018,268.99
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
Excess Ceding Commission Allocated for Rest of Year	574,179.89	519,485.20
Primary Assessment Allocated for Rest of Year	<u>16,267,037.33</u>	<u>16,247,387.33</u>
Total Liabilities	<u>\$56,568,054.92</u>	<u>\$57,034,981.04</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$11,055,822.96	\$7,916,263.73
Year to Date Net Income (Loss)	<u>2,292,397.61</u>	<u>93,336.28</u>
Net Position	<u>\$13,348,220.57</u>	<u>\$8,009,600.01</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$69,916,275.49</u>	<u>\$65,044,581.05</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
4 Months Ended 4/30/2017**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$8,024,939.00	\$8,108,332.00	\$83,393.00	\$8,014,598.00	\$24,325,000.00
Installment Service Charge	108,579.67	110,000.00	1,420.33	109,095.67	330,000.00
Other Income	40,101.17	37,000.00	(3,101.17)	26,750.00	111,000.00
Investment Return	<u>2,743,187.11</u>	<u>583,728.00</u>	<u>(2,159,459.11)</u>	<u>1,020,794.84</u>	<u>1,751,183.00</u>
TOTAL REVENUE	<u>\$10,916,806.95</u>	<u>\$8,839,060.00</u>	<u>(\$2,077,746.95)</u>	<u>\$9,171,238.51</u>	<u>\$26,517,183.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$6,210,000.00			\$6,795,000.00	
Coverage Opinions	18,471.75			40,090.96	
General Expense	4,032.74			8,845.67	
Less Recoveries & Contributions	(2,633.57)			(18.36)	
Budget for Claims Expense		<u>\$6,358,332.00</u>			<u>\$19,075,000.00</u>
Total Provision For Claims	<u>\$6,229,870.92</u>	<u>\$6,358,332.00</u>	<u>\$128,461.08</u>	<u>\$6,843,918.27</u>	<u>\$19,075,000.00</u>
Expense from Operations:					
Administrative Department	\$854,342.63	\$882,475.00	\$28,132.37	\$787,669.12	\$2,656,039.00
Accounting Department	277,192.23	298,587.00	21,394.77	254,521.99	882,350.00
Loss Prevention Department	623,822.10	739,515.00	115,692.90	679,327.73	2,214,830.00
Claims Department	798,736.76	943,808.00	145,071.24	803,432.15	2,923,689.00
Allocated to Excess Program	<u>(369,031.32)</u>	<u>(361,300.00)</u>	<u>7,731.32</u>	<u>(355,326.64)</u>	<u>(1,083,880.00)</u>
Total Expense from Operations	<u>\$2,185,062.40</u>	<u>\$2,503,085.00</u>	<u>\$318,022.60</u>	<u>\$2,169,624.35</u>	<u>\$7,593,028.00</u>
Depreciation and Amortization	\$53,025.99	\$53,500.00	\$474.01	\$51,812.21	\$160,507.00
Allocated Depreciation	<u>(6,952.68)</u>	<u>(6,784.00)</u>	<u>168.68</u>	<u>(8,087.00)</u>	<u>(20,350.00)</u>
TOTAL EXPENSE	<u>\$8,461,006.63</u>	<u>\$8,908,133.00</u>	<u>\$447,126.37</u>	<u>\$9,057,267.83</u>	<u>\$26,808,185.00</u>
NET POSITION - INCOME (LOSS)	<u>\$2,455,775.32</u>	<u>(\$69,741.00)</u>	<u>(\$2,525,516.32)</u>	<u>\$113,970.68</u>	<u>(\$293,002.00)</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
4 Months Ended 4/30/2017**

EXPENSE:	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
Salaries	\$367,457.54	\$1,365,972.20	\$1,566,216.00	\$200,243.80	\$1,348,874.41	\$4,698,648.00
Benefits and Payroll Taxes	130,862.89	511,530.92	565,781.00	54,250.08	514,178.83	1,683,243.00
Investment Services	0.00	12,375.00	11,000.00	(1,375.00)	10,793.25	44,000.00
Legal Services	1,552.50	4,475.50	3,332.00	(1,143.50)	11,842.50	10,000.00
Financial Audit Services	19,000.00	19,000.00	11,500.00	(7,500.00)	6,000.00	23,000.00
Actuarial Services	0.00	9,937.50	15,000.00	5,062.50	8,395.00	30,000.00
Information Services	2,957.70	11,775.25	23,668.00	11,892.75	9,240.51	71,000.00
Document Scanning Services	0.00	0.00	10,000.00	10,000.00	0.00	30,000.00
Other Professional Services	6,876.63	44,776.58	28,728.00	(16,048.58)	23,443.44	86,175.00
Staff Travel	275.87	1,045.76	9,196.00	8,150.24	4,726.37	27,600.00
Board Travel	269.53	4,198.23	13,832.00	9,633.77	3,541.16	41,500.00
NABRICO	0.00	250.00	0.00	(250.00)	250.00	15,000.00
Training	3,215.05	10,093.45	12,348.00	2,254.55	8,285.42	37,000.00
Rent	44,731.25	177,933.37	178,596.00	662.63	175,303.81	535,783.00
Printing and Supplies	5,977.67	31,813.74	26,332.00	(5,481.74)	24,773.12	79,000.00
Postage and Delivery	2,447.95	9,319.68	8,836.00	(483.68)	9,031.38	26,500.00
Equipment Rent & Maintenance	2,730.57	11,806.48	13,920.00	2,113.52	6,482.27	41,761.00
Telephone	4,738.13	18,149.54	16,832.00	(1,317.54)	16,515.95	50,500.00
L P Programs (less Salary & Benefits)	35,120.67	98,989.15	173,268.00	74,278.85	158,260.55	519,750.00
Defense Panel Training	2,163.59	3,831.91	0.00	(3,831.91)	0.00	98,448.00
Bar Books Grant	16,666.67	66,666.68	66,668.00	1.32	66,666.68	200,000.00
Insurance	3,422.49	17,290.95	14,332.00	(2,958.95)	15,408.53	43,000.00
Library	1,986.93	6,590.09	10,500.00	3,909.91	8,079.54	31,500.00
Subscriptions, Memberships & Other	9,586.31	116,271.74	84,500.00	(31,771.74)	94,858.27	253,500.00
Allocated to Excess Program	(92,257.83)	(369,031.32)	(361,300.00)	7,731.32	(355,326.64)	(1,083,880.00)
TOTAL EXPENSE	<u>\$569,782.11</u>	<u>\$2,185,062.40</u>	<u>\$2,503,085.00</u>	<u>\$318,022.60</u>	<u>\$2,169,624.35</u>	<u>\$7,593,028.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
4 Months Ended 4/30/2017**

	<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>					
Ceding Commission	\$286,659.36	\$265,000.00	(\$21,659.36)	\$259,742.60	\$795,000.00
Profit Commission	0.00	10,000.00	10,000.00	0.00	30,000.00
Installment Service Charge	49,306.00	45,000.00	(4,306.00)	44,760.00	45,000.00
Investment Return	(97,639.73)	43,936.00	141,575.73	63,777.04	131,809.00
TOTAL REVENUE	<u>\$238,325.63</u>	<u>\$363,936.00</u>	<u>\$125,610.37</u>	<u>\$368,279.64</u>	<u>\$1,001,809.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$394,750.66	\$400,628.00	\$5,877.34	\$380,827.04	\$1,201,880.00
Allocated Depreciation	\$6,952.68	\$5,732.00	(\$1,220.68)	\$8,087.00	\$17,200.00
NET POSITION - INCOME (LOSS)	<u>(\$163,377.71)</u>	<u>(\$42,424.00)</u>	<u>\$120,953.71</u>	<u>(\$20,634.40)</u>	<u>(\$217,271.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
4 Months Ended 4/30/2017**

	<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	\$50,883.25	\$203,533.00	\$198,572.00	(\$4,961.00)	\$196,642.32	\$595,720.00
Benefits and Payroll Taxes	16,824.16	67,296.64	66,720.00	(576.64)	64,267.00	200,165.00
Investment Services	0.00	0.00	832.00	832.00	456.75	2,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	24,550.42	98,201.68	96,000.00	(2,201.68)	94,417.32	287,995.00
Reinsurance Placement & Travel	2,007.68	5,440.79	6,668.00	1,227.21	1,317.04	20,000.00
Training	0.00	0.00	1,668.00	1,668.00	0.00	5,000.00
Printing and Mailing	0.00	3,549.25	3,500.00	(49.25)	3,644.76	10,500.00
Program Promotion	0.00	3,790.00	6,000.00	2,210.00	4,585.00	18,000.00
Other Professional Services	2,523.40	11,491.50	5,668.00	(5,823.50)	1,738.00	17,000.00
Software Development	0.00	1,447.80	15,000.00	13,552.20	13,758.85	45,000.00
TOTAL EXPENSE	<u>\$96,788.91</u>	<u>\$394,750.66</u>	<u>\$400,628.00</u>	<u>\$5,877.34</u>	<u>\$380,827.04</u>	<u>\$1,201,880.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
4 Months Ended 4/30/2017**

	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	\$5,654.80	\$23,874.15	\$16,174.14	\$45,246.49
Intermediate Term Bond Funds	30,476.39	127,022.11	25,170.99	104,819.25
Domestic Common Stock Funds	0.00	52,711.36	0.00	43,473.98
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	34,457.51	0.00	43,614.73
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>28,926.39</u>	<u>0.00</u>	<u>52,376.43</u>
Total Dividends and Interest	<u>\$36,131.19</u>	<u>\$266,991.52</u>	<u>\$41,345.13</u>	<u>\$289,530.88</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$3,997.78	\$6.29	(\$10,394.03)	\$26,415.91
Intermediate Term Bond Funds	74,489.35	161,437.93	50,233.86	159,126.39
Domestic Common Stock Funds	123,883.25	717,141.97	59,741.36	105,278.92
International Equity Fund	286,508.86	1,151,447.03	186,627.18	(56,687.24)
Real Estate	0.00	21,753.24	0.00	63,171.24
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>9,607.66</u>	<u>326,769.40</u>	<u>165,333.42</u>	<u>497,735.78</u>
Total Gain (Loss) in Fair Value	<u>\$498,486.90</u>	<u>\$2,378,555.86</u>	<u>\$451,541.79</u>	<u>\$795,041.00</u>
TOTAL RETURN	<u>\$534,618.09</u>	<u>\$2,645,547.38</u>	<u>\$492,886.92</u>	<u>\$1,084,571.88</u>
Portions Allocated to Excess Program:				
Dividends and Interest	(\$1,448.86)	(\$11,489.10)	\$864.11	\$9,468.59
Gain (Loss) in Fair Value	<u>(19,989.32)</u>	<u>(86,150.63)</u>	<u>9,437.22</u>	<u>54,308.45</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>(\$21,438.18)</u>	<u>(\$97,639.73)</u>	<u>\$10,301.33</u>	<u>\$63,777.04</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
4/30/2017**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$4,391,296.01	\$2,134,282.07
Assessment Installment Receivable	838,902.95	618,303.00
Due from Reinsurers	5,090.72	45,149.05
Other Assets	5,241.29	0.00
Investments at Fair Value	<u>(1,576,654.75)</u>	<u>289,606.05</u>
TOTAL ASSETS	<u>\$3,663,876.22</u>	<u>\$3,087,340.17</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$0.00	\$1,888.37
Due to Primary Fund	\$7,248.97	\$1,026.85
Due to Reinsurers	1,140,861.78	356,103.25
Ceding Commission Allocated for Remainder of Year	<u>574,179.89</u>	<u>519,485.20</u>
Total Liabilities	<u>\$1,722,290.64</u>	<u>\$878,503.67</u>
Net Position		
Net Position (Deficit) Beginning of Year	\$2,104,963.29	\$2,229,470.90
Year to Date Net Income (Loss)	<u>(163,377.71)</u>	<u>(20,634.40)</u>
Total Net Position	<u>\$1,941,585.58</u>	<u>\$2,208,836.50</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$3,663,876.22</u>	<u>\$3,087,340.17</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
4/30/2017**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$6,745,677.75	\$973,922.39
Investments at Fair Value	53,305,494.52	54,833,001.91
Assessment Installment Receivable	5,436,214.00	5,240,593.00
Due From Excess Fund	7,248.97	1,026.85
Other Current Assets	86,244.92	100,713.60
Net Fixed Assets	638,387.29	782,837.79
Claim Receivables	27,181.82	18,745.34
Other Long Term Assets	<u>5,950.00</u>	<u>6,400.00</u>
TOTAL ASSETS	<u>\$66,252,399.27</u>	<u>\$61,957,240.88</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$68,639.37	\$4,857.61
PERS Pension Liability	2,804,381.04	2,110,907.00
Liability for Compensated Absences	414,472.04	397,427.82
Liability for Indemnity	13,681,356.20	15,277,628.62
Liability for Claim Expense	14,309,878.30	15,018,268.99
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
Assessment and Installment Service Charge Allocated for Remainder of Year	<u>16,267,037.33</u>	<u>16,247,387.33</u>
Total Liabilities	<u>\$54,845,764.28</u>	<u>\$56,156,477.37</u>
Net Position		
Net Position (Deficit) Beginning of the Year	\$8,950,859.67	\$5,686,792.83
Year to Date Net Income (Loss)	<u>2,455,775.32</u>	<u>113,970.68</u>
Total Net Position	<u>\$11,406,634.99</u>	<u>\$5,800,763.51</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$66,252,399.27</u>	<u>\$61,957,240.88</u>

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 23, 2017
Memo Date: June 9, 2017
From: Kaori Tanabe Eder, Oregon New Lawyers Division Chair
Re: ONLD Report

The Region Seven Representative resigned from the Executive Committee in February. After publicizing the opening, and receiving and reviewing letters of interest, the Executive Committee selected Kelsey Herman as the new Region Seven Representative.

The Executive Committee met in April in Portland. As part of that meeting, they listened to presentations by the two candidates for the ABA YLD position. The Executive Committee discussed and approved sponsoring a Casino Night at the August OLIO retreat.

The Member Services & Satisfaction Subcommittee held a social at Mothers in Portland in April, at Jackknife in May, at Oregon City Brewing Co. with Clack. County Bar in May, and in Corvallis at DeMaggio's in June.

The Continuing Legal Education Subcommittee held a Brown Bag CLE in April and May on Mediation Advocacy and Avoiding Ethics Violations. They held the Super Saturday CLE on June 3. Forty new lawyers and six law students were able to choose from 14 different topics over the course of the day, to earn up to six CLE credits on topics pertinent to lawyers starting out in their practice, all for a very low fee.

The Pro Bono Committee held a Wills for Heroes event for Clackamas County First Responders on April 15.

Jaimie Fender has organized a CLE series with the Military & Veterans Law Section. The first CLE was co-sponsored with the Consumer Law Section and focused on Defending Veterans from Financial Peril on April 18. The second CLE in the series is set for June 20, and is focused on Women Service Members and Veterans. It is also co-sponsored by the Mary Leonard Chapter of OWLS.

The ONLD launched the online "Practice Drive," a downloadable file with over 600 documents designed to help a new lawyer start their own form file.

The reception for the swearing-in was successfully hosted by the ONLD.

Executive Committee members represented the ONLD at both the ACDI retreat and on the Loan Repayment Assistance Program Advisory Committee.

The June meeting of the ONLD will be in Bend on June 10, and includes a CLE/Reception for local attorneys, and a public service project in Redmond.

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: June 23, 2017
From: Helen M. Hirschbiel, CEO / Executive Director
Re: Operations and Activities Report

OSB Programs and Operations

Department	
<p>Accounting & Finance/ Facilities/IT (Rod Wegener)</p>	<p><i>Accounting</i></p> <ul style="list-style-type: none"> ▪ After 21 years Cheryl Dexter is retiring in her role in the bar’s accounts receivable position. She accounted for most of the bar’s annual revenue including processing or monitoring the 19,500 member fee payments and 1,000 member status adjustments each member fee season. <p><i>Facilities</i></p> <ul style="list-style-type: none"> ▪ The Facilities Coordinator position is vacant. On June 1 the newest tenant, Pavilion Construction, moved into the vacant 6,015 s.f. on the first floor of the bar center. The building again is 100% occupied. However, two smaller space leases expire December 31. The building is almost ten years old and beginning to show some wear as the bar is incurring first-time costs on numerous maintenance – fortunately nothing major yet. <p><i>Information Technology</i></p> <ul style="list-style-type: none"> ▪ Work continues on the Aptify system including bar staff developing a program to improve the e-business solutions of the software.
<p>Communications & Public Services (includes RIS and Creative Services) (Kay Pulju)</p>	<p><i>Communications</i></p> <ul style="list-style-type: none"> ▪ With the retirement of Paul Nickell, Julie Hankin has been promoted to Editor for the OSB <i>Bulletin</i>. Recent issues have featured articles on immigration law, lawyer dress codes and the beginning of a multi-issue focus on the future of the legal profession. ▪ Multiple surveys for bar sections and groups are underway or recently completed; planning for the 2017 Economic Survey is ongoing, with a tentative completion date of August 31. ▪ A redesign of the public pages of the OSB website has begun, with goals of simplifying navigation and highlighting new video offerings as part of ongoing search engine optimization efforts. ▪ Nominations for the 2017 OSB awards are due on June 14; the annual luncheon will be held on October 25 at the Sentinel Hotel in Portland. <p><i>Creative Services</i></p> <ul style="list-style-type: none"> ▪ Migration to the bar’s WordPress platform continues: The RELU and Elder Law section sites have been transferred, the Corporate Counsel site was approved for transfer in early June week, and the ETU and Cannabis Law draft sites are in review by the sections. Staff have recently trained six new section volunteers in how to update their own websites on the new user-friendly platform.

	<ul style="list-style-type: none"> ▪ Staff have taken on a publishing role for the OSB <i>Bulletin</i>, streamlining workflow processes between editorial, design and advertising and establishing new relationships with the advertising agency and printer. ▪ A major focus this quarter is creation of a web user interface for the new membership database system. <p><i>Public Service</i></p> <ul style="list-style-type: none"> ▪ The Legal Q&A series of public information videos now has 66 finished videos posted on the public pages of the bar’s website. Most of the recently completed videos feature immigration law, with most videos available in both English and Spanish, plus three in Vietnamese. ▪ A new edition of the handbook “Legal Information for Older Adults” is in the final editing stages. Co-sponsored by the RIS program and the Oregon Department of Human Services, the handbook will be translated into five foreign languages and multiple copies will be donated to public libraries across the state. The handbook will also be available as a pdf on the bar’s website and as a print-on-demand product at the cost of printing. <p><i>Referral & Information Services</i></p> <ul style="list-style-type: none"> ▪ Referral & Information Services (RIS) staff is preparing for the annual Lawyer Referral Service (LRS) renewal campaign. Approximately 550 attorneys will receive registration materials through the mail in early July with a return deadline in mid-August. The new program year begins on September 1, and will be the fifth full year under the percentage fee model. Registration fees typically result in \$115,000 in revenue for the bar. ▪ LRS revenue is on track to meet budget projections for 2017. Current percentage fee revenue is at \$250,000 as of April 30th, which is 33% of the budgeted revenue with eight months remaining in the fiscal year. Registration revenue is at \$8,160, which is typical prior to the yearly renewal campaign. Total revenue generated since percentage fee implementation in October of 2012 is \$3,103,637. This revenue represents over \$21,700,000 in legal fees LRS attorneys have billed and collected from LRS-referred cases over the past four years. ▪ RIS is continuing its marketing campaign, focusing on Google Ads and Craigslist in conjunction with the new “Legal Q&A” video series. The program is also co-sponsoring the new edition of “Legal Issues for Older Adults” as part of its marketing strategy to increase referral requests for estate planning and elder law. ▪ RIS is currently seeking two new employees due to staff turnover.
<p>CLE Seminars (Karen Lee)</p>	<ul style="list-style-type: none"> ▪ Continuing to work with Legal Publications on the e-commerce portion of the new AMS. ▪ Tested a series of “Lunch and Learn” in-person and webcast programs from March through May. Initial results are positive (net income and recorded programs for the on-demand catalog). It’s a good format for specialized topics that would not otherwise fill a half- or full-day seminar. ▪ The NW Securities Institute was held as a one-day event with breakout sessions,

	<p>instead of one and a half-days of single sessions, as it had been for the previous 36 institutes. This change in format was the result of surveying the Oregon and Washington cosponsoring sections and asking members what changes would motivate them to attend. Attendance numbers in Oregon were 93, compared to 70 in 2015 (the institute location alternates with Washington). Anecdotal comments showed a preference for the one-day format.</p>
<p>General Counsel (includes CAO and MCLE) (Amber Hollister)</p>	<p><i>General Counsel</i></p> <ul style="list-style-type: none"> ▪ General Counsel is rolling out a new Ethics Helpline call cue, which will have a dedicated phone number (503.431.6475), and will help streamline General Counsel’s efforts to respond to members’ ethics questions. ▪ General Counsel and Client Assistance Office Staff attended two days of ethics and client protection programming at the ABA Center for Professional Responsibility National Conference. <p><i>CAO</i></p> <ul style="list-style-type: none"> ▪ The Client Assistance Office has already received over 850 new complaints this year. ▪ The Client Assistance Office is recruiting to hire a new assistant general counsel to replace Troy Wood, who was promoted to Admissions Manager last month. <p><i>MCLE Operations</i></p> <ul style="list-style-type: none"> ▪ The MCLE Committee is considering the possibility of recommending (1) a stand-alone MCLE credit requirement for mental health/substance use disorder programming; and (2) combining the child abuse reporting and elder abuse reporting MCLE credit requirements into a single one-credit requirement. ▪ The proposed amendment to MCLE Rule 5.12, which will allow members to claim Category II credit for serving on the Oregon Council on Court Procedures, is on the agenda for the Supreme Court’s June 6, 2017, public meeting. ▪ On May 30, 2017, the Supreme Court suspended 21 members for failure to comply with the MCLE Rules.
<p>Human Resources (Christine Ford)</p>	<ul style="list-style-type: none"> ▪ Completed the ACA compliance reporting to the IRS and to staff. ▪ Formed a committee to evaluate the bar’s preparedness in the event of an emergency such as an extended power outage. ▪ With General Counsel, began evaluating data breach – cyber liability insurance. ▪ Assisted the BBX with their recommendation to fill the Admissions Manager opening. ▪ Developed an orientation for new managers. ▪ Met with consultants and Diversity & Inclusion to begin formulating a cultural assessment survey.
<p>Legal Publications (Linda Kruschke)</p>	<ul style="list-style-type: none"> ▪ The following have been posted to BarBooks™ since January 1, 2017: <ul style="list-style-type: none"> ▪ All chapters and final PDF of <i>Elder Law</i>. ▪ 9 chapters of <i>Juvenile Law: Dependency</i>. ▪ 17 chapters of <i>Advising Oregon Businesses</i>, vol. 1&2. ▪ 6 chapters of <i>Administering Trusts in Oregon</i>.

	<ul style="list-style-type: none"> ▪ 1 chapter of the all-new <i>Rights of Veterans and Military Servicemembers</i>. ▪ 2 new or revised <i>Oregon Formal Ethics Opinions</i>. ▪ The 2016 supplement PDF and forms for <i>Uniform Criminal Jury Instructions</i>. ▪ 3 revised <i>Uniform Civil Jury Instructions</i>, plus the 2016 supplement PDF and forms. ▪ We printed and shipped orders for <i>Damages</i> revision in December: <ul style="list-style-type: none"> ▪ Revenue to date: \$25,000 ▪ Budget: \$38,500 ▪ This book just received the ACLEA Award of Outstanding Achievement. ▪ We printed and shipped orders for a new product titled <i>Joint Oregon & Washington Cannabis Codebook</i> in December and January: <ul style="list-style-type: none"> ▪ Revenue to date: \$20,520 ▪ Budget (for Misc. Revenue): \$7,225 ▪ We printed and shipped orders for <i>Elder Law</i> in April and May: <ul style="list-style-type: none"> ▪ Revenue to date: \$21,457 ▪ Budget: \$1,150 – budget is low because this book was originally scheduled to release in 2016. ▪ We printed and shipped supplements for both jury instructions in February. Both are slightly under budget on revenue. ▪ Titles scheduled for release in 2017 are: <ul style="list-style-type: none"> ▪ <i>Juvenile Law: Dependency</i> ▪ <i>Administering Trusts in Oregon</i> ▪ <i>Oregon Trust and Probate Code</i> ▪ <i>Advising Oregon Businesses</i> vol. 1&2 ▪ <i>Rights of Veterans and Military Servicemembers</i> ▪ <i>ORPCs Annotated</i> supplement
<p>Legal Services (Judith Baker) (includes LRAP, Pro Bono and an OLF report)</p>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> ▪ The LSP released \$69,000 in unclaimed funds to the legal aid programs based on BOG approval in April. The LSP also released the remaining \$300,000 General Fund dollars to legal aid that were being held by the program. ▪ The LSP Committee is traveling to Medford to meet with the Center for Nonprofit Legal Services Program which is the legal aid office in Jackson County. The goal is to provide an opportunity for the committee to interact with a legal aid office allowing them a greater understanding of how a legal aid office operates. ▪ Staff is making updates to the LSP Standards and Guidelines and starting a review of the accountability process. ▪ The Willamette School of Law Clinical Law Program was approved as an OSB certified program. The Directory of Pro Bono Programs has been updated on the website. <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> ▪ The OLF has approved funding for a legal needs study. Staff is working with Portland State University in putting together a survey tool and method of

	<p>gathering information.</p> <ul style="list-style-type: none"> ▪ The OLF board approved the grantees that will receive funds from the Bank of America Settlement. Staff is working on grant agreements and measurable outcomes. ▪ The OLF anticipates an increase in interest rates and is formulating a strategy to increase bank IOLTA account interest rates. ▪ There is an OLF CLE and reception at the Oregon Historical Society on June 15, 2017.
<p>Media Relations & New Lawyer Mentoring Program (Kateri Walsh)</p>	<p><i>New Lawyer Mentoring Program</i></p> <ul style="list-style-type: none"> ▪ Staff is processing NLMP completion packets that continue to come in from the program’s 5/31/17 completion deadline. Certifying completions and working with non-compliant new lawyers on repairing their status. ▪ We have recently announced the new Law Firm Certification policy which will allow firms with well-established in-house mentoring programs to streamline the administrative requirements for the new associates’ participation in the NLMP. We are finalizing the structure for staff to review, approve and process those certifications. We expect the first applications to arrive during summer. ▪ Staff will be working closely with Kay on the evaluation of services to new lawyers. ▪ We continue to manage a seamless transition of the program into the Member Services Department, and into a closer working alignment with the ONLD. ▪ Working to enroll and educate new members sworn in since the April ceremony about the NLMP. Working to find mentors as new members continue to enroll. We currently have more than 800 bar members working through the program (410 matched pairs), and 67 new lawyers awaiting a mentor match. ▪ Instituting some new mentor recruitment efforts based on the needs we see from our newest class of participants. We are particularly in need of mentors in the areas of business law, family law, immigration, and in-house counsel. ▪ Continuing to establish partnership strategies with several specialty and local bars interested in mentoring support services. ▪ Actively seeking our first participants to complete a “Mentoring through Pro Bono” program. We hope to get several cases handled over the next six to nine months, and then partner with statewide pro bono programs to offer this more assertively as a way to structure a mentoring year. ▪ Providing ongoing staff support to the Oregon Bench Bar Commission on Professionalism. <p><i>Media Relations & Public Outreach</i></p> <ul style="list-style-type: none"> ▪ Staffing and advising a committee of the Bar Press Broadcasters Council that has drafted proposed amendments to UTCR 3.180, the trial court rule addressing cameras and other electronic video equipment in courtrooms. The amendments seek to clarify vague language, and then modernize the rule to account for technologies such as cell phone cameras and laptops, and for emerging media vehicles like Twitter. The Council finalized its proposal this fall, and it was approved by the UTCR Committee in October. However, it was withdrawn by the Council after some judges raised concerns during the public comments

	<p>period. Kateri is organizing a process for further input the courts, and will provide guidance on a likely new proposal in the fall.</p> <ul style="list-style-type: none"> ▪ Kateri will serve as faculty for the New Judge Orientation on June 22, providing guidance on media access to the courts, and management of high profile cases. ▪ The OSB hosted the 2017 Building a Culture of Dialogue gathering in March. This is a town-hall-style facilitated discussion among judges, prosecutors, defense attorneys, law enforcement and print and broadcast media about the tensions and conflicts in the coverage of high-profile cases. ▪ Entering discussions about video-taped version of the annual “Building a Culture of Dialogue” program hosted by the Bar Press Broadcasters Council. The program has resisted cameras in the past, fearing it would chill the very robust discussion. There is energy around trying it this year, in partnership with KGW TV. Planning is under way with OSB Media Relations providing key leadership. ▪ Providing informal guidance to Oregon courts and judges on media issues and questions as they arise. ▪ Staff responds daily to requests from journalists seeking bar members to serve as expert sources or provide education/explanation about specific areas of the law. ▪ Managing approximately 8-10 CAO and/or DCO cases being actively tracked by media.
<p>Member Services (Dani Edwards)</p>	<ul style="list-style-type: none"> ▪ Recruitment of lawyer and non-lawyer volunteers is underway. Approximately 250 candidates are selected each fall for appointment to the various bar committees, councils, and boards. More information is available for lawyers at http://www.osbar.org/volunteer/volunteeropportunities.html and for non-lawyers at http://www.osbar.org/volunteer/publicmember.html. ▪ The Loan Repayment Assistance Program (LRAP) continues to meet the goal of supporting public service attorneys by assisting them in the repayment of their student debt. This year, 14 of the 36 public service attorneys who applied were selected, receiving forgivable loans ranging from \$3,000 to \$7,500. All 14 attorneys showed a dedicated commitment to public service. They work in a variety of settings, such as the Southern Oregon Public Defenders Office, Klamath County Deputy District Attorney’s office, Youth Rights Justice, and the Oregon Law Center. ▪ The New Lawyer Mentoring Program has just undergone a staff review, with options presented to the BOG in May. The NLMP will be included among the topics in the new lawyer survey to be conducted this fall. New lawyers continue to be matched with mentors to complete the Program. Staff will soon introduce a formal process through which organizations can become certified Mentoring Providers, allowing firms, government agencies, and other employers who wish to create their own mentoring program to do so, provided their program meets the goals and procedures required.
<p>Public Affairs (Susan Grabe)</p>	<ul style="list-style-type: none"> ▪ <u>Day at the Capitol</u> – Public Affairs held their biannual Day at the Capitol on May 23, 2017. Fifty bar members took time out of their schedules to meet with 23 legislators throughout the day to discuss the Bar’s legislative priorities: funding

	<p>for the court system, legal aid, and indigent defense, as well as the Bar’s law improvement proposals.</p> <ul style="list-style-type: none"> ▪ <u>ABA Day in Washington</u> – OSB President Michael Levelle and a delegation of bar members attended the ABA Lobby Day in Washington DC from April 25th – 27th to meet with the OR congressional delegation. ▪ <u>OSB Sponsored Bills</u> – All OSB sponsored bills except for three have passed and been signed by the governor. SB 491 regarding OSB Discipline change and SB 492 regarding Speeding up the Modification process in Family Law cases are waiting for a vote on the House floor. HB 2609 regarding an update to the Nonprofit statutes is dead and will be the subject of an interim workgroup. ▪ <u>Appellate Screening Interviews</u> – The Appellate Screening Committee conducted interviews for the current Court of Appeals vacancies. 30 applicants applied for the position and the committee interviewed 27 of them over the course of 3 days (one rescinded her application and two were previously deemed “highly qualified” during the Supreme Court interviews so they were forwarded to the Governor’s office as “highly qualified” again. ▪ <u>Performance Standards</u> – Public Affairs is staffing two Juvenile Dependency Performance Standards workgroups that came out of SB 222 re the Governor’s Dependency Task Force in 2015. One task force will address child parent representation standards in dependency cases; the other, will address government agency standards when representing DHS in dependency cases. ▪ <u>Interim Workgroups</u> – Public Affairs staff continue to engage in outreach and involvement with numerous interim workgroups through the Oregon Law Commission (Probate Modernization, Criminal Appeals, Election Law Update, Uniform Collateral Consequences of Conviction Act and Juvenile Records). Other legislative groups through the legislature include a rewrite of the advance directive form, guardianship, administrative hearings, due process and cost shifting as well as changes to the parenting time and child custody statutes.
<p>Regulatory Services (Dawn Evans)</p>	<p><i>Admissions Office</i></p> <ul style="list-style-type: none"> ▪ Troy Wood, most recently an Assistant General Counsel in the Client Assistance Office, has begun working as the Admissions Manager. Troy brings a breadth of experience as a lawyer and business person that will enable him to manage the varied responsibilities of the position, including the administration of the two bar examinations annually and supporting the work of the Board of Bar Examinations in its processing of the applications of all persons seeking admission to the Oregon State Bar. ▪ The Oregon State Bar’s first Uniform Bar Examination will be given in July. It is anticipated that approximately 500 test takers will participate. <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none"> ▪ Courtney Dippel began working as an Assistant Disciplinary Counsel on June 12th. Courtney is an experienced former Disciplinary Board member and has also served on the Bar’s Client Security Fund Committee. Courtney is an experienced civil litigator and comes to the bar from Folawn Alterman & Richardson in Portland.

Executive Director’s Activities November 16 to June 13, 2017

Date	Event
11/17-11/19	BOG Meetings at Timberline Lodge
11/21/16	Interviews for Diversity & Inclusion Director; ACDI Meeting at Lewis & Clark
11/28/16	Meeting with 2017 CSF Chair
11/29/16	Coffee with Paul Kim; CEJ Board Meeting
11/30/16	Coffee with Bob Cymbala
12/1/16	ACDI Policy Meeting; Meeting with Chief Justice; Dahlin Investiture
12/2/16	Breakfast with John Mansfield; Innovations TF Committee Meeting
12/5/16	Lunch with Carol Bernick
12/6/16	Legal Needs Study; Meeting with Paul Kim
12/7/16	Breakfast with Tim Johnson; Meeting with Pat; Schwabe Holiday Party
12/8/16	PLF Orientation
12/9/16	PLF Board Meeting & Annual Dinner
12/10/16	Legal Ethics Committee Meeting
12/13/16	Lunch with Charles Wilhoite
12/14/16	Coffee with Martha Izenson; Oregon Supreme Court Public Meeting
12/15/16	Awards Ceremony
12/16/16	Professionalism Commission meeting
12/19/16	Futures Innovation Incubator/ Accelerator Program Subcommittee Meeting
12/20/16	Lunch with Samrach Sar; Meeting with Courtney Dippel (2017 CSF Secretary)
12/21/16	Breakfast meeting with bar executives; Lunch with Tom Kranovich
12/29/16	Breakfast with Rich Spier
1/3/17	Breakfast with Peggy Nagae; Lunch with Jonathan Puente
1/4/17	Meeting with Michael Levelle re: D&I vision; Supreme Court Public Meeting
1/5/17	Conference Call with Mark Engle; BOG/MBA Reception
1/6/17	BOG meetings; OSB Employee Luncheon
1/7/17	Client Security Fund meeting
1/9/17	Conference Call Jennifer Lewin; Innovations TF meeting; ACDI Meeting
1/11/17	ATJ CLE re: Oregon Tribes; Futures TF Incubator/ Accelerator Program Subcmte
1/12/17	Conf. call Danny Lang; Scoping Group mtg; Perceptions of Justice Listening session
1/13/17	UPL meeting
2/1-2/4	ABA Mid-Year Meeting
2/7/17	Lunch with LEC Chair, Ankur Doshi; Supreme Court Public Meeting
2/8/17	Meeting with LDP
2/9-2/10	Meeting with Chief Justice; Lunch with Courts, BOG meetings & reception Salem
2/11/17	Legal Ethics Committee meeting
2/13/17	Lunch with Carol Bernick; Aptify meeting with Houman
2/14/17	OSCCIF Workforce Development Committee
2/15/17	Breakfast with bar executives; Listening session

2/16/17	Coffee with Traci Rossi
2/17/17	Global D&I Benchmarks workshop; Oregon Hispanic Bar Awards Dinner
2/21/17	Coffee with Lisa Amato; CEJ Lunch; Meeting with Darien Fleming
2/22/17	Futures Innovation Cmte -- Incubator/ Accelerator Program Subcmte Meeting
2/23/17	Innovations Committee conference call
2/27-3/3	White Men & Allies convention – Tucson, AZ
3/3/17	Senior Citizen Council Dinner
3/4/17	CSF Committee meeting
3/6/17	Lunch with Carol Bernick; Paraprofessionals Work Group; Alt Services Workgroup
3/8/17	Lunch with Eddie Medina
3/9/17	ABA PIC teleconference; Scoping Group
3/10/17	Lunch with Laura Aust; OWLs Awards Dinner
3/13/17	Lunch w/ K&L Gates; Coffee with Liani Reeves; Meeting w/ Michael Levelle
3/14/17	SFLAC Conference call; Women In the Law
3/15/17	Breakfast w/ Rich Spier; ABA CPR PIC conference call; lunch at Landye Bennett
3/16/17	SFLAC Family Law Conference
3/17/17	BOG meetings; 50-year lunch; OR Supreme Court Council on Inclusion & Fairness
3/18/17	ACDI Retreat
3/20/17	Incubator/Accelerator Subcmte Meeting; FTF Reg. Committee meeting; ACDI mtg
3/21/17	Coffee with Kelly Simon; Supreme Court Public mtg; Honoring Michael Levelle
3/22/17	CEJ Board Meeting
3/23/17	Innovations Committee conference call
3/24/17	Lunch with Samrach
3/28-4/1	Western States Bar Conference in Maui, HI
4/6/17	Danny Santos Retirement; Litigation Department Spring Party
4/7/17	Incubator/Accelerator Subcommittee. Follow Up
4/11/17	Coffee w/ Cheryl Hodgson; DAC meeting; Self Navigation WG; Lindsay Hart Lunch
4/12/17	CSF Rules meeting; Meeting at PERS
4/13/17	Coffee w/ Jollee Patterson; BOG/PLF Implicit Bias & Dinner
4/14/17	BOG meetings (w/ PLF)
4/17/17	DB Conference; ACDI meeting; Meeting w/ Jollee
4/18/17	OMLA Luncheon
4/19/17	Breakfast w/ E.D.s
4/20/17	Women's Leadership Alliance of Greater Portland
4/21/17	Professionalism Commission meeting / RELU meeting
4/26/17	Breakfast w/ R. Spier / CLP Legal Citizen Dinner
4/27/17	Bkfst w/ John Mansfield / Innovations Comm conf call / Guardian Partners Social
4/29/17	LEC meeting
5/1/17	Breakfast w/ Peggy & Michael
5/2/17	Law Firm Lunch at Tonkon Torp / Supreme Court Public Meeting
5/3/17	Breakfast w/ Traci Rossi / Lunch with Carol Bernick / CEJ Board mtg

5/4/17	Law Firm Lunch at Black Helterline
5/5/17	HMCC Scholarship Lunch
5/6/17	CSF Committee meeting
5/8-5/9	ASAE Excellence in Board Governance – Scottsdale, AZ
5/10/17	Corporate Counsel meeting/Incubator Subcomm. mtg/Meet with Arden Olsen
5/11/17	Law Firm Lunch at Lane Powell / Incubator Subcommittee meeting
5/12/17	BOG meeting & Alumni Dinner
5/30/17	Law Firm Lunch at Farleigh Wada Witt
5/31/17	Lunch with Andrew Schpak / PLF Investment comm. mtg / Governor’s Reception
6/1/17	Coffee w/ Liani Reeves
6/2/17	OLIO Committee meeting / Torres Investiture
6/5/17	Lunch w/ Richard Vangelisti / Call CSF client
6/6/17	Breakfast w/ Laura Aust / Diversity Advisory Comm. / Lunch with Carol Bernick
6/7/17	Incubator Subcommittee meeting / Flynn Investiture / Commons Law Launch
6/8/17	OSB Delegation to Cuba meeting
6/9-6/10	PLF BOD meeting, Cannon Beach
6/12/17	Breakfast w/ Lisa Amato re: L&E
6/13/17	Speak at Queen’s Bench Luncheon
6/14/17	Labor & Employment meeting
6/15/17	Access to Justice Reception
6/17/17	LEC meeting in Medford (White City)
6/20-6/22	Local Bar Tour w/ Michael Levelle – Eastern Oregon
6/22-6/23	BOG in Pendleton

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 23, 2017
Memo Date: June 13, 2017
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 April 2017, the Supreme Court took the following action in disciplinary matters:

- Issued an order in *In re Shane A. Reed*, accepting this Jacksonville lawyer's stipulation to a 1-year suspension, all but 6 months stayed, 2-year probation.
- Accepted the Form B resignation from Tigard lawyer *Nick Merrill*.
- Issued an order transferring Portland lawyer *Matthew Curtis Lackey* to involuntary inactive status pursuant to BR 3.2.

b. Disciplinary Board

No appeal was filed in the following cases and the trial panel opinions are now final:

- *In re Jonathan G. Basham* of Bend (1-year suspension).
- *In re Paul Lars Henderson, III* of Medford (4-month suspension).
- *In re Travis W. Huisman* of Regent, North Dakota (18-month suspension).
- *In re Kathleen Y. Rinks* of Portland (disbarment).

One Disciplinary Board trial panel opinion has been issued since April 2017:

- A trial panel recently issued an opinion in *In re Kevin Carolan* of Bend (dismissed).

In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: *In re Brendan Enright* of Portland (60-day suspension), *In re Dwight L. Faulhaber* of Eugene (30-day suspension), *In re J. Kevin Hunt* of Oregon City (90-day suspension), *In re Thomas P. McElroy* of Portland (reprimand), *In re Willard Merkel* (30-day suspension, all stayed, 1-year probation), and *In re Jessica S. Cain* of Newberg (reprimand).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Ryan M. Springer* of South Jordan, Utah, *In re Carol J. Fredrick* of McMinnville, and *In re Jennifer Barrett* of Roseburg.

2. Decisions Pending.

The following matters are pending before the Supreme Court:

In re Scott W. McGraw – 18-month suspension; accused appealed; oral argument September 21, 2017

In re James R. Kirchoff – 2-year suspension; accused appealed; oral argument May 11, 2017

In re Samuel A. Ramirez – 1-year suspension; accused appealed; awaiting briefs

In re Sandy N. Webb – 2-year suspension; OSB appealed; awaiting briefs

In re Gary B. Bertoni – 1-year suspension; accused appealed; awaiting briefs

In re Dana C. Heinzelman – stipulation approval pending

In re Bryce R. Jessen – Form B pending

In re Lisa D. T. Klemp – disbarment; accused appealed; awaiting briefs

In re Steven L. Maurer – dismissed; OSB appealed; awaiting briefs

The following matters are under advisement before a trial panel of the Disciplinary Board:

In re Dale Maximiliano Roller – April 10-11, 2017; TPO due June 14

In re Robert G. Klahn – May 31-June 1, 2017

3. Trials.

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

In re Robert C. Williamson – June 26-28, 2017

In re Michael D. Hoffman – July 19-21, 2017

In re Tomas Finnegan Ryan – July 27-28, 2017

In re David R. Ambrose – August 28-29, 2017

In re Jason C. Hawes – August 30-31, 2017

In re Matthew A. Wilson – September 6, 2017

In re Kyung Joon Hahm – September 18-19, 2017

In re Stefanie L. Burke – September 21-22, 2017

4. Diversions.

The SPRB approved the following diversion agreements since April 2017:

- In re Amanda Ruth Teters – June 1, 2017*
- In re Joseph G. Schwarte – July 1, 2017*

5. Admonitions.

The SPRB issued 5 letter of admonitions in April 2017. The outcome in these matters is as follows:

- 5 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 2017, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

MONTH	2013	2014	2015	2016	2017
January	21/21	29/31	18/19	30/30	17/17
February	23/23	24/25	28/28	38/38	49/49
March	30/30	41/45	22/22	28/30	19/20
April	42/43	45/47	17/17	26/26	22/22
May	37/37	23/24	24/24	27/30	48/51
June	31/31	23/24	31/31	38/39	
July	28/30	43/44	27/27	41/42	
August	33/36	19/21	28/29	28/28	
September	26/27	24/24	21/21	25/25	
October	26/26	25/25	38/39	39/39	
November	25/26	19/19	24/25	26/27	
December	19/19	21/23	20/20	25/28	
TOTALS	341/349	336/352	298/302	371/382	155/159

As of June 1, 2017, there were 267 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 33% are less than three months old, 21% are three to six months old, and 46% are more than six months old. Fourteen of these matters were on the May SPRB agenda.

DME/rh

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 23, 2017
From: Helen Hirschbiel, Executive Director
Re: CSF Claim No. 2016-46 HOWLETT (Castellanos-Ramos)
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

Adolfo Castellanos-Ramos says that he retained attorney Bruce Howlett on May 11, 2011 to represent him in court and reduce his prison sentence and that his domestic partner paid Mr. Howlett a flat fee of \$7500. Court records show that Mr. Howlett conducted discovery, and negotiated a plea agreement with the U.S. Attorney's office. About a month after Mr. Howlett filed the plea petition, he died of cancer.

Mr. Castellanos-Ramos was thereafter represented by court-appointed counsel, who ultimately finished his case.

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. Reimbursement of a legal fee paid is allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. CSF Rule 2.2.3.

In this case, the CSF Committee found no evidence of dishonest conduct. Moreover, it is evident from the court file that Mr. Howlett performed significant legal services on the case. Therefore, the CSF Committee determined that Mr. Castellanos-Ramos was not entitled to reimbursement under the CSF Rules. Further, Mr. Castellanos-Ramos was able to secure substitute counsel at no additional cost, barring a claim under CSF Rule 2.24.

Client Security Fund
Investigative Report

FROM: Stephen Raher, investigator
DATE: CSF Meeting May 6, 2017
RE: Claim No. 2016-46
Claimant: Adolfo Castellanos-Ramos
Attorney: Bruce M. Howlett

Investigator's Recommendation

Investigator recommends denial of the claim for lack of dishonest conduct and pursuant to CSF Rule 2.2.4.

Overview of Claim

Claimant currently lives in Mexico. Attorney Bruce Howlett is deceased. Given the difficulty (or impossibility) of interviewing the primary individuals involved in the underlying case, Investigator relied on information obtained from court records, an interview with Mr. Howlett's surviving spouse, the PLF, an interview with substitute counsel, and correspondence with Claimant's adult son who lives in the United States.

The claim form simply states that Claimant retained Mr. Howlett to "represent me in court and to reduce my prison sentence." Claimant was indicted on various drug charges in federal district court in Eugene. Claimant states that he hired Mr. Howlett on May 11, 2011, and that a \$7,500 payment to Howlett was made by Claimant's domestic partner, Mirna Rizo-Sainz. Court records corroborate this chronology, showing that Mr. Howlett substituted for attorney Robert Schrank on May 25, 2011. Mr. Schrank had been appointed to represent Claimant pursuant to the Criminal Justice Act ("CJA"). The docket further indicates that Mr. Howlett conducted discovery and negotiated a plea agreement with the U.S. Attorney's Office.

According to Mr. Howlett's widow, Roxanne, Mr. Howlett died on October 28, 2011, from cancer. His disease worsened precipitously and Ms. Howlett said that the quickness of his death was unexpected. Ms. Howlett (who also appears to have been Mr. Howlett's administrative assistant) told Investigator that all of her husband's clients were represented under flat-fee, earned-on receipt engagements. She further states that she turned all case files over to the PLF for referral to other attorneys. She says there were no formal probate proceedings.

Court records indicate that about a month after Mr. Howlett filed the plea petition in Claimant's case, but a few days before he died, the court was informed of Mr. Howlett's unavailability. In response, the court reappointed Mr. Schrank to continue representation of Claimant. Mr. Schrank informed Investigator that all his compensation for CJA cases comes from the government, and clients pay nothing. Accordingly, it appears that Claimant obtained substitute counsel at no cost, thus barring this claim under CSF Rule 2.2.4.

Claimant (still represented by Mr. Schrank) was sentenced on March 16, 2012, to 77 months in prison. The Office of the Federal Public Defender subsequently substituted as counsel and successfully moved, in 2015, to reduce Claimant's prison sentence to 70 months.

Even on paper, Claimant's personal situation is very compelling. He was convicted of criminal activity that seems to have been motivated by economic desperation. He appears to be devoted to his family, which is now split between two countries. The family's situation will presumably worsen as this country's immigration policy becomes increasingly inhumane. For these reasons, Investigator would normally be willing to overlook potential timeliness issues with the claim and perhaps even consider "extraordinary circumstances" that would warrant waiving Rule 2.2.4; however, extraordinary measures do not seem appropriate in this situation because there is no indication of dishonest conduct by Mr. Howlett. Dying is not an inherently dishonest act, and the length of time between the engagement and Mr. Howlett's apparently sudden passing does not indicate that Mr. Howlett took funds knowing that he would not be able to complete the representation.

Findings and Conclusions

1. Claimant was a client of Mr. Howlett.
2. At all times relevant to the claim, Mr. Howlett was an active member of the Oregon State Bar and maintained an office in Oregon
3. Claimant alleges a loss based on the fact that Mr. Howlett did not complete the engagement for which he was paid. Mr. Howlett's inability to complete the case was caused by his own death. Mr. Howlett provided services of value to Claimant.
4. Investigator finds no indication of dishonest conduct by Mr. Howlett.
5. Investigator has not discovered any bond, surety agreement, or insurance contract that would cover any loss suffered by Claimant.
6. Investigator is not aware of any judgment, criminal conviction, or probate claim arising from this claim.
7. Claimant did not make efforts to collect from Mr. Howlett or his probate estate.
8. The claim was filed more than two years after Claimant should have been aware of Mr. Howlett's death, but the claim was filed within the 6-year period of ultimate repose contained in CSF Rule 2.8.
9. Claimant's claim appears to be exclusive of interest, attorney fees, and court costs.
10. Claimant is not represented by an attorney in connection with this claim.

By means of this letter I express my feeling and my discontent. I am not happy because the lawyer's work was not finished the only thing he did is a single visit to Mr. Adolfo Castellanos and for just a visit they charged the 7,500 dollars. It's not fair. That lawyer's wife told me that I should claim this money because he did not finish his work, he did not even start it. And for that reason they must return my money considering my situation. I am a single mother and with a lot of sacrifice I acquired that money. I stopped buying things for me and my children to help me to afford this cost. Please return this money because the service I paid for wasn't fulfilled. It is the right things to do under the law.

Client Security Fund Claims paid in 2017 as of 06/16/2017

CLAIM year	CLAIM #	CLAIMANT	LAWYER	CLAIM AMT	AMOUNT PAID
2016	07	Gonzalez Sierra, Florencio E.	Krull, Julie	\$ 6,000.00	\$ 3,525.00
2016	14	Starr, Anna	Krull, Julie	\$ 2,000.00	\$ 1,175.00
2016	24	Davis, Madeline	Hunt, John Kevin	\$ 500.00	\$ 500.00
2016	28	Henson, Wendy	Roller, Dale	\$ 1,200.00	\$ 1,200.00
2016	29	Silajdzic, Sasa	Roller, Dale	\$ 1,200.00	\$ 1,200.00
2016	35	Lopez-Diaz, Marcelino	Ferrua, Franco Dorian	\$ 17,500.00	\$ 12,500.00
2016	36	Cruz, Lourdes	Milstein, Jeffrey S.	\$ 1,750.00	\$ 1,750.00
2016	40	Shorb, Charles Ray	Gerber, Susan R.	\$ 5,000.00	\$ 5,000.00
2016	48	Hoodenpyle, Todd A	Dougan, Rebecca	\$ 4,000.00	\$ 4,000.00
2017	11	Scott, Andrew L.	Allen, Sara Lynn	\$ 5,000.00	\$ 2,500.00
				\$ 44,150.00	\$ 33,350.00

OREGON STATE BAR
Client Security - 113
For the Five Months Ending Wednesday, May 31, 2017

Description	May 2017	YTD 2017	Budget 2017	% of Budget	May Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$1,183	\$5,521	\$12,500	44.2%	\$740	\$3,312	66.7%
Judgments	50	310	1,000	31.0%	50	290	6.8%
Membership Fees	1,905	218,377	231,200	94.5%	960	220,200	(0.8%)
TOTAL REVENUE	3,138	224,208	244,700	91.6%	1,750	223,802	0.2%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	1,112	5,522	32,700	16.9%	1,098	5,283	4.5%
Employee Taxes & Benefits - Reg	509	2,339	13,000	18.0%	413	2,057	13.7%
TOTAL SALARIES & BENEFITS	1,621	7,861	45,700	17.2%	1,511	7,340	7.1%
DIRECT PROGRAM							
Claims	6,400	9,925	200,000	5.0%	16,392	73,581	(86.5%)
Collection Fees	0	0	1,000	0.0%	0	0	0.0%
Committees	0	0	150	0.0%	0	0	0.0%
Travel & Expense	0	0	1,800	0.0%	65	535	(100.0%)
EXPENSE	6,400	9,925	202,950	4.9%	16,457	74,116	(86.6%)
GENERAL & ADMINISTRATIVE							
Office Supplies	0	0	150	0.0%	0	0	0.0%
Photocopying	0	0	50	0.0%	0	0	0.0%
Postage	13	45	150	29.9%	15	65	(31.4%)
Professional Dues	0	0	200	0.0%	0	0	0.0%
Telephone	7	36	200	18.2%	11	34	6.2%
Training & Education	0	4,575	600	762.5%	0	545	739.4%
Staff Travel & Expense	466	466	1,094	42.6%	65	65	616.9%
TOTAL G & A	486	5,122	2,444	209.6%	91	709	621.9%
TOTAL EXPENSE	8,507	22,908	251,094	9.1%	18,059	82,165	(72.1%)
NET REVENUE (EXPENSE)	(5,369)	201,300	(6,394)	#####	(16,309)	141,637	42.1%
Indirect Cost Allocation	2,779	13,895	33,349	41.7%	2,655	13,275	4.7%
NET REV (EXP) AFTER ICA	(8,148)	187,405	(39,743)	(471.5%)	(18,964)	128,362	46.0%
Fund Balance beginning of year		1,130,760					
Ending Fund Balance		1,318,163					

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
From: Legal Ethics Committee
Re: Proposed OSB Formal Ethics Opinion 2017-XXX: Real-Time Electronic Contact

Issue

The Board of Governors must decide whether to adopt the proposed formal ethics opinion regarding real-time electronic contact.

Options

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

Discussion

Oregon RPC 7.3(a) prohibits lawyers from soliciting professional employment by “in-person, live telephone or real-time electronic contact.” With the rise of social media and its potential use for marketing a lawyer’s services, questions have arisen about what constitutes “solicitation” and “real-time electronic contact” in the context of social media posts about a lawyer or her services. The Legal Ethics Committee provides guidance for lawyers on these issues in the proposed opinion.

The LEC is aware that the Futures Task Force has proposed changes to the rules of professional conduct that may render this opinion moot. Such amendments, if adopted, would go into effect no earlier than January 1, 2018. The LEC believes the opinion will be useful in the meantime.¹ Further, there is no guarantee that the proposed amendments will be ultimately adopted. Thus, the LEC recommends that the BOG adopt this formal ethics opinion.

Attachments: Proposed OSB Formal Ethics Op Nos. 2017-XXX

¹ The LEC completed the majority of the work for this opinion prior to the convening of the task force.

FORMAL OPINION NO. 2017-___

Real-time Electronic Contact

Facts:

Lawyer notices on a social media site that Person A has posted publically about a legal issue which Lawyer could provide her services. Lawyer does not have any contact ~~for~~with Person A aside from the social media site.

Lawyer has the option to respond to Person A via a public post that would link to and reference Person A's prior public post. This response would be public, and the social media site would notify Person A that Lawyer had responded to her in a public post. However, Person A would have to log into the social media site to respond to the public post.

Also, Lawyer may respond to Person A via a private messaging system within the social media site. The social media site's messaging system allows a message to be transmitted to a user immediately if the user is logged in and available; ~~if~~ if the user is ~~unavailable and~~ not logged in, the message is saved until the user logs in ~~and decides to answer~~. If a message is transmitted to the user, a user may respond to the sender immediately, and any communication takes place instantaneously. A user of the social media's site also has the capability of "flagging" herself as unavailable, allowing all messages to be saved until the user decides to review them~~—~~. The messaging system is private and only Lawyer and Person A, or individuals with their login credentials, may view the communication.

Question:

1. May Lawyer contact Person A via a public social media post linking to and referencing Person A's prior public post?
2. May Lawyer contact Person A using the private messaging system on the social media site?

Conclusion:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

1. Electronic Solicitation

The issue Lawyer faces is whether RPC 7.3(a) considers the social media's public post a solicitation. RPC 7.3(a) governs the solicitation of clients by a lawyer. It notes:

- (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.

RPC 7.3(a) is analogous to the ABA Model Rule 7.3(a), and the ABA Comments provide additional insight into RPC 7.3(a). The ABA Comments to Model Rule 7.3 provides a definition of solicitation as well as a distinction between solicitation and advertising. Comment [1] establishes that “[a] solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer’s communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website, or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.”

Even though Lawyer’s public social media post is available to the general public, Lawyer’s public post that responds to Person A is a solicitation in this instance. Lawyer’s post is directly targeted towards Person A, and seeks to provide services to resolve Person A’s legal issue. Advertising would not seek to directly target Person A’s legal problem, but would advise the general public of Lawyer’s availability for clients.

This solicitation is permissible under RPC 7.3(a), however, as the public post is not in-person, live telephone or real-time electronic contact. While the solicitation is electronic, and Person A receives notification, the necessity of Person A to log into the social media site to respond to the public post prevents any real-time electronic contact in this instance. A further discussion of real-time electronic contact is included below.

2. Real-Time Electronic Contact

Lawyer’s contact with Person A using a private messaging system on the social media site would also constitute solicitation under RPC 7.3(a), as the message directly targets Person A for the purpose of providing legal services. However, Lawyer faces an issue of whether such communication constitutes real-time electronic contact. The term real-time electronic contact is not defined within Oregon’s RPCs.

The advent of multiple new forms of electronic communications ~~over~~ have changed the method and dynamics of communications between individuals. A number of these communications have merged aspects of prior communications, such as texting, email, chat rooms, social media, and voice mail to provide extensive features and benefits to users. The blending of these features now allows some electronic communications to be accessed and answered immediately by a user, or stored for later access depending on the user’s election. While this provides a number of benefits to the user, it raises substantial questions as to whether such a private messaging system communication would be considered a “real-time electronic contact” under RPC 7.3(a).

The ABA's Comments on Model Rule 7.3(a) suggests that the purpose of preventing in-person, live telephone, or real-time electronic contact is to prevent a prospective client from being unduly pressured to retain a lawyer. Comment [2] notes

There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

Indeed, Comment [3] goes on to note that this type of direct interpersonal contact between a lawyer and prospective client is fraught with the potential for abuse, and notes that information may instead be transmitted via other means which do not subject a prospective client to direct interpersonal contact.¹ Indeed, the Supreme Court, in upholding a ban on direct solicitations by attorneys in Ohio, noted that “[u]nlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection.” *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 457 (1978). The Court's opinion cited the American Bar Association's argument of a compelling state interest in banning direct solicitation: “to reduce the likelihood of overreaching and the exertion of undue influence on lay persons, to protect the privacy of individuals, and to avoid situations where the lawyer's exercise of judgment on behalf of the client will be clouded by his own pecuniary self-interest.” *Id.* At 461.

Real-time electronic contact, like in-person or live telephone contact, requires the communication to occur instantly and synchronously, or without any substantial interruption, between parties. Media that create communication that occur instantly and synchronously also create the interpersonal contact reminiscent of communication in person, which is the rationale for the limitations imposed by RPC 7.3(a).² The potential for abuse through undue influence,

¹ Comment [3] notes

This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.

² See [Philadelphia Bar Association Ethics Opinion 2010-6 at 6, which considered the issue of the definition of real-time electronic communications in Pennsylvania's analogous Rule of Professional Conduct 7.3.](#) “[R]eal-time

intimidation, and over-reaching exists when communications create direct interpersonal contact.

Past opinions related to the implementation of Model Rule 7.3(a) and electronic real-time contact in other jurisdictions have dealt with Internet chat rooms, a form of electronic contact that requires the immediate presence and attention of both users to communicate.³ The necessity of both users to be present and attentive to respond led to an indication that this form of communication was both instantaneous and synchronous. Electronic chat rooms were more akin to a telephone conversation, and therefore generally prohibited.⁴

However, new electronic communications that provide instant communications also provide communication asynchronously, allowing the communication not to interrupt the user. For example, in this instance, the messaging service within the social media site allows a message to be saved until the user wishes to access and possibly respond to the message. While the user may reply immediately to a message, she does at her own accord, and is not required to respond or even acknowledge receipt of the message.⁵ In this manner, the communication is more akin to other forms asynchronous communication, such as mail or email.⁶

The Ohio Supreme Court provides some guidance in Ohio Formal Op. 2013-2 related to text messages and their corresponding rule, Ohio RPC 7.3(a). The Ohio Supreme Court noted that a text message solicitation of a prospective client is not akin to “live” text or voice conversations and instead are more related to an email. *Id.* at 5. As long as technology does not generate a “live” conversation, lawyers may solicit a prospective client through the technology. *Id.*

Lawyer may use the social media messaging system to contact Person A, provided that Lawyer reviews the messaging system to ensure that the communication is not instant and synchronous. Lawyer should review the capabilities of a private messaging system to determine if it would create the direct interpersonal contact that RPC 7.3(a) seeks to prohibit. In particular, Lawyer should determine whether the system would require the recipient of a message to immediately respond and reply, facilitating a “live” conversation such as those found in

electronic communication’ is limited to electronic modes of communication used in a way in which it would socially awkward or difficult for a recipient of a lawyer’s overtures to not respond in real time”

³ See 17 Law. Man. Prof. Conduct 125 (revised 2010); Michigan Informal Ethics Op. RI-276 (1996); Utah Ethics Op. 97-10 (1997); West Virginia Ethics Op. 98-03 (1998). *But see* Arizona Ethics Op. 97-04 (1997) (less potentially coercive than in-person contact because potential client has option of not responding); California Formal Ethics Op. 2004-166, 21 Law. Man. Prof. Conduct 58 (whether chat room contact is unethical will depend on context).

⁴ Florida revised its previous opinion considering chat rooms a form of direct solicitation, noting that, “written communications via a chat room, albeit in real time, do not involve the same pressure or opportunity for overreaching.” Fla. Bar Standing Committee on Advertising, Advisory Op. A-11-1 (Revised), Jan. 29, 2016.

⁵ Most of the popular messaging systems today, such as Facebook Messenger, Twitter Direct Message, and LinkedIn Messages, feature the same services. [The Legal Ethics Committee, however, does not purport to provide an opinion as to the propriety of any specific messaging service. The Committee cannot provide wholesale approval of any platform. After all, terms of service, and site design are constantly in flux. When venturing into new territory, lawyers should exercise their professional judgment on a case-by-case basis to ensure that they are complying with their professional obligations.](#)

⁶ Comment [3] of ABA Model Rule 7.3 notes that email is not considered real-time electronic contact for the purposes of ABA Model Rule 7.3.

Internet chat rooms, or if the recipient would be capable of delaying response at their own accord, more akin to an email or letter. The former type of messaging would likely be prohibited under RPC 7.3(a) while the latter would likely be allowable. In the current situation, as the social media messaging system allows a recipient to delay response at her own volition, solicitation would not be prohibited under RPC 7.3(a).

3. Implication of Additional Ethical Rules

When using social media for solicitation, lawyers should also consider several other Rules that are implicated. Lawyer should consult RPC 7.3(b) to determine whether the solicitation would be proper considering the circumstances of the prospective client's legal troubles.⁷ Lawyer should be careful not to engage in a consultation in an environment where lawyer is unable to maintain the confidentiality of information shared by a prospective client. RPC 1.18(b). In addition, Lawyer should consider whether responding to a prospective client's questions may inadvertently form an attorney-client relationship. See *In re Weidner*, 310 Or 757 (1990)(setting forth rule for when an attorney-client relationship exists). Lawyer should also make sure that any communication is not false or misleading, or otherwise prohibited under RPC 7.1. Finally, Lawyer should also be aware and comply with any terms of service or other governing contracts or licensing agreements related to the use of the messaging system and unsolicited advertising.

⁷ RPC 7.3(b) provides

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

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

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

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

Oregon State Bar
Meeting of the Board of Governors
April 14, 2017
Open Session Minutes

President Michael Levelle called the meeting to order at 12:00 p.m. on April 14, 2017. The meeting adjourned at 3:20 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Kerry Sharp, Kate von Ter Stegge, and Elisabeth Zinser. Not present was Per Ramfjord and Traci Rossi. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, Bill Penn, Catherine Petrecca, and Camille Greene. Also present was Colin Andries, past-ONLD Chair, Carol Bernick, PLF CEO, Barbara Fishleder, PLF Director of Personal and Practice Management/OAAP Executive Director, Bruce Schafer, PLF Director of Claims, and Teresa Statler, Tim Martinez, Dennis Black, Saville Easley, Megan Livermore, Holly Mitchell, Molly Mullen, Tom Newhouse, and Rob Raschio from the PLF Board of Directors; and Kelly Harpster, Futures Task Force.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as presented, by consensus.

2. Combined Meeting with PLF Board of Directors

Ms. Hirschbiel updated the board on the progress made by the two Futures Task Force subcommittees. **[Exhibit A]**

Ms. Harpster updated the board with a review of paraprofessional licensing models in various other states and the status of possible limited licensing models in Oregon. **[Exhibit B]**

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

A. Appellate Screening Special Committee

Ms. Grabe updated the board on new Court of Appeals vacancies. The committee will have a conference call on Monday, April 17, 2017.

B. Board Development Committee

In the absence of Mr. Ramfjord, Mr. Greco presented the committee's recommendations for several committees, and a new lawyer and public member to the Disciplinary Board. **[Exhibit C]**

Motion: The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Mr. Greco presented the Board Development Committee's appointment recommendations for the Department of Public Safety Standards and Training Board Policy Committee. **[Exhibit D]**

Motion: The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

C. Budget & Finance Committee

Mr. Levelle asked the board to decide by consensus whether or not they want to keep the Special BOG account for beer and wine purchases at BOG events. **[Exhibit E]**

Motion: By consensus, the board agreed to keep the Special BOG account.

Mr. Chaney updated the board on the upcoming economic survey that should take place by the end of July. The investment committee will evaluate the significantly different outcomes of the bar's two investment accounts. Sections fund balances continue to be a matter of concern. A message will be sent to that effect and they will be reviewed again in a year. It is anticipated that there will be a budget shortfall in 2018 which will be covered by the reserve, but it is realistic to expect a fee increase in 2019 unless bar programs are significantly reduced. The committee will be looking at establishing priorities for voluntary bar programs. Dennis Black, PLF Board of Directors liaison, asked for a list of programs that are subject to prioritization, and suggested soliciting member input through a survey or some other means.

D. Policy and Governance Committee

Ms. Nordyke presented the committee motion to accept the revision to Article 23 re: the PLF Bylaws and asked the board to waive the one meeting notice. **[Exhibit F]**

Motion: The board voted in favor of waiving the one meeting notice and accepting the committee recommendation to amend Article 23 of the OSB Bylaws. The motion passed.

Ms. Nordyke presented a committee update re: reconfiguration of the Board of Governors as required by ORS 9.025(2)(a). The committee determined that the current configuration is appropriate and therefore is not making any recommendations for changes at this time.

Ms. Nordyke asked Ms. Hirschbiel to present a joint committee update re: CLE co-sponsorship. Ms. Hirschbiel noted that the joint committee had considered three section policy issues: CLE co-sponsorship, section fund balances, and the number of sections. With respect to the number of sections, the committee recommends reviewing alternative formats available with the new association management software and revisiting the issue thereafter. Regarding section fund balances, the committee echoes the report of the Budget & Finance Committee. Mr. Bachofner reported on the alternate proposal that would require section co-sponsorship with CLE seminars only once every three years, as opposed to once every year. Initial feedback has been positive; section leaders were sent an email with the alternate proposal and requesting feedback prior to the bringing the matter back to the full Board for final consideration.

Mr. Levelle presented correspondence from bar member Dwight G. Purdy suggesting the board look at the possibility of bringing back the Legislation CLE and the Bar Convention. Mr. Levelle and Ms. Hirschbiel will give this further consideration and report back to the board. **[Exhibit G]**

E. Public Affairs Committee

Ms. Rastetter thanked sections for their helpful participation in Salem.

Ms. Rastetter gave a general update on legislative activity and reminded the board that on May 23, 2017 the committee will conduct its 'Day at the Capitol' where members meet with the legislators. Board members are encouraged to attend and will be updated with talking points if they contact Ms. Grabe.

F. Discipline System Review Update

Ms. Evans updated the board on the status of the recommended changes to the discipline system. On May 2 the Supreme Court will address the changes to the bar rules and consider the Board of Bar Examiners recommended reduction in the passing score for the bar exam.

4. Professional Liability Fund

Ms. Bernick reported that the PLF presented a 1.5 hour CLE for the Solo and Small Firm Section to help them understand the “why” of what the PLF does. PLF is recruiting for a public member and a lawyer member for the PLF Board of Directors.

Ms. Bernick presented the 2017 Excess Renewal Report now that the BOG no longer needs approve the PLF excess rate.

Ms. Bernick reported that the Board of Directors is pleased with the financial investments of the PLF. Their audit was clean and no adjustments were recommended. She introduced Dennis Black who will chair the PLF BOD in 2018.

5. OSB Committees, Sections, Councils and Divisions

A. MCLE Committee

Ms. Hollister presented the MCLE committee request for the board to approve the changes to MCLE Rules 3.400(a) and 5.300(a). **[Exhibit H]**

Motion: Mr. Greco moved, Mr. Mansfield. seconded, and the board voted unanimously to approve the changes.

Ms. Hollister presented the MCLE committee request for the board to approve credit for serving on Council on Court Procedures. **[Exhibit I]**

There was considerable discussion about whether the MCLE committee had considered adding credit for serving on the Uniform Trial Court Rules committee as well as other committees or sections that are comparable in volunteer time commitment and workload.

Motion: Ms. Rice moved, Ms. von Ter Stegge seconded, and the board voted to approve the credit for serving on the Council on Court Procedures. Mr. Kerry, Mr. Mansfield, and Ms. Rastetter were opposed.

B. Oregon New Lawyers Division Report

In addition to the written report from Ms. Eder, Mr. Andries updated the board on the ONLD progress in reaching out to new members via podcast. Their goal is to produce one per month.

C. Legal Services Program Committee

Mr. Penn asked the board to: approve the LSP Committee’s recommendation to disburse \$69,576 from the annual unclaimed client fund but to hold the funds until the legal aid providers make a recommendation for when to disburse the funds and a method for allocation between providers; and approve the LSP Committee’s recommendation not to disburse the unclaimed client funds from the Strawn v Farmers class action and continue holding the remaining funds in reserve.

Motion: Mr. Greco moved, Mr. Foster seconded, and the board voted unanimously to approve the committee's recommendations.

D. Report of Officers & Executive Staff

Report of the President

Mr. Levelle reported on two significant activities since the last board meeting: 1) he attended a White Men as Full Diversity Partners Workshop which was a perfect example of how different lenses observe and experience things differently; 2) he attended the Western States Bar Conference which made him appreciate the Oregon State Bar and how well it functions and takes on expansive programs, much more than other surrounding states. The OSB takes a holistic approach rather than addressing issues piecemeal; 3) finally, he had the honor of being the subject of an event hosted by Miller Nash which encouraged him to continue his OSB President mission on inclusion, equity, and access to justice.

Report of the President-elect

Ms. Nordyke's goal is to continue next year focusing on the themes of Mr. Levelle, Mr. Heysell, and Mr. Spier. Her theme is going to be "The Next Generation" including the next generation of legal consumers, not just the legal profession. She wants to help new and newer lawyers to connect with the less-fortunate who need access to justice by harnessing technology and legal innovation. She encouraged the board to research the current incubator programs in other states.

Report of the Executive Director

Ms. Hirschbiel presented the 2016 OSB Program Evaluations and its function of measuring the progress of OSB programs. She invited Board feedback on the measures and evaluations. She pointed out the OSB Strategic Functions and Areas of Focus that is included on BOG agendas in order to help the Board stay strategic in its discussions. She announced a special BOG meeting in May to focus solely on a generative discussion around diversity, equity and inclusion.

Director of Regulatory Services

As written.

Director of Diversity & Inclusion

Mr. Puente gave a brief report on giving the ACDI more clarity of purpose for their advisory role. He reorganized his department from linear to more collaborative which involves two coordinators – external and internal.

MBA Liaison Report

Ms. Reeves reported on MBA fellowships and their search for businesses and firms to host fellows over the summer. The MBA YLS, along with OHBA, are hosting an event on April 27 at Miller Nash and board members are encouraged to attend.

6. Consent Agenda

Mr. Levelle asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote. There was no request to do so.

Motion: Mr. Chaney moved, Mr. Mansfield seconded, and the board voted unanimously to approve all items on the consent agenda. Ms. Costantino and Mr. Peachey abstained. **[Exhibits J & K]**

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)**

DRAFT

**Oregon State Bar
Board of Governors Meeting
April 14, 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 Litigation

Ms. Hollister informed the board of a non-action item.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

DRAFT

Exhibit A

FUTURES TASK FORCE UPDATE

Helen M. Hirschbiel, Executive Director/Chief Executive Officer

April 14, 2017



Futures Task Force Charge

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.

Futures Task Force

Convened by Board

Innovations Committee

John Grant, Chair

Regulatory Committee

Hon. Chris Garrett, Chair



Innovations Committee Charge

- Help lawyers, establish, maintain, and grow **sustainable practices** that respond to demonstrated low and moderate income community legal needs;
- Encourage exploration and use of **innovative service delivery models** that leverage technology, unbundling and alternative fee structures in order to provide more affordable legal services;
- Develop lawyer business management, technology, and other practice **skills**; and
- Consider the viability of an **incubator program**.

Innovations Committee

John Grant, Chair

Incubator
Accelerator
Program

Need for Data

Accessibility &
Rural
Communities

Practice
Management
Resources

Modest Means
Program & Lawyer
Referral Service

Regulatory Committee Charge

- Examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models.

DRAFT

Regulatory Committee

Hon. Chris Garrett, Chair

Alternative Legal
Services Delivery
Workgroup

Brad Tellam, Lead

Paraprofessional
Regulation Workgroup

Kelly Harpster, Lead

Self-Navigation
Workgroup

Sandy Hansberger, Lead



Next Steps

- Committees Drafting Report & Recommendations
- Report to Board at June 23, 2017 Board Meeting

DRAFT

Summary of Draft Proposal for Licensing Paraprofessionals

Eligibility

A candidate for admission must be 18 years old, of good moral character, and meet minimum education and experience requirements. In summary form, the minimum requirements are:

- Must have an Associate's Degree
- Must graduate from an ABA-approved or accredited paralegal studies program
- Must have at least 1 year of substantive law-related experience
- Limited exceptions for J.D.s and very experienced paralegals

Presently undecided is whether to require whether to require a candidate to pass one of the three national paralegal certification examinations or to require no exam. The workgroup is leaning toward the latter.

Regulation

A licensee would be required to carry malpractice insurance, meet continuing education requirements, and comply with professional rules of conduct, just like lawyers. A licensee also would be required to use written agreements containing mandatory disclosures about the limited scope of practice.

Scope of Practice

A licensee may provide legal services only to self-represented litigants in approved proceedings, which would initially include routine family law proceedings and landlord-tenant proceedings (FEDs and small claims). Certain types of cases would be deemed outside of the scope of practice due to complexity.¹

A licensee would be able to provide fairly robust legal assistance for a routine proceeding within the scope of practice, including:

- Selecting, preparing, filing, and serving forms and documents relating to the proceeding
- Providing information and advice about matters relating to the proceeding
- Communicating and negotiating with another party
- Providing emotional and administrative support in court

A licensee would be prohibited from:

- Providing any assistance outside the limited scope of practice
- Representing a client before a court or in depositions
- Filing an appeal

If a licensee knows or reasonably should know that a matter is outside the approved scope of practice, the licensee must refer the person to a lawyer.

¹ For an example of similar exclusions in Washington, see Regulation 2(B) in the Appendix to Admission to Practice Rule 28.

Licensed Paraprofessional Programs

		Arizona	California	Nevada	Utah ¹	Washington	Ontario, CA
Title		Legal Document Preparer	Legal Document Assistant and Unlawful Detainer Assistant	Document Preparation Service	Licensed Paralegal Practitioner	Limited License Legal Technician	Licensed Paralegal
Practice Area(s)		Any	Any (LDA); eviction (UDA)	Any	Family law, eviction, debt collection	Family law	Small claims, ADR, provincial offenses, summary convictions
Education and Experience	Minimum education	Varies by work experience	Varies by work experience	n/a	Associates degree	Associates degree	Accredited paralegal program graduate
	Required course work	n/a	n/a	n/a	Paralegal studies, practice area course	Paralegal studies, practice area course	General and practice area courses
	Law-related work experience	0-2 years, varies by educational degree	0-2 years, varies by educational degree	n/a	1,500 hours	3,000 hours	120 hours field work ³
Licensing Exam		Yes	No	No	Yes	Yes	Yes
Insurance/Bond		No	Bond	Bond	TBD	Insurance	Insurance
Rules of Conduct		Yes	No	No, but deceptive practices prohibited	Yes	Yes	Yes
Scope of services	Select forms	Yes	No	Yes	Yes	Yes	Yes
	Complete pre-approved forms	Yes	Yes	Yes	Yes	Yes	Yes
	Draft other legal forms	Yes	No	Yes	No	Yes, if approved by attorney	Yes
	File and serve forms	Yes	Yes	Yes	Yes	Yes	Yes
	Provide legal information	Yes	Yes, only approved published materials	Not addressed	Yes	Yes	Yes
	Provide legal advice²	No	No	No	No	Yes, limited in scope	Yes
	Negotiate on client's behalf	No	No	No	Yes, in mediation	No	Yes
	Appear in court	No	No	No	No	No	Yes
Other	Trust accounts	No	No	No	Yes	Yes	Yes
	Continuing education	Yes	Yes	No	Yes	Yes	Yes
	Oversight	LDP Board	Dept. of Consumer Affairs, Counties	Secretary of State	Board (TBD)	LLLT Board	Paralegal Standing Committee
Statute/Rule		ACJA 7-208	CA Bus. & Prof. Code §6400 et seq	NRS 240A	Draft Rule 14-802	APR 28	Law Society Act

¹ Utah's program has not yet launched, but a special committee appointed by the Supreme Court completed extensive pre-implementation work in 2016.

² Most states allow licensed paraprofessionals to explain and provide information about the law, court procedures, and required forms, while prohibiting licensees from advising clients about their specific legal rights and remedies or applying legal principles to the particular facts.

³ Field work is required to graduate in addition to 590 hours of paralegal and practice area studies and 120 hours of general college course work.



Licensing Paraprofessionals

Self-Represented Litigants

- In 86% of family law cases, at least one of the litigants is self-represented.
- “self-representation is a permanent aspect of the family court”
- Self-represented litigants:
 - Feel disadvantaged
 - Get worse outcomes
 - Strain court resources



Why Litigants Self-Represent

The 3 C's

Cost · Complexity · Confidence

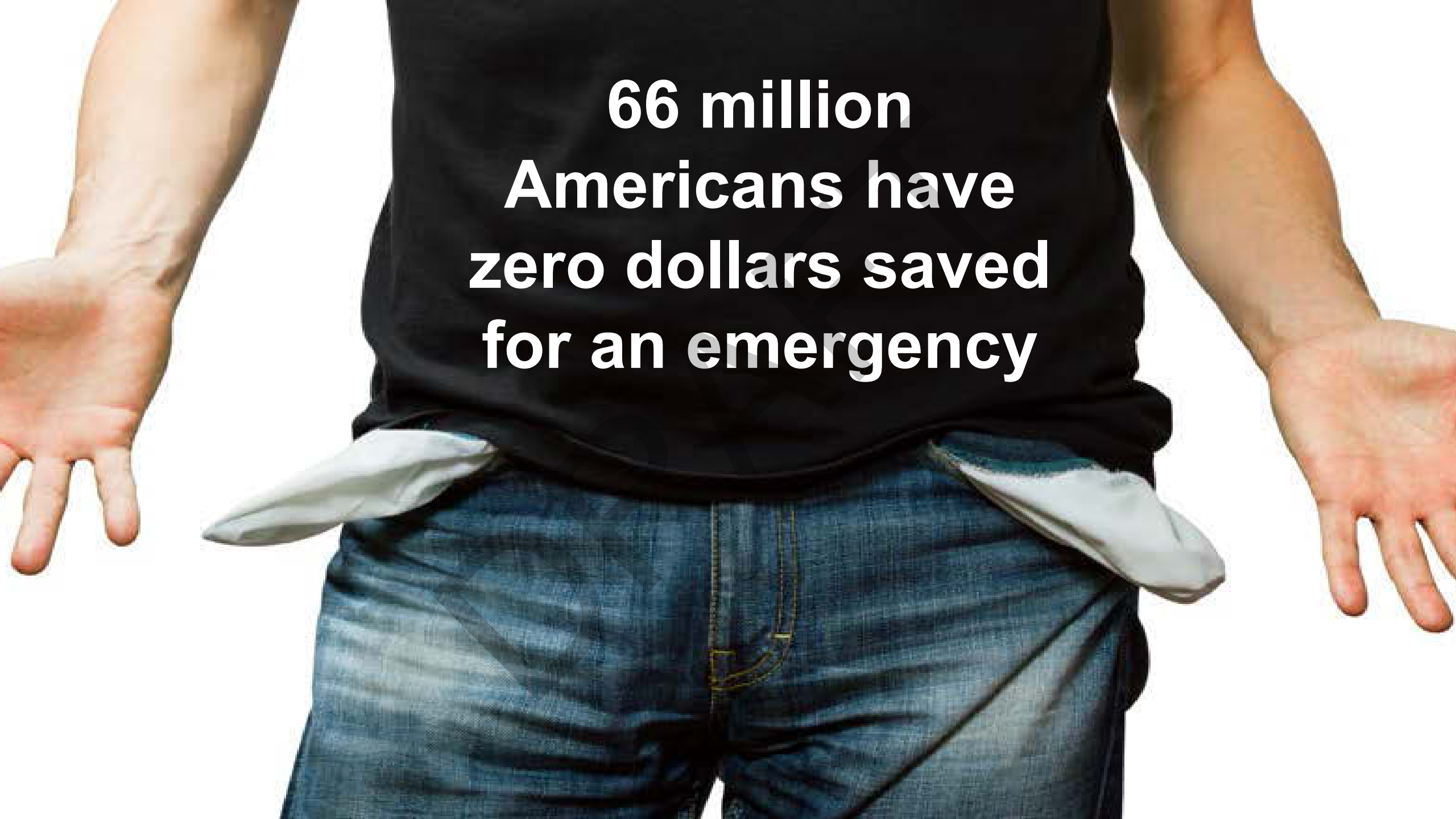
Cost of Divorce in Oregon

- Total cost \$4,000 to \$28,000
- Average fees \$10,000
- With children \$19,100
- With alimony \$17,600
- With property division \$17,900

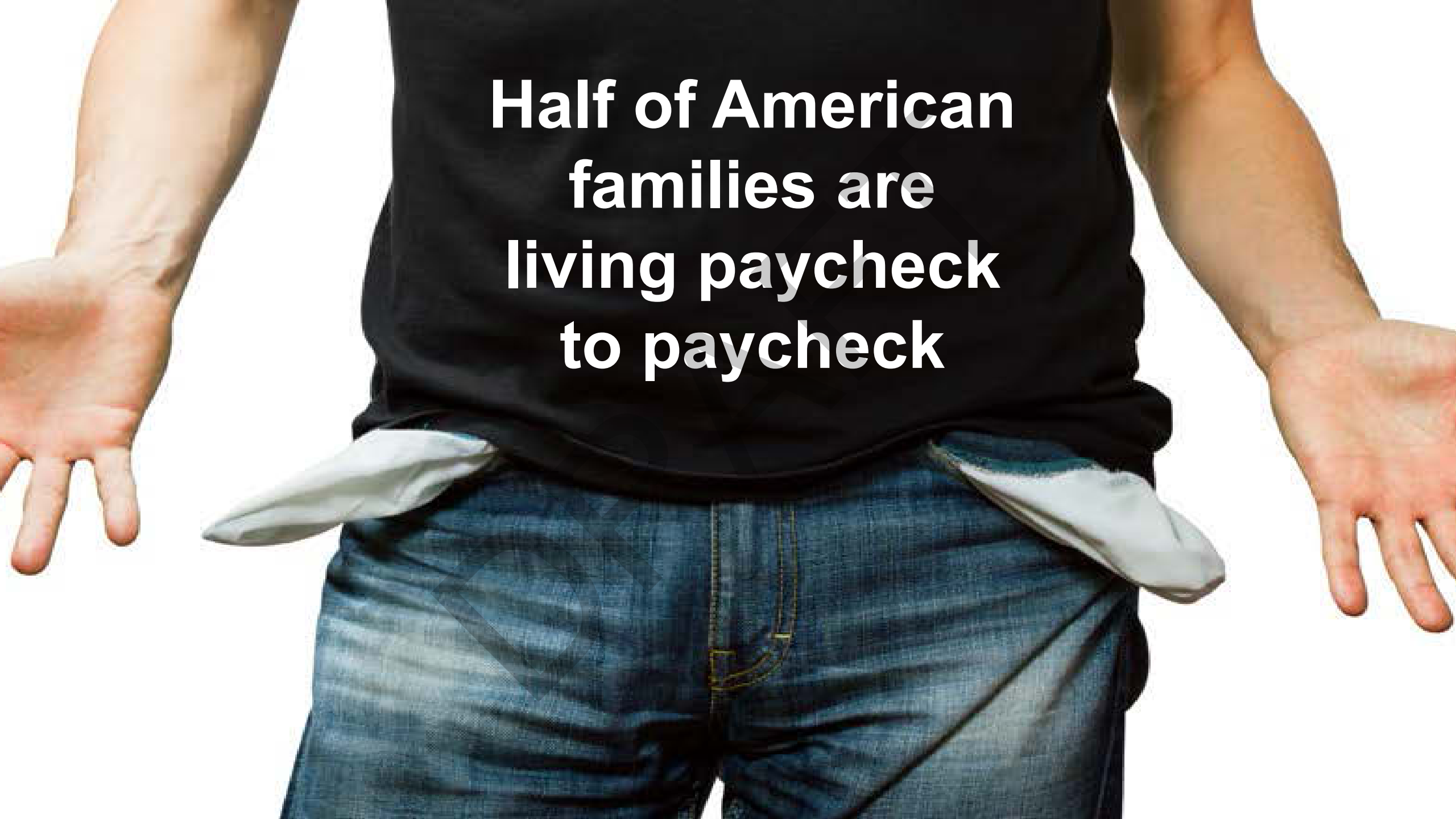




**Nearly 7 in 10
Americans
have less
than \$1,000
in savings**



**66 million
Americans have
zero dollars saved
for an emergency**



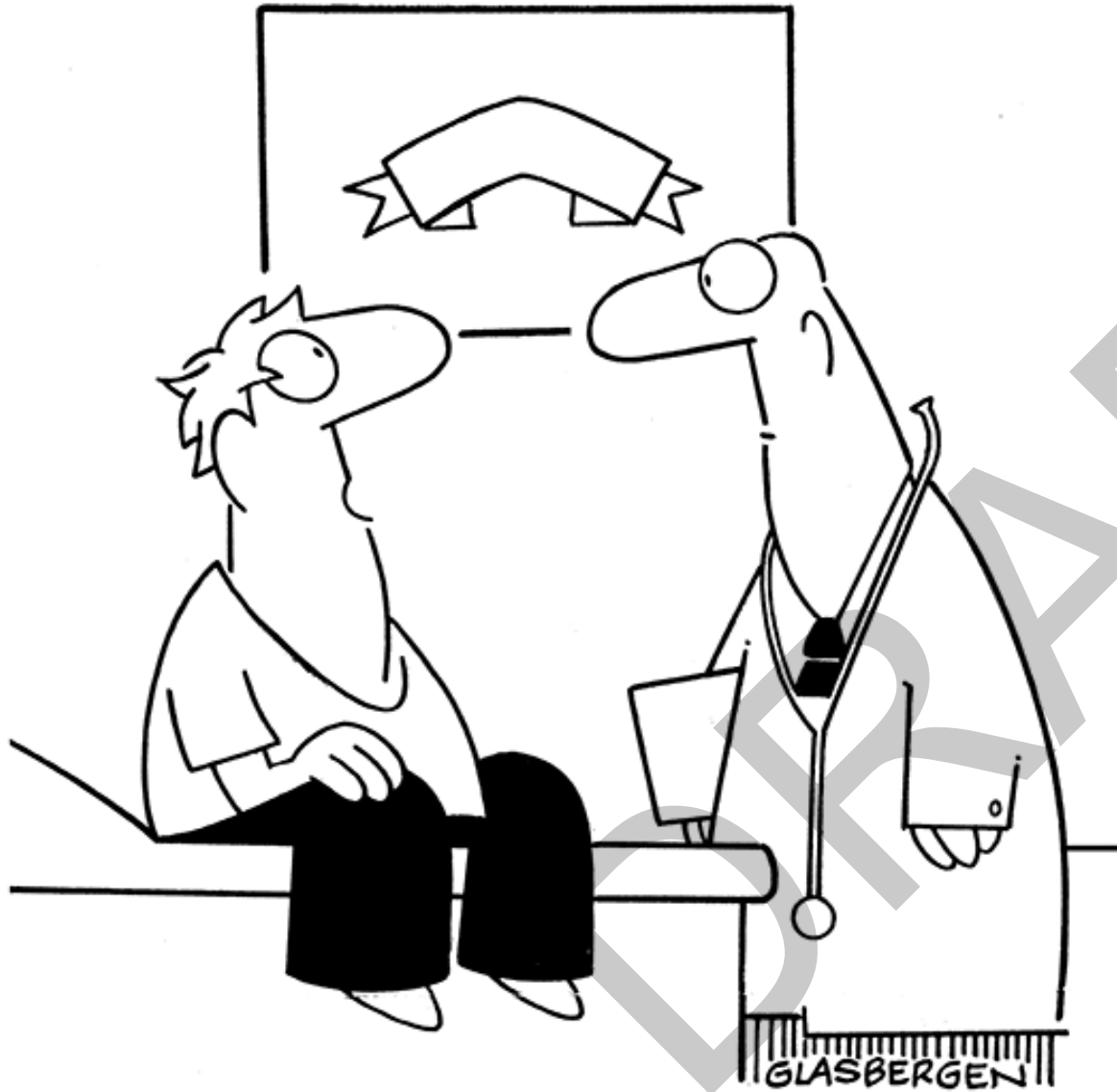
**Half of American
families are
living paycheck
to paycheck**

COMPLEXITY

- Matters perceived as routine or low stakes
- Lawyer perceived as a luxury, not a necessity



"We should be in good shape provided the judge doesn't go all 'legal' on us."



**“I already diagnosed myself on the Internet.
I’m only here for a second opinion.”**

CONFIDENCE

- Disintermediation
- Easy access to legal information
- Prior experience with the legal system

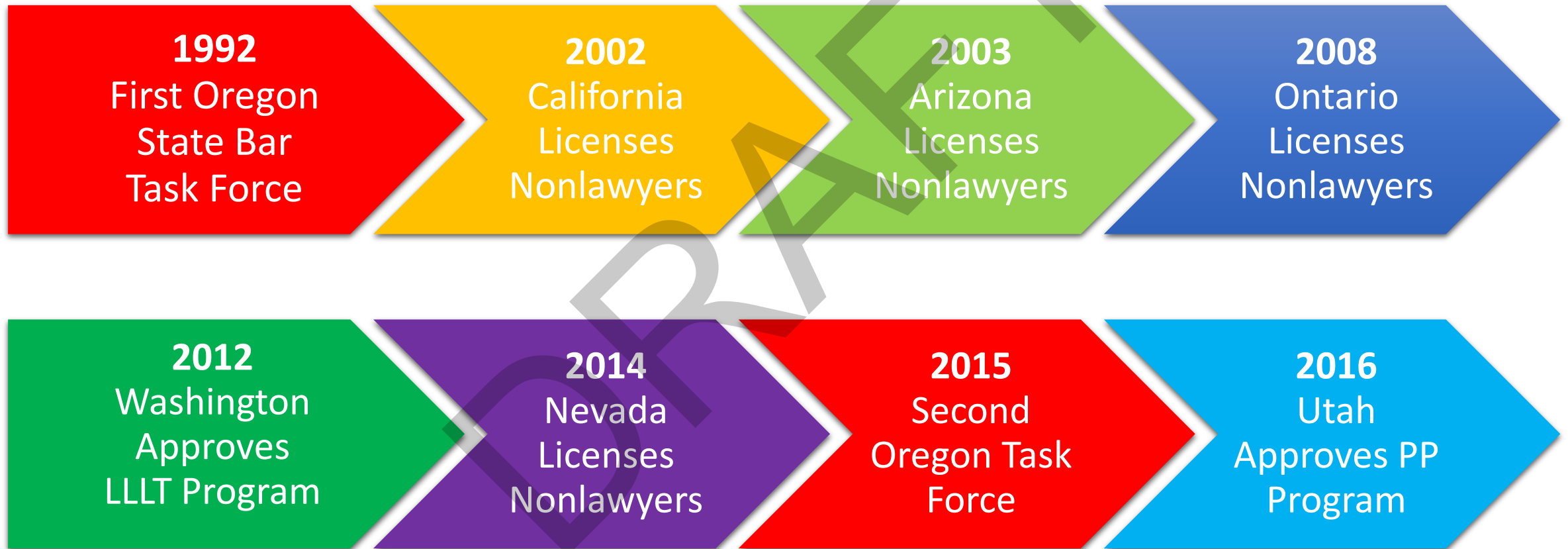
Efforts to Help Pro Se Litigants

- Increase Legal Aid funding
- Encourage pro bono work
- Promote unbundling
- Provide nonlawyer assistance

DRAFT



Limited Licensing In Other Jurisdictions



Eligibility

Knowledge is of no value unless
you put it into practice.

– Anton Chekhov



Eligibility: Lawyers vs. Paraprofessionals

Lawyers

- 18 years old
- Of good moral character
- Minimum education
- No experience required
- Pass a test

Paraprofessionals

- 18 years old
- Of good moral character
- Minimum education
- Minimum experience
- Pass a test (undecided)

Educational Attainment in the United States



- 67% of Americans over 25 do not have a bachelor's degree
- Only 8% of Americans over 25 have a professional or doctoral degree
- If you have an Associates Degree, you are more educated than 6 out of 10 of Americans

From the 2016 Census



Minimum Legal Education

- Must graduate from an ABA-approved or accredited paralegal studies program
 - Accredited programs teach both practical skills and legal theory in the following areas:
 - Litigation or civil procedure
 - Legal research and writing
 - Legal ethics
 - Substantive Law

"All the News
That's Fit to Print"

The New York Times

Late Edition

Today, clouds and sunny,
humid, high 73. Tonight
cloudy, areas of drizzle, low
morning, variably cloudy,
high 76. Weather map, p. 1

CLXIV . . . No. 56,654

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NEW YORK, TUESDAY, OCTOBER 14, 2014

What They Don't Teach Law Students: Lawyering

By DAVID SEGAL NOV. 19, 2011



"They are lawyers in the sense that they have law degrees, but they aren't ready to be a provider of services."

“All the News
That’s Fit to Print”

The New York Times

Late Edition

Today, clouds and sunny,
humid, high 73. Tonight
cloudy, areas of drizzle, low
morrow, variably cloudy,
high 76. Weather map, 1

CLXIV . . . No. 56,654

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NEW YORK, TUESDAY, OCTOBER 14, 2014

*the Vatican,
Shift in Tone
Toward Gays*

*bishops’ Report Signals
Greater Tolerance*

ELISABETTA POVOLEDO
and LAURIE GOODSTEIN

VATICAN CITY — In a marked
tone likely to be discussed
shes around the world, an
oly of Roman Catholic
s convened by Pope Fran-
he Vatican released a pre-
y document on Monday
for the church to welcome
cept gay people, unmar-
uples and those who have
ed, as well as the children
e less traditional families.
bishops’ report, issued

Oregon Requires at Least One Year of Substantive Law-Related Experience



C.D.C. RETHINKS
METHODS TO
SPREAD OF E

AFTER NURSE IN

Adequacy of Proto
Studied — A Bi
Group Faces R

This article is by Ma
nandez, Sabrina Taver
Richard Fausset.

DALLAS — The tran
of the Ebola virus to a nu
forced the Centers for
Control and Prevention
day to reconsider its app

To Test or Not To Test

- Exams test what can be easily tested, not real world skills like the ability to:
 - Perform legal research
 - Conduct fact investigations
 - Interview and counsel clients
 - Negotiate and persuade
- Very expensive to develop and administer

Regulation

The ultimate result of shielding men from the effects of folly is to fill the world with fools.

– Herbert Spencer



Regulation: Lawyers vs. Paraprofessionals

Lawyers

- Must carry malpractice insurance
- Must meet continuing education requirements
- Must comply with rules of professional conduct

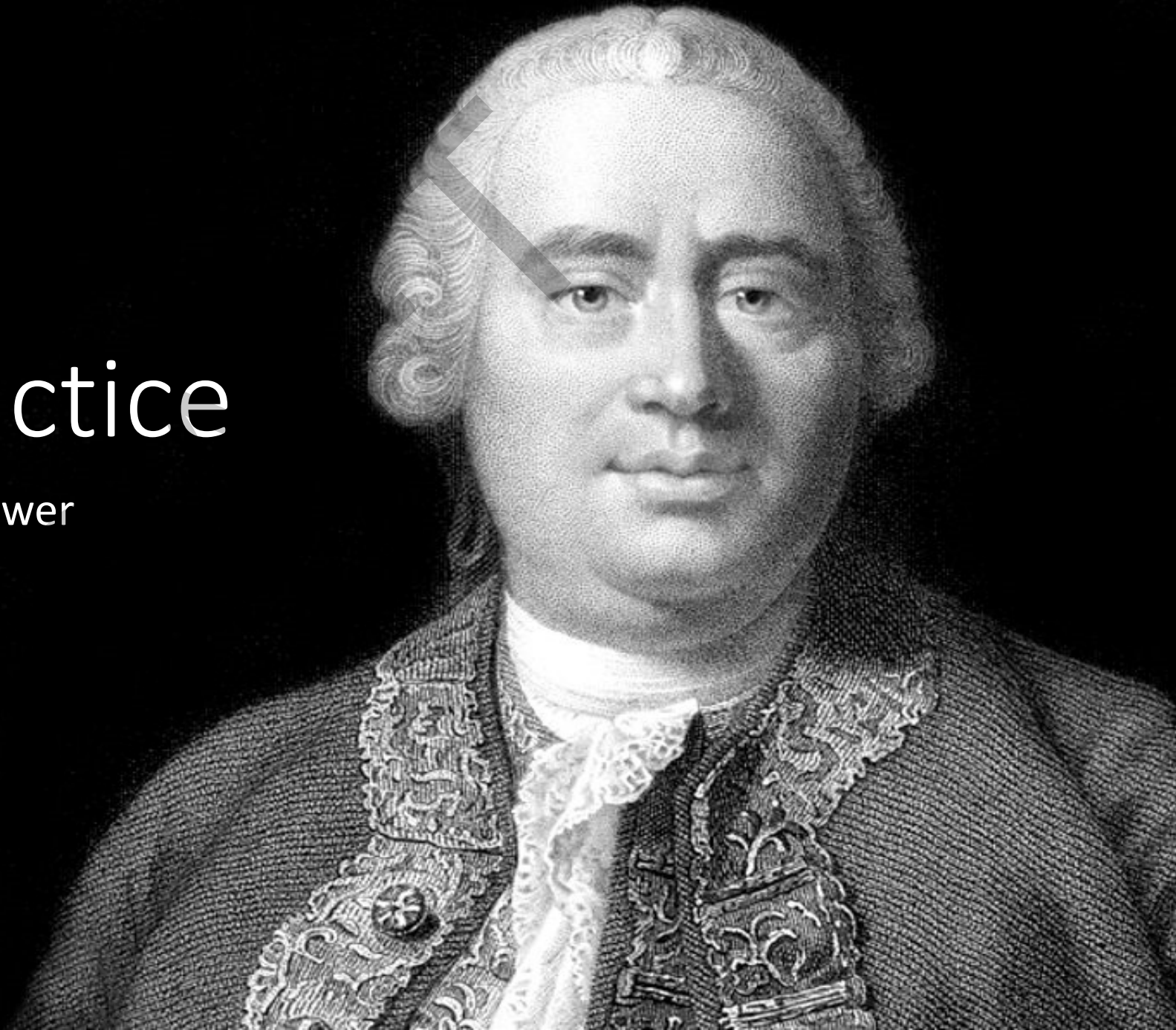
Paraprofessionals

- Must carry malpractice insurance
- Must meet continuing education requirements
- Must comply with rules of professional conduct
- Must use written agreements with mandatory disclosures

Scope of Practice

The law always limits every power
it gives.

– David Hume





Three Limitations on the Scope of Practice

- May provide approved legal services only for certain types of proceedings
- Even for approved proceedings, may provide only limited legal services
- May not provide any legal services in complex cases

Examples of Complex Cases in Washington

- Nonparental custody
- Indian Child Welfare Act cases
- Jurisdiction under UCCJEA not determined
- Protective orders
- Relocation actions





Duty to Refer to a Lawyer

- If a licensee knows or reasonably should know that a matter is outside the approved scope of practice



Family Law Proceedings

- Large number of self-represented litigants
- Many non-complex cases
- Forms-driven process with extensive pattern forms
- Success of the family law facilitator program

Landlord-Tenant Proceedings

- Large number of self-represented litigants
- Routine proceedings
- Landlords are already represented by nonlawyers
- Success of the New York Navigator pilot program



KICK'EM OUT QUICK
EVICCTIONS & COLLECTIONS

Services Within the Scope of Practice



- Providing any other legal service in any other matter
- Representing a client in depositions
- Representing a client in court
- Filing an appeal

- Selecting, preparing, filing and serving forms and documents
- Providing information and advice about the proceeding
- Negotiating with another party
- Providing emotional and administrative support in court

summary



ELIGIBILITY

- 18 years old and of good moral character
- Associates degree
- ABA-approved or accredited paralegal studies program
- 1 year of substantive law-related experience
- Pass a test (undecided)

summary

REGULATION AND SCOPE

- Malpractice insurance
- Continuing legal education
- Rules of professional conduct
- Limited scope of practice
- Duty to refer matters outside the scope of practice
- Mandatory written disclosures



A blue-tinted background image. On the left, a person in a white lab coat is holding a scale. In the foreground, several hands are raised, suggesting a Q&A session or a survey. The word 'DRYFET' is written diagonally across the image in a large, semi-transparent font.

Questions?

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 17, 2017
Memo Date: April 17, 2017
From: Guy Greco, Board Development Committee Vice-Chair
Re: Appointments to various bar groups

Action Recommended

Approve the Board Development Committee's recommendations for new member appointments to the following bar committees. Approve forwarding the committee's recommendation for a new lawyer and public member to the Disciplinary Board.

Background

Pro Bono Committee

The Pro Bono Committee assists with expansion of services to low-income clients in civil matters. The committee is in need of three new members and **Stephanie Harper** (952901), **Charlotte Hodde** (161724), and **Christine Zeller-Powell** (115905) are recommended from the OSB volunteer list. Ms. Harper is an in-house attorney, a perspective not evenly represented on the committee. Ms. Hodde is from a medium-sized firm which has an extensive history of supporting pro bono work. Ms. Zeller-Powell offers geographic diversity and is heavily involved with community outreach in Lane County. Ms. Harper and Ms. Hodde's terms would expire December 31, 2017 and Ms. Zeller-Powell's term would expire December 31, 2018.

Quality of Life Committee

The Quality of Life Committee educates lawyers and firms about the benefits of balancing personal life and career obligations. The committee is in need of three new members and **Emily Farrell** (123126), **Kara Govro** (091098), and **Ellen Pitcher** (814454) are recommended from the OSB volunteer list. Ms. Farrell is employed by U of O and has assisted the committee with law school outreach in the past. Ms. Govro is well known as an active and engaged contributor amongst the committee's leadership. Ms. Pitcher offers a varied background in the legal field and provides a more seasoned perspective to quality of life issues. Ms. Govro's terms would expire December 31, 2018 and Ms. Farrell and Ms. Pitcher's terms would expire December 31, 2019.

State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. One new public member is needed to fill a partial term expiring December 31, 2020. **Dr. Michael R. Villanueva** is recommended based on his extensive neuropsychology experience.

Uniform Civil Jury Instructions Committee

The Uniform Civil Jury Instructions Committee develops uniform jury instructions for use in civil trials. One new member is needed and **Lorelei Craig** (152515) is recommended based on her geographic

area and the perspective she offers from her areas of practice. Ms. Craig's term would expire December 31, 2019.

Disciplinary Board

The Disciplinary Board is a component of the disciplinary process with two lawyer and one public member create a trial panel to evaluate evidence presented by the bar and the accused lawyer. They determine if the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. One new public member is needed to fill a vacant seat in region 4 and one lawyer member in region 5. BOG recommendations are sent to the Supreme Court for appointment consideration.

Sandra Frederiksen is a native Oregonian from Beaverton with extensive volunteer experience through the Beaverton Police Department, animal shelter, and SMART reading program. If appointed to region 4 her term would end on December 31, 2019.

Michael T. McGrath (013445) is with Gearing, Rackner & McGrath LLP. He has served as an arbitrator and practices family law. If approved for appointment Mr. McGrath would serve in region 5 through December 31, 2019.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 14, 2017
Memo Date: April 14, 2017
From: Guy Greco, Board Development Committee Vice-Chair
Re: Recommendations for BPSST Policy Committee Appointment

Action Recommended

Approve the Board Development Committee's appointment recommendations for a policy committee of the Department of Public Safety Standards and Training Board.

Background

As provided in ORS 181.637, the Oregon State Bar has authority to recommend a candidate for appointment to the Private Security/Private Investigators Policy Committee (PSPIPC) of the Department of Public Safety Standards and Training (DPSST) Board. The term of service is two years and members are eligible for reappointment.

Based on an open recruitment through the DPSST, six candidates submitted an interest form for service on the PSPIPC. The interest forms are available as exhibits in the BOG Board Development Committee April meeting materials. After thorough review and deliberation, the Board Development Committee selected **Chris Bloom** as the candidate to recommend for PSPIPC appointment consideration.

Chris Bloom has been a licensed private investigator for more than 7 years and has 30 years of experience in the field as a fire consultant. He is based out of Southern Oregon and holds licenses in four other states. Mr. Bloom taught college-level fire investigation courses and has national experience advocating for ethics and reciprocity in the private investigator profession. He served on the PSPIPC for two years beginning in 2005 but remains eligible to serve another term.

The BOG's Beer & Wine Fund – To Do or Not To Do

The board needs to make a decision if it wants to continue contributing personal funds for beer and wine to be served at official board events. This type of fund has been in existence for several years. Currently there is \$144.39 in the account, the lowest amount in memory. If the board does not want to continue this fund I will close the account and all alcohol at future events will be purchased by the member as a cash bar.

In 2016, \$2,840.00 was expended for two events – the joint BOG/PLF dinner and the board retreat. The latter the most expensive costing \$2,246.00. In previous years there have been 3-4 events for which beer and wine was purchased, but the last 1-2 years it has been only the mid-year out of town and the fall retreat meetings

In 2016, contributions were \$2,324 from 16 people – 7 from members of the 2016 class, 2 from the first-year 2017 class, and 7 senior staff. For the last 4 years the contribution has been \$150.00. Board members who do not drink alcohol are not asked to contribute, and there have been no contributions expected for family members or friends of board members.

April 13, 2017

Article 23 Professional Liability Fund

Section 23.1 Board of Directors

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

Section 23.2 Authority

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors appropriate requirements for PLF coverage and amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

Section 23.3 Operation

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

Section 23.4 Reports

The PLF must present an annual report to the bar membership. ~~at the annual meeting of the House of Delegates and must report periodically to the membership.~~

Section 23.5 Relationship with the Board of Governors

Subsection 23.500 Liaisons

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of

Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints ~~the President elect of the Bar, an additional two~~ lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors. ~~The additional lawyer member of the Board serves at least two years as liaison and will be replaced by a new lawyer member of the Board who will serve at least two years.~~

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) ~~The PLF CEO or the CEO's designee One or more of the Board's PLF liaisons~~ must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

(e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

Subsection 23.501 Reports

The PLF must regularly provide to the BOG the following:

(a) All financial statements when completed;

(b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;

(c) All reports of investment performance and changes in investments;

(d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;

(e) On or before ~~September-October~~ 1 of each year, the proposed assessments for primary ~~and excess~~ coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;

(f) A report generally describing the previous year's excess enrollment, including total firms enrolled, total lawyers and gross premiums from the excess program.

~~(f) All closed claim reports prepared in a manner consistent with the confidentiality requirements of ORS 9.080(2)(a);~~

(g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;

(h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

Subsection 23.502 Release of Information

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President of the Board of Governors to the Chair of

the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

Subsection 23.503 BOG Members Participating in PLF Claims

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. ~~Upon undertaking the representation, the Board of Governors member shall inform the Executive Director in writing as soon as practicable.~~ During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

Subsection 23.504 Annual Meeting

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and/or discuss matters of common interest to the Board of Governors and the PLF. ~~The meeting must include a report by the Personal and Practice Management Committee of the PLF pursuant to PLF Policy 6.150(C).~~ This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by ~~April~~ May 1st of each year, whichever is earlier.

Subsection 23.505 Audit

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

Subsection 23.506 Location of Office

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

Subsection 23.507 Staff Responsibility

The Executive Director of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the Executive Director and bar staff will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its Executive Director and staff in all areas of the Bar's business and activities. The Executive Director of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

Section 23.6 Assessment

Subsection 23.600 Principles

The Board of Governors recognizes that ~~the assessments~~ for coverage ~~is are~~ derived by the prudent application of actuarial principles, responsible evaluation of past and present

operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit ~~proposals~~ to the Board of Governors ~~its recommended for all recommended assessments for the subsequent year (or any mid-year special assessment)~~ supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt ~~an~~ assessments that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

~~Subsection 23.601 Appeals by Members~~

~~(a) Review by the Professional Liability Fund Board of Directors~~

~~The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:~~

~~(1) All notices of assessments and invoices for assessments to members include language that gives notice to the assessed member of the right to appeal to the PLF, the appeal procedure to be followed, and the time limits to perfect the appeal.~~

~~(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:~~

~~"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of this letter. The Executive Director's address is PO Box 231935, Tigard, OR 97281-1935. A request for Board of Governors review constitutes and evidences your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."~~

~~(3) Assure that all steps necessary are taken by the PLF Board of Directors and staff to facilitate the Board of Governors review of the action by the PLF Board of Directors in denying relief requested in the petition.~~

~~(b) Review by the Board of Governors.~~

~~(1) Any member who, after properly and timely filing a petition, is denied requested relief by the PLF Board of Directors has a right to request the Board of Governors to review the action of the PLF Board of Directors in denying the relief requested in that petition. To be entitled to such review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written notice from the PLF to the member denying the requested relief. Review by the Board of Governors on a timely filed request is de novo and on the record. In making the determination whether to affirm the action of the PLF Board of Directors, only the grounds asserted in the petition and written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, on its own motion, requests additional materials from the member and from the PLF.~~

~~(2) The President of the Oregon State Bar must appoint a committee of at least three of the members of the Board of Governors, which must meet and review the appropriate materials and make a recommendation to the Board whether to affirm the action of the PLF Board of Directors. The Board of Governors must make a determination and notify the member in writing of its decision, including any adjustment to the assessment. The decision of the Board of Governors is final.~~

~~(3) A request for Board of Governors review does not relieve a member from the obligation to pay the contested assessment, nor does a review pending before the Board of Governors suspend or toll the default date or delay the imposition of late payment penalties or suspension proceedings. If the Board of Governors review results in an adjustment to the assessment requiring a refund to the member, the PLF must pay the member an appropriate refund together with statutory interest thereon.~~

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April 13, 2017

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RE: Legislation CLE

Dear Michael, Jim, Ray and Helen:

I have been a member of the bar for nearly 43 years. I am writing to lament the apparent loss of the biennial Legislation CLE. If my recollection is correct, the bar ceased having those biennial CLE's when we stopped having the biennial Bar Convention in Seaside. I found those CLE's to be invaluable, as did the members of my firm. It kept us up to date on new legislation. Something the PLF should be pleased about. Now, I have some fear that there is new legislation that I don't know about. Those CLE's were well attended and well received. I have talked with staff in the CLE department about this several times over the years, to no avail. I strongly encourage the Bar to reinstitute the biennial CLE's on new legislation.

As a side note, I also lament the loss of the biennial Bar Convention in Seaside. I realize that we have changed our form of governance, but the biennial convention in Seaside promoted congeniality within the Bar. We would see other attorneys from around the state that we just don't see now. I would encourage the Board to reinstitute the biennial Bar Convention in Seaside where we could have the new Legislation CLE, among other things.

Thank you for considering these matters and thank you for your service to the Bar.

Sincerely yours,

THORP, PURDY, JEWETT
URNES & WILKINSON, P.C.


Dwight G. Purdy

DGP/kdh

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 14, 2017
From: MCLE Committee
Re: Credit for serving on Council on Court Procedures

Action Recommended

Review and approve the proposed MCLE Rules and Regulations regarding credit for service or as staff on the Oregon Council on Court Procedures.

Background

The MCLE Committee recently reviewed a request from member Mark Peterson, who is proposing the following rule and regulation amendments. These amendments would allow members who serve as a member or as staff on the Oregon Council on Court Procedures to claim CLE credit under Category II. Credits in this category are limited to 20 in a three-year reporting period.

Based on Mr. Peterson's personal experience, this activity is comparable to serving on the Uniform Jury Instructions Committees. Members may claim credit for service on these committees pursuant to Rule 5.10 and Regulation 5.00(f).

Members serving on the Oregon Council on Court Procedures are volunteers. They spend a tremendous amount of time reviewing the history of the Oregon Rules of Civil Procedure, comparing them to the federal rules and engaging in a comprehensive analysis in determining whether revisions are needed or appropriate. Their level of commitment is substantial.

Therefore, the MCLE Committee recommends amending the MCLE Rules and Regulations as follows to allow Category II credit for this activity. Category II credits are limited to 20 in a three-year reporting period and 10 in a shorter reporting period.

MCLE Rule 5.12 Oregon Council on Court Procedures. Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.

MCLE Regulation 5.200

- (i) **Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.**

In the fall of 2016, a member asked if he could claim credit under Category III for service on this committee. MCLE Committee members discussed this at the December 2016 meeting and determined that Category III credit could be claimed for this volunteer activity. Credits in Category III are limited to 6 in a three-year reporting period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 14, 2017
From: MCLE Committee
Re: 1) Amend regulations regarding programs discussing substance abuse and mental health issues for lawyers; and
2) Correct numbering in several MCLE Rules

Action Recommended

Review and approve proposed amendments to MCLE Regulations 3.400(a) and 5.300(a) related to accreditation of courses related to substance abuse, cognitive impairments, and mental health issues, and make housekeeping amendments to ensure consistent numbering.

Background

The MCLE Committee recommends amending Regulations 4.300(a) and 5.300(a) to provide that CLE courses related to attorney substance abuse, cognitive impairment, and mental health issues qualify for Category I Practical Skills credit.

The MCLE Committee recognizes the importance of educating attorneys about substance abuse, cognitive impairments, and mental health issues within the profession. In 2016, the American Bar Association, in cooperation with the Hazelden Betty Ford Foundation, published the first national study on attorney substance abuse and mental health concerns. The study, published in the *Journal of Addiction Medicine*, reports that 21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety. The study also found that younger attorneys in the first 10 years of practice exhibit the highest incidence of substance abuse and mental health issues.

The proposed amendments would:

1. Allow greater emphasis on attorney education about substance abuse, cognitive impairments, and mental health issues, by providing courses related to these topics qualifying for Category I, Practical Skills credit, instead of Category III Personal Management Assistance credit. This change would also remove the Category III cap of six (6) credits per reporting period for these courses.
2. Remove language from the regulations that implies a negative stigma should be attached to attorneys who may be dealing with substance abuse issues. Currently, MCLE Regulation 3.400(a) allows practical skills credit for programs discussing “the negative aspects of substance abuse to a law practice.” The Committee recommends amending this regulation to remove the “negative” language associated with substance abuse and

focus instead on the impact of substance abuse, cognitive impairment, and mental health related issues to a law practice.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; *the negative aspects of substance abuse to a law practice*; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

Regulation 5.300(a) sets forth the types of activities that may qualify for personal management assistance credit and includes programs addressing alcoholism, drug addiction, depression and anxiety. Personal management assistance credits are in Category III, which is limited to 6.0 credits in a three-year reporting period and 3.0 credits in a shorter reporting period.

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling or other addictions or compulsive behaviors, and other health and mental health related issues). Credit may also be claimed for programs designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).

Because of the types of activities that qualify for personal management assistance credit (career transition and satisfaction, for example), members may see these Category III activities as less important than other activities that qualify for general or practical skills credits.

Therefore, in order to elevate the importance of the serious issues of substance abuse and other mental health issues among lawyers in the United States, the Committee recommends amending these regulations as set forth below.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the ~~negative aspects~~ impact of substance abuse, cognitive impairment and mental health related issues to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing ~~alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling~~ or other addictions or compulsive behaviors, and other health ~~and mental health~~ related issues). Credit may also be claimed for programs designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).

2) Several housekeeping rule amendments were approved by the Board earlier this year but it was recently pointed out to the Committee that there are currently two different MCLE Rules designated as Rule 5.6.

Therefore, in order to be consistent and avoid confusion, the Committee recommends the following rule amendments be approved:

5.6 5.7 Teaching Activities.

(a) Teaching credit may be claimed for teaching accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.

(b) Credit may be claimed for teaching other courses, provided the activity satisfies the following criteria:

- (1) The MCLE Program Manager determines that the content of the activity is in compliance with other MCLE content standards; and
- (2) The course is a graduate-level course offered by a university; and

- (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(c) Credit may not be claimed by an active member whose primary employment is as a full-time or part-time law teacher, but may be claimed by an active member who teaches on a part-time basis in addition to the member's primary employment.

(d) No credit may be claimed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Program Manager.

5.7 5.8 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); and
- (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- (c) It contributes substantially to the legal education of the applicant and other attorneys; and
- (d) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Program Manager, based on the contribution of the written materials to the professional competency of the applicant and other attorneys.

5.8 5.9 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period.

5.9 5.10 Legal Ethics Service. Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

5.10 5.11 Jury instructions Committee Service. Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.

Accreditation Standards for Category III Activities

5.11 5.12 Credit for Other Activities.

(a) **Personal Management Assistance.** Credit may be claimed for activities that deal with personal self-improvement, provided the MCLE Program Manager determines the self-improvement relates to professional competence as a lawyer.

(b) **Other Volunteer Activities.** Credit for volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9, or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

(c) **Business Development and Marketing Activities.** Credit may be claimed for courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practice.

Activity Content Standards

5.12 5.13 Group and Teaching CLE Activities

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice.

5.13 5.14 Ethics and Access to Justice.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, rules of professional conduct, or statements of professionalism.

(b) Child abuse or elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(c) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(d), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

(d) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

Teaching Activity Content Standards

5.14 5.15 Other Professionals. Notwithstanding the requirements of Rules 5.6 and 5.12(a) and (b), credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer.

Unaccredited Activities

5.15 5.16 Unaccredited Activities. The following activities shall not be accredited:

(a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and

(b) Activities designed primarily to sell services or equipment; and

(c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.

(d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.

DRAFT

Oregon State Bar
Meeting of the Board of Governors
February 10, 2017
Open Session Minutes

President Michael Levelle called the meeting to order at 9:00 a.m. on February 10, 2017. The meeting adjourned at 11:30 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Eric Foster, Guy Greco, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, and Kerry Sharp. Not present was Chris Costantino, Rob Gratchner, Kate von Ter Stegge, and Elisabeth Zinser. Staff present were Helen Hierschbiel, Amber Hollister, Susan Grabe, Dani Edwards, and Camille Greene. Also present was Carol Bernick, PLF CEO, and Tim Martinez, PLF Board of Directors.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as presented, by consensus.

2. 2016 Retreat Debrief and Next Steps

The three takeaways from the November 2016 retreat were: develop clear, concise, achievable goals; focus regularly on strategic and policy issues versus operational issues; and improve development of the board. Moving forward the board will develop a meaningful action plan for each year and keep the mission, strategic function and action plan up front at all BOG meetings.

In addition, the BOG expressed interest in having generative discussions during its meetings. Ms. Hierschbiel gave a brief overview of what generative discussions are and possible topics for generative discussions in 2017.

Mr. Levelle would like the first topic to be 'what is inclusion and equity?' Ms. Hierschbiel announced that we will have a speaker on implicit bias on April 13. Mr. Greco suggested that we schedule any generative discussions for the days only the committees meet. The board, by consensus, agreed to begin in May. The board also discussed other possible generative topics for future meetings.

Ms. Nordyke presented the strategic functions developed by the Policy & Governance Committee over the last year and the Committee's recommended areas of focus for 2017. **[Exhibit A]**.

Motion: The board voted unanimously in favor of accepting the Policy & Governance committee recommendations for 2017 areas of focus. The motion passed.

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

A. Appellate Screening Special Committee

Mr. Ramfjord updated the board on the detailed process to recommend replacements for Justice Baldwin who announced he will step down from the court in December 2016. The

board's recommendations to the court, approved by President Levelle, are posted on the Oregon State Bar website. **[Exhibit B]**

Motion: The board voted to ratify the letter to the court. The committee motion passed. Ms. Reeves abstained.

B. Board Development Committee

Mr. Ramfjord presented the committee's recommendations for several committee and board appointments: Steven B. Taylor to the Client Security Fund, Elizabeth Schwartz to the State Lawyers Assistance Committee, James Brown to the Unlawful Practice of Law Committee, Nicole Krishnaswami and Abby K. Miller, and Paul Nickell to the Legal Heritage Interest Group **[Exhibit C]**

Motion: The board voted in favor of accepting the committee recommendations. The motion passed.

Mr. Ramfjord presented the committee's expression of support for the BBX co-graders. **[Exhibit D]**

Motion: The board voted in favor of accepting the committee recommendations. The motion passed.

Mr. Ramfjord asked the board to defer the vote on the committee's recommended appointment to the BPSST Policy Committee.

C. Budget & Finance Committee

Mr. Chaney updated the board on a working version of the 2016 Financial Report. Six long-term bar employees have left in the past 12 months resulting in lower employee wage costs in the next year. The committee will be working with the Policy & Governance Committee on the reduction of the number of sections.

D. Policy and Governance Committee

Ms. Nordyke presented the committee motion to accept the revision to the Futures Task Force charge. **[Exhibit E]**

Motion: The board voted in favor of accepting the committee recommendations. The motion passed.

Ms. Nordyke asked the board to waive the one-meeting notice requirement.

Motion: By consensus, the board voted in favor of waiving the one-meeting notice. The motion passed.

Ms. Nordyke presented the committee motion to accept the proposed amendments to OSB Bylaw 14.4 regarding committee appointments. **[Exhibit F]**

Motion: The board voted in favor of accepting the committee-recommended bylaw amendments. The motion passed.

E. Public Affairs Committee

Ms. Rastetter gave a general update on legislative activity, including Ms. Hollister's testimony regarding the changes to the OSB disciplinary rules. The committee meets via conference call every two weeks to receive updates on the legislative session and bills of interest. **[Exhibit G]** On May 23, 2017 the committee will conduct its 'Day at the Capitol' where members meet with

the legislators. Board members are encouraged to attend and will be updated with talking points.

4. Professional Liability Fund

Ms. Bernick gave an update on the PLF's efforts to supply immigration law support, the office's progression towards paperless billing, the increasing number of people who do not have the correct amount of insurance, and the risk attorneys are facing when doing work in securities regulation.

Ms. Bernick presented the 2016 Claims Attorney and Defense Counsel Evaluations which were very positive.

The PLF's 40th anniversary will take place in 2018.

Mr. Martinez reported the Board of Directors is pleased with the financial investments of the PLF. He asked the board to approve the proposed revisions to PLF Policy 5.200. **[Exhibit H]**

Motion: Mr. Greco moved, Mr. Foster seconded, and the board voted to approve the revisions. Mr. Chaney, Mr. Peachey, and Mr. Bachofner abstained. The motion passed.

5. OSB Committees, Sections, Councils and Divisions

A. MCLE Committee

Ms. Hollister presented the MCLE committee request for the board to approve the changes to MCLE Rules re: UBE Admittees. **[Exhibit I]**

Motion: Mr. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve the changes.

B. Oregon New Lawyers Division Report

In addition to the written report from Ms. Eder, Ms. Edwards mentioned the ONLD partnership with the Military and Veterans section to present housing CLEs, and the proposal to participate in the ABAs diversity challenge working with students in the state to encourage them to apply to and attend law schools.

6. Consent Agenda

Mr. Levelle asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote.

Mr. Greco asked for an explanation of the LEC's proposed formal opinion regarding lawyer production of client files. Ms. Hirschbiel provided clarification.

A. Report of Officers & Executive Staff

Report of the President

Mr. Levelle reported on his recent testimony in Salem, the meeting with the Chief Justice, and the discussion at the BBX meeting regarding Oregon's high 'cut rate' and its effect on the declining number of new admittees. He introduced Jonathan Puente, the new OSB Director of

Diversity & Inclusion, who reported on the Diversity Action Plan and the efforts to increase the number attorneys of color in Oregon and how to track the progress of these efforts. Mr. Levelle has graciously offered his firm, Sussman Shank, as the location for the ACIDI meetings.

Report of the Executive Director

Ms. Hirschbiel presented the 2016 OSB Program Evaluations and its function of measuring the progress of OSB programs. Mr. Ramfjord asked that the program evaluations be included in the next meeting agenda to give the BOG more of an opportunity to review and give feedback.

Director of Diversity & Inclusion

Mr. Puente introduced himself and gave a brief report.

Motion: Mr. Greco moved, Mr. Peachey seconded, and the board voted unanimously to approve the consent agenda and past meeting minutes. **[Exhibit J]**

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)

Mr. Greco called the board's attention to the article in the agenda regarding California's future struggle with its status as a unified bar.

Mr. Levelle reported on his handout regarding Indian law legal issues in Oregon and encouraged board members to use their status as section liaisons to inform members of this problem. **[Exhibit K]**

**Oregon State Bar
Board of Governors Meeting
February 10, 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 Litigation

Ms. Hollister informed the board of a non-action item.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

DRAFT

2016 Retreat Debrief and Next Steps

- I. Retreat board self-assessment summary and takeaways
 - A. Board needs to develop clear, concise, and achievable goals.
 - B. Board should focus regularly on strategic and policy issues versus operational issues.
 - C. Board could improve development of the board
 - A. Identify and cultivate qualified candidates (recruitment)
 - 1. What are the attributes, abilities and skills that the OSB needs
 - 2. Ensure the board represents the diversity of Oregon lawyers
 - 3. Plan for leadership succession
 - B. Provide job descriptions for board members (education & orientation)
 - C. Ensure new members are familiar with the organization and general board practices (education & orientation)
 - D. Ensure that board members are valued and skills utilized (recognition & engagement)
 - E. Foster inclusion in discussions and meeting planning
- II. Suggestions for moving forward
 - A. Keep mission, strategic functions, and areas of focus up front at all BOG meetings
 - B. Develop a meaningful action plan and keep it “front and center” at board meetings—a short list of big issues
 - C. Mission, strategic functions, tactics in place; ensure BOG is familiar with them
- III. Implementation
 - A. Rearrange agenda
 - 1. Mission will be at top of agenda,
 - 2. Generative discussion to start (recommend two per year)
 - 3. Strategy/Action Plan review of progress
 - 4. Items added to consent agenda
 - B. Create Board Development Plan
 - C. Other?
- IV. Generative Discussions
 - A. What is generative thinking?
 - 1. A cognitive process for deciding what to pay attention to

2. “Making sense” by probing assumptions, logic, and values
3. Problem-framing NOT problem-solving
4. Not expected to result in a decision
5. May inspire subsequent discussions of strategy, plans, tactics, execution

B. What is a generative topic?

1. An issue that is open to multiple interpretations and touches on core values
2. Something new to the board that we haven’t talked to death already
3. Something significant, having major impact
4. Ambiguous; no obvious way to look at it

C. What does it mean for the meetings

1. No discussion about some topics
2. Possible increase in length of meetings

D. Possible generative topics

1. Who do we serve? To whom do we owe duties?
 - Fiduciary v Representative
 - Public v Members
2. Why a unified bar? What’s the advantage? What is deeper purpose? What are the dilemmas? Opportunities? What would happen if we split?
3. What are we trying to accomplish with the Futures Task Force?
4. What are the implications of a no-growth or negative growth membership?
5. What is our diversity paradigm?
6. What if we didn’t have a HOD?
7. What does it mean to promote respect for the rule of law?

V. BOG Buy-In

- A. Ask BOG to approve new agenda format (MICHAEL)
- B. Ask BOG to approve devoting time to two generative discussions (MICHAEL)
- C. Ask BOG to identify generative discussion topics (MICHAEL)
 - A. Michael—you may want to suggest one topic on D&I and get BOG buy-in on implicit bias educations session
- D. Ask BOG to approve strategic functions (VANESSA)
- E. Ask BOG to approve areas of focus (VANESSA)

VI. Diversity deep-dive

A. Major Trends/Challenges in Diversity, Equity and Inclusion

- a. Demographics of OSB does not reflect demographics of Oregon
- b. Pipeline issues
- c. Leadership barriers
- d. Communication and inclusion issues
- e. Education and awareness
- f. Equity and access/institutional bias
- g. Leadership buy-in

B. How our Lenses Shape our Legacy

- a. What D, E, I conversations does the board need to have in the future?
 - i. Improving awareness
- b. What makes governance experiences with outside groups a win-win?
What would it take to create more of them?
- c. What might be legacy I.D.E.A.S?
- d. What needs more or less investment in the future?
- e. How do we break down silos and build up collaboration with other groups?
- f. How will we acknowledge success? What does it take to institutionalize D, E, I?

MINUTES

BOG Appellate Screening Committee

Meeting Date: January 6, 2017

Location: OSB Center

Chair: Per Ramfjord

Attendance: Eric Foster, Guy Greco (by phone), Vanessa Nordyke, Eddie Medina, Tom Peachey, Kathleen Rastetter, Julia Rice, Traci Rossi, Kate Von Ter Stegge, Kerry Sharp, Michael Levelle.

Staff Present: Susan Grabe, Kellie Bagnani

The committee met in executive session to consider confidential documents (A governing body may go into executive session to consider “information or records that are exempt by law from public inspection.” ORS 192.660(2)(f)). Our documents/notes are confidential per:

Confidential Submissions: ORS 192.502(4)

Internal Advisory Communication: ORS 192.502(1)

1. Review appellate screening bylaws, process and timelines. The committee reviewed OSB Bylaw 2.703(f) of the Judicial Selection Bylaws as well as the process, criteria and timelines for the Supreme Court vacancy. The committee also discussed that the bar’s Appellate Selection process is driven by the Governor’s timeline. In this case, the bar has been requested to provide its results to the Governor’s office by February 8, 2017. The committee discussed the need to ensure the perspective of an appellate judge and decided to extend an invitation to former Chief Judge Mary Deits to participate in the process.

2. Candidate and reference check questions. The committee reviewed and revised its questions to solicit feedback that would best help inform their deliberations.

3. Interview dates and follow up. The committee determined that, based on member availability, the best dates for interviewing candidates was January 16th and 18th, to be followed by a final meeting on January 23rd to discuss reference materials, background checks and candidate interviews.

4. Background reference check assignments. Background reference checks were assigned to committee members.

MINUTES

BOG Appellate Screening Committee

Meeting Date: January 23, 2017

Location: OSB Center

Chair: Per Ramfjord

Attendance: Jim Chaney, Eric Foster, Guy Greco (by ph), Vanessa Nordyke, Eddie Medina, Kathleen Rastetter, Julia Rice (by ph), Traci Rossi, Kate Von Ter Stegge, Judge Deits

Staff Present: Susan Grabe, Misha Isaak

The committee met in executive session to consider confidential documents (A governing body may go into executive session to consider “information or records that are exempt by law from public inspection.” ORS 192.660(2)(f)). Our documents/notes are confidential per:

Confidential Submissions: ORS 192.502(4)

Internal Advisory Communication: ORS 192.502(1)

- 1. Appellate Screening recommendations.** The committee met to deliberate on the committee’s recommendations to the Board of Governors of those “Highly Qualified” candidates for consideration by Governor Brown. The committee discussion leading up to the recommendations included discussion of reference materials and were conducted in confidential executive session pursuant to subsection 2.703(f) of the Judicial Selection Bylaws. The final recommendations were unanimously adopted by the committee.
- 2. Next Steps.** The committee discussed further revisions to the process for the future and finalizing the letter in a timely fashion to meet the Governor’s timeline.



Oregon State Bar

February 9, 2017

Board of Governors

President

Michael D. Levelle, Portland

President-elect

Vanessa A. Nordyke, Salem

Region 1

Thomas C. Peachey, The Dalles

Region 2

James C. Chaney, Eugene

Region 3

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Per A. Ramfjord, Portland
Liani JH Reeves, Portland
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Region 6

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Region 7

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Elisabeth Zinser, Ashland

Immediate Past President

R. Ray Heysell, Medford

CEO/Executive Director

Helen Hirschbiel, Tigard

Governor Kate Brown
State Capitol Building
900 Court St. NE, Suite 254
Salem, OR 97301

Dear Governor Brown:

The Oregon State Bar's Appellate Screening Committee has completed its review of the candidates who have applied for appointment to the Oregon Supreme Court and who agreed to disclose their application materials to the OSB. Pursuant to OSB Bylaws, the Committee has conducted an in-depth review of each application and candidate, including in-person interviews of all candidates who opted to participate in the process.

The Committee's review process is intended to provide you with relevant, reliable, and descriptive information to help inform your appointment decision. As instructed by OSB Bylaws, our recommendation of candidates as "highly qualified" is based on "the statutory requirements of the position, as well as information obtained in the review process, and the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service." A "highly qualified" recommendation is intended to be objective, and the Committee's failure to identify any specific candidate as "highly qualified" should not be viewed as a finding that the person is unqualified. A "highly qualified" recommendation is intended to reflect the candidate's overall ability to serve on the court.

The Board of Governors is pleased that members from around the state, including a public member, serve on the Appellate Screening Committee. Hon. Mary Deits, former Chief Judge of the Oregon Court of Appeals, also volunteered her time as a Committee member during this review process, for which the Board of Governors is especially grateful. We also deeply appreciate the assistance and leadership of your counsel and your office during this process.

Pursuant to OSB Bylaw 2.703, the Oregon State Bar Board of Governors has approved the following list of candidates deemed “highly qualified” for appointment to the Oregon Supreme Court:

Allen, Beth A.
Aoyagi, Robyn E.
Auerbach, Harry
Brown, Marc D.
Bushong, Stephen K.
Cook, Nena
Duncan, Rebecca
Flynn, Meagan A.
Garrett, Chris
Leith, David E.
Ortega, Darleen R.
Rasmussen, Karsten H.
Rubin, Bruce A.

The Board of Governors appreciates that there were many qualified candidates for the positions and that the review process presented a challenging task. According to OSB Bylaw 2.700, a press release will be issued with the list of the “highly qualified” candidates and the results will be posted on the OSB webpage. Also pursuant to OSB Bylaws, we will gladly respond to any requests from your office as to whether certain other candidates meet a “qualified” standard.

Sincerely,

MICHAEL D. LEVELLE

Michael D. Levelle
OSB President



Per Ramfjord
OSB Board of Governors
Appellate Screening Committee Chair

Cc: Ben Souede, General Counsel, Office of the Governor
Misha Isaak, Deputy General Counsel, Office of the Governor

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10, 2017
Memo Date: February 9, 2017
From: Per Ramfjord, Board Development Committee Chair
Re: Appointments to various bar groups

Action Recommended

Approve the Board Development Committee's recommendations for new member appointments to the Client Security Fund Committee, State Lawyers Assistance Committee, Unlawful Practice of Law Committee, and the Legal Heritage Interest Group.

Background

Client Security Fund Committee

The Client Security Fund Committee investigates and recommends acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. The committee is in need of one member appointment and **Steven B Taylor** (821285) is recommended from the OSB volunteer list. Mr. Taylor has 25 years of civil practice experience and after closing his office several years ago he began teaching paralegal courses including those focused on ethics. He served on the CSF Committee in the early 90's and offers a significant amount of experience serving on various non-legal related boards. If appointed, Mr. Taylor's term on the CSF Committee would expire December 31, 2019.

State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. One new member is needed to fill a partial term expiring December 31, 2019. **Elizabeth Schwartz** (961121) offers experience as a practicing lawyer and recently earned her license as a mental health therapist. These two perspectives are beneficial for work on this committee.

Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. **James Brown** (670129) offers a varied practice experience and he is recommended for appointment based on his reputation for hard work. Mr. Brown offers geographic diversity and would serve a term through December 31, 2020.

Legal Heritage Interest Group

The Legal Heritage Interest Group preserves and communicates the history of the OSB to interested groups. **Nicole Krishnaswami** (104293), an existing interest group member, volunteered to serve as secretary for the remainder of 2017. **Abby K. Miller** (094443) is recommended as a new member and offers additional gender balance on the group. If appointed Ms. Miller would serve through December 31, 2019. **Paul Nickell**, a current OSB employee, is recommended for appointment as a public member. If approved, his term would begin on March 1, 2017, after his retirement from the OSB, and expire December 31, 2019.

Oregon Board of Bar Examiners

To: Board of Governors Development Committee
Memo Date: January 30, 2017
Meeting Dates: February 9 – 10, 2017
From: Dawn Evans, Director of Regulatory Services
Re: Proposed Co-Graders for the July 2017 Bar Exam

As requested by this committee, the Board of Bar Examiners has provided information for each of the candidates proposed to serve as co-graders for the July 2017 grading session.

STEFFAN ALEXANDER Portland Black Male	Admitted 2013 Private Practice, Litigation No Experience as Co-Grader
TODD E. BOFFERDING Hood River White Male	Admitted 1988 Private Practice, Real Estate/Family Has Co-Graded in the Past
ROSA CHAVEZ Eugene Hispanic Female	Admitted in 2003 University of Oregon Has Co-Graded in the Past
MARISHA CHILDS Vancouver Black Female	Admitted 2012 (Reciprocity) Private Practice, Elder Law & Estates No Experience as a Co-Grader
CHRISTY A. DOORNINK Portland White Female	Admitted 2003 Private Practice, Workers Comp. No Experience as a Co-Grader
DENISE FJORDBECK Salem White Female	Admitted 1982 DOJ, Admin & Environmental No Experience as a Co-Grader
LISSA K. KAUFMAN Portland White Female	Admitted 1997 Private Practice, Family & Consumer Has Co-Graded in the Past

NICOLE KRISHNASWAMI Portland White Female	Admitted 2010 Oregon Medical Bd. No Experience as a Co-Grader
KENDRA MATTHEWS Portland White Female	Admitted 1996 Private Practice, Admin & Criminal Has Co-Graded in the Past
SARAH A. PETERS Eugene White Female	Admitted 2007 Private Practice, Environmental No Experience as a Co-Grader
MANDI PHILPOTT Gladstone White Female	Admitted 2002 Private Practice, Family Law Has Co-Graded in the Past
ANTHONY ROSILEZ CA in 2016) Klamath Falls Hispanic Male	Admitted 1996 (Never practiced in OR, moved from Klamath Community College, Labor & Employment No Experience as a Co-Grader
MICHAEL J. SLAUSON Salem White Male	Admitted 2001 DOJ, Criminal & Constitutional Has Co-Graded in the Past
ADRIAN T. SMITH Portland White Lesbian Female	Admitted 2012 Juvenile & Criminal No Experience as a Co-Grader
MIRANDA SUMMER Portland Bi-Racial Lesbian Female	Admitted 2007 Private Practice, Family Law & Workers Comp No Experience as a Co-Grader
KATHERINE E. WEBER Oregon City White Female	Admitted 1994 Circuit Ct Judge No Experience as a Co-Grader

ERNEST WARREN, JR.

Portland
Black Male

Admitted 1989

Private Practice, Criminal/land use
Has Co-Graded in the Past

SIMON WHANG

Portland
Asian Male

Admitted 2003

Office of City Attorney
Has Co-Graded in the Past

DRAFT

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.

DRAFT

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.

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
OSB SPONSORED BILLS							
SB 491	This bill includes changed proposed by the OSB Discipline Review Committee. These include: Creation of professional adjudicator; elimination of LRPCs; SPRB member appointed by Supreme Court; statutory immunity for mentors; and probation and diversion monitors.	Relating to regulation of attorneys; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
SB 490	This bill includes several issues, including changes necessitated by the implementation of AMS software, clarification of the role of the past-president, elimination of the obsolete vice-president position, and the renaming of the Executive Director position.	Relating to administration of the Oregon State Bar; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
HB 2610	This bill was proposed by the Business Law Section and incorporates concepts from the Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National Commerce Act	Relating to corporation documents.	H 1st - 1 /9	House Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		Business Law Section
HB 2608	Proposed by the Estate Planning Section, this bill corrects the effective date of HB 2331 (2015).	Relating to the Oregon Uniform Trust Code; declaring an emergency.	H 1st - 1 /9	House Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		Estate Planning Section
SB 492	Proposed by the Family Law Section, this bill is a redraft of HB 2332 (2015), and is intended to streamline the process for parties to determine if a modification of spousal support is appropriate.	Relating to exchange of information in spousal support proceedings.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		Family Law Section
SB 552	Proposed by the Family Law Section, this bill will provide courts with the ability to claim against a third party that is named as the beneficiary of life insurance that was ordered for the benefit of a child or former spouse.	Relating to concealed handgun licenses.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		Family Law Section
HB 2609	Proposed by the Nonprofit Organizations Law Section, this bill updates and modernizes ORS Chapter 65, the nonprofit code.	Relating to nonprofit corporations.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor; 2 /8 - Work Session scheduled.		Nonprofit Section
POTENTIAL POSITIONS							
SB 506	Judges reporting elder abuse	Relating to abuse reporting; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee On Judiciary	1 /17 - Referred to Human Services, then Judiciary. 2 /6 - Public Hearing held.	may need amended language.	SG testified. Don't think it is moving - 2/7

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 337	exempts attorneys from registration if debt management services. DOJ has grave concerns	Relating to exempting attorneys from regulation as debt management service providers in certain circumstances; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary	DOJ unofficially has reached out with concerns	
HB 2166	Debt Buyer bill - same bill as Fagan's in 2015	Relating to debt collection practices; declaring an emergency.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor	Nothing official but members of DC already expressed concerns	
HB 2329	permits the Board of Psychologist Examiners to assess disciplinary costs against the psychologist but no reciprocal right to recover costs and attorney fees for the psychologist/licensee who is successful at the hearing.	Relating to assessment of disciplinary costs by State Board of Psychologist Examiners.	H 1st - 1 /9	House Committee On Health Care	1 /17 - Referred to Health Care. 2 /3 - Public Hearing held.	request to oppose from the Admin Law section. Section has also provided possible amendments. Bill is going to be amended. Work Group is going to be convened	
HB 2356	Establishes requirements under which debt buyer may bring legal action to collect debt	Relating to debt collection practices.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor		
HB 2359	Removes requirement for beneficiary in trust deed to send, and Attorney General to receive, copy of notice that beneficiary has denied grantor's eligibility for foreclosure avoidance measure.	Relating to copies of notices of a denial of eligibility for a foreclosure avoidance measure.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor; 2 /8 - Public Hearing scheduled.		
SB 254	Requires financial institutions to participate in data match system established by Department of Revenue to identify assets held at financial institutions by delinquent debtors.	Relating to collection of debts owed to state; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability		
SB 362	Changes legal rate of interest from nine percent per annum to greater of one percent per annum or rate equal to weekly average one-year constant maturity Treasury yield.	Relating to the legal rate of interest.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		
SB 381	Requires certain notices related to real estate loans to be mailed to all addresses on file for recipient, including post office boxes.	Relating to mailing of notices.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation		
SB 59	Authorizes Long Term Care Ombudsman to petition for protective order regarding person in long term care facility or residential facility when ombudsman believes person who is subject of petition is in need of protective services.	Relating to the Long Term Care Ombudsman; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Business and Transportation; 2 /13 - Public Hearing Scheduled.		Elder Law
SB 95	Requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable individual to Department of Consumer and Business Services and Department of Human Services.	Relating to reporting of suspected financial abuse.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Human Services, then Judiciary; 2 /13 - Public Hearing Scheduled.		Elder Law

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 5	Modifies laws related to student athlete agents	Relating to student athlete agents.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /2- Public Hearing and Work Session held; 2 /14 - Work Session scheduled.		OJD
SB 11	Modifies annual salaries of judges of Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts.	Relating to compensation of judges; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
SB 34	Expands "move over law" to include any motor vehicle that is displaying warning or hazard lights or specific indications of distress.	Relating to the offense of failure to maintain a safe distance from a motor vehicle.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
SB 76	Defines "unarmed combat sports." Authorizes Oregon State Athletic Commission to regulate unarmed combat sports.	Relating to unarmed combat sports; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /14 - Public Hearing and Work Session Scheduled.		OJD

OTHER BILLS OF INTEREST

HB 2026	DOJ budget	Relating to state finance; declaring an emergency.	H 1st - 1 /9	House Committee On Judiciary; Joint Committee on Ways and Means	1 /17 - Referred to Judiciary with subsequent referral to Ways and Means.		
HB 2101	Public Records	Relating to public records.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
HB 2178	Requires witness before statutory, standing, special or interim legislative committee to sign declaration that witness's testimony is true to best of witness's knowledge and belief, and that witness understands testimony is subject to penalty for perjury.	Relating to legislative testimony.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
HB 2263	Increases fee from \$500 to \$625 for third mediation session conducted by mediator assigned by Employment Relations Board to resolve labor dispute or labor controversy.	Relating to fees charged by the Employment Relations Board.	H 1st - 1 /9	House Committee On Business and Labor; Joint Committee on Ways and Means	1 /17 - Referred to Business and Labor with subsequent referral to Ways and Means. 2 /1 - Public Hearing held. 2 /8 - Work Session held.		
HB 2264	Increases application fee for individual who applies to be included on State Conciliation Service list of qualified arbitrators for labor controversy.	Relating to fees paid to State Conciliation Service by qualified arbitrators.	H 1st - 1 /9	House Committee On Business and Labor; Joint Committee on Ways and Means	1 /17 - Referred to Business and Labor with subsequent referral to Ways and Means. 2 /1 - Public Hearing held. 2 /8 - Work Session held.		
HB 2299	Repeals requirement that Oregon Government Ethics Commission pay attorney fees for person prevailing in certain contested case hearings.	Relating to Oregon Government Ethics Commission payment of attorney fees.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules; 2 /14 - Public Hearing scheduled.		

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 106	Creates Public Records Advocate and Public Records Advisory Council.	Relating to public accountability in administering the public records law; prescribing an effective date.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Joint Committee On Ways and Means	1 /17 - Referred to General Government and Accountability, then Ways and Means. 2 /6 - Public Hearing held.		
SB 11	Modifies annual salaries of judges of Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts.	Relating to compensation of judges; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means; 2 /14 - Public Hearing and Work Session Scheduled.		
SB 12	Authorizes Oregon Business Development Department to require fingerprints of certain persons for purpose of requesting state or nationwide criminal records check.	Relating to criminal records checks by the Oregon Business Development Department.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability. 2 /6 - Public Hearing held.		
SB 140	Appropriates moneys from General Fund to Oregon Youth Authority for gang intervention services in Multnomah County.	Relating to state financial administration; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means.		
SB 141	Appropriates moneys from General Fund to Department of Education for Youth Development Division for gang prevention services in city of Gresham.	Relating to state financial administration; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means.		
SB 16	Prohibits Department of Corrections facilitated dialogue or responsibility letter bank program facilitator, advisory committee member or staff person from being compelled to testify or produce evidence concerning facilitated dialogue and responsibility letter bank program communications, except as provided by department rule.	Relating to Department of Corrections restorative justice program communications; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 191	Directs State Chief Information Officer to provide sections on Oregon transparency website relating to energy tax incentives, cleanups of brownfields, tourism and affordable housing.	Relating to Oregon transparency website; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
SB 194	Permits elector or chief petitioner to file action in circuit court to challenge determination by Secretary of State or elections official to reject elector's signature on initiative or referendum petition during signature verification process.	Relating to ballot measures.		Senate Committee On Judiciary; Senate Committee On Rules	1 /17 - Referred to Judiciary, then Rules.		
SB 21	Authorizes Oregon Board of Accountancy to disclose confidential information to certain public entities.	Relating to accounting; declaring an emergency.	S 1st - 1 /9 S 2nd - 2/7	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation. 2 /1 - Public Hearing and Possible Work Session held; 2 /7 - Recommendation: Do pass		
SB 210	Authorizes counties, cities and special districts to publish public notices required by law on websites of Association of Oregon Counties, League of Oregon Cities and Special Districts Association of Oregon, respectively.	Relating to publication of public notices.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary	1 /17 - Referred to General Government and Accountability, then Judiciary.		

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 224	Requires Public Employees' Benefit Board and Oregon Educators Benefit Board to provide benefit plan option that includes Oregon Health and Science University as in-network provider.	Relating to Oregon Health and Science University as an in-network provider for state benefit plans.	S 1st - 1 /9	Senate Committee On Health Care	1 /17 - Referred to Health Care; 2 /14 - Public Hearing Scheduled.		
SB 244	Establishes notification requirements of Department of Human Services regarding reported or suspected deficiencies, violations or failures of child-caring agency to comply with full compliance requirements and regarding reports of suspected child abuse of child in care.	Relating to notifications required regarding child-caring agencies; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services	1 /17 - Referred to Human Services. 2 /1 - Public Hearing held. 2 /6 - Work Session held.		
SB 253	Requires institutions of higher education to provide fact sheet to each applicable student detailing amount of education loans received, estimate of total amount of education loans student will owe at graduation, estimate of amount student will have to pay each month to service loans and percentage of borrowing limit student has reached for each type of federal loan.	Relating to student loan disclosure.	S 1st - 1 /9	Senate Committee On Education	1 /17 - Referred to Education.		
SB 309	Eliminates option of members of individual account program of Public Employees Retirement System to receive distributions as installment payments upon retirement.	Relating to distributions under the individual account program of the Public Employees Retirement System.	S 1st - 1 /9	Senate Committee On Workforce	1 /17 - Referred to Workforce.		
SB 317	Requires public bodies that conduct public meetings to post online instructions explaining how public may access written records and other informational materials presented at public meetings.	Relating to public meetings.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
SB 321	Provides that member of Legislative Assembly has standing to intervene and participate in proceeding in which constitutionality of Oregon statute or provision of Oregon Constitution is challenged.	Relating to proceedings challenging the constitutionality of provisions; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Senate Committee On Rules.	1 /17 - Referred to Judiciary, then Rules.		
SB 337	Exempts attorney and law firm that employs attorney or with which attorney is affiliated from regulation as debt management service provider if attorney or law firm provides debt management services in course of practicing law.	Relating to exempting attorneys from regulation as debt management service providers in certain circumstances; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 358	Modifies requirements for appearance in small claims department of circuit court or justice court.	Relating to small claims.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 362	Changes legal rate of interest from nine percent per annum to greater of one percent per annum or rate equal to weekly average one-year constant maturity Treasury yield.	Relating to the legal rate of interest.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 386	Prohibits public employer from participating in collection of labor organization dues.	Relating to restricting public employer from using resources to participate in collection of labor organization dues.	S 1st - 1 /9	Senate Committee On Workforce	1 /17 - Referred to Workforce.		

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 388	Establishes Whistleblower Commission.	Relating to whistleblowing.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
SB 394	Allows President of Senate, Speaker of House of Representatives, Minority Leader of Senate or Minority Leader of House of Representatives to petition Supreme Court for injunction requiring agency of executive department to execute law.	Relating to petitions by members of the Legislative Assembly for injunctions to require executive department agencies to execute the law.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary.	1 /17 - Referred to General Government and Accountability, then Judiciary.		
SB 397	Directs Department of Human Services to convene work group to develop common client confidentiality release form to be used by public bodies and community organizations to enable and facilitate appropriate sharing of confidential information.	Relating to the sharing of information between social services providers; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means. 2 /8 - Public Hearing scheduled.		
SB 413	Establishes Legislative Committee on Accountability as joint committee of Legislative Assembly.	Relating to joint committees of the Legislative Assembly.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary.	1 /17 - Referred to General Government and Accountability, then Judiciary.		
SB 415	Requires executive department public body that, as of January 1, 2017, maintained two or more full-time equivalent positions predominantly dedicated to public relations work on behalf of public body to repurpose one full-time equivalent position so as to prioritize responding to public records requests above all other duties and work responsibilities.	Relating to executive department public body responses to public records; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
SB 428	Exempts collection, storage or use of diffuse surface water from falling rain, melting snow or other precipitation from requirement to obtain water right permit or certificate.	Relating to diffuse surface water.	S 1st - 1 /9	Senate Committee On Environment and Natural Resources	1 /17 - Referred to Environment and Natural Resources.		
SB 43	Subject to certain exemptions, expands definition of lobbying to include person who holds position with public body or private entity and whose work responsibilities include lobbying.	Relating to lobbying.	S 1st - 1 /9	Senate Committee On Rules	1 /17 - Referred to Rules.		
SB 430	Requires insurer to pay claims up to coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.	Relating to amounts insurers must pay under limits for uninsured motorist coverage.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 / 13 - Public Hearing and Possible Work Session scheduled.		
SB 431	Requires insurer to pay claims up to coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.	Relating to amounts that insurers must pay under the limits for uninsured motorist coverage.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 / 13 - Public Hearing and Possible Work Session scheduled.		
SB 44	Permits executive director of Oregon Government Ethics Commission to designate employee of commission to fulfill any duty or responsibility assigned to executive director by law or by commission.	Relating to the executive director of the Oregon Government Ethics Commission.	S 1st - 1 /9	Senate Committee On Rules	1 /17 - Referred to Rules.		

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 451	Sunsets certain exemptions from disclosure for public records.	Relating to public records.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
SB 479	Prohibits courts from applying Sharia law.	Relating to Sharia law.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 481	Establishes state policy regarding public access to public records.	Relating to public records.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
SB 482	Permits city to issue citation for speeding using red light camera in conjunction with other technology that is capable of measuring speed.	Relating to traffic violations; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 487	Restricts limitation on award of noneconomic damages to claims in actions for wrongful death.	Relating to damages in actions for wrongful death; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 489	Eliminates obsolete terms and procedures in statutes relating to court records.	Relating to court records; declaring an emergency.	S 1st - 1 /9 S 2nd- 2 /7	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /1 - Public Hearing and Work Session held; 2 /7 - Recommendation: Do pass		
SB 490	Changes title of executive director of Oregon State Bar to chief executive officer of Oregon State Bar.	Relating to administration of the Oregon State Bar; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
SB 491	Directs Supreme Court to appoint state professional responsibility board.	Relating to regulation of attorneys; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
SB 492	Permits parties to judgment that contains spousal support award to request required exchange of certain documents without filing request for modification of judgment with court.	Relating to exchange of information in spousal support proceedings.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 494	Establishes Advance Directive Rules Adoption Committee for purpose of adopting form of advance directive to be used in this state.	Relating to health care decisions; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
SB 496	Directs presiding judges of judicial districts within state to ensure proceedings before grand jury are recorded.	Relating to recording of grand jury proceedings; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
SB 5	Modifies laws related to student athlete agents.	Relating to student athlete agents.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /2- Public Hearing and Work Session held; 2 /14 - Work Session scheduled.		
SB 504	Eliminates limitation of liability for owner of land used for trail or recreational purposes when owner is public body.	Relating to immunity of public bodies.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		

2017 Legislative Session

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 505	Directs district attorney to ensure proceedings before grand jury are recorded.	Relating to recording of grand jury proceedings; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
SB 506	Exempts public or private official from reporting child or elder abuse when official acquires information that official reasonably believes has already been reported and is already known by law enforcement agency or Department of Human Services.	Relating to abuse reporting; declaring an emergency.	S 1st - 1 /9	Senate Committee on Human Services; Senate Committee on Judiciary	1 /17 - Referred to Human Services, then Judiciary. 2 /6 - Public Hearing held.		
SB 519	Allows polygraph test as condition of employment for preemployment screening of law enforcement officers, subject to applicable collective bargaining agreement.	Relating to polygraph tests.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /16 - Public Hearing and Work Session scheduled.		
SB 525	Extends sunset on provision authorizing Department of Human Services to appear as party in juvenile court proceeding without appearance of Attorney General.	Relating to legal representation in the child welfare system; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 558	Requires Oregon Health Authority to convene work group to advise and assist in implementing targeted outreach and marketing for Health Care for All Oregon Children program.	Relating to improving the health of Oregon children; declaring an emergency.	S 1st - 1 /9	Senate Committee On Health Care; Joint Committee On Ways and Means.	1 /17 - Referred to Health Care, then Ways and Means.		
SB 57	Prohibits court from appointing deputy public guardian and conservator as fiduciary and requires court to appoint Oregon Public Guardian and Conservator as fiduciary.	Relating to the Oregon Public Guardian and Conservator.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
SB 58	Modifies duties and authority of Long Term Care Ombudsman.	Relating to the Long Term Care Ombudsman; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services	1 /17 - Referred to Human Services; 2 /13 - Public Hearing Scheduled.		
SB 95	Requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable individual to Department of Consumer and Business Services and Department of Human Services.	Relating to reporting of suspected financial abuse.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Human Services, then Judiciary; 2 /13 - Public Hearing Scheduled.		
SB 97	Provides that Director of Department of Consumer and Business Services must act as, or acknowledge another regulatory official as, group-wide supervisor for internationally active insurance group.	Relating to modernizing insurance corporate governance; declaring an emergency.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 /15 - Public Hearing and Possible Work Session scheduled.		

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.

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 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

(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)

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.

DRAFT

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, interlined 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.

DRAFT

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.

**Oregon State Bar
Special Open Session of the Board of Governors
March 17, 2017
Minutes**

President Michael Levelle called the meeting to order at 8:57 a.m. on March 17, 2017. The meeting adjourned at 9:39 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, John Mansfield (by telephone), Eddie Medina, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves (by telephone), Julia Rice, Traci Rossi, Kerry Sharp, and Kate von Ter Stegge. Not present were Vanessa Nordyke and Elisabeth Zinser. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Kay Pulju, Susan Grabe, Catherine Petrecca, Judith Baker, Dani Edwards, Kateri Walsh and Camille Greene.

1. Call to Order

2. Public Policy Statements on Controversial Issues

Mr. Levelle and Ms. Hirschbiel led a discussion of the question “How might the bar respond to controversial political issues that could have (or are having) an adverse impact on the judicial system?” The intent of the discussion was to engage in a generative discussion that explores some of the issues that have arisen recently. Mr. Levelle also sought perspectives and concerns of the board members related to controversial issues so he can keep those perspectives in mind when speaking on behalf of the BOG. The discussion centered around the implications of the ICE round-ups and disparagement of judges. Bar staff gave the board examples of statements it had issued in the past in support of the judiciary and actions it has taken recently to help inform the public of rights and responsibilities under the law.

The board reached general consensus that any bar statement or action regarding these issues should focus on their effect on the integrity of the judicial system and the equitable administration of justice. Members agreed that statements should focus on the principles, not the politics. By way of example, several board members pointed to the recent statement issued by the Chief Justice of the California Supreme Court. Board members mentioned not only the need to be mindful of *Keller* restrictions, but also of the bar’s commitment to inclusion. Finally, board members felt it important to reach out to courts and the Oregon Supreme Court Chief Justice, when possible, prior to issuing any statement in order to ensure that the bar is supporting the judiciary and coordinating its educational efforts.

**Oregon State Bar
Special Open Session of the Board of Governors
May 12, 2017
Minutes**

President Michael Levelle called the meeting to order at 8:30 a.m. on May 12, 2017. The meeting adjourned at 8:41 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Traci Rossi, Kerry Sharp, and Elisabeth Zinser. Not present were John Mansfield, Eddie Medina, Julia Rice, Liani Reeves, and Kate von Ter Stegge. Staff present were Helen Hirschbiel, Amber Hollister, Susan Grabe, Dawn Evans, Kateri Walsh, and Camille Greene.

1. Call to Order

2. Request to Sponsor ABA Resolution

Mr. Levelle presented the ABA Resolution opposing the restructuring of the United States Court of Appeals for the Ninth Circuit. Michael H. Reed, Chair of the Federal Courts Subcommittee of the Standing Committee on the American Judicial System of the ABA sent a letter to Mr. Levelle asking the Oregon State Bar to either co-sponsor or support the resolution. **[Exhibit A]**

Motion: Ms. Rastetter moved, Ms. Nordyke seconded, and the board voted unanimously to take no position on the ABA resolution and give no direction to Oregon's ABA HOD delegates with respect to their vote. Mr. Levelle will send a letter of explanation before the May 31, 2017 deadline.

3. Generative Discussion

Board members discussed the OSB core function as advocates for diversity, equity, and inclusion, and specifically how the function supports the OSB mission and how board members can demonstrate leadership in support of the function.

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Fax 215.981.4750

Michael H. Reed
direct dial: 215-981-4416
direct fax: 215-981-4750
reedm@pepperlaw.com

April 18, 2017

Via Email: mlevelle@sussmanshank.com

Michael D. Levelle
President
Oregon State Bar

Re: Opposition to Proposals to Split the United States Court of Appeals for the Ninth Circuit

Dear Michael:

I am writing to you in your capacity as President of the Oregon State Bar. As you know, Oregon is one of the states located within the federal Ninth Circuit. I have the privilege of chairing the Federal Courts Subcommittee of the Standing Committee on the American Judicial System (“Standing Committee”) of the American Bar Association (“ABA”). I also serve as the Pennsylvania State Delegate in the ABA’s House of Delegates and I previously served as President of the Pennsylvania Bar Association.

As you may know, various legislative proposals have been made recently to split the Ninth Circuit. The Standing Committee intends to request that the House of Delegates of the ABA reaffirm its existing policy opposing restructuring the Ninth Circuit because there is no compelling empirical evidence of adjudicative or administrative dysfunction in the existing structure. Enclosed herewith is a draft of the resolution that the Standing Committee will seek to have the House of Delegates adopt at the ABA’s Annual Meeting in New York, New York in August. Also attached is a copy of the draft report supporting the resolution.

The Standing Committee believes that it is important that the organized bar within the affected states be heard on this issue. We would welcome the support of your state as either a co-sponsor or a supporter of the resolution. As a co-sponsor, the name of your state would appear as such in the written materials submitted to the House.

Page 2
April 18, 2017

The deadline for submitting the resolution and report is May 9, 2017 and the deadline for adding co-sponsors to the resolution is May 31, 2017. I would greatly appreciate it if you would let me know at your earliest convenience whether your bar association is willing to join the Standing Committee as a co-sponsor or supporter of the resolution in the House of Delegates.

Sincerely,



Michael H. Reed
Chair
Federal Courts Subcommittee
ABA Standing Committee
on the American Judicial System

/mce

Enclosure

cc: Helen Hirschbiel, Executive Director
Adrienne Nelson, ABA State Delegate
William T. (Bill) Robinson III, Chair
ABA Standing Committee on the American Judicial System

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April 18, 2017

bc: Nicole Vanderdoes

DRAFT



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May 2, 2017

Oregon State Bar
ATTN: Camille Greene
16037 SW Upper Boones Ferry Rd
Tigard OR 97224

Dear Ms. Greene:

Camille - Thanks for ALL your help and support. Robert

This year's Legal Citizen of the Year Award Dinner was a special evening. Thank you for being part of it. We were excited to honor Justice Hans Linde, retired Supreme Court Justice and noted legal educator and scholar.

It was a wonderful evening, summed up nicely by long-time Classroom Law Project supporter and former Board member Susie Marcus. "I am so proud to be part of a caring organization in a time when the rule of law is vital. We live in challenging times and an opportunity to celebrate our constitution(s) (state and national) is important."

Thank you for your purchase of a table for the event. Your receipt is attached below.

With gratitude,

Marilyn R. Cover

Marilyn Cover, Executive Director

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**Oregon State Bar
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LAW SCHOOLS

4% decline in jobs requiring bar passage for law class of 2016, ABA employment data shows

POSTED MAY 11, 2017 02:27 PM CDT

BY STEPHANIE FRANCIS WARD ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/20/](http://www.abajournal.com/authors/20/))



The number of graduates of the law class of 2016 in jobs that require bar passage is down 4.1 percent from the class of 2015.

Out of 37,124 people who graduated in 2016 from ABA-accredited law schools, nearly 73 percent had full-time long-term jobs requiring or preferring JDs, according to employment data

(http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_law_graduate_employment_data.authcheckdam.pdf) (PDF) released today.

Comparatively, 70 percent of 2015 law school graduates had full-time long-term jobs that required or preferred JDs. But the total number of law graduates decreased by 7 percent between 2015 and 2016, according to an ABA press release

(http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2017_employment_data_2016_graduates_news_release.authcheckdam.pdf) (PDF).

“The data show that the job market has stabilized and continues to be challenging for law graduates,” Barry Currier, the ABA’s managing director of accreditation and legal education, told the ABA Journal in an email.

“It is important to remember in studying these outcomes that they are a snapshot taken about 10 months after graduation. Graduates will continue to find employment after that date and to change jobs as they settle into their careers,” he wrote. “These early reports are an important part of the story for the class of 2016, but they are certainly not the full story.”

Ohio State University law professor Deborah J. Merritt, who writes at Law School Cafe, notes (<http://www.lawschoolcafe.org/2017/05/11/2016-employment-outcomes/>) that the actual number of graduates with long-term full-time JD-required jobs fell from 23,687 for the class of 2015 to 22,930 for the class of 2016. That’s a decline of 3.1 percent, Merritt writes, but the year-over-year decline of JD-required jobs is smaller than last year’s.

Also, 14.1 percent of the 2016 graduates had JD-advantage positions. There was a 7.9 percent decrease of long-term full-time JD-advantage jobs between 2015 and 2016, according to the data. However, long-term part-time JD-advantage jobs increased by 16.3 percent, and short-term part-time JD-advantage jobs increased by almost 73 percent.

The actual number of 2016 graduates in short-term JD-advantage jobs—fewer than 800—is small, Merritt told the ABA Journal, but worth noting.

“I think the number of long-term full-time JD-advantage jobs supports what people have been saying—some

graduates want those jobs, but many take them only when they can't find jobs that require a JD," Merritt said.



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The Washington Post

Opinions

The legal profession is failing low-income and middle-class people. Let's fix that.

By Jennifer S. Bard and Larry Cunningham June 5

Jennifer S. Bard is professor of law and medicine and the former dean of the law school at the University of Cincinnati. Larry Cunningham is vice dean and professor of legal writing at St. John's University School of Law.

After President Trump issued his executive order in January banning travel from seven countries, lawyers dashed to the aid of immigrants and refugees trapped in legal limbo while in transit to the United States. The event was the most positive thing that has happened to our profession's image since the civil rights era.

But that experience should not mask the fact that 80 percent of low-income individuals in the United States cannot afford the legal assistance they need to avoid the loss of their homes, children, jobs, liberty and even lives. The middle class doesn't fare much better: Forty to 60 percent of their legal needs go unmet.

In case after case, people caught up in our court system must represent themselves in matters of landlord-tenant lawsuits, foreclosures and family disputes — often failing to navigate the complexities of substantive and procedural law. Less visible are people who do not seek legal representation because they do not realize they have a claim. No system of pro bono lawyers or government-funded legal-services organizations can meet these needs.

We do not expect charities and generous doctors to provide 80 percent of the medical needs for low-income patients, so why do we think this is possible for our legal needs? As law schools become increasingly unaffordable — resulting in plummeting enrollment and debt levels that make it impossible for graduates to offer legal services at affordable prices — the legal profession needs some major changes.

Professionals must first acknowledge that not every legal task must be performed by a licensed lawyer. Instead, we need to adopt a tiered system of legal-services delivery that allows for lower barriers to entry. Just as a pharmacist can administer vaccines and a nurse practitioner can be on the front line of diagnosing and treating ailments, we should have legal practitioners who can also exercise independent judgment within the scope of their training. Such a change would expand the preparation and independence of the existing network of paralegals, secretaries and investigators already assisting lawyers.

New kinds of legal practitioners will require a new kind of legal education. Law schools today offer nearly identical curriculums taught by professors with nearly identical qualifications because students face nearly identical bar exams. Our proposal calls for differentiation, but not for throwing the baby out with the bathwater.

Professors trained as scholars and researchers are as critical to the education of legal-services providers as they are to health-care providers. But that does not mean that every health-care or legal practitioner needs to follow a program qualifying him or her to be an active researcher. Legal education could create PhD tracks for those who want to research and design shorter and more direct programs of study for professionals who can provide access to justice in discrete areas at a lower price.

Finally, the qualifying exams for these new legal professionals would have to be different, too. As currently formulated, the bar exam assumes three years of classroom-based training and is focused on very small doctrinal distinctions in areas in which most lawyers will never see a single client. It's not a bad thing for every law school graduate to be equally prepared to represent a criminal on death row, draft a will or negotiate a public offering of securities, but is it necessary or cost-effective?

Lawyers might see such a solution as lowering the barrier to entry. But the result could be an expanded market, not a fragmentation of the existing profession. Practicing law is a challenging intellectual task, but developing a tiered system of training similar to that in the health-care industry would not diminish the status of anyone involved; rather, it would promote the kind of equal access to justice that still makes our country a beacon for those willing to risk their lives to come here. And we can ensure the quality of all legal-services providers through oversight, just as we are able to regulate nurse practitioners, pharmacists and physical therapists.

This kind of limited license to practice has already started to take hold in particular practice areas, such as tax, unemployment-insurance and special-education appeals. Notably, Washington state has recently begun experimenting with "limited license legal technicians" to assist with family law matters.

We should encourage an acceleration of this kind of innovation by the bar, the bench and the academy so that legal training and services can be more widely available.

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