

**Oregon State Bar**  
**Meeting of the Board of Governors**  
September 8, 2017  
Oregon State Bar Center, Tigard, 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 11:30 am on September 8, 2017. Items on the agenda will not necessarily be discussed in the order as shown.*

**Friday, September 8, 2017, 11:30 am**

**1. Call to Order**

**2. Strategic Areas of Focus for 2017**

- |    |   |        |         |
|----|---|--------|---------|
| A. | Policy & Governance Committee [Ms. Nordyke]           |        |         |
| 1. | Futures TF Recommendation: Paraprofessional Committee | Action | Handout |
| 2. | House of Delegates Quorum Issues                      |        |         |
| a) | InXPO Feedback  | Inform | Exhibit |
| 3. | Review of New Lawyer Programs Update                  | Inform |         |
| B. | OSB Diversity Action Plan Update [Ms. Hirschbiel]     | Inform |         |

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

- |    |  |        |                      |
|----|--|--------|----------------------|
| A. | Board Development Committee [Mr. Ramfjord]                       |        |                      |
| 1. | BOG Public Member Appointment                                    | Action | Exhibit              |
| 2. | Appointment to the Council on Court Procedures                   | Action | <a href="#">Link</a> |
| 3. | Comments on Candidates for the Board of Bar Examiners            | Action | <a href="#">Link</a> |
| 4. | Recommendations for the Disciplinary Board, SPRB, UPL Committee  | Action | Handout              |
| 5. | Ninth Circuit Judicial Conference Representative Recommendations | Action | <a href="#">Link</a> |
| 6. | PLF Board of Directors Appointment                               | Action | Exhibit              |
| B. | Budget & Finance Committee [Mr. Chaney]                          |        |                      |
| 1. | Financial Update   | Inform |                      |
| C. | Public Affairs Committee [Ms. Rastetter]                         |        |                      |
| 1. | Legislative Update   | Inform |                      |
| 2. | Position on 9 <sup>th</sup> Circuit Court Split                  | Action | Exhibit              |
| 3. | 2018 Legislative Cycle   | Action | <a href="#">Link</a> |

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

- |    |   |        |         |
|----|---|--------|---------|
| A. | June 30, 2017 Financial Statements        | Inform | Exhibit |
| B. | 2016 - Final Audited Financial Statements | Inform | Exhibit |
| C. | Approve 2018 Budget                       | Action | Exhibit |
| D. | Approve 2018 Assessment                   | Action | Exhibit |

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

- |    |   |        |                      |
|----|---|--------|----------------------|
| A. | Oregon New Lawyers Division Report [Ms. Eder]   | Inform | Exhibit              |
| B. | Legal Ethics Committee [Ms. Hirschbiel]   |        |                      |
| 1. | Uniform Collaborative Law Act   | Action | Exhibit              |
| 2. | Mediation Rule 8.3 Amendment  | Action | Exhibit              |
| 3. | Proposed OSB Formal Ethics Opinion 2017-XXX:<br>Disqualification of Judges via Affidavit of Prejudice | Action | Exhibit              |
| C. | Client Security Fund [Ms. Hirschbiel]   |        |                      |
| 1. | CSF Rule Amendments   | Action | Exhibit              |
| D. | MCLE Committee  |        |                      |
| 1. | Child Abuse and Elder Abuse Reporting Credit Requirements   | Action | Exhibit              |
| E. | ABA HOD Delegate Report [Ms. Meadows]   | Inform | <a href="#">Link</a> |

## 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. Hirschbiel]    | Inform | Exhibit |
| D. | Director of Regulatory Services [Ms. Evans]     | Inform | Exhibit |
| E. | Directory of Diversity & Inclusion [Mr. Puente] | Inform | Exhibit |
| F. | MBA Liaison Report – none for the summer        |        |         |

## 7. Consent Agenda

- |    |   |        |         |
|----|---|--------|---------|
| A. | Client Security Fund Committee [Ms. Hirschbiel] |        |         |
| 1. | Approve Payment Over \$5000                     |        |         |
| a) | ROLLER (Shreffler) 2017-13                      | Action | Exhibit |
| 2. | Request for Review                              |        |         |
| a) | PARK (Barrows) 2017-23                          | Action | Exhibit |
| 3. | CSF Financial Reports and Claims Paid           | Inform | Exhibit |
| B. | Approve Minutes of Prior BOG Meetings           |        |         |
| 1. | Regular Session June 23, 2017                   | Action | Exhibit |
| 2. | Special Open Session July 21, 2017              | Action | Exhibit |

## 8. Closed Sessions – [CLOSED](#) Agenda

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

## 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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

## MISISON

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.

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

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

<sup>3</sup> 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.



I think that was an interesting experiment. If you want to use that format for voting on nonessential matters, it's fine. But for "the" HOD meeting, no. It cuts off all debate and really while efficient makes a mockery of the process. Why log in when you cannot hear real time what others say, when you cannot assure you have a moment at the podium, or be able to watch the drama unfold? After thinking about it, I will not attend if the real HOD meeting is held this way - why bother as the approach cuts off debate and allows the BOG to drive an outcome - and that makes me really uncomfortable.

Ann L. Fisher, Legal & Consulting Services

Volume was a little low. Otherwise ok.  
David Wade, Attorney P.C.

It worked great, Camille!  
Jeffrey Jones, Associate Professor of Law

As we spoke about, the login was not easy to see due to being buried in the middle of the email. Many times with other webinar programs I've participated in the login is formatted and set apart to be easily seen. Typically with some white space around it so the human eye can pick it out readily, without having to read through most of small single spaced email to find it. Otherwise the live online meeting seemed to work fairly well.

Sincerely, Scott M. Hutchinson, Attorney at Law

As I mentioned in my emails Friday morning, I had trouble getting InXPO to work on my smart phone. I'm not sure why but it could be because I was on vacation and traveling in rural Minnesota and had a poor data connection.

If the HOD holds another virtual meeting, I will be sure to do it from my office computer and have my firm's IT guy handy in case I have trouble connecting. I apologize for missing the last meeting and hope to attend the next one.

Jack R. Scholz, Chernoff Vilhauer LLP

Dear Camille, you were very responsive. Thank you. Sorry I was never able to log on, even though I successfully loaded the app.

My two cents. I have been a participant in several webcasts with different providers with no problems. If you do not have a long term contract with InXPO you may want to experiment with others.

Lish Whitson

Some delays in the audio/video feed, but that might have been on my end. Otherwise, great. Thank you! Kari

Karin E. Dallas, Corey, Byler & Rew, LLP

InXPO worked just fine for me. Easy.  
KERRY SHARP

Worked great for the first 6 min. After that, all down hill where I lost signal and the interface was poor.  
Howard A. Newman, Esq. (MBA, Registered Patent Attorney

Participate in many online conferences, webinars and teleconferences and this was by far the most frustrating experience ever. If this is the way it is going to be done in the future take me out of the group. My communications person worked on the process over 20 minutes. She teaches communications to organizations and was frustrated.

Sincerely, Jerome Rosa, Oregon Cattlemen's Association, Executive Director

I thought it was wonderful, especially for a meeting largely focused on information and Q&A. My only suggestion is to have some kind of recorded message for someone signing in early that they are connected and please stand by for the meeting to start. It was so silent that I kept wondering for ten minutes if I had successfully connected to the audio. I could see the screen but saw and heard nothing that assured me that I would have sound. When the meeting started at 8:30 sharp, I heard the voices and was relieved.

Elisabeth Zinser

I experienced some moments when the video froze, which also caused the sound to cut out. This happened 6-7 times, for 5-15 seconds each time. The spreadsheet and voting worked without issue.

Jovanna L. Patrick, Hollander Lebenbaum & Gannicott

I never received the email with the code for participating. Thanks you Camille for sending me the powerpoint.

Leland R. Berger, OSB #830201, Chair, Cannabis Law Section

I had no problems with the software at all – thought it worked great. There were a few “glitches” with the presentation wherein the screen switched from the video feed to a still picture and the powerpoint disappeared and we were viewing the OSB computer, but I chalked that up to OSB staff getting used to the program. It was a minor hiccup at best. Finally, as everyone was aware, it is important to repeat comments/questions from the audience as it was difficult to hear them. By way of suggestion, for meetings such as this, it might be worthwhile to position the camera so that it can pan to speakers in the audience. A meeting such as the HOD may not be as static as a CLE presentation as far as where speakers are standing, and to that end, it would be helpful to be able to see everyone who is speaking. In the end, not a big deal, but that would be a nice benefit.

Chad Jacobs

I had a slight delay in starting because of a popup blocker on Chrome. This was primarily my issue. I enjoyed the format and found it very effective, both in quality and time savings. I like the fact that you are sending out this information request for difficulties. I felt the results of your online survey might be distorted because some people were not able to log on and this would not give a valid survey result.

Steve Roe

I thought that it worked great! Easy-peasy.

Mitzi Naucler

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Per Ramfjord, Board Development Committee Chair  
**Re:** Board of Governors Public Member Recommendation

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### **Action Recommended**

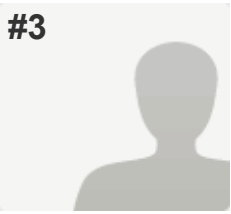
Approve the Board Development Committee's recommendation to appoint Michael Rondeau to the Board of Governors Public Member position beginning January 1, 2018.

### **Background**

During the July meeting the committee reviewed applications of the seven candidates who applied for the Board of Governors public member position. Michael Rondeau, an applicant who applied in 2016 and was asked to apply again in 2017, quickly rose to the top of the list. He is the CEO of the Cow Creek Band of the Umpqua Tribe of Indians and has historically been active in the Sothern Oregon community.

After a lengthy discussion, the Board Development Committee unanimously agreed to recommend Mr. Roundeau for appointment as the 2018 BOG public member. Attached is Mr. Rondeau's application and comments from his references for consideration.

#3



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, May 31, 2016 3:10:12 PM  
**Last Modified:** Tuesday, May 31, 2016 4:47:23 PM  
**Time Spent:** 01:37:10  
**IP Address:** 75.142.150.254

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**PAGE 1: Welcome**

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**Q1: Contact information**

Full Name:	Michael Joseph Rondeau
Address:	38 North River Drive
City:	Roseburg
Zip Code:	97470
County:	Douglas
Email Address:	mrondeau@cowcreek.cow
Phone Number:	541-580-5540

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**Q2: Business Contact Information (if any)**

Company:	Cow Creek Band of Umpqua Tribe of Indians
Job Title:	CEO
Address:	2371 NE Stephens Street
City:	Roseburg
Zip Code:	97470
County:	Douglas
Phone Number:	541-677-5540

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**Q3: Undergraduate Education:**

Name of School:	Umpqua Community College
Location:	Roseburg, Oregon
Dates Attended:	9/84 - 6/86
Degrees Earned:	General studies

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**Q4: Postgraduate Education:**

*Respondent skipped this question*

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## Oregon State Bar Public Member Volunteer Application

**Q5: Most Recent Employment:**

Employer: Cow Creek Band of Umpqua Tribe of Indians  
Job Title: CEO  
Location: Roseburg, OR  
Start and End Date: 3/1986 - Current

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**Q6: Previous Employment (if any):**

Employer: Volume Shoesource  
Job Title: Assistant Manager  
Location: Roseburg, OR  
Start and End Date: 2/87 - 7/88

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**Q7: Previous Employment (if any):**

Employer: EDCO Equipment  
Job Title: Maintenance  
Location: Glide, Oregon  
Start and End Date: 3/1983 - 9/1984

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**PAGE 4****Q8: Volunteer Service:**

Organization: Phoenix Charter School  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: 9/2011 - Current

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**Q9: Additional Volunteer Service:**

Organization: Mercy Foundation  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: April 2002 - April 2010

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**Q10: Additional Volunteer Service:**

Organization: Roseburg Area Chamber of Commerce  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: January 2001 - January 2006

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Oregon State Bar Public Member Volunteer Application

**Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.**

I am a very community oriented person. I have volunteered for many organizations and enjoy the interaction with others.

I have enjoyed serving as Chairman of the Cow Creek Gaming Commission for 22 years and have been involved in the development and implementation of many dozens of minimum internal controls. A major portion of the responsibilities of a Commissioner is to research issues, evaluate and make conclusions as to adherence to policy. This experience has sparked my interest in other similar volunteering opportunities.

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**Q12: Reference 1:**

Full Name:	Allyn Ford
Email Address:	allynf@rfpco.com
Phone Number:	541 679 2754

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**Q13: Reference 2:**

Full Name:	Sue Kupillas
Email Address:	ASK@opusnet.com
Phone Number:	541 282 4155

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**Q14: Reference 3:**

Full Name:	Josh Kardon
Email Address:	jkardon@capitolcouncil.com
Phone Number:	202 365 9408

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<b>Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?</b>	No
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<b>Q16: Have you ever been convicted or have you pleaded guilty to any crime?</b>	No
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<b>Q17: Have you been involved in a lawsuit or litigation in the last 10 years?</b>	No
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<b>Q18: If you answered Yes to any of these questions, please explain in the comment box below.</b>	<i>Respondent skipped this question</i>
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Oregon State Bar Public Member Volunteer Application

**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .** Board of Governors

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**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?**  
Ray Heysell, an attorney at Hornecker Cowling in Medford inquired about my interest in serving.

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**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.** American Indian or Alaskan Native

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**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?** No

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**Q23: Sexual Orientation:** *Respondent skipped this question*

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**Q24: Gender Identity:** Male

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**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.** Michael Joseph Rondeau

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# Michael Joseph Rondeau

## Candidate Reference Comments

### **Sue Kupillas, Brisbee & Stockton LLC:**

The Tribe served on the board of the non-profit for which I was executive director. I have known Michael for 15 years.

Michael is collaborative, intelligent, reasoned and energetic. He studies the issues. He is honest, direct, positive and has the highest integrity. Michael has the perspective from status as a sovereign nation and of a US Citizen.

He is very active in his community as well as all of Sothern Oregon. You would certainly find Michael an asset to any endeavor he chooses. He is also very politically connected locally, statewide and on the federal level.





# Professional Liability Fund

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

## MEMORANDUM

**DATE:** August 29, 2017  
**TO:** BOG Development Committee  
**FROM:** PLF Board of Directors  
Carol J. Bernick, Chief Executive Officer  
**RE:** 2018 Board Appointments

The Board of Governors is charged with appointing the PLF Board members. For the 2018-2022 Board term, the BOG must appoint one lawyer and one public member.

Article 3.4 provides that:

By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. **These may include, but are not limited to, consideration of gender, minority status, ability, experience, type of law practice, and region.**

In general, past PLF boards have felt that in-house corporate attorneys, attorneys in positions that do not require the practice of law, out of state attorneys, attorneys with less than ten-years' experience, and attorneys who have not been in private practice were less likely to have the experience most helpful to the PLF. This has been especially true when other candidates meet the PLF's geographic, subject matter and diversity criteria.

This year, 14 individuals expressed interest in serving on the PLF board (not including those responding to the Bar's preference poll). As part of the selection process, the names of potential board members were circulated to PLF staff, informal inquiries were made and, when appropriate, inquiries were made to OSB staff. Carol Bernick met either by phone or in person with all interested applicants. Finally, the full Board discussed the qualified applicants at its August 24, 2017 meeting.

Our current Board demographics (with the departure of the two members whose terms are expiring) are:

Geography<sup>1</sup>

- Three Portland lawyers; one Portland public member
- One Southern Oregon lawyer
- One Mid-Valley lawyer
- One Central/Eastern Oregon lawyer

Gender

- Four women
- Three men

Firm Size

- Zero large (20+)
- Two medium (10-20)
- Two small (2-6)
- Two solo

Practice Area

- Domestic Relations
- Litigation (plaintiff)
- Litigation (defense)/Mediation
- Criminal
- Estate Planning
- Small Business

Based on the due diligence of the work described above, the PLF Board recommends the BOG appoint the following individuals to the PLF Board (in order of preference):

**LAWYER MEMBER**

Susan Marmaduke. OSB #841458, Portland.

Susan is a partner at Harrang Long Gary Rudnick in their Portland office. Susan is both a trial and appellate lawyer in a wide range of commercial cases. She often works in high profile, complex matters. Susan received her J.D. from Berkeley in 1977 and her undergraduate degree from Portland State University. She has received numerous awards and recognitions for her volunteer service to the Bar and

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<sup>1</sup> Our departing lawyer member is a female solo immigration attorney in Portland. Our departing public member is from Salem.

Memo To: BOG Development Committee  
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community, including the Multnomah Bar Association's Award of Merit, the Honorable James M. Burns Federal Practice Award from the Federal Bar Association and designation as a Lifetime Fellow of the American Bar Foundation. She has also been rated among the best lawyers by Martindale-Hubbell, Best Lawyers in America, and Super Lawyers. Susan's volunteer activities have included service on the Campaign for Equal Justice Board, the Multnomah Bar Association Board, the Multnomah Bar Association Foundation Board, author of various chapters in the Oregon State Bar's BarBooks, the OADC Amicus Committee, the National Lawyers Committee for Civil Rights under Law, and the Local Rules Advisory Committee for the U.S. District Court of Oregon. Early in her career, she served in the Peace Corps including as Associate Country Director in Yemen.

**Oren Buchanan Haker.** OSB #130162, Portland.

Oren is a partner at Stoel Rives, working in creditor rights, specifically in financial restructuring and business reorganizations, as well as complex commercial disputes. He represents secured lenders, bond holders and trade creditors in both court and out of court restructuring, strategic investors and distressed companies, Chapter 11 debtors and similar representations in complex bankruptcy matters. Prior to joining Stoel Rives in 2013, he practiced in New York at Cadwalader, Wickersham & Taft and Weil, Gotshal & Manges, as well as Milberg LLP. Mr. Haker is a 2003 graduate of Columbia Law School and a 1996 graduate of Rice University. Mr. Haker works with the Stoel Rives Quality Assurance Committee (Brad Tellam) on managing internal claims and risks.

**Susan Pitchford.** OSB #980911, Portland.

Susan is a partner at the Chernoff Vilhauer firm where she advises clients in patent prosecution involving a wide range of technologies. She has substantial litigation experience and has represented clients in trials in both state and federal courts and in the appellate courts. She is a past president of the Oregon Federal Bar Association and on the executive team of the National Federal Bar Association Litigation Section. She is currently ending her service on the Board for Oregon Women Lawyers. She is consistently ranked among the best lawyers in America for litigation for patent and trademark law and has been recognized in Super Lawyers since 2009. Susan is a 1993 graduate of Gonzaga University and a 1996 graduate of Gonzaga's law school.

## **PUBLIC MEMBER**

We only had two applications for the open public member position. Both are qualified. Nonetheless, incoming BOD chair Dennis Black moved, and the full Board agreed, to ask Tim Martinez to remain on the Board for another year. There are three reasons for this request: 1) the PLF's Director of Claims, Bruce Schafer, is retiring. Although Bruce is not a Board member, he attends all Board meetings and provides substantial institutional knowledge about the PLF generally (beyond claims). Given Tim's tenure on the Board, he also has significant institutional memory; 2) The PLF has reached its net position goal for the first time since it adopted a goal almost 10 years ago. The Board has asked its Long Range Planning Committee to make a recommendation about lowering the assessment for the first time in the PLF's

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history as well as other possible ways to use the excess net position. Tim's experience on the Board and the Finance Committee will be helpful in this effort; 3) the Board was concerned that the only truly strong public member applicant (Michael Batlan) is less removed from "the law" than the PLF would like to see in its public members. Mr. Batlan is married to a former BOG President, has a daughter who is a practicing lawyer and served as a Chapter 7 and Chapter 11 Trustee. Ideally, the PLF likes to have public members who bring a fresh perspective to the work of the PLF and who have particular expertise in finance. Mr. Batlan is certainly qualified and by all accounts would be a collegial member of our Board, but for the reasons articulated above, the BOD believes Tim Martinez is the best choice for the PLF.

**Tim Martinez.** Salem.

Tim Martinez is a current public member of the BOD and has served three terms. He has a private lobbying business in Salem, representing mostly banks and banking associations.

**Michael B. Batlan.** Salem.

Michael's professional career has mostly been as a Chapter 7 and Chapter 11 Bankruptcy Trustee. He is retiring this year. His interest in the position stems from his work with lawyers professionally as well as the fact that he is "surrounded by lawyers" at home. His wife, Kathy Evans, is an estate planning lawyer in Salem and a former BOG president. His daughter is also a practicing lawyer. He met PLF staff and BOD members when his wife was on the BOG and found the work of the PLF interesting. He has an MBA from Willamette University (1981) and a BS in Economics from Willamette. He is also a Pac-10 football referee. Although he will no longer be in the field, he will be in San Francisco most Saturdays to serve in the new centralized playback booth.

**Jonathan Levine.** Portland.

Jonathan is the Chief Operating Officer of Maxfield Farms. He manages site design, planning, legal, accounting and HR for a start-up farm operation. Before that, he was an in-home care coordinator for Sinai In-Home Care, a Research Project Manager at the University of Western states and a Program Manager for Elderhostel. He has a Masters of Social Work from Portland State and a Bachelor Arts from the University of Arizona (1981). He has served on the Fee Arbitration Panel and then the OSB Disciplinary Board (2009-2015).

Attachments

1. List of all Applicants (copies of resumes for any applicants not listed above are available by request)
2. Resumes for applicants listed above

CJB/clh

Name	Bar #	Firm/Other	Comments
<b>Lawyer Applicants</b>			
Brown, James M.	670129	Solo	
Butterfield, Lisanne M.	913683	Carr Butterfield	
Haker, Oren Buchanan	130162	Stoel Rives	
Hytowitz, David	751929	David A. Hytowitz	
Jones, Tamara Russell	973868	CityCounty Ins. Svcs.	
Marmaduke, Susan	841458	Harrang Long Gary Rudnick	
Nomie, Jessica	124085	Genesis Financial Solutions	
Peters, Daniel B.	903586	Solo	
Pitchford, Susan	980911	Chernoff Vilhauer	
Schroeder, Laura	873392	Schroeder Law Offices	
Vangelisti, Richard J.	994151	Vangelisti Law Firm	
Wilkinson, Kate A.	001705	Oregon School Boards Association	
<b>Public Applicants</b>			
Batlan, Michael B.	N/A	N/A	
Levine, Jonathan P.	N/A	N/A	
Martinez, Tim	N/A	N/A	



## Susan Marmaduke

Shareholder | Portland Office

### Hard Work, Creativity, and Judgment

Successful businesses are built by hard work, creativity, and good judgment. When the product of that effort is threatened, whether by internal dissension or by external challenges, litigation often results. Susan's goal is to solve those problems through the legal system without letting the enterprise, and the people who make it successful, be harmed in the process.

For more than 30 years, Susan has advocated for her clients at the trial court level and on appeal. She has obtained favorable results in disputes over ownership and valuation of businesses, patents and other intellectual property, and a variety of other subject areas.

### Education

Susan received her J.D. from the University of California – Berkeley Law School (Boalt Hall) in 1977. She received her undergraduate degree from Portland State University in 1974 with a BA in Arts and Letters, and a minor in Economics. After earning an Arabic Language Certificate at the Bourguiba Institute of Modern Languages in Tunis, Tunisia, she served as Associate Country Director for the Peace Corps in Yemen.

### Bar Admissions

Susan is admitted to practice in Oregon, Washington, California, and in numerous federal courts, including the Federal Circuit and the United States Supreme Court.

### Professional Recognition

The legal community has recognized Susan's expertise, commitment to improving the legal profession, and service to the community with honors that include:

- **The Award of Merit**, given by the Multnomah Bar Association in recognition of Susan's pro bono work in the disaster recovery centers on the Mississippi Gulf Coast after Hurricane Katrina.
- **The Hon. James M. Burns Federal Practice Award**, given by the Oregon Chapter of the Federal Bar Association in recognition of her work to improve the practice of law in the United States District Court of Oregon.
- An **AV® Preeminent™ rating** ("signifying the highest level of professional excellence") by Martindale-Hubbell National Law Directory's confidential peer reviews.
- Inclusion in **The Best Lawyers in America®** in the fields of commercial litigation and appellate practice every year since 2009.
- Designation as a **Lifetime Fellow** of the American Bar Foundation.
- Inclusion in **Super Lawyers®** for business litigation or appellate law every year since 2006. Susan was also named to the "Oregon Top 50" by *Oregon Super Lawyers* for 2015 and 2016.

### Professional Involvement & Community Service

Susan has written reference resources for lawyers, including the Oregon State Bar's Barbooks chapters on "Jurisdiction, Removal and Remand," "Statutes of Limitations and Statutes of Repose," and "Special Writs: Writ of Review and Quo Warranto." She has given instructive presentations to lawyers on shareholder derivative actions, business valuation disputes, and various other litigation and appellate topics.



### Contact Information

[Email](#) | [PDF](#) | [vCard](#) | [LinkedIn](#)

### Portland Office

1001 SW Fifth Avenue  
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### Practice Emphasis

[Appellate Law](#)

[Business and Commercial Litigation](#)

[Intellectual Property](#)

[Products Liability Defense Litigation](#)

### Professional Recognition



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**Susan D. Marmaduke**

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HARRANG LONG GARY RUDNICK P.C.

Susan serves on the board of the Multnomah Bar Foundation. She served as a member of the amicus committee of the Oregon Association of Defense Counsel for more than a decade. She has served on the boards of the Lawyers Campaign for Equal Justice, which raises money to support legal aid services for indigent Oregonians, the national Lawyers Committee for Civil Rights Under Law, and the Multnomah Bar Association. Susan served on the Local Rules Advisory Committee for the US District Court of Oregon for a decade and chaired the committee for three years. She served as the Chair of the US Magistrate Selection Panel for the US District Court of Oregon in 2015.

## Representative Cases

- *City of Eugene v. Comcast of Oregon II, Inc.*, 358 Or 528 (2016). Represented City of Eugene in obtaining Oregon Supreme Court ruling affirming the right of the city to collect a fee for using the public rights-of-way to provide broadband Internet access.
- *Graydog, Inc. v. Giller*, 279 Or App 722 (2016). Represented shareholder in closely held company in obtaining Oregon Court of Appeals ruling upholding shareholder's right to a forced buy-out for fair value under ORS 60.952.
- *James v. Clackamas County*, 353 Or 431 (2013). Represented Clackamas County in obtaining Oregon Supreme Court's reversal of trial court judgment regarding retirement benefits.
- *FLIR Systems, Inc. v. Gambaro*, 486 Fed Appx 878 (Fed Cir 2012). Represented publicly traded company in obtaining Federal Circuit's affirmance of trial court judgment dismissing patent infringement claim.
- *Confidential arbitration* (2010). Represented closely held company in dispute over business valuation in forced buy-out of shareholder under ORS 60.952.
- *Ram Tech, Inc. v. Koresko*, 346 Or 215 (2009). Represented closely held business and its owners in obtaining Oregon Supreme Court's reversal of trial court judgment dismissing fraud claim.
- *Albrecht v. Justices of the Oregon Supreme Court*, 2007 WL 3283894 (D. Or.) Represented manager of regulatory services of the Oregon State Bar against claim by disbarred lawyer that his constitutional rights were violated in disbarment process.
- *Fields v. Coe Manufacturing Company*, USDC (Oregon), No. CV 02 1025 AA and *Fields v. Three Cities Research, Inc. et al.*, No CV 02 975 AA (2005). Represented former CEO and sole shareholder in dispute over his sale of the company.
- *Dean, et al. v. Hagen, et al.*, Multnomah County Circuit Court No. 0103-02505 (2002) – Represented CPA in professional malpractice case involving estate planning and taxation issues.
- *Hayes v. Olmsted & Associates*, 173 Or App 259, 21 P3d 178 (2001) – Represented majority shareholders in appeal of oppressive conduct claim by employee and minority shareholder.
- *Daryl Johnson v. Civil Service Board of City of Portland*, 162 Or App 527, 986 P2d 666 (1999) – Represented Curator of International Rose Test Gardens in petition for writ of review from administrative agency decision and on appeal.
- *McMillan, et al. v. Follansbee, et al.*, Linn County Circuit Court No. 981006 – Represented trust beneficiaries in dispute with trustees and other co-owners of timberland over action for partition.
- *Ron Robertson v. Lincoln Cristi, Inc., et al.*, Clark County (Washington) Superior Court No. 98 2 04785 6 – Represented corporate directors in shareholder dispute.
- *In the Matter of the Estate of Juan Young*, Multnomah County Circuit Court No. 9703 90477 – Represented co-personal representative in dispute among shareholders and fiduciaries over stock redemption agreement; resolution resulted in funding of one of the ten largest charitable trusts in Oregon.
- *Coe Manufacturing, Inc. v. Laminex (Australia) Pty. Ltd.*, Multnomah County Circuit Court No. 9607-05618; and *Reliance Electric Industrial Co., et al v. Laminex (Australia) Pty. Ltd.*, No. 9607-05625 (consolidated cases) – Represented Australian particleboard manufacturer in the Oregon portion of a multi-party international commercial dispute.
- *Mentor Graphics Corporation v. ATTI, Inc.*, Washington County Circuit Court No. C970634CV – Represented Mentor Graphics in trade secret litigation involving "design for test" software.
- *Mushroom Associates, et al. v. Monterey Mushrooms, Inc., et al.*, U.S. District Court for Northern District of California, Civ. No. 91-1092 WHO – Represented defendants in patent infringement case involving vacuum infusion of mushrooms during processing.
- *Walker v. Mitchell, et al.*, 133 Or App 585, 891 P2d 1359 (1995) – Represented decedent's estate in wrongful death action against Defendant State of Oregon Aeronautics Division and on appeal.
- *Hirsovescu v. Shangri-La, Inc.*, 127 Or App 22, 870 P2d 859 (1994) – Represented employee in appeal of action against corporation and its officers and directors.
- *Glacier Optical v. Optique Due Monde, Ltd.*, 816 F Supp 646 (D Or 1993) – Represented retailer in antitrust action against supplier and on appeal.
- *Monterey Mushrooms, Inc. v. Vito John LaTorre, et al.*, Monterey County Superior Court No. 98041 – Represented mushroom grower in dispute over fair market value of world's largest mushroom growing facility.
- *Verex Assurance, Inc. v. California Housing Finance Authority*, Sacramento County Superior Court – Represented mortgage guaranty insurance company in action against the California Housing Finance Authority for breach of contract to provide mortgage guaranty insurance for 3,000 unit housing development.

- *MacLean & Associates, Inc. v. American Guaranty Life Ins. Co.*, 85 Or App 284, 736 P2d 586 (1987) – Represented cable television system operator in action for damages arising out of breach of contract to install and operate cable system at Rippling River resort and on appeal.
- *Verex Assurance, Inc. v. Maduff Mortgage Co.*, 622 F Supp 85 (1985), aff'd in part, rev'd in part, *Verex Assurance v. John Hanson Savings & Loan*, 816 F2d 1296 (9<sup>th</sup> Cir 1987) – Represented mortgage guaranty insurer in action to rescind coverage of fraudulent loans in two Oregon real estate developments and on appeal.

## Publications

Susan has written numerous articles on law and public policy. A few examples include:

- "Statutes of Limitations and Statutes of Repose," Torts, *Oregon State Bar Legal Publications* (© 2012).
- "Special Writs: Writ of Review and Quo Warranto," Oregon Civil Pleading and Practice, *Oregon State Bar Legal Publications* (© 2012).
- "Shareholder Disputes: A Statutory Escape Route," *Oregon State Bar Bulletin* (© 2010).
- "Advance agreements reduce chance of succession battles," *Portland Business Journal* (© 2010).
- "Jurisdiction, Removal and Remand," Federal Civil Litigation in Oregon, *Oregon State Bar Legal Publications* (© 2002), Update (© 2009).
- "Downstream: Negligence can cause liability to strangers," *Portland Business Journal* (© 2008).
- "Let's Keep Politics Out of the Courts," 67- *Oregon State Bulletin* 70 (© 2006).
- "Safeguarding our local charities' funds," *Oregon Business Magazine* (© 2005).

## Presentations

- "Business Break-ups," for the Oregon State Bar's Business Law Section CLE (November 5, 2015).
- "The Anatomy of a Derivative Action," a Multnomah Bar Association Continuing Legal Education program (October 4, 2012).
- "Valuation Disputes in Commercial Cases: Litigation Strategy and Expert Advice," a Multnomah Bar Association Legal Education program (June 8, 2011).
- "Critical Issues in Arbitration," an Oregon State Bar Continuing Legal Education program (October 7, 2010).
- 2007 OADC Fall Seminar- "Appellate Update," sponsored by the Oregon Association of Defense Counsel (November 2007).
- 2006 Oregon Health Law Update- "Clarke v. OHSU: The Broader Implications," sponsored by the Oregon Bar Association (December 1, 2006).
- Community Planning Day- "Disaster Planning: Lessons Learned from Katrina," sponsored by the City of Portland Planning and Angelo Planning Group (November 2, 2006).
- "Forum on Oregon Constitutional Amendment 40" Sponsored by the Oregon State Bar and American Constitution Society for Law and Policy (October 18, 2006).
- Sustainable Land Use & Measure 37 Symposium, "The State of the Litigation," Sponsored by the Journal of Litigation (October 7, 2005).
- Judgment Day for Litigators Continuing Legal Education Seminar- "Appealing Judgments after January 1, 2004" (December 12, 2004).

### Portland

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### Salem

530 Center Street, N.E., Suite 725  
Salem, OR 97301-3761  
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Fax: 503.371.5336

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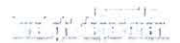




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## Oren Buchanan Haker

Partner

Portland, OR

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### Industries Served

Energy & Infrastructure

Oil & Gas: Midstream and Downstream

Oil & Gas: Upstream

### Service Areas

Appellate Law

Bankruptcy

Corporate

Project and Corporate Finance & Restructuring

### Bar Admissions

Oregon

New York

Washington

### Education

Columbia Law School, J.D., 2003; Columbia Law Review, 2001-2003; Harlan Fiske Stone Scholar, 2001-2003; Judicial Externship, Hon. Robert Katzmann, U.S. Court of Appeals for the Second Circuit, 2003

Rice University, B.A., history and economics, 1996

### ABOUT OREN

Oren Haker practices in the Corporate group of the firm focusing on financial restructuring and business reorganizations, as well as complex commercial disputes. He represents secured lenders, bondholders and trade creditors in both in-court and out-of-court restructurings, strategic investors in distressed companies, chapter 11 debtors, unsecured creditors' committees, acquirers of assets in chapter 11 proceedings and liquidating trustees. Oren's experience includes all aspects of the bankruptcy process including cash collateral disputes, intercreditor disputes, section 363 asset sales, reclamation and section 503(b)(9) issues, section 524(g) asbestos trusts, chapter 11 plan and post-effective date trust formulation, contested plan confirmation, claims resolution, and fraudulent conveyance and preference litigation. He has also advised officers and directors on fiduciary duties and zone of insolvency issues.

Oren has represented clients in the agricultural, automotive, airline, health care, energy, gaming, telecommunications, media, banking, financial services and real estate industries.

Prior to joining the firm, Oren practiced law in the financial restructuring departments at Cadwalader, Wickersham & Taft LLP and Weil, Gotshal & Manges LLP, and with the corporate insolvency group at Milberg LLP.

### EXPERIENCE

#### Creditor Representations

- Senior secured agricultural lender in contested chapter 11 case in United States Bankruptcy Court (Oregon).
- Senior secured lender in two single-asset real estate cases in the United States Bankruptcy Court (Western District of Washington).

- Wineries in involuntary bankruptcy case of distributor in United States Bankruptcy Court (Western District of Washington).
- U.S. Treasury Department Presidential Auto Task Force in the Delphi Corporation chapter 11 case and in connection with the General Motors chapter 11 case.
- Bear Stearns in connection with the Securities Investor Protection Act.
- Bank steering committee in the Truvo (World Directories) chapter 11 case.
- Bank steering committee in the Owens Corning chapter 11 case, including filing an appeal with the U.S. Court of Appeals for the Third Circuit that reversed the district court's ruling on substantive consolidation.
- Bondholders committee in the Trump Atlantic City Casinos restructuring.
- Official committee of unsecured creditors in the Champion Homes chapter 11 case.
- Official committee of unsecured creditors in the Boston Generating chapter 11 case, and trustee to the post-effective date liquidating trust.
- Pharmaceutical service provider as the largest unsecured trade creditor in three nursing home/assisted living chapter 11 cases.

### **Debtor Representations – Chapter 11**

- LyondellBasell Industries
- Bear Stearns (in its preparation for a chapter 11 filing)
- Northwest Airlines
- Adelphia Business Solutions
- Saint Vincent Medical Center
- G-1 Holdings

## **HONORS & ACTIVITIES**

### **Professional Honors & Activities**

- Listed among *Rising Stars* (Bankruptcy: Business), *Oregon Super Lawyers*<sup>®</sup>, 2014
- Under Pressure: Fiscal and Regional Difficulties Facing Local Governments, Willamette University School of Law
- Teaching Assistant, "Corporate Reorganization and Bankruptcy," Columbia Law School
- Adjunct Professor of Law in Bankruptcy at the University of Washington School of Law

### **Civic Activities**

- Legal Election Monitor, Philadelphia, People for the American Way Foundation, 2006
- Legal Election Monitor, Philadelphia, Lawyers' Committee for Civil Rights Under Law, 2004

- Oregon State Bar Debtor-Creditor CLE/Annual Meeting Planning Committee
- Oregon State Bar Debtor-Creditor Newsletter Editorial Board

## INSIGHTS & PRESENTATIONS

- Moderator, "Commercial and Residential Real Property Issues in Business and Consumer Cases," 24th Annual Southwest Bankruptcy Conference, Las Vegas, Nevada, Sept. 2016
- Presenter, "[Bankruptcy in the Oil and Gas Industry](#)," 33rd Annual West Coast Landmen's Institute, Marina del Rey, California, Sept. 2015
- Panelist, "Top 10 Changes to Asset Sales Under Section 363 of the Bankruptcy Code," 23rd Annual Southwest Bankruptcy Conference, Las Vegas, Nevada, Sept. 2015
- "[Lawyers React To High Court's Limiting Of Debt Plan Appeals](#)," *Law360*, May 5, 2015
- "[The Fallout from Fisker on Secondary Lenders and Loan-to-Own](#)," *Business Law*, a publication of the Business Law Section of the Washington State Bar Association, Summer 2014
- "[Detroit's Eligibility Opinion on the Constitutionality of Michigan Law and Legal Nature of Pension Debt](#)," *Oregon Debtor-Creditor Newsletter*, Winter 2014
- "[Could Detroit Happen Here? Guest Opinion](#)," *The Oregonian*, Aug. 4, 2013
- "[Volatile Commodity Markets: Are Customers Protected?](#)" *New York Law Journal*, Oct. 15, 2008





Susan D. Pitchford, Partner

601 SW Second Ave., Suite 1600, Portland, OR  
97204 Tel: 503-227-5631 sdp@chernofflaw.com

Susan advises clients in patent prosecution involving a broad range of technologies, including metal smelting, internet protocols, signal transmission, athletic equipment, products packaging, medical and veterinary devices, and computerized sales systems.

Susan has substantial litigation experience and has represented clients in trials in both state and federal courts, and at appeals to the Ninth Circuit and the Federal Circuit.

Susan is an active member of the Federal Bar Association, serving as Oregon Chapter President from May 2011 to May 2012, and on the executive team of the National FBA Litigation Section Board. Susan was appointed by the Oregon District Court to be a Ninth Circuit Lawyer Representative. She serves on the Board of Directors for Oregon Women Lawyers.

Susan was named 2015 and 2016 in *The Best Lawyers In America* in the fields of Litigation for Patent and Trademark Law. She has been recognized by *Super Lawyers* every year since 2009, first as a "Rising Star" and then as a "Super Lawyer".

Bar Admissions

Oregon  
Washington  
U.S. Patent and Trademark Office  
U.S. District Court for the District of Oregon  
U.S. Court of Appeals, Federal Circuit  
U.S. Court of Appeals, Ninth Circuit  
U.S. District Court for the ED of Washington  
U.S. District Court for the WD of Washington

Education

Gonzaga University, B.S. Biology; B.A. Political Science, 1993  
Gonzaga University School of Law, J.D., 1996  
Portland State University, Electrical Engineering Masters' candidate

# Michael B. Batlan

PO Box 3729, Salem, OR 97302 • wk. (503) 588-9192, cell (503) 559-0306 • mbatlan@aol.com

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## Experience

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### Panel Chapter 7 Bankruptcy Trustee

- Appointed to the Panel for the District of Oregon in 1989
- Report annually to the U.S. Trustee's Office
- Audited regularly by the U.S. Department of Justice

### Court-appointed Chapter 11 Trustee

- Reorganized various businesses after proposing plans confirmed by the U.S. Bankruptcy Court
  - Completed liquidations under confirmed plans
- 

### Fiduciary in Non-Bankruptcy Cases

- State court appointed receiver in many cases over the years in various Oregon circuit courts, beginning in 1985
  - Selected to serve as Assignee for the Benefit of Creditors in various out-of-court liquidations
- 

### Oregon Bank

- Commercial Loan Officer, 1976 to 1980
  - Worked in banking operations, 1974 to 1976
- 

## Education

---

MBA, Willamette University, 1981

BS, Economics, Willamette University, 1975

## References

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References and names of cases handled both available on request.

## JONATHAN P. LEVINE

10614 SW 64th Dr.  
Portland, OR 97219  
503.997.4648  
jpl.pdx@gmail.com

### EXPERIENCE

**Chief Operating Officer** Maxfield Farms LLC (Monmouth, OR) 8/16-present  
*Manage site design, planning, licensing, construction, legal, accounting, HR for a start-up farm operation with an initial \$1.5 million budget*

**Instructor** Capstone English Mastery Center (Portland, OR) 2/15-11/15  
*Prepared and taught individual and group TESOL classes (part-time)*

**Client Care Coordinator** Sinai In-Home Care (Portland, OR) 4/14-10/14  
*Provided client in-home care coordination from initial screening to close of service*

**Research Project Manager** Univ. of Western States (Portland, OR) 10/06-6/10  
*Devised, administered, supervised day-to-day processes and procedures for grants*

- Prepared and monitored progress reports, budgets, subcontracts
- Designed and maintained management reports
- Participated in grant proposal development and writing
- Coordinated project support personnel
- Ensured project integrity and adherence by investigators to research methodology
- Ensured subject confidentiality and securing of data per HIPAA regulations

#### **Major Accomplishments**

- Enrolled four hundred participants in a research study on low back pain
- Developed budgets, processes, procedures for new grants
- Processed more than 2000 payments with an error rate of less than .5%

**Program Manager** Elderhostel, Inc. (Milwaukie, OR) 12/02-9/06  
*Managed Elderhostel/Road Scholar programs in N. California and the Western US*

- Designed, developed, and marketed educational travel programs
- Researched opportunities for regional enrollment growth by database analysis
- Researched industry and news sources for program ideas, providers, vendors
- Met multiple deadlines for 10-12 major marketing publications yearly, including writing/editing of catalog text, budgeting, costing data-entry
- Visited programs in progress and program sites to ensure quality of service

## Major Accomplishments

- Diversified program offerings and locations by approximately 50%
  - Tripled enrollment in specialty programs
- Program Coordinator** Elderhostel, Inc. (Milwaukie, OR) 12/01-11/02  
*Ran day-to-day operations for internally-sponsored educational travel programs*
- Created schedules and budgets; communicated same to sub-contractors, vendors
  - Recruited and hired program personnel
  - Contracted for accommodations, meals, lectures

**Instructor/Student Advisor** ELS Language Center (Washington, DC) 1993-2001  
*Taught ESL courses; assisted students with immigration, housing, banking*

**Cultural Trainer** Intec, Japan (Numazu, Japan) 1988-1992  
*Prepared software designers at Fujitsu for overseas assignment*

**Instructor** Kanda Institute of Foreign Languages (Tokyo, Japan) 1983-1987  
*Taught the four language skills to Japanese junior college students*

## EDUCATION

**Master of Social Work** Portland State University; Portland, OR (3.8 GPA) 6/13  
**Bachelor of Arts - Creative Writing** University of Arizona; Tucson, AZ 12/81

## SERVICE

**Oregon State Bar Disciplinary Board, Public Member** 1/09-9/15  
*Reviewed cases of attorney misconduct, for possible sanction, as part of a panel*

**DHS Midtown Office, Child Protective Services Unit** 8/13-4/14  
*Assisted CPS workers with daily duties including interviewing and report writing*

## AWARDS

**Phi Alpha Honor Society Member** 2012  
*Awarded for excellence in social work scholarship*

**Hattie Greene Lockett Award** 1981  
*Given annually to the outstanding student poet at the University of Arizona*

**National Council of Teachers of English Award** 1977  
*Given annually for non-fiction writing to two high school seniors in each state*

## LANGUAGES

intermediate Japanese; basic Spanish; a smattering of other languages



August 18, 2017

Oregon State Bar

The Honorable Charles E. Grassley  
Chairman  
Judiciary Committee  
United States Senate  
Washington, DC 20515

The Honorable Dianne Feinstein  
Ranking Member  
Judiciary Committee  
United States Senate  
Washington, DC 20515

The Honorable Jeff Flake  
Chairman  
Subcommittee on Privacy,  
Technology, and the Law  
Judiciary Committee  
United States Senate  
Washington, DC 20515

The Honorable Al Franken  
Ranking Member  
Subcommittee on Privacy,  
Technology, and the Law  
Judiciary Committee  
United States Senate  
Washington, DC 20515

Re: Proposal to Restructure the United States Court of Appeals for the Ninth Circuit

Dear Senators Grassley, Feinstein, Flake, and Franken:

The Oregon State Bar appreciates the opportunity to provide comment on the ongoing discussion regarding a proposed split of the Ninth Circuit Court of Appeals. Since the creation of the federal court system, a cornerstone of American democracy is the rule of law which is embodied by the federal court system, including the Ninth Circuit. One of the bar's primary commitments is to support the efficient and effective operations of our court system in order to ensure that all Oregonians have access to a justice system that dispenses justice fairly and without delay. We have closely monitored similar discussions about splitting the Ninth Circuit for the last two decades, and appreciate the sincere concerns that have given rise to many of these proposals.

At this time, the Oregon State Bar has concerns about the various proposals to split the Ninth Circuit Court of Appeals that are currently under consideration. First, any proposal to split the circuit should be carefully and thoroughly vetted by all stakeholders. Further, while we recognize that the Ninth Circuit carries a significantly larger workload than some of the smaller circuits, this fact has not undermined the court's ability to serve the needs of the people in the circuit. While it is possible that the populations of the states that make up the Ninth Circuit caseload may grow too large for one circuit to manage in the future, there is little evidence that we have reached that point. Efficiencies implemented in recent years as well as the increased use of technology have made it possible for each circuit to handle a larger workload than would otherwise have been possible.

Consistent with the Oregon State Bar's role in promoting access to justice within Oregon, we have concerns about the uncertainty that could be created for Oregon litigants if the state was moved into another circuit. In order to avoid uncertainty, any proposal must adequately address the precedential value of case law and opinions. Otherwise, issues that are currently settled law in Oregon could be thrown open to re-litigation thereby increasing costs and complicating access to the courts for many Oregonians. At the same time, there is no certainty that a smaller circuit would have the ability to resolve disputes faster than the current division, as case wait times are primarily driven by other factors. These factors include funding and staffing decisions that can have an adverse impact on the ability of our courts to fulfill their mission. The bar strongly supports full funding and full staffing of the federal courts because they are crucial to ensure the functioning of our American justice system.

The Oregon State Bar and its members thank you for your leadership and commitment to our federal court system, its judiciary, and the administration of justice. Please let us know if we may be of assistance on this or any other matter.

Sincerely,

Handwritten signature of Michael D. Levelle in blue ink.

Michael D. Levelle  
President  
Oregon State Bar

Handwritten signature of Kathleen J. Rastetter in blue ink.

Kathleen J. Rastetter  
Chair, Public Affairs Committee  
Oregon State Bar

**Oregon State Bar  
Professional Liability Fund  
Financial Statements  
6/30/2017**

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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  
6/30/2017**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$609,481.06	\$2,767,230.95
Investments at Fair Value	59,361,623.41	52,725,145.02
Assessment Installment Receivable	4,622,187.32	4,821,847.00
Due from Reinsurers	139,702.57	288,135.54
Other Current Assets	143,001.47	139,473.85
Net Fixed Assets	611,343.87	754,631.24
Claim Receivables	47,806.82	14,301.18
Other Long Term Assets	<u>5,850.00</u>	<u>6,300.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$65,540,996.52</u></b>	<b><u>\$61,517,064.78</u></b>
 <u>LIABILITIES AND FUND POSITION</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$67,419.76	\$50,697.11
Due to Reinsurers	\$467,990.68	\$1,043,533.23
PERS Pension Liability	3,687,715.04	2,110,907.00
Liability for Compensated Absences	414,472.04	397,427.82
Liability for Indemnity	12,800,000.00	13,300,000.00
Liability for Claim Expense	12,677,078.36	15,100,000.01
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	431,729.48	390,645.63
Primary Assessment Allocated for Rest of Year	<u>12,095,396.00</u>	<u>12,267,277.00</u>
<b>Total Liabilities</b>	<b><u>\$49,941,801.36</u></b>	<b><u>\$51,760,487.80</u></b>
<b>Change in Net Position:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$10,172,488.96	\$7,916,263.73
Year to Date Net Income (Loss)	<u>5,426,706.20</u>	<u>1,840,313.25</u>
<b>Net Position</b>	<b><u>\$15,599,195.16</u></b>	<b><u>\$9,756,576.98</u></b>
<b>TOTAL LIABILITIES AND FUND POSITION</b>	<b><u>\$65,540,996.52</u></b>	<b><u>\$61,517,064.78</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Revenues, Expenses, and Changes in Net Position  
6 Months Ended 6/30/2017**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$11,931,816.00	\$12,162,498.00	\$230,682.00	\$12,102,738.00	\$24,325,000.00
Installment Service Charge	163,580.00	165,000.00	1,420.00	164,516.00	330,000.00
Other Income	83,161.17	55,500.00	(27,661.17)	35,097.94	111,000.00
Investment Return	<u>3,492,319.74</u>	<u>875,592.00</u>	<u>(2,616,727.74)</u>	<u>1,595,433.17</u>	<u>1,751,183.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$15,670,876.91</u></b>	<b><u>\$13,258,590.00</u></b>	<b><u>(\$2,412,286.91)</u></b>	<b><u>\$13,897,785.11</u></b>	<b><u>\$26,517,183.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$9,607,500.00			\$10,260,000.00	
Actuarial Adjustment to Reserves	(3,079,536.23)			(1,664,001.84)	
Coverage Opinions	38,823.01			56,563.72	
General Expense	8,773.21			11,285.07	
Less Recoveries & Contributions	(23,026.57)			(24.20)	
Budget for Claims Expense		<u>\$9,537,498.00</u>			<u>\$19,075,000.00</u>
<b>Total Provision For Claims</b>	<b><u>\$6,552,533.42</u></b>	<b><u>\$9,537,498.00</u></b>	<b><u>\$2,984,964.58</u></b>	<b><u>\$8,663,822.75</u></b>	<b><u>\$19,075,000.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$1,342,950.15	\$1,321,117.00	(\$21,833.15)	\$1,208,054.45	\$2,656,039.00
Accounting Department	435,270.34	453,151.00	17,880.66	394,864.58	882,350.00
Loss Prevention Department	995,620.48	1,108,357.00	112,736.52	1,005,884.82	2,214,830.00
Claims Department	1,355,048.17	1,414,178.00	59,129.83	1,230,049.00	2,923,689.00
Allocated to Excess Program	(553,546.98)	(541,950.00)	11,596.98	(532,989.96)	(1,083,880.00)
<b>Total Expense from Operations</b>	<b><u>\$3,575,342.16</u></b>	<b><u>\$3,754,853.00</u></b>	<b><u>\$179,510.84</u></b>	<b><u>\$3,305,862.89</u></b>	<b><u>\$7,593,028.00</u></b>
Depreciation and Amortization	\$78,809.43	\$80,250.00	\$1,440.57	\$80,018.76	\$160,507.00
Allocated Depreciation	(10,429.02)	(10,176.00)	253.02	(12,130.50)	(20,350.00)
<b>TOTAL EXPENSE</b>	<b><u>\$10,196,255.99</u></b>	<b><u>\$13,362,425.00</u></b>	<b><u>\$3,166,169.01</u></b>	<b><u>\$12,037,573.90</u></b>	<b><u>\$26,808,185.00</u></b>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>\$5,474,579.42</u></b>	<b><u>(\$104,837.00)</u></b>	<b><u>(\$5,579,416.42)</u></b>	<b><u>\$1,860,211.21</u></b>	<b><u>(\$293,002.00)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Statement of Operating Expense  
6 Months Ended 6/30/2017**

	<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>
<b><u>EXPENSE:</u></b>						
Salaries	\$575,140.68	\$2,302,737.55	\$2,349,324.00	\$46,586.45	\$2,057,891.58	\$4,698,648.00
Benefits and Payroll Taxes	142,215.53	784,406.37	845,147.00	60,740.63	774,895.74	1,683,243.00
Investment Services	12,300.75	24,675.75	22,000.00	(2,675.75)	21,744.00	44,000.00
Legal Services	2,401.80	6,877.30	4,998.00	(1,879.30)	19,293.95	10,000.00
Financial Audit Services	0.00	19,000.00	23,000.00	4,000.00	17,000.00	23,000.00
Actuarial Services	937.50	10,875.00	15,000.00	4,125.00	8,395.00	30,000.00
Information Services	9,397.05	29,555.95	35,502.00	5,946.05	11,714.51	71,000.00
Document Scanning Services	11,447.11	24,399.32	15,000.00	(9,399.32)	1,646.72	30,000.00
Other Professional Services	5,519.09	54,651.01	43,092.00	(11,559.01)	40,165.56	86,175.00
Staff Travel	3,183.67	4,772.01	13,794.00	9,021.99	8,701.57	27,600.00
Board Travel	11,646.97	17,918.17	20,748.00	2,829.83	12,614.10	41,500.00
NABRICO	1,004.80	1,254.80	0.00	(1,254.80)	250.00	15,000.00
Training	3,125.45	19,561.95	18,522.00	(1,039.95)	25,002.35	37,000.00
Rent	44,731.25	283,199.49	267,894.00	(15,305.49)	283,573.01	535,783.00
Printing and Supplies	5,619.60	53,581.76	39,498.00	(14,083.76)	37,670.34	79,000.00
Postage and Delivery	2,594.65	12,807.44	13,254.00	446.56	12,765.91	26,500.00
Equipment Rent & Maintenance	13,596.32	27,728.68	20,880.00	(6,848.68)	18,671.11	41,761.00
Telephone	1,129.50	23,538.80	25,248.00	1,709.20	24,661.26	50,500.00
L P Programs (less Salary & Benefits)	22,546.09	156,998.24	259,902.00	102,903.76	211,166.88	519,750.00
Defense Panel Training	766.34	5,866.90	0.00	(5,866.90)	0.00	98,448.00
Bar Books Grant	16,666.67	100,000.02	100,002.00	1.98	100,000.02	200,000.00
Insurance	3,422.50	24,135.95	21,498.00	(2,637.95)	22,719.03	43,000.00
Library	2,127.87	13,521.53	15,750.00	2,228.47	12,687.21	31,500.00
Subscriptions, Memberships & Other	3,383.45	126,825.15	126,750.00	(75.15)	115,623.00	253,500.00
Allocated to Excess Program	(92,257.83)	(553,546.98)	(541,950.00)	11,596.98	(532,989.96)	(1,083,880.00)
<b>TOTAL EXPENSE</b>	<b><u>\$802,646.81</u></b>	<b><u>\$3,575,342.16</u></b>	<b><u>\$3,754,853.00</u></b>	<b><u>\$179,510.84</u></b>	<b><u>\$3,305,862.89</u></b>	<b><u>\$7,593,028.00</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Revenue, Expenses, and Changes in Net Position  
6 Months Ended 6/30/2017**

	<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>
<b><u>REVENUE</u></b>					
Ceding Commission	\$430,868.32	\$397,500.00	(\$33,368.32)	\$390,645.63	\$795,000.00
Profit Commission	0.00	15,000.00	15,000.00	46,653.47	30,000.00
Installment Service Charge	49,306.00	45,000.00	(4,306.00)	44,760.00	45,000.00
Investment Return	<u>70,213.62</u>	<u>65,904.00</u>	<u>(4,309.62)</u>	<u>91,675.77</u>	<u>131,809.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$550,387.94</u></b>	<b><u>\$523,404.00</u></b>	<b><u>(\$26,983.94)</u></b>	<b><u>\$573,734.87</u></b>	<b><u>\$1,001,809.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$587,832.14	\$600,942.00	\$13,109.86	\$581,502.33	\$1,201,880.00
Allocated Depreciation	<u>\$10,429.02</u>	<u>\$8,598.00</u>	<u>(\$1,831.02)</u>	<u>\$12,130.50</u>	<u>\$17,200.00</u>
<b>NET POSITION - INCOME (LOSS)</b>	<b><u>(\$47,873.22)</u></b>	<b><u>(\$86,136.00)</u></b>	<b><u>(\$38,262.78)</u></b>	<b><u>(\$19,897.96)</u></b>	<b><u>(\$217,271.00)</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Statement of Operating Expense  
6 Months Ended 6/30/2017**

	<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>
<b><u>EXPENSE:</u></b>						
Salaries	\$50,883.25	\$305,299.50	\$297,858.00	(\$7,441.50)	\$294,963.48	\$595,720.00
Benefits and Payroll Taxes	16,824.16	100,944.96	100,080.00	(864.96)	96,400.50	200,165.00
Investment Services	74.25	74.25	1,248.00	1,173.75	756.00	2,500.00
Office Expense	87.29	87.29	0.00	(87.29)	0.00	0.00
Allocation of Primary Overhead	24,550.42	147,302.52	144,000.00	(3,302.52)	141,625.98	287,995.00
Reinsurance Placement & Travel	378.53	7,694.97	10,002.00	2,307.03	5,979.87	20,000.00
Training	0.00	0.00	2,502.00	2,502.00	485.00	5,000.00
Printing and Mailing	0.00	3,549.25	5,250.00	1,700.75	3,644.76	10,500.00
Program Promotion	1,860.00	7,240.00	9,000.00	1,760.00	7,240.00	18,000.00
Other Professional Services	0.00	13,353.70	8,502.00	(4,851.70)	8,361.99	17,000.00
Software Development	<u>372.40</u>	<u>2,285.70</u>	<u>22,500.00</u>	<u>20,214.30</u>	<u>22,044.75</u>	<u>45,000.00</u>
<b>TOTAL EXPENSE</b>	<b><u>\$95,030.30</u></b>	<b><u>\$587,832.14</u></b>	<b><u>\$600,942.00</u></b>	<b><u>\$13,109.86</u></b>	<b><u>\$581,502.33</u></b>	<b><u>\$1,201,880.00</u></b>



**Oregon State Bar  
Professional Liability Fund  
Combined Investment Schedule  
6 Months Ended 6/30/2017**

	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>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$18,581.70	\$48,775.15	\$13,328.76	\$74,336.62
Intermediate Term Bond Funds	32,705.59	194,299.24	23,355.56	152,706.15
Domestic Common Stock Funds	56,147.09	108,858.45	42,922.75	86,396.73
International Equity Fund	15,144.31	15,144.31	0.00	0.00
Real Estate	35,707.34	70,164.85	46,131.05	89,745.78
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>28,384.16</u>	<u>57,310.55</u>	<u>47,227.30</u>	<u>99,603.73</u>
<b>Total Dividends and Interest</b>	<b><u>\$186,670.19</u></b>	<b><u>\$494,552.55</u></b>	<b><u>\$172,965.42</u></b>	<b><u>\$502,789.01</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	(\$33,264.74)	(\$33,258.45)	\$32,695.00	\$38,290.50
Intermediate Term Bond Funds	(12,677.27)	215,579.50	138,018.64	301,503.65
Domestic Common Stock Funds	55,762.54	894,789.65	(20,121.28)	256,848.64
International Equity Fund	19,028.27	1,473,933.05	(224,106.02)	(301,496.48)
Real Estate	33,867.32	55,620.56	54,066.89	117,238.13
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>107,282.78</u>	<u>462,875.17</u>	<u>386,083.46</u>	<u>771,935.49</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>\$169,998.90</u></b>	<b><u>\$3,069,539.48</u></b>	<b><u>\$366,636.69</u></b>	<b><u>\$1,184,319.93</u></b>
<b>TOTAL RETURN</b>	<b><u>\$356,669.09</u></b>	<b><u>\$3,564,092.03</u></b>	<b><u>\$539,602.11</u></b>	<b><u>\$1,687,108.94</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$7,360.32	\$15,047.88	\$8,406.12	\$18,946.50
Gain (Loss) in Fair Value	<u>6,169.39</u>	<u>55,165.74</u>	<u>17,818.54</u>	<u>72,729.27</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>\$13,529.71</u></b>	<b><u>\$70,213.62</u></b>	<b><u>\$26,224.66</u></b>	<b><u>\$91,675.77</u></b>

**Oregon State Bar  
Professional Liability Fund  
Excess Program  
Balance Sheet  
6/30/2017**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$363,920.24	\$251,699.49
Assessment Installment Receivable	573,894.32	508,922.00
Due from Reinsurers	139,702.57	288,135.54
Other Assets	5,241.29	0.00
Investments at Fair Value	<u>1,874,995.20</u>	<u>2,597,661.20</u>
<b>TOTAL ASSETS</b>	<b><u>\$2,957,753.62</u></b>	<b><u>\$3,646,418.23</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable & Refunds Payable	\$232.75	\$2,666.43
Due to Primary Fund	\$710.64	\$0.00
Due to Reinsurers	467,990.68	1,043,533.23
Ceding Commission Allocated for Remainder of Year	<u>431,729.48</u>	<u>390,645.63</u>
<b>Total Liabilities</b>	<b><u>\$900,663.55</u></b>	<b><u>\$1,436,845.29</u></b>
<b>Net Position</b>		
Net Position (Deficit) Beginning of Year	\$2,104,963.29	\$2,229,470.90
Year to Date Net Income (Loss)	<u>(47,873.22)</u>	<u>(19,897.96)</u>
<b>Total Net Position</b>	<b><u>\$2,057,090.07</u></b>	<b><u>\$2,209,572.94</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$2,957,753.62</u></b>	<b><u>\$3,646,418.23</u></b>

**Oregon State Bar  
Professional Liability Fund  
Primary Program  
Balance Sheet  
6/30/2017**

**ASSETS**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
Cash	\$245,560.82	\$2,515,531.46
Investments at Fair Value	57,486,628.21	50,127,483.82
Assessment Installment Receivable	4,048,293.00	4,312,925.00
Due From Excess Fund	710.64	0.00
Other Current Assets	137,049.54	139,473.85
Net Fixed Assets	611,343.87	754,631.24
Claim Receivables	47,806.82	14,301.18
Other Long Term Assets	<u>5,850.00</u>	<u>6,300.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$62,583,242.90</u></b>	<b><u>\$57,870,646.55</u></b>

**LIABILITIES AND FUND EQUITY**

	<b><u>THIS YEAR</u></b>	<b><u>LAST YEAR</u></b>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$66,476.37	\$48,030.68
PERS Pension Liability	3,687,715.04	2,110,907.00
Liability for Compensated Absences	414,472.04	397,427.82
Liability for Indemnity	12,800,000.00	13,300,000.00
Liability for Claim Expense	12,677,078.36	15,100,000.01
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>12,095,396.00</u>	<u>12,267,277.00</u>
<b>Total Liabilities</b>	<b><u>\$49,041,137.81</u></b>	<b><u>\$50,323,642.51</u></b>
<b>Net Position</b>		
Net Position (Deficit) Beginning of the Year	\$8,067,525.67	\$5,686,792.83
Year to Date Net Income (Loss)	<u>5,474,579.42</u>	<u>1,860,211.21</u>
<b>Total Net Position</b>	<b><u>\$13,542,105.09</u></b>	<b><u>\$7,547,004.04</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$62,583,242.90</u></b>	<b><u>\$57,870,646.55</u></b>

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND**

**FINANCIAL STATEMENTS**

**Years Ended December 31, 2016 and 2015**

**OREGON STATE BAR PROFESSIONAL LIABILITY FUND**

**FINANCIAL STATEMENTS**

**Years Ended December 31, 2016 and 2015**

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
For the Years Ended December 31, 2016 and 2015**

As management of the Oregon State Bar Professional Liability Fund (PLF), we offer readers of the PLF's financial statements this narrative overview and analysis of the financial activities for the calendar year ended December 31, 2016. Readers are encouraged to consider this information in conjunction with the basic financial statements, which begin on page three.

**Background**

The Oregon State Bar is a public corporation, and an instrument of the Judicial Department of the State of Oregon. Provisions of Oregon Revised Statutes (ORS) 9.080 were modified in 1977 to authorize the Board of Governors (BOG) of the Oregon State Bar to establish a professional liability insurance program for all attorneys engaged in private practice whose principal office is in Oregon. The BOG established the PLF in 1978. The PLF is a separate but integral unit of the Oregon State Bar. The PLF is not subject to the Insurance Code of the State of Oregon and as a public body, it is also exempt from federal and state income taxes.

All members of the Oregon State Bar, engaged in the private practice of law whose principal office is in Oregon, are required to purchase liability insurance from the PLF's mandatory program ("Primary Program"). Approximately 52% of Oregon lawyers fall outside of the definition of "private practice of law" and are exempt from coverage. The 2016 coverage limits of the Primary Program were \$300,000 per claim / \$300,000 aggregate, with an additional \$50,000 expense allowance.

The PLF also has an optional underwritten plan ("Excess Program") to provide insurance coverage with policy limits in excess of the existing mandatory plan.

Because the PLF covers all Oregon lawyers and must continue to do so in the future, it focuses considerable resources on loss prevention. The PLF has 4 practice management advisors and has a well-funded attorney assistance program with 4 professional staff members. The attorney assistance program responds to lawyers who have issues that hamper their ability to practice law. The Loss Prevention staff reports to the Director of Loss Prevention.

**Financial Highlights**

- The PLF had a surplus of \$3.7M for 2016 largely as a result of rebounding investments and a below average claim count in the Primary Program portfolio.
- 2016 claim expenses (indemnity and defense) were approximately \$1.0M less than 2015.
- The number of lawyers covered by the Primary Program decreased approximately 0.7% from 2015 to 2016, with 7,373 attorneys covered for at least a portion of 2016.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Description of Basic Financial Statements**

The PLF's basic financial statements consist of a Statement of Net Position, Statement of Revenues, Expenses, and Changes in Net Position, Statement of Cash Flows, and notes to the financial statements.

**CONDENSED STATEMENT OF NET POSITION**

	<u>12/31/2016</u>	<u>12/31/2015</u>	<u>Increase (Decrease)</u>	<u>12/31/2015</u>	<u>12/31/2014</u>	<u>Increase (Decrease)</u>
Cash and Investments	\$ 57,314,337	\$ 52,663,201	\$ 4,651,136	\$ 52,663,201	\$ 55,688,985	\$ (3,025,784)
Other Assets	1,694,421	3,438,367	(1,743,946)	3,438,367	1,579,013	1,859,354
Capital Assets (Net)	673,304	740,183	(66,879)	740,183	852,010	(111,827)
Deferred Outflows of Resources	<u>2,000,296</u>	<u>144,219</u>	<u>1,856,077</u>	<u>144,219</u>	<u>215,796</u>	<u>(71,577)</u>
<b>Total Assets</b>	<b><u>\$ 61,682,358</u></b>	<b><u>\$ 56,985,970</u></b>	<b><u>\$ 4,696,388</u></b>	<b><u>\$ 56,985,970</u></b>	<b><u>\$ 58,335,804</u></b>	<b><u>\$ (1,349,834)</u></b>
<b>Liabilities</b>						
Estimated Liabilities for						
Claims	\$ 34,300,000	\$ 35,300,000	\$ (1,000,000)	\$ 35,300,000	\$ 35,200,000	\$ 100,000
Unearned Revenues	10,771,503	10,847,994	(76,491)	10,847,994	10,580,097	267,897
Other Liabilities	5,704,406	3,202,594	2,501,812	3,202,594	1,496,324	1,706,270
Deferred Inflows of Resources	<u>40,485</u>	<u>441,564</u>	<u>(401,079)</u>	<u>441,564</u>	<u>1,287,088</u>	<u>(845,524)</u>
<b>Total Liabilities</b>	<b><u>50,816,394</u></b>	<b><u>49,792,152</u></b>	<b><u>1,024,242</u></b>	<b><u>49,792,152</u></b>	<b><u>48,563,509</u></b>	<b><u>1,228,643</u></b>
<b>Net Position</b>	<b><u>\$ 10,865,964</u></b>	<b><u>\$ 7,193,818</u></b>	<b><u>\$ 3,672,146</u></b>	<b><u>\$ 7,193,818</u></b>	<b><u>\$ 9,772,295</u></b>	<b><u>\$ (2,578,477)</u></b>

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Financial Position**

Cash and Investments – Total cash and investments value increased approximately \$4.6M during 2016 after losing value of approximately \$3.0M in 2015. Payments from Excess Reinsurers at the end of 2016 accounted for almost \$3.0M of the increase. Additionally, the fair market value of the investment portfolio increased by approximately \$1.4M.

Investments are stated at fair market value. PLF investments are made in accordance with policy guidelines adopted by the Board of Directors. The guidelines require allocation of investment funds to different asset classes in order to balance risk and return by emphasizing diversification among uncorrelated categories. Non-operating assets are allocated to domestic and foreign equities, intermediate-term bonds, real estate, absolute return, and real return categories. The allocation guidelines are reviewed periodically by the Board of Directors. In 2016 the Board of Directors approved the decision to divest all inflation protected funds. The proceeds from that divestment were re-allocated to fixed income funds.

Other Assets – Other assets include receivables acquired during the course of claim handling and amounts due from reinsurers. There was a decrease in other assets of \$1.7M during 2016 largely due to decrease in receivables from Reinsurers as noted in the Cash and Investments section above.

Capital Assets (Net) – Capital assets represent fixed assets owned by the PLF less accumulated depreciation. These assets are a small portion of PLF total assets. During 2016, depreciation was greater than new asset purchases and capital assets decreased by \$67K. This followed a similar decline in 2015 of \$112K.

Estimated Liabilities for Claims – Each time a claim is reported to the PLF, estimates of the costs to resolve and defend the claims are established by the assigned PLF claims attorney. Claims often remain unresolved for several years. Consistent with standard insurance practices, the PLF claims attorneys continually reevaluate and change estimates as more information becomes available. Outside actuaries compare the historical estimates to ultimate claim costs every six months. They use this analysis to estimate total claim liabilities. This actuarial estimate is used by the Board of Directors to help determine the amount of claim liabilities stated in the financial statements.

Management believes that the estimated liabilities for claims are reasonable and adequate to cover the ultimate net cost of losses on claims reported. However the liabilities are necessarily based upon estimates, and therefore the ultimate net claim cost may vary up or down from such estimates.



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Financial Position (Continued)**

Estimated Liabilities for Claims (Continued)

In addition to specific claim liabilities, the PLF also includes estimated liabilities for the cost of future administration of pending claims. The AOE Liability (Adjusting and Other Expenses) represents the potential administrative costs incurred by PLF should the PLF cease operations but still have open claims to defend. The current AOE liability is \$2.6M. Extended reporting coverage (ERC) or "tail coverage" recognizes the liability the PLF holds to ensure an attorney has claims coverage upon ceasing practice for all potential claims incurred while still practicing. The current ERC liability is \$3.1M. Suspense liability represents potential future costs of claims that have as of yet, no monetary demands made against them. The current suspense liability is \$1.6M.

None of the estimated liabilities are discounted for the time value of money.

The total estimated liabilities for claims decreased by \$1.0M during 2016 after increasing by \$100K during 2015. The frequency of new claims was lower than anticipated throughout both the 2016 and 2015 claim years. The increasing indemnity on closed claims halted and in fact diminished during 2016. The expense portion, which had decreased in 2015, began to rise again in 2016.

Deferred Revenue – Deferred revenue represents prepayment of future PLF assessments for both the Primary and Excess Programs. Although annual PLF assessments are due in early January, many lawyers pay them during the preceding December.

Deferred revenue is remaining stable year on year from 2014 through 2016. There was a 0.7% decrease in deferred revenue from 2015 to 2016.

Other Liabilities – Other liabilities include liabilities for accounts payable and accrued payroll obligations. Other liabilities increased by approximately \$2.5M. This increase is largely due to increases in pension liabilities.

Net Position – In the financial statements that follow, the term "net position" represents the difference between assets and liabilities. Positive investment returns coupled with lower than expected claims costs contributed to a surplus of \$3.7M in 2016. The Net Position of the PLF increased in 2016 bringing total net position to \$10.9M.

In 2016, the Board of Directors approved a Net Position goal of \$13.3M.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Operations**

**CONDENSED INCOME STATEMENT**

	<b>12 Months Ending <u>12/31/2016</u></b>	<b>12 Months Ending <u>12/31/2015</u></b>	<b>Increase (Decrease)</b>	<b>12 Months Ending <u>12/31/2015</u></b>	<b>12 Months Ending <u>12/31/2014</u></b>	<b>Increase (Decrease)</b>
<b>Revenues</b>						
Net Assessments	\$ 24,299,773	\$ 24,326,360	\$ (26,587)	\$ 24,326,360	\$ 24,668,300	\$ (341,940)
Investment Income (Loss)	3,593,534	(312,994)	3,906,528	(312,994)	2,591,206	(2,904,200)
Other Income	1,266,300	1,226,582	39,718	1,226,582	1,215,934	10,648
<b>Total Revenues</b>	<u>29,159,607</u>	<u>25,239,948</u>	<u>3,919,659</u>	<u>25,239,948</u>	<u>28,475,440</u>	<u>(3,235,492)</u>
<b>Expenses</b>						
Indemnity & Claim Expense						
Incurred	16,686,564	17,686,293	(999,729)	17,686,293	18,856,551	(1,170,258)
Administrative Expenses	8,611,037	8,425,492	185,545	8,425,492	7,960,204	465,288
Non-Operating (Inc) Exp	189,860	1,706,640	(1,516,780)	1,706,640	404,267	1,302,373
<b>Total Expenses</b>	<u>25,487,461</u>	<u>27,818,425</u>	<u>(2,330,964)</u>	<u>27,818,425</u>	<u>27,221,022</u>	<u>597,403</u>
<b>Net Income (Loss)</b>	<u>3,672,146</u>	<u>(2,578,477)</u>	<u>6,250,623</u>	<u>(2,578,477)</u>	<u>1,254,418</u>	<u>(3,832,895)</u>
<b>Net Position - beginning</b>	<u>7,193,818</u>	<u>9,772,295</u>	<u>(2,578,477)</u>	<u>9,772,295</u>	<u>8,517,877</u>	<u>1,254,418</u>
<b>Net Position</b>	<u>\$ 10,865,964</u>	<u>\$ 7,193,818</u>	<u>\$ 3,672,146</u>	<u>\$ 7,193,818</u>	<u>\$ 9,772,295</u>	<u>\$ (2,578,477)</u>

Total revenues for 2016 were \$3.9M more than in 2015. A substantial increase in investment income from 2015 to 2016 of \$3.9M is largely responsible for the overall increase in revenue.

For the second year, total expenses decreased. In 2016 the total expenses were \$25.4M and in 2015 they were \$26.1M. This decrease is largely due to less than expected claims development. Fiscal year 2016 experienced a net surplus of \$3.7M compared to a deficit in 2015 of \$2.6M.

The PLF develops an annual operating budget for planning and control purposes. The budget is approved by both the Professional Liability Fund Board of Directors and Oregon State Bar Board of Governors.

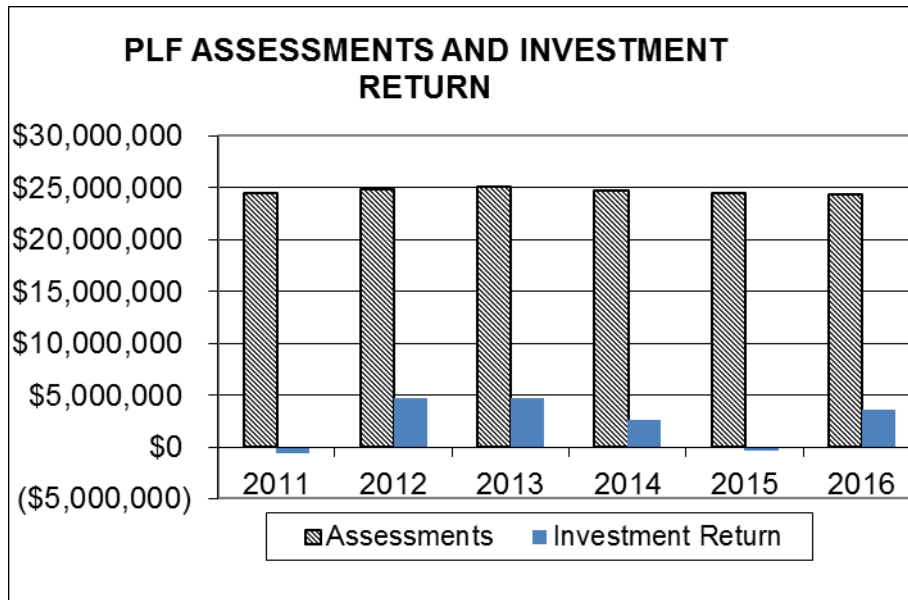
**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Operations (con't)**

Net Assessment Revenue – Net assessment revenue decreased by \$27K during 2016. The assessment amount for 2016 remained the same at \$3,500 per attorney in private practice. Additionally, the number of covered parties remained stable.

Investment Income – The PLF portfolio experienced a positive reversal from 2015 results. Investment income for 2016 was \$3.6M versus a loss of \$313K in 2015.

Other Income – Other income consists of Primary Program installment service charges and Excess Program ceding commissions. Other Income increased marginally by \$40K from 2015 to 2016.



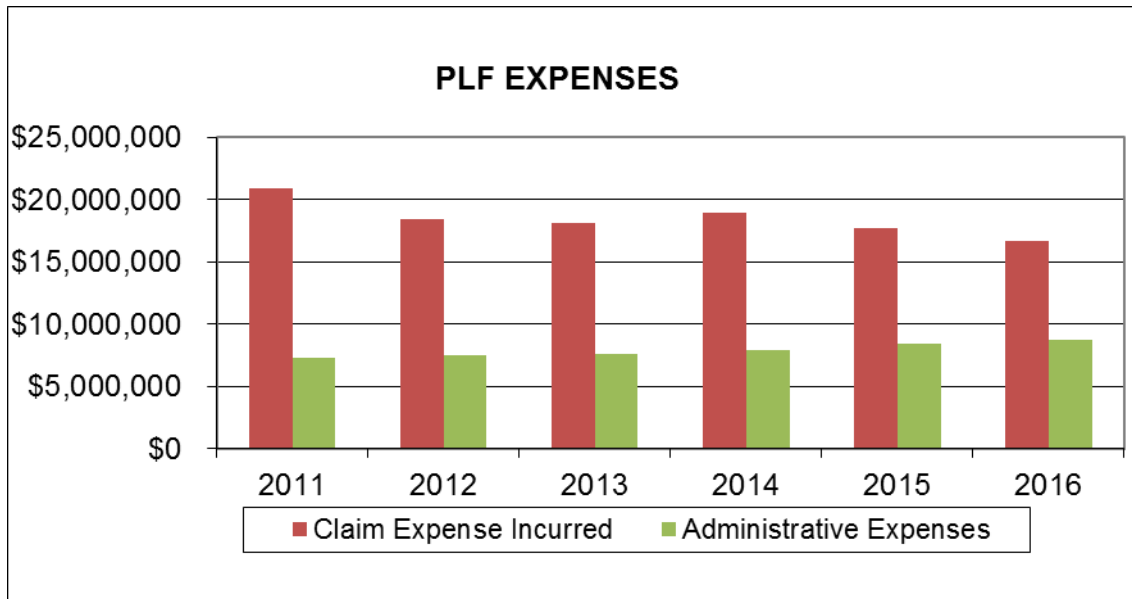
**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Operations (con't)**

Claim Results – Primary Program claim costs (indemnity and defense) are the largest expense item for the PLF. There is no similar expense for the Excess Program because all the liability for excess claims is passed to external insurance companies through reinsurance.

The total provision for claims (total claim costs) for 2016 was \$16.7M which was \$1.0M or 5.6% less than 2015. While severity is trending upwards, the frequency of claims continues at lower than average levels. There were 839 primary claims in 2016 versus 808 primary claims in 2015.

Administrative Expenses – Administration expenses for 2016 increased \$232K (2.75%) from 2015 levels. Administration expense for 2015 increased \$495K (6.2%) from 2014. Expenses increase each year because of gradual increases to salary and benefits along with general increases to operation costs.



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)  
For the Years Ended December 31, 2016 and 2015**

**Capital Asset and Debt Administration**

Net capital assets for the PLF at December 31, 2016 are \$673K which represents a decrease of \$67K from 2015. The trend of depreciation outstripping expenditures on new capital assets has continued from 2013.

The only long-term liabilities for the PLF are lease obligations and estimated liabilities for claims. The PLF has no plans to issue debt.

**Currently Known Facts and Conditions That May Have a Significant Effect on Financial Position**

None.



**INDEPENDENT AUDITORS' REPORT**

To the Board of Directors of  
Oregon State Bar Professional Liability Fund  
Tigard, Oregon

We have audited the accompanying financial statements of the business-type activities of the Oregon State Bar Professional Liability Fund, a separate enterprise fund established by the Oregon State Bar, an instrumentality of the Judicial Department of the State of Oregon (Professional Liability Fund), as of and for the years ended December 31, 2016 and 2015, and the related notes to the financial statements, which collectively comprise the Professional Liability Fund's basic financial statements as listed in the Table of Contents.

***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

***Auditors' Responsibility***

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities of the Professional Liability Fund as of December 31, 2016 and 2015, and the respective changes in financial position and cash flows thereof for the years then ended, in accordance with accounting principles generally accepted in the United States of America.

To the Board of Directors of  
Oregon State Bar Professional Liability Fund

***Emphasis of Matters***

As discussed in Note A, the financial statements present only the transactions and balances attributable to the activities of the Professional Liability Fund and are not intended to present fairly the financial position of the Oregon State Bar, and the results of its operations and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The Professional Liability Fund adopted the provisions of Governmental Accounting Standards Board Statement No. 72, *Fair Value Measurements and Application*, for the year ended December 31, 2016.

As disclosed in Note O, the 2015 financial statements have been restated to reflect the Professional Liability Fund's share of the actuarially determined unfunded pension liability prior to joining the State and Local Government Rate Pool, which was estimated by the Oregon Public Employees Retirement System at its fiscal year ended June 30, 2015 reporting date.

Our opinion is not modified with respect to these matters.

***Other Matters***

**Required Supplementary Information**

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and the pension information schedules as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the required supplementary information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

***Other Reporting Required by Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated July 31, 2017, on our consideration of the Professional Liability Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, and bylaws. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Professional Liability Fund's internal control over financial reporting and compliance.

*KERN & THOMPSON, LLC*

Portland, Oregon  
July 31, 2017

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
Statement of Net Position  
Proprietary Funds  
December 31, 2016 and 2015**

	Primary Program		Excess Program		Totals	
	2016	2015	2016	2015	2016	2015
<b><u>Current Assets</u></b>						
Cash and Equivalents	\$ 5,234,831	\$ 2,038,998	\$ 1,695,949	\$ 1,586,167	\$ 6,930,780	\$ 3,625,165
Investments at Fair Market Value	49,060,827	49,038,036	1,322,730	-	50,383,557	49,038,036
Miscellaneous Receivables	982,685	405,537	-	-	982,685	405,537
Due from Reinsurer	-	-	590,656	2,939,481	590,656	2,939,481
Deposits and Prepayments	50,808	65,722	-	-	50,808	65,722
Due To/From	-	935,580	-	(935,580)	-	-
<b>Total Current Assets</b>	<b>55,329,151</b>	<b>52,483,873</b>	<b>3,609,335</b>	<b>3,590,068</b>	<b>58,938,486</b>	<b>56,073,941</b>
<b><u>Noncurrent Assets</u></b>						
Claims Receivable	70,272	27,627	-	-	70,272	27,627
Capital Assets, Net	673,304	740,183	-	-	673,304	740,183
<b>Total Noncurrent Assets</b>	<b>743,576</b>	<b>767,810</b>	<b>-</b>	<b>-</b>	<b>743,576</b>	<b>767,810</b>
<b><u>Deferred Outflows of Resources</u></b>						
Deferred Amounts Related to Pensions	2,000,296	144,219	-	-	2,000,296	144,219
<b>Total Assets</b>	<b>58,073,023</b>	<b>53,395,902</b>	<b>3,609,335</b>	<b>3,590,068</b>	<b>61,682,358</b>	<b>56,985,970</b>
<b><u>Current Liabilities</u></b>						
Accounts Payable	\$ 122,521	\$ 218,042	\$ 59,129	\$ 51,116	\$ 181,650	\$ 269,158
Accrued Payroll Costs	568,704	397,428	-	-	568,704	397,428
Estimated Liabilities for Claims:						
Indemnity Settlements	7,758,460	7,673,155	-	-	7,758,460	7,673,155
Loss Adjustment Expenses	7,488,249	7,029,024	-	-	7,488,249	7,029,024
Unearned Revenues	9,326,260	9,538,513	1,445,243	1,309,481	10,771,503	10,847,994
<b>Total Current Liabilities</b>	<b>25,264,194</b>	<b>24,856,162</b>	<b>1,504,372</b>	<b>1,360,597</b>	<b>26,768,566</b>	<b>26,216,759</b>
<b><u>Noncurrent Liabilities</u></b>						
Estimated Liabilities for Claims:						
Indemnity Settlements	10,098,565	10,515,123	-	-	10,098,565	10,515,123
Loss Adjustment Expenses	8,954,726	10,082,698	-	-	8,954,726	10,082,698
Pre-SLGRP Pooled Liability	693,474	722,446	-	-	693,474	722,446
Net Pension Liability	4,260,578	1,813,562	-	-	4,260,578	1,813,562
<b>Total Noncurrent Liabilities</b>	<b>24,007,343</b>	<b>23,133,829</b>	<b>-</b>	<b>-</b>	<b>24,007,343</b>	<b>23,133,829</b>
<b>Total Liabilities</b>	<b>49,271,537</b>	<b>47,989,991</b>	<b>1,504,372</b>	<b>1,360,597</b>	<b>50,775,909</b>	<b>49,350,588</b>
<b><u>Deferred Inflows of Resources</u></b>						
Deferred Amounts Related to Pensions	40,485	441,564	-	-	40,485	441,564
<b><u>Net Position</u></b>						
Invested in Capital Assets	673,304	740,183	-	-	673,304	740,183
Unrestricted	8,087,697	4,224,164	2,104,963	2,229,471	10,192,660	6,453,635
<b>Total Net Position, restated</b>	<b>8,761,001</b>	<b>4,964,347</b>	<b>2,104,963</b>	<b>2,229,471</b>	<b>10,865,964</b>	<b>7,193,818</b>
<b>Total Liabilities and Net Position</b>	<b>58,073,023</b>	<b>53,395,902</b>	<b>3,609,335</b>	<b>3,590,068</b>	<b>61,682,358</b>	<b>56,985,970</b>

The accompanying notes are an integral part of these financial statements.



**OREGON STATE BAR**  
**PROFESSIONAL LIABILITY FUND**  
**Statements of Revenues, Expenses, and Changes in Net Position**  
**Proprietary Funds**  
Years Ended December 31, 2016 and 2015

	Primary Program		Excess Program		Totals	
	2016	2015	2016	2015	2016	2015
<b>Operating Revenues</b>						
Annual Assessments	\$ 24,299,773	\$ 24,326,360	\$ 4,890,726	\$ 4,757,044	\$ 29,190,499	\$29,083,404
Assessments Paid to Reinsurers	-	-	(4,890,726)	(4,757,044)	(4,890,726)	(4,757,044)
Net Assessments	24,299,773	24,326,360	-	-	24,299,773	24,326,360
Investment Income (Loss)	3,423,145	(289,722)	170,389	(23,272)	3,593,534	(312,994)
Ceding Commission	-	-	791,294	762,929	791,294	762,929
Other Income (Loss)	383,592	426,587	91,414	37,066	475,006	463,653
<b>Total Revenues</b>	<b>28,106,510</b>	<b>24,463,225</b>	<b>1,053,097</b>	<b>776,723</b>	<b>29,159,607</b>	<b>25,239,948</b>
<b>Operating Expenses</b>						
Liability Claims:						
Provision for Indemnity	7,668,773	10,362,499	-	-	7,668,773	10,362,499
Provision for Claim Expenses	9,017,791	7,323,794	-	-	9,017,791	7,323,794
Total Claims Expenses	16,686,564	17,686,293	-	-	16,686,564	17,686,293
Administrative Expense:						
Salaries and Benefits	5,362,717	5,281,702	782,728	726,249	6,145,445	6,007,951
Services and Supplies	1,907,921	1,957,932	394,877	301,832	2,302,798	2,259,764
Depreciation	162,794	157,777	-	-	162,794	157,777
Total Administrative Expenses	7,433,432	7,397,411	1,177,605	1,028,081	8,611,037	8,425,492
<b>Total Expenses</b>	<b>24,119,996</b>	<b>25,083,704</b>	<b>1,177,605</b>	<b>1,028,081</b>	<b>25,297,601</b>	<b>26,111,785</b>
<b>Operating Income (loss)</b>	<b>3,986,514</b>	<b>(620,479)</b>	<b>(124,508)</b>	<b>(251,358)</b>	<b>3,862,006</b>	<b>(871,837)</b>
<b>Non-Operating Income (Expenses)</b>						
Pension expense	(189,860)	(1,706,640)	-	-	(189,860)	(1,706,640)
<b>Change in Net Position</b>	<b>3,796,654</b>	<b>(2,327,119)</b>	<b>(124,508)</b>	<b>(251,358)</b>	<b>3,672,146</b>	<b>(2,578,477)</b>
Total Net Position - beginning, restated	4,964,347	7,291,466	2,229,471	2,480,829	7,193,818	9,772,295
<b>Total Net Position - ending</b>	<b>\$ 8,761,001</b>	<b>\$ 4,964,347</b>	<b>\$ 2,104,963</b>	<b>\$ 2,229,471</b>	<b>\$ 10,865,964</b>	<b>\$ 7,193,818</b>

The accompanying notes are an integral part of these financial statements.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
Statements of Cash Flows  
Proprietary Funds  
Years Ended December 31, 2016 and 2015**

Increase (Decrease) in Cash and Cash Equivalents	Primary Program		Excess Program		Totals	
	2016	2015	2016	2015	2016	2015
<b>Cash Flows from Operating Activities:</b>						
Cash Received for Assessments	\$ 23,482,642	\$ 24,627,349	\$ 5,026,488	\$ 4,889,109	\$ 28,509,130	\$ 29,516,458
Premiums Paid to Reinsurers	-	-	(4,890,726)	(4,757,044)	(4,890,726)	(4,757,044)
Dividends and Interest Received in Cash	1,150,845	1,180,327	109,128	38,716	1,259,973	1,219,043
Other Operating Revenues Received	383,592	426,587	882,708	799,995	1,266,300	1,226,582
Cash Payments for Liability Claims:						
Indemnity Settlements	(8,000,027)	(7,861,221)	-	-	(8,000,027)	(7,861,221)
Loss Adjustment Expenses	(9,686,538)	(9,725,072)	-	-	(9,686,538)	(9,725,072)
Refundable Reinsurance Claims	-	-	2,348,825	(2,691,536)	2,348,825	(2,691,536)
Cash Paid Employees for Salaries and Benefits	(5,191,441)	(5,268,940)	(782,728)	(726,249)	(5,974,169)	(5,995,189)
Cash Paid Vendors for Goods and Services	(2,002,126)	(2,044,003)	(386,864)	(309,526)	(2,388,990)	(2,353,529)
Net Cash Provided (Used) by Operations	<u>136,947</u>	<u>1,335,027</u>	<u>2,306,831</u>	<u>(2,756,535)</u>	<u>2,443,778</u>	<u>(1,421,508)</u>
<b>Cash Flows from Investing Activities:</b>						
Purchase of Investments	(5,824,056)	(7,832,053)	(6,966,718)	(6,608,005)	(12,790,774)	(14,440,058)
Proceeds from Investment Sales	8,073,565	3,311,568	5,705,249	8,809,447	13,778,814	12,121,015
Net Cash Provided (Used) in Investing Activities	<u>2,249,509</u>	<u>(4,520,485)</u>	<u>(1,261,469)</u>	<u>2,201,442</u>	<u>988,040</u>	<u>(2,319,043)</u>
<b>Cash Flows from Capital Financing:</b>						
Advances (To) From Other Funds	935,580	(935,580)	(935,580)	935,580	-	-
Payments for pension financing	(28,972)	-	-	-	(28,972)	-
Purchase of Equipment, Net	(97,231)	(72,239)	-	-	(97,231)	(72,239)
Net Cash Provided (Used) in Capital Financing	<u>809,377</u>	<u>(1,007,819)</u>	<u>(935,580)</u>	<u>935,580</u>	<u>(126,203)</u>	<u>(72,239)</u>
Net Increase (Decrease) in Cash and Cash Equivalents	3,195,833	(4,193,277)	109,782	380,487	3,305,615	(3,812,790)
Cash and Equivalents - Beginning of Year	2,038,998	6,232,275	1,586,167	1,205,680	3,625,165	7,437,955
Cash and Equivalents - End of Year	<u>\$ 5,234,831</u>	<u>\$ 2,038,998</u>	<u>\$ 1,695,949</u>	<u>\$ 1,586,167</u>	<u>\$ 6,930,780</u>	<u>\$ 3,625,165</u>
<b>Reconciliation of Net Income to Net Cash</b>						
<b>Provided (Used) by Operating Activities:</b>						
Operating Income (Loss)	\$ 3,986,514	\$ (620,479)	\$ (124,508)	\$ (251,358)	\$ 3,862,006	\$ (871,837)
(Gain) Loss on Disposal of Assets	1,316	26,289	-	-	1,316	26,289
Depreciation Expense	162,794	157,777	-	-	162,794	157,777
(Increase) Decrease in Fair Value of Investments	(2,272,300)	1,470,049	(61,261)	61,988	(2,333,561)	1,532,037
Change in Receivables and Payables, Net	(529,124)	65,559	2,356,838	(2,699,230)	1,827,714	(2,633,671)
Increase (Decrease) in Estimated Claims Liabilities	(1,000,001)	100,000	-	-	(1,000,001)	100,000
Increase (Decrease) in Deferred Revenue	(212,252)	135,832	135,762	132,065	(76,490)	267,897
Net Cash Provided (Used) in Operations	<u>\$ 136,947</u>	<u>\$ 1,335,027</u>	<u>\$ 2,306,831</u>	<u>\$ (2,756,535)</u>	<u>\$ 2,443,778</u>	<u>\$ (1,421,508)</u>

The accompanying notes are an integral part of these financial statements.

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**NOTES TO FINANCIAL STATEMENTS**

**December 31, 2016 and 2015**

**NOTE A – DESCRIPTION OF ORGANIZATION**

The Oregon State Bar is comprised of the Oregon State Bar Fund and the Professional Liability Fund (PLF). The financial statements and accompanying notes presented herein are for the PLF only. The accounts of the Oregon State Bar Fund are not included in this presentation.

The PLF was created in 1977 under the provisions of the Oregon Revised Statutes (ORS) 9.080. This legislation authorized the Board of Governors of the Oregon State Bar to establish a professional liability (legal malpractice) insurance program for all attorneys engaged in private practice whose principal office is in Oregon. Coverage is mandatory for all attorneys subject to the law. In 2016, 7,373 attorneys were required to have coverage for at least a portion of the year. Any such attorney who fails to pay the annual assessment fee (premium) is suspended from membership in the Bar and is therefore ineligible to practice law in Oregon.

The PLF is a separate but integral unit of the Oregon State Bar. It is administered by a nine-member Board of Directors appointed by the Board of Governors. The Board of Directors appoints a Chief Executive Officer to supervise and administer the PLF. The PLF is not subject to the Insurance Code of the State of Oregon. As a public body, it is also exempt from federal and state income taxes.

The basic financial statements and notes presented herein include the proprietary fund activity of the PLF, namely the insurance programs.

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

These statements have been prepared in conformity with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB), the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA). In accordance with GASB Statement No. 20, the PLF does not apply FASB pronouncements issued after November 30, 1989, unless GASB amends its pronouncements to specifically adopt FASB pronouncements after that date. PLF is accounted for as Proprietary Funds. Enterprise Funds are used to account for operations that are financed and operated in a manner similar to private business enterprises where the intent of the governing body is that costs of providing goods and services be financed or recovered primarily through user charges.

In 1990, the PLF established an optional underwritten plan to provide insurance coverage with policy limits in excess of the existing mandatory plan. The plan was effective on January 1, 1991. The excess program offers coverage to legal firms, including sole practitioners, as opposed to individual members of a legal entity. Underwriting decisions are based upon the firm as a whole.

For financial reporting purposes, operating activities of the PLF are segregated between the mandatory plan ("Primary Program") and the optional excess coverage plan ("Excess Program"). Investments, investment income (Note C) and administrative expenses have been allocated to the Excess Program.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Basis of Accounting**

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. All Proprietary Fund Types are accounted for on a flow of economic resources focus. With this measurement focus, all assets and liabilities associated with the operation of these Fund Types are included on the Statement of Net Assets. Proprietary Fund Type operating statements present increases (e.g., revenues) and decreases (e.g., expenses) in net assets. Proprietary Fund Types utilize the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

Proprietary Fund Types distinguish operating revenues and expenses from non-operating items. Operating revenues for the PLF are primarily insurance assessments. Operating expenses are all expenses that finance claims and the administration of the programs in the Fund.

**Assessment Revenue**

**Primary Program**

The annual assessment (insurance “premium”) is established by the Oregon State Bar Board of Governors upon recommendation of the PLF Board of Directors. In addition to the basic assessment, a supplemental assessment may be imposed on all attorneys if the financial solvency of the PLF is threatened. This option has never been exercised. Assessments collected before the beginning of the coverage year are reflected as deferred revenues in the PLF Statement of Net Assets.

**Excess Program**

The base rate for Excess coverage is established by the Oregon State Bar Professional Liability Fund in conjunction with input from Excess Reinsurers. It is based primarily on the Excess program claims experience. Individual firm premiums are then calculated using debits or credits based on their prior claims, practice areas, firm size and administrative safeguards and other factors. A supplemental assessment may be imposed on program participants, including firm members. This option has never been exercised.

Like the Primary Program, the period of coverage for the Excess Program is the calendar year. Firms may elect coverage after the start of the year; however, the period of coverage always ends with the end of the calendar year. Excess coverage may be canceled during the coverage period. Assessments collected before the beginning of the coverage year are reflected as deferred revenues in the PLF Statement of Net Assets.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Claim Settlement and Defense Costs**

**Primary Program**

Estimated liabilities (often called “reserves”) to settle and defend a claim are established when a claim is reported to the PLF. These estimates are determined by PLF claims attorneys based upon historic experience and current trends and are continually reevaluated and changed as more information becomes available. Changes in estimates resulting from the continuous review process and differences between estimated and actual payments are reflected in financial operations of the period in which the estimates are changed.

The PLF also uses a firm of independent consulting actuaries to review its claims experience and liability estimates every six months. The estimated liabilities for indemnity and expense reported in these financial statements are based on this actuarial analysis.

In addition to the actuarial methodology used above, PLF cost estimates to defend and settle claims in the future include factors for Adjusting and Other Expense (AOE), Extended Reporting Coverage (ERC), and suspense files. AOE represents the PLF’s estimated future administrative costs for processing open and unresolved claims. ERC represents the estimated cost of future claims that may be filed against lawyers who have obtained such coverage upon leaving private practice. Suspense files represent the estimated cost of potential claims for which the PLF has been notified during a coverage year but formal claims have not yet been filed.

Management believes that its aggregate reserve for losses and loss adjustment expenses is reasonable and adequate to cover the ultimate net cost of losses on claims reported, but such provision is necessarily based on estimates, and the ultimate net cost may vary from such estimates. As adjustments to these estimates become necessary, the adjustments are reflected in current operations.

For financial statement purposes, amounts recoverable from other parties (such as subrogation receivables) relating to paid claims are reflected as assets, net of appropriate valuation allowances, in the Statement of Net Assets and as deductions from the provisions for claim settlement and defense costs in the PLF Statement of Revenues, Expenses, and Changes in Fund Net Assets.

**Excess Program**

As described in the following Reinsurance disclosure, 100% of the liability for any claim filed under the excess plan has been passed to other insurance companies through reinsurance. The possibility of the PLF incurring direct costs under the excess plan is considered remote. Therefore, no provision or liability for such claims has been established. If future operations of the plan indicate that the PLF will incur direct costs, appropriate estimated liabilities for such losses will be established based on plan experience.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Reinsurance**

**Primary Program**

Through 1985, the PLF carried “excess of loss” reinsurance with a private reinsurer. Reinsurance coverage has not been purchased for the Primary Program since 1985.

**Excess Program**

All losses under the excess plan are covered 100% by reinsurance. Although the PLF is ultimately responsible for the payment of successful claims filed under the excess plan, such payments are considered highly unlikely. It is the PLF’s policy to diversify risk by choosing several reinsurance companies. In addition, the PLF selected reinsurance companies with an emphasis on financial solvency. The PLF will secure letters of credit and other means of financial protection when appropriate.

**Basis of Coverage**

PLF coverage is on a “claims made” basis. Under a “claims made” form of coverage, the attorney is covered for any claim made during a plan period in which he or she has professional liability coverage. Prior to 1992, attorneys who left private practice could obtain “extended reporting coverage” for an additional one-time assessment. Payment of this assessment resulted in continuing coverage for covered acts committed prior to the end of the plan period. After December 31, 1991, no charge has been made for extended reporting coverage for the limits of coverage offered by the Primary Program.

Firms that request to have extended reporting coverage from the Excess Program pay an additional assessment.

Under the 2016 Coverage Plan, primary coverage is limited to a maximum of \$300,000 for both indemnity and defense costs. In addition to the \$300,000 aggregate limit, there is a separate \$50,000 claims expense allowance to be used solely for defense costs. Optional coverage under the excess plan increases basic coverage by \$700,000, \$1,700,000, \$2,700,000, \$3,700,000, \$4,700,000 or \$9,700,000 as elected by the covered firm. Therefore, firms with excess coverage have the option to increase their total limits to \$1 million, \$2 million, \$3 million, \$4 million, \$5 million or \$10 million.

**Budgets**

The PLF operates under annual budgets, which are adopted and approved by the Board of Directors and the Oregon State Bar Board of Governors.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Capital Assets and Depreciation**

Capital assets (office and data processing equipment, furniture, and leasehold improvements) are recorded at cost and charged to expense over their useful lives by use of the straight-line method of depreciation. Computer hardware, software, copiers, and telephone systems are depreciated over a three-year period. Furniture is depreciated over a five to ten-year period. Leasehold improvements are depreciated over the term of the lease.

**Cash and Cash Equivalents**

For financial statement purposes, the PLF considers cash and cash equivalents to include cash on hand, cash in checking accounts, and short-term money market funds which are readily convertible to cash.

**Investments**

PLF investments are made in accordance with policy guidelines adopted by the Board of Directors. The guidelines emphasize safety, liquidity, and diversification. To better achieve the benefits of professional management, in late 1993 the PLF placed its investments portfolio in shares of widely diversified mutual or commingled fund companies. Investments are stated and carried at fair value. The estimated fair value of certain alternative investments for which prices are not readily available, are generally determined by the investment advisors of the respective private investment funds and may not reflect amounts that could be realized upon immediate sale, nor amounts that ultimately may be realized. Accordingly, the estimated fair values may differ significantly from the values that would have been used had a ready market existed for these investments.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires that management make estimates and assumptions which affect the reporting amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenditures during the reporting period. Actual results could differ from estimates.

**Deferred Outflows/Inflows of Resources**

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents a consumption of net position that apply to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that apply to a future period and so will not be recognized as an inflow of resources (revenue) until then.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE B – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Pension Retirement Plan**

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Oregon Public Employees Retirement System (OPERS) and additions to/deductions from OPERS's fiduciary net position have been determined on the same basis as they are reported by OPERS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

**Adoption of new GASB pronouncements**

During the fiscal year ended June 30, 2016, the PLF implemented *Governmental Accounting Standards Board ("GASB") Statement No. 72, Fair Value Measurement and Application*. This statement establishes a hierarchy of valuation techniques used to measure fair value of assets and liabilities. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurement), median priority to quoted prices in active markets for similar assets or liabilities (level 2 measurement), and the lowest priority to unobservable inputs (level 3 measurements). There was no material impact to the financial statements caused by the implementation of GASB Statement 72, other than the expansion of relevant disclosures.

**NOTE C – CASH AND INVESTMENTS**

**Cash Deposits**

At December 31, 2016 and 2015, the carrying amounts of the PLF's deposits in the Primary Program were \$5,234,831 and \$2,038,998, respectively. Bank balances were \$5,995,995 and \$5,074,774, respectively. In the Excess Program at December 31, 2016 and 2015, the carrying amounts of deposits were \$1,695,949 and \$1,586,167, respectively. Bank balances were \$1,696,340 and \$1,589,066 respectively.

The differences between carrying amounts and bank balances consisted primarily of deposits in transit and outstanding checks. All of the PLF's operating cash is held in non-interest bearing bank accounts. Under the FDIC, the PLF checking accounts are insured by federal depository insurance up to \$250,000 for 2016. As of December 31, 2016, \$1,695,949 of PLF's bank balance of \$1,696,340 was exposed to credit risk because it was uninsured and uncollateralized.



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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE C – CASH AND INVESTMENTS (CONTINUED)**

**Investments**

The PLF has recorded its investments at fair value according to the fair value hierarchy established by generally accepted accounting principles. Fair values are primarily determined by the Market Approach from information provided by third-party investment fund managers. Certain investment funds for which there is no readily determinable market value are valued at their respective net asset values as provided by the third-party investment fund managers. Assets are categorized by asset type, which is a key component of determining hierarchy levels. Asset types allowable per the PLF's investment policy generally fall within all three hierarchy levels.

**Interest Rate Risk**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. PLF policies specify asset allocation percentages for various investment categories. The amounts invested in fixed income investments, which are subject to interest rate risk, are limited by these policies. PLF forecasts cash needs for the calendar year. This amount is invested in short-term fixed income funds to limit the interest rate risk.

**Credit Risk**

Credit risk is the risk that the issuer of an investment fails to fulfill its obligations. Average quality rates are not available for fixed income investments. Credit ratings do not apply to other PLF categories of investment. PLF policies specify diversification as to the type of investment, issuer, and industry sector. Investment is not made in individual securities; only commingled funds or mutual funds are used. The PLF investments are a small portion of funds that have investments in many different entities.

**Concentration of Credit Risk**

Concentration of credit risk refers to potential losses if total investments are concentrated with one or few issuers. The PLF policies specify the sole use of funds where there is a pooling of securities owned by multiple clients for diversification, lower expense, and improved liquidity.

**Custodial Credit Risk – Investments**

Custodial credit risk refers to PLF investments that are held by others and not registered in the PLF's name. Custodial credit risk does not apply to PLF investments since PLF places its investment portfolio in shares of diversified mutual or commingled fund companies and real estate.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE C – CASH AND INVESTMENTS (CONTINUED)**

**Fair Value Measurements of Investments**

Various inputs are used in determining the fair value of investments. These inputs to valuation techniques are categorized into a fair value hierarchy consisting of three broad levels for financial statement purposes as follows:

**Level 1** – Quoted prices in active markets for identical assets. Assets in this level typically include publicly traded equities and mutual fund investments.

**Level 2** – Quoted prices for similar assets in active or inactive markets, or inputs derived from observable market data such as published interest rates and yield curves, over-the-counter derivatives, market modeling, or other valuation methodologies. Assets in this level include debt securities and fixed income mutual fund investments.

**Level 3** – Unobservable inputs that reflect valuations based on discounted cash flow or market comparable company techniques. Assets in this level include absolute return investment fund investments.

The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). Accordingly, the degree of judgment exercised in determining fair value is greatest for instruments categorized in Level 3. The inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the fair value hierarchy classification is determined based on the lowest level input that is significant to the fair value measurement in its entirety.

The categorization of a value determined for investments is based on the pricing transparency of the investments and is not necessarily an indication of the risks associated with investing in those securities.

Equity investments in real estate funds and absolute return funds are considered alternative investments, as market value is not readily determined in financial markets. Real estate investments are in RREEF America REIT II and in the Baring Core Property Fund, both which invest in well-located income-producing real estate in established markets. The fair value of these investments was determined by obtaining the fund manager's statement of value and assessing these based on the funds' valuation policies. The fair value of real estate funds is determined by the fund managers' calculation of net asset value.

Realized and unrealized gains and losses from these assets are reported in the Statement of Revenues, Expenses and Changes in Net Position as they occur. There have been no changes in valuation techniques and related inputs.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE C – CASH AND INVESTMENTS (CONTINUED)**

Fair values of assets measured on a recurring basis at December 31, 2016 and 2015 were as follows:

	2016				
	Level 1	Level 2	Level 3	Fair Value Total	%
U.S Equities	\$ 11,156,907	\$ -	\$ -	\$ 11,156,907	22%
International Equities	9,272,283	-	-	9,272,283	18%
Fixed Income-Short term	3,935,578	-	-	3,935,578	8%
Fixed Income-Intermediate	-	11,775,535	-	11,775,535	23%
Absolute Return	-	6,301,168	-	6,301,168	13%
Real Return Strategy	2,137,663	-	-	2,137,663	4%
	<u>\$ 26,502,431</u>	<u>\$ 18,076,703</u>	<u>\$ -</u>	\$ 44,579,134	88%
Investments measured at the net asset value (NAV)					
Real Estate Funds				<u>5,804,423</u>	<u>12%</u>
Total Investments				<u>\$ 50,383,557</u>	<u>100%</u>
	2015				
	Level 1	Level 2	Level 3	Fair Value Total	%
U.S Equities	\$ 9,436,084	\$ -	\$ -	\$ 9,436,084	19%
International Equities	8,075,733	-	-	8,075,733	16%
Fixed Income-Short term	5,338,544	-	-	5,338,544	11%
Fixed Income-Intermediate	-	8,634,284	-	8,634,284	18%
Absolute Return	-	6,306,061	-	6,306,061	13%
Real Return Strategy	5,885,628	-	-	5,885,628	12%
	<u>\$ 28,735,989</u>	<u>\$ 14,940,345</u>	<u>\$ -</u>	43,676,334	89%
Investments measured at the net asset value (NAV)					
Real Estate Funds				<u>5,361,702</u>	<u>11%</u>
Total Investments				<u>\$ 49,038,036</u>	<u>100%</u>

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE C – CASH AND INVESTMENTS (CONTINUED)**

The valuation method for investments measured at the net asset value (NAV) per share (or its equivalent) is presented in the following table:

	<u>Unfunded Commitments</u>	<u>Redemption Frequency</u>	<u>Redemption Notice Period</u>
Investments measured at the net asset value (NAV):			
Real Estate Funds:			
RREEF America REIT II	\$ 4,191,173	-	Quarterly
Baring Core Property Funds	<u>1,613,250</u>	-	NA
	<u>\$ 5,804,423</u>	<u>\$ -</u>	45 days NA

The real estate funds consist of a real estate investment trust investment fund (REIT) and a real estate limited partnership fund. Earnings on the underlying assets in each fund are reinvested by the fund managers. Because it is not probable that any individual investment will be sold, the fair values of these funds have been determined using the NAV per share (or its equivalent) of the PLF's ownership interest in the funds.

The following table summarizes the fair value of PLF investments as allocated to the Primary and Excess Programs:

	<u>2016</u>	<u>2015</u>
<b>Allocation:</b>		
Primary Program	\$ 49,060,827	\$ 49,038,036
Excess Program	<u>1,322,730</u>	<u>-</u>
Total Allocation	<u>\$ 50,383,557</u>	<u>\$ 49,038,036</u>

The following table summarizes the composition and allocation by program of investment income for the years ended December 31, 2016 and 2015:

	<u>Fair Value</u>	
	<u>2016</u>	<u>2015</u>
<b>Investment Income:</b>		
Dividends and interest	\$ 1,260,073	\$ 1,219,044
Net Increase (decrease) in the fair value of investments	<u>2,333,461</u>	<u>(1,532,038)</u>
	<u>\$ 3,593,534</u>	<u>\$ (312,994)</u>
<b>Allocation:</b>		
Operating investment income (loss)		
Primary program	\$ 3,423,145	\$ (289,722)
Excess program	<u>170,389</u>	<u>(23,272)</u>
	<u>\$ 3,593,534</u>	<u>\$ (312,994)</u>

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE D – CLAIMS RECEIVABLE**

Claims receivable represent the estimated value of non-cash assets (such as real estate, promissory notes, and various subrogation rights) that the PLF may receive when it settles a claim on behalf of a covered party. Only claims that are reasonably expected to be collected are recorded in the financial statements. Claims receivable are reflected in the financial statements as an asset. Changes to claims receivable are offset against the provision for claim settlements in the operating statement.

**NOTE E – CAPITAL ASSETS**

The following table reflects the cost, accumulated depreciation and amortization, and net book value for each category of capital assets owned by the PLF at December 31, 2016 and 2015:

	Beginning Balance	Increases	Decreases	Ending Balance
Property and equipment				
Data processing equipment	\$ 353,016	\$ 97,231	\$ (64,951)	\$ 385,296
Furniture and equipment	616,809	-	(17,568)	599,241
Leasehold improvements	1,141,868	-	-	1,141,868
Total property and equipment	<u>2,111,693</u>	<u>97,231</u>	<u>(82,519)</u>	<u>2,126,405</u>
Accumulated depreciation				
Data processing equipment	(306,173)	(55,636)	64,753	(297,056)
Furniture and equipment	(490,726)	(28,996)	16,447	(503,275)
Leasehold improvements	(574,611)	(78,159)	-	(652,770)
Total accumulated depreciation	<u>(1,371,510)</u>	<u>(162,791)</u>	<u>81,200</u>	<u>(1,453,101)</u>
<b>Total capital assets, net</b>	<u>\$ 740,183</u>	<u>\$ (65,560)</u>	<u>\$ (1,319)</u>	<u>\$ 673,304</u>

**NOTE F – LIABILITY FOR COMPENSATED ABSENCES**

PLF employees earn vacation leave at rates from 8 to 20 hours per month depending, in part, upon their length of service. Unused vacation leave is compensable to the employee upon termination of employment. At December 31, 2016 and 2015, the value of vacation and the employer's share of social security taxes and other payroll related costs for all PLF employees totaled \$568,704 and \$535,744, respectively.

**OREGON STATE BAR  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE G – LIABILITIES FOR UNEMPLOYMENT BENEFITS**

PLF employees who qualify are entitled to benefit payments during periods of unemployment. Like state agencies, the PLF does not pay unemployment insurance. The PLF is required to reimburse the Employment Department for actual benefit payments made to its former employees. Management believes any potential liability would not be material to the financial statements. The PLF paid \$1,171 in 2016 and \$24,586 in 2015 for unemployment claim costs.

**NOTE H – PRE-SLGRP POOLED LIABILITY**

Prior to the formation of the PERS State and Local Government Rate Pool (“SLGRP”), the State and community colleges were pooled together in the State and Community College Pool (SCCP), while local government employers participated in the Local Government Rate Pool (LGRP). These two pools combined to form the SLGRP effective January 1, 2002. The unfunded actuarial liability (UAL) attributable to the SCCP at the time the SLGRP was formed is maintained separately from the SLGRP and is reduced by contributions and increased for interest charges at the assumed interest rate, currently 7.75%. The pre-SLGRP liability is the responsibility of the SCCP employers and is an obligation separate from each respective employers’ net pension liability. The balance of the pre-SLGRP pooled liability attributable to the State is being amortized over the period ending December 31, 2027. At December 31, 2016 and 2015, the PLF’s proportionate share of the pre-SLGRP liability was \$693,474 and \$722,446, respectively.

**NOTE I – PENSION RETIREMENT PLAN**

**Defined Benefit Pension Plan**

***General Information about the Pension Plan:***

*Name of the pension plan:* The Oregon Public Employees Retirement System (OPERS) is a cost-sharing multiple-employer defined benefit plan.

*Plan description.* Employees of the PLF are provided with pensions through OPERS. All the benefits of OPERS are established by the Oregon legislature pursuant to Oregon Revised Statute (ORS) Chapters 238 and 238A. The ORS Chapter 238 Defined Benefit Pension Plan is closed to new members hired on or after August 29, 2003. OPERS issues a publicly available financial report that can be obtained at:

[http://www.oregon.gov/pers/Pages/section/financial\\_reports/financials.aspx](http://www.oregon.gov/pers/Pages/section/financial_reports/financials.aspx)

**OREGON STATE BAR  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

*Benefits provided under Chapter 238-Tier One / Tier Two*

1. *Pension Benefits.* The ORS 238 Defined Benefit Pension Plan provides benefits to members hired *before* August 29, 2003.

The OPERS retirement benefit is payable monthly for life to covered members upon reaching the minimum retirement age. It may be selected from 13 retirement benefit options. These options include survivorship benefits and lump-sum refunds. The basic benefit is based on years of service and final average salary. A percentage (1.67 percent for general service employees) is multiplied by the number of years of service and the final average salary. Benefits may also be calculated under either a formula plus annuity (for members who were contributing before August 21, 1981) or a money match computation if a greater benefit results.

A member is considered vested and will be eligible at minimum retirement age for a service retirement allowance if he or she has had a contribution in each of five calendar years or has reached at least 50 years of age before ceasing employment with a participating employer. General service employees may retire after reaching age 55. Tier One general service employee benefits are reduced if retirement occurs prior to age 58 with fewer than 30 years of service. Tier Two members are eligible for full benefits at age 60.

2. *Death Benefits.* Upon the death of a non-retired member, the beneficiary receives a lump-sum refund of the member's account balance (accumulated contributions and interest). In addition, the beneficiary will receive a lump-sum payment from employer funds equal to the account balance, provided one or more of the following conditions are met:
  - Member was employed by a OPERS employer at the time of death,
  - Member died within 120 days after termination of OPERS-covered employment,
  - Member died as a result of injury sustained while employed in a OPERS-covered job, or
  - Member was on an official leave of absence from a OPERS-covered job at the time of death.
3. *Disability Benefits.* A member with 10 or more years of creditable service who becomes disabled from other than duty-connected causes may receive a non-duty disability benefit. A disability resulting from a job-incurred injury or illness qualifies a member for disability benefits regardless of the length of OPERS-covered service. Upon qualifying for either a non-duty or duty disability, service time is computed to age 58 when determining the monthly benefit.
4. *Benefit Changes after Retirement.* Members may choose to continue participation in a variable equities investment account after retiring and may experience annual benefit fluctuations due to changes in the market value of equity investments.

Under ORS 238.360 monthly benefits are adjusted annually through cost-of-living changes.

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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

*Benefits provided under Chapter 238A-OPSRP Pension Program (OPSRP DB).*

1. *Pension Benefits.* The ORS 238A Defined Benefit Pension Program provides benefits to members hired *on or after* August 29, 2003.

This portion of the OPSRP provides a life pension funded by employer contributions. Benefits are calculated with the following formula for members who attain normal retirement age:

*General Service:* 1.5 percent is multiplied by the number of years of service and the final average salary. Normal retirement age for general service members is age 65, or age 58 with 30 years of retirement credit.

A member of the OPSRP pension program becomes vested on the earliest of the following dates: the date the member completes 600 hours of service in each of five calendar years, the date the member reaches normal retirement age, and, if the pension program is terminated, the date on which termination becomes effective.

2. *Death Benefits.* Upon the death of a non-retired member, the spouse or other person who is constitutionally required to be treated in the same manner as the spouse, receives for life 50 percent of the pension that would otherwise have been paid to the deceased member.
3. *Disability Benefits.* A member who has accrued 10 or more years of retirement credits before the member becomes disabled or a member who becomes disabled due to job-related injury shall receive a disability benefit of 45 percent of the member's salary determined as of the last full month of employment before the disability occurred.
4. *Benefit Changes after Retirement.* Under ORS 238A.210 monthly benefits are adjusted annually through cost-of-living changes.

*Contributions:*

OPERS funding policy provides for monthly employer contributions at actuarially determined rates. These contributions, expressed as a percentage of covered payroll, are intended to accumulate sufficient assets to pay benefits when due. This funding policy applies to the PERS Defined Benefit Plan and the Other Postemployment Benefit Plans.

Employer contribution rates during the period were based on the December 31, 2014 actuarial valuation. The rates based on a percentage of payroll, first became effective July 1, 2013. The State of Oregon and certain schools, community colleges, and political subdivisions have made lump sum payments to establish side accounts, and their rates have been reduced. The PLF has recorded its proportionate share of its liability in such side accounts as "pre-SLGRP pooled liability (see NOTE H). Additionally, the PLF benefits from the Oregon pension bonds issued in October 2003 that were used to pay down the State's pension unfunded actuarial liability. The PLF contributes 6.0% of each eligible employee's compensation as its share for debt service on the State's bonds.



**OREGON STATE BAR  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

*Contributions: (Continued)*

Employer contributions for the years ended December 31, 2016 and 2015 were \$409,575 and \$404,829, excluding amounts to fund employer specific liabilities. The rates in effect for the fiscal year ended December 31, 2016 were: (1) Tier1/Tier 2 – 13.28%, and (2) OPSRP general service – 7.31%.

***Actuarial Valuations:***

The employer contribution rates effective July 1, 2013, through June 30, 2016, were set using the projected unit credit actuarial cost method. For the Tier One/Tier Two component of the PERS Defined Benefit Plan, this method produced an employer contribution rate consisting of (1) an amount for normal cost (the estimated amount necessary to finance benefits earned by the employees during the current service year), (2) an amount for the amortization of unfunded actuarial accrued liabilities, which are being amortized over a fixed period with new unfunded actuarial accrued liabilities being amortized over 20 years.

For the OPSRP Pension Program component of the PERS Defined Benefit Plan, this method produced an employer contribution rate consisting of (a) an amount for normal cost (the estimated amount necessary to finance benefits earned by the employees during the current service year), (b) an amount for the amortization of unfunded actuarial accrued liabilities, which are being amortized over a fixed period with new unfunded actuarial accrued liabilities being amortized over 16 years.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

*Actuarial Methods and Assumptions:*

Valuation Date	December 31, 2014 rolled forward to June 30, 2016
Experience Study Report	2014, published September 18, 2015
Actuarial Cost Method	Entry Age Normal
Amortization Method	Amortized as a level percentage of payroll as layered amortization bases over a closed period; Tier One/Tier Two UAL is amortized over 20 years and OPSRP pension UAL is amortized over 16 years.
Asset Valuation Method	Market value of assets
Actuarial Assumptions:	
Inflation Rate	2.75 percent
Investment Rate of Return	7.75 percent
Projected Salary Increases	3.75 percent overall payroll growth; salaries for individuals are assumed to grow at 3.75 percent plus assumed rates of merit/longevity increases based on service.
Mortality	<p>Healthy retirees and beneficiaries:</p> <p>RP-2000 Sex-distinct, generational per Scale AA, with collar adjustments and set-backs as described in the valuation.</p> <p>Active members:</p> <p>Mortality rates are a percentage of healthy retiree rates that vary by group, as described in the valuation.</p> <p>Disabled retirees:</p> <p>Mortality rates are a percentage (65% for males, 90% for females) of the RP-2000 static combined disability mortality sex-distinct table.</p>

Actuarial valuations of an ongoing plan involve estimates of the value of projected benefits and assumptions about the probability of events far into the future. Actuarially determined amounts are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future. Experience studies are performed as of December 31 of even numbered years. The methods and assumptions shown above are based on the 2014 Experience Study which reviewed experience for the four-year period ending on December 31, 2014.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

*Discount Rate:*

The discount rate used to measure the total pension liability was 7.75 percent for the Defined Benefit Pension Plan. The projection of cash flows used to determine the discount rate assumed that contributions from plan members and those of the contributing employers are made at the contractually required rates, as actuarially determined. Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return on pension plan investments for the Defined Benefit Pension Plan was applied to all periods of projected benefit payments to determine the total pension liability.

*Assumed Asset Allocation:*

<b>Asset Class/Strategy</b>	<b>Low Range</b>		<b>High Range</b>		<b>OIC Target</b>	
Cash	0.0	%	3.0	%	0.0	%
Debt Securities	15.0		25.0		20.0	
Public Equity	32.5		42.5		37.5	
Private Equity	16.0		24.0		20.0	
Real Estate	9.5		15.5		12.5	
Alternative Equity	0.0		10.0		10.0	
Opportunity Portfolio	0.0		3.0		0.0	
Total					100.0	%

*Long-Term Expected Rate of Return:*

To develop an analytical basis for the selection of the long-term expected rate of return assumption, in July 2013 the PERS Board reviewed long-term assumptions developed by both the actuary's capital market assumptions team and the Oregon Investment Council's (OIC) investment advisors. The table below shows the actuary's assumptions for each of the asset classes in which the plan was invested at that time based on the OIC long-term target asset allocation. The OIC's description of each asset class was used to map the target allocation to the asset classes shown below. Each asset class assumption is based on a consistent set of underlying assumptions, and includes adjustment for the inflation assumption. These assumptions are not based on historical returns, but instead are based on a forward-looking capital market economic model.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

Asset Class	Target Allocation	Compound Annual Return (Geometric)
Core Fixed Income	7.20%	4.50%
Short-Term Bonds	8.00	3.70
Intermediate-Term Bonds	3.00	4.10
High Yield Bonds	1.80	6.66
Large Cap US Equities	11.65	7.20
Mid Cap US Equities	3.88	7.30
Small Cap US Equities	2.27	7.45
Developed Foreign Equities	14.21	6.90
Emerging Foreign Equities	5.49	7.40
Private Equity	20.00	8.26
Opportunity Funds/Absolute Return	5.00	6.01
Real Estate (Property)	13.75	6.51
Real Estate (REITS)	2.50	6.76
Commodities	1.25	6.07
	100.00	
Assumed Inflation – Mean		2.75

*Sensitivity of the PLF's proportionate share of the net pension liability to changes in the discount rate.*

The following presents the PLF's proportionate share of the net pension liability calculated using the discount rate of 7.75 percent, as well as what the PLF's proportionate share of the net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (6.75 percent) or 1 percentage point higher (8.75 percent) than the current rate:

	1% Lower (6.75%)	Current (7.75%)	1% Higher (8.75%)
Proportionate share of the net pension (liability)/asset	\$ <u>6,879,413</u>	\$ <u>4,260,578</u>	\$ <u>2,071,690</u>

*Pension plan fiduciary net position*

Detailed information about the pension plan's fiduciary net position is available in the separately issued OPERS financial report.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

***Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions:***

At December 31, 2016, the PLF reported liabilities of \$4,260,578 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2016, and the total pension liability used to calculate the net pension asset was determined by an actuarial valuation as of December 31, 2014 and rolled forward to June 30, 2016. The PLF's proportion of the net pension asset was based on the PLF's projected long-term contribution effort as compared to the total projected long-term contribution effort of all employers.

Rates of every employer have at least two major components:

1. **Normal Cost Rate:** The economic value, stated as a percent of payroll, for the portion of each active member's total projected retirement benefit that is allocated to the upcoming year of service. The rate is in effect for as long as each member continues in OPERS-covered employment. The current value of all projected future Normal Cost Rate contributions is the Present Value of Future Normal Costs (PVFNC). The PVFNC represents the portion of the projected long-term contribution effort related to future service.
2. **UAL Rate:** If system assets are less than the actuarial liability, an Unfunded Actuarial Liability (UAL) exists. UAL can arise in a biennium when an event such as experience differing from the assumptions used in the actuarial valuation occurs. An amortization schedule is established to eliminate the UAL that arises in a given biennium over a fixed period of time if future experience follows assumption. The UAL Rate is the upcoming year's component of the cumulative amortization schedules, stated as a percent of payroll. The present value of all projected UAL Rate contributions is simply the Unfunded Actuarial Liability (UAL) itself. The UAL represents the portion of the projected long-term contribution effort related to past service.

An employer's PVFNC depends on both the normal cost rates charged on the employer's payrolls, and on the underlying demographics of the respective payrolls. For OPERS funding, employers have up to three different payrolls, each with a different normal cost rate: (1) Tier 1/Tier 2 payroll, (2) OPSRP general service payroll, and (3) OPSRP police and fire payroll.

Analyzing both rate components, the projected long-term contribution effort is simply the sum of the PVFNC and UAL. The PVFNC part of the contribution effort pays for the value of future service while the UAL part of the contribution effort pays for the value of past service not already funded by accumulated contributions and investment earnings. Each of the two contribution effort components are calculated at the employer-specific level. The sum of these components across all employers is the total projected long-term contribution effort.

At December 31, 2016 and 2015, the PLF's proportion was .02838054% and .03158711 percent, respectively.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

For the year ended December 31, 2016, the PLF recognized pension expense of \$189,860. At December 31, 2016, the PLF reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	<u>Deferred Outflow of Resources</u>	<u>Deferred Inflow of Resources</u>
Differences between expected and actual experience	\$ 140,958	\$ -
Changes of assumptions	908,678	-
Net deference between projected and actual earnings on investments	841,712	-
Changes in proportion and differences between employer contributions and proportionate share of contributions	<u>108,948</u>	<u>40,485</u>
Total (prior to post-measurement date contributions)	2,000,296	40,485
Contributions made subsequent to measurement date	<u>-</u>	<u>-</u>
Net deferred outflow/(inflow) of resources	<u>\$ 2,000,296</u>	<u>\$ 40,485</u>

Deferred outflows of resources related to pensions resulting from PLF contributions subsequent to the measurement date of June 30, 2016 will be recognized as a reduction of the net pension liability in the year ended December 31, 2016. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

<u>Employer Subsequent Fiscal Years</u>	
2017	\$ 356,192
2018	356,192
2019	665,637
2020	507,802
2021	<u>73,988</u>
	<u>\$ 1,959,811</u>

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

***Changes in Plan Provisions Subsequent to Measurement Date:***

There were no changes in Plan provisions subsequent to the June 30, 2016 measurement date.

***Changes in Assumptions:***

A summary of key changes implemented since the December 31, 2014 valuation are described briefly below. Additional detail and a comprehensive list of changes in methods and assumptions can be found in the 2014 Experience Study for the System, which was published in September 2015.

***Changes in Benefit Terms***

The Oregon Supreme Court on April 30, 2015, ruled that the provisions of Senate Bill 861, signed into law in October 2013, that limited the post retirement cost-of-living-adjustment (“COLA”) on benefits accrued prior to the signing of the law was unconstitutional. Benefits could be modified prospectively, but not retrospectively. As a result, those who retired before the bills were passed will continue to receive a COLA tied to the Consumer Price Index that normally results in a 2% increase annually. OPERS will make restoration payments to those benefit recipients.

PERS members who have accrued benefits before and after the effective dates of the 2013 legislation will have a blended COLA rate when they retire.

***Allocation of Liability for Service Segments***

For purposes of allocating Tier 1/Tier 2 member’s actuarial accrued liability among multiple employers, the valuation uses a weighted average of the Money Match methodology and the Full Formula methodology used by PERS when the member retires. The weights are determined based on the prevalence of each formula among the current Tier 1/Tier 2 population. For the December 31, 2012 and December 31, 2013 valuations, the Money Match was weighted 30 percent for General Service members. For the December 31, 2014 and December 31, 2015 valuations, this weighting has been adjusted to 25 percent for General Service members, based on a projection of the proportion of liability attributable to Money Match benefits at those valuation dates.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE I – PENSION RETIREMENT PLAN (CONTINUED)**

**Defined Contribution Plan**

**OPSRP Individual Account Program (OPSRP IAP)**

**Pension Benefits**

Participants in OPERS defined benefit pension plans also participate in the OPSRP Individual Account Program (IAP), a defined contribution pension plan. An IAP member becomes vested on the date the employee account is established or on the date the rollover account was established. If the employer makes optional employer contributions for a member, the member becomes vested on the earliest of the following dates: the date the member completes 600 hours of service in each of five calendar years, the date the member reaches normal retirement age, the date the IAP is terminated, the date the active member becomes disabled, or the date the active member dies.

Upon retirement, a member of the OPSRP Individual Account Program (IAP) may receive the amounts in his or her employee account, rollover account, and vested employer account as a lump-sum payment or in equal installments over a 5-, 10-, 15-, 20-year period or an anticipated life span option. Each distribution option has a \$200 minimum distribution limit.

**Death Benefits**

Upon the death of a non-retired member, the beneficiary receives in a lump sum the member's account balance, rollover account balance, and vested employer optional contribution account balance. If a retired member dies before the installment payments are completed, the beneficiary may receive the remaining installment payments or choose a lump-sum payment.

**Contributions**

All eligible OPERS and OPSRP employees make mandatory contributions to the plan at the rate of six percent of gross compensation. OPERS contracts with VOYA Financial to maintain IAP participant records.



**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE J – LEASE OBLIGATIONS**

On February 15, 2008, PLF signed a fifteen-year office lease with the Oregon State Bar located in the Fanno Creek Place office complex. The base rent under the Oregon State Bar Lease is subject to annual increase during the lease term. Rent expense was \$547,994 for 2016 and \$520,065 for 2015 under this lease. Additionally, the PLF leases office space for its Oregon Attorney Assistance Program in downtown Portland, Oregon. The lease term expires November 20, 2020 and increases on December 1, 2013 and December 1, 2016. Rent expense under this lease was \$102,307 for 2016 and \$100,753 for 2015.

The future minimum payments for office leases are as follows:

Year Ending December 31:		
2017	\$	658,236
2018		670,969
2019		684,682
2020		688,534
2021		590,693
Thereafter		681,374
	\$	3,974,488

**NOTE K – ANNUAL ASSESSMENTS**

**Primary Program**

The following table summarizes assessment revenues for the Primary Program by type of coverage for fiscal years 2016 and 2015:

<b>Type of Coverage</b>	<b>2016</b>	<b>2015</b>
Basic Annual Assessment	\$ 24,299,773	\$ 24,326,360
Special Underwriting Assessment	-	-
<b>Total Assessments Earned</b>	<b>\$ 24,299,773</b>	<b>\$ 24,326,360</b>

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE K – ANNUAL ASSESSMENTS (CONTINUED)**

**Excess Program**

The following table summarizes assessment revenues earned by the Excess Program for fiscal years 2016 and 2015:

<u>Type of Coverage</u>	<u>2016</u>	<u>2015</u>
\$ 700,000 Limit	\$ -	\$ -
\$ 1,700,000 Limit	3,424,634	3,293,630
\$ 2,700,000 Limit	-	-
\$ 3,700,000 Limit	-	-
\$ 4,700,000 Limit	1,010,336	1,014,086
\$ 9,700,000 Limit	380,996	378,033
Data Breach Coverage	<u>74,760</u>	<u>71,295</u>
Total Assessments Earned	4,890,726	4,757,044
Less Assessments Ceded to Reinsurers	<u>(4,890,726)</u>	<u>(4,757,044)</u>
Net Assessments	\$ <u><u>-</u></u>	\$ <u><u>-</u></u>

**NOTE L – PROVISION FOR CLAIM SETTLEMENTS AND DEFENSE COSTS**

**Primary Program**

As more fully described in Note B, estimates to settle indemnity and defend liabilities claims are established when claims are reported to the PLF. Subsequent changes in estimates resulting from the case-by-case continuous review process and differences between estimates and ultimate payments are reflected in operations of the fiscal period when the changes occur. Estimates are further adjusted based on studies performed by the PLF's independent consulting actuaries. For financial statement purposes, actual or estimated amounts recoverable from various claims related receivables (such as subrogation receivables) are deducted from estimated expenses in the PLF's operating statement.

During 2016, the net provisions for settling and defending liability claims totaled \$7,668,773 for indemnity and \$9,017,971 for expenses, for a total provision of \$16,686,564 at year-end. This is a decrease of \$999,729 over the total provision of \$17,686,293 during 2015.

The current portions of claims liability were determined by applying the prior three-year average of indemnity and expense payments made on claims pending at the start of the year. For the periods ending December 31, 2016 and 2015, the average current portion of indemnity and expense claims were 44% and 46%, respectively. In 2016 the current portion of indemnity and expense claims were based on the same percentages.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE L – PROVISION FOR CLAIM SETTLEMENTS AND DEFENSE COSTS (CONTINUED)**

**Excess Program**

As described in Note B, the primary liability for any claim filed under the excess plan has been passed to other insurance companies through reinsurance. The possibility of the PLF incurring direct costs under the excess plan is considered remote. Therefore, no provision or liability for such claims has been established. If future operations of the plan indicate that the PLF will incur direct costs, appropriate provision for such losses will be established based on plan experience.

**NOTE M – ESTIMATED LIABILITIES FOR CLAIMS – PRIMARY PROGRAM**

As described in Note B, estimated liabilities to settle (indemnity) and defend (loss adjustment expenses) claims are composed of various factors. The following table shows the composition of these factors by type and the total allocation between indemnity and loss adjustment expenses for the year ending December 31, 2016 and 2015:

	<u>2016</u>	<u>2015</u>
<b>Claim Liabilities:</b>		
Claims Settlements	\$ 13,400,000	\$ 13,800,000
Defense Costs	13,600,000	14,400,000
Future ERC Claims	3,100,000	3,100,000
Suspense Files	1,600,000	1,600,000
Administration of pending Claims	<u>2,600,000</u>	<u>2,400,000</u>
Total Claim Liabilities	<u>\$ 34,300,000</u>	<u>\$ 35,300,000</u>
<b>Allocation:</b>		
Indemnity Settlements	\$ 17,857,025	\$ 18,188,278
Loss Adjustment Expenses	<u>16,442,975</u>	<u>17,111,722</u>
Total Claim Liabilities	<u>\$ 34,300,000</u>	<u>\$ 35,300,000</u>

**NOTE N – RISK MANAGEMENT**

The PLF is exposed to various risks of loss related to: torts, theft, damage or destruction of assets, errors and omissions, injuries to employees, and natural disasters. Except for unemployment compensation, the PLF purchases commercial insurance to minimize its exposure to these risks. There has been no significant reduction in commercial insurance coverage from fiscal year 2015 to 2016.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
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**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

**December 31, 2016 and 2015**

**NOTE O – RESTATEMENT**

The PLF's net position as of December 31, 2014 was restated to adjust the PLF's actuarially determined unfunded pension liability prior to joining the SLGRP, which was estimated by OPERS at the fiscal year ended June 30, 2015 reporting date.

	<u>Primary Program</u>	<u>Excess Program</u>	<u>Total</u>
Net position as of December 31, 2014 (as reported)	\$ 8,043,876	\$ 2,480,829	\$ 10,524,705
Restatement of prior year position Pre-SLGRP liability	<u>(752,410)</u>	<u>-</u>	<u>(752,410)</u>
Net position as of December 31, 2014 (restated)	<u>\$ 7,291,466</u>	<u>\$ 2,480,829</u>	<u>\$ 9,772,295</u>

**REQUIRED SUPPLEMENTARY INFORMATION**

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND**

**SCHEDULES OF REQUIRED SUPPLEMENTARY INFORMATION – PENSION INFORMATION**

**SCHEDULE OF THE PROPORTIONATE SHARE OF THE NET PENSION LIABILITY  
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM  
Last 10 Fiscal Years\***

	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Proportion of the net pension liability (asset)	0.02838054%	0.03158700%	0.03158700%	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Proportionate share of the net pension liability (asset)	\$ 4,260,578	\$ 1,813,562	\$ (667,024)	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Covered-employee payroll	4,592,634	4,384,740	4,266,004	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Proportionate share of the net pension liability (asset) as a percentage of its covered-employee payroll	92.8%	41.4%	-15.6%	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Plan fiduciary net position as a percentage of the total pension liability	225.03%	103.60%	91.97%	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**SCHEDULE OF CONTRIBUTIONS  
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM  
Last 10 Fiscal Years\***

	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Contractually required contribution	\$ 679,113	\$ 683,514	\$ 575,282	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contributions in relation to the contractually required contribution	679,113	683,514	575,282	-	-	-	-	-	-	-
Contribution deficiency (excess)	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Covered-employee payroll	\$ 4,592,634	\$ 4,384,740	\$ 4,266,004	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Contributions as a percentage of covered-employee payroll	14.8%	15.6%	13.5%	N/A	N/A	N/A	N/A	N/A	N/A	N/A

\* GASB # 68 requires ten-year trend information. However, until a full ten-year trend is established, only the information for the years available is presented.

The accompanying notes and independent auditors' report should be read with the supplemental schedules.

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
PROPRIETARY FUNDS**

**NOTES TO REQUIRED SUPPLEMENTARY INFORMATION**

**For the Years Ended December 31, 2016 and 2015**

**Changes in Benefit Terms:**

Effective May 2013, the Oregon legislature eliminated the tax remedy payments for benefit recipients who are not subject to Oregon income tax, because they do not reside in Oregon, and limited the 2013 post-retirement COLA to 1.5% of annual benefit.

**Changes in Assumptions:**

The Actuarial Cost Method was changed from the Projected Unit Credit (PUC) Cost Method to the Entry Age Normal (EAN) Cost Method. In combination with the change in cost method, the outstanding Tier 1/Tier 2 UAL as of December 31, 2013 were re-amortized over a closed period of 20 years as a level percentage of projected payroll.

Other changes are described in the notes to the accompanying financial statements.

**REPORT REQUIRED BY *GOVERNMENT AUDITING STANDARDS***





**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER  
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS  
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN  
ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

Board of Directors  
Oregon State Bar Professional Liability Fund  
Tigard, Oregon

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the business-type activities of the Oregon State Bar Professional Liability Fund (the PLF) as of and for the year ended December 31, 2016, and the related notes to the financial statements, which collectively comprise the PLF's basic financial statements, and have issued our report thereon dated July 31, 2017.

**Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the PLF's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the PLF's internal control. Accordingly, we do not express an opinion on the effectiveness of the PLF's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

**Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the PLF's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## KERN & THOMPSON, LLC

Board of Directors  
Oregon State Bar Professional Liability Fund  
Tigard, Oregon

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the PLF's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the PLF's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*KERN & THOMPSON, LLC*

Portland, Oregon  
July 31, 2017



August 29, 2017

To: Oregon State Bar Board of Governors  
From: PLF Board of Directors  
Re: 2018 PLF Budget and 2018 Assessment

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### **I. Recommended Action**

1. We recommend that the Board of Governors approve the 2018 PLF budget attached as Exhibit A.
2. We recommend the Board of Governors set the 2018 assessment at \$3,500.

### **II. Executive Summary**

1. The PLF Board of Directors approved a 4.0% salary pool. The Bureau of Labor Statistics reports the CPI has increased 4.4% from a year ago. The index for all items less food and energy is 4.1%. This salary pool is separate from reclassifications that are in the budget that occur when individuals take on additional responsibilities and/or move to a new classification with tenure (e.g. Claims Attorney I to Claims Attorney II). While no significant increases are anticipated to the cost of medical benefits in 2018, we are budgeting a 5% increase, which puts medical benefits at approximately 13.6% of total salaries.
2. The June 30, 2017 actuarial rate study estimates an average claim cost per attorney in 2018 of \$2,500, down by \$230 from the estimated 2017 average cost. As in all previous years, an operational shortfall exists for 2018. This shortfall equates to \$719 per attorney. The combination of the estimated average cost per attorney of claims and operation shortfall are offset by assessment revenue. The 2018 budget keeps the assessment stable at \$3,500, as was recommended by our actuaries. See Exhibits B & C.<sup>1</sup>

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<sup>1</sup> We have attached the actuarial reports without the voluminous exhibits. The exhibits will be provided upon request.

3. Over the last two years we have significantly reduced expenses in most office supplies, postage and outside scanning costs. Compared to two years ago, we are budgeting approximately \$40,000 less across departments in these areas. Our paperless assessment and paperless claim files contribute significantly to this reduction.

### **III. 2018 PLF Budget**

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

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

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" attorneys. We project 6,716 "full-pay" attorneys for 2018. The actual number of covered parties in 2018 is expected to be approximately 7,130.

The PLF Excess program anticipates continued growth. Compared to the 2017 budget, the number of covered attorneys is expected to increase by 1% to 2160; and ceding commissions up 11% to \$880,000.

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

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

#### **Primary Program Revenue**

Projected assessment revenue for 2018 is based upon the \$3,500 basic assessment paid by an estimated 6716 attorneys.

Investment returns have been very strong for the PLF in the first 8 months of 2017. The stock market is at an all-time high and unemployment is nearing record lows. The lag in wage growth continues to hamper the economy and the unpredictability of the current administration makes predicting future investment performance difficult. Based on performance of the PLF portfolio to date in 2017, as well as the previously mentioned factors, we are projecting an average return of 4.5% in 2018. A .5% change to the projected rate has a value of approximately \$296,808 (using June 30, 2017 figures) so we believe it is better to estimate investment performance conservatively.

### Primary Program Claims Expense

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

Budgeted claims expense is the estimated cost of new claims. In previous years, the PLF included an amount for adverse claims development. However, in 2016, the PLF Board moved that reserve as part of the Net Position goal for adverse claims development.

Our projections of claim costs for 2018 are based on a projected claim count of 855 claims. At August 1, 2017 the PLF annualized claim count was at 838. The cost of each new claim in 2018 has been budgeted in accordance with actuarial recommendations of \$21,000. The claims frequency anticipated for 2018 is 12.0%. By way of reference, a .5% difference in the number of claims from budget equates to 36 claims or \$756,000.

### Full-time Employee Statistics (Staff Positions)

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. Each department is shown net of Excess staff allocations (explained below):

	<u>2017 Projections</u>	<u>2018 Budget</u>
Administration	6.8 FTE	7.3 FTE
Claims	19.46 FTE	18.57 FTE
Loss Prevention (includes OAAP)	13.92 FTE	13.92 FTE
Accounting	7.2 FTE	7.25 FTE
Excess Allocations	<u>3.75 FTE</u>	<u>3.75 FTE</u>
<b>Total</b>	<b>51.13 FTE</b>	<b>50.79 FTE</b>

### Salary Pool for 2018

In consultation with the Oregon State Bar, a four percent cost of living increase is recommended for 2018. The budget also reflects planned reclassifications. The salary reclassification is either for those employees who change status (e.g. Claims Attorney I to Claims Attorney II) or increase to salaries for recently hired employees hired at “probationary salaries” or to address a historical lack of parity between the salaries of employees in positions with equivalent responsibilities. Salaries for entry level hires of exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately.

### Benefit Expense

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

The employer contribution rates for PERS increased on July 01, 2017. The table below reflects these changes.

	2015-2017	2017-2019	Difference
Tier 1 and 2	19.28%	24.67%	5.39%
OPSRP	13.31%	16.78%	3.47%

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

The PLF covers the cost of medical and dental insurance for PLF employees. We are budgeting for a 5% increase to the employer’s portion of the healthcare premiums. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents.

### Capital Budget Items

There are no significant capital purchases budgeted for 2018.

**Other Primary Operating Expenses with Changes from 2017 Budget +/- 10%**

**Depreciation** will increase slightly from 2017 due to the purchase of new furniture for some offices.

**Office Expense** has dropped versus 2017 budget due to reduced postage, printing and paper charges. These reductions in costs are mainly attributable to ever increasing paperless processes at the PLF.

**Defense Panel Program** occurs bi-annually and there is no conference in 2018. Hence, the decrease for 2018.

Memberships and Subscriptions will drop in 2018 from 2017 budget levels, as the actual expenses have been considerably lower in 2017 than budgeted.

**Excess Program Budget**

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess premium that the PLF retains and is shown in the table below.

<b>Coverage Limits</b>	<b>Ceding Commission</b>
Up to \$1.7 Million	17.50%
Up to \$4.7 Million	12.50%
Up to \$9.7 Million	15.00%

A portion of the premium goes to the PLF brokers, AON Benfield. However, the largest portion of the premium goes to the reinsurers who cover the cost of excess claims. We are budgeting \$880,000 for 2018 ceding commissions. This represents a 10.7% increase over budgeted 2017 levels.

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

**IV. Assessment**

While the BOD voted to keep the assessment steady at \$3,500 (9<sup>th</sup> consecutive year), before August 2018, the Long Range Planning Committee will review factors the Board of Directors should consider in potentially lowering the assessment or raising the coverage limit for 2019.

**Attachments:**

Exhibit A – 2018 PLF Budget

Exhibit B – June 30, 2017 Actuarial Study – Average Claim Cost

Exhibit C – June 27, 2017 Actuarial Report – 2018 Assessment

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET**

Presented to PLF Board of Directors on August 24, 2017

	<u>2014</u> <u>ACTUAL</u>	<u>2015</u> <u>ACTUAL</u>	<u>2016</u> <u>ACTUAL</u>	<u>2017</u> <u>BUDGET</u>	<u>2017</u> <u>PROJECTIONS</u>	<u>2018</u> <u>BUDGET</u>
<b><u>Revenue</u></b>						
Assessments	\$24,668,300	\$24,326,360	\$24,299,733	\$24,325,000	23,863,632	23,505,632
Instalment Service Charge	378,008	334,667	329,097	330,000	327,160	329,500
Investments and Other	2,418,326	(242,895)	3,593,534	1,993,992	3,250,000	2,689,496
Total Revenue	<u>\$27,464,633</u>	<u>\$24,418,131</u>	<u>\$28,222,364</u>	<u>\$26,648,992</u>	<u>\$27,440,792</u>	<u>\$26,524,628</u>
<b><u>Expenses</u></b>						
<b>Provision for Claims</b>						
New Claims	\$19,595,940	\$17,354,000	\$18,877,500	\$19,575,000	\$18,343,500	\$17,955,000
Pending Claims Development	(\$987,534)	\$307,272	(\$2,528,774)	\$500,000	(\$1,800,000)	\$0
Total Provision for Claims	<u>\$18,608,406</u>	<u>\$17,661,272</u>	<u>\$16,348,726</u>	<u>\$20,075,000</u>	<u>\$16,543,500</u>	<u>\$17,955,000</u>
<b>Expense from Operations</b>						
Administration	\$2,371,569	\$2,593,207	\$2,593,207	\$2,677,538	\$2,689,777	\$2,789,563
Accounting/IT	782,536	773,968	773,968	859,349	851,592	922,928
Loss Prevention	2,016,547	2,117,267	2,117,267	2,216,331	2,176,654	2,320,685
Claims	<u>2,488,569</u>	<u>2,680,742</u>	<u>2,680,742</u>	<u>2,923,689</u>	<u>2,846,589</u>	<u>2,839,872</u>
Total Operating Expense	<u>\$7,659,221</u>	<u>\$8,165,184</u>	<u>\$8,165,184</u>	<u>\$8,676,907</u>	<u>\$8,564,611</u>	<u>\$8,873,048</u>
Depreciation	164,678	157,777	162,794	160,507	131,886	135,500
Allocated to Excess Program	<u>(1,145,155)</u>	<u>(965,396)</u>	<u>(1,090,241)</u>	<u>(1,039,305)</u>	<u>(1,127,952)</u>	<u>(955,998)</u>
Total Expenses	<u>\$25,287,150</u>	<u>\$25,018,837</u>	<u>\$23,586,464</u>	<u>\$27,873,109</u>	<u>\$24,112,045</u>	<u>\$26,007,550</u>
Net Income (Loss)	<u>\$2,177,484</u>	<u>(\$600,705)</u>	<u>\$4,635,900</u>	<u>(\$1,224,117)</u>	<u>\$3,328,747</u>	<u>\$517,078</u>
<b>Number of Full Pay Attorneys</b>	7,048	6,950	6,943	6,950	6,818	6,716
<b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2017 Budget	2.26%					
Increase from 2017 Projections	3.60%					



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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Presented to PLF Board of Directors on August 24, 2017**

	<u>2014 BUDGET</u>	<u>2015 ACTUAL</u>	<u>2016 ACTUAL</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b>Expenses</b>						
Salaries	\$4,189,074	\$4,384,740	\$4,515,803	\$4,698,648	\$4,740,242	\$4,794,315
Benefits and Payroll Taxes	1,486,255	1,610,449	1,614,413	1,683,242	1,568,819	1,873,268
Professional Services	325,775	372,283	321,211	292,675	285,831	268,500
Auto, Travel & Training	109,931	114,350	116,742	136,100	117,350	125,350
Office Rent	512,379	520,065	547,994	535,783	566,399	575,194
Office Expense	155,121	167,049	135,696	147,261	157,200	120,300
Telephone	49,326	50,453	50,561	50,500	50,000	51,000
PLF Promotional and Wellness			21,869	28,000	23,500	28,500
L P Programs	482,786	432,645	490,156	519,750	458,119	527,121
OSB Bar Books	200,000	200,000	200,000	200,000	200,000	200,000
Defense Panel Program	1,915	94,340	4,125	98,448	98,715	0
Insurance	38,344	42,108	44,651	43,000	45,000	45,000
Library	31,741	32,346	29,024	31,500	31,250	33,000
Memberships & Subscriptions	22,469	24,275	22,931	36,500	25,000	26,500
Bank Charges/Credit Card Fees	56,088	121,331	170,275	189,000	200,300	205,000
Depreciation						
Total Operating Expenses	<u>\$7,661,204</u>	<u>\$8,166,430</u>	<u>\$8,285,450</u>	<u>\$8,690,407</u>	<u>\$8,567,725</u>	<u>\$8,873,048</u>
Allocated to Excess Program	<u>(\$1,120,789)</u>	<u>(\$948,416)</u>	<u>(\$1,065,980)</u>	<u>(\$1,023,187)</u>	<u>(\$1,107,094)</u>	<u>(\$934,498)</u>
Full Time Employees	49.53	49.78	51.23	51.73	51.13	50.79
Number of Full Pay Attorneys	7,048	6,950	7,009	6,950	6,818	6,716
Non-personnel Expenses	\$1,985,875	\$2,171,242	\$2,288,656	\$2,308,517	\$2,258,664	\$2,205,465
Allocated to Excess Program	<u>(\$270,406)</u>	<u>(\$222,167)</u>	<u>(\$283,252)</u>	<u>(\$227,302)</u>	<u>(\$294,605)</u>	<u>(\$299,000)</u>
Total Non-personnel Expenses	<u>1,715,469</u>	<u>1,949,075</u>	<u>2,005,404</u>	<u>2,081,215</u>	<u>1,964,059</u>	<u>1,906,465</u>
<b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2017 Budget	<b>2.10%</b>					
Increase from 2017 Projections	<b>3.44%</b>					

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET  
ADMINISTRATION**  
Presented to PLF Board of Directors on August 24, 2017

	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 ACTUAL</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b>Expenses</b>						
Salaries	\$684,773	\$731,111	\$682,009	\$793,860	\$789,177	\$832,784
Benefits and Payroll Taxes	233,366	259,873	267,001	280,859	261,021	339,435
Staff Travel	37,354	24,986	28,444	16,100	23,000	10,200
Board of Directors Travel	35,244	54,138	50,614	41,500	57,000	55,500
Training	13,651	6,347	7,333	7,500	15,000	16,000
Legal Services	11,461	31,521	26,297	10,000	10,000	10,000
Financial Audit	22,800	22,800	22,600	23,000	24,000	24,500
Actuarial Services	24,209	46,566	24,995	30,000	25,000	25,000
Investment Services	28,095	38,314	43,394	44,000	45,000	48,000
Information Services	83,788	42,660	65,639	71,000	63,000	65,000
Electronic Record Scanning	44,859	36,008	31,181	30,000	32,000	22,500
Other Professional Services	110,564	154,415	102,234	84,675	86,831	73,500
OSB Bar Books	200,000	200,000	200,000	200,000	200,000	200,000
Office Rent	512,379	520,065	547,994	535,783	566,399	575,194
Equipment Rent & Maint.	45,047	49,075	38,741	39,261	38,000	39,000
Dues and Memberships	22,469	24,275	22,931	36,500	25,000	26,500
Office Supplies	70,597	76,145	58,160	75,000	72,000	55,000
Insurance	38,344	42,106	44,651	43,000	45,000	45,000
Telephone	49,326	50,453	50,561	50,500	50,000	51,000
Printing	11,472	10,813	8,801	4,000	15,000	8,000
Postage & Delivery	27,482	30,781	28,197	26,500	26,700.00	12,800.00
NABRICO - Assoc. of Bar Co.s	7,680	13,819	14,172	15,000	14,850	15,650
Bank Charges/Credit Card Fees	56,088	121,331	170,275	189,000	200,300	205,000
Repairs	523	235	1,797	2,500	5,500	5,500
Promo Wellness Staff Functions	0	5,372	0	28,000	0	28,500
Total Operating Expenses	<u>\$2,371,569</u>	<u>\$2,593,207</u>	<u>\$2,538,019</u>	<u>\$2,677,538</u>	<u>\$2,689,777</u>	<u>\$2,789,563</u>
Allocated to Excess Program	<u>(\$461,595)</u>	<u>(\$401,955)</u>	<u>(\$487,476)</u>	<u>(\$462,313)</u>	<u>(\$495,508)</u>	<u>(\$556,495)</u>
Administration Department FTE	8.00	9.00	9.00	9.00	9.00	9.00
<b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2017 Budget	4.18%					
Increase from 2017 Projections	3.71%					

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET  
ACCOUNTING/INFORMATION TECHNOLOGY  
Presented to PLF Board of Directors on August 24, 2017**

	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 ACTUAL</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b><u>Expenses</u></b>						
Salaries	\$576,354	\$558,824	\$619,221	\$638,854	\$636,722	\$675,572
Benefits and Payroll Taxes	200,385	213,598	217,106	216,495	212,870	245,356
Travel	1,311	755	403	2,500	500	500
Training	4,487	792	2,361	1,500	1,500	1,500
 Total Operating Expenses	 <u>\$782,536</u>	 <u>\$773,968</u>	 <u>\$839,093</u>	 <u>\$859,349</u>	 <u>\$851,592</u>	 <u>\$922,928</u>
 Allocated to Excess Program	 <u>(\$90,264)</u>	 <u>(\$109,729)</u>	 <u>(\$115,779)</u>	 <u>(\$100,728)</u>	 <u>(\$115,830)</u>	 <u>(\$67,622)</u>
  Accounting/ Info Technology FTE	  7.90	  7.90	  7.90	  7.90	  7.90	  7.90
  <b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2017 Budget	7.40%					
Increase from 2017 Projections	8.38%					

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**PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET  
LOSS PREVENTION (Includes OAAP)  
Presented to PLF Board of Directors on August 24, 2017**

	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 ACTUAL</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b><u>Expenses</u></b>						
Salaries	\$1,111,996	\$1,222,736	\$1,281,281	\$1,221,157	\$1,276,089	\$1,272,569
Benefits and Payroll Taxes	423,748	468,504	466,952	473,924	444,059	517,495
In Brief	66,468	59,384	79,493	75,000	65,000	68,000
PLF Handbooks	45,758	9,086	8,345	5,100	10,000	38,000
Library	997	316	754	1,200	800	350
Video and Audio Tapes	33,193	18,486	16,440	22,000	18,000	16,000
Mail Distribution of Video and Audic	14,341	10,177	8,088	6,000	8,500	7,500
Web Distribution of Programs	58,940	30,395	71,095	60,000	60,000	45,000
Program Promotion/Website Updat	16,452	16,418	13,022	22,500	14,000	34,500
Expense of Closing Offices	7,330	22,781	14,058	15,000	15,000	11,000
Facilities	45,804	46,781	60,197	48,000	65,000	68,000
Speaker Expense	(1,362)	8,581	8,178	8,000	8,500	5,000
Accreditation Fees	956	1,371	1,582	1,600	1,600	1,500
Beepers & Confidential Phone	6,430	7,188	8,550	7,500	8,500	8,200
Expert Assistance	0	500	0	5,000	0	500
Bad Debts from Loans	2,325	0	0	0	0	0
Memberships & Subscriptions	11,855	12,018	13,489	16,300	14,182	16,410
Travel	30,792	28,210	25,530	35,350	11,376	24,450
Training	29,571	26,737	24,752	52,900	16,678	41,000
Downtown Office	110,893	127,600	129,737	134,800	138,770	143,211
Bank Charges/Credit Card Fees				1,500	600	2,000
Miscellaneous	60			3,500	0	0
<b>Total Operating Expenses</b>	<b><u>\$2,016,547</u></b>	<b><u>\$2,117,267</u></b>	<b><u>\$2,231,545</u></b>	<b><u>\$2,216,331</u></b>	<b><u>\$2,176,654</u></b>	<b><u>\$2,320,685</u></b>
<b>Allocated to Excess Program</b>	<b><u>(\$225,930)</u></b>	<b><u>(\$110,811)</u></b>	<b><u>(\$124,960)</u></b>	<b><u>(\$110,831)</u></b>	<b><u>(\$124,977)</u></b>	<b><u>(\$112,028)</u></b>
<b>Loss Prevention Department FTE (Includes OAAP)</b>	<b>13.58</b>	<b>14.08</b>	<b>13.83</b>	<b>14.83</b>	<b>13.95</b>	<b>13.95</b>
<b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2017 Budget	<b>4.71%</b>					
Increase from 2017 Projections	<b>6.62%</b>					

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT**  
Presented to PLF Board of Directors on August 24, 2017

	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 ACTUAL</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b><u>Expenses</u></b>						
Salaries	\$1,815,952	\$1,872,069	\$1,933,291	\$2,044,777	\$2,038,254	\$2,008,390
Benefits and Payroll Taxes	628,756	668,475	663,354	711,964	650,870	770,982
Training	4,620	5,195	7,618	28,000	23,500	23,500
Travel	5,584	8,317	5,797	9,000	4,000	4,000
Library & Information Systems	31,741	32,346	29,024	31,500	31,250	33,000
Defense Panel Program	1,915	94,340	4,125	98,448	98,715	0
Total Operating Expenses	<u>\$2,488,569</u>	<u>\$2,680,742</u>	<u>\$2,643,209</u>	<u>\$2,923,689</u>	<u>\$2,846,589</u>	<u>\$2,839,872</u>
Allocated to Excess Program	<u>(\$343,000)</u>	<u>(\$325,921)</u>	<u>(\$337,825)</u>	<u>(\$349,315)</u>	<u>(\$337,313)</u>	<u>(\$198,353)</u>
Claims Department FTE	20.33	20.50	20.50	20.00	20.00	19.50
<b>CHANGE IN OPERATING EXPENSES:</b>						
Decrease from 2017 Budget				-2.87%		
Decrease from 2017 Projections					-0.24%	

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 PRIMARY PROGRAM BUDGET  
CAPITAL BUDGET**

Presented to PLF Board of Directors on August 24, 2017

	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 ACTUAL</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b><u>Capital Items</u></b>						
Furniture and Equipment	\$0	\$49,887	\$0	\$57,000	\$50,000	\$15,000
Telephone	0	0	0	0	0	0
Copiers / Scanners	0	0	0	0	0	0
Audiovisual Equipment	0	0	0	0	0	0
Data Processing						
Hardware	0	0	0	20,000	15,000	10,000
Software	0	0	0	10,000	5,000	5,000
PCs, Ipads and Printers	0	12,810	0	8,500	7,500	8,500
Leasehold Improvements	0	(42,560)	0	10,000	0	0
 Total Capital Budget	 <u>\$0</u>	 <u>\$20,137</u>	 <u>\$0</u>	 <u>\$105,500</u>	 <u>\$77,500</u>	 <u>\$38,500</u>
 Decrease from 2017 Budget						-63.51%
Decrease from 2017 Projections						-50.32%

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**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2018 EXCESS PROGRAM BUDGET  
Updated August 29, 2017**

	<u>2014 ACTUAL</u>	<u>2015 ACTUAL</u>	<u>2016 BUDGET</u>	<u>2017 BUDGET</u>	<u>2017 PROJECTIONS</u>	<u>2018 BUDGET</u>
<b>Revenue</b>						
Ceding Commission	797,386	762,929	791,295	795,000	861,736	880,000
Profit Commission	22,021	4,285	46,653	30,000	0	0
Instalment Service Charge	39,808	40,447	44,760	45,000	54,000	56,000
Other	43,415	5,148	46,654	30,000	0	0
Investment Earnings	218,440	(23,272)	170,389	235,222	70,000.00	85,094.24
<b>Total Revenue</b>	<b><u>\$1,121,070</u></b>	<b><u>\$789,517</u></b>	<b><u>\$1,099,751</u></b>	<b><u>\$1,135,222</u></b>	<b><u>\$985,736</u></b>	<b><u>\$1,021,094</u></b>
<b>Expenses</b>						
Allocated Salaries	\$621,781	\$534,709	\$589,927	\$473,409	\$595,000	\$480,000
Direct Salaries	76,929	0	0	0	0	0
Allocated Benefits	228,602	191,540	192,801	162,089	201,890	163,000
Direct Benefits	30,051	0	0	0	0	0
Program Promotion	8,625	23,169	14,150	18,000	15,000	16,000
Investment Services	1,805	1,686	1,607	2,500	150	200
Allocation of Primary Overhead	270,406	222,167	283,252	227,302	284,605	297,000
Reinsurance Placement Travel	18,120	12,770	8,096	20,000	12,000	8,000
Training	0	0	485	5,000	0	500
Printing and Mailing	1,947	6,120	5,743	10,500	4,000	4,000
Other Professional Services	16	299	29,373	17,000	16,000	18,000
Software Development	0	18,641	27,910	45,000	10,000	16,000
<b>Total Expense</b>	<b><u>\$1,258,383</u></b>	<b><u>\$1,011,101</u></b>	<b><u>\$1,153,344</u></b>	<b><u>\$980,800</u></b>	<b><u>\$1,148,645</u></b>	<b><u>\$1,002,700</u></b>
<b>Allocated Depreciation</b>	<b>\$24,366</b>	<b>\$16,980</b>	<b>\$24,261</b>	<b>\$17,200</b>	<b>\$24,261</b>	<b>\$22,000</b>
<b>Net Income</b>	<b><u>(\$161,679)</u></b>	<b><u>(\$238,564)</u></b>	<b><u>(\$77,854)</u></b>	<b><u>\$137,222</u></b>	<b><u>(\$187,170)</u></b>	<b><u>(\$3,608)</u></b>
<b>Allocated Employee FTE</b>	<b>3.44</b>	<b>3.48</b>	<b>3.48</b>	<b>3.75</b>	<b>3.75</b>	<b>3.75</b>
<b>Number of Covered Attorneys</b>	<b>2,395</b>	<b>2,025</b>	<b>2,125</b>	<b>2,150</b>	<b>2,128</b>	<b>2,160</b>
<b>CHANGE IN OPERATING EXPENSES:</b>						
Increase from 2017 Budget	<b>2.23%</b>					
Decrease from 2017 Projections	<b>-12.71%</b>					

# Rudd and Wisdom, Inc.

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July 25, 2017

Ms. Betty Lou Morrow  
Oregon State Bar Professional  
Liability Fund  
Post Office Box 231600  
Tigard, Oregon 97281-1600

Re: Determination of Reserve for  
Unpaid Indemnity and Unpaid  
Expense as of June 30, 2017

Dear Betty Lou:

At your request, we have performed an actuarial analysis of PLF claims experience from inception through June 30, 2017, to determine the liability for unpaid indemnity and unpaid expense on claims reported as of June 30, 2017. Based on this analysis, we have estimated the reserve for unpaid indemnity to be in a range of \$11.2 million to \$14.2 million, with \$12.8 million as the indicated reserve. Similarly, we estimate the reserve for unpaid expense to be between \$10.3 million and \$14.9 million, with an indicated reserve of \$12.7 million. This report will summarize our analysis.

### *Methodology*

We have used an incurred claim development methodology to determine separately the reserves for unpaid indemnity and unpaid expense on claims reported as of June 30, 2017. Our analysis has been based on claims data provided by the PLF staff. Briefly, we apply the incurred claim development methodology to determine the amount by which ultimate incurred claims are expected to differ from the case incurred estimates (including actual payments on closed claims) established by the PLF staff as of June 30, 2017. Analyzing the actual periodic changes (measured at semiannual intervals) in the case incurred estimates for each PLF claim allows this determination to be made. The purpose of this approach is to adjust for any pattern of over or under-reserving by the PLF staff that may have appeared in the experience



data. This method relies on the key assumption that future development patterns will be similar to those experienced in the past. This methodology is the same as that which was used in developing our reserve estimates for previous valuations.

In recent studies, we have applied the loss development factors to individual claims instead of claims grouped by report date. After selecting loss development factors for both indemnity and expense, we applied the factors to the claims individually and limited the development of any given claim to the maximum payable by the PLF. The maximum amount payable by the PLF for indemnity is \$300,000. The maximum amount payable by the PLF in total for a claim increased from \$325,000 to \$350,000 in 2005. Applying factors that develop claims beyond the Fund's retention limit artificially adds to the volatility of the claim experience.

There is a special claim situation for the PLF that needs to be addressed. One of the PLF insured attorneys has abandoned his practice, generating 160 claims in the process. Under the terms of the PLF insurance policy, these 160 claims have an aggregate limit of \$350,000. So, there is not a large exposure to the Primary Fund from this event. However, we have had to modify our approach to valuing these claims, especially as it pertains to claim counts. These claims were reported in 2012 and 2013. As the claims have matured, the impact on the PLF liabilities has diminished because none of the claims have been near the limit. We will address this issue later in the narrative.

As of June 30, 2017, there are 128 claims at or near the Primary Fund's claim limit. There are only 11 such claims in the Fund's history prior to 1999. In 14 of the 18 years between 1999 and 2017 there have been five or more claims at said limit. The highest number of these claims in a given year is 13. That occurred in 2009. There were 12 such claims in 2000, 10 claims in 2008 and nine claims in 2011. As economic values and attorneys' fees increase over time, it will become more common for claims to reach the PLF's maximum claim amount. The \$300,000 limit on indemnity has been in place since 1987 and the \$350,000 limit was established in 2005.

### *Analysis*

#### **Loss Development Factors**

An important characteristic of attorneys' professional liability claims is volatility. It is difficult to predict both the frequency and ultimate severity of these claims. By frequency, we mean the average number of claims per insured attorney. Severity is the average cost of a claim in dollars. As in prior studies, we have made a key

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assumption that future development patterns will be similar to those experienced in the past. For each actuarial study, we select new development factors for both indemnity and expense portions of the claims to take advantage of the new information available in the updated claim data. As part of our analysis, we test these new factors and compare them to the factors used in the previous valuation. To test and compare these two sets of factors we apply them to the case incurred amounts from previous valuations to measure how well the factors have predicted the claim development, which has actually occurred. We have used this analysis in all of our previous studies and have described the process in all of our previous reports.

The analysis performed for this study reveals that both the prior and current development factors predict recent claim experience fairly well. For the past six months, the claim development for both the indemnity and expense portions of claims has been less than expected.

If we had continued to use the December 31, 2016 factors, then our estimate of ultimate incurred claims and the corresponding liability would have been approximately \$427,000 higher for indemnity and \$680,000 higher for expense. The factors from June 30, 2016 produce results that also would have been approximately \$270,000 higher for indemnity and \$1,016,000 higher for expense.

Exhibits 4A (indemnity) and 4B (expense) display the comparison analysis for claim development between December 31, 2016 and June 30, 2017. Similarly, Exhibits 5A and 5B present the analysis for claim development between June 30, 2016 and June 30, 2017. As mentioned earlier, we have applied the development factors selected for this valuation to determine the ultimate incurred amounts for both indemnity and expense portions of incurred claims. The application of these development factors to case incurred claims is presented in Exhibits 3A and 3B for indemnity and expense, respectively.

### **Projection of Average Severities**

As we have mentioned in previous reports, the application of unadjusted development factors to case incurred estimates for recent reporting periods often produces projections of claim severity which are inconsistent with those of previous periods and indicated trends. The volatility from period to period in the case estimates of these recently reported claims makes it difficult to project their ultimate incurred value using only development factors. Therefore, we have used average severities from periods that we believe to be reasonably credible in an exponential

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regression analysis and professional judgment to project the average severity of the claims reported in 2015, 2016, and 2017.

We have performed the regression analysis over a time period beginning with the 1991 claim year for both indemnity and expense. For the indemnity portion of the claims, the regression analysis indicates that there has been a small trend (0.21%) on average severities since 1991. Since 1993, the trend has been somewhat higher (0.27%). It is important to note that the selection of the beginning and ending points in the regression analysis has a significant effect on our conclusions about trend. Between 1987 and 1992, the average severity for the indemnity portion of the claims hovered in the \$8,500 to \$10,200 range. Between 1993 and 1998, the average severity had fallen into the \$7,400 to \$9,100 range. Performing our analysis over these years (1991 through 1998) causes the trend to be negative. When we include the 1999 through 2008 claim years, the trend becomes flat (i.e., near zero), largely because of the high severity experienced in 1999 (\$10,488) and 2000 (\$15,353) followed by lower severities in 2001 (\$8,382) through 2007(\$8,126). The projected average severities selected for this valuation were chosen using a combination of the regression analysis, the developed claim experience, and professional judgment. The trends on the expense portion of claims display similar patterns to those of the indemnity portion but have not been as pronounced. The regression analysis indicates a moderately positive trend (3.20%) for the expense portion of the claims.

Exhibits 2A and 2B present the regression analysis on average severity for indemnity and expense, respectively. Our approach for claims, which were reported in the current claim year (2017), has been to apply an average severity with some consideration given to the estimates produced by the development factors. Because of the 160 claims incurred by the one attorney in 2012 and 2013, we have excluded all except one of those claims from the average severity calculations in this analysis for 2012 and 2013 claims. We have included all of the dollars from those claims because, in the aggregate, they produced less than \$350,000 of indemnity and expense.

The developed average severities for the indemnity portion of claims reported in 2000 and 2008 are significantly higher than that of other recent years. This is due primarily to the presence of 12 claims in 2000 and 11 claims in 2008, which have reached the PLF's retained limit. In a typical year the PLF incurs only three to six claims that reach the retained limit.

The claims reported in 2004 demonstrate the volatility that these professional liability claims can exhibit. At the end of 2004 it appeared that there would be eight claims that would reach the \$325,000 retention limit. Six of those claims have

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developed less than we expected. Consequently, it appears now that there are only two retention limit claims for 2004. The severity for the indemnity portion of 2004 claims varied in a \$1,300 range for the first three years before settling at its present level (\$8,971). The severity for the expense portion of 2004 claims has varied in a \$2,600 range for the first three years before settling at its present level (\$8,290).

Claim volatility in early durations is due to the limited amount of information available. The PLF claim staff have little or no information about claims when they are first reported. As information does become available, case reserves are revised and claims are litigated or settled. Thus, it is common to find reported claim values that are under-valued at their first report and over-valued at the next duration. The reverse can also happen. Volatile reporting and development patterns for new claims are the main reason that development factors are not reliable for estimating the value of new claims.

For the current valuation, claims reported in 2015 and 2016 are valued using a weighted average of the results obtained from the development factors and the average severity. The claims reported in 2017 are valued based on a projected average severity. The table below summarizes the approach:

<i>Year Claims Reported</i>	<i>Weights Applied at June 30, 2017</i>		<i>Weights To Be Applied at December 31, 2017</i>	
	<i>Development Factor Results</i>	<i>Average Severity Results</i>	<i>Development Factor Results</i>	<i>Average Severity Results</i>
2015	75%	25%	100%	0%
2016	25	75	50	50
2017	0	100	0	100

### Claims Reported Prior to 2015

For claims reported prior to 2015, development during the last six months has been less than expected for both indemnity and expense. Exhibit 6 displays a comparison our estimates of ultimate incurred claims to the corresponding estimates at December 31, 2016 and June 30, 2016. Our estimate of the ultimate incurred liability for the indemnity portion of these claims is approximately \$213,000 less than we had projected for incurred indemnity at December 31, 2016 and approximately \$30,000 more than we had projected at June 30, 2016. Our estimate of the ultimate incurred liability for the expense portion of these claims is approximately \$213,000

less than we had projected at December 31, 2016 and approximately \$821,000 less than we had projected at June 30, 2016.

### **Claims Reported in 2015**

During 2015, 808 claims were reported. Those claims represent an 11.37% claim frequency, which is lower than recent experience and less than our 13.00% assumption in the assessment analysis performed in 2014. The average developed severity for indemnity is \$10,245. The average severity for expense is \$10,230.

For claims reported in 2015, our current estimate reflects a 75% emphasis on the results produced by the development factors and a 25% emphasis on the results based on projected average severity. Our analysis of 2015 claims indicates that the developed average severities for indemnity and expense, taken together, are slightly less than we expected. For 2015 claims, we have selected a \$10,100 severity for indemnity and an \$10,500 severity for expense.

Using the assumptions from the 2015 assessment study, we estimated that 2015 would produce 928 claims (13.00% x 7,135 attorneys) with an average severity of \$21,000 per claim. As mentioned above, the PLF has actually incurred 808 claims, which we have valued at \$20,506 each [75% x (\$10,245 + \$10,230) + 25% x (\$10,100 + \$10,500)]. Thus, the present estimate of claims (\$16.57 million = 808 claims x \$20,506) is approximately \$2.92 million less than the expected incurred claims (\$19.49 million = x 928 claims x \$21,000) due to lower than expected frequency.

### **Claims Reported in 2016**

During 2016, 839 claims were reported. Those claims represent an 11.62% claim frequency, which is similar to recent experience and less than our 13.00% assumption in the assessment analysis performed in 2015. The average developed severity for indemnity is much lower than expected at \$8,864. The average severity for expense is comparable to recent experience at \$10,267.

For claims reported in 2016, our current estimate reflects a 25% emphasis on the results produced by the development factors and a 75% emphasis on the results based on projected average severity. Our analysis of 2016 claims indicates that the developed average severities for indemnity and expense, taken together, are less than we expected. For 2016 claims, we have selected a \$9,600 severity for indemnity and an \$10,900 severity for expense.

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Using the assumptions from the 2016 assessment study, we estimated that 2016 would produce 924 claims ( $13.00\% \times 7,105$  attorneys) with an average severity of \$21,000 per claim. As mentioned above, the PLF has actually incurred 839 claims, which we have valued at \$20,158 each [ $25\% \times (\$8,864 + \$10,267) + 75\% \times (\$9,600 + \$10,900)$ ]. Thus, the present estimate of claims (\$16.91 million =  $839 \text{ claims} \times \$20,158$ ) is approximately \$2.49 million less than the expected incurred claims (\$19.40 million =  $924 \text{ claims} \times \$21,000$ ).

### **Claims Reported in 2017**

During the first six months of 2017, 433 claims were reported. Those claims represent an 12.04% claim frequency, which is similar to recent experience and less than our 13.00% assumption in the assessment analysis performed in 2016. The average developed severity for indemnity is much lower than expected at \$8,674. The average severity for expense is less than recent experience and our expectations at \$8,761.

For claims reported in 2016, we are relying strictly on projected average severities for both indemnity and expense. This is consistent with our treatment of newly reported claims in past studies. Our analysis of 2017 claims indicates that the developed average severities for indemnity and expense, taken together, are lower than we expected due primarily to the initial case estimates of the claims. New claims are difficult to accurately assess both on a case basis and on an ultimate basis. Our selected severities are an attempt to reflect both the experience to date and the expected severities from the exponential regression. For 2017 claims, we have selected an \$10,000 severity for indemnity and an \$11,000 severity for expense.

Using the assumptions from the 2017 assessment study, we estimated that the first six months of 2017 would produce 467 claims ( $1/2 \times 13.00\% \times 7,193$  attorneys) with an average severity of \$21,000 per claim. As mentioned above, the PLF has actually incurred 433 claims, which we have valued at \$21,000 each. Thus, the present estimate of claims (\$9.09 million =  $433 \text{ claims} \times \$21,000$ ) is approximately \$714,000 less than the expected incurred claims (\$9.81 million =  $467 \text{ claims} \times \$21,000$ ).

### **Claims To Be Reported in the Second Half of 2017**

In the December 31, 2016 valuation, we recommended a total average severity of \$22,500 to value each new claim in the first half of 2017. The first six months of 2017 have subsequently produced both lower frequency and lower severity than we expected. It seems reasonable to assume that claim costs will be somewhat lower

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for 2017 than we have previously assumed. For that reason, we believe that you should value claims at \$21,000 each for the second half of 2017. We suggest that claims incurred in the second half of 2017 should be allocated as follows:

<i>2017 Claims</i>	<i>Selected Severity</i>	
	<i>Indemnity</i>	<i>Expense</i>
Reported in Second Half of Year	\$ 10,000	\$11,000

### *Results*

A summary of the analysis and a calculation of the indicated point estimate of the reserves are presented in Exhibit 1. We have also developed low and high estimates using methodology similar to that described above and based on somewhat less or more conservative judgment in our selection of development factors. Our ranges of estimates for the June 30, 2017 indemnity and expense reserves are displayed below. As indicated in past reports, these ranges are intended to encompass a realistic degree of variation. However, they are not intended to include all possible values.

	<i>Financial Statement Reserve Estimates as of June 30, 2017 (in Thousands)</i>		
	<i>Low</i>	<i>Indicated</i>	<i>High</i>
<i>Indemnity</i>	\$11,100	\$12,800	\$14,200
<i>Expense</i>	10,300	12,700	14,900
<i>Total</i>	\$21,400	\$25,500	\$29,100

To summarize the determination of the reserve estimates:

1. Supplements to the PLF case incurred estimates were developed using a traditional incurred claim development methodology. This analysis is presented in Exhibits 3A and 3B.
2. Adjusted supplements were determined based on an historical analysis of average claims severity as presented in Exhibits 2A and 2B.
3. The adjusted ultimate incurred amounts determined by adding the adjusted supplements to the case incurred estimates were then reduced by payments on open and closed claims to produce the financial statement reserve estimates for unpaid claims as of June 30, 2017.

It should be noted that these estimates do not include provisions for adjusting and other expenses (AOE) or reserves for suspense files and extended reporting coverage. It is our understanding that you will make a provision for these items. We generally find that a provision of 10-15% of the claim reserve is adequate for AOE.

The PLF should maintain an appropriate level of retained earnings or surplus to protect against experience fluctuations and unexpected increases in liability. Attorneys professional liability is an extremely volatile line of coverage and is susceptible to sudden and significant changes. The PLF Primary Fund's experience demonstrates this volatility very well. In December 1999, the Primary Program had retained earnings in excess of \$9 million. The program incurred adverse claim and investment experience resulting in an overall deficit of approximately \$7 million in 2006. The Fund's claim and investment results in 2007 propelled it to positive retained earnings of approximately \$1.3 million. Investment losses of \$7.1 million in 2008 left the Fund with a \$4.9 million deficit at yearend.

In the environment of an insurance company writing only this line of business in a single state, a surplus level equal to at least one-third of written premium would be required. For the PLF this would be approximately \$8 million, and a higher amount of surplus would be considered prudent. The PLF is, however, a different type of entity with a significantly different regulatory environment. The Fund's recent experience provides a good example of the value of surplus. We have seen adverse experience from both claims and investments eliminate a \$9 million surplus in a short time. We recommend that the PLF establish a goal for the Primary Program to accumulate and maintain a surplus of at least \$7 million to \$10 million to absorb adverse claim and investment experience. We note that the PLF raised the Primary Program assessment (premium) by \$400 for 2005, 200 for 2007, and \$300 for 2011. The purpose of these increases was to improve the financial position of the Primary Program. The current assessment rate for the Primary Program is \$3,500 per attorney. The Primary Program has produced profits in 10 of the past 12 years. The losses in the other two years were significant. It lost \$6.2 million in 2008 and 2.44 million in 2011. We recommend that the PLF continue to set assessment rates that help the Primary Program accumulate surplus.

The determination of an appropriate level of surplus requires knowledge of the coverage being written, familiarity with the risk involved, and an understanding of the consequences associated with adverse results. An approach that can help quantify desired surplus levels under a variety of situations involves the use of statistical confidence levels. The first step in this approach is the determination of the mean and standard deviation of the age-to-ultimate development factors derived from the PLF's incurred claim data. Using these parameters and assuming that the



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development factors will approximately follow a Normal Distribution over time, we can determine aggregate incurred claim amounts at various probability or confidence levels.

In Exhibit 8, we have displayed the work done to determine desired surplus amounts at various confidence levels. Please note that the indicated reserves are expected to be adequate approximately 50% of the time. A confidence level of 70% requires approximately \$4.6 million of surplus, and 80% confidence indicates that the Fund should hold \$8.0 million of surplus. A 90% confidence level requires \$12.6 million of surplus. The corresponding values at December 31, 2016 were lower than these values further demonstrating the potential volatility of this insurance. We have said in the past that we believe a 70% confidence level is adequate. However, given the characteristics of the Fund and its exposures, we would not recommend a surplus goal that is less than \$7 million.

If we are going to rely on this method, then we must assume that the Fund's claims can be modeled or approximated by a statistical distribution with these parameters. If we determine that \$12.6 million is the appropriate amount of surplus at a 90% confidence level, then we believe that there is a 90% probability that the claim reserves on the Fund's balance sheet plus \$12.6 million will be sufficient to cover the Fund's liability for unpaid claims. The volatility of the Fund's claim experience, however, highlights a fundamental weakness in the confidence level approach. The various confidence level values have decreased in nine of the past 14 years and have increased in five of those years. This demonstrates that there is enough statistical variation in the data to make modeling the PLF's claims a difficult proposition. The confidence level methodology provides a disciplined approach to estimating an appropriate surplus goal. However, the approach is not precise, and it does not address the issue of asset values or other risk characteristics that the Primary Fund faces. The Fund's assets have played a significant role in the Fund's overall financial results over the past ten years.

We have once again enjoyed working with you. We look forward to any comments or questions you have regarding this report.

Sincerely,



Charles V. Faerber, F.S.A., A.C.A.S

CVF: ms

N:\Clients\OPLF\WPFiles\2017\Morrow0117.doc

# Rudd and Wisdom, Inc.

## CONSULTING ACTUARIES

Mitchell L. Bilbe, F.S.A.  
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Philip S. Dial, F.S.A.  
Philip J. Ellis, A.S.A.  
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David G. Wilkes, F.S.A.

July 27, 2017

Ms. Betty Lou Morrow  
Oregon State Bar Professional  
Liability Fund  
Post Office Box 1600  
Lake Oswego, Oregon 97035-0889

Re: Year 2018 Assessment

Dear Betty Lou:

At your request, we have analyzed the PLF Primary Fund's historical claims data available through June 30, 2017. Based on this analysis, we have projected the expected claim cost for the Primary Fund for the Calendar Year 2018 (CY 2018) and developed recommendations concerning the CY 2018 assessment for the Primary Fund.

Our assignment for this study was to focus on a projection of the Primary Fund's projected claim cost for CY 2018. We have not attempted to address the impact of investment income, installment surcharges, underwriting expenses or unallocated loss adjustment expenses. Based on our analysis we estimate that the PLF Primary Fund's CY 2018 average claim cost per attorney will lie in a range of \$2,100 to \$3,038 (see table on page 7 of this report) with an indicated average claim cost of \$2,500 per attorney. While the indicated claim cost is \$230 lower than what we had last year, I would be reluctant to reduce the assessment. The assessment rate still needs a provision for expenses and perhaps an implicit margin for the potential of adverse claim experience.

At June 30, 2017, the PLF Primary Fund has retained earnings (the equivalent of surplus for an insurance company) of approximately \$13.5 million. The Primary Program had net income of approximately \$5.47 million for the first six months of 2017. At June 30, 2000, the PLF Primary Fund had retained earnings in excess of \$7 million. Shortly after that, a combination of claims experience and investment results

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eliminated the Primary Fund's surplus. With a history of negative retained earnings, it is important that the PLF Primary Fund charge an adequate rate. Net investment income and installment surcharges offset part of the PLF's operating expenses. A supplement to provide for operating expenses is also appropriate. That being said, the Fund's experience has been good over the last 10 years and especially the last eight years. As stated above, a pure premium in the neighborhood of \$2,500 per attorney for the 2018 claim year is reasonably likely to cover the Primary Fund's claim costs. If the Primary Fund covers approximately 7,150 attorneys in CY 2018, then the Primary Fund should expect to increase its surplus by approximately \$715,000 for each \$100 that the assessment rate exceeds the Fund's claim and administrative costs on a per-attorney basis.

In our claim reserve report dated July 25, 2017 we recommended that the Primary Fund keep at least \$7 million of surplus to be able to absorb adverse claim or investment experience which may occur in the future. We also described an approach for quantifying desired surplus levels using statistical confidence levels. In prior studies, we have noted the need for caution in establishing assessment rates for the PLF Primary Fund. This has not changed, and there are several reasons for the Board to exercise caution in setting the rate at this time.

1. The Fund's frequency has been volatile varying from a low rate of 11.2% in 2015 to a high rate of 14.7% in 2004. It has also varied significantly from year to year. This volatility makes it difficult to predict the Fund's frequency for a given year.
2. The Fund's claim costs have had a moderately positive trend since 1993, indicating that claim costs are increasing. Since 1999, the average claim cost per attorney has hovered in a range of \$2,300 to \$3,000 after being in the \$1,800 to \$2,000 range for most of the 1990's. The 2000 and 2001 claim years are the exceptions, as the average claim cost in 2000 spiked to \$3,214 and the claim cost in 2001 dropped to \$1,958. The 2007 (\$1,864) and 2009 (\$3,066) claim years were also outliers in the data.
3. The market value of the Fund's assets has been volatile, producing large gains in some years and losses in others during the past 22 years.
4. The Fund currently has a surplus position of approximately \$13.5 million. This is a good position for the Fund. It must be noted, however, that the Primary Fund had accumulated a \$10 million surplus at the end of 1999 that evaporated rather quickly due to bad investment and claim experience. Volatile asset values tend to exacerbate a low or negative surplus position. Surplus enables an insurance

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company or fund to withstand adverse experience (whether it is due to claims or asset values) without having to take drastic measures.

### **Data and Methodology**

The analysis utilizes case incurred amounts for indemnity and expense as of June 30, 2017, provided by the PLF staff. The term "case incurred" is used herein to describe the estimated value placed on a claim by the PLF staff. The value includes both the paid and unpaid portions of the claim. The indemnity and expense components of incurred claims for each semiannual reporting period are reviewed separately. These amounts have been developed based on actuarial development factors, which are used to estimate the amount by which ultimate losses can be expected to differ from the case incurred amounts established by the PLF. We make this determination by analyzing the actual periodic changes (measured at semiannual intervals) in case incurred amounts. The purpose of this approach is to adjust for any pattern of over or under-reserving by the PLF staff that may have appeared in the experience data.

The methodology and judgment utilized in selecting the actuarial development factors for this review are consistent with that utilized in our determination of reserves for unpaid losses as of June 30, 2017. While the development factors used in this analysis represent our best judgment concerning future development patterns, it should be noted that attorneys professional liability insurance is a volatile line of business that is affected by legislation, judicial interpretation and the economy. This may cause future development patterns to differ from those exhibited in the claim data at June 30, 2017.

The PLF has provided information concerning the historical and estimated future number of covered attorneys. This has provided the basis for the exposure data used in our analysis. In prior studies, the number of full pay attorneys was determined as the total assessment for a given year divided by the assessment rate for the year. Effective with the 2006 plan year, the PLF reduced the discounts given to attorneys with limited prior PLF coverage ("step rating"). This distorts the calculation of the number of full pay attorneys as the same number and distribution of attorneys will now generate more assessment dollars. Based on data from 2001 through 2005, this change generated approximately 2% more assessment dollars and therefore 2% more full pay equivalent attorneys. In prior studies, we adjusted the number of full pay attorneys for 2006 and 2007 to get the exposure data on a basis consistent with earlier years. For this analysis, we have restated the number of covered attorneys for 2008 and later to reflect a more accurate attorney count. There have been additional changes to the rating structure and the values used in recent studies has somewhat

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understated the number of covered attorneys. With the resulting higher attorney counts, the historical frequencies are slightly lower. However, we believe that these values paint a more accurate picture of the experience.

In this analysis, we have concentrated only on the claim costs. We have made no calculations of 2018 investment income or operating expenses. It is our understanding that the PLF staff will include a discussion of those factors in their recommendations regarding the 2018 assessment.

### **Provision for Claims**

The foundation for the determination of a provision for claims is the expected claim cost for the assessment period. This analysis anticipates a calendar year 2018 assessment period with the bulk of the policies written January 1, 2018. To determine the expected claim cost for this period, we used the following approach:

1. Claims experience was analyzed for calendar years 1983 through 2016. The ultimate incurred claims used in this analysis are the same as those determined in connection with our estimate of PLF Primary Fund reserves as of June 30, 2017. We have described the methodology used in that determination in separate correspondence.

Exhibit 1 presents a summary of this analysis, including ultimate incurred claims, number of claims, frequency, severity, and claim cost for calendar years 1983 through 2016. The average claim cost per attorney for calendar years 1983 through 2016 is displayed in the column captioned "Untrended Claim Cost." The untrended claim cost is determined by dividing (a) the ultimate incurred claim amounts reported during each calendar year by (b) the attorney exposure for that year. Therefore, the claim cost represents the average incurred claims for an average attorney insured for the full calendar year. The values described above are also displayed for the first six months of 2017.

There is a special claim situation for this study. In 2012 and 2013, 160 claims were reported from a single attorney. The aggregate limit for these claims is \$350,000. These claims have all closed and their aggregate value did not exceed \$350,000. For claim count and frequency purposes, these claims were treated as a single claim. To do otherwise would distort our results.

2. The current coverage limits (\$300,000 per claim) have been in place since 1987. We have focused our analysis on the experience period, which includes calendar

Ms. Betty Lou Morrow  
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years 2007 through 2016. We note that a \$25,000 claim expense allowance was implemented in 1995 and an additional \$25,000 claim expense allowance (for a total of \$50,000) was added in 2005. The experience for periods since 1995 reflects the first allowance. Only the 2005 through 2017 experience reflects the second expense allowance. We do not believe that the impact of the second allowance on claims expense is significant enough to invalidate the use of data from previous periods in our analysis. We have omitted the 2017 claims from the experience period because these claims are new, and there is only six months of data. Each calendar year claim cost is trended to the middle of CY 2018, the approximate midpoint of the exposure to be incurred during the assessment period. The purpose of trending is to recognize the tendency of claim costs to increase over time.

3. Selecting an appropriate trend rate is an important step in applying the methodology described above. The 1997 - 2016 experience period indicates a trend of approximately 0.5%. Between 1992 and 1998, claim costs were flat (i.e., no measurable trend) with values in a range of \$1,800 to \$2,000 per attorney. The 1999 and later claim years give the trend line an upward slope because average claim cost increased by approximately \$560 per attorney in 1999 and the average cost has been in the mid-to-high \$2,000 range since that time. The net effect of this experience is that it is difficult to select a specific trend. However, we note that the Primary Fund's claim cost trend has generally been in the 0% to 2% range.
4. Having established a framework for reviewing the claims experience, we must develop a method for determining the expected cost of claims to be reported in CY 2018. For this purpose, we have employed two different approaches:
  - a. Based on the analysis described in (1) through (3) above we have selected a range of claim cost trends that we believe to be appropriate. These trends are applied to each calendar year's untrended claim cost to produce for each calendar year a range of claim costs trended to July 1, 2018. The averages of these trended claim costs provide a range of expected claim costs for claims to be reported in 2018. These calculations are displayed in Exhibit 1.
  - b. As an alternative to the approach described above we have used the claims data and professional judgment to select a range of claim frequencies and a range of average claim severities. Multiplying the claim frequencies by the average severities also produces a range of expected claim costs. This approach is displayed in Exhibit 2.

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5. For each of the methods described above parameters representing expected future claim experience must be selected. The following paragraphs describe our rationale for the parameters we have selected.
  - a. As stated above, the first method requires the selection of appropriate trend rates for annual claim costs. In Exhibit 1, we have selected 0.50%, 1.00%, and 2.00% trends for our range of values. As we noted in the reserve report, the selection of beginning and ending points can have a significant impact on the conclusions about average trend rates. Depending on the period selected, the PLF Primary Fund has had claim cost trends in the 0% to 2% range.
  - b. To implement the second method, selection of appropriate claim frequency and claim severity parameters is required. At the low end, we have selected a 12% frequency and a \$17,500 average severity. Since 1995, there have been 11 years with claim frequencies less than 13%. It should be noted that the frequency since 2011 (including the first six months of 2017) has been less than 13% in every year. The average claim size has been at or below \$17,500 in four of the past 18 years. Even so, these parameters would be characterized as optimistic.

The indicated estimate is based on 12.50% frequency and \$20,000 severity. These are lower than the parameters we employed in the assessment study we performed last year. The PLF Primary Fund's average frequency since 2007 is 12.4% if we ignore the 160 claims generated by the one attorney in 2012 and 2013. The Primary Fund experienced claim frequency of 13% or higher every year between 1997 and 2005. The frequency for 2008 through the 2011 averaged 13.10% after two years at 11.90%. We believe that we should pick parameters that give the program a good chance to be adequate.

The Primary Fund's average claim size (i.e., severity) is a more difficult selection. Between 1993 and 1998, the average severity never exceeded \$14,500, falling in a range of \$12,600 to \$14,500. In 1999, severity jumped to \$16,530 and spiked to \$23,593 in 2000. The average claim severity for the last 10 years is \$19,659 without the 160 claims. Over the past five years it has been \$19,520 without the 160 claims. Based on recent experience, we believe that \$20,000 will prove to be an adequate severity estimate for 2018 claims.

With a surplus of approximately \$13.5 million, we believe that the Board should set the assessment rate for 2018 to cover the claim cost and operating expenses. At the current surplus level, the need to increase the Primary Fund's retained earnings is not as important as it has been in prior years.

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At the upper end of the range, we have selected a 13.5% frequency and a \$22,500 average severity. The PLF Primary Fund has experienced frequency in excess of 14% in 1995, 1999, and 2004. Two of the ten full years since 2006 have produced an average severity at or above \$22,000, and one of those years had an average severity of approximately \$22,600. The first half of 2017 has been set at \$21,000. The average severity for claim year 2000 (\$23,593) is the largest in the Fund's history.

- c. We have noted in the past that attorneys professional liability insurance is a volatile line of business. It is reasonable to expect that there will be years in the future that will have significantly higher than expected claim costs. Years with lower than expected claim costs are also to be expected. This uncertainty with regard to future experience suggests the need for caution in rating.

6. The table below summarizes our estimates of the CY 2018 expected claim cost.

<i>Estimate</i>	<i>Method 1 Average Trended Claim Cost</i>	<i>Method 2 Frequency x Severity</i>
Low	\$ 2,510	\$ 2,100
Indicated	2,595	2,500
High	2,772	3,038

These results are somewhat lower than the results from the analysis we did last year. The results from Method 1 are lower in this year's analysis than the corresponding values from last year's study because we have shifted to lower trends. The results from Method 2 are lower for the indicated and upper estimates because we have selected lower frequencies and severities than we did last year. As a check on the reasonableness of the results from Method 2, we have determined the trend rates applied to the average trended claim costs over the 2007 – 2016 period, which produce expected claim costs approximately the same as the three estimates. A negative 2.20% trend reproduces the low estimate, while a 0.45% trend produces the indicated estimate and a 3.40% trend is needed for the high estimate. These determinations were made to provide additional perspective to the analysis. The Method 1 calculations are presented in Exhibit 1. The Method 2 calculations are presented in Exhibit 2.



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### **Rating Margin: Theoretical Considerations**

Generally, it is appropriate to include in an insurance rate a provision for adverse deviation from expected experience. The purpose of this rating margin is to increase the insurance organization's chances for rating adequacy by making a reasonable provision for adverse fluctuation in claims experience.

Because this methodology utilizes the average trended claim cost from the experience period, statistically, there is a 50% probability that actual results will be better than expected and a 50% probability that actual results will be worse than expected, assuming the trend factor provides an appropriate basis for projection. The typical insurance organization considers it prudent to increase its probability of success substantially above the 50/50 position. This is accomplished by establishing a rating margin either statistically, based on the observed fluctuations in the experience data, or subjectively, based on actuarial and management judgment.

It is sometimes appealing to establish the margin based on a mathematical measure of the statistical fluctuation observed in the experience data, e.g., the standard deviation. Frequently, however, the data is not sufficiently credible for such a purpose and, in any event, the approach may be too esoteric. As a result, it is often convenient and equally effective to establish the margin based on a subjectively chosen percentage of the expected claim cost. The selection of the percentage margin requires management to exercise judgment based on the organization's willingness to accept risk, its ability to withstand adverse experience, its position in the competitive market, etc.

The ability of the typical insurance organization to withstand adverse experience depends in part on the adequacy of its surplus (the equivalent of the PLF Primary Fund's retained earnings). A strong surplus position permits a lower rating margin, while a weaker surplus position would require a larger margin. Likewise, an organization's surplus relative to its surplus goal might also influence management's judgment regarding the margin to be included in its rates.

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing its rates. The mandatory participation requirement and PLF's ability to establish future assessments to fund prior deficits provide at least as much protection against adverse experience as a strong surplus position provides to the typical commercial insurer. As a result, a rating margin is not nearly as important to the PLF Primary Fund as it is to the typical insurer and management has more discretion in the judgment it exercises in this regard. While there is certainly an argument to be made that under normal circumstances the PLF Primary Fund should

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incorporate no margin in its rating, some consideration may be in order concerning minimizing the frequency of rate adjustments, retained earnings position and goals, etc.

### **Rating Margin: Practical Considerations**

The PLF's unique circumstances allow it to be significantly less conservative than a commercial insurer in establishing rates. Nevertheless, there are several considerations, which indicate that under certain conditions some additional margin in the rate may be appropriate:

1. The Primary Fund presently has a reasonable amount of positive retained earnings. A margin in the assessment rate would enable the Primary Fund to increase its retained earnings and provide a better cushion to absorb adverse claim experience, such as a higher than expected number of reported claims or adverse development on existing and future claims. This point is not as important as it has been in past years. However, the Primary Fund's current surplus should not be considered excessive.
2. The Primary Fund's assets are reported at market value, and investment results vary from year to year. The PLF uses asset allocation to limit volatility but investment income can not be predicted precisely for rating purposes. Thus, investment risk, as well as claim risk, becomes an important consideration in the rating process.

In spite of the considerations listed above, there are also factors, which indicate that an additional margin in the rate may not be needed at this time:

1. Attorneys are required to participate in the PLF's Primary Fund, and the PLF has the ability to set future rates at whatever level it deems necessary to maintain the financial soundness of the Fund.
2. The PLF also operates an Excess Fund to provide attorneys with coverage in excess of \$300,000. The Excess Fund currently (through June 30, 2017) has retained losses of approximately \$48,000. While the accounting on the two Funds is separate and it is not the goal of the PLF staff for the Excess Fund to subsidize the Primary Fund, the assets of the two Funds are commingled, and nothing prevents the two Funds from supporting each other financially.
3. Unlike other members of NABRICO, the PLF's Primary Fund is not constrained by competition. Since the coverage is mandatory, the PLF has the ability to assess

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policyholders to meet the Primary Fund's financial needs without fear of losing market share. The staff and Board of Directors of the PLF believe that they have an obligation to the attorneys of the state of Oregon not to abuse this privilege. Thus, they are reluctant to overreact to adverse experience. They will implement rate increases when experience clearly dictates that increases are required.

For your consideration, we have developed expected CY 2018 claim costs without a margin and with 10% and 15% margins. A 10% margin is subjective and is a commonly used level in much of our rate work with other insurance entities. For the values displayed in Exhibit 1, one standard deviation is approximately 15% of the expected claim cost. The table below summarizes our estimates of the CY 2018 claim costs:

<i>Claim Cost Estimates</i>	<i>Expected CY 2018 Average Claim Cost</i>					
	<i>Average Trended Claim Cost Method</i>			<i>Frequency x Severity Method</i>		
	<i>No Margin</i>	<i>10% Margin</i>	<i>15% Margin</i>	<i>No Margin</i>	<i>10% Margin</i>	<i>15% Margin</i>
Low	\$2,510	\$2,761	\$2,887	\$2,100	\$2,310	\$2,415
Indicated	2,595	2,855	2,984	2,500	2,750	2,875
High	2,772	3,049	3,188	3,038	3,342	3,494

Prior to 1999, we had recommended rates that proved (with the benefit of hindsight) to be too high. The rates proposed for the 2000 through 2004 rate studies have proven to be inadequate. For the 2000 through 2017 policy years, we had projected pure premiums (i.e., claim costs) between \$1,958 and \$2,730. At this point, we believe that the actual claim costs for those years will be between \$1,864 and \$3,214. The table below summarizes these results:

<i>Policy Year</i>	<i>Expected Claim Cost at Time of Study</i>	<i>Estimated Claim Cost at 6/30/2017</i>
2000	\$ 1,958	\$ 3,214
2001	1,980	1,958
2002	2,160	2,338
2003	2,236	2,622
2004	2,228	2,539

Ms. Betty Lou Morrow  
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<i>Policy Year</i>	<i>Expected Claim Cost at Time of Study</i>	<i>Estimated Claim Cost at 6/30/2017</i>
2005	2,520	2,581
2006	2,538	2,198
2007	2,544	1,864
2008	2,470	2,911
2009	2,527	3,066
2010	2,633	2,467
2011	2,730	2,401
2012	2,700	2,299
2013	2,768	2,435
2014	2,730	2,257
2015	2,730	2,294
2016	2,730	2,295
2017	2,730	2,528

We believe that \$2,500 per attorney is reasonably likely to cover the cost of 2018 claims. This is a lower value for the claim cost than we have proposed in the analyses we have performed for the past three years. This value reflects lower frequency (12.50%) and claim severity (\$20,000) that we used for those years. Please note that this rate is based on professional judgment and a focus on recent claim experience.

### **Important Considerations**

#### ***Credibility***

Attorneys professional liability insurance is a low frequency, high severity exposure. Accordingly, a block of attorneys professional liability insurance policies generates lower credibility than a similar-sized block of a high frequency, low severity exposure like automobile insurance. Due to its size and nature, the PLF Primary Fund's block of business does not possess as much credibility as an actuary would prefer in developing rates. While one would prefer to enhance the predictability of

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experience by relying upon an outside source of data to compliment PLF Primary Fund's actual experience, we do not believe that any reasonably comparable body of data exists. This is the result of the lack of industry loss data for this line of coverage and the tremendous variations in risk among jurisdictions. We believe that the economic and judicial climate that exists in Oregon is substantially different from that of other jurisdictions. In addition, due to its mandatory nature, the PLF Primary Fund claim experience can be expected to be substantially different from that of other jurisdictions. This difference renders loss data developed in other jurisdictions inapplicable for the purpose of establishing rates for Oregon attorneys. Accordingly, despite expected weaknesses in the credibility of the historical data, we believe it is the best basis for establishing PLF Primary Fund rates.

### *Retained Earnings*

We understand that the PLF Primary Fund has a goal of maintaining a level of retained earnings (surplus) sufficient to stabilize assessments. The question of how much surplus the PLF Primary Fund should maintain has been considered. In our reserve report dated July 25, 2017, we have discussed an approach that may help the PLF Primary Fund quantify its desired surplus level. It is clear to us that it is beneficial for the Primary Fund to have some surplus. It is also clear that the PLF was not established for the purpose of making a profit. The mandatory nature of the PLF Primary Fund and its ability to assess covered attorneys suggests a significantly smaller amount of surplus than would be appropriate for a commercial insurer or for one of the PLF's sister organizations in other states.

### *Miscellaneous Issues*

Attorneys professional liability insurance has been a volatile line of coverage subject to sudden adverse change. To the extent that unexpected adverse occurrences influence the PLF Primary Fund's experience, projections of expected claim cost and the assessment based on these conclusions could prove inadequate. Significant upward trends in the claim cost of attorneys professional liability insurance have occurred in some jurisdictions. The potential for change makes periodic rate analyses necessary. We suggest that these analyses continue to be performed on an annual basis.

While the PLF must cope with the uncertainty and volatility associated with the attorneys professional liability line of coverage, it has significant advantages over other organizations. These advantages enhance the PLF's chances for appropriately establishing the assessment. The mandatory nature of the program avoids the disruption that occurs in a commercial company's block of business that results from

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consumer response to the competitive market. The PLF is not required to make assumptions regarding its exposure base for the period for which the assessment is to be established. Also, writing one policy form with uniform coverage features and limits and a common renewal date greatly strengthens the rating process. Because of these attributes, the PLF does not have to "aim at a moving target," as do its sister organizations in other states. While periodic analyses are important to the PLF's success, the resulting revisions are more likely to be refinements than sudden large increases.

As in the past, we have enjoyed the opportunity to work with you and we look forward to discussing the results of this analysis. If you have any questions, or if there are other issues that should be addressed, please let us know.

Sincerely,



Charles V. Faerber, F.S.A., A.C.A.S

CVF: ms  
Enclosure

cc: Mr. Philip S. Dial

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**Memo Date:** August 29, 2017  
**From:** Kaori Tanabe Eder, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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A nominating committee, consisting of Jenn Nicholls, Kaori Eder, and Jay Sayles, was approved by the executive committee. They plan to have a 2018 slate prepared shortly. The following seats will be up for election this year: two member at-large seats and region positions for regions 1, 3, 4 and 5.

The Continuing Legal Education Subcommittee held a Settlement brown bag CLE on August 28 and have another brown bag CLE scheduled in September. The Chairs have been meeting with Barbara Fishleder of the PLF and plan to coordinate CLEs with the PLF. The ONLD will co-sponsor of PLF's Learning the Ropes seminar, and will help find speakers and refine the program.

The Pro Bono Subcommittee continues to work on the Fair, CLEs and award presentation. The subcommittee has also hosted one Wills for Heroes event in Clackamas County and are preparing for another one in Eugene.

The Law School Outreach Subcommittee has new law student representatives from all three law schools.

Jaimie Fender has organized a CLE series with the Military & Veterans Law Section. The next CLE will be in Eugene and focus on LGBTQ service members and veterans. Jaimie is working on finding a local company to simulcast the CLE. Two more CLEs will follow to round out the year. She is also looking into the ONLD possibly hosting a legal film festival in 2018.

Jaimie Fender will be launching the first ONLD Podcast (Ex Pod Facto) in October, and the theme will be pro bono in light of the pro bono week taking place that month. Currently, there is a competition for a theme tune for the podcast.

The ONLD is partnering with the MBA to address homelessness in Multnomah County. Joel Sturm joined the MBA task force and is actively participating in the research and discussions related to homelessness.

The ONLD is organizing a project inspired by an ABA initiative aimed at diversifying the Bar. A large group of high school students from Franklin High School will be participating in a one day program organized by the ONLD. The students will attend a panel presentation at the Multnomah County courthouse consisting of a local attorney, who will discuss the pathway to become a lawyer, a representative from PSU, who will discuss financial aid options and admission criteria at the college level, and a representative, who will discuss financial aid options and admission criteria at the law school level. After the presentation, the students will be matched with local attorneys who will take the students out to lunch and give them a tour of their law firms. After the tour, the students will watch a mini mock trial with Bill Uhle, Sam

Leineweber from the Multnomah County District Attorney's office, a judge from Multnomah County and possibly a volunteer sheriff.

Andrew Gust and subcommittee members from the Law Related Education Subcommittee are partnering with the courts to work assist with preparation of materials for victims of domestic violence.

The Executive Committee continues to examine ways in which technology will impact the future of the profession. They had a generative discussion both about ways to make their own practices more efficient and whether the ONLD should host a technology fair at some point.

The Executive Committee members represented the ONLD at the OLIO orientation held at Salishan. The event went well and students and attorneys enjoyed the casino night games that the ONLD organized.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Legal Ethics Committee  
**Re:** Collaborative Law in Oregon

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### Action Recommended

Consider how to respond to the Oregon Law Commission's request for input on a proposal to enact the Uniform Collaborative Law Act into Oregon law.

### Background Information

The Oregon Law Commission has received a proposal to enact the Uniform Collaborative Law Act (UCLA) into Oregon law. The Commission has requested input from the Bar and has asked for a response by fall 2017. Because enacting the UCLA may implicate ethics rules, the Legal Ethics Committee is providing feedback.

In collaborative law, the parties agree in a "collaborative law participation agreement" not to seek a judicial resolution, but instead to "negotiat[e] a mutually acceptable settlement without court intervention, to engag[e] in open communication and information sharing, and to creat[e] shared solutions that meet the needs of both clients." See ABA Formal Ethics Op No 07-447 (discussing core elements of collaborative practice).

The UCLA was drafted by the Uniform Law Commission, and is designed to implement a uniform system of "collaborative law" through court rule or statute. A UCLA collaborative participation agreement specifically provides for prospective disqualification of collaborative lawyers if their clients decline to continue the collaborative law process. In other words, either party can terminate the collaborative process at any time, but in order to do so both of their lawyers must "withdraw from representing their respective clients" and agree not to "handle any subsequent court proceedings." *Id.* Practically, this prospective disqualification acts as a penalty, because if the collaborative process is unsuccessful the parties must retain (and pay for) new lawyers. Further, the clients may not rely upon any of the information obtained during the collaborative process in subsequent litigation; instead, they must rely on the usual discovery processes.

In the family law context, collaborative law enjoys sufficient popularity among the public and family law practitioners to have come to the Oregon Law Commission's attention. While some version of the UCLA has been adopted in sixteen states, its

acceptance among lawyers is not as widespread. Instead, the UCLA was soundly rejected by the American Bar Association’s House of Delegates (by a margin of 2-1), as well as by the Board of Governors of the American Academy of Matrimonial Lawyers. Based on anecdotal information, some Oregon practitioners are presently marketing “collaborative law” services, although it is unclear whether they are practicing in the manner described by the UCLA.

Although little empirical data exists on the benefits of collaborative law, its proponents promise a “more civilized” process for divorce litigation: one that gives the clients more control over the process and the outcome and is generally more satisfactory in terms of preserving cooperative family relationships following the divorce. A useful overview of the legal and practical issues presented by collaborative law is provided by John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 Ohio St L J 1315 (2003).

## Discussion

### 1. Oregon Lawyers May Already Practice Collaboratively.

Any discussion of collaborative law in Oregon must begin with the observation that much of what collaborative lawyers and their family law clients seek to accomplish under the UCLA can already be accomplished under existing Oregon law. For instance,

- Oregon lawyers are explicitly allowed to limit their representation of clients (*e.g.* to only pre-filing non-litigation matters), so long as the limitation is a reasonable one under the circumstances, and the client can rely on the advice provided. *See* RPC 1.2(b).
- Recently, the courts explicitly authorized limited-scope representation in family law cases and provided special procedures for lawyers appearing in a limited capacity. *See* UTCR 8.110.
- In family law disputes, parties often choose to mediate their disputes using third-party mediators. Under existing law, mediation communications are confidential. *See* ORS 36.222. In addition, the parties to a dispute may agree to confidentiality provisions for their negotiations that they find desirable.

### 2. The Court Is in the Best Position to Make Decisions Regarding Lawyer Disqualification.

The Oregon Law Commission has signaled it is considering recommending that the Legislature enact the entire UCLA, including its disqualification provision, by statute. It has long been the position of the bar, however, that regulating lawyer conduct, including lawyer disqualification, is the province of the court. After all, the court is in the best position to regulate legal practice, and control the proceedings before it.

Under the UCLA, clients agree to disqualification of both lawyers and their respective law firms in the event that the collaborative process fails, and the Act itself purports to disqualify the lawyers from further representation:

“SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND  
LAWYERS IN ASSOCIATED LAW FIRM.

- (a) Except as otherwise provided in subsection (c),<sup>1</sup> a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.
- (b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

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Enacting this provision of the UCLA by statute would be inconsistent with the current scheme for the regulation of lawyers. The Oregon Rules of Professional Conduct place the power to disqualify lawyers or remove them from cases squarely with the court. For instance, if a lawyer identifies an existing conflict of interest in a pending case, the rules provide the lawyer must seek permission prior to withdrawal if court rules require the lawyer to do so. RPC 1.16(c). If the court decides that withdrawal is not warranted or it serves the interests of justice for the lawyer to remain, the court may order the lawyer to continue the representation. *Id.* Similarly, in instances where a lawyer is an advocate in a trial in which the lawyer is likely to be a witness on behalf of the lawyer’s client, the rules allow the court discretion to determine whether disqualification of the lawyer would “work a substantial hardship on the client.” RPC 3.7(a)(3).

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<sup>1</sup> Section 9(c) of the Uniform Collaborative Law Act contains exceptions for lawyers who are asking for court approval of an agreement resulting from the collaborative law process, or “to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party” if successor counsel is not “immediately available.”

Finally, in instances where lawyers seek to disqualify opposing counsel, the court exercises its inherent authority to determine whether disqualification is appropriate. The court's right to disqualify stems from its duty to "prevent breaches of trust and to control the proceedings before it." *The Ethical Oregon Lawyer* §10.3-5, citing *State ex rel. Bryant v. Ellis*, 301 Or 633, 638–39 (1986).

Ensuring that judges retain the power to make decisions regarding lawyer disqualification is fundamental to ensuring the court's power to regulate the practice of law. Such an approach is also well grounded in practical reality – after all, judges have the ability to examine the facts and law before them, and to rule in a manner that serves justice. Enabling statutory provisions to determine when and whether lawyers are disqualified from practicing law could have unintended consequences. Therefore, if any disqualification provision is enacted, the Committee recommends it be enacted by court rule.

3. Collaborative Law Participation Agreements Authorized by the UCLA May Implicate the Oregon Rules of Professional Conduct and Confuse Lawyers

The UCLA's form of collaborative law may also implicate the Oregon Rules of Professional Conduct, and potentially place lawyers in jeopardy of running afoul of the prohibition on restrictions on the right to practice.

The Oregon Rules of Professional Conduct do not permit lawyers to participate in offering or making an agreement, as a part of the settlement of a dispute that limits the lawyer's right to practice. Instead, Rule 5.6(b) provides:

"A lawyer shall not participate in offering or making:

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(b) an agreement in which a direct or indirect restriction on the lawyer's right to practice is part of the settlement of a client controversy."

See OSB Formal Ethics Op 2005-47 (Neither plaintiff's counsel nor defense counsel may offer or agree to settle litigation on the condition that plaintiff's counsel agree not to sue the defendant again).

The policy rationale for this limitation is both to protect the autonomy of lawyers and to prevent "limits" on "the freedom of clients to choose a lawyer." Comment [1] to ABA Model Rule 5.6. The prohibition is intended prohibit all such restrictions, "except for

restrictions incident to provisions concerning retirement benefits for service with the firm.” *Id.*

There is no Oregon case law or ethics opinion addressing whether a collaborative participation agreement’s prospective disqualification of the collaborative lawyers implicates Rule 5.6(b).<sup>2</sup> Likely, any analysis by an Oregon court regarding Rule 5.6 would turn on whether such an agreement would be deemed an “indirect or direct” limitation on a lawyer’s right to practice that is “part of” the settlement of a client controversy.

Because the purpose of the collaborative participation agreement is to set out a framework for settlement negotiations, it seems plausible that a court could find such an agreement implicates RPC 5.6(b). It appears that collaborative law participation agreements under the UCLA would both limit the lawyer’s right to take the client to trial if that is what the lawyer and the lawyer’s own client decide is the best option, and would limit the lawyer’s ability to represent that client in future court proceedings related to the underlying dispute (e.g. post-judgment matters).

Some state ethics opinions have suggested that collaborative law participation agreements may give rise to a lawyer self-interest conflict, because a lawyer interested in maintaining a collaborative practice may be self-interested in advising the client to agree to a participation agreement. RPC 1.7(a)(2). These authorities typically conclude that, with proper informed consent, it may be possible to waive any self-interest conflicts created by a lawyer’s involvement in negotiating a collaborative law participation agreement, as long as the lawyer reasonably believes he or she can provide competent and diligent representation. *See* RPC 1.7(b).<sup>3</sup>

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<sup>2</sup> The authorities are split on whether collaborative law participation agreements are ethical. Interestingly, the formal ethics opinion of the American Bar Association, widely cited as approving the practice of collaborative law, does not address the potential RPC 5.6 issue. *Ethical Considerations in Collaborative Law Practice*, ABA Standing Comm. on Ethics and Prof’l Responsibility, Formal Op 07-447 (2007). Similarly, many state ethics opinions that address the ethical implications of collaborative law participation agreements do not discuss whether mandatory prospective disqualification implicates Rule 5.6. *See* Maine Ethics Op. 208 (March 6, 2014); Orange County Bar Association Formal Opinion 2011-01; North Dakota Opinion 12-01 (July 31, 2012); New Jersey Ethics Opinion 711 (July 23, 2007).

<sup>3</sup> A number of state ethics opinions discuss collaborative law participation agreements and conclude they give rise to a waivable conflict, under Rule 1.7, without analyzing the Rule 5.6 question. *See* South Carolina Opinion 10-01 (March 31, 2010); Alaska Opinion 2011-3 (May 3, 2011); Washington Opinion 2170 (2007); Kentucky Opinion E-425 (June 2005); Missouri Opinion 124 (August 20, 2008).

Colorado is the only state, to our knowledge, to determine that collaborative law participation agreements with prospective disqualification provisions may run afoul of ethics requirements. See Colorado Opinion 115 (February 24, 2007). The Colorado opinion concludes that a lawyer may not use a collaborative law retainer agreement that requires the lawyer to withdraw if the client or adversary chooses to litigate the matter rather than continue the collaborative process. The opinion explains that such a provision would create an unwaivable conflict between the lawyer and client, because it would allow an opposing party to exercise the disqualification provision over the objections of the client; therefore, it concludes, such an agreement would run afoul of Rule 1.7.

The UCLA attempts to overcome any potential inconsistencies with Rules of Professional Conduct by merely stating that the Act “does not affect ... the professional responsibility obligations and standards applicable to a lawyer or other licensed professional.” UCLA at Section 13. This provision does very little to provide clarity to practicing lawyers. The Committee is concerned that enacting the UCLA in its current form could create needless confusion among Oregon attorneys about the propriety of collaborative law participation agreements that contain prospective disqualification provisions.

4. The BOG Could Oppose Provisions of the Act Related to Prospective Disqualification, and Later Explore Potential Amendments to the Rules of Professional Conduct.

Given this background, the Committee proposes that the Board oppose adoption of the provisions of the UCLA pertaining to prospective disqualification, on the principle that any such provisions should be enacted by court rule. This approach would be consistent with Comments to the UCLA (as Amended in 2010), which provide, “The Drafting Committee recommends that Section 9 [pertaining to disqualification] be enacted by judicial rule rather than legislation.”

With this approach, upon enactment of the UCLA without disqualification provisions, the bar could explore an amendment to the Oregon Rules of Professional Conduct to enable lawyers to participate in offering or making collaborative law agreements that contain a prospective disqualification provision.

This Committee would welcome the opportunity to propose a rule amendment at the Board’s request at a later date, if the UCLA is enacted. Because no version of the UCLA has been adopted, it is difficult to propose language at this time.

### Conclusion

In conclusion, everything about a collaborative participation agreement, except the prospective disqualification provision, can be accomplished under current law.

What is unique and different about the UCLA's version of collaborative law is the disqualification provision itself; the utility of that provision to any particular client is unclear. Allowing the courts to remain engaged in decisions about lawyer disqualification would help protect vulnerable litigants and support the bar's access to justice mission.

### Options

**Option 1: Take no position at this time.** Refer matter to Public Affairs Committee to provide a response to the Oregon Law Commission. This option would provide the PAC with flexibility to respond and take positions during the legislative session, but would not provide a clear path to amending the Oregon Rules of Professional Conduct.

**Option 2: Oppose Act as written and not propose amending the RPCs.** This option would support the status quo, but political realities may result in the Act's passage, as written.

**Option 3: Oppose the prospective disqualification provisions of the Act, but offer to explore amendments to the Rules of Professional Conduct.** This option would recognize Oregon family law lawyers' interest in the practice collaborative law, while working to ensure the court's continued involvement in questions of disqualification of lawyers.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Legal Ethics Committee  
**Re:** Proposed Amendment to Oregon RPC 8.3  
Mediation Communication Confidentiality

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### Action Recommended

Amend lawyer's duty to report misconduct under Oregon RPC 8.3 to resolve potential inconsistency with duty to maintain confidentiality of mediation communications.

### Background

At the July 21, 2017 Board of Governors' meeting, Rich Spier presented the Fee Mediation Task Force Report and asked the BOG to consider its recommendations. After accepting the report, the BOG directed the Legal Ethics Committee to consider how to best resolve the inconsistency between the duty to report attorney misconduct under Oregon RPC 8.3 and statutory protections for mediation communications.

In its report, the Fee Mediation Task Force recommended:

"The BOG should ask the Legal Ethics Committee to address appropriately, whether by an ethics opinion, rule amendment, or other vehicle, the inconsistency between the prohibition from disclosing confidential mediation communications under ORS 36.220 and a lawyer mediator's duty under RPC 3.4(c) and the duty under RPC 8.3 to report certain ethical misconduct when knowledge of the perceived misconduct is based solely on "confidential mediation communication."

Oregon RPC 8.3(a), provides that a lawyer who "know that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer" must report the other lawyer to the bar. If, however, the lawyer learns of another lawyer's RPC violation in the course of a mediation—the communications of which are confidential under ORS 36.220—the lawyer may be uncertain whether to report the misconduct. A lawyer under those circumstances may rightfully be wary of making a bar complaint that discloses confidential mediation communications. After all, lawyers can be disciplined for disclosing confidential mediation communications. *See In re Dodge*, 22 DB Rptr 271 (2008) (lawyer disciplined for disclosing confidential mediation communications pursuant to Rule 3.4(c)).

This issue is most likely to arise for lawyers serving as mediators. If a lawyer is serving as a lawyer to a party in mediation then it is very likely that any report that comes up in the context of a mediation will be prohibited by Rule 8.3(c)'s exception for information "otherwise protected by Rule 1.6 or ORS 9.460(3)" and the issue will not arise.



## DISCUSSION

Determining whether it is appropriate to amend the Rules to provide an exception for reports based upon mediation communications requires weighing the interests of the regulatory system in learning information about potential lawyer misconduct against the interests of mediation participants (and the public at large) in maintaining confidentiality.

The Legal Ethics Committee weighed these interests and concluded that lawyers have a legitimate interest in having a clear understanding of when it is appropriate to report in the context of mediations. The potential inconsistency between Oregon RPC 8.3 and ORS 36.222 may create a scenario where lawyers have no clear path forward. The Committee also noted that the Legislature made a policy decision that it is in the best interest of Oregonians to facilitate alternative dispute resolution by allowing for the confidentiality of mediation communications. In light of this legislative decision, the Committee determined an amendment to Oregon RPC 8.3 was in order.

The Committee recommends that the Board adopt the following amendment, which would add a new section (d) to Oregon RPC 8.3, as follows:

### RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:

(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

(2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or

(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

**(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.**

## OPTIONS

1. **Adopt Proposed Amendment to Oregon RPC 8.3 and Place Matter on 2017 HOD Agenda.**  
Amend Oregon RPC 8.3 to provide an exception for confidential mediation communications.

This option would resolve the potential inconsistency between a lawyer's duty to report misconduct and obligation not to disclose mediation communications.

2. **Provide Guidance.** Direct Legal Ethics Committee to draft a formal ethics opinion addressing lawyer-mediator's duty to report misconduct. This option would help lawyers better understand their obligations, but would not resolve the underlying inconsistency between the duty to report misconduct and the duty not to disclose mediation communications.
3. **Take No Action.** The Board could decline to recommend a rule change, and maintain the status quo. Ultimately, any inconsistency may be resolved through a disciplinary decision or legislative action. This option would leave members without clear guidance.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Legal Ethics Committee  
**Re:** Proposed OSB Formal Ethics Opinion 2017-XXX: Disqualification of Judges via Affidavit of Prejudice

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### Issue

The Board of Governors must decide whether to adopt the proposed formal ethics opinion regarding the disqualification of judges via affidavit of prejudice.

### Options

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

### Discussion

This proposed opinion arises out of an Oregon State Bar member's request for a formal ethics opinion to resolve issues of professional conduct that arise when a lawyer is considering whether to file an affidavit of prejudice against a judge who may have a reputation for favoring plaintiffs over defendants in personal injury lawsuits.

Attachments: Proposed OSB Formal Ethics Op No. 2017-XXX Disqualification of Judges via Affidavit of Prejudice

*Project 14-08*

**FORMAL OPINION NO. 2017-xxx**

**Candor, Independent Professional Judgment, Communication,  
Disqualification of Judges via Affidavit of Prejudice**

Lawyer practices primarily in ABC County and represents Defendant in a personal injury litigation. Judge X, a Circuit Court judge in ABC County, is assigned to preside over the case. Lawyer has no reason to believe that Judge X has any specific bias against Lawyer or Defendant personally. However, Lawyer believes that Judge X has a reputation for doing just about everything that can be done to support personal injury plaintiffs—e.g., by consistently construing facts and law against personal injury defendants, by frequently granting motions to add punitive damages, by refusing to grant summary judgment to personal injury defendants, etc.

Lawyer is considering whether to file an “affidavit of prejudice” and motion to disqualify Judge X pursuant to ORS 14.260. Lawyer believes that there are potential pros and cons to doing so. Lawyer is also concerned, however, that if Lawyer files an affidavit of prejudice against Judge X in Defendant’s case he will need to start regularly filing affidavits of prejudice against Judge X in all of Lawyer’s personal injury cases. As a result, Lawyer’s reputation could be tarnished. For example, one or more other Circuit Court judges in ABC County may take offense and treat Defendant or Lawyer’s other clients more harshly. In addition, Lawyer’s ability to represent other clients before Judge X in non-personal injury cases, or when the time for filing an affidavit of prejudice has passed, could be adversely affected.

**Questions:**

1. May Lawyer file an affidavit of prejudice against Judge X in Defendant’s case?
2. May Lawyer consider the impact that filing an affidavit of prejudice could have on Lawyer’s other clients or the Lawyer’s reputation generally?
3. Must Lawyer advise Defendant about Judge X’s reputation and the option to potentially disqualify Judge X?

**Conclusions:**

1. See discussion.

2. No, qualified.
3. See discussion.

**Discussion:**

One method for seeking a judge’s disqualification in Oregon is set forth in ORS 14.250 to 14.260, referred to as disqualification by “affidavit of prejudice.”<sup>1</sup> Under ORS 14.260(1), a lawyer or party may (but is not required to) seek disqualification of a judge by filing a motion and supporting affidavit stating that “the party or attorney believes that the party or attorney cannot have a fair and impartial trial or hearing before the judge, and that it is made in good faith and not for the purpose of delay.” An affidavit of prejudice need not state specific grounds for the attorney’s or party’s belief. ORS 14.250(1). In addition, the motion *must* be granted unless the challenged judge contests disqualification. *Id.* If contested, the challenged judge bears the burden of proof to establish that the attorney or party filed the affidavit of prejudice in bad faith. *Id.*<sup>2</sup> The motion and affidavit must be filed within certain statutory time limits, and a party or attorney may not file more than two affidavits of prejudice in any one case. ORS 14.260(4)-(6).<sup>3</sup>

1. *May Lawyer File an Affidavit of Prejudice Against Judge X?*

The first question implicates the ethical restrictions that govern a lawyer’s decision as to whether to file an affidavit of prejudice when there is concern about a judge’s perceived reputation against a certain class of litigants, rather than the specific parties or attorneys in the case.<sup>4</sup> There are several relevant Oregon RPCs.

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<sup>1</sup> Additional grounds for disqualification are set forth in ORS 14.210.

<sup>2</sup> See also *State ex rel. Kafoury v. Jones*, 315 Or 201, 207 (1992).

<sup>3</sup> For a more thorough discussion of affidavits of prejudice, see 1 *Criminal Law* § 12.6-2 (OSB Legal Pub 2013).

<sup>4</sup> We emphasize that this opinion does not address whether a judge’s reputation for bias against a certain class of litigants is or should be a proper basis alone for disqualification under ORS 14.260—that issue is for the Legislature and courts to decide. This Committee is authorized to construe statutes and regulations pertaining directly to lawyers, but not to construe substantive law generally. See OSB Formal Ethics Opinion 2006-176 (rev 2015). This opinion addresses only the circumstances under which an attorney’s filing of an affidavit of prejudice under the provisions of ORS 14.260 is *ethically* permissible under the Oregon Rules of Professional Conduct.

Oregon RPC 3.3(a)(1) provides, in pertinent part:

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . .

Oregon RPC 8.2(a) provides:

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge . . . .

Oregon RPC 8.4(a) provides, in pertinent part:

- (a) It is professional misconduct for a lawyer to:
  - . . . .
  - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law; or
  - (4) engage in conduct that is prejudicial to the administration of justice . . . .

Taken together, Oregon RPCs 3.3(a)(1), 8.2(a), and 8.4(a)(3)-(4) prohibit lawyers from making any false statements in an affidavit of prejudice. The critical issue, therefore, is whether Lawyer can truthfully state in an affidavit under ORS 14.260 that: (1) Lawyer believes Defendant or Lawyer cannot receive a fair and impartial trial or hearing before Judge X; *and* (2) Lawyer is filing the disqualification motion in “good faith and not for the purpose of delay.” These are subjective inquiries. Lawyer must consider each question independently in light of the specific facts, procedural posture, and applicable law of his or her case. Only if Lawyer can truthfully answer yes to both questions may Lawyer ethically file a motion to disqualify Judge X under ORS 14.260.

As to the first question, Lawyer must consider whether his or her concern about Judge X is significant enough that Lawyer honestly believes that Defendant cannot receive a fair and impartial trial or hearing before Judge X. However, even if Lawyer concludes (after conducting this analysis) that he or she honestly believes that Defendant or Lawyer cannot receive a fair and impartial trial or hearing before Judge X, that does not end the inquiry. Lawyer must then consider the second question—can Lawyer truthfully state that the motion would be brought in “good faith and not for the purpose of delay”?

In considering the second question, Lawyer must draw a careful distinction between seeking to disqualify Judge X to ensure a fair and impartial proceeding for Defendant versus doing so to obtain a tactical advantage in the litigation. The former situation would constitute good faith; the latter would not. For example, it would not be “good faith” for Lawyer to file an affidavit of prejudice against Judge X if Lawyer’s primary reason was to delay resolution of the case, or to maximize the chances that a more favorable judge will be assigned to Defendant’s case, or as an attempt to get Defendant’s case transferred to a more favorable venue.<sup>5</sup> Using affidavits of prejudice as a form of judge or forum shopping, or for other strategic advantage, is a form of bad faith and, thus, Lawyer would violate Oregon RPCs 3.3, 8.2, and 8.4 by filing an affidavit of prejudice primarily for those reasons.

2. *May Lawyer Consider the Impact Filing an Affidavit of Prejudice Might Have on Lawyer’s Other Clients or Lawyer’s Own Reputation?*

Filing an affidavit of prejudice can have significant consequences for a lawyer. Lawyers may be concerned about the effect that filing an affidavit of prejudice could have on their own reputation or practice, or on their other clients in the future. This is particularly true for lawyers who practice in smaller counties where the local Bar and pool of available judges are relatively small, and for lawyers who typically represent only one class of litigants (such as in criminal and personal injury contexts).

Oregon RPC 2.1 provides, in pertinent part, that “in representing a client, a lawyer shall exercise independent professional judgment.” In addition, Oregon RPC 1.7(a) provides, in pertinent part:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:
  - ....
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by the personal interest of the lawyer . . .

The duties to exercise “[l]oyalty and independent judgment are essential elements in the lawyer’s relationship to a client.” ABA Model Rules, Rule 1.7, cmt. [1]. Generally speaking, Oregon RPC 2.1 and 1.7 require a lawyer to make

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<sup>5</sup> These examples are not intended to be exhaustive.

decisions with only his or her client's interests in mind, not the lawyer's personal interests or the interests of other clients or third parties.<sup>6</sup>

In the context of a disqualification motion, this means that Lawyer must evaluate whether to file an affidavit of prejudice on a case-by-case basis, without regard to lawyer's personal interests or the interests of others. Lawyer may consider only the impact that seeking disqualification of Judge X could have on Defendant's case. Lawyer may not consider the effect, if any, that seeking Judge X's disqualification could have on Lawyer's own practice, or on Lawyer's other current or future clients or cases.

Moreover, if there is a significant risk that Lawyer's analysis of the disqualification issue in Defendant's case will be materially limited by his or her concerns about Lawyer's personal interests, or the interests of other clients or third parties, then under Oregon RPC 1.7(a)(2) Lawyer must withdraw from the representation unless Lawyer's continued representation complies with the requirements of Oregon RPC 1.7(b).

This is not to say that Lawyer may never consider the potential impact a disqualification motion would have on Lawyer's own credibility, reputation, or relationship with Judge X or other judges in ABC County. Lawyer may ethically consider such factors to the extent Lawyer believes they could impact Lawyer's representation of *Defendant*. For example, it would be permissible for Lawyer to consider whether filing an affidavit of prejudice against Judge X could negatively affect how other judges in ABC County (who might preside over Defendant's case if Judge X is disqualified) might treat Lawyer or Defendant in Defendant's specific proceeding.

3. *Whether Lawyer Has a Duty to Advise Client about the Option to file an Affidavit of Prejudice*

Question No. 3 asks whether Lawyer has an affirmative duty to advise Defendant about Judge X's reputation and the potential option to file a motion to disqualify Judge X.

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<sup>6</sup> For a broader discussion on the duties to exercise loyalty and independent judgment, see the Annotation to ABA Model Rule 2.1.



Oregon RPC 1.4 provides:

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit client to make informed decisions regarding the representation.

In addition, Oregon RPC 1.2(a) provides, in pertinent part:

- (a) Subject to paragraphs (b) and (c), lawyer shall abide by a client's decision concerning the objectives of representation, and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

In this hypothetical, the first question is whether there is even a decision for Lawyer to potentially discuss with Defendant. In other words, Lawyer must first determine initially whether he or she can even file a motion to disqualify Judge X. If Lawyer has concluded that he or she cannot legally *and* ethically file a motion to disqualify Judge X (see *supra* discussion Part 1), then there is nothing to discuss with Defendant, and Lawyer would have no duty under Oregon RPCs 1.2 or 1.4 to advise Defendant of any potential option to file an affidavit of prejudice against Judge X.<sup>7</sup>

If, however, Lawyer has concluded that he or she could legally and ethically file an affidavit of prejudice against Judge X, Lawyer has a duty under Oregon RPC 1.2 and 1.4 to reasonably consult with Defendant about that decision. At a minimum, Lawyer should inform Defendant about the basis of his or her concerns about Judge X, the available options and procedure under ORS 14.260, and the potential advantages and disadvantages to filing a motion to disqualify.

In doing so, Lawyer must disclose sufficient information for Defendant to intelligently participate in a discussion about whether to file an affidavit of prejudice. As the *Restatement (Third) of the Law Governing Lawyers* states:

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<sup>7</sup> Of course, should Defendant ask Lawyer to explain why a motion to disqualify cannot be filed, Lawyer would need to provide a reasonable response to the client inquiry under Oregon RPC 1.2(a).

The lawyer’s duty to consult goes beyond dispatching information to the client. The lawyer must, when appropriate, inquire about the client’s knowledge, goals, and concerns about the matter, and must be open to discussion of the appropriate course of action. . . .

The level of consultation is measured by a standard of reasonableness and depends on such factors as the importance of the decision, the extent to which disclosure or consultation has already occurred, the client’s sophistication level and interest, and the time and money that reporting or consulting will consume.<sup>8</sup>

The timing of that discussion will depend on the specific circumstances of the representation and how the issue regarding potential disqualification arises. The identity of a judge is an important issue in any case, and, if feasible, lawyers should consult with their clients before making a decision about whether to file an affidavit of prejudice. In some situations, however, a lawyer may be required to decide about filing an affidavit of prejudice without any reasonable opportunity to consult with the client beforehand—such as when the lawyer faces an impending deadline or when substantive law requires the lawyer to either file an affidavit of prejudice immediately or risk waiver. If reasonably necessary under the circumstances, a lawyer may decide whether to file an affidavit of prejudice without first consulting with his or her client; however, even then, the lawyer must reasonably inform the client about the lawyer’s decision within a reasonable time thereafter.

Finally, there may be circumstances where the lawyer and client, even after consultation, disagree about whether to file a disqualification motion. Such a decision goes to the “means,” not the “objectives,” of the representation. Moreover, filing a motion to disqualify is not one of the enumerated decisions listed in Oregon RPC 2.1(a) that is expressly reserved to the client (e.g., whether to accept a settlement). Accordingly, the lawyer is ethically permitted to make the final decision as to whether to seek disqualification, even over his or her client’s objection, provided the lawyer has adequately consulted with the client, as discussed above.<sup>9</sup>

In the criminal context, we note that the lawyer may need to consider other factors besides ethical considerations in resolving such a disagreement. Criminal defendants possess constitutional rights that are not implicated in civil cases. “[T]he decision-making authority of a criminal defendant is therefore broader than that of a client in a civil matter.”<sup>10</sup> Criminal defense lawyers should consider, among other

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<sup>8</sup> *Restatement (Third) of the Law Governing Lawyers* § 20 cmt. b (2000).

<sup>9</sup> Of course, the client retains the ultimate right to resolve any disagreement by discharging the lawyer. *See* Oregon RPC 1.16(a)(3); ABA Model Rules, Rule 1.2, cmt. [2].

<sup>10</sup> Annotation to ABA Model Rule 1.4 at 36-37 (citing various authorities).

things, whether) the decision to file an affidavit of prejudice in his or her client's specific case implicates a the client's fundamental rights under the Sixth Amendment. That issue is beyond the scope of what this Committee can opine on.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** Client Security Fund Rules Amendments

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### **Action Requested**

The Client Security Fund Committee (CSF Committee) recommends the Board of Governors adopt the attached amendments to the Client Security Fund Rules (CSF Rules).

### **Background**

Beginning in early 2017, the CSF Committee undertook a review of the CSF Rules. The attached proposed amendments to the CSF Rules encompass both substantive changes and an overall stylistic cleanup of the existing rules. A summary of the substantive changes and structural modifications follows.

#### Definition of dishonest conduct.

Current CSF Rule 1.8 defines dishonest conduct as “a lawyer’s willful act against a client’s interest by defalcation, by embezzlement, or by other wrongful taking.” But the waters are muddied by current Rule 2.2.1, which appears to provide additional, non-exclusive, examples of dishonest conduct. The proposed amendments consolidate all non-exclusive examples of dishonest conduct into new Rule 2.1.2, which is cross-referenced in a definitional paragraph (in section 1). The CSF Committee carefully considered whether to adopt an explicit rule regarding flat-fee claims, including the potential of adopting Rule 10(C)(1) of the ABA Model Rules for Lawyers’ Funds for Client Protection (the “Model Rules”), which states that dishonest conduct includes a lawyer’s “failure to refund an unearned fee received in advance as required by [the rules of professional conduct].” It decided not to adopt a per se rule on flat-fee claims because it believes that the current CSF Rules provide needed flexibility to consider such claims. Specifically, the mere failure to refund an unearned fee may not in all cases be the result of dishonesty. Because ORS 9.625 directs the CSF to make payments only in cases of loss “caused by dishonest conduct,” the CSF Committee believes that the approach taken under Model Rule 10(C)(1) is not nuanced enough to comply with our enabling statute.

#### Restructuring of Section 2.

Section 2 of the existing CSF Rules starts with an unnumbered preamble that reads: “A loss of money or other property of a lawyer’s client is eligible for reimbursement if...” However, not all subsequent subsections complete the sentence that begins with the preamble. The proposed revisions designate the preamble as Rule 2.1, with all basic claim requirements following as subsections of Rule 2.1. Other, more general, provisions concerning claim eligibility appear as Rules 2.2 through 2.6. Importantly, Rule 2.6 is now clear that the CSF Committee may waive

only the rules that appear in section 2. Other, non-waivable, provisions relating to claims (such as the dollar limit, and the approval procedure) appear in other sections of the rules.

#### Oregon nexus.

Current CSF Rule 1.5 appears to require that the accused lawyer have an office in Oregon as a prerequisite for payment of a claim. The CSF enabling statute merely requires that the accused lawyer be an active member of the Oregon bar and that the transaction underlying the loss “arose out of the [accused lawyer’s] practice of law in Oregon” (ORS 9.655(1)). The proposed amendments eliminate the requirement of an Oregon office and adopt a more flexible approach, in line with the Model Rules. Proposed Rule 2.1.9 mirrors the statutory language and provides that a claim is reimbursable so long as “[t]he loss arose from the lawyer’s practice of law in Oregon.” The proposed rule also provides a non-exclusive list of factors that the Committee may consider when determining if this requirement is satisfied. Current CSF Rule 2.3, which requires the Committee to consider available coverage from another jurisdiction’s client security fund, remains unchanged (aside from renumbering).

#### Criminal referrals.

CSF Rule 4.14 as currently drafted provides that the CSF Committee may ask the Board of Governors to provide information about a lawyer’s misconduct to the Oregon Department of Justice or an appropriate district attorney if “a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.” The proposed amendment to this rule makes three changes. First, the amendment allows the CSF committee to make referrals directly, without going through the BOG. Second, the amended rule drops the reference to specific agencies and allows referrals to “any agency or entity that the CSF Committee determines may be helpful in resolving the claimant’s concerns.” Finally, the amended rule eliminates the requirement that referrals be based on certain types of bad acts—thus, as an example, the CSF Committee could refer a lawyer’s conduct to Disciplinary Counsel’s Office even if the conduct did not arise to the level of crime or fraud.

#### Rule amendments.

Proposed Rule 6.3 changes the CSF Committee vote requirement for rules amendments from a majority of a quorum to a majority of the entire CSF Committee membership.

#### Recusal procedures.

Current Rule 6.3 requires recusal of a CSF Committee member who has an attorney-client relationship or financial relationship with either a claimant or an accused lawyer. The proposed amendment retains this standard, but clarifies that a member must disclose such relationship before the CSF Committee considers the relevant claim, and the conflicted member may not participate in discussion of the claim without leave of the chair.

Attachment: Redline and Clean Copy of Rules

## Client Security Fund Rules

(As approved by the Board of Governors through ~~April 25, 2014~~     , 2017)

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### Section 1. Definitions.

For the purpose of these ~~Rules of Procedure, rules,~~ the following definitions ~~shall~~ apply:

1.1 "Administrator" means the ~~OSB Executive Director~~ Oregon State Bar executive director or other person designated by the ~~Executive Director~~ executive director to oversee the operations of the Client Security Fund.

1.2 "Bar" means the Oregon State Bar.

~~1.3 "Committee" means the Client Security Fund Committee.~~

~~1.4 "Fund" means the Client Security Fund.~~

~~1.5 "Lawyer" means one who, at the time of the act or acts complained of, was an active member of the Oregon State Bar and maintained an office for the practice of law in Oregon.~~

~~1.3 "Claimant" means one who files a claim with the Fund.~~

~~1.6-1.4~~ "Client" means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.

~~1.5 "Committee" means the Client Security Fund Committee.~~

~~1.6 "Dishonest conduct" has the meaning prescribed in Rule 2.1.2.~~

~~1.7 "Fund" means the Client Security Fund.~~

~~1.7 "Claimant" means one who files a claim with the Fund.~~

1.8 "~~Dishonest conduct~~" "Lawyer" means the person named in a statement of claim as the attorney whose dishonest conduct caused the loss, and who, at the time of the act or acts

complained of, was an active member of the Oregon State Bar.

1.9 "Statement of claim" means the form designated by the administrator pursuant to CSF Rule 3.1.

## Section 2. Reimbursable Losses.

2.1 A loss of money or other property of a lawyer's client is eligible for reimbursement if:

~~2.1~~ 2.1.1 The claim is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.

~~2.2~~ 2.1.2 The loss was caused by the lawyer's dishonest conduct. ~~2.2.1 In a loss resulting from~~ For purposes of this rule, dishonest conduct includes: (i) a lawyer's ~~refusal~~ willful act against a client's interest by defalcation, embezzlement, or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) other wrongful taking; (ii) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal ~~fee or (ii) fee; or, (iii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.~~ 2.2.2 A lawyer's failure to perform or complete a legal engagement ~~shall~~ does not constitute, in itself, evidence of misrepresentation, false ~~promise~~ promise, or dishonest conduct.

~~2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.~~

~~2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.~~

~~2.3~~ 2.1.3 The loss ~~was~~ is not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.

~~2.4~~ 2.1.4 The loss ~~was~~ is not ~~to~~ incurred by a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract.

~~2.5~~ 2.1.5 The loss arose from, and was because of: ~~2.5.1 (i)~~ (i) an established lawyer-client relationship; ~~or 2.5.2 or, (ii)~~ (ii) the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

~~2.6~~ 2.1.6 As a result of the dishonest conduct, either: ~~(i) the~~ (i) the lawyer was found guilty of a crime; (ii) a civil judgment was entered against the lawyer, ~~or which remains unsatisfied;~~ (iii) the claimant holds an allowed claim against the lawyer's probate or bankruptcy estate, ~~and that judgment which~~ remains unsatisfied; or (iv) in the case of a claimed loss of

\$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.

**2.7-2.1.7** A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

**2.8-2.1.8** The **statement of** claim was filed with the Bar within two years after the latest of the following: ~~(a)~~ **(i)** the date of the lawyer's conviction; or ~~(b)~~ **(ii)** in the case of a claim of loss of ~~\$5,000.00~~ **\$5,000** or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or ~~(c)~~ **(iii)** the date a judgment is obtained against the lawyer, or ~~(d)~~ **(iv)** the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event ~~shall any claim against may~~ the ~~Fund be considered~~ **Committee approve a claim** for reimbursement if ~~it~~ **the statement of claim** is submitted more than six ~~(6)~~ years after the date of the loss.

**2.9-2.1.9** **The loss arose from the lawyer's practice of law in Oregon. In determining whether the loss arose from the lawyer's practice of law in Oregon, the Committee may consider all relevant factors including the parties' domiciles, the location of the lawyer's office, the location where the attorney-client relationship was formed, and the location where legal services were rendered.**

**2.2** **Reimbursement of a legal fee will be allowed only if: (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer.**

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

**2.4** A claim approved by the Committee ~~shall~~ **may** not include attorney's fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a ~~recovery~~ **recovery**, or prevailing party costs authorized by statute, except that a claim may include the claimant's actual expense incurred for court costs, as awarded by the court.

**2.10-2.5** Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and the attorney fee shall be paid from, and not in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

**2.11-2.6** In 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 provisions in Section 2 of these rules.

### Section 3. Statement of Claim for Reimbursement.

3.1 All claims for reimbursement must be submitted ~~on the form prepared in a format designated~~ by the ~~Bar~~ administrator.

3.2 The statement of claim ~~form shall require, as minimum must include, at a minimum, the following~~ information:

3.2.1 The name and address of the lawyer alleged to have engaged in ~~"dishonest conduct."~~ dishonest conduct;

3.2.2 The amount of the alleged loss;

3.2.3 The date or period of time during which the alleged loss occurred;

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer;

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath; and

3.2.6 The name of the attorney, if any, who is assisting the claimant in presenting the claim to the ~~Client Security Fund~~ Committee.

3.3 The ~~Statement statement~~ of ~~Claim shall claim must~~ contain substantially the following statement: ~~ALL~~ "ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual ~~lawyers.~~ lawyers."

### Section 4. Processing ~~Statements of Claim.~~ Claims.

4.1 All statements of claim ~~shall must~~ be submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935.

4.2 The ~~Administrator administrator~~ shall ~~cause assign~~ each statement of claim to ~~be sent to~~ a member of the Committee for investigation and ~~report. Such member shall be reimbursed by report, and~~ the ~~State~~ Bar shall reimburse such member for reasonable out of pocket expenses incurred ~~by said attorney~~ in making such investigation. ~~A~~ The administrator shall send a copy of the statement of claim ~~shall be sent by regular mail~~ to the lawyer who is the subject of the claim at the lawyer's last known address. Before ~~transmitting assigning~~ a statement of claim for investigation, the ~~Administrator administrator~~ may request of the claimant further information with respect to the claim.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a ~~"reimbursable loss"~~ reimbursable loss and is otherwise in compliance with these rules in order to guide the Committee in determining the extent, if any, to which the claimant ~~shall~~ may receive an award from the Fund.

~~4.4 Reports with respect to claims shall be submitted by the~~ The Committee member to whom ~~the a~~ claim is assigned for investigation shall submit an investigative report to the ~~Administrator administrator~~ within a reasonable time after the referral assignment of the claim to that member. ~~Reports submitted The member~~ shall contain include in such report a discussion of the criteria for payment set by these rules and ~~shall include the a~~ recommendation ~~of the member for the regarding~~ payment ~~of any amount~~ on such claim from the Fund.

~~4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.~~

~~4.6 4.5~~ At any meeting of the Committee, claims may be considered for which an investigation has been completed. ~~In determining each claim, the Committee shall be considered the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.~~

~~4.7 Records of the Client Security Fund are public records within the meaning of the Public Records Law and meetings of the Committee are public meetings within the meaning of the Public Meetings Law. The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.~~

~~4.8 4.6~~ No award ~~shall may~~ be made to any claimant if the statement of claim has not been submitted and reviewed pursuant to these ~~rules. No award shall be made to any claimant unless rules, and~~ approved ~~by a majority of at a quorum duly noticed meeting~~ of the Committee.

~~4.7~~ No award from the Fund on any one claim shall may exceed \$50,000.

~~4.8~~ The Committee shall determine the amount of loss, if any, for which any claimant ~~shall may~~ receive an award from the Fund. The Committee may give final approval to an award of less than \$5,000 and shall submit regular reports to the Board of Governors reflecting all awards finally approved by the Committee since the Board's last ~~Board~~ meeting.

~~4.10 4.9~~ The Committee's denial of a claim ~~shall be is~~ final unless a claimant's written request for review by the Board of Governors is received by the ~~Executive Director of the Bar administrator~~ within 20 days of the Committee's decision. The 20 days ~~shall run runs~~ from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

~~4.11. Claims for which 4.10~~ If the Committee ~~finds an award determines that a claim~~ should be ~~for approved in an amount of~~ \$5,000 or ~~more shall be submitted more, the Committee must submit its recommendation~~ to the Board ~~for approval, and decisions of the Committee which are reviewed by Governors for approval.~~ When reviewing such claims, the Board of Governors shall ~~be considered under conduct its review pursuant to~~ the criteria stated in provisions of these rules. The Board ~~shall of Governors may~~ approve or deny each claim presented to it for review, or it may refer a claim back to the Committee for further

investigation prior to making a decision.

~~4.12~~ ~~4.11~~ Awards from the Fund are discretionary. The Committee or Board of Governors may deny claims in whole or part for any reason.

~~4.12~~ The Board of Governors may determine the order and payment of awards; may defer or pro-rate awards based on ~~CSF~~ funds available in any calendar year; and may allow a further award in any subsequent year to a claimant who received only partial payment of an award. In exercising its discretion, the Board of Governors shall ~~be guided by~~ consider the following objectives:

4.12.1 Timely and complete payment of approved awards;

4.12.2 Maintaining the integrity and stability of the Fund; and

4.12.3 Avoiding frequent or significant fluctuations in the member assessment.

4.13 A finding of ~~"dishonest conduct"~~ dishonest conduct by the Committee ~~or the Board shall be is~~ for the sole purpose of resolving a claim and ~~shall is~~ not ~~be construed to be construed as~~ a finding of misconduct for purposes of ~~discipline or otherwise, any other proceeding.~~

4.14 The Committee may ~~recommend to the Board of Governors that provide~~ information obtained by the Committee about a lawyer's conduct ~~be provided to any agency or entity that the Committee determines may be helpful in resolving the claimant's concerns the appropriate District Attorney or to the Oregon Department of Justice when, in the Committee's opinion, a single serious act or a series of acts by the lawyer might constitute a violation of criminal law or of a civil fraud or consumer protection statute.~~

## Section 5. Subrogation for Reimbursements Made.

~~5.1.1~~ ~~5.1~~ As a condition of receiving an award, a claimant shall ~~be required to~~ provide the Bar with a pro tanto transfer assignment of the claimant's rights against the lawyer, the lawyer's legal representative, estate ~~or and~~ assigns, and of the claimant's rights against ~~the any~~ person or entity who may be liable for the claimant's loss. ~~5.1.2~~ Upon receipt of such assignment, the following rules govern the relationship between the Bar and the claimant:

~~5.1.1~~ 5.1.1 Upon commencement of an action by the Bar as subrogee or assignee of a claim, ~~it the administrator~~ shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

~~5.1.3~~ ~~5.1.2~~ In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall ~~be required to~~ notify the Bar of such action in writing, within 14 days of the commencement of such action.

~~5.1.4~~ ~~5.1.3~~ The claimant shall ~~be required to agree to~~ cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

~~5.2 A~~ ~~5.1.4~~ The claimant shall not release the lawyer from liability or otherwise impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

~~5.3-5.2~~ The ~~Administrator-administrator~~ shall be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile. The ~~Administrator-administrator~~ may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The ~~Administrator-administrator~~ may authorize the expenditure of money from the ~~Client Security~~-Fund for reasonable costs and expenses of collection.

## Section 6. General Provisions.

~~6.1~~ The members and officers of the Committee will be appointed and discharged pursuant to applicable provisions of the Bar Bylaws.

~~6.2~~ The Committee may only act pursuant to the quorum provisions contained in section 14.9 of the Bar Bylaws.

~~4.5-6.3~~ The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

~~6.4~~ These Rules may be changed at any time by a majority vote of ~~a quorum-the entire membership~~ of the ~~Committee-Committee~~, subject to approval by the Board of Governors of the ~~Oregon State~~-Bar. ~~A quorum is a majority of the entire Committee membership.~~

~~6.2~~ No award from the Fund on any one claim shall exceed \$50,000.

~~6.5~~ ~~In determining each~~ When investigating, reviewing, or acting on a claim, the Committee shall be considered and its members are deemed to be the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

~~4.7-6.6~~ Records of the ~~Client Security~~-Fund are public records within the meaning of the ~~Public Records Law-Oregon's public records law~~ and meetings of the Committee are public meetings within the meaning of ~~the Public Meetings Law-Oregon's public meetings law~~. The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.

~~6.3-6.7~~ A member of the Committee who has or has had ~~a lawyer-client-an attorney-client~~ relationship or financial relationship with a claimant or lawyer who is the subject of a claim ~~shall may~~ not participate in the investigation or review of ~~a-any~~ claim involving the claimant or lawyer. A member who is subject to this provision shall disclose the nature of the relationship before the Committee begins consideration of such claim, and the member may not participate in the Committee's discussion of the claim without leave of the chair.

~~6.8~~ These Rules ~~shall~~ apply to all claims pending at the time of their enactment.

~~6.5-6.9~~ The ~~Administrator-administrator~~ shall prepare an annual report to the ~~membership-Bar membership~~, and may from time to time issue press releases or other public statements about the Fund and awards that have been made. The annual report and any press releases and other public statements shall include the name of the lawyer, the amount of the award, the general nature of the claim, the lawyer's status with the ~~bar-Bar~~, and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has

previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant's name. The annual report, press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information.

Client Security Fund Rules

*(As approved by the Board of Governors through \_\_\_\_, 2017)*

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**Section 1. Definitions.**

For the purpose of these rules, the following definitions apply:

- 1.1 “Administrator” means the Oregon State Bar executive director or other person designated by the executive director to oversee the operations of the Client Security Fund.
- 1.2 “Bar” means the Oregon State Bar.
- 1.3 “Claimant” means one who files a claim with the Fund.
- 1.4 “Client” means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.
- 1.5 “Committee” means the Client Security Fund Committee.
- 1.6 “Dishonest conduct” has the meaning prescribed in Rule 2.1.2.
- 1.7 “Fund” means the Client Security Fund.
- 1.8 “Lawyer” means the person named in a statement of claim as the attorney whose dishonest conduct caused the loss, and who, at the time of the act or acts complained of, was an active member of the Oregon State Bar.
- 1.9 “Statement of claim” means the form designated by the administrator pursuant to CSF Rule 3.1.

**Section 2. Reimbursable Losses.**

- 2.1 A loss of money or other property of a lawyer’s client is eligible for reimbursement if:
  - 2.1.1 The claim is made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.
  - 2.1.2 The loss was caused by the lawyer’s dishonest conduct. For purposes of this rule, dishonest conduct includes: (i) a lawyer’s willful act against a client’s interest by defalcation, embezzlement, or other wrongful taking; (ii) a lawyer’s misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee; or, (iii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned. A lawyer’s failure to perform or complete a legal engagement does not constitute, in itself, evidence of misrepresentation, false promise, or dishonest conduct.
  - 2.1.3 The loss is not covered by any similar fund in another state or jurisdiction, or by a bond, surety agreement or insurance contract, including losses to which any bonding agent, surety or insurer is subrogated.
  - 2.1.4 The loss is not incurred by a financial institution covered by a “banker’s blanket bond” or similar insurance or surety contract.
  - 2.1.5 The loss arose from, and was because of: (i) an established lawyer-client relationship; or, (ii) the failure to account for money or property entrusted to the lawyer in connection

with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.

2.1.6 As a result of the dishonest conduct, either: (i) the lawyer was found guilty of a crime; (ii) a civil judgment was entered against the lawyer, which remains unsatisfied; (iii) the claimant holds an allowed claim against the lawyer's probate or bankruptcy estate, which remains unsatisfied; or (iv) in the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar.

2.1.7 A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

2.1.8 The statement of claim was filed with the Bar within two years after the latest of the following: (i) the date of the lawyer's conviction; or (ii) in the case of a claim of loss of \$5,000 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar; or (iii) the date a judgment is obtained against the lawyer, or (iv) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event may the Committee approve a claim for reimbursement if the statement of claim is submitted more than six years after the date of the loss.

2.1.9 The loss arose from the lawyer's practice of law in Oregon. In determining whether the loss arose from the lawyer's practice of law in Oregon, the Committee may consider all relevant factors including the parties' domiciles, the location of the lawyer's office, the location where the attorney-client relationship was formed, and the location where legal services were rendered.

2.2 Reimbursement of a legal fee will be allowed only if: (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer.

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

2.4 A claim approved by the Committee may not include attorney's fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a recovery, or prevailing party costs authorized by statute, except that a claim may include the claimant's actual expense incurred for court costs, as awarded by the court.

2.5 Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The



Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and the attorney fee shall be paid from, and not in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

2.6 In 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 provisions in Section 2 of these rules.

### **Section 3. Statement of Claim for Reimbursement.**

3.1 All claims for reimbursement must be submitted in a format designated by the administrator.

3.2 The statement of claim must include, at a minimum, the following information:

3.2.1 The name and address of the lawyer alleged to have engaged in dishonest conduct;

3.2.2 The amount of the alleged loss;

3.2.3 The date or period of time during which the alleged loss occurred;

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer;

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath; and

3.2.6 The name of the attorney, if any, who is assisting the claimant in presenting the claim to the Committee.

3.3 The statement of claim must contain substantially the following statement: "ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers."

### **Section 4. Processing Claims.**

4.1 All statements of claim must be submitted to Client Security Fund, Oregon State Bar, 16037 SW Upper Boones Ferry Rd., P. O. Box 1689, Tigard, Oregon 97281-1935.

4.2 The administrator shall assign each statement of claim to a member of the Committee for investigation and report, and the Bar shall reimburse such member for reasonable out of pocket expenses incurred in making such investigation. The administrator shall send a copy of the statement of claim to the lawyer who is the subject of the claim at the lawyer's last known address. Before assigning a statement of claim for investigation, the administrator may request of the claimant further information with respect to the claim.

4.3. A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a reimbursable loss and is otherwise in compliance with these rules in order to guide the

Committee in determining the extent, if any, to which the claimant may receive an award from the Fund.

4.4 The Committee member to whom a claim is assigned for investigation shall submit an investigative report to the administrator within a reasonable time after the assignment of the claim to that member. The member shall include in such report a discussion of the criteria for payment set by these rules and a recommendation regarding payment on such claim from the Fund.

4.5 At any meeting of the Committee, claims may be considered for which an investigation has been completed.

4.6 No award may be made to any claimant if the statement of claim has not been submitted and reviewed pursuant to these rules, and approved at a duly noticed meeting of the Committee.

4.7 No award from the Fund on any one claim may exceed \$50,000.

4.8 The Committee shall determine the amount of loss, if any, for which any claimant may receive an award from the Fund. The Committee may give final approval to an award of less than \$5,000 and shall submit regular reports to the Board of Governors reflecting all awards finally approved by the Committee since the Board's last meeting.

4.9 The Committee's denial of a claim is final unless a claimant's written request for review by the Board of Governors is received by the administrator within 20 days of the Committee's decision. The 20 days runs from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.10 If the Committee determines that a claim should be approved in an amount of \$5,000 or more, the Committee must submit its recommendation to the Board of Governors for approval. When reviewing such claims, the Board of Governors shall conduct its review pursuant to the provisions of these rules. The Board of Governors may approve or deny each claim presented to it for review, or it may refer a claim back to the Committee for further investigation prior to making a decision.

4.11 Awards from the Fund are discretionary. The Committee or Board of Governors may deny claims in whole or part for any reason.

4.12 The Board of Governors may determine the order and payment of awards; may defer or pro-rate awards based on funds available in any calendar year; and may allow a further award in any subsequent year to a claimant who received only partial payment of an award. In exercising its discretion, the Board of Governors shall consider the following objectives:

4.12.1 Timely and complete payment of approved awards;

4.12.2 Maintaining the integrity and stability of the Fund; and

4.12.3 Avoiding frequent or significant fluctuations in the member assessment.

4.13 A finding of dishonest conduct by the Committee is for the sole purpose of resolving a claim and is not to be construed as a finding of misconduct for purposes of any other proceeding.

4.14 The Committee may provide information obtained by the Committee about a lawyer's conduct to any agency or entity that the Committee determines may be helpful in resolving the claimant's concerns.

### **Section 5. Subrogation for Reimbursements Made.**

5.1 As a condition of receiving an award, a claimant shall provide the Bar with a pro tanto assignment of the claimant's rights against the lawyer, the lawyer's legal representative, estate and assigns, and of the claimant's rights against any person or entity who may be liable for the claimant's loss. Upon receipt of such assignment, the following rules govern the relationship between the Bar and the claimant:

5.1.1 Upon commencement of an action by the Bar as subrogee or assignee of a claim, the administrator shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5.1.2 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall notify the Bar of such action in writing, within 14 days of the commencement of such action.

5.1.3 The claimant shall cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.1.4 The claimant shall not release the lawyer from liability or otherwise impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.2 The administrator shall be responsible for collection of Fund receivables and shall have sole discretion to determine when such efforts would be futile. The administrator may undertake collection efforts directly or may assign subrogated claims to a collection agency or outside counsel. The administrator may authorize the expenditure of money from the Fund for reasonable costs and expenses of collection.

### **Section 6. General Provisions.**

6.1 The members and officers of the Committee will be appointed and discharged pursuant to applicable provisions of the Bar Bylaws.

6.2 The Committee may only act pursuant to the quorum provisions contained in section 14.9 of the Bar Bylaws.

6.3 The Committee shall meet from time to time upon the call of the chairperson. At the request of at least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

6.4 These Rules may be changed at any time by a majority vote of the entire membership of the Committee, subject to approval by the Board of Governors of the Bar.

6.5 When investigating, reviewing, or acting on a claim, the Committee and its members are deemed to be the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

6.6 Records of the Fund are public records within the meaning of the Oregon's public records law and meetings of the Committee are public meetings within the meaning of Oregon's public meetings law. The claimant, the claimant's attorney, the lawyer or the lawyer's attorney may attend meetings and, at the discretion of the chair, present their respective positions on a claim.

6.7 A member of the Committee who has or has had an attorney-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim may not participate in the investigation or review of any claim involving the claimant or lawyer. A member who is subject to this provision shall disclose the nature of the relationship before the Committee begins consideration of such claim, and the member may not participate in the Committee's discussion of the claim without leave of the chair.

6.8 These Rules apply to all claims pending at the time of their enactment.

6.9 The administrator shall prepare an annual report to the Bar membership, and may from time to time issue press releases or other public statements about the Fund and awards that have been made. The annual report and any press releases and other public statements shall include the name of the lawyer, the amount of the award, the general nature of the claim, the lawyer's status with the Bar, and whether any criminal action has been instituted against the lawyer for the conduct giving rise to the loss. If the claimant has previously initiated criminal or civil action against the lawyer, the press release or public statement may also include the claimant's name. The annual report, press release or other public statement may also include general information about the Fund, what claims are eligible for reimbursement, how the Fund is financed, and who to contact for information.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**Memo Date:** June 22, 2017  
**From:** MCLE Committee  
**Re:** Child Abuse Reporting and Elder Abuse Reporting credit requirements

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### Action Recommended

Approve the Committee's recommendation to combine the child abuse reporting and elder abuse reporting credit requirements into a single one-hour program. The program would include discussion of the differences between the two types of abuse, an Oregon lawyer's obligations to report the abuse and the exceptions to reporting.

### Background

During the 1999 Legislative Session, the legislature passed HB 2998, which required active Oregon lawyers to complete one of hour training every three years on their duty to report child abuse. The law became effective July 1, 2000. Beginning with the reporting period ending 12/31/2000, all active members were required to complete 1.0 child abuse reporting credit in each reporting period.

During the 2013 Legislative Session, House Bill 2205 was passed. Among other changes, Section 5 of HB 2205 amended ORS 124.050 to add lawyers to the list of mandatory reporters for elder abuse. Section 7 of HB 2205 amended the mandatory child abuse reporting training requirement set forth in ORS 9.114 to remove the details of the training requirement from the statute but required the Oregon State Bar to "...adopt rules to establish minimum training requirements for all active members of the bar relating to the duties of attorneys under ORS 124.060 and 419B.010." The amendments to HB 2205 became effective January 1, 2015.

The rules establishing minimum training requirements must be approved by the Supreme Court. In April 2014, the Court approved the following amendments to the MCLE Rules. These amendments became effective January 1, 2015.

**Rule 3.2 (b) Ethics.** At least six of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule 5.5(a), including one hour on the subject of a lawyer's statutory duty to report child abuse ~~(see ORS 9.114)~~ 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.

**Rule 3.2(c) 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). ~~For purposes of this rule, the first reporting period that may be~~

~~skipped will be the one ending on December 31, 2009.~~<sup>1</sup>

### **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 ~~(including one in child abuse reporting)~~.

(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 ~~(including one in child abuse reporting)~~, and ten credit hours in practical skills. ~~New admittees admitted prior to December 31, 2008 must also complete one access to justice credit in their first reporting period.~~ New admittees admitted on or after January 1, 2009<sup>2</sup> must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator 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.

### **3.5 Out-of-State Compliance.**

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon ~~but~~ and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse or elder abuse reporting credit required in ORS 9.114. ). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

### **5.5 Ethics and Access to Justice.**

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse or elder abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an

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<sup>1</sup> Reference to past date was deleted for housekeeping purposes.

<sup>2</sup> References to past dates were deleted for housekeeping purposes.

accredited program. MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

After the above-referenced rule amendments were approved by the Court, the following regulations were also amended.

### Regulation Amendments

**3.260 Reciprocity.** An active member who is also an active member whose principal office for the practice of law is in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction of the state in which the member's principal office is located, 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) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

**3.300(d)** Members in a three-year reporting period are required to have 3.0 access to justice credits and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. ~~Access to Justice credits earned in a non-required reporting period will be credited as general credits.~~ Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit. Access to Justice, child abuse reporting and elder abuse reporting credits earned in a non-required reporting period will be credited as general credits.

After this year's reporting period ends on 12/31/2017, all active members in a three-year reporting period (2015, 2016 and 2017) will have completed one elder abuse reporting credit.

Based on comments MCLE staff have received, members find this alternating requirement very confusing. Also, requiring separate stand-alone programs for each abuse reporting requirement is confusing and encourages people to think that the reporting obligations are more different than alike, which is not the case.

Therefore, the Committee recommends amending the rules and regulations to combine these reporting requirements into a single one-hour program. The program would meet the requirement set forth in ORS 9.114 and include discussion of the differences between child abuse and elder abuse, an Oregon lawyer's obligations to report the abuse and the exceptions to reporting.

If the BOG agrees that these credit requirements should be combined into a single requirement, the rule and regulation amendments, which could be effective on January 1, 2018, are set forth below.

## Proposed Rule Amendments

### 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 5.13(a).
- (c) ~~Child Abuse or Elder Abuse Reporting.~~ Abuse Reporting. One hour must be on the subject of an lawyer's statutory duty to report child abuse ~~or one hour on the subject of a lawyer's statutory duty to report and~~ 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 5.13(c).

### 3.4 Out-of-State Compliance.

- (a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and who is an active member in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed ~~the child abuse or elder abuse~~ a child and elder abuse reporting credit required in ORS 9.114. ~~MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.~~
- (b) Other Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and is not in a jurisdiction with which Oregon has established MCLE reciprocity must file a compliance report as required by MCLE Rule 7.1 showing that the member has completed at least 45 hours of accredited CLE activities as required by Rule 3.2.

### 5.13 Ethics, Child and Elder Abuse Reporting 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~~ Child and elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse ~~or~~ and 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.

### Proposed Regulation Amendments

**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 3.4(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 a child and elder abuse ~~the child abuse or elder abuse~~ reporting training required in ORS 9.114. No other information about program attendance is required. ~~MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.~~

#### **3.300 Application of Credits.**

(a) Legal ethics and access to justice credits in excess of the minimum required can be applied to the general or practical skills requirement.

(b) Practical skills credits can be applied to the general requirement.

(c) ~~For members in a three-year reporting period, one child abuse or elder abuse reporting credit earned in a non-required reporting period may be applied to the ethics credit requirement. Additional child abuse and elder abuse reporting credits will be applied to the general or practical skills requirement. For members in a shorter reporting period, child abuse and elder~~ Excess ~~child and elder~~ abuse reporting credits will be applied as general or practical skills credit. Access to Justice credits earned in a non-required reporting period will be credited as general credits.

(d) Members in a three-year reporting period are required to have 3.0 access to justice credits ~~and 1.0 child abuse reporting credit in reporting periods ending 12/31/2012 through 12/31/2014, in reporting periods ending 12/31/2018 through 12/31/2020 and in alternate three-year periods thereafter. Members in a three-year reporting period ending 12/31/2015 through 12/31/2017, 12/31/2021 through 12/31/2023 and in alternate three-year periods thereafter are required to have 1.0 elder abuse reporting credit.~~

**5.600 Child and Elder Abuse Reporting.** In order to be accredited as ~~a child abuse reporting or elder abuse~~ a child and elder abuse reporting activity, the one-hour session must include discussion of an Oregon attorney's requirements to report child abuse ~~or~~ and elder abuse and the exceptions to those requirements.

**6.100 Carry Over Credit.** No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. ~~Child abuse and elder abuse~~ Abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new ~~child abuse or elder~~ abuse reporting education credit must be earned in each reporting period in which the credit is required. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

**OREGON STATE BAR**  
**Board of Governors Agenda**

**Meeting Date:** September 8, 2017  
**From:** Helen M. Hirschbiel, CEO / Executive Director  
**Re:** Operations and Activities Report

**OSB Programs and Operations**

Department	
<p><b>Accounting &amp; Finance/ Facilities/IT (Rod Wegener)</b></p>	<p><i>Accounting</i></p> <ul style="list-style-type: none"> <li>▪ On August 14 Margie Scott started her role in the Accounting Department as the specialist in accounts receivable. This position handles a crucial part of the bar’s cash transaction and the primary person processing the member fee payments. During August all budget preparers begin work on developing their respective department’s budgets for 2018.</li> </ul> <p><i>Facilities</i></p> <ul style="list-style-type: none"> <li>▪ The vacant Facilities Coordinator position has been upgraded to a Facilities Manager and is in the beginning stages of recruitment. The other 1.5 FTE working in the Copy/Distribution Center are contract employees from Pacific Office Automation. Both personnel there are new to the bar in August.</li> </ul> <p><i>Information Technology</i></p> <ul style="list-style-type: none"> <li>▪ The first Aptify Go-Live is scheduled for September 12, 2017. This go-live includes the roll out of membership record management and improvements to site security. This module being deployed is referred to as Customer Relationship Management (CRM). It represents core functionality of the software and ties together all other systems used by the bar. It is an important step. The new functionality will improve how the bar stores data and manages data quality standards related to contact and demographic information for members and firms. Online features on contact details and firm affiliation will be minor but have a different look.</li> <li>▪ The largest impact this change has on membership is upgrading site security which requires members to create new passwords.</li> <li>▪ Not to be left out, Carolyn McRory, the IT Manager who has spearheaded the Aptify project from Day 1 submitted her resignation effective September 1. The bar already had begun the development and recruitment of the newly formed IT Director position which will lead the bar’s IT infrastructure and strategy as it embarks on the new platform.</li> </ul>
<p><b>Communications &amp; Public Services (includes RIS and Creative Services) (Kay Pulju)</b></p>	<p><i>Referral &amp; Information Services</i></p> <ul style="list-style-type: none"> <li>• The annual Lawyer Referral Service (LRS) renewal campaign is nearly complete. Approximately 600 attorneys received 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 funding model.</li> <li>• LRS revenue is on track to meet or exceed budget projections for 2017.</li> </ul>

	<p>Current remittance revenue is at \$416,520 as of July 31, which is 53% of the budgeted revenue and does not include an estimated \$115,000 from registration fees that will be reflected in the August financials. Total revenue generated since percentage-fee implementation in 2012 is \$2,775,561. This revenue represents over \$23,000,000 in legal fees LRS attorneys have billed and collected from LRS-referred cases over the same period.</p> <ul style="list-style-type: none"> <li>• Marketing efforts focused on Google Ads and Craigslist are ongoing. RIS is also sponsoring a new edition of the handbook “Legal Issues for Older Adults” as part of its grassroots marketing strategy. The book will be available in English, Spanish, Russian, Vietnamese and Chinese thanks to a grant-funded partnership with Oregon’s Department of Human Services.</li> </ul> <p><i>Communications and Public Services</i></p> <ul style="list-style-type: none"> <li>• The August/September edition of the Bulletin includes two features that are parts of ongoing series. The first one looks at law practice along the southern coast, highlighting the experiences of newer lawyers and practice opportunities for lawyers considering relocating. The second feature presents the “Big Law” phenomenon, and is part of a series on the future of law practice.</li> <li>• Staff continue to work with lawyer volunteers to update our public information web pages. The “Legal Q&amp;A” video series now includes 81 completed topics featuring a diverse group of lawyers. Some topics are available in Spanish and Vietnamese as well as English.</li> <li>• Media efforts have focused on recent changes to the bar exam, along with various lawyer discipline matters.</li> <li>• Other current department projects include: the 2017 economic survey; member communications on the futures task force report, volunteer opportunities and new website password requirements; planning for the annual awards luncheon on November 8; and testing for implementation of the bar’s new association management software.</li> </ul> <p><i>Creative Services</i></p> <ul style="list-style-type: none"> <li>• Web development has been focused on the new single sign on for the OSB and PLF websites, set to launch in September with new passwords, profile/address change form and demographics form.</li> <li>• Continuing migration of section websites to the OSB WordPress platform, with a current focus on transferring the six sites from the public WordPress to the bar’s platform. The Corporate Counsel and Civil Rights section sites are now fully transitioned to OSB and a new site was created for the ETU section.</li> </ul>
<p><b>CLE Seminars (Karen Lee)</b></p>	<ul style="list-style-type: none"> <li>▪ Began populating the bar’s content delivery platform (INXPO) with CLE Seminars digital media (on-demand videos and MP3 files).</li> <li>▪ The department held a one-week summer sale the first week of August for</li> </ul>

	<p>online seminars, offering a 15% discount. Gross sales for the period were \$9,386. In 2016 department’s two-week August tiered discount sale (the more seminars purchased the greater the discount) grossed \$2,919. A straight percentage is clearly more attractive to members than discounts tied to the number of seminars purchased.</p> <ul style="list-style-type: none"> <li>▪ The department is working with the bar’s General Counsel and members of the Futures Task Force to sponsor an ethics program on September 29 that will discuss the proposed ORPC amendments regarding referral fee sharing and in-person advertising.</li> </ul>
<p><b>General Counsel                  (includes CAO and                  MCLE)                  (Amber Hollister)</b></p>	<p><i>General Counsel</i></p> <ul style="list-style-type: none"> <li>▪ General Counsel’s Office has started recruiting for the new Disciplinary Board Adjudicator position.</li> <li>▪ General Counsel is working with Futures Task Force members to present an ethics CLE on September 29, 2017 from 9-11 at the OSB Center, focused on the proposed rule changes to RPC 5.4, 7.2 and 7.3, slated to be on the fall HOD agenda. BOG members are welcome to attend.</li> <li>▪ General Counsel has been invited by the Wisconsin State Bar on October 26, 2017 to present at its Small &amp; Solo Firm Conference on the findings and approach of the OSB Futures Task Force.</li> </ul> <p><i>CAO</i></p> <ul style="list-style-type: none"> <li>▪ CAO hired lawyer Lisa Amatangel to fill the Assistant GC/CAO Staff Attorney vacancy, starting August 28. Ms. Amatangel was previously in private practice as a litigator at a Portland, and previously worked for the Colorado Attorney General and a Boston law firm.</li> <li>▪ CAO has received over 850 complaints to date this year.</li> </ul> <p><i>MCLE Operations</i></p> <ul style="list-style-type: none"> <li>▪ At its June meeting, the MCLE Committee approved a recommendation to combine the child abuse reporting and elder abuse reporting credit requirements into a single one-hour program. This item is on the agenda for the 9/8/2017 BOG meeting.</li> <li>▪ 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, was approved by the Supreme Court in June.</li> <li>▪ The MCLE Committee will continue its discussion of a possible stand-alone credit requirement for mental health/substance use disorder programming later this year.</li> <li>▪ MCLE compliance e-mail reminders were sent in mid-July to members whose reporting period ends 12/31/2017.</li> <li>▪ Staff have reviewed/processed approximately 4,800 MCLE accreditation applications since the beginning of the year.</li> </ul>
<p><b>Human Resources                  (Christine Ford)</b></p>	<ul style="list-style-type: none"> <li>▪ Completed discrimination tests for the flexible spending accounts. All tests were marked as passed.</li> <li>▪ Provided, for all staff, Multi-generations in the Workplace training.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Provided, for all directors and managers, Overcoming Depression in the Workplace training.</li> <li>▪ Renewed the workers’ compensation insurance policy for a 55.41% increase. This is due to one claim that maintained a high reserve level at the time of renewal. That reserve level has since been significantly reduced. This claim also increased the experience modification factor from .80 to 1.34. The factor is used to calculate the premium and should fall for the 2018 to 2019 policy year; however, this claim will affect the premium for the next three policy years.</li> <li>▪ Organized a committee and began work on an emergency plan for emergencies such as a power outage.</li> </ul>
<p><b>Legal Publications (Linda Kruschke)</b></p>	<ul style="list-style-type: none"> <li>▪ The following have been posted to BarBooks™ since June 12, 2017:             <ul style="list-style-type: none"> <li>○ 4 last chapters of <i>Juvenile Law: Dependency</i>.</li> <li>○ 10 chapters of <i>Advising Oregon Businesses</i>, vol. 1&amp;2.</li> <li>○ 3 chapters of <i>Administering Trusts in Oregon</i>.</li> <li>○ 2 chapters of the all-new <i>Rights of Veterans and Military Servicemembers</i>.</li> <li>○ 2 revised <i>Uniform Criminal Jury Instructions</i>.</li> <li>○ 4 revised <i>Uniform Civil Jury Instructions</i>.</li> <li>○ Vol. 30 of the <i>Disciplinary Board Reporter</i>.</li> </ul> </li> <li>▪ We printed and shipped orders for <i>Elder Law</i> in April and May:             <ul style="list-style-type: none"> <li>○ Revenue to date: \$22,652</li> <li>○ Budget: \$1,150 – budget is low because this book was originally scheduled to release in 2016.</li> </ul> </li> <li>▪ <i>ORPCs Annotated</i> supplement will be sent to the printer next week. Pre-order marketing started in mid-August.             <ul style="list-style-type: none"> <li>○ Revenue to date: \$340</li> <li>○ Budget: \$2,450</li> </ul> </li> <li>▪ <i>Oregon Formal Ethics Opinions</i> supplement will be sent to the printer next week. Pre-order marketing started in mid-August.             <ul style="list-style-type: none"> <li>○ Revenue to date: \$1,897</li> <li>○ Budget: \$1,500</li> </ul> </li> <li>▪ <i>Juvenile Law: Dependency</i> will be sent to the printer in mid-September. Pre-order marketing started in August.             <ul style="list-style-type: none"> <li>○ Revenue to date: \$8,160</li> <li>○ Budget: \$12,250</li> </ul> </li> <li>▪ Titles scheduled for release in 2017 are:             <ul style="list-style-type: none"> <li>○ <i>Advising Oregon Businesses</i> vol. 1&amp;2</li> <li>○ <i>Rights of Veterans and Military Servicemembers</i></li> <li>○ <i>Administering Trusts in Oregon</i> (may be delayed to early 2018)</li> </ul> </li> <li>▪ <i>Oregon Trust and Probate Code</i> (may be delayed to early 2018)</li> </ul>
<p><b>Legal Services (Judith Baker) (includes Pro Bono and an OLF)</b></p>	<p><i>Legal Services Program</i></p> <ul style="list-style-type: none"> <li>▪ The LSP Committee’s 2017 focus is to visit legal aid offices across Oregon and hold committee meetings outside of the Portland area. The committee members went to Medford in June, Bend in August and will visit Eugene in</li> </ul>

<p>report)</p>	<p>October. The goal is to learn and understand how a legal aid office operates.</p> <ul style="list-style-type: none"> <li>▪ Staff is making updates to the LSP Standards and Guidelines which will be submitted to the LSP committee in October. Staff is working with the committee and legal aid to review the accountability process and implement changes in 2018.</li> <li>▪ There are currently three new certified pro bono program applications in process waiting for a final review by the PLF.</li> <li>▪ The ABA Pro Bono Oregon specific survey results are in. No action has been taken yet based on the results, but the survey will play a role in planning for next year’s Pro Bono committee, and will be used with certified programs to help them better understand how to access volunteers. Staff are waiting for the nationwide numbers to come in to compare to them.</li> <li>▪ The Pro Bono Directory has been fully updated.</li> <li>▪ The pro bono committee has been pushing out information on getting CLE credit for pro bono work to local bar associations to make sure pro bono programs and attorneys across the state are aware of the credit.</li> <li>▪ The 2016 Pro Bono numbers are in and have been totaled up – 93,880 volunteer hours reported with 1,469 attorneys reporting.</li> </ul> <p><i>Oregon Law Foundation</i></p> <ul style="list-style-type: none"> <li>▪ The OLF has approved funding for a civil legal needs study. Staff is working with Portland State University in putting together a survey tool and method of gathering information. It is anticipated that the study will be published in 2018.</li> <li>▪ 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.</li> </ul>
<p><b>Member Services &amp; New Lawyer Mentoring Program &amp; LRAP (Dani Edwards)</b></p>	<p><i>Member Services</i></p> <ul style="list-style-type: none"> <li>• Due to Kate’s resignation, a special filing deadline of September 26 is set for region 5 Board of Governors candidates. The election for this position will be held in October and allow the new member to participate in the November BOG retreat. Members interested in serving in this partial term seat can be directed to more information online at <a href="http://www.osbar.org/leadership/bog">http://www.osbar.org/leadership/bog</a>.</li> <li>• The annual volunteer recruitment period ended with a healthy list of members interested in participating in bar activities and programs. Nearly 200 of the 300 volunteers will be slated for appointed to a committee, council, or board during the September and November Board Development Committee meetings. Nearly 30 non-lawyer volunteers expressed an interest in serving on a bar committee or board, these public member candidates will be evaluated for appointment consideration during the same time period.</li> <li>• Department staff have focused considerable effort preparing for implementation of the new association management software. The initial</li> </ul>

	<p>launch will include creation of new passwords for all members and a user interface for member address changes, demographics, and directory preferences.</p> <p><i>New Lawyer Mentoring Program</i></p> <ul style="list-style-type: none"> <li>• Staff continues to process NLMP completion packets that come in from the program’s 5/31/17 completion deadline. Certifying completions and working with non-compliant new lawyers on repairing their status.</li> <li>• We are finalizing the structure for staff to review, approve and process the new Law Firm Certification policy. Some applications have arrived, and employers are asking questions about the policy.</li> <li>• Working to enroll and educate new members sworn in since the April ceremony about the NLMP.</li> <li>• Recently worked with six sections to recruit new Mentors.</li> <li>• Approximately 20 new lawyers currently need to be matched to Mentors</li> </ul> <p><i>Loan Repayment Assistance Program</i></p> <ul style="list-style-type: none"> <li>• 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. Their first checks were disbursed in July. Their second checks will be disbursed in November/December.</li> </ul>
<p><b>Public Affairs                  (Susan Grabe)</b></p>	<p><b><u>End of Session</u></b> – The 2017 legislative session officially adjourned, <i>sine die</i>, as of July 11<sup>th</sup>, 2017.</p> <p><b><u>Legislation Highlights</u></b> – Public Affairs staff has enlisted authors to write chapters and prepared bill lists and for the <i>2017 Oregon Legislation Highlights</i> publication. The book highlights legislative changes in a variety of practice areas with practice tips to assist lawyers on changes to the law that will impact their practice. Of particular interest this cycle is the inordinately high number of bills that go into effect on other than the normal effective date of January 2018; most bills this time will go into effect in early October.</p> <p><b><u>Interim Workgroups</u></b> – 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> <p><b><u>Outreach to bar groups re Law Improvement</u></b> – Public Affairs staff is gearing up to reach out to sections and committees regarding the law improvement program and assistance that the bar can provide. The next Law Improvement cycle for the 2019 session has a target deadline for bar legislative proposals from sections and committees of April 1, 2018.</p>
<p><b>Regulatory</b></p>	<p><i>Admissions Office</i></p>

<p><b>Services</b> <b>(Dawn Evans)</b></p>	<ul style="list-style-type: none"><li>▪ On July 25<sup>th</sup> and 26<sup>th</sup>, 459 test takers sat for the Oregon State Bar’s first Uniform Bar Examination. Once the July results are in, those who have taken the bar exam in one of the other UBE jurisdictions nationwide and received a score of 274 or greater will be eligible to transfer that score to Oregon as part of an application process in lieu of having to take Oregon’s bar exam. Similarly, those who have successfully taken the Oregon State Bar exam will be able to transfer that score to other UBE states for which their Oregon score is a passing score and seek admission.</li></ul> <p><i>Disciplinary Counsel’s Office</i></p> <ul style="list-style-type: none"><li>▪ As a result of a collaborative effort between the PLF’s Practice Management Advisors and Disciplinary Counsel staff, a long-discussed trust account school is nearing the completion of its development. The program’s intention is to teach basics about the ethical management of a trust account and fundamentals about recordkeeping associated with funds held in and disbursed from a trust account. The planning committee will be finalizing materials and previewing the presentations in the fall and plan to have two offerings of the half-day program in March and September of 2018.</li></ul>
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**Executive Director’s Activities June 22 to September 6, 2017**

<b>Date</b>	<b>Event</b>
6/22-6/23	BOG Meeting in Pendleton
6/27	Coffee with M. Izenon, law student mentee; Brown Bag lunch at Brownstein Rask; Portland Asst City Atty H. Auerbach’s retirement party
6/28	Call w/ D. Crowell, ED of Confederated Tribes of Umatilla Indian Reservation
6/29	DAC Committee mtg; Meet w/MBA ED G. Walden
7/6	DAC Subcommittee mtg
7/10	Directors/Managers mtg
7/14	Meeting w YRJ ED, M. McKechnie
7/15	Client Security Fund mtg
7/17	Meet w/L. Reeves and J. Puente; ACDI Meeting
7/18	Brown Bag Lunch at Bonneville Power Administration
7/19	Breakfast with local bar EDs
7/20	DAC Committee mtg
7/21	BOG meetings; HOD Regional meeting – remote access test
7/25	Breakfast w/R Spier; meet w/ PLF re: salary increases for 2018
7/26	CEJ Board mtg; Dunn Carney social
7/27	Meet w/ M. Levelle; Meet w M. Green from MBL group re IT Director; OMLA social
7/28	Meet w/ R. Nickerson;
8/1	Coffee w/ Chief Justice; Directors mtg
8/3-8/6	OLIO at Salishan; present on Lawyer Support Services Panel
8/8-8/13	Annual Meeting Conference of National Association of Bar Executives and National Conference of Bar Presidents in NYC
8/14	Aptify testing
8/15	Open Forum; Lunch w/A. Fisher; Meeting w LEC chair A. Doshi and secretary D. Keppler re LEC appointment recommendations
8/16	Willamette Law School Professionalism Program & lunch
8/17	Meet w/ Deschutes County Bar in Bend
8/21	Conference call w/ J. Lewin re BOG generative discussion on 9/7
8/22	DAC Committee mtg
8/23-8/25	PLF Board mtg in Sunriver
8/28	E. Bucher investiture
8/29	Meeting w CSF chair S. Raheer and secretary N. Cooper re CSF appointment recommendations; Lunch w/ N. Hochman
8/31	Brown Bag lunch at Williams Kastner
9/1	Lunch w/ J. Grant, new board member
9/5	DAC meeting
9/6	OTLA mtg re RPC changes; American Bar Foundation Frontiers of Access to Justice

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**Memo Date:** August 22, 2017  
**From:** Dawn M. Evans, Disciplinary Counsel  
**Re:** Disciplinary/Regulatory Counsel's Status Report

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### 1. Decisions Received.

#### a. Supreme Court

Since the Board of Governors met in June 2017, the Supreme Court took the following action in disciplinary matters:

- Accepted the Form B resignation from Springfield lawyer *Bryce R. Jessen*.
- Issued an order in *In re Dana C. Heinzelman*, accepting this Salem lawyer's stipulation to a 5-year suspension.
- Accepted the Form B resignation from Lake Oswego lawyer *Jason C. Hawes*.
- Issued an opinion in *In re James R. Kirchoff*, suspending this Grants Pass lawyer for 2 years. The court affirmed the trial panel opinion finding violations of RPC 3.3(a)(1), RPC 3.4(b), RPC 8.1(a)(1), and RPC 8.4(a)(3).

#### b. Disciplinary Board

No appeal was filed in the following cases and the trial panel opinions are now final:

- *In re Kevin Carolan* of Bend (dismissed).
- *In re Michael Reuben Stedman* of Medford (disbarment).

One Disciplinary Board trial panel opinion has been issued since June 2017:

- A trial panel recently issued an opinion in *In re Dale Maximiliano Roller* of Salem (disbarment).

In addition to these trial panel opinions, the Disciplinary Board approved stipulations for discipline in: *In re Conrad E. Yunker* of Salem (60-day suspension, all stayed, 2-year probation), *In re Michael E. Haglund* of Portland (reprimand), *In re Matthew C. Daily* of Bay City (180-day suspension, with formal reinstatement), *In re Howard W. Collins* of Salem (reprimand), *In re Robert C. Williamson* of Salem (reprimand), *In re Gregory L. Powell* of Portland (90-day

suspension), *In re James M. Monsebroten* of Coos Bay (reprimand), *In re James C. Hilborn* of Mountain View, Arkansas (90-day suspension), and *In re Sheryl S. McConnell* of McMinnville (90-day suspension).

The Disciplinary Board Chairperson approved BR 7.1 suspensions in *In re Dana C. Heinzelman* of Salem and *In re Robert Scott Phillips* of Portland.

## 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 Samuel A. Ramirez* – 1-year suspension; accused appealed; oral argument November 13, 2017
- In re Sandy N. Webb* – 2-year suspension; OSB appealed; awaiting briefs; oral argument November 9, 2017
- In re Gary B. Bertoni* – 1-year suspension; accused appealed; awaiting briefs
- In re Lisa D. T. Klemp* – disbarment; accused appealed; awaiting briefs
- In re Steven L. Maurer* – dismissed; OSB appealed; awaiting briefs
- In re Michael James Buroker* – failure to attend Ethics School pending
- In re Michael D. Hoffman* – Form B pending
- In re Glenn Solomon* – Form B pending

The following matters are under advisement before a trial panel of the Disciplinary Board:

- In re Robert G. Klahn* – May 31-June 1, 2017; TPO due September 1

## 3. Trials.

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

- In re David R. Ambrose* – August 28-29, 2017
- In re Kyung Joon Hahm* – September 18-19, 2017
- In re Stefanie L. Burke* – September 21-22, 2017
- In re James C. Jagger* – September 29, 2017
- In re Kenneth Stephen Mitchell-Phillips* – October 30-November 1, 2017
- In re Russell Lipetzky* – December 14-15, 2017

**4. Diversions.**

The SPRB approved the following diversion agreements since June 2017:

- In re Stephen J. Bedor – August 1, 2017*
- In re Daniel J. Lounsbury – August 1, 2017*
- In re Zachary Spier – August 1, 2017*

**5. Admonitions.**

The SPRB issued 2 letters of admonitions in May and July 2017. The outcome in these matters is as follows:

- 2 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyers have asked for reconsiderations;
- 0 lawyers have time in which to accept or reject their admonition.

**6. New Matters.**

Below is a table of complaint numbers in 2017, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

<b>MONTH</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
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	19/20
July	28/30	43/44	27/27	41/42	31/31
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	
<b>TOTALS</b>	<b>341/349</b>	<b>336/352</b>	<b>298/302</b>	<b>371/382</b>	<b>205/210</b>

As of August 1, 2017, there were 285 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 32% are less than three months old, 20% are three

to six months old, and 48% are more than six months old. Seventeen of these matters were on the August SPRB agenda.

DME/rh

**OREGON STATE BAR**  
**Board of Governors Agenda**

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**Meeting Date:** September 8, 2017  
**From:** Jonathan Puente, Director of Diversity & Inclusion  
**Re:** Department Status Report

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**OSB Diversity & Inclusion Program Status Report**

- OLIO- 52 students attended from the 3 Oregon law schools, presentations covering a variety of topics including professionalism, networking, research and writing skills, different practice areas, approx. 60 presenters/and other professionals from a broad spectrum of practice areas attended including 10 judges representing federal, OR supreme, appeals, and multiple counties. 9 ACDI members. 3 BOG members. Reps from all three schools. Individuals from each of the specialty bars, including the current chair/president for most
- Debriefing/collecting feedback from students and community partners about OLIO and assessing strengths of this year's program and areas for improvement for next year
- Reestablishing and developing positive working relationships with law schools and presence on campus to increase student awareness of D&I programs and resources
- Working on 2017-2018 Judicial mentorship program
- Finished Diversity Action Plan draft
- Started compiling diversity data

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Helen Hierschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
ROLLER (Shreffler) 2017-13

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### **Action Requested**

The Client Security Fund Committee recommends reimbursement of \$10,000 to Bryce Thomas Shreffler for his loss resulting from the conduct of attorney Dale M. Roller.

### **Discussion**

#### Background

In December 2014, Mr. Shreffler paid Mr. Roller a flat fee of \$10,000 to handle a DUI case in Marion County. Mr. Shreffler sent Mr. Roller a copy of his citation, which indicated the DMV would hold an administrative hearing on claimant's license suspension on January 6, 2015. Mr. Roller appeared at the administrative hearing on his own. Mr. Shreffler says he did not hear from Mr. Roller again until May, when Mr. Roller told him there may be a warrant for his arrest. Nearly a year later, in January 2016, Mr. Shreffler was still attempting to get information from Mr. Roller, including an accounting and a copy of his fee agreement so he could get a refund of the unearned portion of his \$10,000 payment. After several additional requests, Mr. Roller sent Mr. Shreffler the fee agreement but never produced an accounting. In February 2016, Mr. Roller told Mr. Shreffler that he was found guilty of DUII by default and that he would attempt to appeal the conviction. In August 2016, after months of more back and forth, Mr. Roller assured Mr. Shreffler he was working on the case. Mr. Shreffler finally fired Mr. Roller October 2016 when Mr. Roller failed to respond to a communication regarding whether he needed to appear in court.

Mr. Roller's account of his work and communications with Mr. Shreffler differs from that of Mr. Shreffler. Mr. Roller maintains that he made court appearances on behalf of Mr. Shreffler after the DMV hearing, filed multiple motions on his behalf, and does not remember telling Mr. Shreffler not to appear at court hearings. Court records do not substantiate Mr. Roller's story.

#### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. CSF Rule 2.2. In addition, reimbursement of a legal fee will be allowed only if the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee concluded Mr. Roller performed minimal services of value. At most, he attended the DMV administrative hearing, contacted the court and prosecutor about rescheduling claimant's arraignment, and filed what appears to be a form motion for discovery. In the investigator's opinion, Mr. Roller worked, at most, for five hours on this file, and Mr. Roller did engage in dishonest conduct after failing to appear at claimant's July court date. After that date, he provided claimant with blatantly false explanations and failed to timely communicate with claimant. Mr. Roller also provided a similar false explanation about what occurred in the case. Vacating the bench warrant in this case would not require an appeal, but a simple motion. Such an action is well within the scope of the fee agreement.

Mr. Roller's conduct did not result in a criminal conviction or civil judgment. According to Rule 2.6, a claim of more than \$5,000.00 cannot be approved unless one of these conditions has been met. Mr. Roller's conduct in connection with his representation of Mr. Shreffler is, however, the subject of an ongoing investigation by Disciplinary Counsel's Office. Moreover, Mr. Roller was recommended for disbarment by a Trial Panel Opinion on June 30, 2017 based on its findings of professional misconduct during his representation of four other individuals. Mr. Roller has submitted an appeal of that decision.

Pursuant to Rule 2.11, the Committee decided to waive the Rule 2.6 requirement. Mr. Shreffler is unable to afford new counsel, and Mr. Roller's inaction was the cause of the current bench warrant, which has been a barrier for Mr. Shreffler in securing new employment.

For the above reasons, the CSF Committee recommends that the Board of Governors approve Mr. Shreffler's claim for reimbursement in the amount of \$10,000.00.

Attachment: Investigator's Report





# Client Security Fund Application for Reimbursement

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

2017-13

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

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

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

- a. Full Name: BYRLE THOMAS SHREFFLER
- b. Street Address: 171 FOREST TRAIL
- c. City, State, Zip: SANDPOINT, ID 83864
- d. Phone: (Home) \_\_\_\_\_ (Cell) 208-290-4992  
(Work) \_\_\_\_\_ (Other) \_\_\_\_\_
- e. Email: shreffler.21@hotmail.com

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

- a. Lawyer's Name DALE MAXIMILIANO ROLLER
- b. Firm Name \_\_\_\_\_
- c. Street Address: 161 HIGH STREET SE SUITE 243
- d. City, State, Zip: SALEM, OR 97301
- d. Phone: 503-347-6662
- e. Email: daleroller@gmail.com

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MAR 24 2017  
Oregon State Bar  
Executive Director

3. Information about the representation:

- a. When did you hire the lawyer? 12/20/2014
- b. What did you hire the lawyer to do? Represent me for a DUI charge
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)  
\$10,000 fee agreement. (Attached)
- d. Did anyone else pay the lawyer to represent you? No
- e. If yes, explain the circumstances (and complete item 10B on page 3):  
\_\_\_\_\_  
\_\_\_\_\_
- f. How much was actually paid to the lawyer? \$10,000
- g. What services did the lawyer perform? Claimed to have appeared in court for me and file documents, but court records don't show this.

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

No

4. Information about your loss:

- a. When did your loss occur? Sometime between 12/20/2014 and now
- b. When did you discover the loss? When I got a letter from the court stating that I did not appear for a hearing, and now have a warrant for my arrest.
- c. Please describe what the lawyer did that caused your loss He advised me not to pay my fines, then lied about appearing in court for me.
- d. Total amount of your loss \$10,000 paid to DALE
- e. How did you calculate your loss? Amount of his fee
- f. Amount you are requesting to be reimbursed \$10,000, unless I owe him any time on my case subtracted from \$10,000 fee.

5. Information about your efforts to recover your loss:

- a. Have you been reimbursed for any part of your loss? If yes, please explain: No
- b. Do you have any insurance, indemnity or a bond that might cover your loss? If yes, please explain: No
- c. Have you made demand on the lawyer to repay your loss? When? Please attach a copy of any written demand. Not yet.
- d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain: No
- e. Have you sued the lawyer or made any other claim? If yes, please provide the name of the court and a copy of the complaint. Yes, to the OSB
- f. Have you obtained a judgment? If yes, please provide a copy No
- g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found: No

6. Information about where you have reported your loss:

- District attorney
- Police
- Oregon State Bar Professional Liability Fund
- If yes to any of the above, please provide copies of your complaint, if available.*
- Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? If yes, please provide the name and telephone number of the new lawyer: Not yet.

8. Please give the name and the telephone number of any other person who may have information about this claim: Kirsten Shreffler 208-290-1210

9. Agreement and Understanding

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

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

10. Claimant's Authorization

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

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

11. Claimant's Signature and Verification

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

State of IDAHO )  
County of KOOTENAI )ss

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

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

[Signature]  
Claimant's Signature

Signed and sworn (or affirmed) before me this 21 day of MARCH, 2017.



Notary's Signature [Signature]  
Notary Public for CECILE D'ALONE  
My Commission Expires 4-4-22

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

**"FLAT" FEE WRITTEN AGREEMENT FOR LEGAL REPRESENTATION**

PURPOSE: Bryce T. Shreffler employs lawyer Dale M Roller, Esquire to represent and advise in the following matters: Marion County DUI

ATTORNEY FEES: Dale Maximiliano Roller, Attorney at Law requires a fee in the amount of \$ 10,000. The fee is earned upon receipt. All funds paid are immediately the property of Dale M Roller. This is NOT a retainer agreement. That means that fees paid will NOT be put in any trust account on Client's behalf. The only bills that Client may receive are those reminding Client of payments due pursuant to this Agreement. This fee does not apply to services required for any appeal or postconviction relief unless specifically contracted for.

**IT IS CLEARLY UNDERSTOOD THAT THE DEPOSIT OF SAID FUNDS WILL BE THE SOLE PROPERTY OF DALE M ROLLER.**

It is understood that Lawyer reserves the right to assign all or any portion of the work to be performed under this Agreement to a law clerk, other lawyers, paralegals, or others working under Lawyer's supervision, at Lawyer's expense.

COSTS AND EXPENSES: All costs and expenses incurred by Lawyer in connection with Client's representation will be paid by Client when requested by Lawyer. Costs and expenses may include, but are not limited to, court filing fees, word-processing work, service of process charges, long-distance phone charges, mailing or copying expenses, and fees charged by experts or investigators employed at the discretion of Lawyer, including any fees charged for appearances in court.

PAYMENT OF FEES BY SOMEONE OTHER THAN CLIENT: Client consents, with full disclosure, to Dale M Roller accepting payment for legal fees from someone other than Client.

WITHDRAWAL BY LAWYER: Lawyer may elect at his or her discretion to withdraw as Lawyer for Client and terminate this Agreement for good and sufficient cause, which may include innocent or intentional misrepresentation of material facts by Client, or discovery of facts or circumstances during the course of this Agreement from which Lawyer concludes that such continued representation would be in violation of professionally recognized standards of conduct. **THIS AGREEMENT MAY BE TERMINATED BY LAWYER UPON WRITTEN NOTICE TO CLIENT, IF CLIENT, OR ONE WHO AGREES TO PAY FEES ON CLIENT'S BEHALF, FAILS TO TIMELY PAY FEES OR EXPENSES DUE.** If Attorney elects to withdraw from representation, Attorney will refund any unearned portion of the nonrefundable "flat fee" above, based on Attorney's hourly rate of \$250, and also including travel, expenses, phone calls, all client conversations, all conversations on behalf of Client, and all correspondence on behalf of Client.

DISCHARGE OF LAWYER: Client will be entitled to terminate this agreement at any time and may be entitled to a refund. Any refund will be determined by first calculating the attorney's reasonable fee, and deducting it from the nonrefundable fee paid by the Client. Even upon discharge, Attorney shall be entitled to attorney fees as calculated in the "Withdrawal of Attorney" paragraph above, all costs, and all expenses advanced by Attorney. In such event, Lawyer may claim a lien as provided by law upon Client's funds, papers, or things in his or her possession, and may further decline to withdraw as Lawyer for Client until Lawyer is paid in full for all services rendered.

DISCLAIMER OF WARRANTY: **Because Attorney is prohibited from doing so, Attorney has made no representations as to the success of any litigation strategy on the matters above.** All expressions made by Lawyer relative thereto are matters of Lawyer's opinion only, and are provided as a service to Client in evaluating Client's case.

ENFORCEMENT: In the event that legal action is required by Lawyer to recover any fees or cost reimbursements due from Client pursuant to this Agreement, Lawyer will be entitled to an award of reasonable attorney fees that will be determined and awarded by a court in such action. If such legal action is required, venue will be in Lincoln County, Oregon, unless the parties agree to the Oregon State Bar Voluntary Fee Arbitration Program. If the parties agree to that forum, that decision shall be binding on the parties.

DATED: 20 Dec 2014

Bryce T. Shreffler  
CLIENT NAME

Dale M Roller  
Dale M Roller, Esquire OSB #091897

Dale M Roller, Attorney at Law, 161 High Street SE, Suite #243, Salem, OR 97301  
Phone: (503) 914 - 2000 Fax: (888) 381-1722 lawyer@daleroller.com www.daleroller.com

\$10,000 paid in full BS

**Client Security Fund  
Investigative Report**

Re: Claim No. 2017-13  
Claimant: Bryce Thomas Shreffler  
Attorney: Dale Maximiliano Roller  
Investigator: Douglas J. Stamm

**RECOMMENDATION**

I recommend approval of the claim in the amount of \$8,750.00.

**CLAIM INVESTIGATION SUMMARY**

According to claimant, a friend referred him to Mr. Roller in late December 2014 to handle a DUI case in Marion County. Claimant was working in Seattle at the time, and met Mr. Roller in Tacoma to sign a fee agreement and pay a \$10,000 flat fee (which he paid with a personal check, a copy of which is attached). Claimant sent Mr. Roller a copy of his citation, which indicated the DMV would hold an administrative hearing on claimant's license suspension on January 6, 2015. Claimant says Mr. Roller told him he did not need to appear. After numerous attempts to learn the outcome of the hearing, claimant received a letter in the mail stating his driver's license was suspended. Claimant forwarded the letter to Mr. Roller in February, who said he would appeal the decision. Claimant says he did not hear from Mr. Roller again until May, and Mr. Roller told him there may be a warrant for his arrest. Nearly a year later, in January 2016, claimant was still attempting to get information from Mr. Roller. Claimant also asked Mr. Roller for an accounting and a copy of his fee agreement so he could get a refund of the unearned portion of his \$10,000 payment. After several additional requests, Mr. Roller sent claimant the fee agreement but never produced an accounting. In February 2016, Mr. Roller told claimant that he was found guilty of DUI by default, the court issued an arrest warrant at a hearing, and Mr. Roller did not receive notice of the hearing. Mr. Roller also told claimant he would attempt to appeal the conviction. In August 2016, after months of more back and forth, Mr. Roller assured claimant he was working on the case. Claimant received more assurances until October 2016, when Mr. Roller failed to respond to a communication regarding whether claimant needed to appear in court. Claimant states that during the time Mr. Roller represented him, he never told claimant he had to appear in court.

Mr. Roller acknowledges that claimant paid him \$10,000 to represent him in a DUI case in Salem Municipal Court. Mr. Roller states that he appeared at the DMV administrative hearing to try to get the suspension "dismissed" and use those results to help with the DUI case. Mr. Roller states that he appeared in court for claimant, and does not remember telling him not to appear at court hearings. According to Mr. Roller, the court convicted claimant by default and issued a warrant for his arrest after claimant failed to appear in court. After this happened, Mr. Roller states he filed motions to lift the warrant, and began "prepping" other motions in the case. Mr. Roller does not recall many of the communications he had with claimant, and claims he was unable to contact claimant because he "fled the state to disappear in North Dakota." Mr. Roller denies offering to appeal any decisions in the case because such work was beyond the scope of the fee agreement. Mr. Roller does not believe he owes claimant any refund.

It is clear from DMV documents that Mr. Roller attended and participated in the DMV administrative proceeding regarding claimant's license. This, and Mr. Roller's acknowledgement that claimant paid him \$10,000, are his only verifiable statements. For example, Mr. Roller states that he appeared in court for claimant in early January, but that the city prosecutor was not ready to proceed. This is unclear. Claimant's citation required an appearance in January, but a letter from the court states that the hearing was rescheduled for March. The docket shows no evidence of a hearing in January 2015. In fact, according to the court file, Mr. Roller never actually appeared in Salem Municipal Court for claimant. Mr. Roller failed to appear at the March hearing and wrote an e-mail to the court saying he never received notice. Based on Mr. Roller's request, the court rescheduled the hearing for July 6, 2015. Mr. Roller failed to attend this hearing as well and did not notify claimant of the court date. As a result, the court issued a bench warrant for claimant. The warrant is still active and the case is still pending. Mr. Roller's claim that the court convicted claimant by default is therefore totally false. In addition, there is no evidence that Mr. Roller prepared or filed any motions in the case after the supposed default conviction. Other than a notice of representation and what appears to be a form motion for discovery, he filed no documents in the case.

During my investigation of the claim, I spoke to claimant and Mr. Roller. I also reviewed documents from claimant, disciplinary counsel's file, Mr. Roller, and the court file for Salem Municipal Court case number 2015-9000463-CR.

### **FINDINGS AND CONCLUSIONS**

1. Claimant is the injured client.
2. Mr. Roller was an active member of the OSB at the time of the loss.
3. At all times relevant to the claim, Mr. Roller maintained an office in Oregon.
4. The loss arose from, and was because of, an established lawyer-client relationship.
5. The loss was caused by Mr. Roller's failure to complete services for which he was apparently paid. Claimant produced a copy of the cancelled check used to pay Mr. Roller. Claimant also produced a copy of the fee agreement, which acknowledges receipt of \$10,000.00. Mr. Roller also admits receiving \$10,000.00 to represent claimant.
6. Mr. Roller performed minimal services of value. At most, he attended the DMV administrative hearing, contacted the court and prosecutor about rescheduling claimant's arraignment, and filed what appears to be a form motion for discovery. In my opinion, Mr. Roller worked, at most, for five hours on this file. Therefore, I would reduce the amount of the claim by \$1,250 (five hours multiplied by Mr. Roller's hourly rate of \$250). I believe that Mr. Roller did engage in dishonest conduct after failing to appear at claimant's July court date. After that date, he provided claimant with blatantly false explanations and failed to timely communicate with claimant. Mr. Roller also provided me with a similar false explanation about what occurred in the

case. Vacating the bench warrant in this case would not require an appeal, but a simple motion. Such an action is well within the scope of the fee agreement.

7. The loss is not covered by a bond, surety agreement, or insurance contract.

8. Mr. Roller's conduct did not result in a criminal conviction or civil judgment. According to Rule 2.6, a claim of more than \$5,000.00 cannot be approved unless one of these conditions has been met. Mr. Roller is, however, facing discipline for his conduct in connection with this case. The Client Assistance Office referred claimant's bar complaint to Disciplinary Counsel, which is currently investigating. Mr. Roller was previously suspended from practice for four years as a result of his conduct in another disciplinary case. Pursuant to Rule 2.11, I recommend waiving the Rule 2.6 requirement in this case. Claimant is unable to afford new counsel, and Mr. Roller's inaction was the cause of the current bench warrant. Claimant has also been limited in his options for employment as a result of this case. In addition, claimant states he took out a loan from a bank to pay Mr. Roller, and is still making monthly payments. The loan is continuing to accrue interest. If the CSF chooses not to waive the Rule 2.6 requirement for these reasons, I alternatively recommend that the claim be approved in the amount of \$5,000.00.

9. The claimant made a good-faith effort to obtain a refund, including requesting an accounting and asking for a refund of the balance of his \$10,000.00.

10. The claim is timely.

**“FLAT” FEE WRITTEN AGREEMENT FOR LEGAL REPRESENTATION**

PURPOSE: Gayle T. Shreffler employs lawyer Dale M. Roller, Esquire to represent and advise in the following matters:

Wagon County DUI

ATTORNEY FEES: Dale Maximiliano Roller, Attorney at Law requires a fee in the amount of \$ 10,000. The fee is earned upon receipt. All funds paid are immediately the property of Dale M. Roller. This is NOT a retainer agreement. That means that fees paid will NOT be put in any trust account on Client's behalf. The only bills that Client may receive are those reminding Client of payments due pursuant to this Agreement. This fee does not apply to services required for any appeal or postconviction relief unless specifically contracted for.

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It is understood that Lawyer reserves the right to assign all or any portion of the work to be performed under this Agreement to a law clerk, other lawyers, paralegals, or others working under Lawyer's supervision, at Lawyer's expense.

**COSTS AND EXPENSES:** All costs and expenses incurred by Lawyer in connection with Client's representation will be paid by Client when requested by Lawyer. Costs and expenses may include, but are not limited to, court filing fees, word-processing work, service of process charges, long-distance phone charges, mailing or copying expenses, and fees charged by experts or investigators employed at the discretion of Lawyer, including any fees charged for appearances in court.

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**DISCLAIMER OF WARRANTY:** Because Attorney is prohibited from doing so, Attorney has made no representations as to the success of any litigation strategy on the matters above. All expressions made by Lawyer relative thereto are matters of Lawyer's opinion only, and are provided as a service to Client in evaluating Client's case.

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DATED: 20 Dec 2014

[Signature]  
CLIENT NAME

[Signature]  
Dale M. Roller, Esquire OSB #091897

Dale M. Roller, Attorney at Law, 161 High Street SE, Suite #243, Salem, OR 97301  
Phone: (503) 914 - 2000 Fax: (888) 381-1722 lawyer@daleroller.com www.daleroller.com  
\$10,000 paid in full 1/15



Account: 52000025293

BRYCE T. SHREFFLER  
KIRSTEN SHREFFLER  
171 FOREST TRAIL  
SANDPOINT, ID 83864

1017

92-7195-1231  
Security Features  
Includes  
Debit on Back

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Pay to the order of

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*Ten thousand dollars & 00/100*

Dollars

MOUNTAIN WEST BANK  
LOVE WHERE YOU BANK!

For

*Bryce T. Shreffler*

⑆0123⑆71955⑆52000025293⑆1017

Check 1017 Amount \$10,000.00 Date 12/23/2014



Redacted Information

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**TO:** Emily Schwartz  
Oregon State Bar

**FROM:** Jill  
Salem Municipal Court

**DATE:** 5/31/2017

**SUBJECT:** Redacted Information

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Greetings ~

I have prepared the items as requested. Please note, certain items containing personal information have been removed and/or redacted pursuant to ORS 192.502(2).

Please contact me if you have further inquiries regarding this matter. I am happy to assist with your records requests.

Salem Municipal Court  
ROA Listing  
2015-9000463-CR  
For Defendant: Bryce Thomas Shreffler

## City of Salem vs. Bryce Thomas Shreffler

Date	Action
02/19/2015	Letter from CA to attorney Dale Roller re: 3/10/15 @ 8:00 a.m. appearance. Motion Filed: Motion & Order to Consolidate with 2015-0554190-CR New charge filed
03/05/2015	Hearing Scheduled (Arraignment 03/10/2015 8:00 AM)
03/10/2015	Defendant Failed to appear
03/11/2015	Motion to consolidate Allowed. Consolidate cases 2015-9000463-CR and 2015-0054190-CR.
04/23/2015	Defendant: Bryce Thomas Shreffler: Retained Attorney Dale M Roller-per e-mail Motion Filed. Ex Parte Motion For Arrest Warrant and Order.
04/24/2015	Per half sheet: Set motion for court date & notify Defendant's attorney, defendant and city. If defendant appears, court will arraign. If defendant FTA, court will sign arrest warrant. (See attached email; defendant's attorney objects)
04/28/2015	Notice of Representation filed by Attorney Dale Roller along with a copy of the Request for Discovery that was submitted to the City Attorney.
04/29/2015	Hearing Scheduled (Motion 07/06/2015 1:30 PM)
07/06/2015	Arrest Warrant Prepared for Judges Signature Arrest warrant issued Bond amount: 5000.00 Arrest warrant pending Defendant Failed to appear per half sheet: Neither def nor defense atty Dale Roller appeared @ 1:30pm today as scheduled. City Motion for Arrest Warrant granted. Security set @ \$5,000.

IN THE MUNICIPAL COURT FOR THE CITY OF SALEM  
COUNTY OF MARION, STATE OF OREGON  
555 LIBERTY STREET SE, SALEM OR 97301

City of Salem,

Plaintiff

Arrest Warrant  
Arraignment FTA

VS.

Case Number: 2015-9000463-CR

Shreffler, Bryce Thomas  
171 Forest Trl  
Sandpoint ID 83864

Defendant

DOB: **REDACTED** Alias:

IN THE NAME OF THE CITY OF SALEM IN THE STATE OF OREGON

To the Chief of Police or any Peace Officer:


A complaint having been filed, accusing Bryce Thomas Shreffler of committing the offense(s) of Driving Under the Influence of Intoxicants, a violation of 100.331(10) Salem Revised Code Misdemeanor .

You are hereby commanded forthwith to arrest the above named defendant and lodge him at a correctional facility.

IT IS HEREBY ORDERED that defendant be brought before the magistrate in accordance with ORS 133.140. The arresting officer may enter premises in which the officer has probable cause to believe the person to be arrested is present, in accordance with ORS 133.140(7).

Security amount for release \$ 5100<sup>00</sup>

DATED at Salem, Oregon this 6<sup>th</sup> day of July 20 15

  
Salem Municipal Court Judge

The Undersigned peace officer hereby returns that he/she has executed the within Arrest Warrant on the above-named-defendant.

\_\_\_\_\_  
Service Date

\_\_\_\_\_  
Officer Signature

Certified correct copy of original made under Court Administrator's directions 7/10/2015

IN THE MUNICIPAL COURT FOR THE CITY OF SALEM  
555 LIBERTY ST. SE, SALEM, OR 97301  
COUNTY OF MARION, STATE OF OREGON

*Motion*

CASE NO. *2015-900463*

THE CITY OF SALEM

pl.,

vs.

*Bryce T. Shreffler*  
Def.

Incourt Date:

*7/6/15*

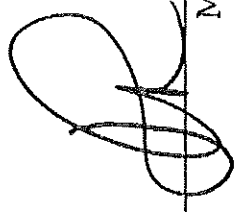
CURRENT ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Neither I, nor defense  
att Dale Roller appeared @  
1:30 pm today as scheduled.  
City Motion for Arrest Warrant  
granted. Security set @ \$5,000.*

DISPOSITION:

Non-compliance to pay this debt will result in your account being transferred to a collection agency. If your account is transferred to a collection agency, as provided for in ORS 697.105, you will be responsible for a collection fee of up to 25% which will be added to your principal balance on each fine. Also be advised that your account may be reported to the credit bureaus as a delinquent account. Any fines sent to collections are no longer payable at the City of Salem.



MUNICIPAL JUDGE

# SALEM MUNICIPAL COURT HEARING NOTICE

CASE NUMBER: 2015-9000463-CR 2015-0554190-CR

Defendant: Bryce Thomas Shreffler

Attorney: Dale M Roller Attorney Phone #: (503) 914-2000

Charges: Driving Under the Influence of Intoxicants

## HEARING INFORMATION

DATE OF HEARING: 07/06/2015 AT: 1:30 PM

TYPE OF HEARING: Motion

I acknowledge I received the hearing date and time. I understand that if I do not appear as ordered a warrant may be issued for my arrest, an additional charge of Failure to Appear may be filed against me and any security deposit I may have posted may be forfeited.

\_\_\_\_\_  
Defendant Signature

\_\_\_\_\_  
Attorney Signature

DATE GIVEN/MAILED TO ATTORNEY OR DEFENDANT: 04/29/2015

CJA

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IN THE MUNICIPAL COURT OF THE CITY OF SALEM

CITY OF SALEM,  
  
Plaintiff,  
  
vs.  
  
BRYCE THOMAS SHREFFLER,  
  
Defendant.

Case No.: 2015-9000463-CR

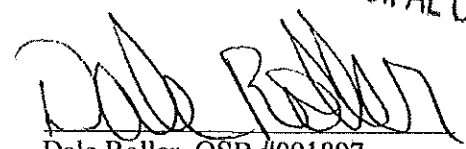
NOTICE OF REPRESENTATION

Please be advised that Dale Maximiliano Roller, Esquire OSB #091897 has been retained to represent defendant in the above entitled matter. All future notices and correspondence concerning this matter should be directed to this attorney at the following address:

Law Offices of Dale M Roller  
161 High Street SE, Suite #243  
Salem, OR 97301  
Phone: (503) 347 - 6662  
Fax: (888) 381 - 1722  
lawyer@daleroller.com

Dated April 28<sup>th</sup>, 2015

RECEIVED  
APR 28 2015  
SALEM MUNICIPAL COURT

  
Dale Roller, OSB #091897  
Attorney for Defendant

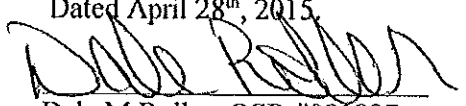
161 High Street SE, #243  
Salem, Oregon 97301  
Phone: (503) 347 - 6662  
Fax: (888) 381 - 1722  
Email: lawyer@daleroller.com

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing NOTICE OF REPRESENTATION on the following persons on the date indicated below by facsimile transmission to said persons a true copy thereof, addressed to said persons at their last known fax number indicated below.

Salem City Attorney (503) 361-2202

Dated April 28<sup>th</sup>, 2015.

  
Dale M Roller, OSB #091897

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IN THE MUNICIPAL COURT OF THE CITY OF SALEM

CITY OF SALEM,  
  
Plaintiff,  
  
vs.  
  
BRYCE THOMAS SHREFFLER,  
  
Defendant.

Case #: 2015-9000463-CR

DEMAND FOR DISCOVERY and  
PRESERVATION

ORS 135.815

RECEIVED  
APR 28 2015

SALEM MUNICIPAL COURT

Defendant, by and through his attorney, Dale Maximiliano Roller, Esquire demands that the City Attorney disclose and produce the following material and information without delay:

1.

The name, addresses, and phone numbers of all persons whom the City Attorney intends to call as witnesses at any stage of the trial, together with their relevant written and recorded statements and memoranda of any oral statements, of such persons. ORS 135.815(1).

2.

All written and recorded statements and memoranda of oral statements made by the Defendant, or made by all Co-Defendants in the event of a joint trial. OLRS 135.805(2). See *State v. Fritz*, 72 Or App 409, 695 P2d 972 (1985).

1 This request includes all reports, memoranda, notes, and statements intended by the maker to be an account of the events of this case or a declaration of fact, prepared by any police or investigative agency, which relate to the above-entitled case. See *State v. Johns*, 44 Or App 421, 606 P2d 640 (1979), *rev den* 289 Or 1 (1980); *State v. Brady*, Or App 47, 569 P2d 688 (1977); *State v. Johnson*, 26 Or App 651, 554 P2d 624 (1976). Defendant takes the position that the so-called "fragmentary notes" are also discoverable. Margolin, *The Oregon Court of Appeals and Statutory Pretrial Discovery*, 18 Will LJ 279 (1982). *Contra State v. Smith*, 66 Or App 374, 675 P2d 1060 (1984); *State v. Bray supra*. Even assuming that fragmentary notes are not discoverable, factual information contained therein is discoverable and should be provided to defense counsel. See *State v. Burdge*, 295. Statements or memoranda of witnesses are subject to the disclosure requirements regardless of whether they ever actually come within the possession of the prosecutor. *State v. Johnson*, 26 Or App 651, 554 P2d 624 (1976); Or 1, 664 P2d 1076 (1983). In any event, Defendant is entitled to such notes at least prior to cross-examination of police witnesses. OEC 612; *State v. Jacobs*, 252 Or 433, 450 P2d 542 (1969); *State v. Foster*, 242 Or 101, 407 P2d 901 (1965).

2. Defendant takes the position that this includes all statements which the prosecutor intends to offer as admissions as a party-opponent under OEC 801(4)(b).



1 3.

2 All reports or statements of experts, made in connection  
3 with this particular case, including the results of physical or  
4 mental examinations, polygraph tests and of scientific tests,  
5 breathalyzer analysis, field sobriety tests, drug recognition  
6 tests, experiments or comparisons which the City Attorney  
7 intends to offer in evidence at the trial. ORS 135.815(3).

8 4.

9 All books, papers, documents, medical records, photographs,  
10 dash cam/patrol car/unit video and/or audio tapes, dispatch logs  
11 and tangible objects (including blood, urine & semen samples)  
12 which the State intends to offer in evidence at trial or which  
13 were obtained from or belong to the Defendant. ORS 135.815(4).  
14 See *State v. Carsner*, 31 Or. App 1115, 572 P2d 339 (1977).

15 5.

16 All records of prior criminal convictions, arrests, and  
17 contacts by law enforcement officers of persons whom the  
18 District Attorney intends to call as witnesses at trial. ORS  
19 135.815(5). See *State v. Williams*, 11 Or App 255, 500 P2d 722  
20 (1972); *State v. Ireland*, 11 Or App 264, 500 P2d 1231 (1972).

21 6.

22 All prior convictions of the Defendant. ORS 135.815(6). In  
23 order for the defendant to receive the effective assistance of  
24 counsel, a complete criminal history is required to be disclosed  
25 to the defendant, including the FBI rap sheet, in a timely  
26 fashion. Unless this history is disclosed, counsel cannot advise  
27 the defendant whether to accept any offer or whether to  
28 otherwise engage in plea negotiations with the city.

1 7.

2 Whether any person whom the City Attorney intends to  
3 call as a witness at any stage of the trial has undergone  
4 hypnosis, regardless of purpose, and/or treatment by sodium  
5 pentothal, or other so called "truth serum" drugs. See *United*  
6 *States v. Miller*, 411 F2d 825 (2d Cir 1969); *State v. Coe*, 101  
7 Wash 2d 772, 684 P2d 668 (1984). ORS 136.675 et seq.

8 8.

9 The occurrence of all searches and seizures, all relevant  
10 material or information obtained thereby, the circumstances  
11 surrounding each search or seizure, and the circumstances of the  
12 acquisition of all statements attributed to the defendant. ORS  
13 135.825. *State v. Sweet*, 122 Or App 525, 529 n.4, 858 P2d 477  
14 (1993). This request includes, but is not limited to, the  
15 relevant contents of the notebooks of the officers participating  
16 in the search. Counsel for the defendant requests that the city  
17 attorney specifically ask each officer participating in the  
18 search to provide this information so that delays and surprises  
19 be avoided at any hearing on a motion to suppress, if one is  
20 filed.

21 9.

22 The occurrence of all lineups, photographic throwdowns, or  
23 other identification procedures, the circumstances surrounding  
24 each, and all material and information obtained thereby.

25 10.

26 All information contained in personnel files of all persons  
27 employed or acting as law enforcement agents whom the District  
28 Attorney intends to call as witnesses at any stage for the

1 trial, which, if believed, would be seriously considered by a  
2 trier of fact in determining guilt or innocence. *State v.*  
3 *Fleischman*, 10 Or App 22, 495 P2d 277 (1972).

4 11.

5 A certified copy to counsel for the defendant of any  
6 Certification of Alcohol Breath Testing Equipment, which the  
7 state may elect to introduce into evidence herein, so that  
8 counsel may, in a timely manner, know if there is or is not an  
9 issue as to said Certification, pursuant to ORS 813.160 and OAR  
10 257-30-035 *et seq.*

11 12(a).

12 The existence and identity of all so-called "informants,"  
13 i.e., persons who have worked as agents of and/or provided  
14 information to state officials and whose testimony the District  
15 Attorney intends to offer at trial either by calling those  
16 persons as witnesses at trial or by offering their testimony as  
17 statements made by alleged co-conspirators.

18 Under ORS 135.855(1)(b), the identity of a "confidential  
19 informant" whom the prosecution intends to call as a witness at  
20 trial must be disclosed unless the prosecution obtains a  
21 protective order under ORS 135.873.

22 No privilege exists if the identity of the informant or the  
23 informant's interest in the subject matter of the communication  
24 has been disclosed to those who would have cause to resent the  
25 communication by a holder of the privilege or by the informant's  
26 own action, or if the informant appears as a witness for the  
27 prosecution. OEC 510 (4)(a).

28 No privilege exists if it appears that the informant may be

1 able to give testimony necessary to a fair determination of the  
2 issue of guilt or innocence. OEC 510 (4)(b). See *Rovario v.*  
3 *United States*, 353 US 53, 77 Sct 623, 1 LEd2d 639 (1957); *State*  
4 *v. Elliot*, 276 Or 99, 102, 553 P2d 1058 (1976); *State v.*  
5 *Martinez*, 97 Or App 170, 172-75, 776 P2d 3 (1989).

6 No privilege exists if information from an informant is  
7 relied upon to establish the legality of the means by which  
8 evidence was obtained and if a judge is not satisfied that the  
9 information was received from an informant reasonably believed  
10 to be reliable or credible. OEC 510 (4)(c); ORS 133.703.

11 12(b).

12 If any such persons exist, then Defendant requests  
13 disclosure of the following material and information: (a) notice  
14 as to the existence of any cooperation agreement between the  
15 person and the state; (b) if a cooperation agreement exists,  
16 then copies of all documents reflecting the terms of the  
17 agreement; see *United States v. Kojavan*, 8 F3d 1315 (9th Cir  
18 1993); (c) if part or all of the agreement has not been reduced  
19 to writing, then a description of the agreement or any part of  
20 the agreement which has not been reduced to writing; (d) copies  
21 of all documents reflecting all communications, whether direct  
22 or indirect, between the informant and state officials; and (e)  
23 copies of all other documents reflecting information relevant to  
24 the motive and/or reason for person's cooperation with the law  
25 enforcement officials.

26 The latter material and information also includes, but is  
27 not limited to, payments of anything of value including but not  
28 limited to money, goods, and/or services, all express or implied

1 promises made by the prosecution, and all action by the law  
2 enforcement officials which could be considered beneficial to  
3 such persons whether or not it was a benefit expressly or  
4 impliedly bargained by such persons. See *United States v.*  
5 *Bagley*, 473 US 667, 105 Sct 3375, 87 LEd2d 481 (1985); *Giglio v.*  
6 *United States*, 405 US 150, 93 Sct 763, 31 LEd2d 104 (1972);  
7 *United States v. Burnside*, 824 F Supp 1215 (DC Ill 1993)  
8 (information of informants' continuing drug use, substantial  
9 benefits of money, gifts, clothing, etc., and unrestricted  
10 access to females). See also *Bagley v. Lumpkin*, 798 F2d 1297 (9th  
11 Cir 1986) (payments and inducements made to witnesses in ATF  
12 contracts); *United States v. Shaffer*, 789 F2d 682 (9th Cir 1986)  
13 (facts which imply an agreement must be disclosed); *Haber v.*  
14 *Wainwright*, 756 F2d 1520, 1526 (11th Cir 1985) (even mere advice  
15 to key witness that state would not prosecute in exchange for  
16 testimony may be an informal understanding directly affecting a  
17 witness' credibility); *Boone v. Paderick*, 541 F2d 447, 451 (4th  
18 Cir 1976) (the more uncertain an agreement, the greater the  
19 incentive to make testimony pleasing to the prosecution).

20 13.

21 Whether any books, papers, documents, photographs, video  
22 tapes, tangible objects, and/or other physical evidence, in the  
23 possession of law enforcement officials at any time, has been  
24 lost, destroyed and/or altered or changed in any material way,  
25 whether intentionally or inadvertently. See *State v. Mower*, 50  
26 Or App 63, 622 P2d 745 (1980), rev den 290 Or 651 (1981); *State*  
27 *v. Lance*, 48 Or App 141, 616 P2d 546 (1980); *State v. Michener*,  
28 25 Or App 523, 550 P2d 449 (1976); *United States v. Loud Hawk*,

1 628 F2d 1139 (9th Cir 1979), cert den 445 US 917 (1980).

2 14.

3 Any and all information that may be favorable to defendant  
4 and material either to guilt or innocence or to punishment. This  
5 includes but is not limited to all of the items specified above.  
6 US Const amend XIV. *Brady v. Maryland*, 373 US 83, 83 Sct 1194,  
7 10 LEd2d 215 (1963); *State v. Graville*, 304 Or 424, 746 P2d 715  
8 (1987); *State ex rel Dooley v. Connall*, 257 Or 94, 475 P2d 582  
9 (1970); *Hanson v. Cupp*, 5 Or App 312, 484 P2d 847 (1971).

10 15.

11 Defendant also bases this request for discovery on the  
12 compulsory process clause of Article I, section 11 of the Oregon  
13 Constitution. This includes but is not limited to all of the  
14 items specified above.

15 The right of compulsory process "comes into play at the  
16 Defendant's initiative and provides him with affirmative aid in  
17 presenting his defense." Westen, *The Compulsory Process Clause*,  
18 73 Mich L Rev 71, 74 (1975). Defendant submits that the State is  
19 required to disclose all facts necessary to present his defense.  
20 See *State v. Mai*, 294 Or 269, 274, 656 P2d 315 (1982) (quoting  
21 *Washington v. Texas*, 388 US 14, 19, 87 Sct 1920, 1923, 18 Led2d  
22 1019 (1967)).

23 Defendant submits that it need only be shown that the  
24 information in question is "material." It should not be required  
25 that the information also be "favorable" as under *Brady* and the  
26 due process clause. See *state ex rel Gladden v. Lonergan*, 201 Or  
27 163, 188, 189, 269 P2d 491 (1954).

28

1 16.

2 This demand for discovery includes material not only in the  
3 possession, custody or control of the City Attorney, but also in  
4 the possession, custody, or control of law enforcement  
5 agencies. *State ex rel Dugan v. Tiktin*, 313 Or 607, 612-15, 837  
6 P2d 959 (1992); *State v. Warren*, 304 Or 428, 433, 746 P2d 711  
7 (1987); *United States v. Antone*, 603 F2d 566, 569 (5th Cir  
8 1979); *State v. Fleischman*, 10 Or App at 32.

9 "The prosecuting attorney's obligations...extend to  
10 material and information in the possession or control of members  
11 of his staff and any others who have participated in the  
12 investigation or evaluation of the case and who either regularly  
13 report or with reference to the particular case have reported to  
14 his office." *Commonwealth v. St. Germain*, 381 Mass 256, 408 NE2d  
15 1358, 1363 n.8 (1980). This includes federal as well as state  
16 agencies. See *Commonwealth v. Donahue*, 396 Mass 590, 487 NE2d  
17 1351, 1354-58 (1986). At a minimum, even under *Brady* and its  
18 progeny, if the District Attorney has knowledge of and access to  
19 exculpatory information that is outside the geographic  
20 boundaries of his or her jurisdiction, then the District  
21 Attorney must disclose that information to the defense. See  
22 *United States v. Bryan*, 868 F2d 1032, 1037 (9th Cir), cert den  
23 493 US 858 (1989).

24 18.

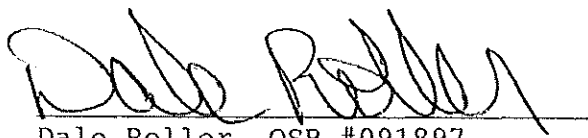
25 Defendant further demands continuing disclosure of the  
26 information requested in the preceding paragraphs including  
27 amendments to witness statements. ORS 135.845(2); *State v.*  
28 *Harshman*, 61 Or App 711, 715, 658 P2d 1173 (1983).

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19.

The defendant demands that the City Attorney and/or agents of the prosecution to preserve, retain, keep and disclose to the defendant as a part of discovery herein any and all evidence in this case including, but not limited to, all original notes, now in existence or hereafter made, of police officers and/or investigators on behalf of the state relating to this case, and all items, including suspected controlled substances, seized by law enforcement in connection with this case.

Dated: 28 April 2015



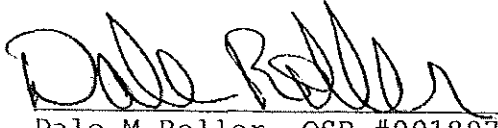
Dale Roller, OSB #091897  
Attorney for Defendant  
161 High Street SE, #243  
Salem, OR 97301  
Phone: (503) 347 - 6662 / Fax:  
(888) 381-1722  
lawyer@daleroller.com

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing DEMAND FOR DISCOVERY and PRESERVATION on the following persons on the date indicated below by facsimile transmission to said persons a true copy thereof, addressed to said persons at their last known fax number indicated below.

Salem City Attorney (503) 361-2202

Dated April 28<sup>th</sup>, 2015.



Dale M Roller, OSB #091897



Wendy McClure - Re: Shreffler, Bryce Thomas

From: "Dale Maximiliano Roller, Esquire" <lawyer@daleroller.com>  
To: Wendy McClure <wmccclure@cityofsalem.net>  
Date: 4/28/2015 3:56 PM  
Subject: Re: Shreffler, Bryce Thomas

I am available on July 6 anytime between 1:30 and 4pm.  
Could I get a case number please so that we can start filing motions?

On Mon, Apr 27, 2015 at 3:17 PM, Wendy McClure <wmccclure@cityofsalem.net> wrote:

Hello Mr. Roller,

Judge Wilson has requested that a motion hearing be set for Mr. Shreffler. This is in regards to the motion for arrest warrant filed by the City Attorney's office.

Currently the court has the following dates available:

6/22 at 4 PM

6/25 at 3:30 PM

6/29 at 3 or 4 PM

7/2 at 2:30 PM

7/6 at 1:30, 2, 3 or 4 PM

Please let me know what date works best for you.

Wendy McClure

Municipal Court

SR Court Operations Specialist

(503) 588-6433

Fax (503) 588-6441

**NOTICE: My phone number has changed to (503) 347 - 6662**

**Dale Maximiliano Roller, Attorney at Law**

161 High Street SE

Suite #243

Salem, Oregon 97301

549 NW HWY 101

Lincoln City, Oregon 97367

425 SW Madison Avenue

Suite #J-4

Corvallis, Oregon 97330

Phone: (503) 347-6662 Fax: (888) 381-1722

<http://www.daleroller.com>

<http://www.DudeIAmSoBusted.com>

<http://www.oregonabogado.com>

<http://www.oregonexpungement.info>

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IRS Circular 230 Notice: Any U.S. federal tax advice contained in this communication is not intended to be used, and may not be used by any taxpayer, for the purpose of avoiding federal tax penalties. Any legal advice contained in this message is delivered to the recipient solely for his/her/its use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without my prior written consent.

IN THE MUNICIPAL COURT FOR THE CITY OF SALEM  
55 LIBERTY ST. SE, SALEM, OR 97301  
COUNTY OF MARION, STATE OF OREGON

2015 -  
CASE #: 9000463-CR

THE CITY OF SALEM )  
pl. )  
vs. )  
Bryce Thomas )  
Def. )

Incourt Date: 4-24-15

CURRENT ADDRESS  
(see attached email;  
Da objects)

- set motion for court date & notify Da & D, and city.
- If D appears, court will arraign
- If D FTA court will sign arrest warrant.

DISPOSITION:

Non-compliance to pay this debt will result in your account being transferred to a collection agency. If your account is transferred to a collection agency, as provided for in ORS 697.105, you will be responsible for a collection fee of up to 25% which will be added to your principal balance on each fine. Also be advised that your account may be reported to the credit bureaus as a delinquent account. Any fines sent to collections are no longer payable at the City of Salem.

Deborah Wells  
MUNICIPAL JUDGE

RECEIVED  
APR 23 2015  
MUNICIPAL COURT

IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION - STATE OF OREGON

CITY OF SALEM, Oregon )

Plaintiff )

v. )

BRYCE THOMAS SHREFFLER )

DOB: **REDACTED** )

Defendant. )

Case No. 2015-9000463-CR

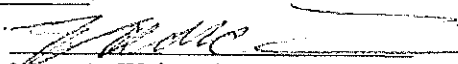
SMP 14-52333

EX PARTE MOTION FOR ARREST  
WARRANT and ORDER

MOTION

Comes now Assistant City Attorney Marc A. Weinstein, attorney for plaintiff, City of Salem, and respectfully moves the court for an arrest warrant to be issued for the above-named defendant. This motion is based upon the attached complaint filed herein and the affidavit attached hereto.

DATED: 4/8/2015

  
\_\_\_\_\_  
Marc A. Weinstein, OSB 964562  
Assistant City Attorney  
OF ATTORNEYS FOR PLAINTIFF

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-361-2202

////

////

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RECEIVED  
APR 23 2015  
MUNICIPAL COURT

ORDER DIRECTING ARREST WARRANT TO BE ISSUED

Based on the foregoing motion and attached affidavit; NOW THEREFORE, IT IS  
HEREBY ORDERED that an arrest warrant be issued for the arrest of Bryce Thomas Shreffler,  
DOB: *Redacted* and \$ *5,000* bail be issued.

DATED: 7/6/15

  
Municipal Court Judge

Prepared & Submitted by:  
Marc A. Weinstein, OSB 964562  
Assistant City Attorney  
OF ATTORNEYS FOR PLAINTIFF

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-361-2202

RECEIVED  
APR 23 2015  
MUNICIPAL COURT

IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION - STATE OF OREGON

CITY OF SALEM, Oregon )

Plaintiff )

v. )

BRYCE THOMAS SHREFFLER,  
DOB: )

**REDACTED** )

Defendant. )

Case No. 2015-9000463-CR

SMP 14-52333

AFFIDAVIT FOR ARREST WARRANT

STATE OF OREGON )

) ss.

COUNTY OF MARION )

I, Marc A. Weinstein, being first duly sworn on oath do hereby depose and say:

I have reviewed Salem Police Incident Report SMP 14-52333, attached hereto and incorporated herein by reference.

My review of the report indicates probable cause exists to arrest Bryce Thomas Shreffler for violation of Salem Revised Code 100.331 DUII.

Defendant was notified through his attorney, Dale Roller that he was to appear before the court on this matter on Tuesday, March 10, 2015 at 8:00 a.m.

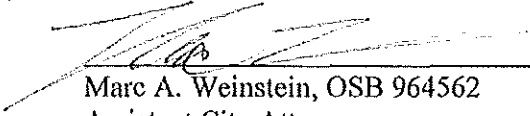
According to the court's Register of Actions the defendant did not appear on that date and time.

///

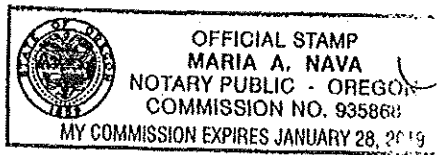
City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-361-2202

1  
2  
3  
4 I make this affidavit in support of my motion to issue an arrest warrant for defendant in  
5 the above-entitled matter.

6 DATED: April 22, 2015.

7  
8   
Marc A. Weinstein, OSB 964562  
Assistant City Attorney

9 SUBSCRIBED AND SWORN to before me on April 22, 2015.



  
NOTARY PUBLIC FOR OREGON

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003; Fax: 503-361-2202

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APR 23 2015  
MUNICIPAL COURT

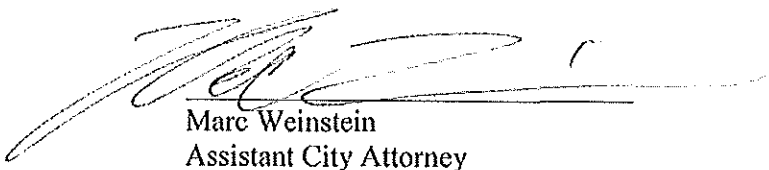
CERTIFICATE OF SERVICE

I hereby certify on April 23, 2015, defendant was served with a true and correct copy of plaintiff's Ex Parte Motion for Arrest Warrant and Order, Salem Municipal Court Case No. 2015-9000463-CR by:

- mailing a true copy thereof in an envelope with first class postage fully prepaid;
- faxing: (888)381-1722
- emailing: lawyer@daleroller.com
- hand delivery
- overnight delivery

addressed as follows:

Dale Maximiliano Roller  
Law Offices  
161 High Street SE Suite 243  
Salem, OR 97301  
Attorney for Defendant



Marc Weinstein  
Assistant City Attorney  
OF ATTORNEYS FOR PLAINTIFF



**Wendy McClure - Fwd: Re: SHREFFLER, Bryce Thomas**

---

**From:** Dawn Thompson  
**To:** Wendy McClure  
**Date:** 4/23/2015 2:33 PM  
**Subject:** Fwd: Re: SHREFFLER, Bryce Thomas

---

Hi Wendy,

This was meant for you and not me. I talked to Marc and explained who did what in the office. :)  
~D

>>> Marc Weinstein 4/23/2015 2:25 PM >>>  
Your Honor,

Please see below a message received by the City Attorney's office from defense counsel on the City v. Bryce Thomas Shreffler matter (Salem Municipal Court Case #2015-9000463-CR).

I have included Mr. Roller on this message

---

Marc Weinstein  
Assistant City Attorney  
City of Salem, Legal Department  
555 Liberty St. SE, Room 205  
Salem, OR 97301-3513  
[\(503\)588-6003](tel:5035886003)

>>> Discovery 4/23/2015 2:16 PM >>>  
Marc,  
This is email received from Mr. Roller.

>>> "Dale Maximiliano Roller, Esquire" <[lawyer@daleroller.com](mailto:lawyer@daleroller.com)> 4/23/2015 11:35 AM >>>  
I OBJECT to the ex-parte motion. Arraignment was set for sometime in January or December I believe. I appeared at court for my client but was informed that the City Attorney had not taken any action against my client. I have no record of having received any notice of a court appearance being scheduled for Mr. Schreffler being scheduled for March 10th. Please note that I am currently out of state until Saturday and will be unable to contest any such motion in person.

On Thu, Apr 23, 2015 at 9:50 AM, Discovery <[Discovery@cityofsalem.net](mailto:Discovery@cityofsalem.net)> wrote:

- | Dale Maximiliano Roller
- | Law Offices
- | 161 High Street SE Suite 243
- | Salem, OR 97301
- | [lawyer@daleroller.com](mailto:lawyer@daleroller.com)

RE: City of Salem v. SHREFFLER, Bryce Thomas  
Municipal Case No(s): 2015-9000463-CR

Dear Mr. Roller:

Attached is Ex Parte Motion for Arrest Warrant and Order being filed with the Salem Municipal Court regarding the above-referenced matter. Please feel free to contact our office if you have any question.

Salem City Attorney's Office  
555 Liberty St SE, Room 205  
Salem, OR 97301  
PH: (503) 588-6003  
FAX: (503) 361-2202

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**NOTICE: My phone number has changed to (503) 347 - 6662**

**Dale Maximiliano Roller, Attorney at Law**

161 High Street SE  
Suite #243  
Salem, Oregon 97301  
549 NW HWY 101  
Lincoln City, Oregon 97367  
425 SW Madison Avenue  
Suite #J-4  
Corvallis, Oregon 97330

Phone: (503) 347-6662 Fax: (888) 381-1722

<http://www.daleroller.com>  
<http://www.DudeIAmSoBusted.com>  
<http://www.oregonabogado.com>  
<http://www.oregonexpungement.info>

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IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION - STATE OF OREGON

CITY OF SALEM,

Plaintiff,

vs.

BRYCE THOMAS SHREFFLER

DOB:

**REDACTED**

Defendant.

Case Nos.: <sup>2015</sup> 2014-9000463-CR  
DUII (.15%)

<sup>2015</sup> 2014-0554190-CR  
Careless Driving

SMP 14-52333

MOTION TO CONSOLIDATE  
and ORDER

Plaintiff moves this Court for an order consolidating the above matters as, and for the reason that, the allegations arose from the same incident.


DATED: 2/19/2015.



Marc A. Weinstein, OSB 964562  
Assistant City Attorney  
OF ATTORNEYS FOR PLAINTIFF

IT SO ORDERED.

DATED: 3/11/15.

  
Municipal Court Judge

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-561-2202

RECEIVED  
FEB 19 2015  
MUNICIPAL COURT

IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION - STATE OF OREGON

CITY OF SALEM, Oregon

Plaintiff

v.

BRYCE THOMAS SHREFFLER,

DOB: **REDACTED**

Defendant.

Case Nos.: <sup>2015</sup> 2014-9000463-CR  
DUI (.15%)

<sup>2015</sup> 2014-0554190-CR  
Careless Driving

SMP 14-52333

AFFIDAVIT IN SUPPORT OF MOTION  
TO CONSOLIDATE and ORDER

STATE OF OREGON )

) ss.

COUNTY OF MARION )

I, Marc A. Weinstein, being first duly sworn on oath do hereby depose and say:

I have reviewed Salem Police Incident Report SMP 14-52333. My review of the report indicates defendant was cited for Oregon Revised Statutes (ORS) 811.135 Careless Driving out of the same incident that gave rise to defendant being arrested for Salem Revised Code (SRC) 100.331 DUII.

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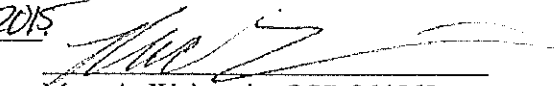
///

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-361-2202

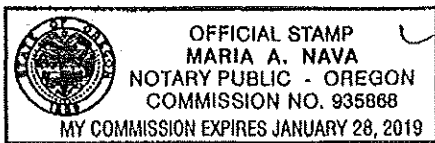
RECEIVED  
FEB 19 2015  
MUNICIPAL COURT

1  
2  
3  
4  
5  
6 I make this affidavit in support of plaintiff's motion and order to consolidate the charges  
7 referenced above.

8 DATED: February 19, 2015

  
\_\_\_\_\_  
Marc A. Weinstein, OSB 964562  
Assistant City Attorney

9  
10 SUBSCRIBED AND SWORN to before me on February 19, 15.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-361-2202

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FEB 19 2015  
MUNICIPAL COURT

IN THE MUNICIPAL COURT OF THE CITY OF SALEM  
COUNTY OF MARION - STATE OF OREGON

CITY OF SALEM, Oregon )

Plaintiff )

Case No. 2015-9000463-CR

v. )

SMP 14-52333

BRYCE THOMAS SHREFFLER,  
DOB: **REDACTED** )

CRIMINAL INFORMATION

Defendant. )

City of Salem Legal Department  
555 Liberty Street SE, Room 205  
Salem, OR 97301  
Phone: 503-588-6003 Fax: 503-361-2202


Defendant is accused by this information of the crime set forth below, committed  
contrary to provisions of the Oregon Revised Statute (ORS) and against the peace and dignity of  
the City of Salem.

DRIVING UNDER THE INFLUENCE OF INTOXICANTS (SRC 100.331)

On or about 12/12/2014, defendant drove a vehicle upon a public highway or premises  
open to the public while under the influence of intoxicants.

This crime took place within the corporate limits of Salem. The City Attorney intends it  
to be treated as a misdemeanor.

DATED: 2/4/2015

  
Marc A. Weinstein, OSB 964562  
Assistant City Attorney

Officer Witness(es): Officer Rachel Prager S594 Officer Gerrit Roelof S281 Officer Jared  
Noack S484

Anaigh 1-6-15

# CITY OF SALEM MUNICIPAL COURT PROBABLE CAUSE STATEMENT

RECEIVED  
FEB 19 2015  
MUNICIPAL COURT

2014-9000463 CR

SPD CASE # 14-52333

I offer the following information based upon my information and belief:

Name of Arrestee: Shreffler, Bryce Thomas DOB: REDACTED

Crime(s) Alleged: 100.331 DUII (Alcohol)

Date of Crime(s): 12/12/14 Location of Crime(s): River Rd S/ Minto Brown Rd

Date of Arrest: 12/13/14 Location of Arrest: River Rd S/ Minto Brown Rd

Other Arrestees: \_\_\_\_\_

Victim(s) of Crime: \_\_\_\_\_ DOB: \_\_\_\_\_

Victim Address: \_\_\_\_\_ Victim Phone: \_\_\_\_\_

Victim(s) of Crime: \_\_\_\_\_ DOB: \_\_\_\_\_

Victim Address: \_\_\_\_\_ Victim Phone: \_\_\_\_\_

Witness(es)  Adult  Minor: Davis, Misha 971-218-4332

Witness(es)  Adult  Minor: Stanton, Dylan 503-551-7255

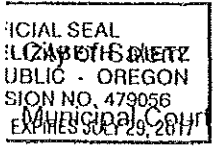
Injury: \_\_\_\_\_ Loss/Damage: \_\_\_\_\_ Value: \_\_\_\_\_

RECEIVED  
DEC 15 2014  
CITY OF SALEM  
LEGAL DEPARTMENT

### Summary of Probable Cause:

On 12/12/14, at approximately 2313 hours, I responded to a single vehicle accident near the stop light on River Rd S and Minto Brown Rd. The witness said a vehicle was in the ditch on the East side of the road and it appeared as though it was trying to leave the scene. Neither witness reported seeing anyone else near the vehicle. They had been told by the driver, (A) Bryce Shreffler, that his male friend had been driving and had fled the scene. I arrived and contacted Bryce. I could smell the strong odor of an alcoholic beverage coming from his person. His eyes were red, bloodshot and glassy. His speech was slow and thick tongued. He was swaying as he stood talking to me. Bryce said he had been drinking at an unknown location downtown with friends. He said that he had allowed an unknown female to give him and 2 other male friends a ride. Bryce changed his story several times, as to how many occupants there were in the vehicle, the description of the driver and his location in the vehicle. There was no evidence that anyone else had been in the vehicle during the accident and he could not explain why the other passengers would flee the scene. I requested that Bryce voluntarily submit to field sobriety tests and he agreed. During the tests, I observed 4 out of the 6 clues for the HGN test and VGN. I observed 6 out of the 8 clues for the Walk and Turn Test and I observed 2 out of the 4 clues for the One Leg Stand test. Bryce admitted to being drunk but continued to maintain that an unknown female had been the driver of the vehicle. I arrested Bryce and transported him to MCCF where he provided a breath sample that measured 0.15% BAC. While waiting to be booked, I asked Bryce what had caused the accident and he told me he had fallen asleep while driving. However, he again changed his story and later said he did not know what had caused the accident. Bryce was lodged at MCCF.

Submitted by: [Signature] R. Prager 594/52090 SPD 12/13/2014  
Sign Print Name ID-DPSST Dept. Date Completed



) Under penalty, I declare that I have examined this statement, and to  
 ) ss. the best of my knowledge and belief, it is true, correct, and complete,  
 ) and is based on all information of which the preparer has any knowledge.

Subscribed and sworn to before me this 13 day of DECEMBER 20 14

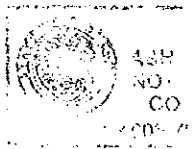


OFFICIAL SEAL  
 ASHLEE ELIZABETH DIETZ  
 NOTARY PUBLIC - OREGON  
 COMMISSION NO. 479056  
 MY COMMISSION EXPIRES JULY 29, 2017

*Ashlee E Dietz*  
 Deputy Clerk of the Court/Notary Public

- I find that probable cause exists to believe the arrestee committed the crime(s).
- I find that insufficient probable cause exists so the defendant must be released on this charge.
- No decision is needed, because the defendant has been released.

Judge: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_





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FEB 19 2015



MUNICIPAL COURT  
CITY OF SALEM, OREGON  
LEGAL DEPARTMENT / ROOM 205  
555 Liberty Street SE, 97301  
Telephone: (503) 588-6003  
FAX: (503) 361-2202  
TDD: (503) 588-6009

February 19, 2015

Dale Maximiliano Roller  
Law Offices  
357 Main Street  
Dallas, OR 97338

City Attorney  
Daniel B. Atchison  
Deputy City Attorney  
Natasha A. Zimmerman  
Assistant City Attorneys  
Katrina L. Brown  
Thomas V. Cupani  
Ryan W. Sudbury  
Jason H. Ramey  
Marc A. Weinstein

RE: Salem Police Incident No. SMP 14-52333  
Salem Municipal Court Case No. 2014-9000463-CR

Dear Mr. Roller:

Your client, Bryce Shreffler was recently cited to appear in Salem Municipal Court on January 06, 2015, regarding a misdemeanor citation he received on December 12, 2014. Misdemeanor charges cited into Municipal Court are only heard on Tuesdays and Thursdays. Therefore, your client's appearance has been changed to **Tuesday March 10, 2015, at 8:00 a.m.**

Salem Municipal Court is located at 555 Liberty Street SE, Room 215. Court check-in begins at 7:00 a.m.

Yours Truly,

Maria Nava  
Legal Assistant

COPY

■ ADA ACCOMMODATIONS UPON REQUEST ■

SHREFFLER, Bryce 2014-9000463 Ltr to Def Atty changing Arr Date

IN THE MUNICIPAL COURT OF THE CITY OF SALEM OREGON

CITY OF SALEM

) RELEASE AGREEMENT

RECEIVED

vs.

)

FEB 19 2015

) SID#: 20952228

MUNICIPAL COL

BRYCE THOMAS SHREFFLER, Defendant

)

) DOB#:

REDACTED

N/A, AKA

)



Case#	PROBABLE	Charges	DUII
Case#		Charges	
Case#		Charges	
Case#		Charges	
Case#		Charges	

NOTE: One or more of the above cases include charges which constitute domestic violence.

As a condition of my release from custody, I agree to:

1. Appear in Court at 0800 a.m. on the 6th day of January, 2015 at the: Salem Municipal Court / 555 Liberty St SE Rm 215, Salem, Oregon
2. Reside at: 171 FOREST TRL. / SANDPOINT, ID 83864 Phone #: (208)290-4992
3. Submit to the orders and process of the Court.
4. Appear on any future dates set by the Court until discharge or final order of the Court.
5. Obey all laws, and understand that a new arrest may cause this Release Agreement to be revoked.
6. Not depart the State unless authorized by the Court.
7. NOT HAVE DIRECT OR INDIRECT CONTACT, IN ANY MANNER, WITH ALLEGED VICTIM(S) or WITNESS(ES): unless authorized by this court, DHS, or the juvenile court.
8. If I have an attorney in this case, contact the attorney immediately upon my release and maintain contact with the attorney throughout this case.
9. Not illegally possess or consume controlled substances, and not enter places where illegal controlled substances are used, kept, or sold.
10. Not drive without a valid driver license and insurance.
11. If I am on probation, parole, or post-prison supervision, contact my supervising officer upon release, and obey all conditions of my supervision.

Not possess or consume alcohol, and not enter bars or taverns.

Not possess or use firearms, and obey any current orders prohibiting possession of firearms.

Not possess firearms or use firearms because you are charged with a crime involving one or more of the following:

violence or threat of violence toward another person, including a member of your family or household;

a firearm;  a controlled substance;  other: \_\_\_\_\_

Other: \_\_\_\_\_

Other: \_\_\_\_\_

I also acknowledge that if I violate any condition in this Release Agreement, a warrant for my arrest may be issued. Any security may be forfeited. I understand that I may also be prosecuted for either Contempt of Court or Failure to Appear. I have read this agreement, or had it read to me, and understand its terms. I swear or affirm that the above information is true, and I will comply with the terms in every respect.

Defendant's Signature

SUBSCRIBED AND SWORN to before me this 13th day of December, 20 14

Court Clerk / Deputy Sheriff

Type of Release:  CROR per JAIL

Security \$ \_\_\_\_\_

Release under County ordinance  CAP

RELEASE AGREEMENT - Page 1 of 2

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DEC 15 2014  
CITY OF SALEM  
LEGAL DEPARTMENT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 8, 2017  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2017-23 PARK (Barrows)  
Request for BOG Review

---

### **Action Requested**

Consider Linda Barrow's request for review of the Client Security Fund Committee's decision to deny her claim for reimbursement.

### **Discussion**

#### *Summary of Facts*

Ms. Barrow makes this claim against CSF Committee member Karen Park (who abstained from discussion and consideration of the claim pursuant to CSF Rule 6.3).

In May 2015, Ms. Barrow was physically assaulted by her friend's son in Bend. She reported the incident to the Bend Police Department. Ms. Barrow hired Ms. Park sometime in August 2015 to pursue a civil action for assault, battery, negligence, and defamation (the "Gorman Case") as well as a separate civil suit against the Bend Police Department for the mishandling of their investigation into the assault (the "BPD Case"). A fee agreement was signed in November 2015. Between September 2015 and March 2017, Ms. Park billed \$289,475 in fees for the two cases. At Ms. Park's recommendation, Ms. Barrow ultimately accepted settlement on the Gorman Case for a modest monetary payment, and voluntarily dismissed the BPD case.

Ms. Barrow now claims that Ms. Park overcharged her for the work and that her alleged overbilling constitutes a dishonest act. She requests \$600,000 in reimbursement of fees, as well as interest, and damages for pain and suffering.

#### *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.

The CSF Committee determined that this claim was in the nature of a fee dispute, and fee disputes are generally ineligible for coverage under CSF Rule 2.2.3. Moreover, the Committee determined that this is not a case of an unsuspecting client providing a large retainer to a lawyer, only to discover several years later that it has been depleted through questionable billing practices. Instead, the case involves regular invoices, which Ms. Barrow paid in a series of payments over the course of many months. The fee agreement was clear that Ms. Barrow was free to terminate the representation at any time. Ms. Park states that she suggested at least twice that Ms. Barrow seek a second opinion (and, indeed, it appears that Ms. Barrow did so, since she complains about seeking assistance from two other attorneys who “wasted our time”).

In the end, the CSF Committee found no evidence of dishonest conduct. In addition, Ms. Barrow did not suffer a pecuniary loss. All funds that Ms. Barrow remitted to Ms. Park have been accounted for. Ms. Park provided extensive legal services to Ms. Barrow and delivered detailed bills supporting her fees. Ms. Park has not been disciplined or convicted of a crime in connection with the matters that form the basis for this claim. Ms. Barrow has also not pursued a civil suit against Ms. Park.

For the reasons cited above, the CSF Committee denied Ms. Barrow’s claim for reimbursement and recommends the BOG do the same.



# Client Security Fund Application for Reimbursement

Return completed form to:

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

2017-23

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

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

RECEIVED

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

a. Full Name: Linda Barron  
b. Street Address: 14555 SW Hawk Ridge Rd.  
c. City, State, Zip: Tigard OR 97224  
d. Phone: (Home) \_\_\_\_\_ (Cell) 503-784-1236  
(Work) \_\_\_\_\_ (Other) 1236  
e. Email: because nice matters@me.com

MAY 23 2017  
Oregon State Bar  
Executive Director

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

a. Lawyer's Name: Karen J. PARK ON the OSB Board  
b. Firm Name: Home office  
c. Street Address: 5200 Meadows Rd #150 (Virtual office)  
d. City, State, Zip: Lake Oswego, OR 97035  
e. Phone: 503-603-0600 or 503-860-6350 or 503-722-2394  
f. Email: Kparklaw@aol.com

3. Information about the representation:

a. When did you hire the lawyer? AUGUST 2015 - Signed contract 3 months later  
b. What did you hire the lawyer to do? Protect me. Obvious evidence. AFTER paying her \$20,000.00 FOR HER REVIEW  
Personal Injury Assault & case against Bend Police for Falsifying reports - CASES became a mess because she used the defense report witness doctors as truth to our expert  
c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement) To pay \$150,000.00 total for both cases through trials. WITNES  
d. Did anyone else pay the lawyer to represent you? NO  
e. If yes, explain the circumstances (and complete item 10B on page 3):

f. How much was actually paid to the lawyer? \$ 349,532.43 and never reached a trial or jury. Bend complaint still in discovery  
g. What services did the lawyer perform? Filing Complaints, answers, motions, research of my medical (for 23 years) Depositions etc. NOT EVEN close to being ready for Trial.

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

I had received her info from OSB to write some letters for me in 2013. I went back to her & trusted her to help me

4. Information about your loss:

a. When did your loss occur? August 2015 - March 2017

b. When did you discover the loss? Claim in about NOV<sup>15</sup> Dec<sup>15</sup> (ST)

c. Please describe what the lawyer did that caused your loss Excessive FEES + should have known that these cases are taken on contingency + deceit.

d. Total amount of your loss 349,522.43 + interest + pain + suffering

e. How did you calculate your loss? Completely devastated. (600,000.00 total)

f. Amount you are requesting to be reimbursed \$600,000.00

(150,000.00 For interest + Pain + suffering - PHIRKS)

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? If yes, please explain: Forced to settle and dismissed court cases.

excessive fees allocated \$13,602.86 - money that was in my retainer acct for COSTS NOT FEES

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

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

NO - Her anger and threats were too much to handle.

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? If yes, please explain:

NO - Even see email that she sent regarding DR. Green's three times the amount she estimated to us, NOT close to an estimate

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

We are seeking out another attorney if needed.

f. Have you obtained a judgment? If yes, please provide a copy

g. Have you made attempts to locate assets or recover on a judgment? If yes, please explain what you found:

NO - But today filing complaints w/ OSB, PLF, Dept of Justice + DPSS.

6. Information about where you have reported your loss:

District attorney Criminal + Fraud investigation requested.

Police

Oregon State Bar Professional Liability Fund

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

Oregon State Bar Client Assistance Office or Disciplinary Counsel

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

NO - NOBODY WOULD TOUCH these over billed cases + we were told to file to OSB + JUDGE WALLER SAID TO DO THE SAME. (Multnomah county court)

8. Please give the name and the telephone number of any other person who may have information about this claim: Robert Barron - husband 503-730-4844  
Department of Justice + Washington County Sheriff

9. Agreement and Understanding

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

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

10. Claimant's Authorization *We had no idea what was going on until too late. Karen Park was Attorney + Broker before - also she has 25 years experience to know better.*

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

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

11. Claimant's Signature and Verification

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

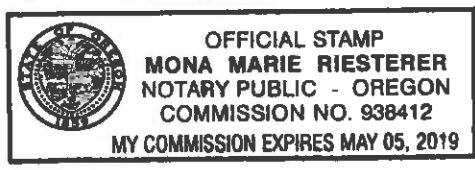
State of Oregon )  
County of Marion County ) ss

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

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

[Signature]  
Claimant's Signature

Signed and sworn (or affirmed) before me this 22nd day of May, 2017.



Notary's Signature [Signature]  
Notary Public for Dpsst  
My Commission Expires May 5, 2019

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

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

*I would hope we do not need an attorney - IF we do we would have to file for more damages caused by Karen*

1. I authorize Park, D. M. (print name of attorney)  
to act as my attorney in presenting my claim.

\_\_\_\_\_  
*Claimant's Signature*

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

- Without charge
- Under the attached fee agreement

\_\_\_\_\_  
*Attorney's Signature*

\_\_\_\_\_  
*Attorney's Bar No.*

\_\_\_\_\_  
*Attorney's Phone*

\_\_\_\_\_  
*Attorney's Address*



Client Security Fund  
Investigative Report

FROM: Stephen Raher  
DATE: CSF Meeting July 15, 2017  
RE: Claim No. 2017-23  
Claimant: Linda Barrow  
Attorney: Karen J. Park

Investigator's Recommendation

Investigator recommends denial of claim for lack of a pecuniary loss (as required by ORS 9.655) and lack of dishonest conduct.

Background of Dispute

Claimant makes this claim against CSF Committee member Karen Park, who has agreed to abstain from consideration of the claim pursuant to CSF Rule 6.3. Claimant further requests that Committee member Rick Braun abstain under Rule 6.3 because Claimant apparently consulted Mr. Braun regarding the subject matter of her claim.

Although Claimant makes numerous allegations in her claim, this is clearly a fee dispute.

Based on Investigator's interview with Ms. Park, and a review of the documents submitted with the claim, the basic facts of the case are as follows: in May 2015, Claimant was physically assaulted by her friend's son in Bend. Claimant reported the incident to the Bend Police Department ("BPD"); but, according to Ms. Park, BPD badly mishandled the investigation and made false statements regarding Claimant's culpability.

According to Ms. Park, Claimant had retained counsel earlier in an attempt to encourage the Deschutes County District Attorney to prosecute her assailant. When this proved unsuccessful, Claimant hired Ms. Park to file a lawsuit against the assailant and his mother for assault, battery, negligence, and defamation (the "Gorman Case"); as well as a separate civil suit against BPD over its mishandling of the investigation (the "BPD Case").

According to the case file, the attorney-client relationship started sometime in August 2015. Claimant and Ms. Park memorialized the engagement in a fee agreement signed on November 6, 2015 (attached as **Exhibit 1**). The fee agreement set an hourly rate of \$250 and required Claimant to maintain a \$5,000 "evergreen" deposit that Ms. Park would keep in her trust account until bills came due.<sup>1</sup> Ms. Park sent Claimant a cover letter with the fee agreement reiterating her remarks from a previous meeting that "the attorney fees to pursue litigation against the Bend Police and Taylor and Kristie Gorman could exceed \$100,000. Additionally, there will be costs associated with litigation including but not limited to filing fees, service fees, court reporter fees, trial fees, expert witness fees and other expenses." Claimant alleges that Ms. Park orally agreed to cap fees at

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<sup>1</sup> Based on Ms. Park's billing history, it appears that the evergreen deposit amount was later increased. Ms. Park states that this increase occurred because Claimant wanted to make less frequent payments.

either \$100,000 or \$150,000 (different documents contain different allegations), which Ms. Park denies. The fee agreement provides for an hourly rate and the transmittal letter discloses that fees could exceed \$100,000. Neither document contains any indication of a cap. Moreover, Claimant continued to make regular payments to Ms. Park even after fees topped \$150,000.

According to Ms. Park, the cases were more time-consuming than she initially anticipated, due in part to the force with which the defendants responded. Compounding the expense of the case, according to Ms. Park, was Claimant's strategic approach, which was to fight the defendants on every single disputed issue of law, fact, or procedure. The complexity of the case is corroborated by the hundreds of pages of billing records that Claimant submitted with her claim. These records indicate extensive document discovery, approximately one dozen depositions, multiple expert witnesses, numerous pretrial motions, settlement negotiations, and trial preparation. Ms. Park appears to have provided detailed and timely billing statements. Although Claimant now disputes various line items under assorted theories, she generally paid the invoices in a timely manner and without protest.

Claimant provided Investigator with a spreadsheet summarizing her expenses related to this litigation (attached as **Exhibit 2**). According to the spreadsheet, between September 2015 and March 2017, Ms. Park billed \$289,475 in fees for the two cases (net of \$11,032 in courtesy discounts). Ms. Park informed Investigator that she has not performed a precise reconciliation of the spreadsheet with her billing records, but that this total seems roughly accurate. The spreadsheet further indicates expert witness fees and other expenses of \$71,079.43 during the same time period. Finally, the spreadsheet indicates that claimant paid Ms. Park via twenty eight separate checks (in amounts ranging from \$4,428.75 to \$25,000).

At some point, the attorney-client relationship deteriorated. Ms. Park states that this began after defendants raised questions about Claimant's mental health and medication usage. Ms. Park began to discuss these matters with Claimant in order to form a trial strategy, but Claimant interpreted Ms. Park's questions as personal attacks on her. The relationship became more strained in January 2017, when Ms. Park obtained a continuance of the trial date after ice storms cut off power to Ms. Park's home office and the Multnomah County Courthouse (the Gorman Case was filed in Multnomah County). Claimant was not happy with the delay, accused Ms. Park of lying, and asked that Ms. Park take the case through trial at no additional cost.

As the time for trial drew nearer, Ms. Park recommended settlement of the Gorman Case for a modest monetary payment, and voluntary dismissal of the BPD Case. Claimant agreed, and both cases are now closed.

### Overview of Claim

Claimant has sent voluminous documents, including numerous summaries of her grievances that were sent to various regulatory and law enforcement agencies. Investigator reviewed all information submitted by Claimant, but to provide the most thorough review of the dispute, Investigator focused on the following items, which summarize Claimant's accusations regarding Ms. Park:

1. CSF claim form: cites "excessive fees" and states that Ms. Park "should have known that these cases are taken on contingency." Requests \$600,000 for reimbursement of fees, interest, and pain and suffering.

2. May 22, 2017 letter to Oregon Department of Justice: six-page letter criticizing various strategic decisions by Ms. Park, stating that case should have been taken on contingency, complaining about delays in trial date, and expressing displeasure with Ms. Park's personal demeanor. No allegations of loss due to dishonest conduct.
3. Fee Dispute Resolution Program petition. Four specific allegations: (1) attorney fees exceeded original estimate, (2) expert witness fees were too high, (3) excessive attorney fees, and (4) plaintiff's expert discussed "unfactual" defense materials in his report. No allegations of loss due to dishonest conduct.
4. Untitled list of grievances. This list describes twenty-two alleged misdeeds by Ms. Park (most of which are accompanied by documentary evidence). Of the twenty-two allegations, only one arguably touches upon any claimed loss due to dishonest conduct (this allegation is discussed in the following section).

#### Payment of Expert Witness Fees

Claimant's grievances generally lack any accusations of dishonest conduct. There are occasional allegations of "lies" by Ms. Park (although many of these allegations are contradicted by documentary evidence), but the alleged lies are generally not connected to any pecuniary losses. The only possible exception is item 16 of the untitled list of grievances (see prior paragraph), which complains that Ms. Park hired an expert witness (Dr. Randall Green), whose bills were too high and who wrote a report that "was mainly based on the defense's ORCP44 and stated horrible things about me." Although nothing in Claimant's narrative suggests dishonest conduct by Ms. Park, there are some oblique accusations of dishonesty contained in the documents that Claimant submitted in support of this allegation. Out of an abundance of caution, Investigator has considered whether Claimant's allegations could warrant a CSF award.

In November 2016, Ms. Park sent Dr. Green's engagement agreement to Claimant with an email explaining that "I anticipate his fees will fall in the \$10,000 range" for the Gorman Case, with additional, unquantified, costs for the BPD Case. In that same email, Ms. Park requested that Claimant send a check for \$10,000 "which I will hold in my trust account specifically to pay Dr. Green." Claimant agreed to hire Dr. Green, sent Ms. Park a \$10,000 check, and Ms. Park subsequently paid Dr. Green a required \$1,500 deposit.

Dr. Green conducted his work between December 2016 and February 2017. On February 7, 2017, he sent Ms. Park an invoice for \$29,554.08 (with \$28,054.08 due, after credit for the deposit). On February 9, 2017, Ms. Park forwarded Dr. Green's invoice to Claimant and asked for authority to pay \$18,850 from her lawyer trust account, with Claimant to pay the remaining balance directly to Dr. Green.<sup>2</sup> Claimant immediately objected, citing the amount of the bill and making various complaints about Dr. Green's handling of the case. Claimant also sent an email to Dr. Green questioning the amount of the invoice and complaining that it was far in excess of the estimated total quoted by Ms. Park. In response, Dr. Green admitted that he had underestimated the total cost because "this was (is) an exceedingly complicated case that encompasses a large volume of information, and much of which [sic] is both complex and contested."

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<sup>2</sup> According to Ms. Park, other litigation expenses were running less than anticipated, and she therefore felt it was possible to reallocate an additional \$10,350 of IOLTA funds for payment of the Green invoice, in addition to the \$8,500 which was already in the trust account, earmarked for Green's fees.

According to Ms. Park (and corroborated by her billing records), after Claimant objected to the proposed payment of \$18,850, Ms. Park sent Dr. Green a payment of \$8,500 (i.e., the amount still remaining in trust that had been earmarked for Dr. Green's fees), and let Claimant negotiate the unpaid balance with Dr. Green.<sup>3</sup> On a printout of one of the emails concerning this issue, Claimant has made a handwritten notation stating that Ms. Park "[misallocated] my trust funds." This allegation lacks merit.

First, it is worth noting that Claimant provided \$10,000 to Ms. Park for the express purpose of paying Dr. Green's fee, and Ms. Park was contractually authorized (via the fee agreement) to pay Claimant's expenses from her client trust account.<sup>4</sup> This authorization was reaffirmed when Claimant sent Ms. Park the \$10,000, and again on January 18, 2017, when Claimant wrote Ms. Park to voice her displeasure with Dr. Green. In the January 18 email, Claimant expressed a desire to terminate Dr. Green, but nonetheless directed Ms. Park to "Just pay him for his time when you receive his bill for the work he has done so far and chalk this off as more secondary injuries to my victimization." Although Claimant subsequently objected to payment after receiving the invoice, her objections were clearly based on the fact that the invoice *exceeded* the original estimate of \$10,000. Due to the conflicting messages received from Claimant, it was reasonable for Ms. Park to proceed in reliance on the client's original instructions (which had been reiterated just a few weeks earlier) to pay Dr. Green a total of \$10,000 from her trust account.

Ms. Park has properly accounted for the \$10,000 she received for payment of Dr. Green's fees, and the record indicates that the funds were disbursed in compliance with Claimant's instructions. Investigator does not believe that Ms. Park breached any fiduciary duty in connection with this issue; however, even if this payment were a breach of duty, there would still be no pecuniary loss for the CSF to compensate. By using client trust funds to reduce Claimant's valid contractual liability to Dr. Green, there is no net change to Claimant's financial position, and thus no loss.

#### Overbilling as Theft

The true gist of Claimant's claim is that Ms. Park's alleged overbilling constitutes a dishonest act. The CSF has never endorsed such a theory, and for good reason. Most fee disputes are ineligible for coverage under CSF Rule 2.2.3.

Even if one were to entertain this theory for purposes of argument, the facts of this case still do not support an award. This is not a case of an unsuspecting client providing a large retainer to a lawyer, only to discover several years later that it has been depleted through questionable billing practices. Instead, this case involves regular invoices, which the client paid in a series of small payments over the course of many months. The fee agreement was clear that Claimant was free to terminate the representation at any time. Ms. Park states that she suggested at least twice that Claimant seek a second opinion (and, indeed, it appears that Claimant did so, since she complains about seeking assistance from two other attorneys who "wasted our time").

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<sup>3</sup> According to Ms. Park, Claimant paid the entire unpaid balance and later obtained a refund from Dr. Green. Investigator has not verified this, since it does not have any relevance to the CSF claim.

<sup>4</sup> The fee agreement provides that "My attorney may, but is not required to advance payment of any costs and expenses on my behalf."

Findings and Conclusions

1. Claimant was a client of Ms. Park.
2. At all times relevant to the claim, Ms. Park was an active member of the Oregon State Bar and maintained an office in Oregon.
3. This claim is timely under CSF Rule 2.8.
4. Claimant did not suffer a pecuniary loss. All funds that Claimant remitted to Ms. Park have been accounted for. Ms. Park provided extensive legal services to Claimant and delivered detailed bills supporting her fees.
5. Investigator has found no evidence of dishonest conduct by Ms. Park.
6. Ms. Park has not been disciplined or convicted of a crime in connection with the matters that form the basis for this claim. Claimant has not pursued a civil suit against Ms. Park.

Karen J. Park  
Lawyer  
5200 Meadows Rd., Suite 150  
Lake Oswego, Oregon 97035  
Phone 503-603-0600  
Fax 503-603-0606

November 6, 2015

Linda Barrow  
14555 SW Hawk Ridge Rd.  
Tigard, OR 97224

### **FEE AND COST AGREEMENT**

This will confirm that I, Linda Barrow, have retained Karen J. Park ("my attorney") to represent me in all matters related to the events of May 26, 2015, where Taylor Gorman assaulted me and the conduct of the Bend Police Department related to the investigation of the incident.

#### **Attorney Fees and Costs**

**Attorney Fees and Costs:** My attorney's regular hourly rate is \$250 per hour. I agree to pay my attorney at the hourly rate of \$250 per hour, billed in minimum 6 minute increments (1/10 of an hour).

I agree to pay a retainer for legal services in the amount of \$5,000.00, which my attorney will deposit in her Client Trust Account. When the amount on deposit in my Client Trust Account reaches \$50, or when it is apparent that the funds on deposit will reach \$50, I agree to replenish the funds on deposit by depositing with my attorney additional funds to restore the funds on deposit to \$5,000.00 for necessary anticipated attorney fees within 5 calendar days of receipt of notice or statement that the funds must be replenished.

I understand that I am responsible for all costs and expenses incurred such as filing fees, service fees, expert witness fees, deposition charges/court reporter fees, copying costs, postage and related expenses. I agree to pay costs and expenses in advance by depositing \$1,000.00 with my attorney which she will hold in her Client Trust Account until costs are incurred. I agree to replenish the funds on deposit by depositing with my attorney additional funds to restore the funds on deposit for costs to \$1,000.00 for necessary anticipated costs within 5 calendar days of receipt of notice or statement that the funds must be replenished. My attorney may, but is not required to advance payment of any costs and expenses on my behalf. If my attorney advances payment of any costs or expenses on my behalf, I agree to reimburse those costs and expenses within 5 days of receipt of a bill or receipt for any such costs and expenses.



Linda Barrow  
Fee Agreement  
November 6, 2015  
Page 2

If fees for legal services exceed the \$5,000.00 advance deposit and I have not replenished the funds as required by this agreement, my attorney is authorized to utilize funds on deposit for costs to pay for legal services.

**Billing:** My attorney will issue periodic itemized billing statements to me, approximately every 30 days or more often if necessary. Each invoice is due and payable within 5 calendar days.

### **Additional Provisions**

My attorney agrees to send me copies of all documents filed in my case, all correspondence, and any and all other printed materials for my personal file. My attorney will also keep a copy of all information for her file. When my attorney has completed all the legal work necessary for my case, my attorney will close her file and return all my original documents to me upon my request. My attorney will then store her file for approximately 10 years after my case is closed. After that time, my attorney will destroy her file.

My attorney agrees to provide conscientious, competent, and diligent services, and I agree to cooperate with my attorney and others working on my case by keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making all payments required under this agreement. I also agree to keep my attorney informed of any change of address or telephone number within five days of the change.

I may terminate the services of my attorney at any time by providing written notice of termination to my attorney. I agree that I am responsible for the legal services and costs incurred by my attorney prior to my attorney's receipt of notice of termination.

My attorney has the right to resign if the investigation of the facts and circumstances lead her to believe that the claim should not be pursued, if I do not fully cooperate or pay fees, costs or expenses as agreed, or if in my attorney's opinion she is not able to obtain any needed expert testimony.

### **E-Mail Communication**

To expedite communications, my attorney routinely uses unencrypted e-mail. Use of unencrypted e-mail necessarily involves some risk of accidental disclosure of attorney/client confidences. Because the attorney/client privilege belongs to me, my attorney will abide by my instructions regarding communication by e-mail. Unless I provide instruction to my attorney to the contrary, my attorney is authorized to use unencrypted e-mail to communicate with me and others about this matter.

Linda Barrow  
Fee Agreement  
November 6, 2015  
Page 3

I have read and fully understand and agree to the foregoing fee agreement.

  
Linda Barrow

11/6/15  
Date

  
Karen J. Park, OSB 913906

11/06/2015  
Date



Legal Expenses

Invoice Date	Provider	Invoice #	Professional svcs.	Fees	Credits / Discounts	Invoice total	Payments	Payment Date	Check #	Additional comments	Gorman Civil Case Fees Split		City of Bend Case Fees Split	
											Prof. Svcs	Fees	Prof. Svcs	Fees
9/11/2015	Karen Park- Lawyer	10262	\$4,175.00	\$0.00		\$4,175.00	\$5,000.00	09/03/15	4701		\$1,475.00	\$0.00	\$2,700.00	\$0.00
9/22/2015	Karen Park- Lawyer	10264	\$6,175.00	\$0.00		\$6,175.00	\$5,350.00	09/28/15	4717		\$0.00	\$0.00	\$6,175.00	\$0.00
10/7/2015	Karen Park- Lawyer	10266	\$4,400.00	\$28.75		\$4,428.75	\$4,428.75	10/12/15	4732		\$1,025.00	\$0.00	\$3,375.00	\$28.75
10/28/2015	Karen Park- Lawyer	10267	\$5,275.00	\$0.00		\$5,275.00	\$5,275.00	11/06/15	4741		\$4,650.00	\$0.00	\$625.00	\$0.00
11/30/2015	Karen Park- Lawyer	10268	\$5,675.00	\$0.00		\$5,675.00	\$6,000.00	11/10/15	4744		\$750.00	\$0.00	\$4,925.00	\$0.00
12/21/2015	Karen Park- Lawyer	10269	\$5,725.00	\$948.25		\$6,673.25	\$5,675.00	12/11/15	4765		\$3,150.00	\$548.25	\$2,575.00	\$400.00
1/13/2016	Karen Park- Lawyer	10270	\$5,150.00	\$15.75		\$5,165.75	\$5,675.00	12/28/15	4778		\$525.00	\$0.00	\$4,625.00	\$15.75
1/29/2016	Karen Park- Lawyer	10271	\$4,900.00	\$6.45		\$4,906.45	\$5,164.00	01/19/16	4794		\$1,825.00	\$0.00	\$3,075.00	\$6.45
2/12/2016	Karen Park- Lawyer	10272	\$5,400.00	\$0.00		\$5,400.00	\$5,000.00	02/04/16	4807		\$5,175.00	\$0.00	\$225.00	\$0.00
3/7/2016	Karen Park- Lawyer	10273	\$7,425.00	\$0.00		\$7,425.00	\$20,000.00	02/19/16	4817		\$6,150.00	\$0.00	\$1,275.00	\$0.00
3/30/2016	Karen Park- Lawyer	10275	\$12,800.00	\$0.00		\$12,800.00	\$15,000.00	03/29/16	4861		\$8,050.00	\$0.00	\$4,750.00	\$0.00
4/20/2016	Karen Park- Lawyer	10276	\$14,775.00	\$657.85		\$15,432.85	\$20,000.00	04/28/16	4883		\$8,175.00	\$328.92	\$6,600.00	\$328.93
5/26/2016	Karen Park- Lawyer	10279	\$13,325.00	\$22.07		\$13,347.07	\$20,000.00	06/06/16	4915		\$3,425.00	\$0.00	\$9,900.00	\$22.07
6/24/2016	Karen Park- Lawyer	10281	\$19,625.00	\$156.72	-\$5,000.00	\$14,781.72	\$10,000.00	07/01/16	4942	\$5,000 billing discount	\$12,250.00	\$156.72	\$2,375.00	\$0.00
7/12/2016	Karen Park- Lawyer	10281	\$11,850.00	\$11.09		\$11,861.09	\$10,953.98	07/19/16	4960		\$5,275.00	\$11.09	\$6,575.00	\$0.00
8/2/2016	Karen Park- Lawyer	10281	\$11,650.00	\$126.37		\$11,776.37	\$11,776.37	08/12/16	4986		\$9,375.00	\$102.90	\$2,275.00	\$23.47
8/3/2016	Karen Park- Lawyer					\$0.00	\$8,500.00	08/03/16	4967		\$0.00	\$0.00	\$0.00	\$0.00
9/1/2016	Karen Park- Lawyer	10281	\$22,900.00	\$9.80		\$22,909.80	\$22,909.80	09/13/16	5014	\$45 Credit Hummel fee applied to fees.	\$8,975.00	\$0.00	\$13,925.00	\$9.80
9/26/2016	Karen Park- Lawyer	10290		\$712.50		\$712.50					\$0.00	\$0.00	\$0.00	\$712.50
9/26/2016	Karen Park- Lawyer	10281	\$12,350.00	\$48.23	-\$1,000.00	\$11,398.23	\$11,500.00	10/06/16	5029	Credit for admin work re doc production	\$7,525.00	\$31.73	\$3,825.00	\$16.50
10/19/2016	Karen Park- Lawyer	10281	\$23,150.00	\$0.00	-\$5,000.00	\$18,150.00	\$13,000.00	10/06/16	5030	Courtesy discount	\$9,950.00	\$0.00	\$8,200.00	\$0.00
10/19/2016	Karen Park- Lawyer	10291		\$7,853.47		\$7,853.47	\$23,150.00	10/28/16	5050		\$0.00	\$2,124.15	\$0.00	\$5,729.32
11/8/2016	Karen Park- Lawyer	10281	\$20,712.50	\$420.80		\$21,133.30	\$10,000.00	11/08/16	5063		\$10,775.00	\$175.50	\$9,937.50	\$245.30
11/8/2016	Karen Park- Lawyer	10292		\$4,314.50		\$4,314.50					\$0.00	\$4,314.50	\$0.00	\$0.00
11/21/2016	Karen Park- Lawyer	10294		\$8,590.46		\$8,590.46	\$25,000.00	11/17/16	5068		\$0.00	\$3,366.52	\$0.00	\$5,250.31
11/21/2016	Karen Park- Lawyer	10281	\$9,700.00	\$26.37		\$9,726.37	\$18,400.00	12/02/16	5078		\$6,375.00	\$26.37	\$3,325.00	\$0.00
12/12/2016	Karen Park- Lawyer	10281	\$18,025.00			\$18,025.00	\$13,782.00	12/16/16	5094		\$16,800.00	\$0.00	\$1,225.00	\$0.00
12/12/2016	Karen Park- Lawyer	10295		\$441.63		\$441.63					\$0.00	\$441.63	\$0.00	\$0.00
1/1/2017	Karen Park- Lawyer	10281	\$20,150.00	\$170.44		\$20,320.44	\$20,320.44	01/09/17	5117		\$19,600.00	\$170.44	\$550.00	\$0.00
1/1/2017	Karen Park- Lawyer	10298		\$7,639.37		\$7,639.37	\$18,000.00	01/13/17	5118			\$4,304.06		\$3,506.65
1/27/2017	Karen Park- Lawyer	10299		\$6,017.21	-\$32.00	\$5,985.21						\$5,985.21		
1/27/2017	Karen Park- Lawyer	10281	\$19,312.50	\$47.27		\$19,359.77					\$19,238.00	\$47.27	\$75.00	\$0.00
2/11/2017	Dr. Green - Expert witness			\$19,054.08		\$19,054.08	\$19,054.08			Additional Witness fee paid by client directly to Dr.Green		\$19,054.08		
2/17/2017	Karen Park- Lawyer	10300		\$13,760.00		\$13,760.00					\$0.00	\$13,760.00	\$0.00	\$0.00
2/17/2017	Karen Park- Lawyer	10300		\$0.00		\$0.00	-\$13,602.86			Refund from Fees account		\$0.00		\$0.00
2/20/2017	Karen Park- Lawyer	10281	\$3,550.00			\$3,550.00	\$4,359.77	02/09/17	5135		\$3,475.00	\$0.00	\$75.00	\$0.00
3/3/2017	Karen Park- Lawyer	10281	\$1,300.00	\$0.00		\$1,300.00					\$775.00		\$525.00	
			\$289,475.00	\$71,079.43	-\$11,032.00	\$349,522.43	\$349,671.33				\$174,763.00	\$54,949.34	\$103,712.50	\$16,295.80

Legal fees shown above are for two separate lawsuits. A breakdown of costs for each is provided on the summary tab of this spread sheet manually and supported by the actual receipts. Differences between invoice total and payments represent approximate funds available in retainer

**From:** Linda Barrow  
**To:** [Helen Hierschbiel](#)  
**Subject:** Karen Park Complaint - Board of Governors - Please include  
**Date:** Monday, July 17, 2017 10:41:25 AM  
**Attachments:** [Board of Governors - Karen Park complaint.pdf](#)  
[ATT00001.txt](#)

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Dear Helen Hierschbiel,

Please include this letter from another attorney about Karen Park's fees.

Karen Park is not a civil right's attorney and she did personal injury for Insurance Defense only. I feel that Karen Park should have directed us to qualified attorneys, and I also believe she knew that the standard of care from attorneys in these serious cases were handled by contingency normally.

I am requesting the full \$50,000.00 maximum of reimbursement from the Client Security Fund, as I know that any other amount over this would probably not be considered.

This letter below is from another attorney Mr. Jess Glaeser, P.C. and he states:

"I would find it difficult to spend more than 250 hours on any kind of personal injury case even one that went through trial to a jury verdict"

He also states, "Since I believe some or all of the billing is not reasonable...."

He also states, "that is not the standard of care in the community"

He also states, "The bottom line here for me is that I believe that you overpaid for legal services" and suggests there is a mandatory fee arbitration through the Oregon State Bar"

Please include this with my complaints to the OSB Board of Governors. Please let me know that you are in receipt of this too.

Karen Park stated that she spent 699 hours on just the personal injury case without a trial.

Thank you,  
Linda Barrow

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**JESS M. GLAESER, P.C.**

ATTORNEY AT LAW

737 SW VISTA AVENUE

PORTLAND, OREGON 97205

JGLAESER@GLAESERLAW.COM

TELEPHONE (503) 228-4963

FAX (503) 224-9430

June 30, 2017

Ms. Linda Barrow  
14555 SW Hawk Ridge Road  
Tigard, OR 97224

Re: Potential Legal Malpractice Claim vs. Karen Park

Dear Linda:

I've now had a chance to thoroughly review the materials that you sent me including your summary of your issues with Ms. Park, deposition transcripts, email correspondence, and billing statements. I also reviewed the complaints that were filed both in the injury claim and the civil rights claim against the City of Bend, et al.

Let me start by saying that I think the billings to you are unreasonable. While §1983 litigation tends to be more complex and federal court litigation generally is more time consuming, on the injury matter I would find it difficult to spend more than 250 hours on any kind of personal injury case even one that went through trial to a jury verdict. With respect to the §1983 claim, while Ms. Park has an interesting way of pleading, I'm not sure that I would have recommended pursuing a civil rights action against the City of Bend and the police officers. However, that is a judgment call and I would rely upon the opinion of somebody who does an extensive amount of §1983 litigation to determine whether or not the advice about going forward with that case was reasonable.

Since I believe some or all of the billing is not reasonable, I would urge you to review your fee agreement with Ms. Park to determine whether there is an agreement to submit any fee dispute to mandatory arbitration. If there is, I would suggest that you request an arbitration of the fee dispute.

With respect to your substantive complaints about the quality of the representation that you received by Ms. Park, other than whether the §1983 claim should have been filed, I really don't see a breach of the standard of care. While I certainly would have done things differently, that is not the standard of care in the community. Some of your complaints about turning over medical records, are simply unwarranted. You have an obligation to provide any and all medical records relating to your claim, and if some of those records consisted of your request to correct the record, those things needed to be disclosed to the defendants.

While I disagree with Ms. Park's statement that you should not keep a journal, since that could be protected as an attorney-client privilege or attorney work-product, especially if Ms. Park requested that you keep a journal, however, that does not seem to be a breach of the standard of care.

If Ms. Park hired Randy Green from Salem, then she did in fact retain a very, very competent expert witness on your behalf. I've used Randy on numerous matters and he is very good.

The issue on the postponement on the trial date is not a standard of care issue. It appears that Simon Harding also was going to request a continuance given the fact that he was already in trial on a different matter. In addition, it simply is not unusual for attorney's to need to request a continuance for any number of reasons, including, what appears to be a legitimate reason related to power outages and storms. I know that you were upset with the continuance but I don't think that it rises to the level of a legal negligence claim.

Ultimately, I think you have a fee dispute with this attorney, although I'm specifically not rendering an opinion on the civil rights complaint since I simply don't have the necessary expertise to fully evaluate whether the civil rights claims should have been brought.

The bottom line here for me is that I believe that you overpaid for legal services. If you have the ability to contest those fees through mandatory fee arbitration through the Oregon State Bar, I would urge you to do that.

While I am declining to represent you on the legal malpractice action, I would encourage you to get a second opinion. The easiest thing for you to do is to call the Oregon State Bar Lawyer Referral Service at (503) 684-3763, and tell them that you'd like a referral for purposes of a legal negligence claim. The bar should be able to refer you to a number of different lawyers who do legal malpractice.

I also want to remind you that there's a statute of limitations that governs your claim for legal malpractice. That statute of limitations expires two years from the date that you knew or reasonably should have known of the negligence of your attorney, and that the negligence caused you harm. I think the most conservative approach would be to measure that statute of limitations from either the date of the trial postponement in January of this year, or the date that you settled the personal injury claim, and/or dismissed the §1983 litigation. I would therefore urge you to act promptly in obtaining a second opinion to avoid any problems with the expiration of the statute of limitations.

Ms. Linda Barrow

June 30, 2017

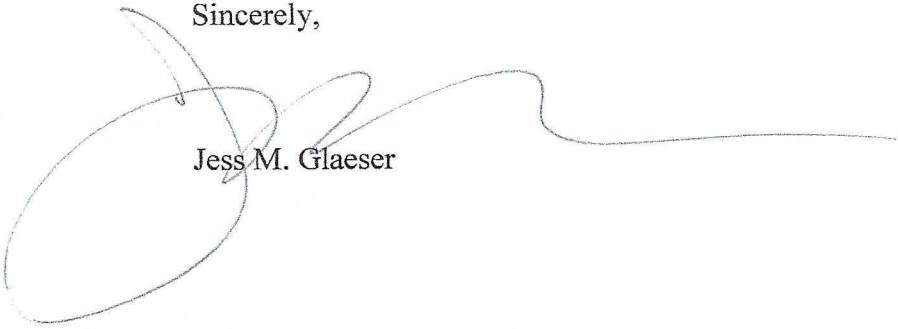
Page 3

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If you have any questions regarding this letter, or my decision not to represent you, please feel free to give me a call. Otherwise, I wish you the best of luck in proceeding with your attempts to resolve your disputes with Ms. Park.

Sincerely,

Jess M. Glaeser



JMG/hmg



**From:** Linda Barrow  
**To:** [Helen Hirschbiel](#)  
**Subject:** Re: Bend Case  
**Date:** Tuesday, July 18, 2017 8:09:41 AM

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Dear Ms Hirschbiel,

Please also add my comment to the Board of Governors to correct Attorney Jim Case's misunderstanding of what Karen Park wrote in her letter dated November 6, 2015. Jim Case is referring about this in his second paragraph. Karen Park wrote and told us that "Both cases" **through trial** "could exceed 100,00.00" not just the Bend Police case. It's in writing "**both cases**". Karen Park made my husband and I believe in her letter and in her spoken words to us that our total out of pocket expenses could be 130k to 150k MAX/total for **both cases**. Not, could exceed 200k or 300k or 500k. The Bend case wasn't even out of discovery because of all the games, stall tactics and delays by the attorneys.

Both cases were combined on Karen Park's bill every time that she billed us. I trusted her. I suffered from serious brain injuries where I lost my hair from the trauma, and I was in major pain and cried most days. I was going to Dr after Dr. trying to make my headaches go away until I got my good team of doctors in November 2015. Karen Park should have protected me. I thought she was but now realize the truth.

I had to separate her bills in January 2017 because she refused. She wrote, "Just split them down the middle". She combined my cost payments until I had to figure that out too. I had to ask her to separate them while injured. I never could have imagined she would have done this as a legal professional because citizens are suppose to be able to trust and be protected as clients by honest attorneys.

I don't have "other psychological issues" like she was trying to portray. My husband wrote to her to stop saying that in our evidence. I have brain injuries and suffered enormously from deceit and corruption and that is what happened to me.

Do you believe someone with massive Federal Tax Liens? Had I known that I would have ran, but she has this virtual office in Lake Oswego and would never expect to have someone working in such a nice building to be in debt. I trusted her and she took complete advantage of me and my family.

In God's name we pray,  
Linda Barrow

Sent from my iPad  
Because Nice Matters....

On Jul 17, 2017, at 7:53 PM, Linda Barrow <[becausenicematters@me.com](mailto:becausenicematters@me.com)> wrote:

DEAR HELEN HIERSCHBIEL.

I DON'T HAVE MY GLASSES ON BUT I JUST THOUGHT OF ANOTHER EMAIL I RECEIVED FROM ANOTHER ATTORNEY. I CAN SEE BETTER WHEN I'M TYPING IN CAPS. SORRY. PLEASE INCLUDE THIS LETTER TOO FROM ATTORNEY JIM CASE TO THE BOARD OF GOVERNORS. I HAVE A BRAIN INJURY AND I SHOULD HAVE BEEN PROTECTED AND NOT TAKEN FOR \$350,000.00 AN "UNCONSCIONABLE AMOUNT". THAT'S HOW WE FEEL. WE WERE DECEIVED AND WE CAN PROVE ANY DOUBTS THAT ANYONE HAS. I HAVE ENORMOUS EMAILS THAT CAN PROVE WHATEVER KAREN PARK WOULD SAY HER REASONS WERE FOR DOING THIS TO ME. PLEASE CONFIRM THAT THIS EMAIL TOO WILL GO TO THE BOARD OF GOVERNORS.

I AM REQUESTING THE MAXIMUM AMOUNT OF \$50,000.00 TO BE PAID BY THE CLIENT SECURITY FUND TO ME BECAUSE THIS IS ALL THAT THE OREGON BAR STATES THAT THEY WILL PAY. I DID NOT GIVE JIM CASE THE EVIDENCE OR THE EXHIBITS.

KAREN PARK'S FEES PER JIM CASE, "I find them to be absolutely unconscionable along with every associated synonym that I could think of relating to her billing practices. "

Linda Barrow

Begin forwarded message:

**From:** Jim Case <[jcase@case-dusterhoff.com](mailto:jcase@case-dusterhoff.com)>  
**Subject:** RE: Bend Case  
**Date:** February 13, 2017 at 11:57:00 AM PST  
**To:** Linda Barrow <[becausenicematters@me.com](mailto:becausenicematters@me.com)>

Linda,

You have provided me with a great deal of material which I reviewed over the weekend. Let me give you some observations:

First and probably the most important is that I do not understand how or why you agreed to pay an hourly rate for the personal injury case, and the civil rights case for that matter. Both should have been contingencies or not pursued at all....but that is not necessarily the attorney's fault. She was apparently unwilling to take the cases on a contingency basis and at that point it was up to you to seek a different attorney or agree to pay hourly. The first red flag to you and the first indication that she really didn't want the cases is when she told you that the civil rights case could cost you over \$100,000 in attorney fees. Many would say that at that point a prudent person would have looked elsewhere for an attorney. I did not see a specific estimate of the cost of going forward with the personal injury case but it is unusual to say the least to pursue a good liability personal injury case on an hourly basis.

Second, it appears that this attorney has done everything in her power to get you to fire her, from insults to overbilling to demands to ultimatums. She does not want these cases and she has profited enormously. You are currently in a very difficult position.

Regarding the January trial date, it appears from the email that you sent me from opposing counsel that the case would have been reset whether your attorney wanted it or not. The standard period for a reset is 3 to 4 months, not 30 days. 60 days or less occurs in Multnomah county under unusual circumstances. Regarding the work that was unfinished by your attorney, it is the type of work that is often done in the week or days preceding trial however well prepared attorneys usually have these things done far in advance of the week before. An attorney who has billed you as much as she had billed to that point should have had those items done three times over.

Regarding her "promised fees and costs" she did not agree to do the civil rights case for \$100,000, rather she said that it could exceed \$100,000....and it has. I don't know about any representations regarding the personal injury case but given her style, I would guess that if she gave you a number it was again, a vague estimate. As to Dr. Green it was her "estimate" that his fees would be \$10,000, not her promise. Dr. Green apparently also did not understand the volume of work and as such once he

received everything he was to review, he should have notified your attorney that his original estimate would be far short. Your attorney should have gotten a much better idea of what those fees would actually be before she retained his services and he should have reported a better estimate to her. But these things are probably not malpractice as such.

As to the merits of your two cases, there is no way for me to form an opinion or give you decent advice. You sent some photos of bruises on your arm and a photos of your head but they really don't show much. You said that your medical bills were over \$50K but I do not know what they were for....it does not appear that they were for treatment of physical injuries. Perhaps counseling was the majority of the cost. I cannot figure out why your attorney thinks the case is only worth \$30K now, and if it is only worth \$30K why wasn't that figured out long ago. Likewise with the civil rights case, she is recommending dismissal....if there was no case there to begin with, then it never should have been filed.

The bottom line from my standpoint is that the cases are way too far down the road for me to consider taking either one of them over from your attorney. The time we spent on the telephone along with my review of the materials you emailed to me do not reveal actionable malpractice on your attorney's part. Not that there is no malpractice, but that I just don't see any at this point. I am unable to give you informed advice as to whether or not to settle, dismiss or proceed with the two cases, although it appears on the surface that proceeding would be an exercise in throwing good money after bad. Alternatively, if you could get another attorney to take over the cases, you might be able to get further court continuances and have a more competent review of the value of the cases, thus being in a better position to make an informed decision.

As for your attorney's billings, I find them to be absolutely unconscionable along with every associated synonym that I could think of relating to her billing practices. Unfortunately you will bear some of the burden of this unconscionability by allowing the matter to continue this long without seeking additional outside advice. Nonetheless, I believe that regardless of the outcome of these cases (settled, tried, dismissed or whatever) this attorney should be reported to the bar for churning your file, performing many, many hours of unnecessary work and milking you for attorney fees which far exceed the value of any potential recovery from either case. It is my opinion that an attorney has an absolute obligation to be honest and up front with the client when it becomes clear that the cost of proceeding outweighs any potential recovery. You told me that in the personal injury case there is maximum insurance coverage of \$200,000 and yet attorney fees far exceed the maximum potential recovery and are 10 times her recommended settlement number. It makes no sense. To me her actions in continuing to bill these matters at the level at which she has been billing is highly unethical. Of course she will have an entirely different story in her defense. Unfortunately a complaint against her will take a great deal of time and will not, regardless of outcome, return any money to you.

You could, perhaps, find an attorney who would be willing to sue her for recovery of excess fees, however you should be aware that there would most likely be no insurance coverage for her except for defense fees. In other words, the PLF would likely hire an attorney or firm to defend her against your action but if you won a verdict against her, the insurance company probably would not pay and you would have to collect directly against her.



After giving these matters due consideration and discussing them with other attorneys in my office we have concluded that we will be unable to assist you. We simply have too many other complicated matters to deal with and feel we would be unable to devote proper attention to yours. We wish you the best in your endeavors.

Jim

James D. Case  
**CASE & DUSTERHOFF, LLP**  
**Attorneys at Law**  
The 9800 Professional Building  
9800 SW Beaverton Hillsdale Hwy, Suite 200  
Beaverton, Oregon 97005

Telephone: 503.641.7222  
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[jcase@case-dusterhoff.com](mailto:jcase@case-dusterhoff.com)

[www.case-dusterhoff.com](http://www.case-dusterhoff.com)

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[www.linkedin.com/pub/james-case/11/9b2/116](https://www.linkedin.com/pub/james-case/11/9b2/116)

<https://twitter.com/OregonWineLover>

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**From:** Linda Barrow [<mailto:becausenicematters@me.com>]

**Sent:** Monday, February 13, 2017 9:09 AM

**To:** Jim Case

**Subject:** Fwd: Bend Case

Hi Jim,

This email just came from Karen Park. We have a solid case against the Bend police. The attorneys have delayed depositions and discovery 3 times. This is absurd.

Can you help us? I have a call into a civil rights attorney too to take over Bend Federal Case.

Thank you,  
Linda

Because Nice Matters

Begin forwarded message:

**From:** Karen Park <[kparklaw@aol.com](mailto:kparklaw@aol.com)>

**Date:** February 13, 2017 at 9:03:42 AM PST

**To:** [becausenicematters@me.com](mailto:becausenicematters@me.com)

**Subject:** Bend Case

I am not able to halt all work on the Bend case pending resolution of the

Gorman case. I recommend that you make a settlement offer in the Bend case in the amount of \$30,000 holding that offer open for a limited amount of time, such as 7 days. I will need to file a motion to compel the production of Skelton's DUI cases and need those documents prior to Porter's deposition.

I can point out to Franz that the settlement offer is being made in an attempt to avoid the cost and expense of further discovery (Porter's depo and the motion to compel).

If that offer is rejected without any counter-offer and you are not willing to offer to voluntarily dismiss the Bend case, I have to proceed with preparing for Porter's deposition and the other work that needs to be done on that case.

Please let me know, today, if you want me to make that settlement offer to Franz.

Karen J. Park  
Lawyer  
5200 Meadows Rd., Suite 150  
Lake Oswego, OR 97035  
T: 503-603-0600 F: 503-726-5911

**CONFIDENTIALITY NOTE:** This email contains information belonging to Karen J. Park, which is confidential and/or legally privileged. The information is intended only for the use of the individual(s) or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this email is strictly prohibited. If you have received this email in error, please immediately notify me and delete the message and any attachments. Thank you.

**From:** Linda Barrow  
**To:** [Helen Hirschbiel](#)  
**Subject:** Re: CSF Claim PARK (Barrow) 2017-23  
**Date:** Monday, July 17, 2017 7:36:45 PM

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Dear Ms. Hirschbiel,

Thank you, Please also note to the Board of Governors. I want this added to my complaint.

I would have won my lawsuits hands down had I had an attorney that specialized in personal injury and civil rights. Karen Park should have directed me with a brain injury/personal injury case/police case to an attorney that specializes in these things and who, for the majority, takes these cases on contingency. I'm 53 years old and brain injured. I went to Karen Park because she wrote a few letters for us a few years back.

I have hard written facts to both my cases. Judge Breithaupt ruled in my favor on the personal injury case against the defense's summary judgement motion in my personal injury case. I just couldn't get to trial because Karen was completely unprepared and billing us outrageously and we couldn't stop her. I just wanted to get to justice and in the last four months before trial she knew that I was stuck. This is what I believe. I even have huge pictures for the trial in my attic of my assault that she never even bothered to take out of the packaging.

I was forced to settle out of court on the personal injury, because of Karen Park's excessive fees. A innocent person's insurance Co's would not pay someone for their injuries if the facts were not obvious. I should have received \$200,000.00 for my brain injuries with all the lies the defenants told and wrote because that was the limits for their insurance coverage. I received a tiny amount that didn't even cover my medical expenses because Karen Park was threatening us to dismiss while she had hundreds of thousands of my family's money. She stated she couldn't stop working on the two cases after just delaying them for 90 days more each, and she threatened that she would need to keep charging us while we were trying to find another attorney. Her fees were outrageous and she deceived us and lied to us on the what these two lawsuits would cost us. Also, nobody has seen the evidence of my cases or asked me for my counter of Karen's remarks to the OSB. I have no idea what she has said to you all, but Camille was sending Karen my emails "Dear Karen". How is this fair? I'm assuming that Karen Park gave her story, yet I should be able to counter her if there is any discrepancy or untruths to her side of the story. Karen Park took away my justice from her excessive fees and lied to us about how much this would cost us. Once you're in that far there's no way out to justice. My rights for justice were taken away because others with personal injuries do not go through this with obvious facts.

Would you or any persons on the Board of Governors expect to pay \$350,000.00 to an attorney in 17 months, and expect to be treated by an attorney like this? Her bills were combined for both cases and she refused to separate which made it very confusing to know how much was going to which case and what the totals were for both cases. I feel robbed. Completely. Do you know how to walk away from justice if you are brain injured after an assault? **Women's violence continues when the woman's rights are taken away. My rights were taken away financially. No woman should have to pay \$350K for being assaulted and brain injured to seek justice.** I know the answer is "No" by any woman that has ever been assaulted and treated like I've been treated. Did I deserve this? No. What have I done to anyone? Why would this be my fault? I didn't take an oath to protect citizens

and clients. I did nothing but pay her hoping and praying that my assailant would get some accountability and the police lies would be reprimanded.

Every other attorney we spoke to has stated that \$350,000.00 was extreme who is not on the client security fund board. The Client Security Fund found no fault or dishonesty from Karen Park their constituent? This to me is scary to think this is our world that we live in. This is how the bad continues in our world. This is how people get angry and protest because of our failing systems that are suppose to protect us. This is why so many people have been hurt. Nothing can hurt me anymore than how I've already been hurt. I will probably die from this because my soul has been crushed. My life has changed. My anxiety and stress is so great. This was absolute corruption, and I have witnessed it and endured it now full circle. This is what I feel and this is what I have endured. I know right from wrong and good from bad. I would have never thought to be so hurtful to another. This is my last note to the Board of Governors at the OSB. I would expect to be able to protect myself when another has lied about me or if you are making your decisions on anything that Karen Park has said to you. She lied to me.

I have pages of rot that people have written about me. Untruths and hurtful things that I would never do to another living soul.

I believe in God. My faith is huge and so whatever happens happens and I know that I wasn't the cause. My health is suffering from all of this and I'm brain injured for life. It would be nice if people would protect me vs continuing to hurt me. I also can bet my life on what the Board of Governors is going to do, and that is to protect Karen Park. I believe in love and kindness and truth. Someone with Federal Tax Liens is not someone I would have ever trusted or done business with had I known this about Karen Park. She was in debt and this should be seriously considered when her excessive fees are discussed, even though the client security fund board said there was no dishonesty. This was public information and I knew there had to be a reason why she was doing this to me, so I checked and I was right. That doesn't mean that my money is for her to take. That doesn't mean that I need to be hurt further than I was already suffering. God sees all of this and others can continue down the path that they know, and yes I will get justice someday and it may not be on this earth. I would have never, or could ever, do what Karen Park did to me to her or anyone else. Nobody deserves this. Also, I just don't hurt others.

I have been taken down in every direction since this assault and it's sad to think that other people will allow this to go on from within the government, accountability boards and from people that I was suppose to trust. If this is not what the Board of Governors would want to happen for themselves, if they ever needed an attorney for justice as a citizen, then I believe they should do the right thing. I believe that I should be able to have a chance to counter or answer to whatever excuses Karen would come up with too because I don't trust one word that comes from her now.

This was an injustice today, I felt, and I don't believe there is any good left in our systems that are in place for citizens' protection.

Please just tell me when this will be decided upon so I can prepare myself for this day.

Thank you for your time,  
Linda Barrow

On Jul 17, 2017, at 6:23 PM, Helen Hierschbiel <[HHierschbiel@osbar.org](mailto:HHierschbiel@osbar.org)> wrote:

Dear Ms. Barrow,


Yes, your email suffices to request review of your Client Security Fund claim by the Board of Governors. I also received your email from later in the morning with the letter from Jess Glaeser as an attachment. I will include those items in your request for review as well.

I do not yet have the minutes for the CSF Committee meeting, so I cannot provide you with those at this time. However, once we receive the minutes, we will forward them to you. I did not keep a log of the people who attended the meeting, but that information will be included in the minutes. I will note that Karen Park did not attend the meeting and that Rick Braun recused himself from the discussion of your claim and from voting on your claim. I am not a voting member of the CSF Committee; instead, I am the bar staff liaison to the Committee. Therefore, I did not vote on your claim.

Regarding the BOG meeting, neither Richard Spier nor Randall Green are on the Board of Governors.

Please let me know if you have further questions regarding your Client Security Fund claim.

Best regards,

Helen Hierschbiel

CEO/Executive Director

503-431-6361

[HHierschbiel@osbar.org](mailto:HHierschbiel@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •

[www.osbar.org](http://www.osbar.org)

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**From:** Linda Barrow [<mailto:becausenicematters@me.com>]

**Sent:** Monday, July 17, 2017 9:29 AM

**To:** Helen Hierschbiel <[HHierschbiel@osbar.org](mailto:HHierschbiel@osbar.org)>

**Subject:** Fwd: CSF Claim PARK (Barrow) 2017-23

Ms. Helen Hierschbiel,

Please consider this as my request for review from the Oregon State Bar Board of Governors.

Does this email suffice?

I will follow this email up and put it in the mail today too.

Please tell me which members of the Client Security Fund denied my claim? I am requesting the the Board of Governors refund the full \$50,000.00 maximum from the Client Security Fund because that is all the maximum allows. The \$600,000.00 amount that I mentioned is what I feel we are out, because of the deceit and excessive billing and the pain and suffering that Ms. Karen Park caused me and my husband.

Mr. Spiers and Mr. Randall Green need to recuse themselves if they are on the Board of Governors. It state that you are on the board of the client Security Fund, so were you one of the ones that decided that there was no dishonesty or loss to me and my family?

Please email me a copy of the decisions and paperwork of your July 15th, 2017 board meeting with the Client Security board of my denial and who signed off on this.

Thank you,  
Linda Barrow

Begin forwarded message:

**From:** Camille Greene <[CGreene@osbar.org](mailto:CGreene@osbar.org)>

**Subject:** CSF Claim PARK (Barrow) 2017-23

**Date:** July 17, 2017 at 8:27:15 AM PDT

**To:** 'Linda Barrow' <[becausenicematters@me.com](mailto:becausenicematters@me.com)>

**Cc:** "'[kparklaw@aol.com](mailto:kparklaw@aol.com)'" <[kparklaw@aol.com](mailto:kparklaw@aol.com)>, "Stephen A. Raher" <[stephen\\_raher@orb.uscourts.gov](mailto:stephen_raher@orb.uscourts.gov)>

Dear Ms. Barrow:

At its meeting on July 15, 2017 the Client Security Fund Committee considered your claim for reimbursement. After discussing the facts and the requirements for eligibility for reimbursement, the committee voted to deny your claim for \$600,000.00 against Karen J. Park. The Committee concluded that there was no evidence of dishonesty or pecuniary loss.

Under Client Security Fund Rule 4.10.1 the denial of this claim by the committee is final, unless your written request for review by the Oregon State Bar Board of Governors is received by the Executive Director within 20 days of the date of this letter. Requests for Board review must be sent to: Helen Hirschbiel, CEO / Executive Director, Oregon State Bar, PO Box 231935 Tigard, OR 97281-1935

If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact us should you wish any further information.

cc: Stephen A. Raher, CSF Committee Chair & Investigator  
Karen J. Park, Attorney

<image001.gif>**Camille Greene**

Executive Assistant  
503-431-6386 direct  
503-598-6986 fax  
[CGreene@osbar.org](mailto:CGreene@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • [www.osbar.org](http://www.osbar.org)

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**From:** Linda Barrow  
**To:** [Helen Hierschbiel](#)  
**Subject:** 12 Oregon State Bar Complaints with Secretary of the State. I feel the same.  
**Date:** Thursday, July 20, 2017 9:13:38 AM  
**Attachments:** [State Oregon State Bar Complaints.pdf](#)  
[ATT00001.txt](#)

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Dear Helen Hierschbiel,

Please consider what is going on here. The Client Security Fund denied my complaints and stating there was no dishonesty and pecuniary loss done to me by Karen Park, and the Client Security Fund denied to pay me back the maximum of \$50,000.00 that is the maximum that the OSB will pay back to clients from deceitful attorneys. I feel what has happened to me is 100% deceitful and many attorneys have confirmed this to us, yet your bar board found no dishonesty for either attorney on the client security board where I have had to make my complaints. We feel robbed of justice and our money, and these injustices happening to me should never happen to another citizen. I would want the protection from \$350,000.00 leaving my savings account in 17 months, which is an enormous amount of money, going into Karen Park's account. I am requesting for full protection under the laws and ethics that are clearly written for all the complaints that I have made to the OSB.

No other business would survive these kind of complaints, but it's a client's only hope for help, and there seems to be some very upset people claiming unlawfulness with the Oregon State Bar. I am praying for honesty and accountability towards these attorneys that have been unethical and/or unlawful that did these things to me where I have filed my complaints, but were denied by the Client Security Fund Board, which is the same board that Karen Park and Rick Braun are on. I feel their constituents are protecting them and I hope this is not the case. Stephen Raheer also wrote that he doesn't think any criminal has gone on and he too is on the Client Security Fund board. Why do other attorneys outside of the OSB think there has been some very bad things that have happened to me by Karen Park, yet the Client Security Fund Board supported Karen Park and denied me?

The OSB is a place for citizens/clients to make their complaints, not for attorneys to make their complaints, so when your boards decide on serious matters I don't think a citizen/client should have to file like an attorney would to accomplish help. I feel my complaints are very clear in the documents that I have provided. Karen Park was able to get my complaints and respond to people, yet I wasn't able to see her responses and defend my complaints.

Thank you,  
Linda Barrow



**From:** [Helen Hierschbiel](#)  
**To:** "[Linda Barrow](#)"  
**Cc:** [Camille Greene](#)  
**Subject:** RE: CSF Claim PARK (Barrow) 2017-23  
**Date:** Monday, July 17, 2017 6:23:46 PM

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Dear Ms. Barrow,

Yes, your email suffices to request review of your Client Security Fund claim by the Board of Governors. I also received your email from later in the morning with the letter from Jess Glaeser as an attachment. I will include those items in your request for review as well.

I do not yet have the minutes for the CSF Committee meeting, so I cannot provide you with those at this time. However, once we receive the minutes, we will forward them to you. I did not keep a log of the people who attended the meeting, but that information will be included in the minutes. I will note that Karen Park did not attend the meeting and that Rick Braun recused himself from the discussion of your claim and from voting on your claim. I am not a voting member of the CSF Committee; instead, I am the bar staff liaison to the Committee. Therefore, I did not vote on your claim.

Regarding the BOG meeting, neither Richard Spier nor Randall Green are on the Board of Governors.

Please let me know if you have further questions regarding your Client Security Fund claim.

Best regards,

**Helen Hierschbiel**  
CEO/Executive Director  
503-431-6361  
[HHierschbiel@osbar.org](mailto:HHierschbiel@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 • [www.osbar.org](http://www.osbar.org)

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**From:** Linda Barrow [mailto:[becausenicematters@me.com](mailto:becausenicematters@me.com)]  
**Sent:** Monday, July 17, 2017 9:29 AM  
**To:** Helen Hierschbiel <[HHierschbiel@osbar.org](mailto:HHierschbiel@osbar.org)>  
**Subject:** Fwd: CSF Claim PARK (Barrow) 2017-23

Ms. Helen Hierschbiel,  
Please consider this as my request for review from the Oregon State Bar Board of Governors.  
Does this email suffice?

I will follow this email up and put it in the mail today too.

Please tell me which members of the Client Security Fund denied my claim? I am requesting the the Board of Governors refund the full \$50,000.00 maximum from the Client Security Fund because that is all the maximum allows. The \$600,000.00 amount that I mentioned is what I feel we are out, because of the deceit and excessive billing and the pain and suffering that Ms. Karen Park caused me and my husband.

Mr. Spiers and Mr. Randall Green need to recuse themselves if they are on the Board of Governors. It state that you are on the board of the client Security Fund, so were you one of the ones that decided that there was no dishonesty or loss to me and my family?

Please email me a copy of the decisions and paperwork of your July 15th, 2017 board meeting with the Client Security board of my denial and who signed off on this.

Thank you,  
Linda Barrow

Begin forwarded message:

**From:** Camille Greene <[CGreene@osbar.org](mailto:CGreene@osbar.org)>  
**Subject:** CSF Claim PARK (Barrow) 2017-23  
**Date:** July 17, 2017 at 8:27:15 AM PDT  
**To:** 'Linda Barrow' <[becausenicematters@me.com](mailto:becausenicematters@me.com)>  
**Cc:** "'[kparklaw@aol.com](mailto:kparklaw@aol.com)'" <[kparklaw@aol.com](mailto:kparklaw@aol.com)>, "Stephen A. Raher" <[stephen\\_raher@orb.uscourts.gov](mailto:stephen_raher@orb.uscourts.gov)>

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If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact us should you wish any further information.

cc: Stephen A. Raher, CSF Committee Chair & Investigator  
Karen J. Park, Attorney



**Camille Greene**

Executive Assistant  
503-431-6386 direct  
503-598-6986 fax  
[CGreene@osbar.org](mailto:CGreene@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935  
• [www.osbar.org](http://www.osbar.org)

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RECEIVED

JUL 20 2017



From: Linda Barrow because nicematters@me.com  
Subject: Fwd: CSF Claim PARK (Barrow) 2017-23  
Date: July 17, 2017 at 9:28 AM  
To: Helen Hierschbiel hhierschbiel@osbar.org

Oregon State Bar  
Executive Director

Ms. Helen Hierschbiel,

Please consider this as my request for review from the Oregon State Bar Board of Governors.  
Does this email suffice?

*FOR ATTORNEY  
Karen Park*

I will follow this email up and put it in the mail today too.

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Thank you,  
Linda Barrow

*Please include the PLF denial too.  
that states the reason for their  
denial. included here.*

Begin forwarded message:

From: Camille Greene <CGreene@osbar.org>  
Subject: CSF Claim PARK (Barrow) 2017-23  
Date: July 17, 2017 at 8:27:15 AM PDT  
To: 'Linda Barrow' <because nicematters@me.com>  
Cc: "kparklaw@aol.com" <kparklaw@aol.com>, "Stephen A. Raher" <stephen\_raher@orb.uscourts.gov>

Dear Ms. Barrow:

At its meeting on July 15, 2017 the Client Security Fund Committee considered your claim for reimbursement. After discussing the facts and the requirements for eligibility for reimbursement, the committee voted to deny your claim for \$600,000.00 against Karen J. Park. The Committee concluded that there was no evidence of dishonesty or pecuniary loss.

Under Client Security Fund Rule 4.10.1 the denial of this claim by the committee is final, unless your written request for review by the Oregon State Bar Board of Governors is received by the Executive Director within 20 days of the date of this letter. Requests for Board review must be sent to: Helen Hierschbiel, CEO / Executive Director, Oregon State Bar, PO Box 231935 Tigard, OR 97281-1935


If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact us should you wish any further information.

cc: Stephen A. Raher, CSF Committee Chair & Investigator  
Karen J. Park, Attorney

Camille Greene



  
Executive Assistant  
503-431-6386 direct  
503-598-6986 fax  
[CGreene@osbar.org](mailto:CGreene@osbar.org)

Oregon State Bar • 16037 SW Upper Boones Ferry Road • PO Box 231935 • Tigard, OR 97281-1935 •  
[www.osbar.org](http://www.osbar.org)

Please note: Your email communication may be subject to public disclosure. Written communications to or from the Oregon State Bar are public records that, with limited exceptions, must be made available to anyone upon request in accordance with Oregon's public records laws.



# Professional Liability Fund

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

June 23, 2017

*Sent via email only to [becausenicematters@me.com](mailto:becausenicematters@me.com)*

Linda Barrow  
14555 SW Hawk Ridge Road  
Tigard, OR 97224

Re: PLF File No. : 034917  
Covered Party : Karen J. Park  
Claimant : Linda Barrow

Dear Ms. Barrow:

This week I received a copy of the Oregon State Bar's file regarding your application for reimbursement from the Client Security Fund as well as your Bar Complaint against Karen Park. I promptly reviewed those documents. Following is the Professional Liability Fund's position in response to your legal malpractice claim against Ms. Park. It is my understanding that you are not represented by an attorney in bringing your claim. If I am incorrect and you have retained legal counsel, please give a copy of this letter to that person.

As I understand the background of this matter, you indicate that you were involved in an assault on or about May 26, 2015, in Bend. This arose from a domestic dispute occurring between Taylor and Kristie Gorman. You allege that Mr. Gorman grabbed you and caused you to fall to the ground hitting your head on the pavement. This action resulted in a head injury. The Bend Police Department responded to the incident. You allege that the Bend Police Department employees were not properly trained and failed to properly investigate and document the incident. Thereafter, you sought the assistance of a lawyer to pursue claims against the Gormans and the Bend Police Department. You entered into a Fee and Cost Agreement with Karen Park on November 6, 2015.

On December 18, 2015, Ms. Park filed a complaint in the United States District Court, District of Oregon, Eugene Division, entitled *Linda J. Barrow v. City of Bend, Russell Skelton and Victor Umnitz*, Case No. 6:15-cv-02363-AA. That case proceeded through various stages, including the filing of several motions, and ultimately was dismissed on March 9, 2017, via a Stipulated Notice of Dismissal. I understand no payment was made to you with respect to this lawsuit.

On December 21, 2015, Ms. Park filed a complaint in Multnomah County Circuit Court, entitled *Linda J. Barrow v. Taylor Gorman and Kristie Gorman*, Case No. 15CV34141. That case proceeded through various stages as well, including motions and eventually a mediation in late November 2016. This case

was ultimately resolved through settlement in which the defendants paid you and your insurer a total of \$60,000.

I understand that you paid Ms. Park a total of \$349,522.43 for her fees, as well as costs and expert witness fees on these two lawsuits.

In reviewing your claim, I see your statement in the application for reimbursement from the Client Security Fund that you are seeking \$600,000. You describe that amount as \$349,522.43 for fees and costs you paid to Ms. Park and want refunded. You also seek \$250,000 for interest on that amount, and for pain and suffering. These are the same items you mention in the Claim Initiation Form you sent to the Professional Liability Fund.

I want to explain the role of the Professional Liability Fund and inform you of our position concerning your claim.

The Professional Liability Fund is an independently operated arm of the Oregon State Bar. The Professional Liability Fund's sole purpose is to provide coverage for legal malpractice to non-exempt attorneys in the private practice of law in Oregon, in accordance with the terms and conditions of the applicable coverage plan, and to address claims against those attorneys that are potentially within coverage. We do not provide advice or assistance to persons such as yourself to aid you in making a claim against an attorney. To the contrary, as Ms. Park's professional liability carrier, the Professional Liability Fund's interests are adverse to yours. You will need to hire your own attorney for advice and representation concerning your claim.

The Professional Liability Fund's Coverage Plan does not provide coverage for the type of damages you are seeking. To be covered under the Plan, any claim must arise out of a **Covered Activity** as defined in Section III of the Plan. Additionally, the Plan only applies to claims for **Damages** as defined in the Plan. It does not appear that your claim falls within the scope of these definitions.

Additionally, there are at least three exclusions from Section VI of the Coverage Plan, effective January 1, 2017, that apply. For your reference, those Exclusions state:

Exclusion 2 of the Plan provides as follows:

Wrongful Conduct. This Plan does not apply to any Claim based on or arising out of:

- a. any criminal act or conduct;
- b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct;
- c. any intentional tort; or
- d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any **Covered Party** who did not commit or participate in any acts or conduct set forth in subsections (a) through (d), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.

Exclusion 10 of the Plan provides as follows:

Law Practice Business Activities or Benefits Exclusion. This Plan does not apply to any **Claim**:

- a. For any amounts paid, incurred, or charged by any **Covered Party** as fees, costs or disbursements, (or by any **Law Entity** with which any **Covered Party** was associated at the time the fees, costs, or expenses were paid, incurred or charged), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off, or otherwise.
- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any **Covered Party**, or any **Law Entity** with which any **Covered Party** is now associated, or was associated at the time of the conduct giving rise to the **Claim**; or
- c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any **Covered Party**.

In the event the PLF defends any **Claim** or **Suit** that includes any claim within the scope of this exclusion, the **Covered Party** is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim.

This exclusion does not apply to the extent a **Claim** is based on an act, error, or omission that eliminates, reduces, or prejudices a client's right or ability to recover fees, costs, or expenses from an opposing party.

Exclusion 15 of the Plan provides as follows:

General Tortious Conduct. This Plan does not apply to any **Claim** for:

- a. Bodily injury, sickness, disease, mental anguish, emotional distress, or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act, or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or



- b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible, or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services or Special Capacity Services**.

To the extent that your claim alleges unethical conduct, that falls within Exclusion 2 and there is no coverage under the Plan. Likewise, to the extent you seek a return of fees, costs and interest thereon, that claim falls within Exclusion 10 and there is no coverage. Finally, to the extent that you seek damages for "pain and suffering," that claim falls within Exclusion 15.

Accordingly, there is no coverage under the Professional Liability Fund's Coverage Plan for return of fees, costs, interest or pain and suffering as you have alleged. Therefore, the claim you have asserted against Ms. Park is denied.

There may be reasons to deny your claim that go beyond just those described in this letter. Please understand that in the event of a lawsuit against Ms. Park, she retains the ability to assert any and all claims, rights, privileges and defenses that are available under the circumstances.

Also, please be aware that I am not your attorney and am in fact adverse to your interests in bringing your malpractice claim. For this reason, you should not construe anything I say in this correspondence or in any other communication to be personal legal advice for your benefit. Similarly, you should have no expectation that I either can or will represent you or protect your interests. Therefore, I routinely advise unrepresented claimants, such as yourself, to retain private counsel to provide independent legal advice if for any reason he or she is skeptical about my claims analysis and/or disagrees with my unwillingness to pay his or her settlement demands.

**Please keep in mind that making a claim against an attorney by letter to the Professional Liability Fund does not toll or stop the running of the applicable statute of limitations on any lawsuit that you might be considering. The statute of limitations continues to run and may expire while discussions with us are underway.**

Sincerely,



Pamela J. Stendahl  
Claims Attorney

PJS/dc

c: Karen J. Park (Sent via email & USPS - Personal and Confidential)

From: **Danae Crook** Danae@osbplf.org  
Subject: PLF File No. 034917 Park (Barrow) Correspondence  
Date: June 23, 2017 at 10:57 AM  
To: braceusenicematters@ms.com  
Cc: Pam Stendahl PamS@osbplf.org, kparklaw@aol.com

Good morning Ms. Barrow:

Please see the attached correspondence from Pamela Stendahl.

Thank you,  
Danae



Professional  
Liability Fund

**Danae Crook**  
Claims Assistant

P.O. Box 231600 | Tigard, Oregon 97281-1600  
p: 503.639.6911 x. 466 | f: 503.684.7250 | [www.osbplf.org](http://www.osbplf.org)

Whenever possible, please identify the Covered Party's last name and the PLF file number in the subject line when emailing the PLF. Thank you.

**CONFIDENTIALITY NOTICE:** The information contained in this email communication may contain confidential information that is legally privileged. If you are not the intended recipient, or if you have reason to believe that this message has been addressed to you in error, you are hereby notified that your receipt of this email was not intended by the sender and any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information except its direct delivery to the intended recipient is strictly prohibited. If you have received this email in error, please notify me immediately by telephone at the numbers listed above or by email and then delete the e-mail from your computer and do not print, copy or disclose it to anyone else. Thank you.



2017-06-23 PJS Ltr  
Barrow - Co...nial Ltr.pdf

JESS M. GLAESER, P.C.

ATTORNEY AT LAW  
737 SW VISTA AVENUE  
PORTLAND, OREGON 97205  
JGLAESER@GLAESERLAW.COM

TELEPHONE (503) 228-4963  
FAX (503) 224-9430

RECEIVED

JUL 20 2017

Oregon State Bar  
Executive Director

June 30, 2017

Ms. Linda Barrow  
14555 SW Hawk Ridge Road  
Tigard, OR 97224

Re: Potential Legal Malpractice Claim vs. Karen Park

Dear Linda:

I've now had a chance to thoroughly review the materials that you sent me including your summary of your issues with Ms. Park, deposition transcripts, email correspondence, and billing statements. I also reviewed the complaints that were filed both in the injury claim and the civil rights claim against the City of Bend, et al.

Let me start by saying that I think the billings to you are unreasonable. While §1983 litigation tends to be more complex and federal court litigation generally is more time consuming, on the injury matter I would find it difficult to spend more than 250 hours on any kind of personal injury case even one that went through trial to a jury verdict. With respect to the §1983 claim, while Ms. Park has an interesting way of pleading, I'm not sure that I would have recommended pursuing a civil rights action against the City of Bend and the police officers. However, that is a judgment call and I would rely upon the opinion of somebody who does an extensive amount of §1983 litigation to determine whether or not the advice about going forward with that case was reasonable.

Since I believe some or all of the billing is not reasonable, I would urge you to review your fee agreement with Ms. Park to determine whether there is an agreement to submit any fee dispute to mandatory arbitration. If there is, I would suggest that you request an arbitration of the fee dispute.

*Karen Park denied.*

With respect to your substantive complaints about the quality of the representation that you received by Ms. Park, other than whether the §1983 claim should have been filed, I really don't see a breach of the standard of care. While I certainly would have done things differently, that is not the standard of care in the community. Some of your complaints about turning over medical records, are simply unwarranted. You have an obligation to provide any and all medical records relating to your claim, and if some of those records consisted of your request to correct the record, those things needed to be disclosed to the defendants.

While I disagree with Ms. Park's statement that you should not keep a journal, since that could be protected as an attorney-client privilege or attorney work-product, especially if Ms. Park requested that you keep a journal, however, that does not seem to be a breach of the standard of care.

If Ms. Park hired Randy Green from Salem, then she did in fact retain a very, very competent expert witness on your behalf. I've used Randy on numerous matters and he is very good.

The issue on the postponement on the trial date is not a standard of care issue. It appears that Simon Harding also was going to request a continuance given the fact that he was already in trial on a different matter. In addition, it simply is not unusual for attorney's to need to request a continuance for any number of reasons, including, what appears to be a legitimate reason related to power outages and storms. I know that you were upset with the continuance but I don't think that it rises to the level of a legal negligence claim.

Ultimately, I think you have a fee dispute with this attorney, although I'm specifically not rendering an opinion on the civil rights complaint since I simply don't have the necessary expertise to fully evaluate whether the civil rights claims should have been brought.

The bottom line here for me is that I believe that you overpaid for legal services. If you have the ability to contest those fees through mandatory fee arbitration through the Oregon State Bar, I would urge you to do that.

While I am declining to represent you on the legal malpractice action, I would encourage you to get a second opinion. The easiest thing for you to do is to call the Oregon State Bar Lawyer Referral Service at (503) 684-3763, and tell them that you'd like a referral for purposes of a legal negligence claim. The bar should be able to refer you to a number of different lawyers who do legal malpractice.

I also want to remind you that there's a statute of limitations that governs your claim for legal malpractice. That statute of limitations expires two years from the date that you knew or reasonably should have known of the negligence of your attorney, and that the negligence caused you harm. I think the most conservative approach would be to measure that statute of limitations from either the date of the trial postponement in January of this year, or the date that you settled the personal injury claim, and/or dismissed the §1983 litigation. I would therefore urge you to act promptly in obtaining a second opinion to avoid any problems with the expiration of the statute of limitations.

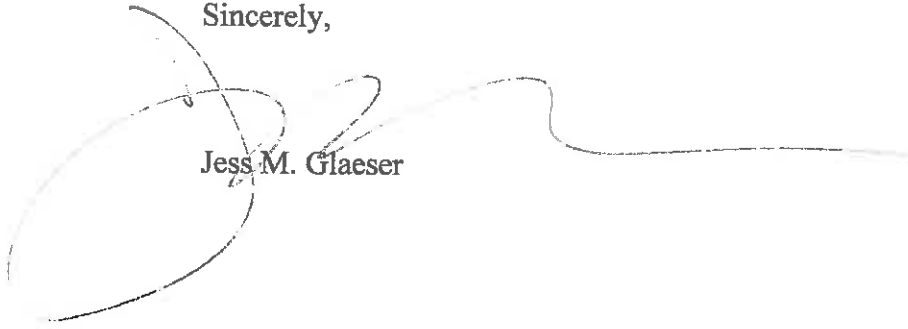
Ms. Linda Barrow  
June 30, 2017  
Page 3

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If you have any questions regarding this letter, or my decision not to represent you, please feel free to give me a call. Otherwise, I wish you the best of luck in proceeding with your attempts to resolve your disputes with Ms. Park.

Sincerely,



Jess M. Glaeser

JMG/hmg

11

Legal Expenses

Invoice Date	Provider	Invoice #	Professional svcs.	Fees	Credits/ Discounts	Invoice total	Payments	Payment Date	Check #	Additional comments	Gorman Civil Case		City of Bend Case	
											Prof Svcs	Fees	Prof Svcs	Fees
9/11/2015	Karen Park- Lawyer	10262	\$4,175.00	\$0.00	\$4,175.00	\$5,000.00	09/09/15	4701			\$1,475.00	\$0.00	\$2,700.00	\$0.00
9/22/2015	Karen Park- Lawyer	10264	\$6,175.00	\$0.00	\$6,175.00	\$5,350.00	09/28/15	4717			\$0.00	\$0.00	\$6,175.00	\$0.00
10/7/2015	Karen Park- Lawyer	10266	\$4,400.00	\$28.75	\$4,428.75	\$4,428.75	10/12/15	4732			\$1,025.00	\$0.00	\$3,375.00	\$28.75
10/28/2015	Karen Park- Lawyer	10267	\$5,275.00	\$0.00	\$5,275.00	\$5,275.00	11/06/15	4741			\$4,650.00	\$0.00	\$625.00	\$0.00
11/30/2015	Karen Park- Lawyer	10268	\$5,675.00	\$0.00	\$5,675.00	\$5,675.00	11/10/15	4744			\$750.00	\$0.00	\$4,925.00	\$0.00
12/24/2015	Karen Park- Lawyer	10269	\$5,725.00	\$948.25	\$6,673.25	\$5,675.00	12/11/15	4765			\$9,150.00	\$548.25	\$2,575.00	\$400.00
1/13/2016	Karen Park- Lawyer	10270	\$5,150.00	\$15.75	\$5,165.75	\$5,675.00	12/28/15	4778			\$825.00	\$0.00	\$4,625.00	\$15.75
1/28/2016	Karen Park- Lawyer	10271	\$4,900.00	\$6.45	\$4,906.45	\$5,165.75	01/19/16	4794			\$1,925.00	\$0.00	\$9,075.00	\$6.45
2/12/2016	Karen Park- Lawyer	10272	\$5,400.00	\$0.00	\$5,400.00	\$5,400.00	02/04/16	4807			\$5,175.00	\$0.00	\$225.00	\$0.00
3/7/2016	Karen Park- Lawyer	10273	\$7,425.00	\$0.00	\$7,425.00	\$20,000.00	02/19/16	4817			\$6,150.00	\$0.00	\$1,275.00	\$0.00
3/30/2016	Karen Park- Lawyer	10275	\$12,800.00	\$0.00	\$12,800.00	\$15,000.00	03/29/16	4861			\$8,050.00	\$0.00	\$4,750.00	\$0.00
4/26/2016	Karen Park- Lawyer	10276	\$14,775.00	\$657.85	\$15,432.85	\$20,000.00	04/28/16	4883			\$3,425.00	\$0.00	\$6,600.00	\$328.93
5/26/2016	Karen Park- Lawyer	10279	\$13,325.00	\$22.07	\$13,347.07	\$20,000.00	06/08/16	4915			\$3,425.00	\$0.00	\$9,900.00	\$22.07
6/24/2016	Karen Park- Lawyer	10281	\$19,625.00	\$156.72	\$19,781.72	\$10,000.00	07/03/16	4942	\$5,000 billing discount		\$12,250.00	\$156.72	\$2,375.00	\$0.00
8/2/2016	Karen Park- Lawyer	10281	\$11,850.00	\$11.09	\$11,861.09	\$10,953.98	07/19/16	4960			\$5,275.00	\$11.09	\$6,575.00	\$23.47
8/2/2016	Karen Park- Lawyer	10281	\$11,650.00	\$136.37	\$11,786.37	\$11,776.37	08/12/16	4986			\$9,375.00	\$102.90	\$2,275.00	\$0.00
8/9/2016	Karen Park- Lawyer	10281	\$22,900.00	\$9.80	\$22,909.80	\$8,500.00	08/03/16	4967			\$0.00	\$0.00	\$0.00	\$0.00
9/1/2016	Karen Park- Lawyer	10281	\$22,900.00	\$9.80	\$22,909.80	\$22,909.80	09/13/16	5014	\$45 Credit Hummel fee applied to fees.		\$8,975.00	\$0.00	\$13,925.00	\$9.80
9/26/2016	Karen Park- Lawyer	10290	\$12,350.00	\$712.50	\$13,062.50	\$11,500.00	10/06/16	5029	Credit for admin work re doc production		\$7,325.00	\$31.73	\$3,825.00	\$16.50
10/19/2016	Karen Park- Lawyer	10281	\$23,150.00	\$5,000.00	\$18,150.00	\$13,000.00	10/06/16	5030	Courtesy discount		\$9,950.00	\$0.00	\$8,200.00	\$0.00
10/29/2016	Karen Park- Lawyer	10291	\$20,712.50	\$7,853.47	\$28,565.97	\$23,150.00	10/29/16	5050			\$0.00	\$2,121.15	\$0.00	\$5,729.32
11/8/2016	Karen Park- Lawyer	10292	\$20,712.50	\$420.80	\$21,133.30	\$10,000.00	11/08/16	5063			\$10,775.00	\$175.50	\$9,937.50	\$245.30
11/21/2016	Karen Park- Lawyer	10294	\$9,700.00	\$8,590.46	\$18,290.46	\$25,000.00	11/21/16	5068			\$0.00	\$4,314.50	\$0.00	\$0.00
11/21/2016	Karen Park- Lawyer	10281	\$18,025.00	\$26.37	\$18,051.37	\$18,400.00	12/02/16	5078			\$6,375.00	\$26.37	\$9,325.00	\$0.00
12/12/2016	Karen Park- Lawyer	10281	\$18,025.00	\$441.63	\$18,466.63	\$13,782.00	12/16/16	5094			\$16,800.00	\$0.00	\$1,225.00	\$0.00
12/12/2016	Karen Park- Lawyer	10285	\$20,150.00	\$170.44	\$20,320.44	\$20,320.44	01/09/17	5117			\$0.00	\$443.63	\$0.00	\$0.00
1/1/2017	Karen Park- Lawyer	10298	\$7,699.37	\$6,017.21	\$13,716.58	\$16,000.00	01/13/17	5118			\$19,600.00	\$170.44	\$550.00	\$0.00
1/27/2017	Karen Park- Lawyer	10299	\$19,312.50	\$47.27	\$19,359.77	\$19,359.77					\$0.00	\$4,304.06	\$0.00	\$3,506.65
1/27/2017	Dr. Green - Expert	10281	\$19,312.50	\$47.27	\$19,359.77	\$19,359.77					\$19,298.00	\$47.27	\$75.00	\$0.00
2/14/2017	witness	10300	\$19,054.08	\$13,760.00	\$32,814.08	\$19,054.08					\$19,054.08	\$0.00	\$0.00	\$0.00
2/17/2017	Karen Park- Lawyer	10300	\$0.00	\$0.00	\$0.00	-\$13,602.86					\$0.00	\$0.00	\$0.00	\$0.00
2/20/2017	Karen Park- Lawyer	10281	\$3,550.00	\$0.00	\$3,550.00	\$4,359.77	02/09/17	5135	Refund from Fees account		\$9,475.00	\$0.00	\$75.00	\$0.00
3/9/2017	Karen Park- Lawyer	10281	\$1,300.00	\$0.00	\$1,300.00	\$1,300.00					\$775.00	\$0.00	\$525.00	\$0.00
			\$289,475.00	\$71,079.43	\$360,554.43	\$349,522.43					\$174,763.00	\$54,949.34	\$103,712.50	\$16,295.80

Legal fees shown above are for two separate lawsuits. A breakdown of costs for each is provided on the summary tab of this spread sheet manually and supported by the actual receipts. Differences between invoice total and payments represent approximate funds available in retainer





This summary provides a breakdown of the legal fees shown on corresponding tab between the Gorman Civil case and the federal City of Bend Case to date. Neither case has gone to trial and additional spend beyond this summary is expected to occur.

The Gorman case is presently in a state where a \$60,000 settlement offer is being finalized for closure.

In late February, the projected additional fees required to take the Federal City of Bend case through trial is >\$200,000.

Totals and breakdown shown below are close as billing details for these cases are combined & numerous. Very small error in totals are likely. Each specific bill was reviewed and manually split out to separate costs. The split details can be seen on the PDF hard copy of bills.

Case	Karen Park Legal hrs billed	Karen Park Prof. Services Attorney's Fees	Fees supplies, fees, witnesses, etc	Total to date as of 3/3/2017	Lien
Gorman Civil Case	699	\$174,763.00	\$54,949.34	\$229,712.34	Rawlings / Aetna
City of Bend Case	415	\$103,712.50	\$16,295.80	\$120,008.30	None

Ms. Linda J. Barrow  
14555 SW Hawk Ridge Rd  
Portland OR 97224-1301

**RECEIVED**

JUL 20 2017

Oregon State Bar  
Executive Director

**CERTIFIED MAIL**



7017 0530 0000 3061 1035

*Ms. Valentia Schbiel  
CEO / Executive Director  
P.O. Box 231935  
Portland, OR 97281-1935*



\$3.07<sup>0</sup>  
US POSTAGE  
FIRST-CLASS  
071S01030722  
97224  
000018121



97281-1935





CLAIM year	CLAIM #	CLAIMANT	LAWYER	CLAIM AMT	PENDING	AMOUNT PAID	INVESTIGATOR	STATUS
2014	02	Kitchen, Kimberly A.	Wood, Alan K.	\$ 3,000.00	\$ 3,000.00		Raher	9/24/16 to CSF. Inform only.
2015	39	Boone, Charles P	Morningstar, Jonah	\$ 8,000.00	\$ 8,000.00		Raher	9/24/16 CSF stayed. Re-open in July 2017
2016	27	Roden, Joseph	Morningstar, Jonah	\$ 9,385.50	\$ 9,385.50		Raher	9/24/16 CSF stayed. Re-open in July 2017
2016	36	Cruz, Lourdes	Milstein, Jeffrey S.	\$ 1,750.00	\$ 1,750.00		Butterfield	5/6/17 CSF Approved \$1750
2016	42	Heredia, Keeley	Krull, Julie	\$ 9,000.00	\$ 9,000.00		Dippel to Atwood	
2016	47	Bierbrauer, Randy Russell	Foraker, Peggy S	\$ 21,896.19	\$ 21,896.19		Park	
2017	01	Bostwick, Aaron Paul	Rader, Mark	\$ 8,500.00	\$ 8,500.00		Roy	
2017	02	McLaren Hall, Rebecca Jean	Merrill, Nick	\$ 2,500.00	\$ 2,500.00		Young	
2017	04	Powell, Terry Scott	Milstein, Jeffrey S.	\$ 3,000.00	\$ 3,000.00		Taylor	
2017	05	Schwengels-Loe, Denyse Marie	Milstein, Jeffrey S.	\$ 5,100.00	\$ 5,100.00		Taylor	
2017	06	Frost, Forrest Robert	Heinzelman, Dana C	\$ 7,500.00		\$ 2,687.50	Cooper	7/27 ck mailed to P.Frost \$2687.50
2017	07	Clymer, Joseph & Deborah	Campbell, Jefferson G. Jr	\$ 1,235.00	\$ 1,235.00		Thompson	
2017	08	Jay, Sandra	Milstein, Jeffrey S.	\$ 2,730.00	\$ 2,730.00		Taylor	
2017	09	Tupper, Robert Thompson	Milstein, Jeffrey S.	\$ 2,100.00	\$ 2,100.00		Taylor	
2017	10	Frazier, Justin	Milstein, Jeffrey S.	\$ 3,000.00	\$ 3,000.00		Taylor	
2017	11	Scott, Andrew L.	Allen, Sara Lynn	\$ 5,000.00		\$ 2,500.00	Atwood	6/26/17 ck sent \$2500
2017	13	Shreffler, Bryce Thomas	Roller, Dale	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	Stamm	7/15/17 CSF approved. 9/8/17 to BOG.
2017	14	Cooper, James Adam	Milstein, Jeffrey S.	\$ 11,500.00	\$ 11,500.00		Taylor	
2017	15	Ashpole, Mathew Thomas	Milstein, Jeffrey S.	\$ 4,800.00	\$ 4,800.00		Taylor	
2017	16	Allen, Thomas John Robert	Milstein, Jeffrey S.	\$ 28,000.00	\$ 28,000.00		Taylor	
2017	17	Torrance, Glen M	Roller, Dale	\$ 11,000.00	\$ 11,000.00		Stamm	
2017	18	Madden, Kimberly Dawn Louse Armstrong	Roller, Dale	\$ 1,320.00		\$ 1,316.80	Stamm	7/25 ck sent \$1316.80
2017	19	Pointer, Kelly Renee	Roller, Dale	\$ 1,000.00	\$ 1,000.00		Stamm	
2017	20	Guitron, Aunah	Dougan, Rebecca	\$ 4,000.00	\$ 4,000.00		Braun	7/15/17 CSF denied.
2017	21	Gale, Daniel Poe	Johnson, Rankin	\$ 2,000.00		\$ -	Atwood	Atty refunded new atty. Client protested.
2017	23	Barrow, Linda	Park, Karen J	\$ 600,000.00	\$ 50,000.00		Raher	7/15/17 CSF denied. 9/8/17 BOG Review.
2017	24	Lopez-Contreras, Rosalina	Hudson, Howard	\$ 6,410.00	\$ 6,410.00		Jones	
2017	25	Roebuck, William	Roller, Dale	\$ 7,500.00	\$ 7,500.00		Stamm	
2017	26	Jacob, Avishaq	Johnson, Ron	\$ 1,300.00	\$ 1,300.00		Roy	
2017	27	Gaddie, Kelle Lawrence	Wymetalek, Craig	\$ 1,500.00		\$ -	Braun	7/12/17 Atty refunded client \$1500
2017	28	Yang, Wai Thomas	Gerber, Susan R.	\$ 10,000.00	\$ 10,000.00		Atwood	funds to be sent to his niece, Qiao Hong Chen
2017	29	Vega-Flores, Gustavo	Coran, Theodore C	\$ 10,000.00	\$ 10,000.00		Young	
2017	30	Grace, Ronald James	Hill, Thomas A	\$ 972.00		\$ -	Cooper	8/29 atty refund client in full
		Claims pending and claims paid since June 23 BOG meeting			\$ 215,406.69	\$ 16,504.30		
		Funds available for claims and indirect costs allocation as of July 2017			\$ 1,303,695.00			
		<b>Fund Excess</b>			<b>\$ 1,088,288.31</b>			

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Seven Months Ending Monday, July 31, 2017**

Description	July 2017	YTD 2017	Budget 2017	% of Budget	July Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$1,368	\$8,022	\$12,500	64.2%	\$768	\$4,859	65.1%
Judgments	90	399	1,000	39.9%	50	390	2.4%
Membership Fees	420	219,547	231,200	95.0%	420	221,170	(0.7%)
<b>TOTAL REVENUE</b>	<b>1,878</b>	<b>227,968</b>	<b>244,700</b>	<b>93.2%</b>	<b>1,238</b>	<b>226,419</b>	<b>0.7%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	1,067	8,466	32,700	25.9%	1,111	8,065	5.0%
Employee Taxes & Benefits - Reg	784	3,728	13,000	28.7%	367	2,957	26.1%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>1,851</b>	<b>12,194</b>	<b>45,700</b>	<b>26.7%</b>	<b>1,478</b>	<b>11,022</b>	<b>10.6%</b>
<b>DIRECT PROGRAM</b>							
Claims	4,004	16,429	200,000	8.2%	8,500	84,081	(80.5%)
Collection Fees	0	0	1,000	0.0%	0	0	0.0%
Committees	0	0	150	0.0%	0	0	0.0%
Travel & Expense	40	1,144	1,800	63.6%	0	1,349	(15.1%)
<b>EXPENSE</b>	<b>4,044</b>	<b>17,573</b>	<b>202,950</b>	<b>8.7%</b>	<b>8,500</b>	<b>85,430</b>	<b>(79.4%)</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Office Supplies	0	0	150	0.0%	0	0	0.0%
Photocopying	0	0	50	0.0%	0	0	0.0%
Postage	0	30	150	20.2%	11	88	(65.6%)
Professional Dues	0	0	200	0.0%	0	0	0.0%
Telephone	0	36	200	18.2%	0	34	6.2%
Training & Education	0	4,575	600	762.5%	0	545	739.4%
Staff Travel & Expense	556	1,169	1,094	106.9%	230	295	296.5%
<b>TOTAL G &amp; A</b>	<b>556</b>	<b>5,810</b>	<b>2,444</b>	<b>237.8%</b>	<b>241</b>	<b>962</b>	<b>503.9%</b>
<b>TOTAL EXPENSE</b>	<b>6,451</b>	<b>35,577</b>	<b>251,094</b>	<b>14.2%</b>	<b>10,219</b>	<b>97,414</b>	<b>(63.5%)</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(4,573)</b>	<b>192,391</b>	<b>(6,394)</b>	<b>#####</b>	<b>(8,981)</b>	<b>129,005</b>	<b>49.1%</b>
Indirect Cost Allocation	2,779	19,454	33,349	58.3%	2,655	18,586	4.7%
<b>NET REV (EXP) AFTER ICA</b>	<b>(7,352)</b>	<b>172,937</b>	<b>(39,743)</b>	<b>(435.1%)</b>	<b>(11,636)</b>	<b>110,419</b>	<b>56.6%</b>
Fund Balance beginning of year		1,130,760					
<b>Ending Fund Balance</b>		<b>1,303,695</b>					

**Oregon State Bar**  
**Meeting of the Board of Governors**  
June 23, 2017  
**Open Session Minutes**

President Michael Levelle called the meeting to order at 12:15 p.m. on June 23, 2017. The meeting adjourned at 3:30 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, John Mansfield, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, and Kerry Sharp. Not present were Ray Heysell, Eddie Medina, Traci Rossi, Kate von Ter Stegge, and Elisabeth Zinser. Staff present were Helen Hirschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Dani Edwards, Kay Pulju, and Camille Greene. Also present: Justin Morton, ONLD Committee; Carol Bernick, PLF CEO; and Futures Task Force members Hon. Chris Garrett (Regulatory Committee chair), John Grant (Innovations Committee chair), Kelly Harpster (paraprofessionals subgroup chair), and Nadia Dahab.

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

The board accepted the agenda, as presented, by consensus.

**2. Strategic Areas of Focus for 2017**

Futures Task Force (FTF) Reports & Recommendations **[Exhibit A]**

John Grant gave a Power Point presentation **[Exhibit B]** on the persistent access to justice gap and the FTF Innovation Committee recommendations for steps the Board of Governors should take to help close that gap, as set forth in the FTF Report Executive Summary. Nadia Dahab presented the details of the Innovation Committee recommendation that the bar establish an incubator/accelerator program, staffed by a full-time Oregon State Bar employee.

Hon. Chris Garrett gave a Power Point presentation **[Exhibit C]** regarding the FTF Regulatory Committee recommendations for steps the bar should take to help close the justice gap, as set forth in the FTF Report Executive Summary. Kelly Harpster answered questions related to the paraprofessional licensure recommendation.

There was considerable discussion about the committee recommendations and current models that are being used in other states and countries.

**Motion:** Ms. Nordyke moved, Mr. Greco seconded, and the board voted unanimously to accept the Futures Task Force Report.

Mr. Levelle asked whether Board members felt that any of the recommendations could be voted on immediately. Mr. Foster and Ms. Reeves suggested that the board solicit bar membership feedback before voting to take action on any of the items.

**Motion:** Mr. Foster moved, Mr. Peachey seconded, to table taking any action until after soliciting membership feedback. Mr. Peachey called for the end of debate, Mr. Bachofner seconded. Mr. Levelle asked for those in favor of ending discussion, and the board voted unanimously to end discussion. The board then voted to pass Mr. Foster's motion. Mr. Sharp voted no.

Ms. Hirschbiel asked for a timeline as to how to proceed. Ms. Costantino asked Ms. Harpster if she would be willing to attend a Family Law Section meeting to discuss. Ms. Costantino also asked the board to include this as subject matter for a generative discussion at the July 21, 2017 BOG meeting.

Ms. Hirschbiel presented the Oregon Law Foundation's request for board approval of a \$10,000 contribution to the Oregon Law Foundation's Civil Legal Needs Study focusing on Oregonians up to 125% of the poverty guideline. **[Exhibit D]**

**Motion:** Ms. Rice moved, Mr. Bachofner seconded, and the board voted unanimously to approve the \$10,000 contribution. The motion passed.

Ms. Nordyke presented the Policy & Governance committee's proposed changes to the Advisory Committee on Diversity & Inclusion (ACDI) committee charge for board approval. **[Exhibit E]**

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Ms. Nordyke asked the board to identify areas for further review of the Oregon New Lawyers Division and future programs for new lawyers. The committee would like to survey current ONLD members to find out what they would like to see from the program.

Ms. Nordyke updated the board on the section CLE co-sponsorship feedback. She presented the committee motion to require each section to co-sponsor a four-hour program with the OSB CLE Seminars Department at least once every three years. Mr. Bachofner asked whether this would require that the OSB co-sponsor with sections every three years; no, sections are required to offer to co-sponsor with the OSB CLE seminars department every year until the OSB CLE seminars department says yes. Thereafter, the section could wait two years before offering to co-sponsor again.

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

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

Policy & Governance Committee

Ms. Nordyke asked the board to approve the Policy & Governance Committee's recommendation to revise the Legal Heritage Interest Group's charge. **[Exhibit F]**

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Ad Hoc Awards Committee

Ms. Pulju asked the board to 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. The 2017 Awards Luncheon will be held on October 25, and the committee will need to present its recommendations for BOG approval on July 21.

**Motion:** Ms. Reeves moved, Ms. Costantino seconded, and the board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Volunteers for the Ad Hoc Awards Committee: Chris Costantino, Vanessa Nordyke, John Bachofner, and Tom Peachey.

Board Development Committee

Mr. Ramfjord presented the committee's recommendations for several committee appointments. **[Exhibit G]**

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed.

Budget & Finance Committee

Mr. Chaney presented a financial update **[Exhibit H]** and asked the board to approve the selection of Moss Adams as the auditors of the 2016-2017 OSB financial statements.

**Motion:** Mr. Sharp moved, Ms. Nordyke seconded, and the board voted unanimously in favor of accepting the auditor selection. The motion passed.

Public Affairs Committee

Ms. Rastetter gave a general update on legislative activity and asked the board to adopt the updated "The Specific Standards for Representation in Juvenile Dependency.

**Motion:** The board voted unanimously in favor of adopting the committee recommendations. The motion passed.

Appellate Screening Committee

Mr. Ramfjord presented the final highly-qualified letter sent to Governor Kate Brown. The appointments are still pending.

#### **4. Professional Liability Fund**

Ms. Bernick gave a general update and reported that after 31 years at the PLF, and 28 years as Director of Claims, Bruce Shafer is retiring from the PLF. They will be doing their assessments paperless this year for the first time.

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

Oregon New Lawyers Division Report. As written.

Report of the President.

Mr. Levelle reported on his 3-day Eastern Oregon trip with Helen Hierschbiel to visit local bar members. Mr. Levelle received a letter from an ABA-affiliated organization that made an offer for him to be a team leader for a group of Oregon lawyers to visit Cuba and learn about the Cuban legal system. Staff will send out additional information.

Report of the President-elect.

Ms. Nordyke reported that she is looking forward to working on a panel at OLIO this year. She is going to be interviewed on a local cable channel in Salem. She also will be speaking at the University of Oregon's School of Law.

Report of the Executive Director. As written.

Director of Regulatory Services. As written.

MBA Liaison Report.

Mr. Ramfjord reported on the MBA board meeting he attended. The MBA board was very interested in the update on the Futures Task Force, Diversity Action Plan, and other OSB progress.

**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. Greco moved, Mr. Bachofner seconded, and the board voted unanimously to approve all items on the consent agenda.

**7. Closed Sessions – see CLOSED Minutes**

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

**Motion:** Mr. Bachofner moved, Mr. Ramfjord seconded, and the board voted unanimously to grant the authority to pay the \$10,000 claim from the unclaimed lawyer trust account.

**8. Good of the Order (Non-action comments, information and notice of need for possible future board action)**

**Oregon State Bar  
Board of Governors Meeting  
June 23, 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. Unclaimed Lawyer Trust Account Claim

Ms. Hollister asked the board to decide whether to approve Virgil Lee Hayes III's claim for the return of \$10,000.

B. Unlawful Practice of Law Litigation

Ms. Hollister informed the board of non-action items.

C. Pending or Threatened Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

# FUTURE

THE FUTURE OF LEGAL SERVICES IN OREGON

## OSB Futures Task Force

Executive Summary | June 2017

DRAFT





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

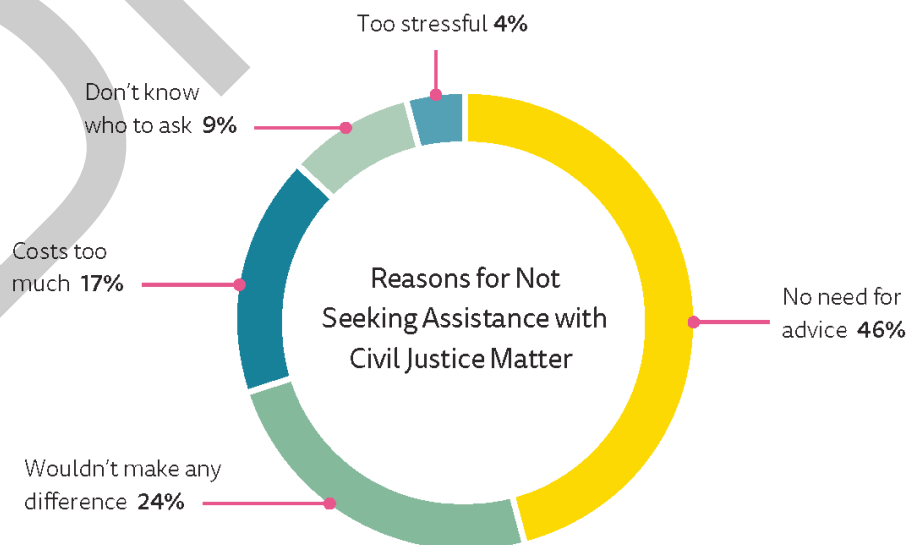
*OSB Advertising Task Force Report (2009)*

## 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 corporations<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

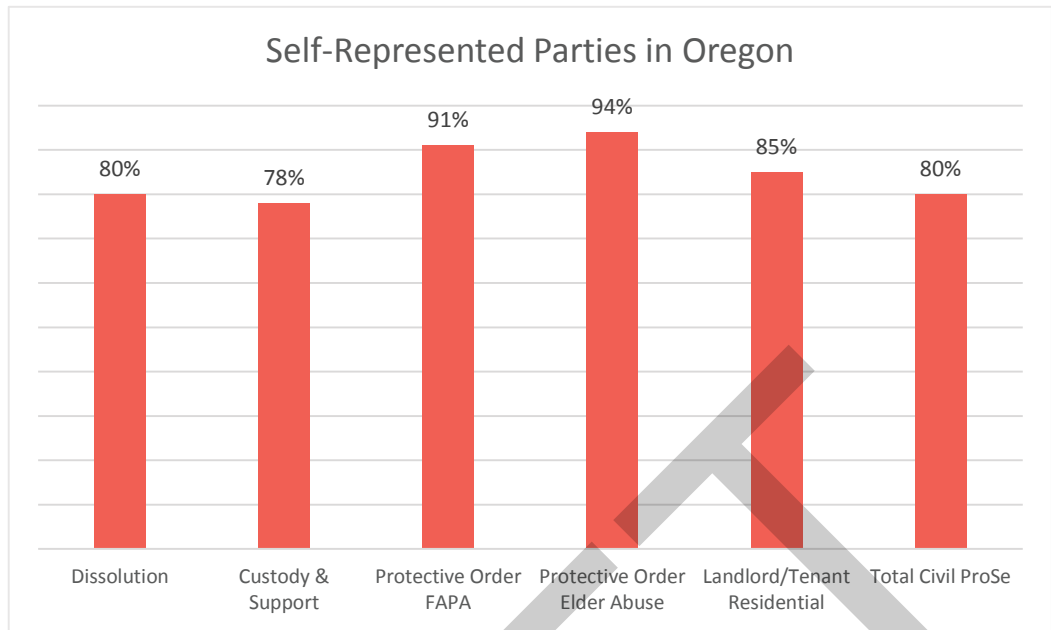
- Access to justice is not just a problem for the poor. One study showed that “well over 100 million Americans [are] living with civil justice problems, many involving what the American

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

- Although financial cost is the most often cited reason for not seeking legal services,<sup>6</sup> 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.”<sup>7</sup> 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.”<sup>8</sup>
- 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.”<sup>9</sup> Nor have other programs across the country designed to offer assistance to this population significantly narrowed the access-to-justice gap.<sup>10</sup>

Within this context, new lawyers remain un- and underemployed.<sup>11</sup> Total student debt burdens now average in excess of \$140,000<sup>12</sup>—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.<sup>13</sup> 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,<sup>14</sup> write a will,<sup>15</sup> or apply for an immigration visa,<sup>16</sup> 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."<sup>17</sup> 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.<sup>18</sup> In the long term, however, firms that have taken a proactive approach to alternative fee arrangements have retained their profitability.<sup>19</sup>

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.”<sup>20</sup>

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](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](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](http://www.osbar.org/_docs/resources/taskforces/futures/FuturesTF_Summary.pdf)

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**OSB FUTURES TASK FORCE  
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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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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."<sup>4</sup> 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).<sup>5</sup> 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.<sup>6</sup> 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

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

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

<sup>4</sup> 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).

<sup>5</sup> 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>.

<sup>6</sup> 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 PARAPROFSSIONAL 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.<sup>7</sup> The study found “a great need for civil legal services for low and moderate income people”

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

that was not adequately met.<sup>8</sup> 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.”<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup> 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.”<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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.”<sup>18</sup> 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.<sup>19</sup> Dissatisfied with this state of affairs, the

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<sup>8</sup> *Id.*

<sup>9</sup> 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.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Id.* at 9-10.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> *Id.* at ii.

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

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.*

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

<sup>18</sup> 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).

<sup>19</sup> *Id.*



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

In 2013, the New York City Bar Association reached the same conclusion.<sup>22</sup> 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."<sup>23</sup> 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.<sup>24</sup> In the "for-the-duration" pilot program, no tenant who received help was evicted.<sup>25</sup>

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."<sup>26</sup> 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.<sup>27</sup> The Washington court worried that the public will increasingly "fall prey to the perils" of unregulated and untrained nonlawyers.<sup>28</sup> 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

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<sup>20</sup> 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](http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap).

<sup>21</sup> *Id.*

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

<sup>23</sup> *Id.* at 4.

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

<sup>25</sup> *Id.* at 5.

<sup>26</sup> LLLT Order at 5.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

incredible unmet need is more than we can tolerate.”<sup>29</sup> 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.<sup>30</sup>

Despite the support of the Washington Supreme Court and the Washington State Bar Association, some Washington attorneys remain skeptical about licensing paraprofessionals.<sup>31</sup> 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.<sup>32</sup> 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.”<sup>33</sup>

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.<sup>34</sup> Survey respondents who sought but were unable to obtain legal assistance were left with “extremely negative” views of our system

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

<sup>30</sup> *Id.*

<sup>31</sup> 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.

<sup>32</sup> 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](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](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](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).

<sup>33</sup> Schaefer, *supra* note 27, at 1.

<sup>34</sup> DALE, *supra* note 6, at 10.

(significantly worse than the opinions of those who received at least some help).<sup>35</sup> 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.<sup>36</sup>

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.

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<sup>35</sup> *Id.* at 38.

<sup>36</sup> 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.<sup>37</sup> The Board of Legal Document Preparers issues certificates and performs essential regulatory functions.<sup>38</sup> Fees and assessments are paid into a special fund.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

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<sup>37</sup> ARIZ. CODE OF JUD. ADMIN. § 7-208(B).

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

<sup>39</sup> ARIZ. CODE OF JUD. ADMIN. § 7-208(D)(2).

<sup>40</sup> ARIZ. CODE OF JUD. ADMIN. § 7-208(F)(1).

<sup>41</sup> ARIZ. CODE OF JUD. ADMIN. § 7-208(F)(1).

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

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

### 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.<sup>45</sup>

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

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

### Nevada

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<sup>43</sup> ARIZ. CODE OF JUD. ADMIN. § 7-208(E)(3).

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

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

<sup>46</sup> CAL. BUS. & PROF. CODE § 6402.1.

<sup>47</sup> CAL. BUS. & PROF. CODE § 6402.

<sup>48</sup> CAL. BUS. & PROF. CODE § 6405.

<sup>49</sup> CAL. BUS. & PROF. CODE § 6402.2.

<sup>50</sup> CAL. BUS. & PROF. CODE § 6400(d)(1).

<sup>51</sup> CAL. BUS. & PROF. CODE § 6400(d)(2).

<sup>52</sup> CAL. BUS. & PROF. CODE § 6400(g).

<sup>53</sup> CAL. CODE REGS. tit. 16, § 3950.

<sup>54</sup> CAL. BUS. & PROF. CODE § 6401.6.

<sup>55</sup> 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.<sup>56</sup>

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 State<sup>57</sup> and are prohibited from engaging in deceptive practices,<sup>58</sup> 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.”<sup>59</sup> Registrants also may prepare wills and trusts<sup>60</sup> and provide published factual information about legal rights, obligations, and procedures, if that information was written or approved by an attorney.<sup>61</sup> The statute also mandates the use of written agreements with mandatory disclosures about the limited scope of practice.<sup>62</sup>

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.<sup>63</sup>

## Washington

In 2014, Washington’s first prospective LLLTs enrolled in approved courses at law schools, and the first graduates were licensed in 2015.<sup>64</sup> 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.<sup>65</sup> Washington’s work-experience requirement is substantial: eligible applicants must have 3,000 hours of law-related work

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<sup>56</sup> NEV. REV. STAT. § 240A.250, *et seq.*

<sup>57</sup> NEV. REV. STAT. §§ 240A.110(3), 240A.120.

<sup>58</sup> NEV. REV. STAT. § 240A.240.

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

<sup>60</sup> NEV. REV. STAT. § 240A.040(1).

<sup>61</sup> NEV. REV. STAT. § 240A.240(6).

<sup>62</sup> NEV. REV. STAT. §§ 240A.180, 240A.190.

<sup>63</sup> NEV. REV. STAT. § 240A.240.

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

<sup>65</sup> ADMIS. TO PRAC. RULE 28(D)(3).

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

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.<sup>68</sup> Currently, LLLTs may provide limited legal services in only one practice area: family law.<sup>69</sup> 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.<sup>70</sup>

Like licensed paraprofessionals in other states, LLLTs may select, complete, file, and serve approved family-law pattern forms.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

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.<sup>74</sup> 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.<sup>75</sup>

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<sup>66</sup> ADMIS. TO PRAC. RULE 28(E)(2).

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

<sup>68</sup> ADMIS. TO PRAC. RULE 28(I).

<sup>69</sup> 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.

<sup>70</sup> ADMIS. TO PRAC. RULE 28, APP. REG. 2(B)(3).

<sup>71</sup> ADMIS. TO PRAC. RULE 28(F)(6).

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

<sup>73</sup> ADMIS. TO PRAC. RULE 28(F)(8).

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

<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup> The Chair, Justice Himonas, described the task as the examination of “a market-based, supply-side solution to the unmet needs of litigants.”<sup>78</sup> 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.<sup>79</sup>

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.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> For substantive law-related work experience, the task force concluded that Washington’s bar was too high.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

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

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

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

<sup>79</sup> UTAH REPORT, *supra* note 73, at 7.

<sup>80</sup> *Id.* at 7.

<sup>81</sup> Himonas and Shea, *supra* note 74, at 19.

<sup>82</sup> UTAH REPORT, *supra* note 73, at 36.

<sup>83</sup> PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (July 21, 2016).

<sup>84</sup> 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”).

<sup>85</sup> PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (August 18, 2016).

<sup>86</sup> 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.<sup>87</sup> 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.”<sup>88</sup>

Although the scope of services will be “centered on completing forms,”<sup>89</sup> Utah will nevertheless “take a bolder step” than other states.<sup>90</sup> 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.”<sup>91</sup> 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.”<sup>92</sup> Licensees will be able to represent clients in both mediated and nonmediated negotiations<sup>93</sup> and, if required, may be authorized to prepare a written settlement agreement.<sup>94</sup>

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.”<sup>95</sup> 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.

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<sup>87</sup> *Id.* at 8.

<sup>88</sup> *Id.* at 32.

<sup>89</sup> PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES 2 (July 21, 2016).

<sup>90</sup> UTAH REPORT, *supra* note 73, at 30.

<sup>91</sup> *Id.* at 32.

<sup>92</sup> *Id.* at 33.

<sup>93</sup> PARALEGAL PRACTITIONER STEERING SUBCOMMITTEE, MINUTES (August 18, 2016).

<sup>94</sup> UTAH REPORT, *supra* note 73, at 33.

<sup>95</sup> *Id.* at 21.

Licensees may represent clients in four general types of proceedings: small-claims proceedings, provincial offenses before the Ontario Court of Justice,<sup>96</sup> summary-conviction proceedings,<sup>97</sup> and proceedings before administrative tribunals (including landlord-tenant and immigration matters).<sup>98</sup> 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.<sup>99</sup> 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.<sup>100</sup>

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.”<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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

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

<sup>97</sup> 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.

<sup>98</sup> LAW SOC'Y ACT, BY-LAW 4, § 6(2).

<sup>99</sup> *Id.*

<sup>100</sup> 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>.

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

<sup>102</sup> *Id.* at 25.

<sup>103</sup> 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.”<sup>104</sup> 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.<sup>105</sup>

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.<sup>106</sup> 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.<sup>107</sup>

### **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

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<sup>104</sup> NEW YORK REPORT, *supra* note 20, at 30.

<sup>105</sup> SANDEFUR AND CLARKE, *supra* note 22.

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

<sup>107</sup> 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.<sup>108</sup> 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

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<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> The state's LLLT Board determines the key concepts or topics that practice-area instruction must include and the number of credit hours required.<sup>111</sup> 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.<sup>112</sup>

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.<sup>113</sup>

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

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

<sup>110</sup> ADMIS. TO PRAC. RULE 28(D)(3)(c).

<sup>111</sup> *Id.*

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

<sup>113</sup> 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.<sup>114</sup> 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.<sup>115</sup>

**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.<sup>116</sup> The experience should be acquired in the two years preceding the date of application for the license.<sup>117</sup>

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

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<sup>114</sup> NALS CERTIFICATION RESOURCE MANUAL 5 (2016).

<sup>115</sup> 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.

<sup>116</sup> 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.

<sup>117</sup> 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.<sup>118</sup> Therefore, we recommend that licensees be required to complete a minimum number of hours of continuing legal education in each reporting period.<sup>119</sup> 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.

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<sup>118</sup> OSB MINIMUM CONTINUING LEGAL EDUCATION RULES AND REGULATIONS (2016).

<sup>119</sup> 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.<sup>120</sup> 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.<sup>121</sup> Our immediate goal is to better meet the legal needs of these litigants.

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<sup>120</sup> OSB, *supra* note 5, AT 4.

<sup>121</sup> 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.<sup>122</sup>

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.<sup>123</sup> Washington has a more extensive list of specific exclusions within otherwise-approved family-law matters.<sup>124</sup> 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.**

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<sup>122</sup> SANDEFUR AND CLARKE, *supra* note 22, at 4.

<sup>123</sup> UTAH REPORT, *supra* note 73, at 30.

<sup>124</sup> 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.<sup>125</sup> 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.

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<sup>125</sup> 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.<sup>126</sup>

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.<sup>127</sup> 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

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<sup>126</sup> 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.

<sup>127</sup> 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.<sup>128</sup> 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 organizations<sup>129</sup> that have developed such certification exams.<sup>130</sup>

**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.<sup>131</sup> 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

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<sup>128</sup> 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.

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

<sup>130</sup> 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.<sup>130</sup> 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.

<sup>131</sup> 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.

DRAFT

**APPENDIX A: Licensed Paraprofessional Programs Comparison Chart**

Licensed Paraprofessional Programs						
Title	Arizona	California	Nevada	Utah <sup>1</sup>	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	Varies by work experience	Associates degree	Associates degree	Accredited paralegal program graduate
Licensing Exam	0-2 years, varies by educational degree	0-2 years, varies by educational degree	n/a	Paralegal studies, practice area course	Paralegal studies, practice area course	General and practice area courses
Insurance/Bond	Yes	No	Bond	Yes	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	Yes, limited in scope	Yes, limited in scope	Yes
	Negotiate on client's behalf	No	No	Yes, in mediation	No	Yes
Other	Appear in court	No	No	No	No	Yes
	Trust accounts	No	No	Yes	Yes	Yes
	Continuing education	Yes	Yes	Yes	Yes	Yes
Stature/Rule	LDP Board	Dept. of Consumer Affairs, Counties	Secretary of State	Board (TBD)	LLT Board	Paralegal Standing Committee
	ACIA 7-208	CA Bus. & Prof. Code §6400 et seq	NRS 240A	Draft Rule 14-802	APR 28	Law Society Act

<sup>1</sup> 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
<b>Domestic Relations</b>						
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
<b>Civil</b>						
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
<b>Protective Orders</b>						
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

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

**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.<sup>132</sup> 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.

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<sup>132</sup> 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 services<sup>133</sup>—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

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<sup>133</sup> 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.<sup>134</sup> One source indicates that there are well over a thousand legal tech startup companies currently in existence.”<sup>135</sup>

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.”<sup>136</sup>

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.”<sup>137</sup> 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.”<sup>138</sup>

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.”<sup>139</sup> 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.”<sup>140</sup>

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](#),

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<sup>134</sup> 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>.

<sup>135</sup> See [Angellist, Legal Services](https://angel.co/legal), available at <https://angel.co/legal>.

<sup>136</sup> 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.

<sup>137</sup> 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/>.

<sup>138</sup> 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>.

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

<sup>140</sup> *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.<sup>141</sup>

**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.<sup>142</sup>

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<sup>141</sup> More information about the Bar’s Lawyer Referral Service is available at [https://www.osbar.org/public/legalinfo/1171\\_LRS.htm](https://www.osbar.org/public/legalinfo/1171_LRS.htm).

<sup>142</sup> 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*.<sup>143</sup>

### 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.<sup>144</sup> 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

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<sup>143</sup> 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>.

<sup>144</sup> 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.<sup>145</sup> 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).<sup>146</sup> 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.<sup>147</sup> 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

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<sup>145</sup> 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.”

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

<sup>147</sup> 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:

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(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

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(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."<sup>148</sup>

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."<sup>149</sup>

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<sup>148</sup> 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](http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf).

<sup>149</sup> *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.<sup>150</sup>

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.’”<sup>151</sup>

#### **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;

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<sup>150</sup> *Id.*

<sup>151</sup> 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.<sup>152</sup> 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

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<sup>152</sup> 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.<sup>153</sup>

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.

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<sup>153</sup> 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.<sup>154</sup> 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 Committee<sup>155</sup> and ideas from the September 2016 Oregon Access to Justice Forum.<sup>156</sup> In some cases, the recommendations of other groups may be incorporated here, and efforts have been made to acknowledge these ongoing efforts.

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<sup>154</sup> 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.

<sup>155</sup> 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.

<sup>156</sup> 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,<sup>157</sup> the Oregon State Bar's public website,<sup>158</sup> and Oregon legal aid organizations' informational website, Oregon Law Help<sup>159</sup>.

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:

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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.<sup>160</sup> 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 feedback<sup>161</sup>; 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.”<sup>162</sup>

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.

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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.<sup>163</sup> 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.<sup>164</sup> 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.<sup>165</sup>

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

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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](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](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.<sup>166</sup>
- 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.<sup>167</sup>
- 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.<sup>168</sup>
- 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

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<sup>166</sup> 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.

<sup>167</sup> 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.

<sup>168</sup> 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.<sup>169</sup> 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.<sup>170</sup>

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.<sup>171</sup> 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.

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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](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.<sup>172</sup>

#### **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,<sup>173</sup> 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.<sup>174</sup> 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-

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<sup>172</sup> 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.

<sup>173</sup> 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>.

<sup>174</sup> 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.<sup>175</sup>
- 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.<sup>176</sup>
- Consider recommendations proposed by a panel at the September 2016 Oregon Access to Justice Forum that deal with small-claims and consumer cases.<sup>177</sup> 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

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

<sup>176</sup> 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.

<sup>177</sup> 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.<sup>178</sup>
- Seek feedback from self-navigators on whether online materials are helpful.<sup>179</sup>
- 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).

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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.<sup>180</sup>
- 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.<sup>181</sup>
- 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 8<sup>th</sup> grade reading level).

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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.

DRAFT

**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,<sup>1</sup> “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.”<sup>2</sup>

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

<sup>2</sup> <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,<sup>3</sup> and establishing what the business world refers to as SMART goals<sup>4</sup> 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,<sup>5</sup> 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.

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<sup>3</sup> Available at [https://www.osbar.org/\\_docs/resources/OSBMissionStatement.pdf](https://www.osbar.org/_docs/resources/OSBMissionStatement.pdf)

<sup>4</sup> 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.

<sup>5</sup> 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 review<sup>6</sup> 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.<sup>7</sup>

**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

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

<sup>7</sup> [https://www.osbar.org/\\_docs/leadership/committees/CommitteeAnnualReport.pdf](https://www.osbar.org/_docs/leadership/committees/CommitteeAnnualReport.pdf)

are available through the State of Oregon,<sup>8</sup> the City of Portland,<sup>9</sup> the U.S. Federal Government,<sup>10</sup> and civic organizations like the Civic Commons project<sup>11</sup> and the Sunlight Foundation.<sup>12</sup> 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 website<sup>13</sup> that performs well from a

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

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

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

<sup>11</sup> <http://wiki.civiccommons.org>

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

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

Search Engine Optimization (SEO) standpoint.<sup>14</sup> 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 increase<sup>15</sup> 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

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<sup>14</sup> 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.

<sup>15</sup> 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.<sup>16</sup>**

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.<sup>17</sup> 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

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

<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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.”

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<sup>18</sup> 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](http://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/aba_rural_book.pdf)

<sup>19</sup> *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.<sup>20</sup> 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.<sup>21</sup>

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).

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<sup>20</sup> 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](http://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf).

<sup>21</sup> 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/](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.

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## 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](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,<sup>1</sup> 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.”

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<sup>1</sup> 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](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.<sup>2</sup>

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

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<sup>2</sup> 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,<sup>3</sup> a consortium of people engaged in “civic hacking”<sup>4</sup> 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

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

<sup>4</sup> The term “hacking” in this context has the positive connotation of “clever improvements,” as shown on mainstream sites like [lifehacker.com](http://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,<sup>5</sup> 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,

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<sup>5</sup> 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/ls\\_del\\_comprehensive\\_survey\\_lawyer\\_incubators.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_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**

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

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**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 data<sup>1</sup>.

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 used<sup>2</sup> and a random

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<sup>1</sup> 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>

<sup>2</sup> 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+<sup>3</sup> 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.

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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.

<sup>3</sup> Based on the screening-only response rate of the recent Washington legal needs study.

# OREGON STATE BAR

## BOG Policy & Governance Committee

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**Meeting Date:** June 23, 2017  
**From:** Jonathan Puente, Director of Diversity and Inclusion  
**Re:** Revisions to the Advisory Committee on Diversity and Inclusion Charge

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### 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.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 23, 2017  
**From:** Vanessa Nordyke, Policy & Governance Committee Chair  
**Re:** Revisions to the Legal Heritage Interest Group Charge

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### 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.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 23, 2017  
**Memo Date:** June 23, 2017  
**From:** Per Ramfjord, Board Development Committee Chair  
**Re:** Appointments to various bar groups

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### Action Recommended

Approve the Board Development Committee's recommendations for new member appointments to the following bar committees and the House of Delegates.

### Background

#### Client Security Fund Committee

The Client Security Fund Committee investigate and recommends acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. A new secretary is needed to complete the remainder of the year. **Nancy Cooper** (952388) is recommended from the existing committee membership.

#### Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. One new member is needed and **Stephen Raher** (095625) is recommended based on his experience with the bankruptcy court. Mr. Raher's term would expire December 31, 2020.

#### House of Delegates

##### **Region 2:**

Erin Zempler, 044628

##### **Region 3:**

Steve Roe, public member

##### **Region 5:**

Robert Burt, 771300

Rena Jimenez-Blount, 114272

Anastasia Meisner, 981222

Waylon Pickett, 151365

Rebekka Pfanze, public member

##### **Region 6:**

Sarah Litowich, 140269

Jerome Rosa, public member

##### **Region 8:**

Marisha Childs, 125994



## FINANCIAL STATEMENTS

May 31, 2017

### Narrative Summary

The May statements look better than May a year ago, but it is too early to expect a year end Net Operating Revenue of \$966, 911 as 2016 ended for a number of reasons:

- 1) Even though Member Fee revenue is slightly over budget, it is \$24,100 less than a year ago as it was so last month. Active membership continues to remain less than a year ago. There are 48 fewer active members this May than last May.
- 2) Program Fee revenue is inflated this year due to a change in how CLE Seminars revenue is recorded (see next page).
- 3) Salaries & Benefits are below budget and last year for two reasons: current or past vacancies in at least eight positions, and the PERS rate will increase by 3.45% and 5.37% on July 1.
- 4) Virtually every major direct cost program is below budget and a year ago. These expenses will catch up in the second half of the year, but for now the bar is fortunate that revenue is coming in faster than costs are expended.

To summarize, although the bottom line looks very positive, by year end the Net Operating Revenue will grow closer to the budgeted \$391,911.

### Executive Summary

Revenue	Actual 5/31/2017	Quarter Budget 5/31/2017	Budget Variance	% of Budget	Actual 5/31/2016
Member Fees	\$ 3,340,146	\$3,320,833	\$19,313	0.6%	\$ 3,364,245
Program Fees	1,829,675	1,609,277	220,398	13.7%	1,811,891
Other Income	155,921	169,680	(13,759)	-8.1%	127,454
<b>Total Revenue</b>	<b>5,325,742</b>	<b>5,099,790</b>	<b>225,952</b>	<b>4.4%</b>	<b>5,303,590</b>
<b>Expenses</b>					
Salaries & Benefits	3,232,204	3,374,000	(141,796)	-4.2%	3,246,399
Direct Program, G & A	990,889	1,270,911	(280,022)	-22.0%	1,029,007
Contingency	-	10,417	(10,417)	-100.0%	10,600
<b>Total Expense</b>	<b>4,223,093</b>	<b>4,655,328</b>	<b>(432,235)</b>	<b>-9.3%</b>	<b>4,286,006</b>
<b>Net Operating Rev (Exp)</b>	<b>1,102,649</b>	<b>\$ 444,463</b>	<b>658,186</b>		<b>1,017,584</b>
Fanno Creek Place	(271,598)	(263,843)			(207,816)
<b>Net Rev Bef Mkt Adj</b>	<b>831,051</b>	<b>\$ 180,620</b>			<b>809,768</b>
Unrealized Investment Gains /(Losses)	137,270				143,688
Realized Investment Gains/(Losses)	101,865				49,243
Publ Inventory Increase/Decrease (COGS)	0				(22,236)
<b>Net Revenue</b>	<b>\$ 1,070,186</b>				<b>\$ 980,463</b>

Positive  
Budget  
Variance

**Notes on Selected Programs**

**Admissions**

The May statement is deceiving since most of revenue is collected and many expenses are still outstanding. Revenue is \$39,900 less than a year ago and will be lower when 2017 is complete.

The lower revenue is due to 58 fewer candidates at the February exam and the count at the July exam, even though will be higher than a year ago, will be below the 23-year average.

**CLE Seminars**

The statement shows that revenue is \$44,300 more than a year ago. But with the change in the InReach contract, the bar receives the gross revenue and pays a flat \$15,000 per month.

Removing the \$75,000 (5 months), this year's revenue is \$30,700 lower than last year, and costs are correspondingly higher than a year ago.

**LAWYER REFERRAL**

For the first time since the program began the total Percentage Fee revenue after five months is lower than the previous year. The monthly income reporting can be erratic, so that trend could easily change.

**FUND BALANCES**

Some healthy fund balances (all invested in Long-term portfolio):

Diversity & Inclusion . . .	\$ 907,322
Client Security Fund . . .	\$1,318,161
Sections . . . . .	\$ 942,512
Loan Repay Assist Prog .	\$ 296,357

**Investment Portfolio**

The long-term portfolio has increased every month during 2017 and at May 31 its value is \$5,826,089.

The increase from the end of 2016 is \$279,000, or 5%,

**INVESTMENT INCOME**

Some good news. The interest earned on the bar's daily cash management is \$35,900 after five months. For all of 2016, the interest income was \$42,500.

The big increase is due to more active cash management, but more so to increasing rates. The current rate paid by the LGIP is 1.3% (and will increase to 1.45% in late June). A year ago the rate was 0.78%.

**Oregon State Bar**  
**Special Open Session of the Board of Governors**  
**July 21, 2017**  
**Minutes**

President Michael Levelle called the meeting to order at 12:05 p.m. on July 21, 2017. The meeting adjourned at 2:15 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Guy Greco, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Kathleen Rastetter, Liani Reeves, Julia Rice, Kerry Sharp, and Elisabeth Zinser. Not present were Ray Heysell, Rob Gratchner, Per Ramfjord and Traci Rossi. Staff present were Helen Hirschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Kay Pulju, Susan Grabe, Dani Edwards, Kateri Walsh, and Camille Greene. Present from the Fee Mediation Task Force were Rich Spier and Sam Imperati.

**1. Call to Order**

Ms. Nordyke reminded the board that we will hold our 4th Annual Richard Spier Memorial Talent Show at the BOG retreat in November. Mr. Spier will MC the event. Ms. Nordyke encouraged every BOG member to participate.

**2. Fee Mediation Task Force Report**

Mr. Spier introduced Mr. Imperati, presented the Fee Mediation Task Force Report and asked the board to consider and adopt the recommendations therein. **[Exhibit A]**

Mr. Levelle thanked the task force for their work and the report.

**Motion:** Mr. Peachey moved, Mr. Chaney seconded, and the board voted unanimously in favor of accepting the task force report.

**Motion:** Mr. Peachey moved, Mr. Chaney seconded, and the board voted unanimously in favor of sending the proposed changes to the Rules of Professional Conduct to the Legal Ethics Committee and the remaining recommendations to the BOG Policy & Governance Committee.

**3. Ad Hoc Awards Committee**

Mr. Levelle presented the committee's recommended award recipients. **[Exhibit B]**

**Motion:** The board voted unanimously in favor of approving the award recommendations.

**4. Appointments to Council on Court Procedures**

In the absence of Mr. Ramfjord, Ms. Costantino presented the Board Development Committee recommendations for appointments to the Council on Court Procedures (COCP).

**Motion:** The board voted unanimously to accept the committee motion to reappoint Travis Eiva, Jennifer Gates, Shenoa Payne, and Deanna Wray who have expressed an interest in continuing on the COCP.

**Motion:** The board voted unanimously to accept the committee motion to appoint Kelly L. Andersen and Sharon Rudnick.

**Motion:** Mr. Bachofner moved, Ms. Costantino seconded, and the board voted unanimously to table any further committee motions.

## 5. Futures Task Force Report

Mr. Levelle deferred to Ms. Hirschbiel to lead the discussion on the task force's recommended actions for the board. Ms. Hirschbiel presented a proposed approach for considering the recommendations and suggested next steps. **[Exhibit C]**

Mr. Chaney suggested the board consider the budgetary impact of recommendations.

**Motion:** Ms. Rice moved, Mr. Mansfield seconded, and the board voted unanimously in favor to adopt Action Items I A., and B., and place proposed rules on the House of Delegates Agenda in November 2017.

**Motion:** Ms. Rice moved, Ms. Costantino seconded, and the board voted unanimously in favor to send Action Item I C. to the Legal Ethics Committee for further action.

**Motion:** Ms. Rice moved, Ms. Costantino seconded, and the board voted unanimously in favor to send Action Items III A. - E. to the OSB CEO/E.D. to further flesh them out.

**Motion:** Mr. Bachofner moved, Ms. Reeves seconded, and the board voted unanimously in favor to send Action Item IV E. to the PLF for further action.

**Motion:** Ms. Rice moved, Ms. Nordyke seconded, and the board voted unanimously in favor to send Action Items IV A. - D. to the OSB CEO/E.D. to further flesh them out.

**Motion:** Mr. Mansfield moved, Mr. Chaney seconded, and the board voted unanimously in favor to send Action Items V A. 1-3 to the BOG Policy & Governance Committee, and Action Item V A. 4 to the OSB CEO/E.D. to further flesh them out.

**Motion:** Mr. Chaney moved, Ms. Rice seconded, and the board voted unanimously in favor to table Action Items VI A. 1-2. Mr. Chaney suggested that before taking any action on Action Items VI A. 1-2, the Board should seek more information and coordinate with the Budget & Finance Committee for budgetary concerns.

**Motion:** Mr. Mansfield moved, Mr. Foster seconded, and the board voted unanimously in favor to send Action Items II B & C to the BOG Public Affairs Committee for further study and possible proposed legislation.

**Motion:** Mr. Mansfield moved, Mr. Chaney seconded, and the board voted unanimously in favor to request Mr. Levelle and Ms. Hirschbiel to identify the possible stakeholders for a committee, as outlined in Action Item IIA, and then send Action Item IIA to the BOG Policy & Governance Committee for further action.

#### **6. Document Access Fees for eCourt**

Ms. Rastetter presented the committee's recommended actions **[Exhibit D]** and asked the board for approval to have Mr. Levelle send a letter to the Supreme Court requesting additional time to review and comment on the proposed order.

**Motion:** The board voted unanimously to approve the committee motion to review proposed document access fee increases in CJO 17-037 and send a letter to the court requesting that the comment period be extended.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 21, 2017

**From:** Richard G. Spier, Chair, BOG Fee Mediation Task Force

**Re:** Report of the Fee Mediation Task Force

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### Action Recommended

Consider and adopt the recommendations of the Fee Mediation Task Force (Task Force) to the Board of Bar Governors (BOG) as follows:

1. RPC 8.3(c) should be amended to create an additional exception to RPC 8.3(a)'s reporting requirement for mediators in the OSB's fee dispute program (the program), when the knowledge or evidence of attorney misconduct comes from mediation communications as defined by ORS 36.110(7)<sup>1</sup> and made confidential by ORS 36.220.<sup>2</sup>

<sup>1</sup> "Mediation communications" means:

- (a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and
- (b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

*See also Alfieri v Solomon, 358 Or 383 (2015) (construing legislature's intended meaning of "mediation communications").*

<sup>2</sup> ORS 36.220 provides:

- (1) Except as provided in ORS 36.220 to 36.238:
  - (a) Mediation communications are confidential and may not be disclosed to any other person.
  - (b) The parties to a mediation may agree in writing that all or part of the mediation communications are not confidential.
- (2) Except as provided in ORS 36.220 to 36.238:
  - (a) The terms of any mediation agreement are not confidential.
  - (b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.
- (3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.
- (4) Any document that, before its use in a mediation, was a public record as defined in ORS 192.410 remains subject to disclosure to the extent provided by ORS 192.410 to 192.505.
- (5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of ORS 419B.010 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 419B.010. Any mediation communication relating to elder abuse that is



2. Once the changes outlined in recommendation 1 are adopted, any references to the reporting requirement in RPC 8.3 should be removed from Oregon Fee Dispute Resolution Rule (Rule) 10.4 and from all other program rules (*e.g.* Rule 7.5, 10.5, 10.6 and 10.8) and materials addressing program-conducted mediation (program mediation).
3. Any program mediation should center on the reasonableness of the fee and the return of client property. Evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief should be permitted in any program mediation.
4. Mediators participating in the program should complete at least a 32-hour integrated mediation course and complete three mediations before being enrolled in the program. Mediators should also agree to be bound by the ethical requirements in section 1.4 of the Chief Justice's order on qualification of mediators for court-connected mediation programs.<sup>3</sup>
5. The BOG should ask the Legal Ethics Committee to address appropriately, whether by an ethics opinion, rule amendment, or other vehicle, the inconsistency between the prohibition from disclosing confidential mediation communications under ORS 36.220 and a lawyer mediator's duty under RPC 3.4(c) and the duty under RPC 8.3 to report certain ethical misconduct when knowledge of the perceived misconduct is based solely on "confidential mediation communication."

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made to a person who is required to report elder abuse under the provisions of ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 124.050 to 124.095.

- (6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.
- (7) A party to a mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS 40.010 to 40.585 or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.
- (8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to ORS 36.224, 36.226 and 36.230.

<sup>3</sup> [https://www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/\\$File/05cER001sh.pdf](https://www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/$File/05cER001sh.pdf).

6. The BOG should further consider whether mediators in the OSB's program should be required to carry professional liability insurance for mediator malpractice through the PLF (part-time lawyer mediator) or other carrier (full-time lawyer mediator).

### Background Information

The OSB has run a mediation and arbitration fee dispute program for many years. The OSB's program provides a quick, inexpensive means for attorneys and clients to resolve fee disputes. It is voluntary, except that lawyers who receive the underlying referral from the OSB must participate. A petitioner who wishes to resolve a fee dispute submits an application, which is sent to the respondent. If the respondent agrees to arbitrate, or if they must participate, the petitioner pays the filing fee and an arbitrator or panel is assigned.

Although the arbitration program is popular and effective, it is as formal as any arbitration. Clients, in particular, have asked over the years for a simpler process that would let them "tell their story" more effectively than is possible in formal testimony. In response, the BOG implemented a pilot fee mediation part to the OSB's program. In 2016, the BOG adopted rules to make that change permanent.

Lawyer mediators<sup>4</sup> have expressed concern about material in the OSB's program documents indicating that a lawyer mediator involved in the OSB's program was still subject to RPC 8.3(a)<sup>5</sup> in circumstances where reporting attorney misconduct was required by that rule. As currently formulated, Rule 10.8 provides that "[m]ediators and parties who agree to participate in this program expressly waive the confidentiality provisions of ORS 36.222 to the extent necessary to allow disclosures pursuant to Rule 7.5, 10.4, 10.5 and 10.6."<sup>6</sup> Whether the parties actually understand and appreciate the

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<sup>4</sup> A mediator is "a third party who performs mediation." ORS 36.110(9). Mediation itself is "a process in which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy . . ." ORS 36.110(5).

<sup>5</sup> "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office." RPC 8.3(a).

<sup>6</sup> Rule 10.4 addresses the duty to report violations of RPC 8.3. The rule provides:

[L]awyer mediators and arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

This rule, on its face, does not mention mediation, though it refers to "mediators." To fully implement the

“waiver” language is of additional concern because mediation is based upon the principles of full disclosure, informed consent, and self-determination. These principles are undermined when parties must agree to the “waiver” or not have access to the OSB mediation program.

Where a lawyer mediator knows, based on confidential mediation communications, that another lawyer has committed a violation of the RPCs that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer, RPC 8.3’s duty to report is inconsistent with ORS 36.220(1)(a). The BOG created the Task Force to study that and related issues.<sup>7</sup>

## Discussion

### *Members of the Task Force*

Rich Spier, Chair  
Thom Brown  
Mark Comstock  
Bob Earnest, public member  
Dawn Evans  
Dorothy Fallon, public member  
Mark Friel  
Judy Henry  
Sam Imperati  
Chris Kent  
Bruce Schafer  
Jim Uerlings  
Pat Vallerand  
Cassandra Dyke, Program Administrator (staff)  
Mark Johnson Roberts, Deputy General Counsel (staff)

### *Meetings of the Task Force*

The Task Force met five times between November 2016 and April 2017. A subcommittee of the Task Force was created and met with OSB staff. The subcommittee then deliberated and adopted a final draft of this report that was then considered and

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Task Force’s recommendations, the BOG should delete the reference to “mediators” in the rule.

<sup>7</sup> “The Fee Mediation Task Force is charged to evaluate the current fee mediation rules and make proposals for changes to the Board of Governors where appropriate. The Fee Mediation Task Force shall also make recommendations to General Counsel regarding fee mediation training and fee mediation forms” (9 Sep 2016).

approved by the entire Task Force.

*Recommendations of the Task Force*

1. RPC 8.3(c) should be amended to create an additional exception to RPC 8.3(a)'s reporting requirement for lawyer mediators in the OSB's fee-dispute program, when the knowledge or evidence of attorney misconduct comes from mediation communications as defined by ORS 36.110(7) and made confidential by ORS 36.220.

The BOG created the Task Force because lawyer mediators questioned whether a lawyer serving as a mediator had an obligation to report an attorney in the circumstances covered under RPC 8.3(a) in light of ORS 36.220. Specifically, lawyer mediators observed that, to the extent the reporting obligation depended on information obtained through "mediation communications," RPC 8.3(a) was inconsistent with ORS 36.220(1)(a), which prohibits the disclosure of mediation communications by a lawyer mediator "to any other person" in the absence of an agreement by all mediation parties or a legislatively created exception. *See also* ORS 36.222(1) and (3) (to same effect). Moreover, lawyer mediators also observed that the program materials, and related form agreement to mediate, set forth the RPC 8.3 reporting obligation explicitly notwithstanding ORS 36.220.

To address the concerns raised by lawyer mediators, the Task Force recommends that the BOG ask the Supreme Court to amend RPC 8.3(c)<sup>8</sup> to add an exception for lawyer mediators participating in a program mediation. The recommended revised RPC 8.3(c) would read as follows:

This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:

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<sup>8</sup> In the course of the Task Force's work, OSB's General Counsel brought to the Task Force's attention an important issue. As a separate branch of government, the judicial branch possesses certain inherent powers necessary to ensure the courts' functioning. In Oregon, "[n]o 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." *Ramstead v. Morgan*, 219 Or 383, 399 (1959). Although the Oregon Supreme Court has acknowledged its inherent power to regulate the practice of law, it has also recognized that the legislature has the power to regulate "some matters which affect the judicial process." *Id.* The court held that "[t]he limits of legislative authority are reached, however, when legislative action unduly burdens or unduly interferes with the judicial department in the exercise of its judicial functions." *Id.* The Task Force takes no position on whether—or to what extent—the issue raised by OSB's General Counsel is implicated by the inconsistency between ORS 36.220 and RPC 8.3(a) addressed in this report.

(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

(2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund;  
~~or~~

(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program; *or*

(4) *acting as a mediator in the Fee Dispute Resolution Program, if the disclosure would be based on information protected by the confidential mediation communications provisions of ORS 36.220.*

(Italics reflect recommended change.)<sup>9</sup>

The Task Force's recommended change to RPC 8.3(c) implements its view that ensuring the legislature's protection of confidential mediation communication exists in any program mediation is critically important for the following reasons:

- The parties in the mediation have a well-established reasonable expectation of confidentiality in mediation.
- The statute-versus-rule conflict presents a potential hazard for all lawyer mediators, who could be vulnerable to accusation of violating the RPCs (e.g., RPC 3.4(c)) and Rule 10.4 while complying with the requirements of ORS 36.220.
- The success of mediation, in large part, depends on the parties' justified expectation of confidentiality, consistent with the policies set out in ORS

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<sup>9</sup> RPC 8.3(c) already contains exceptions for SLAC, the PLF, and the PLF loss prevention programs including OAAP. The Task Force believes that the need for confidentiality in any program mediation is similarly weighty in light of the importance confidentiality plays in mediation and in light of the legislative policy statement supporting mediation in other contexts. See ORS 36.100 ("[W]hen two or more persons cannot settle a dispute directly between themselves, it is preferable that the disputants be encouraged and assisted to resolve their dispute with the assistance of a trusted and competent third party mediator, whenever possible, rather than the dispute remaining unresolved or resulting in litigation.").

36.220.

- Volunteer mediators should not be compelled to testify and participate in hearings when all other mediators in the State of Oregon are not required to do so.
- Asking the volunteer mediators in the program to have to get involved after the mediation session is an unfair burden.

2. Once the changes outlined in recommendation 1 are adopted, any references to the reporting requirement in RPC 8.3 should be removed from Rule 10.4 and from all other program rules (e.g. Rule 7.5, 10.5, 10.6 and 10.8) and materials addressing program-conducted mediation (program mediation).

To fully implement the Task Force's first recommendation, the Task Force strongly feels that it is essential that the RPC 8.3 language be removed from all rules and materials covering in any way a program mediation.

3. Any program mediation should center on the reasonableness of the fee and the return of client property. Evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief should be permitted in any program mediation.<sup>10</sup>

The Task Force examined at some length the appropriate scope of mediation within the program. While the group recognized mediation's core principle of self-determination,<sup>11</sup> it also recognized that the central purpose of any program mediation is

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<sup>10</sup> Consistent with the full implementation of the this recommendation, the Task Force recommends that the program's rules, handbook, and documents should be amended to clearly advise the potential mediation participants, before selecting the OSB program, that evidence of alleged malpractice or unethical conduct may be considered during mediation in addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in any mediated resolution, but no other affirmative monetary relief should be permitted in any program mediation. The amendments should also specifically recommend the available alternatives for resolving malpractice claims (including mediation outside the program) and the appropriate ways to address ethics issues.

<sup>11</sup> See Oregon Judicial Dep't Court-Connected Mediator Qualifications Rules § 1.4 (ethical requirements), available at [www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/\\$File/05cER001sh.pdf](http://www.ojd.state.or.us/web/OJDPublications.nsf/Files/05cER001sh.pdf/$File/05cER001sh.pdf); Oregon Mediation Ass'n, *Core Standards of Mediation Practice 2* (rev April 23, 2005), available at [www.omediate.org/docs/2005CoreStandardsFinalP.pdf](http://www.omediate.org/docs/2005CoreStandardsFinalP.pdf).



to determine the appropriate fee, taking into consideration the quality of the services rendered, while avoiding any mediated resolution of malpractice or ethics issues that are too complex to address in this context.

The Task Force's consensus was that a program mediation should center only on the amount of the fee and the return of client property. However, evidence of alleged malpractice or unethical conduct may be discussed when addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly in mediation, but no other affirmative monetary relief should be permitted in any program mediation.<sup>12</sup>

The program rules, handbook, and documents should be amended where necessary to fully implement the Task Force's consensus including, but not limited to, the inclusion of a clear statement that no program mediation results in any release, waiver, estoppel, or preclusion for issues pertaining to professional liability or unethical conduct.<sup>13</sup>

4. Mediators participating in the program should complete at least a 32-hour integrated mediation course and complete three mediations before being enrolled in the program. Mediators should also agree to be bound by the ethical requirements in section 1.4 of the Chief Justice's order on qualification of mediators for public mediation programs.

The Task Force next considered the issue of participating mediators' qualifications. The OSB's program has no formal experience requirements at present, although staff looks in general for people who have either formal mediation training or substantial experience. The consensus of the Task Force was that mediators in this program should

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<sup>12</sup> The Task Force discussed, but is not addressing, the applicability of this language to arbitration because it concluded that issue went beyond the Task Force's charge. In the course of that discussion, the Task Force noted that Rule 5.2 states that "[t]he sole issue to be determined in all fee dispute proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5." RPC 1.5 does not explicitly state that malpractice or unethical conduct may be discussed when addressing whether the fee charged is reasonable, and the fee may be adjusted accordingly. However, both the program mediator and arbitrator handbooks state clearly that those issues can be discussed and the fee may be adjusted. To ensure full implementation of the Task Force's recommendations, the Task Force hopes that the BOG considers whether Rule 5.2, RPC 1.5, and all related program provisions should be changed to clearly reflect the current practice in all aspects of the program as outlined in the handbooks.

<sup>13</sup> The Task Force discussed, but is not addressing, the applicability of this language to arbitration because it concluded that the issue went beyond the Task Force's charge. To ensure full implementation of the Task Force's recommendations, the Task Force hopes that the BOG considers whether similar language (with the addition of "findings") should be contained in the fee-arbitration program.

be qualified like mediators in court-connected mediation programs. The Chief Justice has issued an order for this purpose.

The Task Force discussed deferring to the Chief Justice's order, but decided instead to recommend that mediators in the OSB's program complete at least a 32-hour integrated mediation course and have facilitated three mediations before being enrolled in the program. Mediators would also agree to be bound by the ethical requirements in section 1.4 of the Chief Justice's order. (A copy of the Chief Justice's order accompanies this memorandum.)

5. The BOG should ask the Legal Ethics Committee to address appropriately, whether by an ethics opinion, rule amendment, or other vehicle, the inconsistency between the prohibition from disclosing confidential mediation communications under ORS 36.220 and a lawyer mediator's duty under RPC 3.4(c) and the duty under RPC 8.3 to report certain ethical misconduct when knowledge of the perceived misconduct is based solely on "confidential mediation communication.,

During the Task Force's work, OSB's General Counsel raised the issue that lawyers have a duty under RPC 3.4(c) not to "knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists." While that conflict would be eliminated through the Supreme Court's implementation of the Task Force's recommend change to RPC 8.3 for any program mediation, the conflict would remain in all other mediations involving a lawyer mediator.

The Task Force was not asked to resolve this broader conflict between ORS 36.220 and RPC 3.4(c) and RPC 8.3(a). Nevertheless, the Task Force concluded that the presence of that broader conflict is a significant concern that should be addressed by the BOG. Accordingly, the Task Force recommends that, as soon as feasible,<sup>14</sup> the BOG ask the Supreme Court to resolve the conflict between ORS 36.220 and all implicated RPCs including, but not limited to, RPC 3.4 and RPC 8.3, by acknowledging that ORS 36.220 protects "confidential mediation communications" in all mediations involving a lawyer mediator just as it would in a program mediation upon implementation of the Task Force's recommend change to RPC 8.3 in that specific context.

6. The BOG should further study whether mediators in the program should be required to carry professional liability insurance for mediator malpractice

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<sup>14</sup> The Task Force believes the BOG's consideration of this broader issue should follow only after input is obtained from all appropriate stakeholders including, but not limited to, the OSB ADR Section Executive Committee or its designee(s).



through the PLF (part-time lawyer mediator) or other carrier (full-time lawyer mediator).

A question arose about insurance coverage for mediators participating in the program. The OSB does not require that its participating mediators hold professional liability insurance but, as a practical matter, most of them are attorneys and most have liability insurance coverage.

The Oregon State Bar Professional Liability Fund provides coverage through its approved coverage plan for those attorneys who conduct mediations as an adjunct to the private practice of law, but it does not cover full-time lawyer mediators. The Task Force discussed that mediators in the OSB's program might want liability insurance coverage, notwithstanding their limited liability under ORS 36.210. This issue is again beyond the scope of the Task Force's charge, but the Task Force suggests that the BOG may wish to consider giving it further study.

DRAFT

# Oregon Judicial Department Court-Connected Mediator Qualifications Rules

Effective  
August 1, 2005



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# OREGON JUDICIAL DEPARTMENT COURT-CONNECTED MEDIATOR QUALIFICATIONS RULES

## PREFACE

### **Historical Background:**

Court-Connected Mediator Qualifications were first adopted by the Oregon Dispute Resolution Commission (ODRC) between 1992 and 1998. In October 2003, the legislature abolished the ODRC and transferred responsibility for establishing such rules on qualifications to the Oregon Judicial Department (OJD). At that time, Chief Justice Wallace P. Carson, Jr., adopted a version of these rules as Uniform Trial Court Rules Chapter 12.

Prior to its abolition, the ODRC had begun a process of reviewing and revising the substance of these qualifications. Upon receiving the responsibility for these rules, the OJD convened the Court-Connected Mediator Qualifications Advisory Committee to continue the work begun by the ODRC. The committee included representatives from each of the kinds of court-connected mediation, as well as advocates for users of mediation.

The committee included mediation coordinators from urban and rural trial courts; domestic relations mediators from county-based agencies and independent contractor panels; private mediators; mediation trainers; and representatives of the Oregon Association of Community Dispute Resolution Centers, Oregon Association of Family Court Services, Oregon Department of Justice, Oregon Mediation Association, Oregon State Bar Alternative Dispute Resolution Section Executive Committee, Oregon State Bar Family Law Section Executive Committee, State Family Law Advisory Committee, and University of Oregon Law School Office for Dispute Resolution.

During the development of this proposal, public comment was solicited through a variety of channels, including all of the groups represented above plus trial court administrators, Oregon State Bar Litigation Section Executive Committee, Oregon Trial Lawyers Association, and Oregon Association of Defense Counsel.

After consideration of comments received, the Chief Justice decided to remove these rules from under the structure of the Uniform Trial Court Rules (UTCRC) and issue them as a separate policy. Final rules were adopted by Chief Justice Order effective on August 1, 2005. These rules are not part of the UTCRC and are not subject to the UTCRC process.

### **Process for Revision:**

The rules will be updated as necessary. Questions or comments can be submitted at any time to:

Statewide Appropriate Dispute Resolution Analyst  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563  
503.986.4539  
[ojd.adr@ojd.state.or.us](mailto:ojd.adr@ojd.state.or.us)

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**OREGON JUDICIAL DEPARTMENT  
COURT-CONNECTED MEDIATOR QUALIFICATIONS RULES**

**1: GENERAL REQUIREMENTS FOR ALL COURT-CONNECTED MEDIATORS**

**SECTION 1.1 APPLICABILITY**

Sections 1.1 to 3.6 of these rules:

- (1) Establish minimum qualifications, obligations, and mediator disclosures, including education, training, experience, and conduct requirements, applicable to:
  - (a) General civil mediators as provided by ORS 36.200(1).
  - (b) Domestic relations custody and parenting mediators as provided by ORS 107.775(2).
  - (c) Domestic relations financial mediators as provided by ORS 107.755(4).
- (2) Provide that a mediator approved to provide one type of mediation may not mediate another type of case unless the mediator is also approved for the other type of mediation.
- (3) Do not:
  - (a) In any way alter the requirements pertaining to personnel who perform conciliation services under ORS 107.510 to 107.610.
  - (b) Allow mediation of proceedings under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040, or 163.738, as provided in ORS 107.755(2).
  - (c) In any way establish any requirements for compensation of mediators.
  - (d) Limit in any way the ability of mediators or qualified supervisors to be compensated for their services.

**SECTION 1.2 DEFINITIONS**

As used in these rules:

- (1) "Approved mediator" means a mediator who a circuit court or judicial district of this state officially recognizes and shows by appropriate official documentation as being approved within that court or judicial district as a general civil mediator, domestic relations custody and parenting mediator, or domestic relations financial mediator for purposes of the one or more mediation programs operated under the auspices of that court or judicial district that is subject to Section 1.1.
- (2) "Basic mediation curriculum" means the curriculum set out in Section 3.2.
- (3) "Continuing education requirements" means the requirements set out in Section 3.6.

- (4) "Court-system training" means a curriculum or combination of courses set out in Section 3.5.
- (5) "Determining authority" means an entity that acts under Section 1.3 concerning qualification to be an approved mediator.
- (6) "Domestic relations custody and parenting mediation curriculum" means the curriculum set out in Section 3.3.
- (7) "Domestic relations custody and parenting mediation supervisor" means a person who is qualified at the level described in Section 2.2.
- (8) "Domestic relations custody and parenting mediator" means a mediator for domestic relations, custody, parenting time, or parenting plan matters in circuit court under ORS 107.755 who meets qualifications under Section 2.2 as required by ORS 107.775(2).
- (9) "Domestic relations financial mediation supervisor" means a person who is qualified at the level described in Section 2.3.
- (10) "Domestic relations financial mediation training" means a curriculum or combination of courses set out in Section 3.4.
- (11) "Domestic relations financial mediator" means a mediator for domestic relations financial matters in circuit court under ORS 107.755 who meets qualifications under Section 2.3 as required by ORS 107.755(4).
- (12) "General civil mediator" means a mediator for civil matters in circuit court under ORS 36.185 to 36.210, including small claims and forcible entry and detainer cases, who meets qualifications under Section 2.1 as required by ORS 36.200(1).
- (13) "General civil mediation supervisor" means a person who is qualified at the level described in Section 2.1.
- (14) "Independent qualification review" means the process described in Section 3.1.
- (15) "Mediation" is defined at ORS 36.110.

**SECTION 1.3 DETERMINING AUTHORITY, DETERMINING MEDIATOR QUALIFICATIONS, OTHER RESPONSIBILITIES AND AUTHORITY**

- (1) The determining authority:
  - (a) Is the entity within a judicial district with authority to determine whether applicants to become an approved mediator for courts within the judicial district meet the qualifications as described in these rules and whether approved mediators meet any continuing qualifications or obligations required by these rules.
  - (b) Is the presiding judge of the judicial district unless the presiding judge has delegated the authority to be the determining authority as provided or allowed by statute. Delegation under this paragraph may be made to an entity chosen by the presiding

judge to establish a mediation program as allowed by law or statute. A delegation must be in writing and, if it places any limitations on the presiding judge's ultimate authority to review and change decisions made by the delegatee, must be approved by the State Court Administrator before the delegation can be made.

- (2) Authority over qualifications. Subject to the following, a determining authority, for good cause, may allow appropriate substitutions, or obtain waiver, for any of the minimum qualifications for an approved mediator.
  - (a) Except as provided in paragraph (b) of this subsection, a determining authority that allows a substitution must, as a condition of approval, require the applicant to commit to a written plan to meet the minimum qualifications within a specified reasonable period of time. A determining authority that is not a presiding judge must notify the presiding judge of substitutions allowed under this subsection.
  - (b) For good cause, a determining authority, other than the presiding judge for the judicial district, may petition the presiding judge for a waiver of specific minimum qualification requirements for a specific person to be an approved mediator. A presiding judge may waive any of the qualifications to be an approved mediator in an individual case with the approval of the State Court Administrator.
- (3) The determining authority may revoke a mediator's approved status at his or her discretion, including in the event that the mediator no longer meets the requirements set forth in these rules.
- (4) The determining authority may authorize the use of an evaluation to be completed by the parties, for the purpose of monitoring program and mediator performance.
- (5) In those judicial districts where a mediator is assigned to a case by the court, or where mediators are assigned to a case by a program sponsored or authorized by the court, the determining authority shall assure that parties to a mediation have access to information on:
  - (a) How mediators are assigned to cases.
  - (b) The nature of the mediator's affiliation with the court.
  - (c) The process, if any, that a party can use to comment on, or object to the assignment or performance of a mediator.
- (6) The minimum qualifications of these rules have been met by an individual who is an approved mediator at the time these rules become effective if the individual has met the minimum requirements of the Uniform Trial Court Rules in effect prior to August 1, 2005.
- (7) The State Court Administrator may approve the successful completion of a standardized performance-based evaluation to substitute for formal degree requirements under Sections 2.2 or 2.3 upon determining an appropriate evaluation process has been developed and can be used at reasonable costs and with reasonable efficiency.

## **SECTION 1.4 MEDIATOR ETHICS**

An approved mediator, when mediating under ORS 36.185 to 36.210 or 107.755 to 107.795, is required to:

- (1) Disclose to the determining authority and the participants at least one of the relevant codes of mediator ethics, standards, principles, and disciplinary rules of the mediator's relevant memberships, licenses, or certifications. It is not the court's responsibility to enforce any relevant codes of mediator ethics, standards, principles, and/or rules;
- (2) Comply with relevant laws relating to confidentiality, inadmissibility, and nondiscoverability of mediation communications including, but not limited to, ORS 36.220, 36.222, and 107.785; and
- (3) Inform the participants prior to or at the commencement of the mediation of each of the following:
  - (a) The nature of mediation, the role and style of the mediator, and the process that will be used;
  - (b) The extent to which participation in mediation is voluntary and the ability of the participants and the mediator to suspend or terminate the mediation;
  - (c) The commitment of the participants to participate fully and to negotiate in good faith;
  - (d) The extent to which disclosures in mediation are confidential, including during private caucuses;
  - (e) Any potential conflicts of interest that the mediator may have, i.e., any circumstances or relationships that may raise a question as to the mediator's impartiality and fairness;
  - (f) The need for the informed consent of the participants to any decisions;
  - (g) The right of the parties to seek independent legal counsel, including review of the proposed mediation agreement before execution;
  - (h) In appropriate cases, the advisability of proceeding with mediation under the circumstances of the particular dispute;
  - (i) The availability of public information about the mediator pursuant to Section 1.5; and
  - (j) If applicable, the nature and extent to which the mediator is being supervised.

## **SECTION 1.5 PROVIDING AND MAINTAINING PUBLICLY AVAILABLE INFORMATION**

- (1) Information for court use and public dissemination: All approved mediators must provide the information required to the determining authority of each court at which the mediator is an approved mediator. Reports must be made using the form located in Appendix A of these rules, or any substantially similar form authorized by the determining authority.



- (2) All approved mediators must update the information provided in Section 1.5 at least once every two calendar years.
- (3) The information provided in Section 1.5 must be made available to all mediation parties and participants upon request.

## **2: QUALIFICATIONS FOR COURT-CONNECTED MEDIATORS BY CASE TYPE**

### **SECTION 2.1 QUALIFICATION AS AN APPROVED GENERAL CIVIL MEDIATOR, ONGOING OBLIGATIONS**

To become an approved general civil mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet ongoing requirements as described:

- (1) Training. An applicant must have completed training, including all the following:
  - (a) The basic mediation curriculum described in Section 3.2, or substantially similar training; and
  - (b) Court-system training in Section 3.5, or substantially similar training or education.
- (2) Experience. An applicant must have:
  - (a) Observed three actual mediations; and
  - (b) Participated as a mediator or co-mediator in at least three cases that have been or will be filed in court, observed by a person qualified as a general civil mediation supervisor under this section and performing to the supervisor's satisfaction.
- (3) Continuing Education.
  - (a) During the first two calendar years beginning January 1 of the year after the mediator's approval by the determining authority, general civil mediators must complete at least 12 hours of continuing education as follows:
    - (i) If the approved mediator's basic mediation training was 36 hours or more, 12 hours of continuing education as described in Section 3.6.
    - (ii) If the approved mediator's basic mediation training was between 30 and 36 hours, then one additional hour of continuing education for every hour of training fewer than 36 (i.e., if basic mediation training was 30 hours, then 18 hours of continuing education; if the basic mediation training was 32 hours, then 16 hours of continuing education).
  - (b) Thereafter, as an ongoing obligation, an approved general civil mediator must complete 12 hours of continuing education requirements every two calendar years as described in Section 3.6.

- (4) **Conduct.** An applicant and, as an ongoing obligation, an approved general civil mediator must subscribe to the mediator ethics in Section 1.4.
- (5) **Public information.** An applicant and, as an ongoing obligation, an approved general civil mediator must comply with requirements to provide and maintain information as provided in Section 1.5.
- (6) **Supervision.** A qualified general civil mediation supervisor is an individual who has:
  - (a) Met the qualifications of a general civil mediator as defined in this section, and
  - (b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of an approved general civil mediator in this section.

## **SECTION 2.2 QUALIFICATION AS AN APPROVED DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATOR, ONGOING OBLIGATIONS**

To become an approved domestic relations custody and parenting mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet ongoing requirements as described.

- (1) **Education.** An applicant must possess at least one of the following:
  - (a) A master's or doctoral degree in counseling, psychiatry, psychology, social work, marriage and family therapy, or mental health from an accredited college or university.
  - (b) A law degree from an accredited law school with course work and/or Continuing Legal Education credits in family law.
  - (c) A master's or doctoral degree in a subject relating to children and family dynamics, education, communication, or conflict resolution from an accredited college or university, with coursework in human behavior, plus at least one year full-time equivalent post-degree experience in providing social work, mental health, or conflict resolution services to families.
  - (d) A bachelor's degree in a behavioral science related to family relationships, child development, or conflict resolution, with coursework in a behavioral science, and at least seven years full-time equivalent post-bachelor's experience in providing social work, mental health, or conflict resolution services to families.
- (2) **Training.** An applicant must have completed training in each of the following areas:
  - (a) The basic mediation curriculum in Section 3.2;
  - (b) The domestic relations custody and parenting mediation curriculum in Section 3.3; and
  - (c) Court-system training in Section 3.5, or substantially similar training.

- (3) Experience. An applicant must have completed one of the following types of experience:
- (a) Participation in at least 20 cases including a total of at least 100 hours of domestic relations mediation supervised by or mediated with a person qualified as a domestic relations custody and parenting mediation supervisor under this section. At least ten cases and 50 hours of the supervised cases in this paragraph must be in domestic relations custody and parenting mediation. At least three of the domestic relations custody and parenting mediation cases must have direct observation by the qualified supervisor; or
  - (b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short-term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:
    - (i) Participated as a mediator or mediator in a total of at least ten cases including a total of at least 50 hours of domestic relations custody and parenting mediation, and
    - (ii) An understanding of court-connected domestic relations programs.
- (4) Continuing education. As an ongoing obligation, an approved domestic relations custody and parenting mediator must complete 24 hours of continuing education every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority, as described in Section 3.6.
- (5) Conduct. An applicant and, as an ongoing obligation, an approved domestic relations custody and parenting mediator must subscribe to the mediator ethics in Section 1.4.
- (6) Public information. An applicant and, as an ongoing obligation, an approved domestic relations custody and parenting mediator must comply with requirements to provide and maintain information in Section 1.5.
- (7) Supervision. A qualified domestic relations custody and parenting mediation supervisor is an individual who has:
- (a) Met the qualifications of a domestic relations custody and parenting mediator as defined in Section 2.2,
  - (b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in this section, and
  - (c) An understanding of court-connected domestic relations programs.

## **SECTION 2.3 QUALIFICATION AS AN APPROVED DOMESTIC RELATIONS FINANCIAL MEDIATOR, ONGOING OBLIGATIONS**

To become an approved domestic relations financial mediator, an individual must establish, to the satisfaction of the determining authority, that the individual meets or exceeds all the following qualifications and will continue to meet all ongoing requirements as described.

- (1) **Education.** An applicant must meet the education requirements under Section 2.2 applicable to an applicant to be approved as a domestic relations custody and parenting mediator.
- (2) **Training.** An applicant must have completed training in each of the following areas:
  - (a) The basic mediation curriculum in Section 3.2;
  - (b) The domestic relations custody and parenting mediation curriculum in Section 3.3;
  - (c) Domestic relations financial mediation training in Section 3.4; and
  - (d) Court-system training in Section 3.5, or substantially similar training.
- (3) **Experience.** An applicant must have completed one of the following types of experience:
  - (a) Participation in at least 20 cases including a total of at least 100 hours of domestic relations mediation supervised by or comediated with a person qualified as a domestic relations financial mediation supervisor under this section. At least ten cases and 50 hours of the supervised cases in this paragraph must be in domestic relations financial mediation. At least three of the domestic relations financial mediation cases must have direct observation by the qualified supervisor; or
  - (b) At least two years full-time equivalent experience in any of the following: mediation, direct therapy or counseling experience with an emphasis on short-term problem solving, or as a practicing attorney handling a domestic relations or juvenile caseload. Applicants must have:
    - (i) Participated as a mediator or comediator in a total of at least ten cases including a total of at least 50 hours of domestic relations financial mediation, and
    - (ii) An understanding of court-connected domestic relations programs.
- (4) **Continuing education.** As an ongoing obligation, an approved domestic relations financial mediator must complete 24 hours of continuing education every two calendar years, beginning January 1 of the year after the mediator's approval by the determining authority, as described in Section 3.6.
- (5) **Conduct.** An applicant and, as an ongoing obligation, an approved domestic relations financial mediator must subscribe to the mediator ethics in Section 1.4.

- (6) Public information. An applicant and, as an ongoing obligation, an approved domestic relations financial mediator must comply with requirements to provide and maintain current information in Section 1.5.
- (7) Insurance. As an ongoing obligation, an approved domestic relations financial mediator shall have in effect at all times the greater of:
  - (a) \$100,000 in malpractice insurance or self-insurance with comparable coverage; or
  - (b) Such greater amount of coverage as the determining authority requires.
- (8) Supervision. A qualified domestic relations financial mediation supervisor is an individual who has:
  - (a) Met the qualifications of a domestic relations financial mediator as defined in this section,
  - (b) Completed at least 35 domestic relations cases including a total of at least 350 hours of domestic relations financial mediation beyond the experience required in this section, and
  - (c) Malpractice insurance coverage for the supervisory role in force.

### **3: COMPONENTS OF QUALIFICATIONS FOR COURT-CONNECTED MEDIATORS**

#### **SECTION 3.1 INDEPENDENT QUALIFICATION REVIEW**

- (1) In programs where domestic relations financial mediators are independent contractors, the determining authority must appoint a panel consisting of at least:
  - (a) A representative of the determining authority;
  - (b) A domestic relations financial mediator; and
  - (c) An attorney who practices domestic relations law locally.
- (2) The panel shall interview each applicant to be an approved domestic relations financial mediator solely to determine whether the applicant meets the requirements for being approved or whether it is appropriate to substitute or waive some minimum qualifications. The review panel shall report its recommendation to the determining authority in writing.
- (3) Nothing in this section affects the authority under Section 1.3 to make sole and final determinations about whether an applicant has fulfilled the requirements to be approved or whether an application for substitution should be granted.

### SECTION 3.2 BASIC MEDIATION CURRICULUM

The basic mediation curriculum is a single curriculum that is designed to integrate the elements in this section consistent with any guidelines promulgated by the State Court Administrator. The basic mediation curriculum shall:

- (1) Be at least 30 hours, or substantially similar training or education.
- (2) Include training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees, including, but not be limited to, at least six hours participation by each trainee in role plays with trainer feedback to the trainee and trainee self-assessment.
- (3) Include instruction to help the trainee:
  - (a) Gain an understanding of conflict resolution and mediation theory,
  - (b) Effectively prepare for mediation,
  - (c) Create a safe and comfortable environment for the mediation,
  - (d) Facilitate effective communication between the parties and between the mediator and the parties,
  - (e) Use techniques that help the parties solve problems and seek agreement,
  - (f) Conduct the mediation in a fair and impartial manner,
  - (g) Understand mediator confidentiality and ethical standards for mediator conduct adopted by Oregon and national organizations, and
  - (h) Conclude a mediation and memorialize understandings and agreements.
- (4) Be conducted by a lead trainer who has:
  - (a) The qualifications of a general civil mediator as defined in Section 2.1, except the requirement in Section 2.1(1)(a) to have completed the basic mediation curriculum;
  - (b) Mediated at least 35 cases to conclusion or completed at least 350 hours of mediation experience beyond the experience required of a general civil mediator in Section 2.1; and either
  - (c) Served as a trainer or an assistant trainer for the basic mediation curriculum outlined in this section at least three times; or

- (d) Have experience in adult education and mediation as follows:
  - (i) Served as a teacher for at least 1000 hours of accredited education or training for adults, and
  - (ii) Completed the basic mediation curriculum outlined under this section.

### **SECTION 3.3 DOMESTIC RELATIONS CUSTODY AND PARENTING MEDIATION CURRICULUM**

The domestic relations custody and parenting mediation curriculum shall:

- (1) Include at least 40 hours in a domestic relations custody and parenting mediation curriculum consistent with any guidelines promulgated by the State Court Administrator.
- (2) Include multiple learning methods and training techniques that closely simulate the interactions that occur in a mediation and that provide effective feedback to trainees.
- (3) Provide instruction with the goal of creating competency sufficient for initial practice as a family mediator and must include the following topics:
  - (a) General Family Mediation Knowledge and Skills;
  - (b) Knowledge and Skill with Families and Children;
  - (c) Adaptations and Modifications for Special Case Concerns; and
  - (d) Specific Family, Divorce, and Parenting Information.
- (4) Be conducted by a lead trainer who has all of the following:
  - (a) The qualifications of a domestic relations custody and parenting mediator as defined in Section 2.2,
  - (b) Completed at least 35 cases including a total of at least 350 hours of domestic relations custody and parenting mediation beyond the experience required of a domestic relations custody and parenting mediator in Section 2.2,
  - (c) Served as a mediation trainer or an assistant mediation trainer for the domestic relations custody and parenting mediation curriculum outlined in this section at least three times, and
  - (d) An understanding of court-connected domestic relations programs.



### **SECTION 3.4 DOMESTIC RELATIONS FINANCIAL MEDIATION TRAINING**

- (1) Domestic relations financial mediation training shall include at least 40 hours of training or education that covers the topics relevant to the financial issues the mediator will be mediating, including:
  - (a) Legal and financial issues in separation, divorce, and family reorganization in Oregon, including property division, asset valuation, public benefits law, domestic relations income tax law, child and spousal support, and joint and several liability for family debt;
  - (b) Basics of corporate and partnership law, retirement interests, personal bankruptcy, ethics (including unauthorized practice of law), drafting, and legal process (including disclosure problems); and
  - (c) The needs of self-represented parties, the desirability of review by independent counsel, recognizing the finality of a judgment, and methods to carry out the parties' agreement.
- (2) Of the training required in subsection (1) of this section:
  - (a) Twenty-four of the hours must be in an integrated training (a training designed as a single cohesive curriculum that may be delivered over time).
  - (b) Six hours must be in three role plays in financial mediation with trainer feedback to the trainee.
  - (c) Fifteen hours must be in training accredited by the Oregon State Bar.

### **SECTION 3.5 COURT-SYSTEM TRAINING**

When court-system training under this section is required, the training shall include, but not be limited to:

- (1) At least six hours including, but not limited to, the following subject areas:
  - (a) Instruction on the court system including, but not limited to:
    - (i) Basic legal vocabulary;
    - (ii) How to read a court file;
    - (iii) Confidentiality and disclosure;
    - (iv) Availability of jury trials;
    - (v) Burdens of proof;
    - (vii) Basic trial procedure;



- (viii) The effect of a mediated agreement on the case including, but not limited to, finality, appeal rights, remedies, and enforceability;
  - (ix) Agreement writing;
  - (x) Working with interpreters; and
  - (xi) Obligations under the Americans with Disabilities Act.
- (b) Information on the range of available administrative and other dispute resolution processes.
  - (c) Information on the process that will be used to resolve the dispute if no agreement is reached, such as judicial or administrative adjudication or arbitration, including entitlement to jury trial and appeal, where applicable.
  - (d) How the legal information described in this subsection is appropriately used by a mediator in mediation, including avoidance of the unauthorized practice of law.
- (2) For mediators working in contexts other than small claims court, at least two additional hours including, but not limited to, all of the following:
- (a) Working with represented and unrepresented parties, including:
    - (i) The role of litigants' lawyers in the mediation process;
    - (ii) Attorney-client relationships, including privileges;
    - (iii) Working with lawyers, including understanding of Oregon State Bar disciplinary rules; and
    - (iii) Attorney fee issues.
  - (b) Understanding motions, discovery, and other court rules and procedures;
  - (c) Basic rules of evidence; and
  - (d) Basic rules of contract and tort law.

### **SECTION 3.6 CONTINUING EDUCATION REQUIREMENTS**

- (1) Of the continuing education hours required of approved mediators every two calendar years:
  - (a) If the mediator is an approved general civil mediator:
    - (i) One hour must relate to confidentiality,
    - (ii) One hour must relate to mediator ethics, and

- (iii) Six hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation.
- (b) If the mediator is an approved domestic relations custody and parenting or domestic relations financial mediator:
  - (i) Two hours must relate to confidentiality;
  - (ii) Two hours must relate to mediator ethics;
  - (iii) Twelve hours must be on the subject of either custody and parenting issues or financial issues, respectively;
  - (iv) Twelve hours can be satisfied by the mediator taking the continuing education classes required by his or her licensure unless such licensure is not reasonably related to the practice of mediation; and
  - (v) The hours required in subparagraphs (i) and (ii) can be met in the hours required in subparagraph (iii) if confidentiality or mediator ethics is covered in the context of domestic relations.
- (2) Continuing education topics may include, but are not limited to, the following examples:
  - (a) Those topics outlined in Sections 3.2, 3.3, and 3.4;
  - (b) Practical skills-based training in mediation or facilitation;
  - (c) Court processes;
  - (d) Confidentiality laws and rules;
  - (e) Changes in the subject matter areas of law in which the mediator practices;
  - (f) Mediation ethics;
  - (g) Domestic violence;
  - (h) Sexual assault;
  - (i) Child abuse and elder abuse;
  - (j) Gender, ethnic, and cultural diversity;
  - (k) Psychology and psychopathology;
  - (l) Organizational development;
  - (m) Communication;
  - (n) Crisis intervention;

- (o) Program administration and service delivery;
  - (p) Practices and procedures of state and local social service agencies; and
  - (q) Safety issues for mediators.
- (3) Continuing education shall be conducted by an individual or group qualified by practical or academic experience. For purposes of this section, an hour is defined as 60 minutes of instructional time or activity and may be completed in a variety of formats, including but not limited to:
- (a) Attendance at a live lecture or seminar;
  - (b) Attendance at an audio or video playback of a lecture or seminar with a group where the group discusses the materials presented;
  - (c) Listening or viewing audio, video, or internet presentations;
  - (d) Receiving supervision as part of a training mentorship;
  - (e) Formally debriefing mediation cases with mediator supervisors and colleagues following the mediation;
  - (f) Lecturing or teaching in qualified continuing education courses; and
  - (g) Reading, authoring, or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation.
- (4) Continuing education classes should enhance the participant's competence as a mediator and provide opportunities for mediators to expand upon existing skills and explore new areas of practice or interest. To the extent that the mediator's prior training and experience do not include the topics listed above, the mediator should emphasize those listed areas relevant to the mediator's practice.
- (5) Where applicable, continuing education topics should be coordinated with, reported to, and approved by the determining authority of each court at which the mediator is an approved mediator and reported at least every two calendar years via the electronic Court-Connected Mediator Continuing Education Credit Form available on the Oregon Judicial Department's web page or other reporting form authorized by the appropriate determining authority.

Appendix A  
**Court-Connected Mediator Information for Public Dissemination**

Name of Mediator:	
Business or Program Name (if applicable):	
<b>Business or Program Contact Information below (as applicable)</b>	
Mailing Address:	
Telephone Number:	Fax Number:
E-Mail Address:	

Description of mediation training: \_\_\_\_\_

\_\_\_\_\_

Description of other relevant education: \_\_\_\_\_

\_\_\_\_\_

If you are a domestic relations mediator, description of formal education: \_\_\_\_\_

\_\_\_\_\_

Description of mediation experience, including type and approximate number of cases mediated: \_\_\_\_\_

\_\_\_\_\_

Relevant organizations with which the mediator is affiliated: \_\_\_\_\_

\_\_\_\_\_

Description of other relevant experience: \_\_\_\_\_

\_\_\_\_\_

Description of fees (if applicable): \_\_\_\_\_

\_\_\_\_\_

Description of relevant codes of ethics to which the mediator subscribes: \_\_\_\_\_

\_\_\_\_\_

**I hereby certify that the above is true and accurate.**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** July 21, 2017  
**Memo Date:** July 21, 2017  
**From:** BOG Awards Committee  
**Re:** Award recommendations for 2017

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### Action Recommended

Approve the following slate of nominees:

President's Membership Service Award

Erin N. Dawson  
M. Christopher Hall  
Bruce L. Schafer

President's Public Service Award

Sheryl Balthrop  
David C. Glenn  
Theresa Hollis

President's Diversity & Inclusion Award

Rima I. Ghandour  
Ivan R. Gutierrez  
Diane S. Sykes

President's Public Leadership Award

Steven Bjerke

President's Sustainability Award

William Sherlock & Christopher G. Winter

Wallace P. Carson, Jr., Award for Judicial Excellence

Hon. Sid Brockley  
Hon. Diarmuid F. O'Scannlain

OSB Award of Merit

Donald B. Bowerman

President's Special Award of Appreciation

Hon. Christopher L. Garrett  
John E. Grant

## Background

The ad hoc Awards Committee met by conference call on July 12 and in person on August 21 to review nomination materials and develop the recommendations detailed above. Members of the committee are: Michael Levelle (Chair), Vanessa Nordyke, John Bachofner, Tom Peachey and Chris Costantino. Note that nominees for the President's Special Award of Appreciation are selected by the OSB President rather than the awards committee, and ratified by the full board.

The annual Awards Luncheon will take place on Wednesday, November 8, at the Sentinel Hotel in Portland.

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## OSB Futures Task Force Recommendations and Possible Next Steps

<b>I. Changes to Rules of Professional Conduct</b>					
<b>Task Force Recommendation</b>	<b>Rec. No.</b>	<b>Full Report Reference</b>	<b>Possible Next Step</b>	<b>Timeline</b>	<b>Board Decision</b>
<b>A.</b> Adopt Recommendation to Amend Oregon RPC 7.3, which has already been adopted by the Board in substance, with (very slightly) modified wording	2.1	Pages 36-38	Place on HOD Agenda	9.22.2017	
<b>B.</b> Adopt Recommendation to Amend Oregon RPC 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers	2.2	Pages 38-40	Place on HOD Agenda	9.22.2017	
<b>C.</b> Direct the Legal Ethics Committee to consider whether to amend Oregon RPCs to allow fee-sharing or law firm partnership with paraprofessionals and other professionals	2.3	Pages 40-43	Send to LEC		

Questions for discussion:

- Are there questions regarding any of the proposals?
- Do we need more information?
- What are the risks of action/no action?
- Is feedback needed before adopting the recommendation? If so, from whom and by when?
- What is the timeline for making a decision?
- What is the timeline for implementation?
- Other?

## II. Regulation/Development of Alternative Legal Service Delivery Models

Task Force Recommendation	Rec. No.	Full Report Reference	Possible Next Step	Timeline	Board Decision
A. Convene a paraprofessional licensing implementation committee to prepare a detailed proposal for Board and Supreme Court.	1.1 to 1.11	Pages 3-26			
B. Direct Public Affairs Committee to craft legislative approach related to online document review and consumer protections generally consistent with the approach outlined by Report	2.4	Pages 43-45	Send to PAC		
C. Direct Public Affairs Committee to craft legislative approach related to Self-Help Centers and Court facilitation that is generally consistent with the approach outlined by Report	3.2	Pages 48-51	Send to PAC		

Questions for discussion:

- Are there questions regarding any of the proposals?
- Do we need more information?
- What are the risks of action/no action?
- Is feedback needed before adopting the recommendation? If so, from whom and by when?
- What is the timeline for making a decision?
- What is the timeline for implementation?
- Other?



### III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

Task Force Recommendation	Rec. No.	Full Report Reference	Possible Next Step	Timeline	Board Decision
A. Establish an Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources	3.1	Pages 47-48	Send to ED/CEO		
B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes	3.3-3.4	Pages 51-54	Send to ED/CEO		
C. Develop Blueprint for Nonfamily Law Facilitation Office	5.2	Page 65	Send to ED/CEO		
D. Promote use of technology to increase A2J in Lower Income & Rural Communities	7.2	Page 70	Send to ED/CEO		
E. Take steps to make legal services more accessible in Rural Areas	7.3	Page 71	Send to ED/CEO		

#### ED/CEO Action Items

- Talk with Court and Legal Aid
- Participate in Oregon Supreme Court Civil Access Initiative Task Force
- Continue to advocate for legal aid funding
- Review legal services standards and guidelines

## IV. Enhancement of Existing Bar Programs and Resources

Task Force Recommendation	Rec. No.	Full Report Reference	Possible Next Step	Timeline	Board Decision
A. Ask PSAC to explore ways to increase availability to unbundled services offered through LRS	3.5	Pages 54-55	Send to ED/CEO		
B. Continue to Improve & Enhance Resources for Self-Navigators	3.6	Pages 56-57	Send to ED/CEO		
C. Work to improve the public perception of lawyers	7.4	Page 72	Send to ED/CEO		
D. Expand the Lawyer Referral Service and Modest Means Program					
<b>1. Set Goal to increase LRS Inquiries by 11% by Next 4 Years</b>	5.1	Page 64	Send to ED/CEO		
E. Enhance Practice Management Resources					
<b>1. Develop Comprehensive Training Curriculum re Modern Law-Practice Management Methods</b>	6.1	Page 65-68	Send to PLF		
<b>2. Promote unbundled legal services</b>	7.1	Page 69	Send to PLF		

### ED/CEO Action Items

- Talk with PLF CEO
- Review and modify Program Measures as appropriate
- Participate in SFLAC pro se assistance subcommittee
- Update Fee Agreement Compendium to include broader sampling of alternative fee agreements

## V. BOG Policy Development

<b>Task Force Recommendation</b>	<b>Rec. No.</b>	<b>Full Report Reference</b>	<b>Possible Next Step</b>	<b>Timeline</b>	<b>Board Decision</b>
<b>A. Embrace Data-Driven Decision-Making</b>	4	Page 61	Send to PGC		
<b>1. Adopt Data-Driven Decision Making Policy</b>	4.1	Page 61	Send to PGC		
<b>2. Adopt formal Set of Key Performance Indicators to Monitor State of Values</b>	4.2	Page 62	Send to PGC		
<b>3. Adopt Open-Data Policy</b>	4.3	Page 62	Send to PGC		
<b>4. Dedicate OSB Resources to Data collection, design and dissemination</b>	4.4	Page 63	Send to ED/CEO		

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## VI. Development of New Bar Programs

Task Force Recommendation	Rec. No.	Full Report Reference	Possible Next Step	Timeline	Board Decision
A. Create Incubator/Accelerator Program	8	Page 86-93			
<b>1. Dedicate staff as project manager</b>					
<b>2. Form a Program Development Committee to help design and implement the program</b>					

Questions for discussion:

- Are there questions regarding the proposal?
- Do we need more information?
- What are the risks of action/no action?
- Is feedback needed before adopting the recommendation? If so, from whom and by when?
- What is the timeline for making a decision?
- What is the timeline for implementation?
- Are there alternatives to this recommendation?
- Other?

Possible next steps for ED/CEO:

- Reach out to law schools and law firms to determine interest in participation
- Include questions regarding incubator/accelerator in new lawyer survey
- Send to PGC as part of New Lawyer Programs Review
- Other?

# OREGON STATE BAR

## Public Affairs Committee

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**Meeting Date:** July 21, 2017  
**Memo Date:** July 19, 2017  
**From:** Kathleen Rastetter  
**Re:** Document Access Fees for eCourt (OJCIN)

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### Action Recommended

Review proposed document access fee increases in CJO 17-037 and request the following:

- 1) Additional time to review and comment on the proposed order;
- 2) Delay implementation of proposed order (scheduled for September 1, 2017) ;
- 3) Consider whether the bar should do its own survey; and,
- 4) Consider whether the bar should propose an alternative approach.

### Background

The Oregon Judicial Department opened a public comment period on revised fees for Oregon Judicial Case Information Network (OJCIN), or document access, on June 29<sup>th</sup>. Comments on the proposed fee schedule are due no later than 5 pm on July 31, 2017. <http://www.courts.oregon.gov/services/online/pages/ojcin.aspx> View a copy of the Chief Justice orders establishing the notice and comment provisions, and establishing the proposed fees ([CJO 17-036](#) and [CJO 17-037](#)).

Since then, some practitioners have become aware of the proposed CJ order and have raised concerns, including M. Patton Echols from Gresham who conducted his own survey of three bar groups. While limited in reach, the feedback and comments are enlightening. (see attached exhibit). Other bar groups from Estate Planning, to Sole Small Firm Practitioners, Real Estate and Land Use and Bar Press Broadcasters Council have raised concerns as well. It is likely that most people missed the notice since it came out just before the 4<sup>th</sup> of July holiday.

By way of background, in 2016, the Oregon Judicial Department (OJD) completed the implementation of Oregon eCourt. The eCourt system is funded through three funding sources: civil filing fees, criminal fines and assessments, and user fees. At the beginning of the 2017 Legislative Session, OJD identified an \$8.3 million shortfall in funding for the Oregon eCourt program and identified four possible funding sources.

In the 2017 session two bills passed to address some of the eCourt filing fees to help fund the eCourt system and technology fund. [HB 2795](#) increases civil court filing fees by five

percent as of October 1, 2017. This will raise an additional \$2.9 million for OJD to fund Oregon eCourt. [HB 2797](#) increases presumptive fines for violations by \$5 beginning on January 1, 2018 and will raise an additional \$3.1 million to fund Oregon eCourt. In addition, eCourt user fees will be increased to raise \$1.5 million as well.

The fourth proposed funding source is an assessment on governmental entities. Currently, 60% of the total users are public subscribers such as law enforcement entities, the Oregon Department of Justice, public defense providers, district attorneys and legal aid. These entities do not pay to access the Oregon eCourt system. While the proposal was discussed this session, it was not implemented.

DRAFT

August 7, 2017

The Honorable Thomas A. Balmer  
Chief Justice, Oregon Supreme Court  
Supreme Court Building  
1163 State Street  
Salem OR 97301

Dear Chief Justice Balmer:

Thank for the opportunity – and extension of time – to provide comment on the proposed fee structure for use of the Oregon Judicial Case Information Network (OJCIN). The Oregon State Bar Board of Governors has a few comments regarding the proposed changes found in CJO 17-036 and -037 and would like to suggest a possible path forward.

The board is both impressed by and grateful for the Oregon Judicial Department's work on its eCourt program. Not only has eCourt proven to be one of the most successful I.T. projects in Oregon, it is also a giant leap forward in improving access to justice in Oregon, an important goal that we share with the Court. Over the years, the Oregon State Bar and the Oregon Judicial Branch have worked together to minimize the access to justice gap. The enactment of new fees for access to documents through the Oregon Judicial Case Information Network (OJCIN) provides the bar and the courts with another opportunity to focus on this important principle and further strengthen the public's faith, trust, and confidence in Oregon's impartial judicial system.

We know that I.T. resources are expensive to acquire, operate, and maintain. Further, we recognize the need for revenue given the current state of Oregon's state budget. Our hope is that the strides forward that the Court and the bar have made to increase access to justice will not be lost by establishing document access fees that have the unintended consequence of denying access for low- and middle-income Oregonians to Oregon's court system.

The Oregon State Bar has consistently relied on principles, first identified by the *Joint Interim Committee on State Justice System Revenues* in 2010 and later adopted by the Oregon Legislature, by which court fees should be viewed. These principles, set forth below, are as applicable to the proposed document access fees as they are to filing fee issues in general.

- Access to justice. Fees should be set at a level that ensures everyone has access to the court system.
- Constitutional and statutory mandates require the courts to resolve all disputes brought to them, some within certain time constraints.

- Revenue generation is an appropriate factor to consider in setting fees, but revenue generated from such fees alone will never fund the court system adequately.
- Balance. A healthy fee structure balances generation of revenue and access to justice.
- Fee structure should be transparent, simple and understandable:
  - Fees should not impede reasonable access to justice.
  - Fees should be uniform across the state.
  - Fees should be cost-effective and transaction costs minimized.
- Fee waivers and deferrals should be granted in appropriate cases.
- Revenue neutrality. Court fees should not become more of a revenue source for courts than at the current time.

Available data suggests that the cost of legal representation is no longer just prohibitive for Oregon's lowest income residents – the cost is now becoming prohibitive for many middle-income Oregonians as well. Oftentimes solo and small firm practitioners are the lawyers representing Oregonians running small businesses, living in rural areas, and navigating personal or family cases through the court system. If document access fees are increased for solo and small firm practitioners, while fees for larger firms and governmental entities and local governments remain steady, the shift may have the unintended consequence of decreasing the lawyers available to serve the needs of low and moderate income Oregonians. Not only will this change further burden those low- and middle-income Oregonians seeking access to the court system, it may drive small and solo practitioners to no longer subscribe to document access and return to relying on court clerks for court information, creating a greater financial burden on the court system as well.

Further, a funding structure based on continuous fee increases will not be sustainable. The bar suggests that the Oregon Judicial Department reconsider the proposed fee structure and, with the input of stakeholders, design a tiered fee structure based on system usage. By developing a usage fee system, the financial burden will be shared by all who benefit from the system. The creation of a fee system that brings about greater access to justice, which is measurable and equitable, will increase the public's faith, trust, and confidence in the judicial branch and the Oregon eCourt system.

### **2017 – 2019 Biennium**

1. Establish temporary fees rather than permanent fees with an end date of July 1, 2019. This will ensure sufficient funding for Oregon eCourt during the 2017 – 2019 biennium as well as allow for the analysis of and development of a tiered usage document access proposal.
2. Rebalance the temporary fees found in CJO 17-036 and -037 to ensure that the fee increase does not fall disproportionately on small and solo practitioners.
3. Create a joint Oregon State Bar/Oregon Judicial Department Work Group to review possible fee structures that are based on usage rather than firm size and report back during the 2019 legislative session with a plan to implement usage-based document access fees. Possible areas to explore include:



- a. charge by document size,
- b. charge by CPU usage,
- c. charge by number of pages accessed, and
- d. charge by number of cases accessed.

### **2019 and into the future**

1. Institute the work group's fee structure proposal directed to the State Court Technology Fund on July 1, 2019, in conjunction with a biennial assessment. Include in the proposal the sunset for the user-based fee structure and the implementation date for instituting a usage-based fee structure.
2. Request that the legislature institute a biennial assessment on state entities with funding directed to the State Court Technology Fund. This assessment addresses the lack of financial support from the 60% of Oregon eCourt users who do not currently pay to use the Oregon eCourt system. The assessment would have a similar structure as the law library assessment and go into effect on July 1, 2019.
3. Request that the legislature institute a separate assessment on cities and counties which is attached to each convicted offense and directed to the State Court Technology Fund beginning July 1, 2019. This assessment is necessary because cities and counties are not subject to the biennial budgetary assessment.

We understand that the proposed adoption of document access fees is the third leg of the eCourt funding strategy. And again we appreciate the leadership and staff of the Oregon Judicial Department for shepherding the implementation of the Oregon eCourt project through the courts, the legislature, and the legal community. As we take this final step to a fiscally sound and technologically stable Oregon eCourt system, the bar looks forward to supporting the mission of the Oregon Judicial Department as it continues to focus on maintaining the public's faith, trust, and confidence in a judicial system for all Oregonians.

Respectfully yours,

MICHAEL D. LEVELLE

Michael D. Levelle  
OSB President

Kathleen J. Rastetter

Kathleen J. Rastetter  
OSB Public Affairs Chair

July 24, 2017

Dear Chief Justice Balmer:

Thank you for the opportunity to comment on the proposed fee structure for use of the Oregon Judicial Case Information Network. While the Oregon State Bar at this time takes no position on the substance of the proposal, we respectfully ask that you consider an extension of the comment period.

The Oregon State Bar commends the Oregon Judicial Department's work on its eCourt program, which has proven to be one of the most successful I.T. projects in the state. We further recognize the need for increased revenue, given the current state of the budget.

Our concerns at this stage are two-fold:

1. Both the number and tone of comments received thus far by the OJD and by the bar through a variety of communication vehicles indicate that the impact on practitioners, and ultimately the public, could be considerable. Categories of concern are broad but compelling, including: a potential doubling or tripling of OJCIN costs for some practitioners, with sole and small firms being disproportionately impacted; a subscription fee that is out of proportion to fees charged in other states; and a concern that some practitioners will cancel subscriptions, which would provide a hardship on their practices and clients.
2. The state bar generally considers any fees that are required in order to engage with Oregon courts as at least a potential barrier to the public's ability to access the justice system. Any fees to pursue a case or defend a claim are paid by regular Oregonians and businesses. If fees get too high, citizens' access to the court system can be hindered. This certainly does not negate the need for fees, particularly in an era when the courts continue to be underfunded and legal services programs for the poor are in crisis. The bar would like to assure ample time for consideration and comment on this access to justice issue before significant fee structure changes go into effect.

With those issues in mind, and given the timing of the comment period during the quiet vacation month of July, we would like to ensure that all stakeholders are made aware of the proposal and have ample opportunity to analyze and comment on its impact.

We respectfully request that you extend the comment period to assure that you can take a full measure of its impact prior to finalizing any fee increases. Thank you for your consideration.

Respectfully,

MICHAEL D. LEVELLE

Michael Levelle, President  
Oregon State Bar

# SUPPORTING JUSTICE IN OREGON: A Report on the Pro Bono Work of Oregon's Lawyers

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July 2017

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The American Bar Association’s Standing Committee on Pro Bono and Public Service (referred to as “the Committee”) is charged with the responsibility to review, evaluate and foster development of pro bono publico programs and activity by law firms, bar associations, corporate law departments and other legal practitioners. The Committee works to analyze and define the appropriate scope, function and objectives of pro bono publico programs; to establish an interest in such programs; and to review and propose policy that has an impact on the ability of lawyers to provide pro bono service. Toward that end, the Committee has conducted three national pro bono empirical studies. In 2014 the Committee piloted the survey at the state level in Nebraska. Based on the success of this model, the Committee conducted this survey in 24 states in 2017. Presenting and analyzing the results of this state-level data collection, this report contains the results for Oregon. A national report on the aggregate findings from the 24 participating states is forthcoming.

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## Section 1: Amount and Type of Pro Bono in 2016

### *When did attorneys most recently provide pro bono?*

Respondents were asked to indicate when they most recently provided pro bono service. The majority (64.7%) indicated that they most recently provided pro bono service in 2016, while 13.4% indicated they have never provided pro bono service.

<b>In what year did you provide your most recent pro bono service?</b>	<b>Number</b>	<b>Percent</b>
2016	555	64.7
2015	45	5.2
2014	24	2.8
2013	14	1.6
2012	12	1.3
2011	9	1.1
2010	9	1.0
2009	6	.7
2008	5	.6
2007	5	.5
2006	4	.5
2005 or earlier	55	6.4
I have not yet provided pro bono service	115	13.4
<b>Total</b>	<b>857</b>	<b>100.0</b>

### Notable Trends:

- **GENDER:** More male attorneys reported undertaking pro bono service in 2016 (66.8%) than female attorneys (59.9%). Female attorneys were more likely to indicate they had never provided pro bono services (17.6% compared to 11.2% of the male attorneys).
- **PRACTICE SETTING:** Attorneys in private practice were significantly more likely to have engaged in pro bono service in 2016 (76.5%) compared to attorneys in other practice settings (29.4% in the corporate setting, 16.4% in the government setting, and 42.6% in the non-profit setting).

**How many hours of pro bono were provided in 2016?**

Respondents were asked to complete a grid regarding their pro bono hours and matters for the year. Approximately 40% of respondents reported not providing any pro bono service, compared to 14.9% of respondents providing 1-19 hours; 18.4% providing 20-49 hours, 10.7% providing 50-79 hours and 16% providing 80 or more hours. Overall, the surveyed attorneys provided an average of 48.2 (median of 11.3) hours of pro bono service in 2016. And, the average number of matters was 10.5.

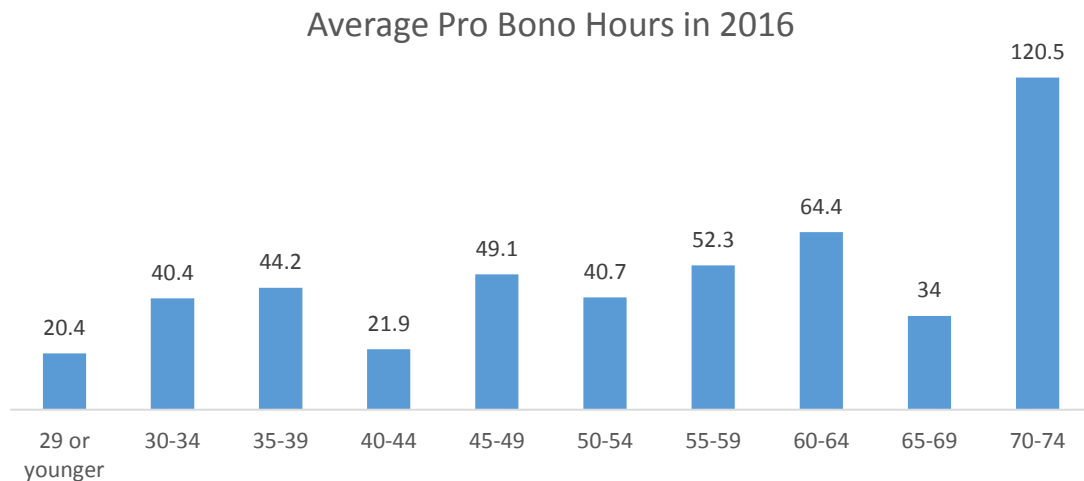
Among the attorneys who had provided pro bono in 2016 (as opposed to including the “zeroes” for those who had not provided pro bono in 2016), the average was 74.4 (median of 36) hours. And, the average number of matters was 16.2.

		Number	Percent	
48.2 Average Hours	Pro Bono	None	342	40.0
	Hours in 2016	1-19	128	14.9
		20-49	158	18.4
		50-79	92	10.7
		80+	137	16.0
		Total	857	100.0

74.4  
Average  
Hours

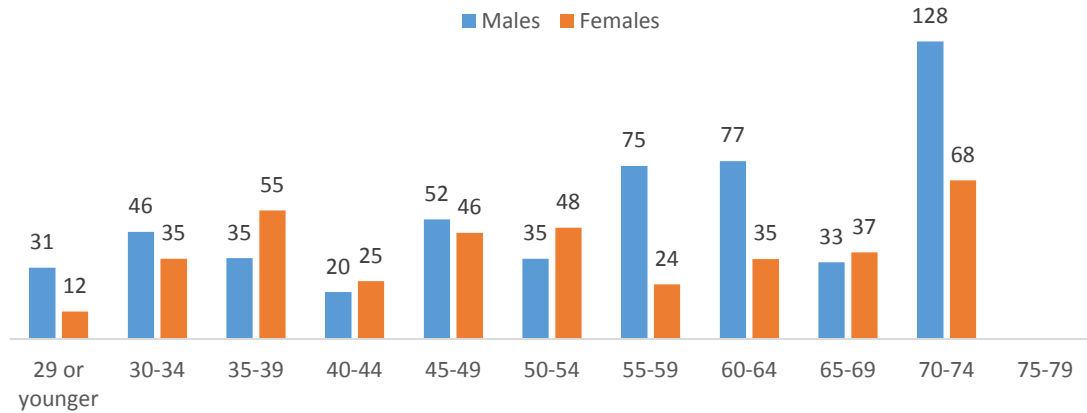
**Notable Trends:**

- AGE: There were significant differences in the average pro bono hours completed by various age groups (see below chart).



- GENDER AND AGE: As noted in the below chart, gender likewise played a role with respect to attorneys undertaking pro bono service and who fall into certain age groups.

Average Pro Bono Hours in 2016



- PRACTICE SETTING: Private practice attorneys reported on average doing significantly more pro bono (50.0 pro bono hours in 2016) than attorneys in other practice settings (11.6 hours by corporate attorneys and 5.9 hours by government attorneys).
- PRACTICE AREA: Attorneys who focus in their non-pro bono practice on the following areas of law reported doing more pro bono in 2016: health care, poverty, consumer, disability rights, public benefits, immigration, civil rights, education, housing

***To whom were these pro bono services provided?***

Among the attorneys who provided pro bono in 2016, 80.4% provided services to individuals, 8.5% had provided services to classes of individuals, and 42.9% had provided services to organizations. Of the pro bono services provided to individuals in 2016, the average hours were 59.3, compared to an average of 56.4 hours of services to organizations.

Client Type	Percent of Attorneys Providing Pro Bono to ...	Average Pro Bono Hours Provided	Average Number of Matters
Individuals	80.4%	59.3	16.1
Class of Individuals	8.5%	20.4	0.8
Organizations	42.9%	56.4	6.9

**What type of pro bono services were provided?**

Limited scope representation was the most prevalent type of service undertaken by respondents. Among respondents who provided pro bono service in 2016 (i.e. omitting respondents who provided no pro bono service), 42.4% provided *only* limited scope representation and 30.7% provided *only* full representation. Over 26% had provided both full and limited scope representation in 2016.

Service Type	Percent of Attorneys Providing this Type in 2016	Average Pro Bono Hours in 2016
Full and Limited Scope Representation	26.1%	99.8
Full Representation Only	30.7%	106.9
Limited Scope Representation Only	42.4%	50.1
Mediation Only	0.8%	19.2

**Who were the pro bono clients in 2016?**

Among respondents who provided pro bono service in 2016 (i.e. omitting respondents who provided no pro bono service), respondents were most likely to indicate that they had represent an ethnic minority, an elderly person, a single parent or a disabled person compared to the below list of client types. There were some notable differences in the client served based on attorney demographics.

Type of Client	Percent of Attorneys Indicating Having Represented This Client Type	The below types of attorneys were more likely to represent the corresponding type of client
An Ethnic Minority	69.5%	Asian; under age 45; in the corporate, government or non-profit work setting
Elderly Person	28.6%	
Single Parent	27.0%	
Disabled person	26.4%	
Non or Limited English Speaker	23.0%	
Victim of Domestic Violence	19.4%	Female; in the non-profit setting
Child/Juvenile	18.8%	Female
Rural Resident	18.5%	In a rural area or town
Student	16.6%	Hispanic or Asian
Veteran	13.5%	
Undocumented Immigrant	12.2%	Hispanic
Homeless	11.3%	Rural area or town
Documented Immigrant	11.2%	In the non-profit setting
Incarcerated Person	8.6%	
LGBT	6.5%	
Victim of Consumer Fraud	6.0%	
Migrant Worker	3.4%	



## Section II: Most Recent Pro Bono Case/Experience

### *Which type of pro bono service is most typical?*

The majority of pro bono service by respondents was undertaken on behalf of persons of limited means (75.8%) as opposed to a specific class of persons (4.0%) or an organization (20.2%). Additionally, most of these services were limited scope representation (54.1%) as opposed to full representation (45.1%) or mediation (0.6%).

### *How do attorneys find their clients?*

Of the attorneys who provided pro bono service, 22.8% indicated that their most recent client came directly to them. The remaining 77.2% were referred from some specific source. The most common of which were legal aid pro bono programs, followed by present or former clients. Black attorneys were more likely to report that their most recent client came to them directly (57.1% compared to 22.5% among non-Black attorneys).

<b>How did this client come to you?</b>	<b>Number</b>	<b>Percent</b>
The client came directly to me	121	22.8
A referral from a family member or friend	33	6.2
A referral from your employer	10	1.8
A referral from a co-worker within your organization	11	2.2
A referral from an attorney outside of your organization	26	5.0
A referral from a present or former client	48	9.1
A referral from legal aid pro bono program	109	20.6
A referral from an independent pro bono program	5	.9
A referral from a law school clinic	6	1.2
A referral from a mediation center	1	.2
A referral from a religious organization	13	2.5
A referral from a non-profit organization	33	6.2
A referral from a judge or court administrator	44	8.4
Other	24	4.6
A referral from a bar association pro bono program	11	2.2
A referral from a lawyer referral service	8	1.5
A referral from a guardian ad litem program	1	.2
A referral from a professional acquaintance	22	4.2
From a posting on a pro bono listserv to which I subscribe	2	.3
<b>Total</b>	<b>528</b>	<b>100.0</b>

Among the respondents whose clients came directly to them, 37.8% reported having no personal relationship with the person, while 20.5% reported that the client was an organization with whom the attorney was involved, 13.6% reported that the client was an acquaintance, and 10.1% indicated that the client was a former client.

**How would you describe your relationship with the client before the legal engagement began?**

	Number	Percent
A personal friend	7	6.8
A relative	2	2.2
An acquaintance	14	13.6
A former client	11	10.1
A class of persons with whom I had a relationship with at least one class member	1	1.2
An organization with which I was personally involved	22	20.5
An organization with which a friend or family member was personally involved	3	2.5
Another relationship	4	4.2
A class of persons to whom my employer had a connection	1	1.0
None of the above- no prior relationship	40	37.8
Total	105	100.0

**How was the client determined to be low-income?**

As noted in the below chart, to determine whether a client qualified for pro bono service, about half of the attorneys (50.4%) relied on the referral source to vet the client’s financial eligibility. Otherwise, respondents primarily used impressionistic methods, such as relying on the word of the client or on the attorney’s knowledge of the client’s situation, rather than vetting the client’s financial data.

Low Income Determination (Multiple Choice)	Percent of Respondents
An indication from the referral source	15.4%
The referral source qualified the client	35.0%
Financial data, such as a W2 or paycheck information	9.6%
The word of the client	21.5%
Some other factor	8.3%
My knowledge of the client’s situation	47.3%

***What tasks were performed and what was the scope of the work?***

The most frequently reported pro bono legal tasks consisted of providing advice (77.5%), reviewing and/or drafting legal documents (68.9%) and interviewing/meeting with the client (68.8%).

Legal Task (Multiple Choice)	Percent of Respondents
Provided advice	77.5%
Reviewed/drafted documents	68.9%
Interviewed/met with the client	68.8%
Wrote letter	43.4%
Spoke with other attorneys	38.2%
Provided full representation in court (trial or appellate)	27.4%
Negotiated a settlement with other parties	24.6%
Referred to other organization(s)	13.0%
Represented the client in administrative proceedings	9.3%
Limited scope representation in court (trial or appellate)	8.1%
Represented the client before a legislative body	1.3%
Other	10.1%

***Within the scope of the attorneys' expertise?***

The tasks performed were generally within the attorneys' area of expertise. Specifically, 75.2% indicated that their recent pro bono experience was within their area of expertise. White attorneys and attorneys in private practice or the corporate setting were more likely to report that their recent case was within their area of expertise.

***Consistent with the attorneys' expectations?***

Most (72.5%) of the attorneys indicated that their most recent pro bono experience was consistent with their expectations. Approximately 22.7%, however, indicated that the case took more time than they had expected and 7.4% said that the case was more complex than they had expected.

Response (Multiple Choice)	Percent of Attorneys Providing Response
Yes – it was consistent in terms of time and complexity	72.5%
No – it took more time than I expected	22.7%
No – it took less time than I expected	1.7%
No – it was more complex than I expected	7.4%
No – it was less complex than I expected	0.4%
No – it was not what I expected in some other way	1.7%

***Hours of service provided?***

On average, attorneys spent 30.2 hours on their most recent pro bono case.

## Section III: Motivations and Attitudes

### *The importance of pro bono services?*

Most attorneys (85.8%) believe that pro bono services are either somewhat or very important. Very few attorneys did not believe that pro bono services are important.

<b>Thinking about the legal needs of the low-income population in your state, how important is it for local attorneys to offer pro bono services?</b>	Number	Percent
Don't know	14	1.8
Very unimportant	41	5.4
Somewhat unimportant	26	3.5
Neither important nor unimportant	26	3.4
Somewhat important	178	23.5
Very important	471	62.3
Total	756	100.0

### *What motivates attorneys to do pro bono?*

As noted in the below chart, the top three motivators for undertaking pro bono included:

1. Helping people in need
2. Participating in reducing social inequalities
3. Duty as a member of the legal profession

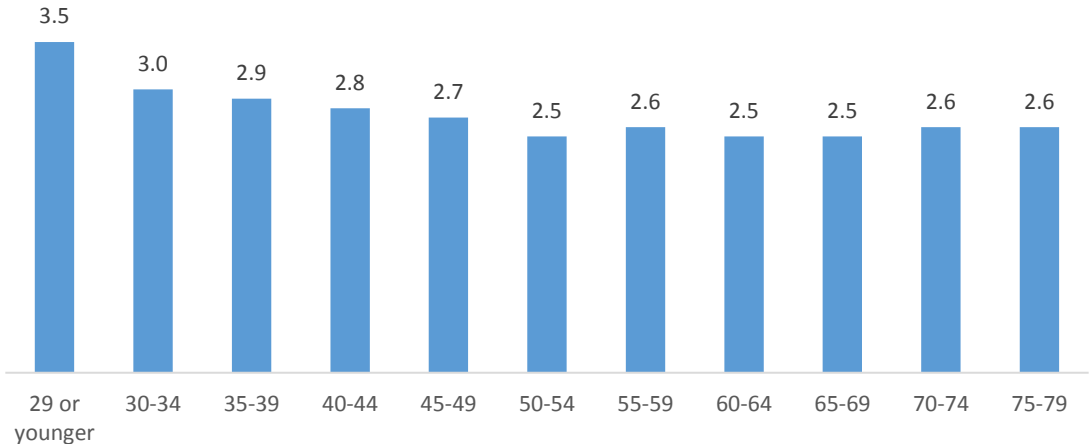
<b>Motivator</b>	<b>Average Rating (on a scale from 1-5, where 1 is the least motivating and 5 is the most motivating)</b>
Helping people in need	4.32
Participating in reducing social inequalities	3.72
Professional duty	3.55
It would make me feel like a good person	3.46
Ethical obligation	3.45
Helping the profession's public image	2.87
A firm culture that encourages pro bono	2.67
Opportunities to interact with low-income populations	2.47
Opportunities to work directly with clients	2.30
Opportunities to work with other attorneys	2.11

Gaining experience in an area outside of my expertise	2.07
Recognition from colleagues and friends	1.91
Opportunities to go to court	1.83
Strengthening relationships with my private practice clients who value pro bono engagement	1.72
Recognition from employer	1.72
Average across all factors	2.69

**Notable Trends:**

- GENDER: Overall, female attorneys provided higher ratings for the list of motivating factors (with an average of 2.9) than male attorneys (with an average of 2.6).
  - o Females were most motivated by: 1) helping people in need, 2) reducing social inequalities and 3) feeling like a good person
  - o Males were most motivated by: 1) helping people in need, 2) reducing social inequalities and 3) professional duty
- RACE/ETHNICITY: Attorneys identifying as Asian provided higher ratings for motivator factors (with an average rating of 3.2) than non-Asian attorneys (with an average rating of 2.7).
- AGE: Younger attorneys provided higher average ratings for the motivating factors than older attorneys. The 29 and younger age group, for example provided an average rating of 3.5 across motivating factors, while the 70-74 age group provided an average rating of 2.6. See the chart below. Specifically, among attorneys under 50, the top three motivators were: 1) helping people in need, 2) reducing social inequalities, and 3) feeling like a good person. Meanwhile, for older attorneys, ethical obligations and/or professional duty tended to be in their top motivators, after “helping people in need.”

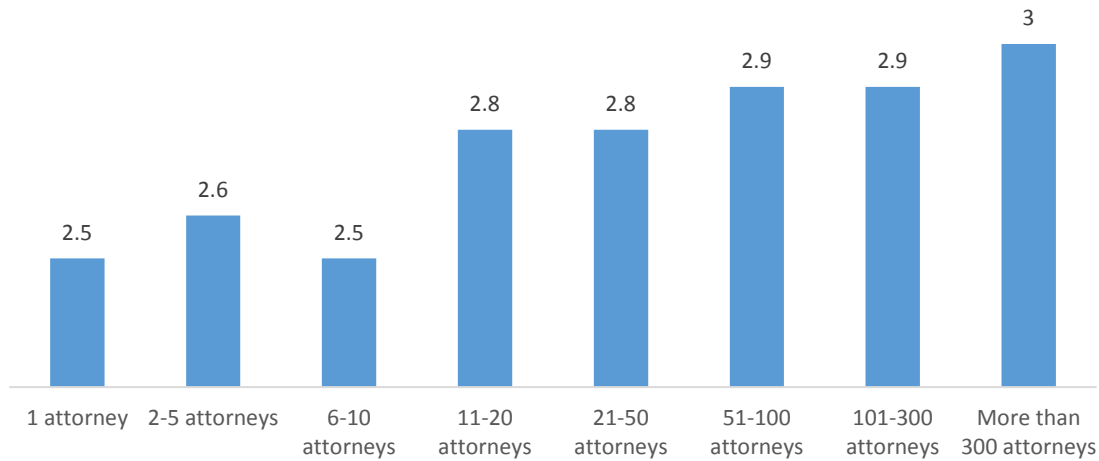
Average Rating Across Motivating Factors



- URBAN/RURAL: Urban attorneys provided the highest overall ratings for the motivating factors, with an average of 2.8, compared to suburban attorneys (2.6), rural attorneys (2.5) and attorneys in towns (2.5).

- PRACTICE SETTING: Private practice attorneys provided slightly lower ratings (2.6) than corporate (2.9) or government attorneys (2.7). Within private practice, attorneys from larger firms provided higher ratings (the average rating for solos was 2.5 and the average rating for 300+ firms was 3.0). Specifically:
  - o For attorneys in private practice, the top three motivators were: 1) helping people in need, 2) professional duty, and 3) reducing social inequalities
  - o For attorneys in the corporate, government or non-profit settings, the top three motivators were: 1) helping people in need, 2) reducing social inequalities, and 3) feeling like a good person

Average Rating for Motivating Factors



- BY PRO BONO HOURS PROVIDED: As expected, attorneys who provided 50 or more hours of pro bono in 2016 also provided higher ratings for the motivating factors (2.8 compared to 2.6).

**Are Attorneys Reactive or Proactive Concerning Pro Bono Opportunities?**

To identify pro bono opportunities, just under half of the attorneys (55%) had reached out to some organization and 72.9% had been contacted by an organization regarding a pro bono opportunity.

Organization	Percent of Respondents Who Contacted...	Percent of Respondents Who Were Contacted By...
State bar association	22.7%	37.1%
Your local bar association	17.1%	33.5%
A legal aid or pro bono organization	44.8%	57.0%
Some other organization	25.0%	34.6%
At least one of the above	55.0%	72.9%

**What can pro bono programs do to engage more attorneys?**

According to respondents, in order to engage more attorneys, pro bono programs should:

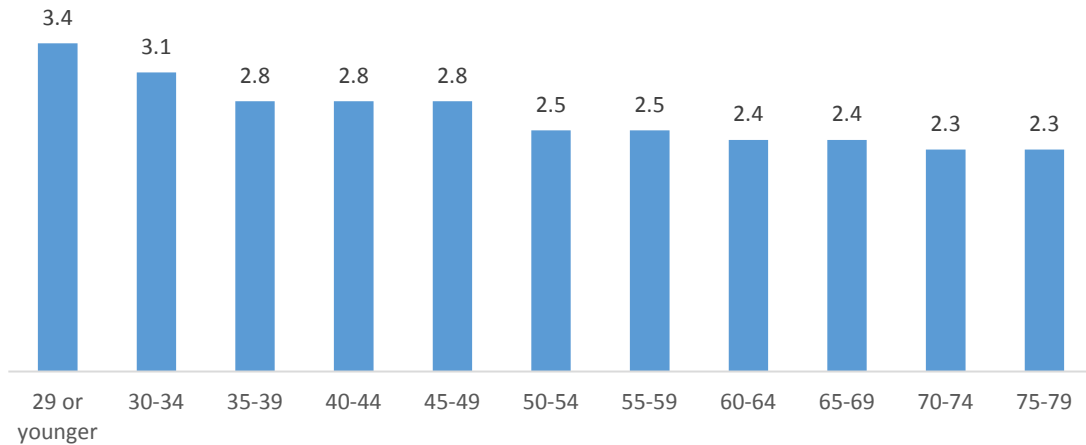
1. Provide malpractice insurance
2. Engage judges in soliciting participation
3. Provide limited scope representation opportunities

Action	Average (on a scale from 1-5, where 1 is the least encouraging and 5 is the most encouraging)
Malpractice insurance provided by referral org	3.83
If a judge solicited my participation	3.52
Limited scope representation opportunities	3.28
If a colleague asked me to take a case	3.18
CLE credit for doing pro bono	3.14
The option of selecting a client based on demographics/descriptors	2.81
Free or reduced cost CLE	2.80
Opportunities to act as a mentor to young attorneys or law students	2.73
Online description of case opportunities from which to select	2.71
Administrative or research support	2.65
Mentorship/supervision by an attorney specializing in the legal matter	2.60
Periodic contact by a referral organization (I'll take a case when I can)	2.57
If I were matched with another attorney to share the work	2.50
Alternative dispute resolution opportunities	2.46
Opportunities to do pro bono remotely	2.45
Availability of networking opportunities with other attorneys providing pro bono in my community	2.24
Reduced fee opportunities as opposed to free service opportunities	2.20
More support from my firm	2.18
Self-reporting and state bar tracking of voluntary pro bono contributions	2.02
Formal recognition of my past volunteer efforts	1.93
Average of All Factors	2.64

Notable Trends:

- GENDER: Overall, female attorneys provided higher ratings for the list of actions (2.9 compared to 2.6 for male attorneys). Specifically,
  - o For female attorneys, the top three influential actions were: 1) if a judge solicited participation, 2) limited scope representation opportunities, and 3) CLE credit
  - o For male attorneys, the top three influential actions were: 1) if a judge solicited participation, 2) if a colleague asked, and 3) limited scope representation opportunities
- RACE/ETHNICITY: Asian attorneys provided higher ratings for the list of actions (3.1) as compared to non-Asian attorneys. And specifically, their top three were: 1) CLE credit, 2) limited scope representation opportunities, and 3) malpractice insurance.
- AGE: Younger attorneys provided higher ratings than did older attorneys for the list of actions. For example, attorneys in the 29 and younger age group provided an average rating of 3.4, compared to the 70-74 age group which provided an average rating of 2.3.

Average Rating for List of Actions



- PRACTICE SETTING: Attorneys in both the corporate and non-profit setting provided higher ratings for the list of actions (2.9 for both) compared to attorneys in the private practice or the government setting (2.6 for both). Specifically:
  - o For private practice attorneys, the top three actions were: 1) if a judge solicited participation, 2) if a colleague asked, and 3) limited scope representation opportunities
  - o For corporate attorneys, the top three actions were: 1) malpractice insurance, 2) limited scope representation opportunities, and 3) if a judge solicited participation
  - o For government and non-profit attorneys, the top three actions were: 1) malpractice insurance, 2) limited scope representation opportunities and 3) CLE credit



***What discourages attorneys from doing pro bono?***

According to respondents, the top three discouraging factors were:

1. Lack of time
2. Commitment to family or other personal obligations
3. Lack of skills or experience in the practice areas needed by pro bono clients

<b>Factor</b>	<b>Average (on a scale from 1-5, where 1 is the least discouraging and 5 is the most discouraging)</b>
Lack of time	4.07
Commitment to family or other personal obligations	3.89
Lack of skills or experience in the practice areas needed by pro bono clients	3.45
Lack of clarity on how much time I would end up having to commit	2.98
The unrealistic expectations of clients	2.97
Competing billable hour expectations and policies	2.97
Too costly; financially burdensome to my practice	2.87
Lack of interest in the types of cases	2.84
Scheduling conflicts making it difficult to be available for court appearances	2.76
A preference for spending volunteer time on non-legal matters	2.70
Lack of malpractice insurance	2.66
Lack of administrative support or resources	2.63
Lack of information about opportunities	2.52
Concerns that doing pro bono work would compromise the interests of my other clients	2.06
Discouragement from employer/firm	2.04
A preference for providing reduced fee assistance rather than no fee assistance	1.81
I feel that a lot of pro bono clients really can afford legal assistance	1.57
Personal or philosophical objections	1.41
<b>Total for all factors</b>	<b>2.69</b>

***Firm/Employer attitude toward pro bono?***

Private practice attorneys were asked to indicate what their employer’s attitude is towards pro bono. Just over half (55.4%) indicated that their employer encouraged pro bono activities, while 43% indicated that their employer neither encourages nor discourages pro bono activities.

<b>Which of the following best describes your firm's or employer's attitude toward pro bono?</b>	Number	Percent
Employer encourages pro bono activities	174	55.4
Employer neither encourages nor discourages pro bono activities	135	43.0
Employer discourages pro bono activities	5	1.6
Total	315	100.0

According to the surveyed attorneys, the most common ways their employers encouraged pro bono was by allowing use of internal resources for pro bono activities (30.4% reported this) or by allowing pro bono during regular business hours (29.6%). Only a small percentage reported that their employers did things that discouraged pro bono.

<b>Employer Activity (Multiple Choice)</b>	<b>Percent</b>
Employer allows use of internal resources for pro bono activities	30.4%
Employer allows pro bono during regular business hours	29.6%
Employer has a pro bono policy that supports employee pro bono activities	18.0%
Employer provides mentoring for pro bono activities/matters	11.3%
Employer allows billable hour credit for pro bono work	9.1%
Employer has procedures in place for identifying and referring pro bono cases internally	8.5%
Employer has a pro bono manager	5.1%
Employer requires a specific number of pro bono hours or matters per year	0.9%
Employer places restriction on number of pro bono clients or matters in a fiscal year	1.2%
Employer does NOT allow pro bono during regular business hours	0.4%
Employer disallows use of internal resources for pro bono activities	1.3%

***Pro bono as a law student and its impact on future pro bono?***

Of the 57.6% of respondents that indicated that they had provided pro bono legal services as a law student, over half (60.8%) noted that doing so made them “more” or “far more” likely to provide pro bono services after graduating from law school. Around 36.8% indicated that it had no impact on their likelihood of providing pro bono services after law school, and only 2.4% reported that it made them less likely to provide pro bono services after law school.

**If you provided pro bono legal services while you were a law student, to what degree did that experience affect your decision to provide pro bono services as a practicing attorney?**

	Number	Percent	Percent of attorneys who had provided pro bono in law school
Far more likely to provide pro bono services	101	15.4	26.7
More likely to provide pro bono services	129	19.6	34.1
It had no impact on my provision of pro bono services	139	21.2	36.8
Less likely to provide pro bono services	9	1.4	2.4
I did not provide pro bono legal services while I was a law student	277	42.4	N/A
Total	655	100.0	100

***Likelihood of providing pro bono in 2017?***

Overall, 55.6% of the respondents indicated that they were either likely or very likely to offer pro bono services in 2017, while 19.4% indicated they were unlikely or very unlikely to offer such services.

<b>How likely are you to offer pro bono services in 2017?</b>	Number	Percent
Very Unlikely	71	10.2
Unlikely	64	9.2
Somewhat Unlikely	38	5.4
Undecided	67	9.6
Somewhat likely	71	10.1
Likely	100	14.4
Very Likely	288	41.2
Total	699	100.0

## Section IV: Other Public Service Activities

### *What public service activities did attorneys provide in 2016?*

The surveyed attorneys provided a range of public service activities that do not necessarily fall under the traditional definition of pro bono. Approximately 23% of the attorneys reported that they had provided legal services for a reduced fee, and the average hours provided in 2016 were 110.8. See the below chart for information about other public service activities provided in 2016.

<b>Public Service Activity</b>	<b>Percent of Attorneys Providing ...</b>	<b>Average Hours in 2016</b>
Legal services for a reduced fee	22.7%	110.8
Trainer or teacher on legal issues	21.3%	25.5
Speaker at legal education event for non-lawyers	19.6%	10.6
Grassroots community advocacy	13.1%	43.5
Policy advocacy	13.7%	36.9
Member of board of legal services or pro bono organization	10.4%	46.6
Supervising or mentorship to another attorney providing pro bono representation	9.9%	20.0
Member of bar committee related to pro bono or access to justice	8.4%	22.6
Lobbying on behalf of a pro bono organization	3.6%	40.4
Member of firm committee related to pro bono or access to justice	3.2%	15.8
Other	7.6%	
None of the above	25.0%	

See the below chart for the various reductions provided by the attorneys who had reduced their fees. About half reduced their fees by between 46 and 75%.

<b>Reduced Fee - Average Reduction Percent</b>	<b>Number</b>	<b>Percent</b>
5% or less	5	2.4
6-10%	4	1.8
11-15%	1	.5
16-20%	7	3.5
21-25%	20	10.1
26-30%	12	6.2
31-35%	9	4.4
36-40%	10	5.0

41-45%	1	.7
46-50%	44	22.8
51-55%	17	8.8
56-60%	8	4.0
61-65%	3	1.3
66-70%	10	5.3
71-75%	18	9.0
76-80%	5	2.5
81-85%	2	1.0
86-90%	5	2.3
91-95%	5	2.4
96-99%	12	6.0
Total	195	100.0

And, based on this reduction, the below chart shows the average hourly fees that resulted from the above reductions.

**And, based on this reduction, approximately what was your average reduced hourly fee?**

	Number	Percent
\$1-50	30	15.8
\$51-100	47	24.4
\$101-150	59	30.6
\$151-200	30	15.4
\$200-300	23	11.8
More than \$300	4	1.9
Total	192	100.0

***How much unbundling are attorneys doing?***

The private practice attorneys were asked a series of questions about their use of limited scope representation/unbundling as part of the practice in 2016. The majority of attorneys (58.9%) indicated that none of their cases involve unbundled legal services for a fee. However 30.7% of attorneys indicated that 1-20% of their caseload involves unbundling.

In 2016, approximately what percentage of your overall caseload involved unbundled legal services for a fee?	Number	Percent
0%	290	58.9
1-20%	151	30.7
21-40%	21	4.2
41-60%	9	1.9
61-80%	11	2.3
81-100%	9	1.9
Total	491	100.0

***What encourages or discourages attorneys from providing unbundling?***

Attorneys were provided with a list of things that might encourage unbundling and asked to rank them. The top three actions that attorneys said would encourage them to do more unbundling were:

- 1) more guidance or clarity concerning ethical obligations for unbundled matters
- 2) more guidance or clarity concerning malpractice exposure for unbundled matters
- 3) more guidance or clarity concerning court procedures for unbundled matters

Activity and Ranking	Percent Selecting Activity as #1	Ave Ranking (1 being the most encouraging)
(1) More guidance/clarity concerning ethical obligations for unbundling	28.7%	2.51
(2) More guidance clarity concerning malpractice exposure for unbundled matters	8.6%	3.18
(3) More guidance/clarity concerning court procedures for unbundled matters	3.6%	4.08
(4) Sample limited-scope agreements	6.9%	4.49
(5) Programs to connect you with prospective clients interested in unbundled legal services	13.2%	4.53
(6) Information to better understand fee structures for unbundled legal services	5.8%	5.62
(7) Opportunities to network with lawyers who unbundle	2.0%	6.12
Nothing. Unbundling is just not in my future	31.2%	

For those who had not provided any unbundling, most (81.7%) indicated that “agreed” or “strongly agreed” with the statement: “I don’t think unbundling would work for much of my practice” and many (62.9%) indicated that they “agreed” or “strongly agreed” with the statement “I worry that unbundling would expose them to more malpractice claims.”

<b>Statement</b>	<b>Average (1= strongly disagree and 4=strongly agree)</b>
I don’t think unbundling would work for much of my practice	3.19
I worry that unbundling would expose me to more malpractice claims	2.75
Prospective clients are not interested in unbundled legal services	2.61
It is difficult to get enough clients to make unbundling worthwhile	2.54
Unbundled cases do not produce enough revenue	2.47
I am concerned that unbundling may be unethical	2.43
My law firm does not permit me to unbundle	1.91

For those who had provided unbundling, the most (80.8%) indicated that they “agreed” or “strongly agreed” with the statement “unbundling lowers the cost of cases so that more people can afford my services”. Similarly, most (71.3%) also “agreed” or “strongly agreed” with the statement: “unbundling allows them to offer legal services at a more competitive price.” And, 55.5% “agreed” or “strongly agreed” with the statement: “unbundling lowers receivables and results in fewer uncollected fees.”

<b>Statement</b>	<b>Average (1= strongly disagree and 4=strongly agree)</b>
Unbundling lowers the cost of cases so that more people can afford my services	2.99
Unbundling allows me to offer legal services at a more competitive price	2.82
Unbundling lowers receivables and results in fewer uncollectable fees	2.57
Unbundling clients are likely to become full-service clients	2.28
Unbundling clients are more engaged in the process and invested in the outcome than full service clients	2.17
Unbundling clients are more satisfied with their service than full-service clients	2.14
I am less worried about disciplinary complaints for unbundled cases	2.06

## Appendix

Methodology: the web-based survey was distributed to all attorneys for whom contact information was available in the 24 participating states. The surveys for Oregon were distributed by email on February 9, 2017. The final sample of surveys amounted to 877, with 840 of these responses being from attorneys with active licenses.

The sample fairly closely matched the known demographics of the attorney population, with slight deviations with respect to gender. Consequently, weights were applied to adjust the sample to represent the state attorney population. Weighting is a standard practice that addresses inconsistencies in distributions between survey responses collected compared with the actual distributions of the population being studied. The weight does not change a respondent's answer; rather, it gives appropriate relative importance to the answer. The below charts demonstrate the final weighted sample distributions by race/ethnicity, gender, age, and practice setting. All significant results noted throughout this report are at the 95 percent confidence level.

Category	Percent
<b>Race/Ethnicity</b>	
White, Not Hispanic	89.6%
Black, Not Hispanic	1.6%
Hispanic	1.7%
Asian, Pacific American, Not Hispanic	2.2%
<b>Gender</b>	
Male	65.2%
Female	34.3%
Gender Non-Conforming	0.5%
<b>Age</b>	
29 or younger	4.0%
30-34	10.2%
35-39	11.0%
40-44	8.6%
45-49	9.3%
50-54	9.4%
55-59	10.3%
60-64	12.6%
65-69	13.6%
70-74	7.0%
75+	4.0%
<b>Practice Setting</b>	
Private Practice	74.8%
Corporate Counsel	6.1%
Government	7.4%
Non-profit	6.6%
Other	5.1%