

Oregon State Bar
Meeting of the Board of Governors
February 23, 2018
Salem Conference Center, Salem, 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 9:00am on February 23, 2018.
Items on the agenda will not necessarily be discussed in the order as shown.*

1. Call to Order & Finalization of Agenda [Ms. Nordyke]

2. 2018 Strategic Areas of Focus

- | | | |
|--|--------|-------------|
| A. 2018 BOG Areas of Focus [Ms. Costantino] | Action | Exhibit |
| B. New Lawyer Program Review | | |
| 1. New Lawyer Mentoring Program Changes [Ms. Costantino] | Action | Exhibit |
| 2. Oregon New Lawyer Division Update [Ms. Nicholls] | Inform | Exhibit |
| C. Futures Task Force Progress Report [Ms. Hierschbiel] | | |
| 1. Memo from Professional Liability Fund | Inform | Exhibit |
| 2. Minutes from Self-Navigator WorkGroup | Inform | Exhibit |
| 3. NCSC Civil Justice Initiative Executive Summary 2016 | Inform | Exhibit |
| 4. Adopt Innovations Award [Ms. Costantino] | Action | Exhibit |
| 5. Approve Fee Sharing Committee | Action | Posted 2/23 |
| D. Diversity Action Plan Implementation Update | Inform | |

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

- | | | |
|--|--------|-------------|
| A. Policy & Governance [Ms. Costantino] | | |
| 1. Adopt Changes to OSB Bylaw 1.2 | Action | Exhibit |
| 2. Adopt Changes to Fee Dispute Resolution Rules | Action | Exhibit |
| 3. Approve "Alternative Pathways to Becoming A Lawyer" Committee | Action | Exhibit |
| B. Public Affairs Committee [Ms. Rastetter] | | |
| 1. 2018 Legislative Update | Inform | |
| 2. OJD/OSB eCourt Implementation TF Final Report & Survey | Action | Exhibit |
| C. Budget & Finance Committee [Mr. Wade] | | |
| 1. 2017 Financial Report | Inform | Exhibit |
| D. Board Development Committee [Mr. Greco] | | |
| 1. Appointments to Bar Groups and Affiliated Boards | Action | posted 2/23 |
| 2. Board of Bar Examiners co-Grader Recommendations | Action | Exhibit |
| 3. Board of Bar Examiners Appointment | Action | Exhibit |
| 4. BOG and HOD Election Outreach | Inform | |

4. Professional Liability Fund [Ms. Bernick]

- | | | |
|---|--------|---------|
| A. December 31, 2017 Financial Statements | Inform | Exhibit |
| B. 2017 Claims Attorney and Defense Counsel Evaluations | Inform | Exhibit |
| C. PLF 40 th Anniversary, April 19 th , 4-6pm in Columbia A&B | | |

5. Board of Bar Examiners [Ms. Tuttle]

- | | | |
|-----------------------------|--------|---------|
| A. Application Fee Increase | Inform | Exhibit |
|-----------------------------|--------|---------|

6. OSB Committees, Sections, Councils and Divisions

A. Legal Ethics Committee [Ms. Hirschbiel]

- | | | |
|---|--------|---------|
| 1. Proposed OSB Formal Op No 2018-XX Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share | Action | Exhibit |
| 2. Proposed OSB Formal Op No 2018-XX Disqualification of Judges | Action | Exhibit |

B. MCLE Committee Seeking Housekeeping Authority [Ms. Hollister]	Action	Exhibit
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C. Legal Services Programs

- | | | |
|--|--------|---------|
| 1. Approve Revisions to Standards and Guidelines | Action | Exhibit |
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7. ABA HOD Delegates

- | | | |
|---|--------|--|
| A. ABA Midyear HOD Meeting Update [Ms. Meadows] | Inform | |
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8. CONSENT AGENDA

A. Client Security Fund Committee [Ms. Hollister]

- | | | |
|--|--------|---------|
| 1. Request for Review | | |
| a) GERBER (Yang) 2017-28 | Action | Exhibit |
| b) KRULL (Heredia) 2016-42 | Action | Exhibit |
| 2. CSF Financial Reports and Claims Paid | Inform | Exhibit |

B. Unclaimed Lawyer Trust Account [Ms. Hollister]

- | | | |
|------------------|--------|---------|
| 1. Annual Report | Inform | Exhibit |
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C. Report of Officers & Executive Staff

- | | | |
|---|--------|--------------|
| 1. President's Report [Ms. Nordyke] | Inform | |
| 2. President-elect's Report [Ms. Costantino] | Inform | |
| 3. CEO Report [Ms. Hirschbiel] | Inform | Exhibit |
| a) Sections and Committees Annual Reports | Inform | Links |
| b) Program Evaluations | Inform | updated 2/20 |
| 4. Director of Regulatory Services [Ms. Evans] | Inform | Exhibit |
| 5. Director of Diversity & Inclusion [Mr. Puente] | Inform | posted 2/20 |
| 6. MBA Liaison Report [Ms. Costantino] | Inform | |

D. Approve Minutes of Prior BOG Meetings

- | | | |
|---|--------|---------|
| 1. Regular Session November 18, 2017 | Action | Exhibit |
| 2. Special Open Session January 5, 2018 | Action | Exhibit |

9. CLOSED SESSION – [CLOSED](#) Agenda

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

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

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

OSB Board of Governors

STATUTORY CHARGE

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

MISSION

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

STRATEGIC FUNCTIONS

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

FUNCTION #1 – REGULATORY BODY

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

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

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

FUNCTION #3 – PROFESSIONAL ORGANIZATION

GOAL: Promote professional excellence of bar members.

FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

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

FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

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

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

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

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

FIDUCIARY ROLE

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

AREAS OF FOCUS FOR 2018

1. Follow-up on Futures Task Force items
 - a. Develop charge and plan for RPC 5.4 Committee. Consider recommendations.
 - b. Consider recommendations of Paraprofessionals Implementation Committee
 - c. Receive reports on progress of other items and identify action items as appropriate.
 - d. Develop charge and plan for Committee on Alternative Pathways to Becoming a Lawyer. Consider recommendations.
2. Continue review of new lawyer programs for adherence to mission, value to members and adopt changes as appropriate.
 - a. Consider recommendations for changes to the New Lawyer Mentoring Program.
 - b. Seek feedback from ONLD regarding survey results and alternative governance models.
 - c. Consider adding ex-officio member to section executive committees.
3. Continue review of sections and make policy decisions about how to proceed on the following issues:
 - a. Number of sections
 - b. Section fund balances
4. Evaluate potential forms of revenue and cost-savings for 2019 budget and beyond.
5. Implement Diversity Action Plan items identified for 2018.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: February 22, 2018
From: Catherine Petrecca, New Lawyer Programs Coordinator
Danielle Edwards, Director of Member Services
Re: Proposed Changes to the New Lawyer Mentoring Program

Action Recommended

Consider changes to the New Lawyer Mentoring Program (NLMP) based on results from ongoing participant surveys, responses from the 2017 new lawyer survey, and the experience of the NLMP staff.

Background

The NLMP launched in 2011, under Supreme Court Rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession and serve as a resource during their transition from student to practitioner. At the time of its creation, the NLMP was the third mandatory mentoring program in the country. Two more states have since created mandatory mentoring programs.

The NLMP requires each new lawyer to complete up to four activities in five separate areas, and then suggests another six activities in each of those areas. It also requires the new lawyer to complete ten practice area activities. (See attached Mentoring Plan Checklist.) Each new lawyer is required to turn in the Mentoring Plan, complete with the dates each practice area activity was completed.

Currently, all new lawyers pay a \$100 fee upon completion of the program. Participants may apply for a waiver, but very few do so – an average of three participants per year have requested waivers so far.

See the attached New Lawyer Mentoring Program Review from May 2017 for further details on the program.

Items for Discussion

1. Integrate the NLMP and MCLE Rules

The NLMP is a regulatory program designed to educate new lawyers on Oregon's high standards of integrity, professional conduct, professional competence and service to the public. After completing the program new lawyers receive six MCLE credits applied to their first full MCLE reporting cycle. Currently the NLMP rules are free-standing. Both the NLMP and the MCLE rules are promulgated and amended by the Supreme Court, following recommendations from the BOG.

Staff recommends that NLMP rules be integrated into the MCLE rules. This will help new lawyers understand the focus of the program, set their expectations for other bar regulatory compliance processes, and make internal administration of the program more efficient. This would require revisions of the MCLE rules to include an amended version of the NLMP rules. If the BOG supports this change, staff will work with the MCLE Committee on the proposed changes and bring those amendments to the BOG for consideration before review by the Supreme Court.

Options:

1. Integrate the NLMP Rules into the MCLE Rules.
2. Make no changes.

2. Streamline the NLMP requirements

The results of the new lawyer survey support this idea: respondents were almost-evenly split when asked if *all* curriculum activities should be optional, but only 1/3 of respondents said they think the program should exempt new lawyers who don't think they would benefit from participation. New lawyers and mentors are, however, supportive of reducing the number of requirements, with the writing requirement receiving the most criticism. (Currently, all participants are required to select and complete at least ten practice area activities in a substantive law area, with at least one writing project reviewed by their mentor.) Making the writing requirement optional would not likely have a negative impact on participants who opted out, but would still provide support for those who wanted the chance to have a mentor critique their writing.

It is important to note that staff are currently working on re-formatting the program resource materials to more clearly indicate which activities are optional and which are required.

Options:

1. Change the writing requirement to make it optional.
2. Make no changes.

3. Streamline the Reporting Requirement

In order to streamline the reporting process, staff recommends that new lawyers only be required to turn in the Certificate of Compliance (without the accompanying mentoring plan) and that the Certificate of Compliance be replaced with an MCLE accreditation form submitted upon completion of the program. Seventy-six percent of survey respondents agreed that "the only reporting requirement should be filing a

certificate of completion.” In addition, staff time would be reduced if staff does not need to review the mentoring plan for each participant.

We also recommend that participants be obligated to maintain their mentoring plan for the duration of their current MCLE reporting period, in case an audit needs to be done for MCLE purposes. These changes would need to be incorporated into any new MCLE rules created by the integration of the NLMP Rules into the MCLE Rules.

Streamlining the NLMP certification process and integrating it into the MCLE reporting framework will allow the bar to utilize components of the bar’s new association management software when it comes online.

Options:

1. Eliminate the requirement to file the Mentoring Plan.
2. Change the reporting requirement to an MCLE form.
3. Make no changes

4. Changes to the Program Fee

The NLMP participation fee brings in \$25,000 to \$30,000 in revenue per year. Both the staff program review and the new lawyer survey identified the fee as an area ripe for change, with over 80% of new lawyers agreeing that the fee should be adjusted based on income. In addition, both the survey and statistics from the ABA show that law school debt continues to rise.

For some new lawyers, however, the payment is not a burden. Over half of the fees for the program are paid by employers. Also, upon receipt of the completion fee, each new lawyer receives six MCLE credits. Staff recommends that the reporting form allow new lawyers to self-report their qualification for a fee waiver if their income is below \$60,000¹¹, or if payment of the fee would be an undue burden. Staff can include guidelines for the definition of an undue burden in the program materials.

Options:

1. Eliminate the \$100 program fee.
2. Exempt certain attorneys from paying the fee.
3. Make no changes.

¹¹ The \$60,000 waiver amount is recommended as it is just below the median income reported in the 2017 Economic Survey for lawyers with 0 to 3 years practice.

MENTORING PLAN

(to be filed with the Oregon State Bar upon completion)

Please note: this section is in continuing development. Please feel free to contact the NLMP with recommendations for further activity content.

Set forth in the Mentoring Plan below are the required and optional activities of the NLMP. Please note that while all six of the core curriculum areas are required to be addressed, many of the actual activities for addressing each area are suggestions. Mentors and new lawyers are encouraged to be broad, expansive and creative in how they address each of the six components.

Further, it is not the expectation that the mentor directly lead each and every experience outlined. The mentor assumes the role of “primary care practitioner” in assuring that the new lawyer gains access to the people and professionals that will support the new lawyer’s career goals, and reinforce development of a professional, ethical and competent law practice. Quite frequently, new lawyers may get more value out of exploring key concepts with someone more directly involved or knowledgeable about that area. For example, in a large firm, understanding of billing practices or trust account management may be handled by the accounting department, with the mentor simply confirming that the curriculum element was addressed.

Finally, as this new program continues to develop, we hope that participants will add their own ideas for how they addressed each area. This will help add to the suggestions included in the manual for future participants.

New Lawyer _____ Mentor _____

A. REQUIRED AND OPTIONAL ACTIVITIES & EXPERIENCES	
1. Introduction to the Legal Community, Public Service and Bar Service	
<i>REQUIRED ACTIVITIES</i>	<i>DATE COMPLETED</i>
<ul style="list-style-type: none"> ▪ As soon as practicable after receipt of the mentoring match, the new lawyer and mentor meet to get acquainted and design the mentoring plan. The new lawyer is responsible for arranging the initial meeting. 	
<ul style="list-style-type: none"> ▪ Introduce the new lawyer to other lawyers in the community through attendance at meetings of the local bar association or another law-related group. Discuss opportunities for participating in the work of local, state or national bar organizations and the value of professional networking and relationships gained thereby. 	

<ul style="list-style-type: none"> Describe and explain the customs and expectations of etiquette and behavior in the legal community such as cooperating with reasonable requests of opposing counsel that do not prejudice the rights of the lawyer's client, punctuality in fulfilling all professional commitments, avoiding offensive tactics, treating opposing parties and counsel with courtesy, and discuss the value of adhering to those customs and practices. 	
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INTRODUCTION TO THE LEGAL COMMUNITY OPTIONAL ACTIVITIES

The following are suggestions for other activities to help address this first curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:

<ul style="list-style-type: none"> Introduce new lawyer to other lawyers and staff members at the mentors office or workplace, or ascertain that such introductions have already occurred. 	
<ul style="list-style-type: none"> Discuss a lawyer's professional obligations regarding and the personal rewards arising from community and public service, and supporting and providing legal service to low income clients. Acquaint the new lawyer with Campaign for Equal Justice, the Oregon Law Foundation and/or other law-related charitable organizations. Acquaint the new lawyer with programs in which lawyers in private practice can provide pro bono legal services. Alternatively, have the new lawyer report on a visit with someone closely connected to these services. 	
<ul style="list-style-type: none"> Review and discuss the opportunities for volunteer participation in OSB and local bar programs (including the ONLD and local bar young lawyer groups) and how being involved in such activities promotes professional and personal development. 	
<ul style="list-style-type: none"> Escort the new lawyer on a tour of the local courthouse(s) and, to the extent practicable, introduce the new lawyer to members of the judiciary, court personnel, and clerks of court. <i>(Encouraged for new lawyers whose practices will take them to the courthouse.)</i> 	

2. Rules of Professional Conduct / Standards of Professionalism

REQUIRED ACTIVITIES	DATE COMPLETED
<ul style="list-style-type: none"> Review and discuss ethical issues that arise with some regularity in the practice setting and best practices for resolving them, with reference to experience as well as the Rules of Professional Conduct. Review and discuss the importance of and methods used to screen for conflicts. Discuss available resources for resolving ethical issues, including consultation with the OSB ethics advice service, private ethics counsel, and in-house ethics counsel or committees. 	

<ul style="list-style-type: none"> Review and discuss the OSB Statement on Professionalism. 	
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<ul style="list-style-type: none"> Discuss the importance of cultural competence to effectively represent diverse clients and work in a diverse legal community. 	
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PROFESSIONALISM OPTIONAL ACTIVITIES

The following are suggestions for other activities to help address this second curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:

<ul style="list-style-type: none"> Discuss the lawyer’s oath and the practical application of the obligation to protect the laws of the State of Oregon and the United States. 	
<ul style="list-style-type: none"> Discuss the core lawyering values of confidentiality and loyalty with reference to the Oregon Rules of Professional Conduct. Some ORPC’s that could be emphasized include: <ul style="list-style-type: none"> 1.7 thru 1.11 Conflicts of Interest; 3.3. Candor Toward the Tribunal; 4.2 Communication with Persons Represented by Counsel; or 4.3 Dealing with Unrepresented Persons. 	
<ul style="list-style-type: none"> Discuss how a new lawyer should handle a situation in which it is believed that another lawyer has violated ethical duties, including the duty to report certain kinds of misconduct. Discuss what to do if the new lawyer believes he or she has been instructed to engage in prohibited conduct. 	
<ul style="list-style-type: none"> Discuss and explain the Minimum Continuing Legal Education requirements and ways to fulfill such requirements, including OSB programs. 	

3. Introduction to Law Office Management

REQUIRED ACTIVITIES	DATE COMPLETED
<ul style="list-style-type: none"> Discuss the ethics rule most frequently invoked by the OSB – neglect of a legal matter and failure to communicate with client – and the role of good time keeping, time management and communication techniques. Introduce calendar and “tickler” or reminder systems. 	
<ul style="list-style-type: none"> Review and discuss malpractice insurance coverage including disclosure requirements. 	

LAW OFFICE MANAGEMENT OPTIONAL ACTIVITIES

The following are suggestions for other activities to help address this third curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:

<ul style="list-style-type: none"> ▪ If the new lawyer and the mentor are in the same firm, discuss the new lawyer’s role in the billing system. If not in the same firm, review and discuss good billing practices, or arrange for new lawyer to meet with someone knowledgeable about best practices. 	
<ul style="list-style-type: none"> ▪ Review and discuss trust account rules and best practices for handling of client funds, including importance of clearing checks before funds are drawn and authority needed to pay lawyer fees from client funds in trust. Review and discuss OSB and PLF resources. 	
<ul style="list-style-type: none"> ▪ Introduce the use of information technology systems in law practice. 	
<ul style="list-style-type: none"> ▪ Discuss resources (publications, seminars, research tools, equipment, etc.) that a new lawyer might find particularly helpful in his or her work. 	
<ul style="list-style-type: none"> ▪ Discuss the roles and responsibilities of paralegals, secretaries, and other office personnel, and how to honor and establish good working relationships with others in the office who are support staff, colleagues, or senior partners. 	
<ul style="list-style-type: none"> ▪ Review and discuss a lawyer’s responsibility as a subordinate under RPC 5.2, and as a supervisor of non-lawyers under RPC 5.3. 	

4. Working with Clients

REQUIRED ACTIVITIES	DATE COMPLETED
<ul style="list-style-type: none"> ▪ Review how to screen for, recognize, and avoid conflicts of interest. 	
<ul style="list-style-type: none"> ▪ Discuss “DOs and DON’Ts” of maintaining good ongoing client relations, such as returning telephone calls and keeping clients informed about matters. 	

WORKING WITH CLIENTS OPTIONAL ACTIVITIES

The following are suggestions for other activities to help address this fourth curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:

<ul style="list-style-type: none"> ▪ Discuss the importance of knowing whom you represent, particularly when representing corporations, government agencies or other organizations. 	
<ul style="list-style-type: none"> ▪ Discuss client interaction, including tips for gathering information about a legal matter and appraising the credibility and trust of a potential client. 	

<ul style="list-style-type: none"> ▪ Discuss issues that arise regarding the scope of representation. 	
<ul style="list-style-type: none"> ▪ Participate in or observe at least one client interview or client counseling session. 	
<ul style="list-style-type: none"> ▪ Discuss how to decide whether to accept a proffered representation. 	
<ul style="list-style-type: none"> ▪ Discuss how to talk about and set the fee for legal services. Review retainers and fee agreements and discuss the importance of written engagement agreements. 	
<ul style="list-style-type: none"> ▪ Discuss how to deal with a difficult client and how to decline representation of the unrealistic or “impossible” client. 	
<ul style="list-style-type: none"> ▪ Discuss terminating the lawyer-client relationship and necessary documentation. 	

5. Career Satisfaction and Work/Life Balance	
REQUIRED ACTIVITIES	DATE COMPLETED
<ul style="list-style-type: none"> ▪ Discuss how to handle challenging relationships in and outside the office, and how to develop a support system of colleagues and others with whom the new lawyer can discuss problems as they arise. 	
<ul style="list-style-type: none"> ▪ Discuss the warning signs of substance abuse and depression and how to address those problems when they are manifested in the new lawyer or others. Review and discuss the support and counseling available to the new lawyer and their family through the Oregon Attorney’s Assistance Program. Review OSB and PLF resources. 	

CAREER SATISFACTION <u>OPTIONAL</u> ACTIVITIES	
<p><i>The following are suggestions for other activities to help address this fifth curriculum area. Mentors and new lawyers are encouraged to add their own ideas and activities to this list as well:</i></p>	
<ul style="list-style-type: none"> ▪ Discuss the importance of having a business plan for developing a practice and meeting both short- and long-term career objectives. 	
<ul style="list-style-type: none"> ▪ Discuss the importance of making time for family, friends, and other personal interests. Discuss how to manage billable hour or other performance requirements to enable an appropriate balance of professional obligations and personal life. 	

B. REQUIRED PRACTICE AREA ACTIVITIES

Select and complete **at least ten (10)** Practice Area Activities in one or more substantive law Practice Areas shown on the following pages. **At least one** of the Activities must be a writing project that the mentor reviews with the new lawyer.

If the new lawyer is interested in a practice area not included here, the new lawyer and mentor may identify basic skill activities in that practice area to include in the mentoring plan.

The activities and experiences suggested on the following pages may be adjusted to the new lawyer's particular practice setting and individual needs.

<i>ACTIVITY</i>	<i>DATE COMPLETED</i>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

PROGRAM COMPLETION PACKET & FEE

Once you have completed the mentoring plan checklist, please submit your program completion packet to the OSB via email or regular mail. The completion packet must include the following three (3) items:

- Parts A & B checklist
- Signed completion certificate
- \$100 program fee

Please make checks payable to Oregon State Bar and mail to: *NLMP c/o Oregon State Bar, PO Box 231935, Tigard, OR 97281*. The fee may also be paid with VISA or Mastercard. Please call program staff to make a credit card payment at 503.431.6355 or 503.431.6367.

New Lawyer Mentoring Program Program Review May 3, 2017

I. NLMP Overview

The New Lawyer Mentoring Program launched in 2011, under Oregon Supreme Court rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession, and serve as a resource during their transition from student to practitioner. Another key objective was to reinforce Oregon's unique culture of collegiality and professionalism among incoming bar members. The OSB program borrowed elements from similar programs in other states, and was spearheaded by then-Chief Justice Paul De Muniz.

Soon after admission, new lawyers who are actively practicing are matched to volunteer mentors for a one-year program. The program includes a six-part curriculum, including: introduction to the legal community; ethics and professionalism; law office management; working with clients; career satisfaction; and practical skills. Although this does provide some structure, the requirements within each curriculum area are minimal, allowing participants to shape the program to the specific needs of each new lawyer. At the completion of the program year, mentors and new lawyers receive eight and six MCLE credits respectively, including two ethics credits.

To date, 1,397 new lawyers have completed the program, while 1,369 mentors have volunteered to serve. At any given time, there are roughly 400 "matched pairs" of new lawyers and mentors moving through the program. In 2015 and 2016, 505 and 426 new lawyers completed the program during the calendar year.

Annual expenses (not including ICA) for the NLMP total just under \$150,000. Program revenue, all of which comes from mandatory fees paid by new lawyers, is projected at \$20,000 for 2017. The most time-intensive staff functions include matching new lawyers with appropriate mentors, and administrative oversight of the regulatory functions.

All NLMP participants are invited to complete an online survey regarding their experience with the program. Additionally, staff compiles and regularly reviews all feedback received either by email, telephone or in-person contacts.

The overall feedback has been quite positive, with new lawyers often reaching out to specifically praise their mentor's role in their first year, or to commend the bar for the value of the mentoring year. The feedback has also been valuable in identifying areas for improvement, and several significant changes have been made based on participant input, including some

changes (notably, the Law Firm Certification Policy, discussed later) that are quite recent and likely not captured in feedback data.

Notwithstanding some of the more positive feedback, this review will focus specifically on areas where participant feedback and staff input indicate areas for further improvement.

A. Mentor Experiences

Feedback from mentors has been consistently very positive, with overall satisfaction around 90%. Most chose to become a mentor because they recognized the importance of mentoring, often in recollecting their own experiences as a new lawyer. Very few were encouraged by the promise of MCLE credits. A full 94% believed they had sufficient information and training to be an effective mentor, and did not need further assistance from the OSB.

For areas to improve, mentors consistently cited the following:

- More flexible and/or less comprehensive curriculum.
- Reduce financial and reporting requirements for new lawyers.
- Allow new lawyers to opt out if they have other avenues for mentoring or are not interested.

B. New Lawyer Experiences

A majority of new lawyers rated their experiences as positive overall, although they generally have a less favorable view of the program than the mentors. A majority of respondents felt the program had better prepared them to practice law, especially in understanding ethics, professionalism and the “unwritten rules” of practice.

Although one objective of the program is to reduce first-year stress for new lawyers, a majority of respondents disagreed with the statement that their year was “less stressful because of participation in the NLMP,” with some noting that it added to their already high stress levels. Additionally, while 38% said they most hoped to gain a “positive mentoring relationship” from the program, another 27% said their goal was to simply “meet the requirements.”

Regarding NLMP curriculum, the most valued components were: ethics/professionalism and “introduction to the legal community, public service and bar service.” The least valued components were client relations and law office management. Nearly 30% did not find the practical skills portion of the curriculum useful or relevant.

Areas for improvement were the same as expressed by mentors, perhaps more strongly worded and with more emphasis on fees.

II. Discussion of Potential Program Improvements

A. Curriculum and reporting requirements

Both mentors and new lawyers think the curriculum should be more flexible and/or less comprehensive. The NLMP covers six broad curriculum areas, five of which include 1-3 required activities along with optional items. The sixth area, practical skills, requires completion of at least 10 activities in one or more areas of substantive law. One of these items must include a writing project.

A relatively recent change in policy by staff does address some concerns, although it is too early to be reflected in survey responses. Staff has recently finalized a new *Law Firm Certification Policy* (attached). This allows law firms or other employers (i.e. government agencies) to demonstrate that they have robust training and mentoring programs that meet the objectives of the NLMP, and would exempt them from the curriculum requirements. The policy was drafted with input from professional development staff from six large law firms and one government agency. The hope is that this addresses both the concerns about the redundancy of the curriculum for new lawyers in large firms, and also the concerns about relevance of the curriculum for government lawyers or non-traditional practitioners.

Additionally, the Supreme Court Rule grants program staff the ability to exempt new lawyers from the requirement for good cause shown. This option is rarely used.

Options to consider:

- Make all activities optional (replace activity count/hours requirement)
- Eliminate practical skills/make optional
- Eliminate writing requirement/make optional
- Reduce reporting requirement to certificate of completion
- Increase visibility of the exemption option via staff discretion
- Maintain status quo until effects of new law firm certification policy can be measured

B. New lawyer fee

Both mentors and new lawyers are dissatisfied with the \$100 fee charged to new lawyer participants. The fee was originally included to offset costs of program, connote the intended value of the program itself, and reflect some minimal value of the cost of the six MCLE credits afforded to participants. However for a segment of new lawyers who are under-employed or burdened by debt, the fee is clearly an irritant at best or a hardship at worst.

Participants do have the ability to apply for a fee waiver, although few new lawyers have taken advantage of this option. This is perhaps because it is not particularly visible in the materials. Staff approves approximately six to eight fee waivers per year. One request has been denied in five years.

Options to consider:

- Eliminate \$100 fee
- Increase visibility of waiver option for unemployed/underemployed lawyers
- Offer income-based fee waivers/reductions

C. Changes to the matching process.

While overall quite effective, the matching process has two possible areas for consideration. One is the staff time devoted to matching. There are models in other states that may decrease staff time by use of an online “self-matching” system; this may be a long-term consideration given constraints in IT staff time and budgets.

The other is the quality of the matches. Although the quality is quite high overall, when a match does not work it has a significant impact on the quality of the experience for both participants.

Options to consider:

- Encourage new lawyers to find their own mentors
- Develop online forum with bios for self-matching

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
Memo Date: February 14, 2018
From: Jennifer Nicholls, Oregon New Lawyers Division Chair
Re: ONLD Report

The ONLD Executive Committee met in Warrenton on Saturday, January 6 for the annual retreat and January Executive Committee meeting. We were joined by OSB President Vanessa Nordyke, BOG Liaison Tom Peachey, and OSB CEO Helen Hierschbiel.

In an effort to assist with the BOG review of new lawyer programming, as well as internally evaluate our programming, the retreat focused on: (1) reviewing and discussing the results of the new lawyer survey; (2) commencing a review of the ONLD's subcommittees; and (3) generally discussing the needs of new lawyers in Oregon. The day-long conversation at the retreat was wide-ranging and thorough.

Recurring themes included: the future of CLEs and Webcasting opportunities to reach and connect with ONLD members who are not in the Portland Metropolitan area, methods to measure member impact, the scope of ONLD membership, the subcommittee structure of the ONLD, use of Social Media, the ONLD budget, and how the ONLD can best meet the needs of new lawyers in a changing profession. The ONLD Executive Committee will continue to revisit these themes as we continue our review and internal audit of our programming.

As part of our review of subcommittees, the Chairs of the Pro Bono and Practical Skills through Public Service Subcommittees agreed to evaluate their similar purposes, and make a recommendation about the future of these two subcommittees in light of the OSB's goals of promoting respect for the rule of law and access to justice. Those discussions will also include reviewing what the ONLD can do to support Justice Walters's request for a review of existing resources for attorneys hoping to represent low and middle-income populations.

At the Executive Committee meeting on Sunday, January 7, the Chair appointed two ad-hoc committees: (1) an ONLD By-laws Review Committee which will review and make recommendations regarding the ONLD Bylaws, including ONLD membership, whether the ONLD should be a Section rather than a Division, and the process of selecting Executive Committee members and Officers; and (2) an Ex-officio Review Committee which will review the issue of appointing ONLD members to OSB Sections and Committees to serve in and Ex-officio capacity.

The ONLD Executive Committee decided to hold a follow up "mini-retreat" on April 7 at the Bar Center. The purpose of this meeting is to review the recommendations of these two Ad Hoc committees, as well as review additional recommendations relating to the structure and programming of the ONLD generally. It is our goal to present these recommendations to the BOG Policy and Governance Committee at its April 20, 2018 meeting.

Currently, members of the ONLD Executive Committee serve as Ex Officio members of the following committees: Loan Repayment Assistance Advisory Committee, ACDI, and Pro Bono. The Chair will continue to serve as the new lawyer liaison to the LRAP Committee. Ralph

Gzik will continue to serve as the interim liaison to the ACDI pending the appointment of a permanent liaison to the ACDI for 2018. ONLD Pro Bono Subcommittee Chair will serve as liaison to the OSB Pro Bono Committee.

There was a brief conversation about the ONLD budget. No members of the Executive Committee will be attending the ABA YLD Mid-year meeting in Vancouver, BC (February 2018) at ONLD's expense, and travel is among the items that will be discussed at length in the ONLD February meeting.

The ONLD continues planning work on the Rural Regional Summit scheduled for September 21, and is beginning the work for a Financial Literacy Fair, likely to be scheduled in the fall of 2018.

The February 10 Executive Committee meeting in Salem was preceded by a Friday evening CLE and Social. Executive Committee member Anthony Kuchulis presented a CLE on training employers about sexual harassment, attended by 30 OSB members from Multnomah, Marion, Linn and Benton counties. The Executive Committee meeting continued its discussion and evaluation of its existing Subcommittees, with a focus on the Law Related Education and the Law Student Outreach Subcommittees. Additionally, there was a robust conversation about the purpose and value of travel to the four ABA Young Lawyer Division sponsored conferences each year. The Mid-year and Annual Meetings are generally focused on policy changes, while the spring and fall meetings are focused on program ideas. The Chair will determine whether any members will attend this year's meetings, with the future of travel to be considered as the ONLD moves through the Program Review.

The ONLD has adopted a Consent Agenda format, and the February meeting was the first meeting conducted with a Consent Agenda.

**February 2018
Progress Report for
OSB Futures Task Force
Recommendations**
(Highlighted items are updates.)

I. Changes to Rules of Professional Conduct				
Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. 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	Adopted by Court.	LEC to draft Formal Ethics Opinion	
B. Adopt Recommendation to Amend Oregon RPC 7.2 and 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers.	2.2 Pages 38-40	Committee and charge being developed.	Bring to BOG for discussion and approval. Appointment and welcome memo from President.	
C. 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	Waiting for implementation of paraprofessional program.		

II. Regulation/Development of Alternative Legal Service Delivery Models

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
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	Committee and charge being developed.	Appointment and welcome memo from President.	
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	<p>PAC Report</p> <ul style="list-style-type: none"> HB 4095 Expanding Evidentiary Privilege for Lawyer Referral Services (Passed) 		
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	<p>PAC Report</p> <ul style="list-style-type: none"> HB 4097 Legal Resource Centers 		

III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Establish Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources	3.1 Pages 47-48	<p>BOG sent to CEO.</p> <p>Committee created and meetings being held. See minutes for full report.</p>	<p>Continue meetings.</p> <p>Coordinate with OSCIIF and OSC CJl re topic areas</p>	

<p>B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</p>	<p>3.3-3.4 Pages 51-54</p>	<p>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings. See NCSC Report.</p>	<p>Continue to attend OSC CJI meetings and report to BOG</p>	
<p>C. Promote use of technology and other means to increase A2J in Lower Income & Rural Communities</p>	<p>7.2—7.3 Pages 70-71</p>	<p>BOG sent to CEO. CEO attending Civil Justice Initiative Task Force meetings</p> <p>Participating in Global Legal Hackathon 2/23—2/25: https://globallegalhackathon.com/</p> <p>Consideration of new OSB Technology & Innovation Award.</p> <p>LSP including technology and rural service in accountability review process.</p> <p>Rural Opportunity Fellowship reviewed by D&I Director.</p> <p>Series in OSB Bulletin on rural law practice opportunities. Four published so far: 10/15; 12/15; 7/16; 8/17. Next scheduled for spring 2018.</p> <p>ONLD to hold Rural Summit to explore A2J issues on September 21, 2018.</p> <p>Pro Bono Committee review Texas Rural Justice Project</p>	<p>Continue to attend OSC CJI meetings and report to BOG.</p> <p>On February BOG agenda</p> <p>Conduct accountability review process.</p> <p>Complete review. Make changes as appropriate.</p> <p>Draft and publish 5th article.</p> <p>Hold Summit.</p>	

IV. Enhancement of Existing Bar Programs and Resources

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Ask PSAC to explore ways to increase availability unbundled services offered through LRS	3.5 Pages 54-55	PSAC/LRS exploring.		
B. Continue to Improve & Enhance Resources for Self-Navigators	3.6 Pages 56-57	BOG sent to CEO. Participating in SFLAC pro se assistance subcommittee. Ms. Nordyke testified in favor of HB 4097 Legal Resource Centers.	Continue SFLAC participation. Continue support for self-navigator resources.	
C. Work to improve the public perception of lawyers	7.4 Page 72	BOG sent to CEO. Media relations manager working with media.	Continue work with media.	
D. Expand the Lawyer Referral Service and Modest Means Program	5.1 Page 64	BOG sent to CEO. On 2018 Work Plan for B&F and P&G Committees		
E. Enhance Practice Management Resources				
1. Develop Comprehensive Training Curriculum re Modern Law-Practice Management Methods	6.1 Page 65-68	See Report from PLF CEO		
2. Promote unbundled legal services	7.1 Page 69	See Report from PLF CEO. Fee Agreement Compendium update to include broader sampling of alternative fee agreements. GCO column in 1/18 Bulletin on ethics of unbundling. http://www.osbar.org/bulletin/issues/2018/2018January/html5/index.html?page=9 .		

V. BOG Policy Development

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Embrace Data-Driven Decision-Making through adoption of policies and KPIs.	4 Page 61-63	On P&G 2018 Work Plan		2018
1. Dedicate OSB Resources to Data collection, design and dissemination	4.4 Page 63	<p>BOG sent to CEO.</p> <p>New Association Management Software (AMS) implementation in process. Update.</p> <p>Legal Needs Study in process. Update.</p> <p>Data collection for OSB Economic Survey complete. https://www.osbar.org/_docs/resources/Econsurveys/17EconomicSurvey.pdf</p> <p>Survey of lawyers from non-dominant cultures in development.</p> <p>IT Director hired.</p>	<p>Continue AMS implementation.</p> <p>Finish Study.</p> <p>Complete and conduct survey.</p>	2018

VI. Development of New Bar Programs

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Create Incubator/Accelerator Program	8 Page 86-93	<p>New lawyer survey results received and discussed by BOG.</p> <p>Given to ONLD for consideration.</p>		



CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE: January 8, 2018
TO: Helen Hierschbiel, Oregon State Bar Chief Executive Officer 
FROM: Carol J. Bernick, Chief Executive Officer
RE: PLF's Response to Future's Task Force Recommendations 6.1 and 7.1

Recommendation 6.1: Enhance Practice Management Resources.

In your report to the BOG at the November 2017 meeting, you indicated you had referred this recommendation to the PLF. We have now evaluated it and provide the following information.

On its face, the recommendation is aimed at the Bar's solo lawyers. Approximately 50% of the PLF's Covered Parties are solo attorneys. The recommendation acknowledges that the PLF 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." It also mentions the Small & Solo Firm Section's annual two-day practice management CLE. The Recommendation suggests that these resources be "enhanced" in three specific ways: automation, legal outsourcing and project management.

The loss prevention programs at the PLF, including the on-line resources, CLEs and the assistance of the Practice Management Advisors are to help lawyers reduce their risk of malpractice. The collection and review of actual claims data regarding about what leads to malpractice drives the creation and revision of our practice management resources. We start with the claim and evaluate what was missing or what failed. We then create or improve resources to address the actions or omissions that resulted in the claim.

In short, while the recommendations from the Futures Task Force might be a benefit for lawyers' profitability, such benefit is only coincidental to our work to avoid malpractice. We believe others (such as the Small and Solo Firm Section) are in a better position to promote many of the recommendations in 6.1.

All that said, we do provide a number of tools (CLEs, practice aids and one-on-one consultations) aimed at automation of a lawyer's practice. In 2016, 563 lawyers registered for 17 separate technology-

Memo To : Helen Hierschbiel, Oregon State Bar
Date : January 8, 2018
Page : 2

related CLEs put on by the PMAs.¹ Most all of our programming is available on line and 384 additional people either ordered the CD/DVD, did an audio download or streamed a technology-related CLE. Attached as Exhibit 1 is the power point for the Technology Tips CLE. You can see the topics are broad and at least touch on many of the items in Recommendation 6.1. Attached as Exhibit 2 is a list of technology-related practice aids and the number of downloads for each in the last year (as of November 16, 2017).

Finally, in the first quarter of 2018 we will finish updating our nearly 400 practice aid. One improvement we made was the elimination of the “Technology” category. We have incorporated those resources into other categories to emphasize that technology tools should be an integral part of the whole practice.

1. Automation. The recommendation suggests that automation can (and should) be used for tasks that lawyers perform repeatedly. The report maintains that document automation, text automation, speech recognition, client intake, tracking time and billing can all be improved (that is, done more efficiently, improve a lawyer’s competitive edge and provide better client service) through practice management software. Very little of these enhancements to a lawyer’s practice is directly related to loss prevention. To the extent a malpractice component is involved, it is equally likely to create (rather than avoid) a malpractice issue if the automation is not carefully constructed, implemented and reviewed.

In short, we believe the PLF already provides significant technology training. We always welcome ideas about additional topics useful to Oregon lawyers, but evaluate those suggestions through the lens of our malpractice prevention mission.

2. Legal Outsourcing. Legal outsourcing is unrelated to malpractice prevention and I do not believe the PLF will be offering training related to outsourcing.
3. Project Management. Again, project management may help lawyers be more efficient and cost effective but it is largely unrelated to malpractice prevention.

Recommendation 7.1: Unbundled Legal Services

We do not believe the PLF is the best place to promote this for two reasons. First, a frequent allegation in malpractice claims is that the lawyer failed to do “something.” That “something” can be narrow (i.e. not deposing a certain person) or broad (i.e. not protecting the estate from taxes). Often there is a dispute between the Covered Party and the claimant about whether the “something” was within the scope of engagement. Ideally of course, the engagement letter is thorough and clear such that disputes about the scope of engagement do not exist. But no engagement letter can be drafted to account for

¹ Every other year (in even years), the PMAs go “on the road” to present CLEs throughout the date. Thus, the number of registrants in 2017 was fewer (102) because we did fewer CLEs.

Memo To : Helen Hierschbiel, Oregon State Bar
Date : January 8, 2018
Page : 3

every scenario; often the nature of the engagement changes as more facts are known to the Covered Party or other circumstances arise. While the PLF supports greater access to justice for more people, we see limited scope representation as fraught with malpractice risk. Thus, we do not believe we are the proper entity to promote it.

Second, we do not believe the PLF should try to write limited scope engagement templates because we would thus be creating the standard of care against which lawyers will be judged in a malpractice case. Moreover, because the scope of engagement is so case and fact specific, we believe trying to create a template for unbundled representation is a near impossibility.

CJB/clh

Attachments:

Exhibit 1 – PowerPoint for Technology Tips CLE

Exhibit 2 – List of technology-related practice aids and the number of downloads in the last year



Technology Tips & Practice Pointers

Professional
OSB Liability Fund

Exhibit 1



Saving text messages

1. Screenshots
2. Third party applications

<https://www.osbplf.org/inpractice/saving-text-messages/>

Saving Texts Using Third Party Apps

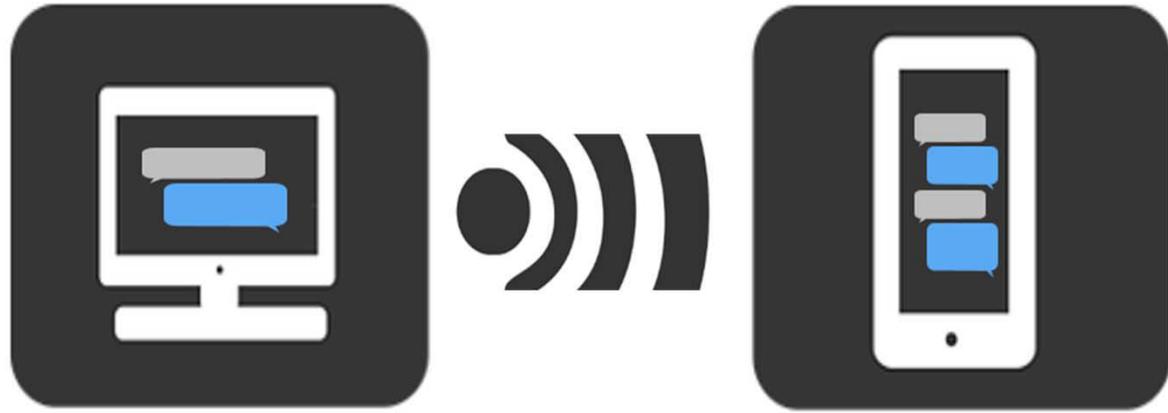
iPhone

- PhoneView (Mac only)
- CopyTrans (PC only)
- iExplorer (Mac and PC)

Android

- SMS Backup+
- My Backup Pro
- SMS Backup & Restore
- Super Backup & Restore

Send Text Through Computer



What you need:

- Client's cell phone number
- Client's phone carrier
- Carrier's SMS gateway address

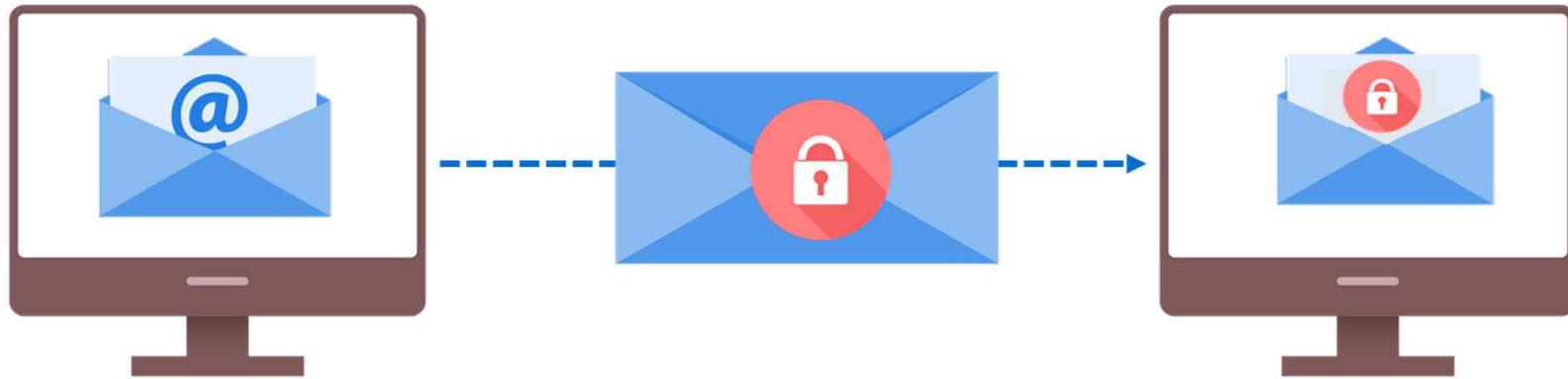
<https://www.osbplf.org/inpractice/send-text-messages-to-your-clients-without-using-your-cell-phone/>

Overwhelmed by Emails?



- Create folders & automatic rules
- 4 Ds: Delete, Delegate, Defer, Do
- Use email filing assistants

Encrypting Emails



Consider encrypting when:

- Emailing sensitive or confidential information
- Recipient is emailing from unsecured devices, network, or shared email account

SecureGail

<https://www.youtube.com/watch?v=MIZcqrFELsQ&t=33s>



<https://www.youtube.com/watch?v=YESZb1ijQl8>
<https://www.youtube.com/watch?v=ONexJyiJk4g>

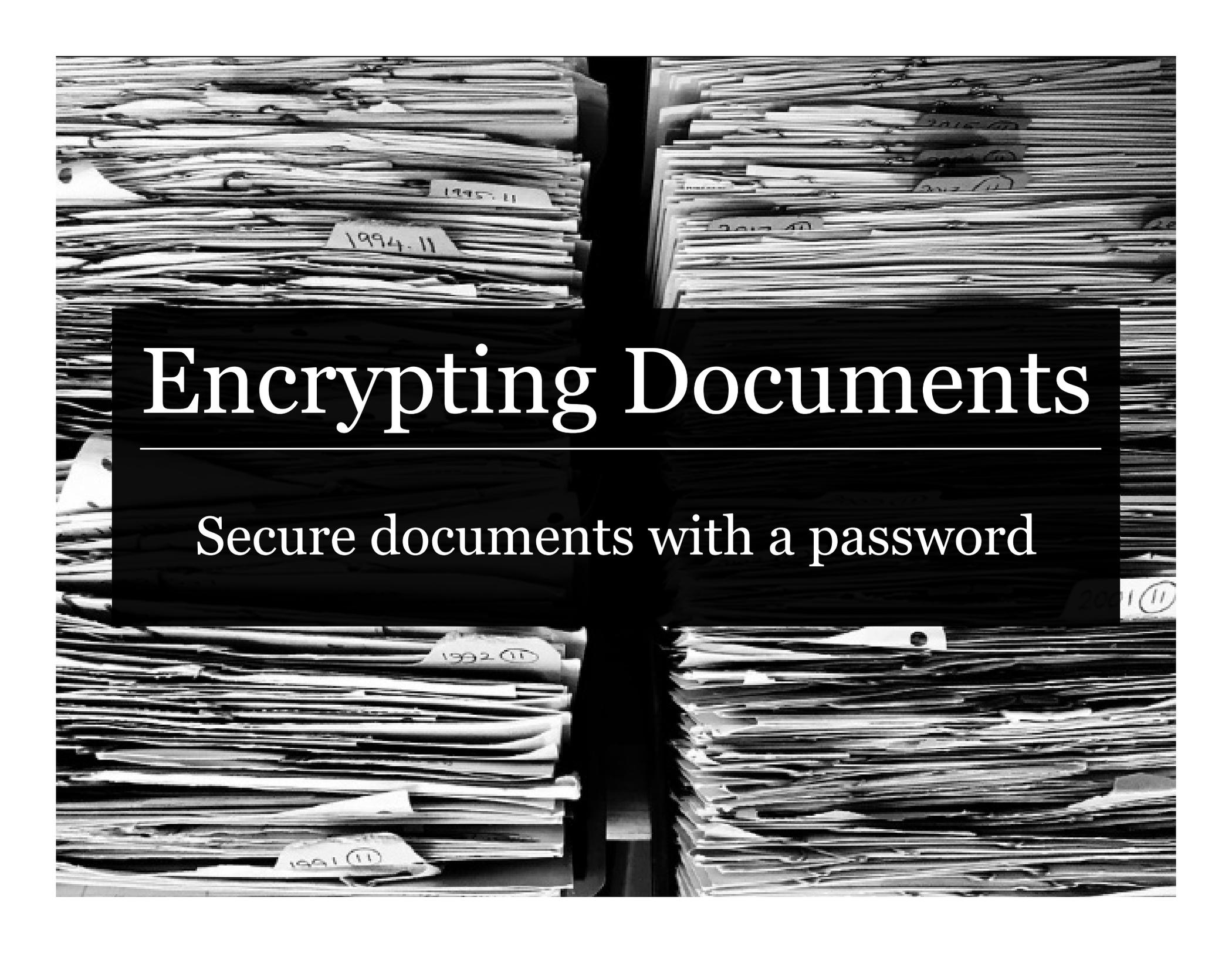
PGP: *Mailvelope*

<https://www.youtube.com/watch?v=4ba0K-DhoGo>
https://www.youtube.com/watch?v=-Hz4O_P6bVE



CITRIX ShareFile

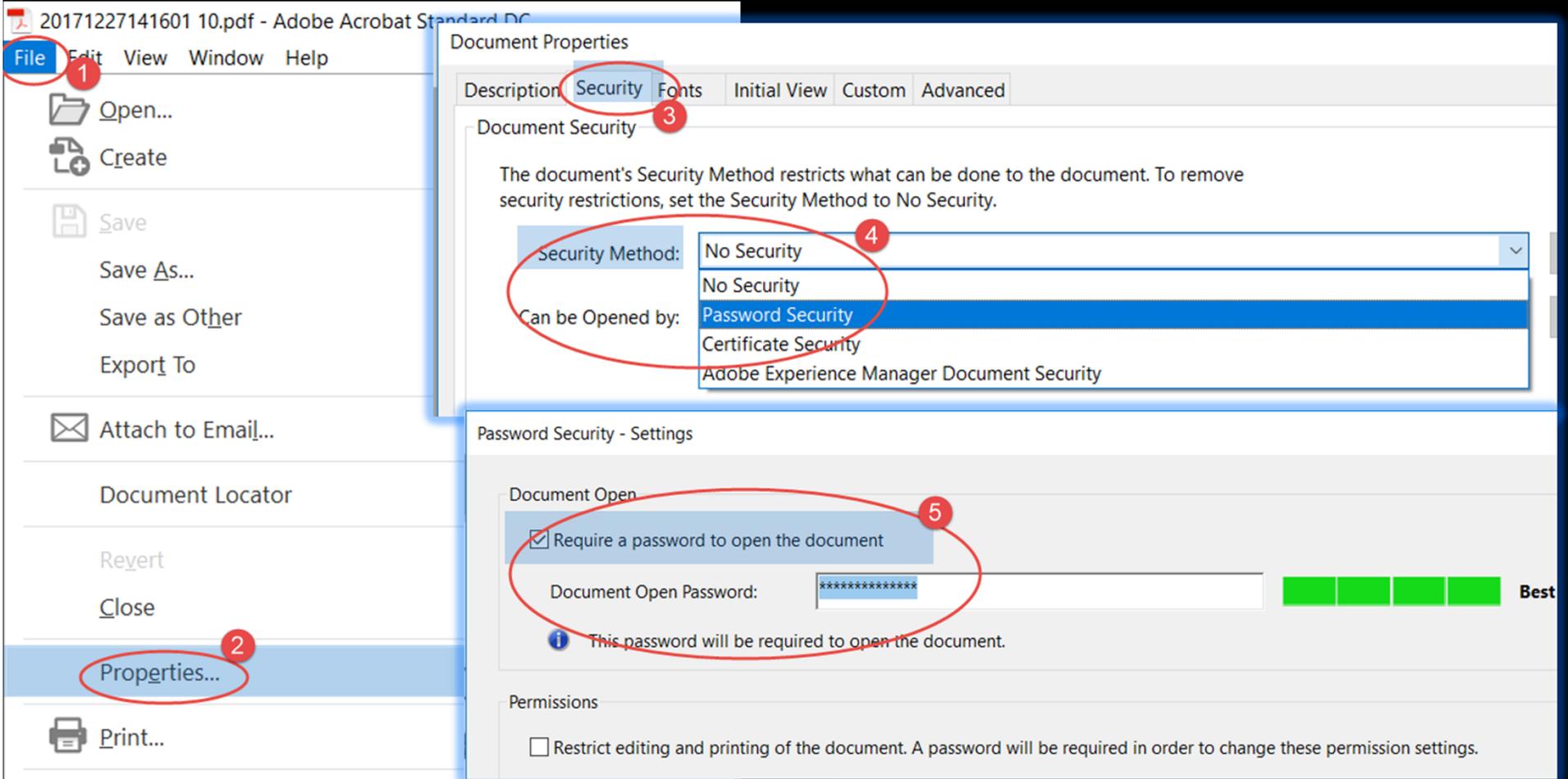
TitanFil



Encrypting Documents

Secure documents with a password

Encrypting PDF



Click on File > Properties > Security tab > Security Method > select Password Security > Check Require a password to open the document > Enter a strong password > Click on OK.

Encrypting MS Word

The screenshot shows the Microsoft Word interface with the following steps highlighted:

1. Click on the **File** tab in the ribbon.
2. Click on the **Info** section in the left-hand navigation pane.
3. Click on the **Protect Document** button in the Info section.
4. Click on the **Encrypt with Password** option in the Protect Document dropdown menu.
5. Enter a password in the **Encrypt Document** dialog box.

The **Encrypt Document** dialog box contains the following text:

Encrypt the contents of this file

Password:

Caution: If you lose or forget the password, it cannot be recovered. It is advisable to keep a list of passwords and their corresponding document names in a safe place. (Remember that passwords are case-sensitive.)

Buttons: **OK**, **Cancel**

Click on File > Info > Protect Document > Select Encrypt with Password > Enter a strong password > Click on OK.

Cloud Security



Why encrypt before uploading to cloud storage?

Prevent access by provider
Make file sharing more secure
Not rocket science

<https://www.osbplf.org/inpractice/understanding-security-when-using-cloud-storage/>

Cloud Storage Providers



Dropbox



Google Drive



iCloud



OneDrive



Cloud Encryption Software



boxcryptor

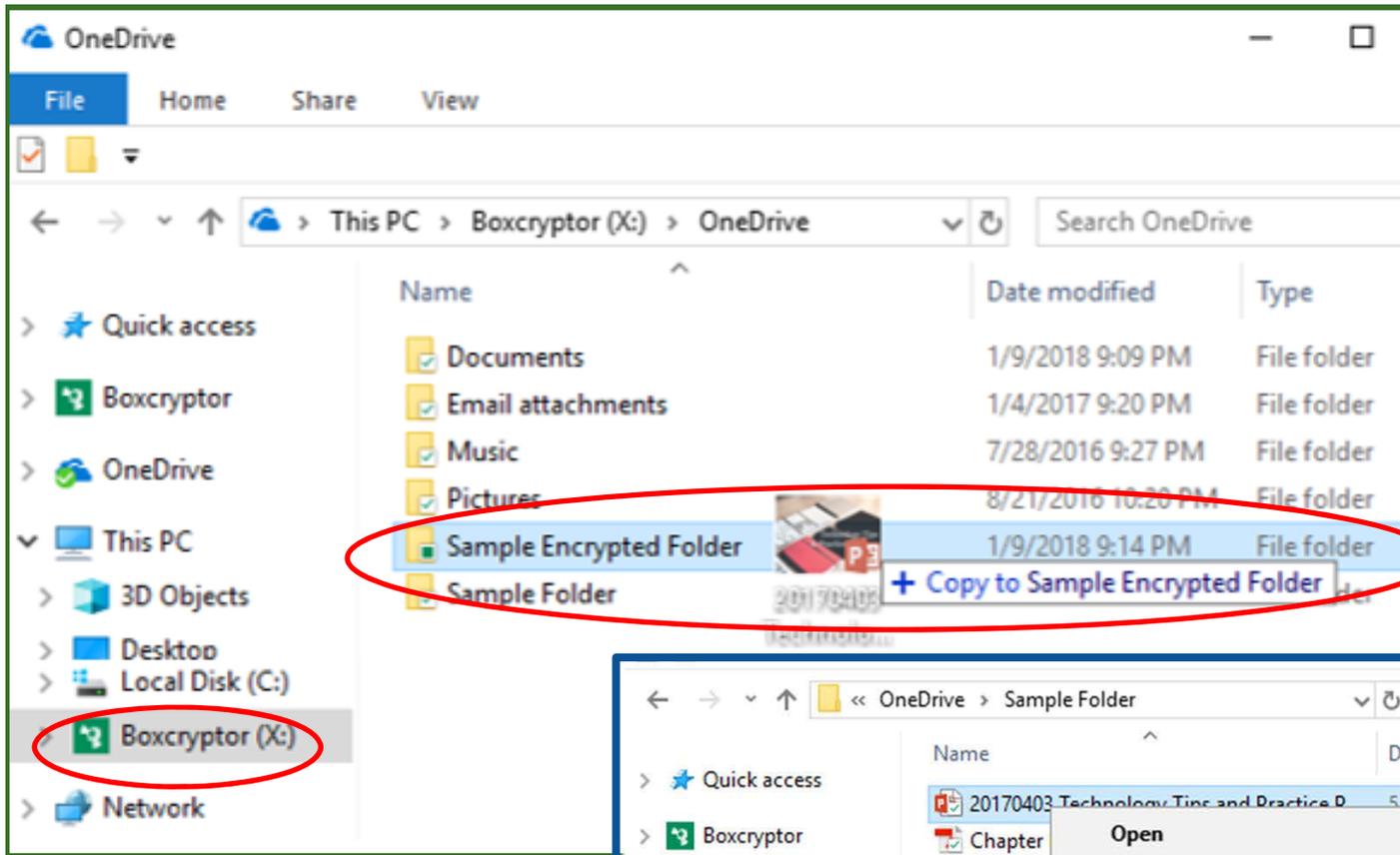
<https://www.youtube.com/watch?v=jLpXETg9wWM>



<https://www.odrive.com/features/encryption>

Cryptomator

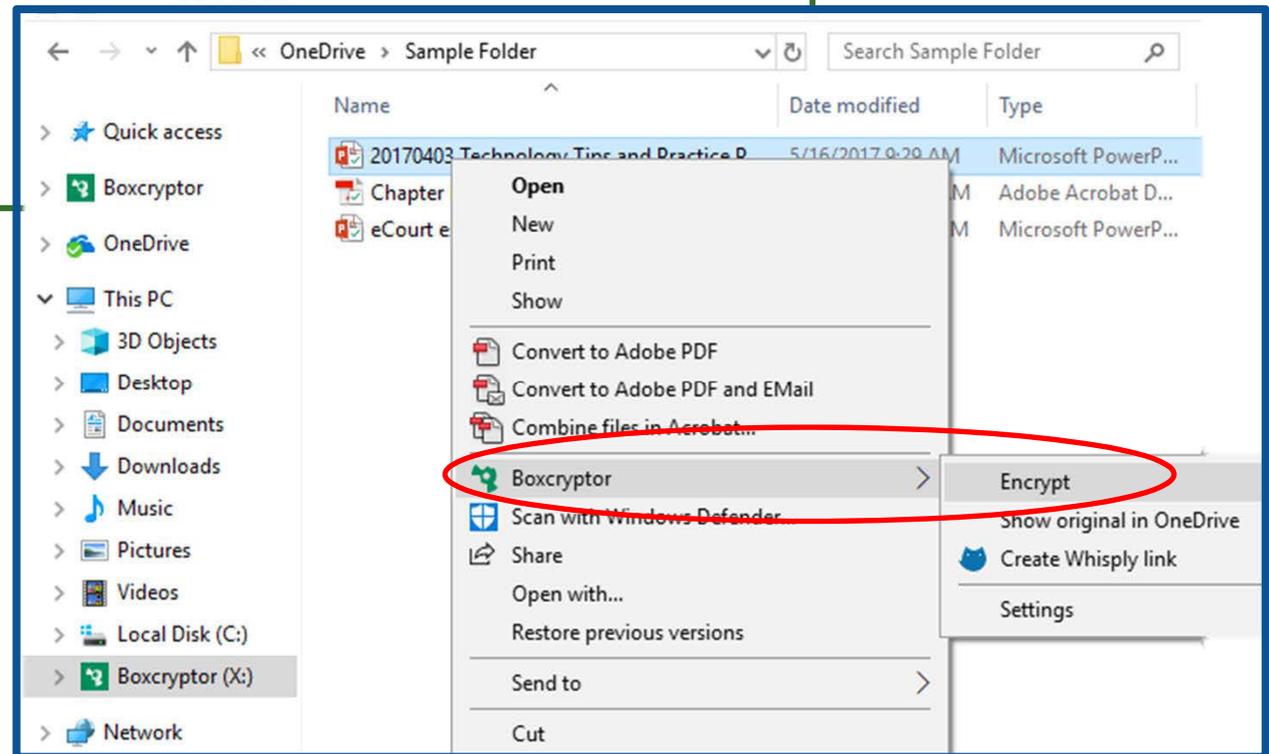
<https://www.youtube.com/watch?v=g9AozihHZ14>



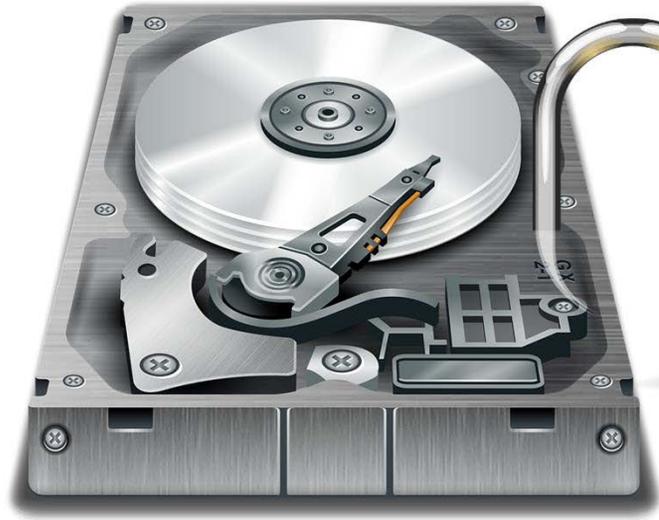
Drag and drop into encrypted folder



Right click on file to encrypt



Example of how it works...



Full Disk Encryption

Makes data on
computer unreadable
without decryption
key

Prevents
unauthorized access
when computer is
lost or stolen



Windows

Bitlocker

- Built-in full-disk encryption
- Only available in Windows 7, 8, 10 Pro or Enterprise version

<https://support.microsoft.com/en-us/help/4028713/windows-10-turn-on-device-encryption>
<https://www.howtogeek.com/192894/how-to-set-up-bitlocker-encryption-on-windows/>

Third Party Encryption Programs

- VeraCrypt
- DiskCryptor
- COMODO Disk Encryption

Comparison chart: https://en.wikipedia.org/wiki/Comparison_of_disk_encryption_software

Mac OS

FileVault 2

- Built-in full-disk encryption
- Only available in OS X Lion or later

<https://support.apple.com/en-us/HT204837>



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Practical Advice for Oregon Lawyers

Subscribe at:
www.osbplf.org/inpractice

Anatomy of a Ransomware Attack: One Firm's Story

December 20, 2017



Imagine you post an ad on craigslist to hire a legal assistant. Someone immediately responds by email and attaches a zip file. Believing the file contains the applicant's resume and cover letter, you click on the attachment and download it to your server. Soon afterward, you can't access any files on your computer. You have just been infected by ransomware.

Responding to Requests for the Client File

December 04, 2017



Lawyers routinely receive requests to share materials from the client file. Sometimes clients ask the lawyer directly, but other times the request comes from new counsel or third parties. Evaluating these requests requires you to consider who is entitled to the client file, as well as what documents and materials belong in the client file. Furthermore, you must also ask whether any limitations prevent you from releasing the complete contents of the client file.

Tips for Establishing and Maintaining an Organized Office

November 17, 2017



According to a professional organizer based in New York City, the average person loses at least one hour per day because of disorganization. Disorganization can be particularly damaging to attorneys, who need to utilize their time efficiently in order to maintain their practice.

Remember that it can be easy to organize your office, but the importance lies in maintaining the system longterm.

Don't Fall Prey to Spear Phishing

November 13, 2017



You may have heard about the popular tax season IRS scam in which the targeted taxpayers were notified by email they were in serious trouble for tax fraud. The IRS scam is an example of spear phishing: the targeted attempt to steal information.

Secure Communication

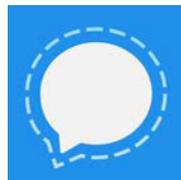
Encrypted Text Messaging:

Signal | WhatsApp | Wickr | iMessage



Encrypted Voice/Video Calling:

Signal | FaceTime



<https://www.eff.org/secure-messaging-scorecard/>

Mobile Scanning

Turn your phone into a portable scanner



- Captures 4 corners of a document; not background
- Save as PDF & perform OCR
- Enhance and annotate scanned images
- Integrate with cloud storage

Scanning Apps:

CamScanner Scannable by Evernote
Google Drive's App Genius Scan



Print & Save Webpages

- Make any webpage print friendly
- Remove annoying graphics
- Add it to your browser
- Get a button for your website



printfriendly
Save Money & the Environment

<http://www.printfriendly.com/>

Billing by Software

- Improve client relations
- Improve profits
- Reduce errors and disputes

Stand-alone Software

(Desktop)

 **sage** Timeslips

 **Tabs3**
Reliable Software. Trusted Service.

RTG

(Cloud)

 **TIME SOLV**

 **bill4time**

TIME59

RTG

Packaged Software

(Cloud)

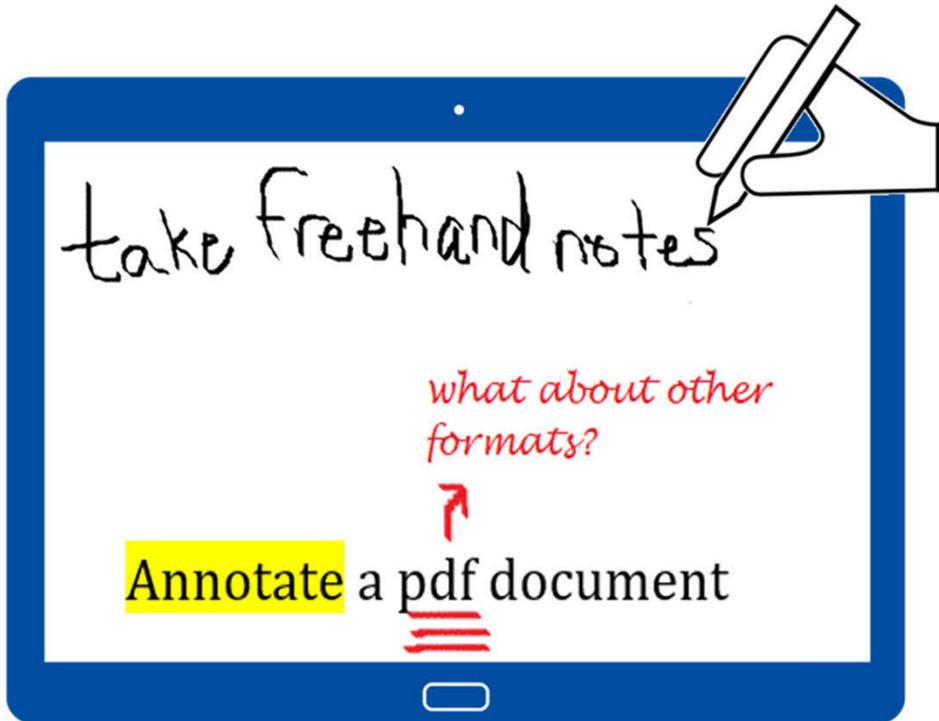
 **Clio**  **MyCase**



rocket matter[®]

 **CosmoLex**

Versatile Tablets



PDF Annotation

Surface Pro:

Drawboard
Foxit Mobile PDF

iPad: iAnnotate

Readdle PDF Expert

Take Notes/Draw

OneNote (SurfacePro)

GoodNotes (iPad)

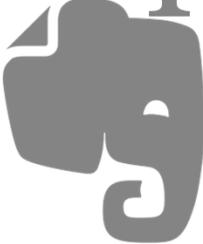
Newer version MS Office (most OS)



Storing & Organizing Online Contents

Collect, organize, store information in one location on the Web or computer

Declutter: helps get rid of notepads, sticky notes, bits of paper containing pertinent or random information



How Lawyers Use **EVERNOTE**

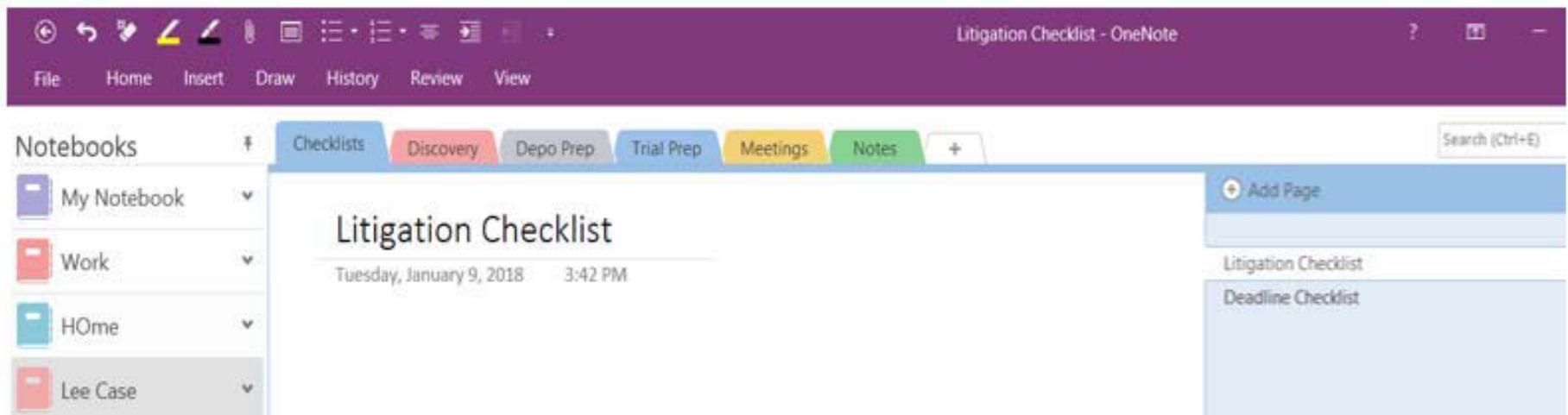
- Keep track of ideas for blog posts and presentation topics
- Store legal research (case law, statutes, treatise excerpts, web articles, PDFs) and links containing research materials

- Store notes, documents, and ideas for committee work and other projects
- Collect and archive informal handwritten notes, post-its, telephone messages and reminders

How Lawyers Use OneNote



- Replace traditional notebooks
- Take free-form notes instead of using legal notepads (on tablet)
- Make audio recording that syncs with handwritten notes
- Repository for online research



Conferencing Made Easy



Conference Calling

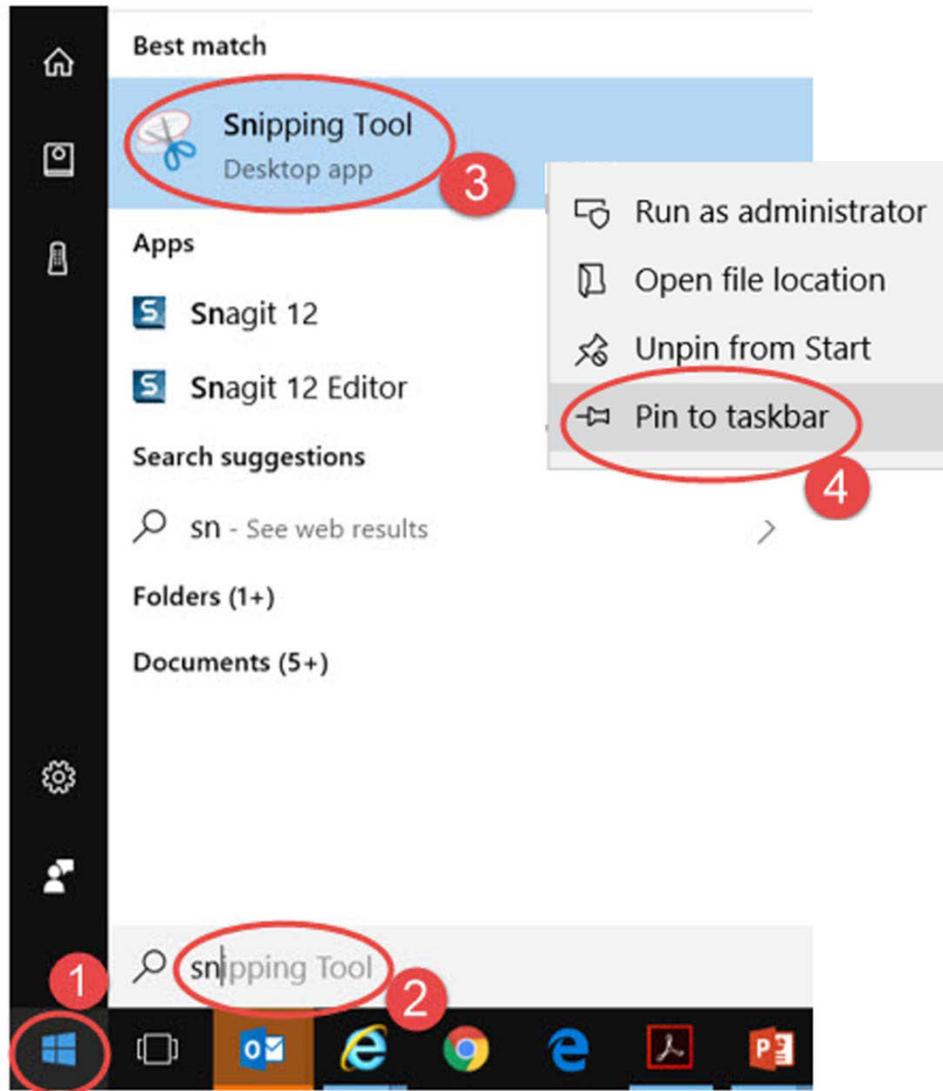
- ConferenceCalling.com
- UberConference.com
- Appear.in

Video & Voice Calls

- Citrix GoToMeeting
- Cisco WebEx
- Zoom.us

Screen Captures

Windows Snipping Tool



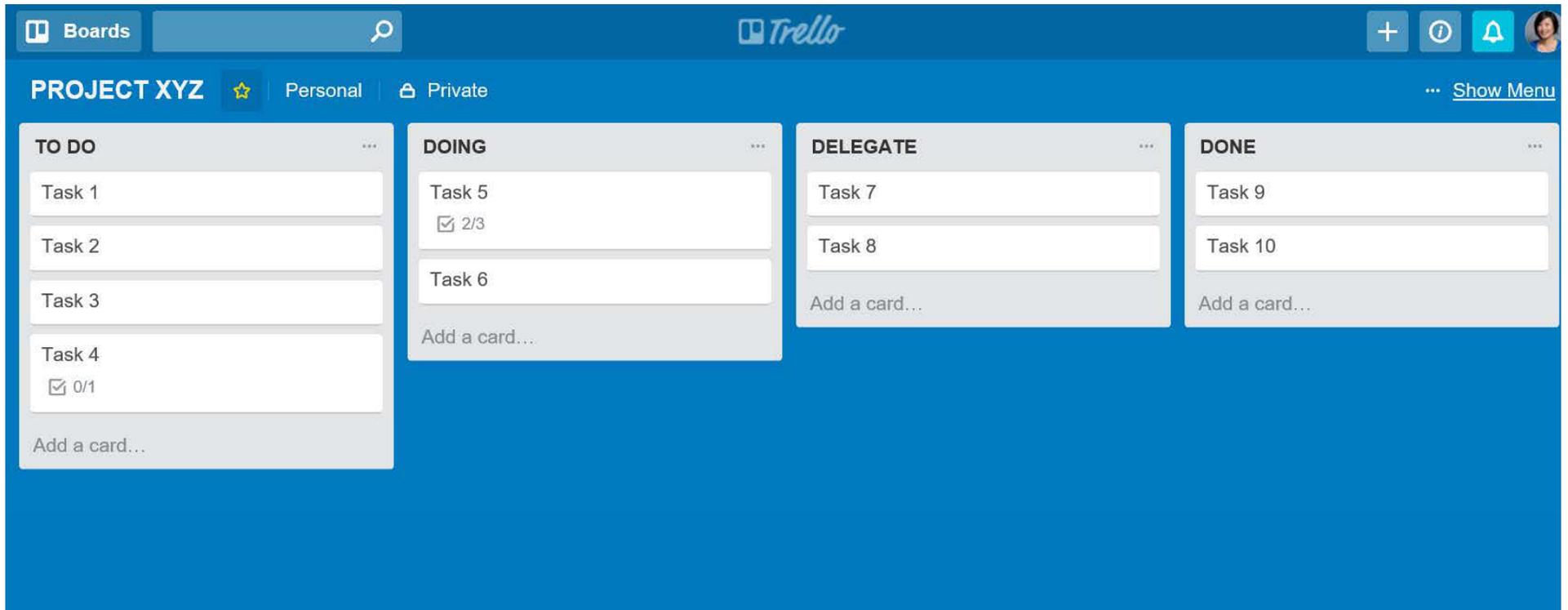
1. Click on Windows button
2. Type “snipping tool” in search box
3. Right click on the result list
4. Select Pin to taskbar

Project Management

Keep track of tasks
Get status update on projects
Communicate without emailing



- Card system
- Drag-drop functionality
- In-line editing
- Checklist with progress meter
- Activity log
- Deadline reminder





- # Real-time messaging
- # Team channels & private chat
- # Drag-drop file sharing
- # Contextual search
- # 5 GM storage limit (free plan)
- # Limit 10,000 messages

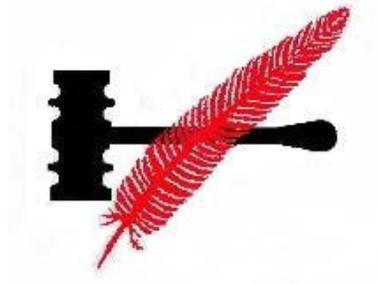
The screenshot shows the Slack interface. On the left is a sidebar with a dark purple background. Under the "Channels" section, there is a list of channels: # 2017ropes, # blog, # general (highlighted in green), # newsyoucanuse, # officeclosureprocess, and # practice-aid-review. Below this is the "Direct Messages" section with a plus sign icon, listing slackbot, hongd (you), and jenniferm. The main area on the right shows the "#general" channel. At the top of the channel view, there are icons for a star, a group of 4 people, and 0 reactions. The chat history includes: hongd (1:04 PM) joined #general along with sheilab.; hongd (1:09 PM) Hello everyone!!; rachele (1:10 PM) joined #general along with jenniferm.; sheilab (1:51 PM) joined #general.; jenniferm (1:55 PM) Hello! Thanks for setting this up Hong! It looks fun! I can't wait to try it out and get more familiar with things.; hongd (2:56 PM) This #general channel is used to communicate general things and if we're talking about something specific or related to our projects, we should use that particular channel. Thanks

Deadline Management

Use multiple reminders

- ☑ 1 month
- ☑ 1 week
- ☑ 3 days

Tickle periodic reviews



Deadline calculating software



Backup: 3-2-1

3

Copies of Data

1 original
2 backup

2

Backed up to
two different
storage types

1

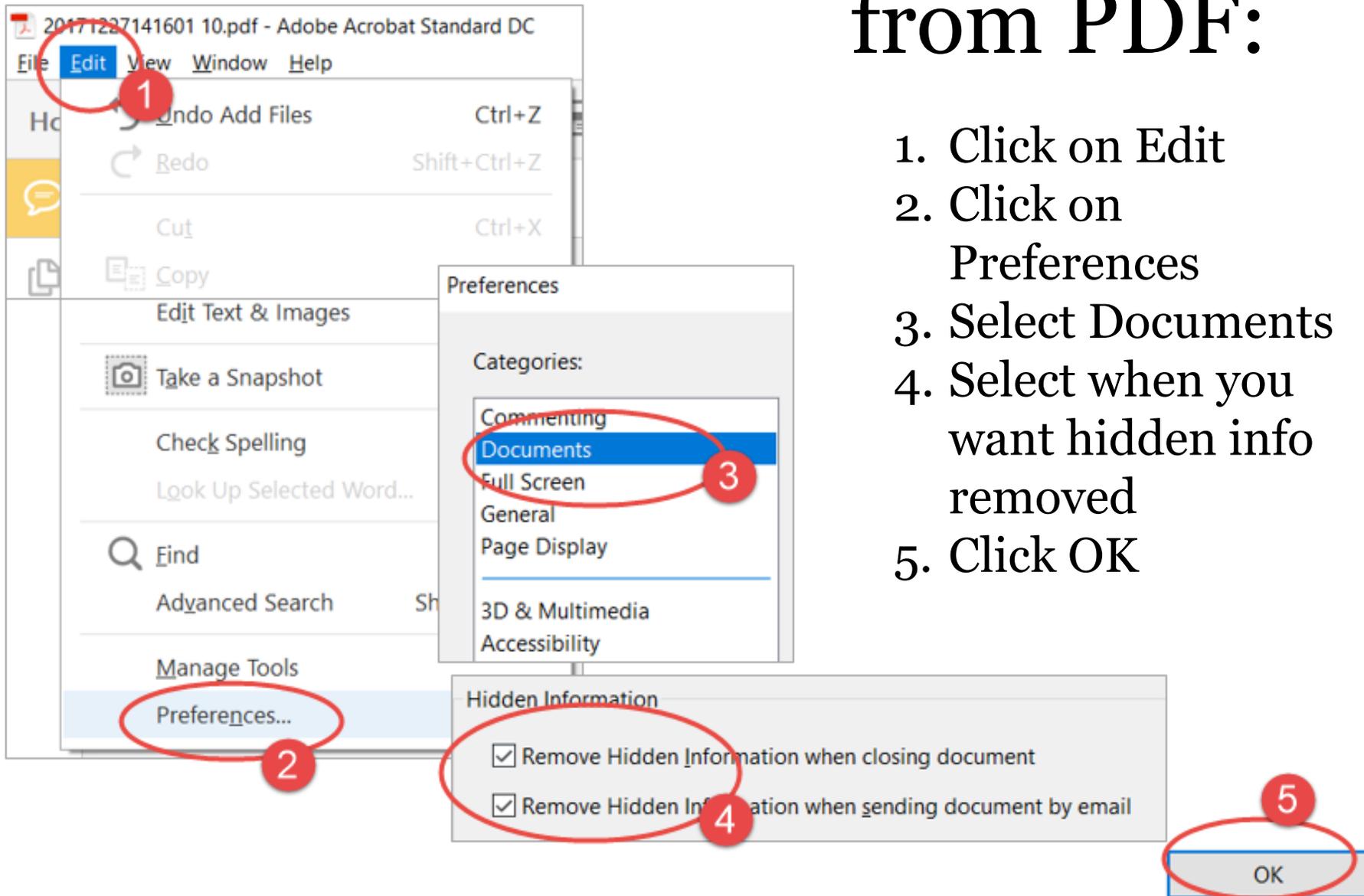
Keep at least
one copy
offsite



Confidential information or information prejudicial to the client may be revealed through metadata

Prevent inadvertent disclosure by scrubbing metadata before exchanging documents

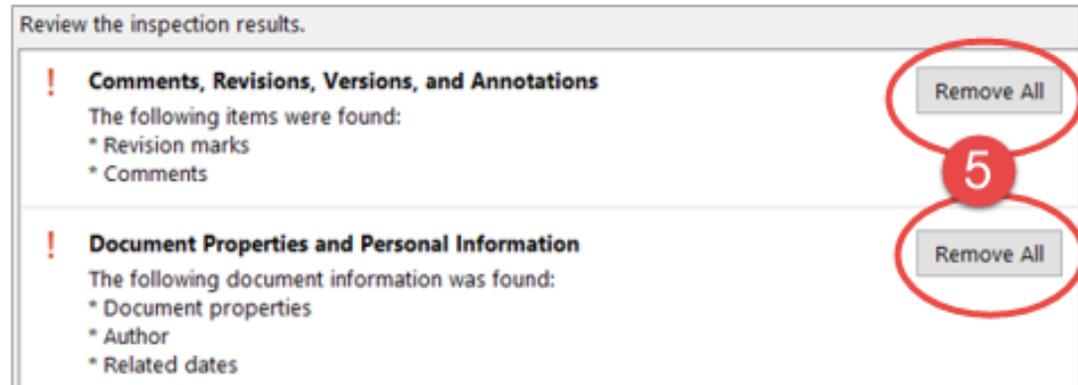
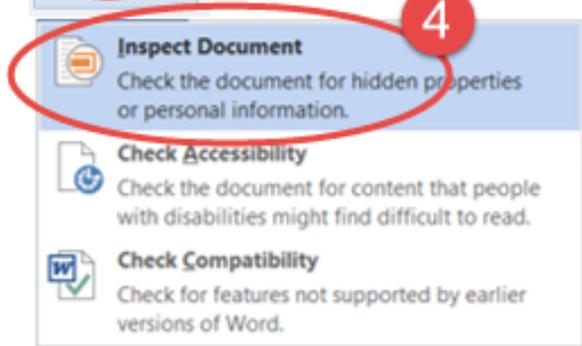
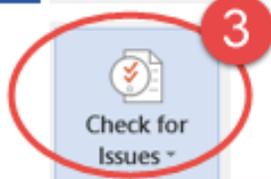
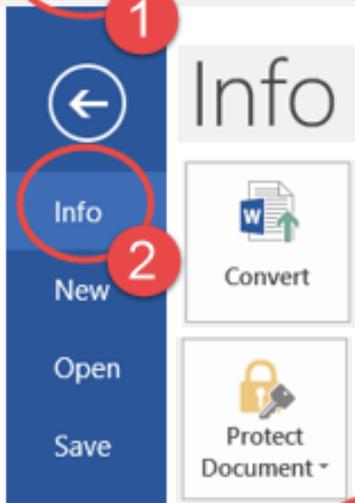
Remove from PDF:



1. Click on Edit
2. Click on Preferences
3. Select Documents
4. Select when you want hidden info removed
5. Click OK

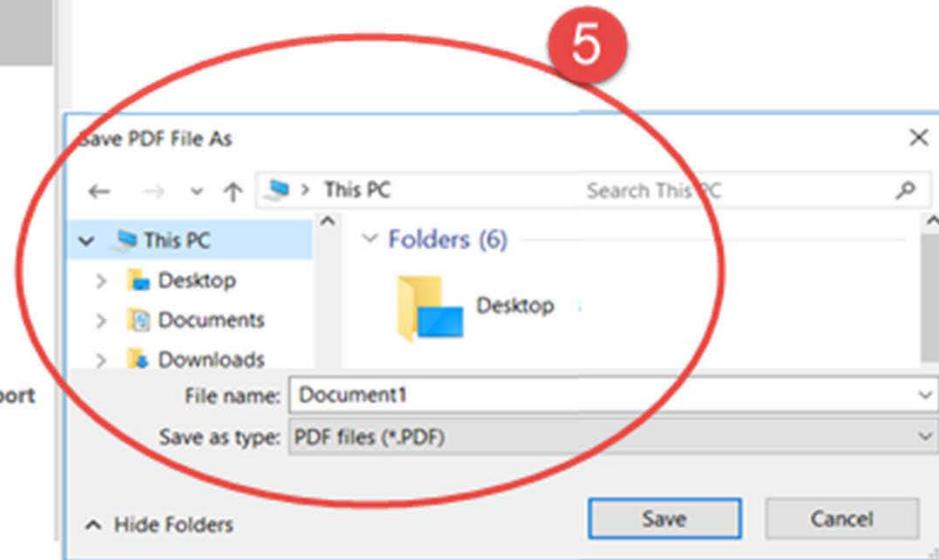
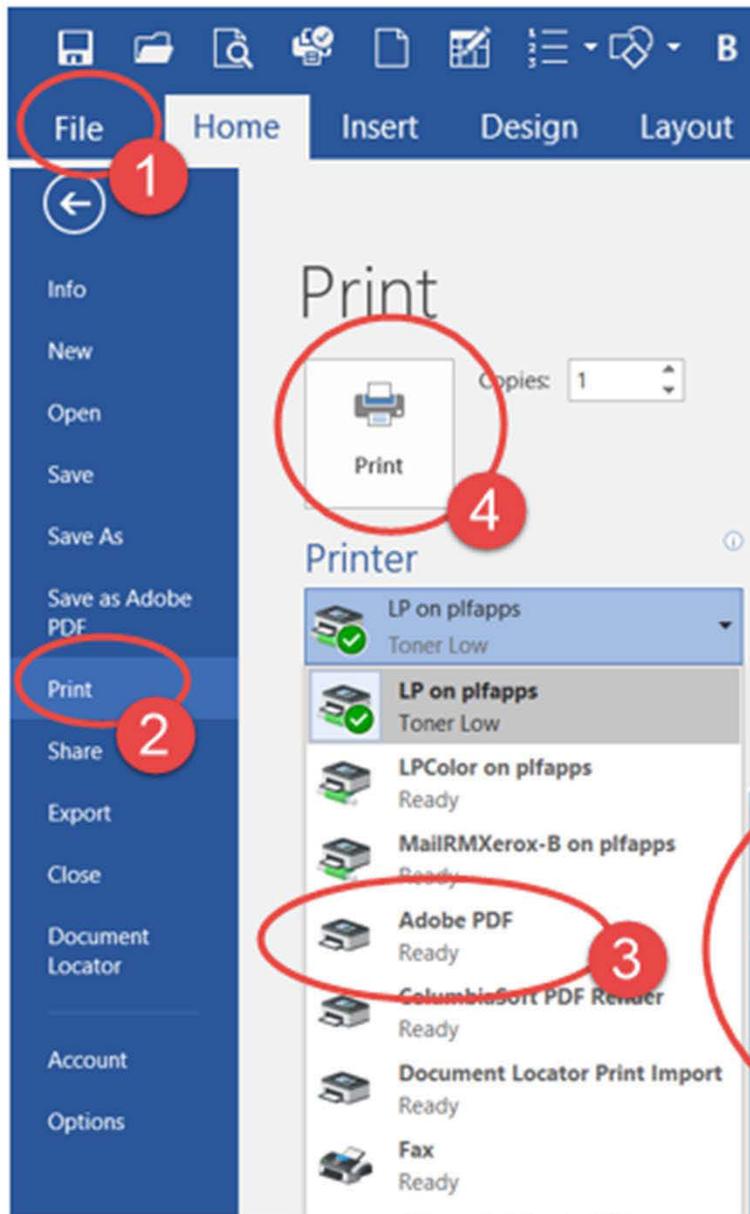
Remove from MS Word:

1. Click on File
2. Click on Info
3. Check for Issues
4. Inspect Document
5. Click on Remove All



Print to PDF:

1. Click on File
2. Click on Print
3. Select Adobe PDF from printer menu list
4. Click on Print
5. Rename and save the PDF file



Ransomware Attack



Phishing Email Red Flags

The Bait

 *Sender's email address doesn't look right or is spoofed to look legit*

Tue 1/2/2018 12:11 PM
courtclerk@chaidk.ra.im
Hearing: Case 15JR1547
To [REDACTED]

 *Email contains "zip," ".exe," ".scr," or ".bat" file*

Smith_J Court Notice.zip
96 KB

NOTICE TO APPEAR

Hereby you are notified that you have been scheduled to appear in front of the Court at the time and day stipulated in the notice attached, signed by the judge. Please, open it now and read it very carefully.

Please bring all documents and witesses related to this case with you to Court on the hearing date.

IMPORTANT: if you do not appear at the hearing, the Judge will dismiss your case.

Sincerely,

Clerk of the Court

 *Poor grammar and misspelled words
Refers to threats
High sense of urgency*

The Infection



Ransomware can spread to any device connected to the infected computer, including the server and backup.

The Ransom Note

Your personal files are encrypted!

Your important files **encryption** produced on this computer: photos, videos, documents, etc. [Here](#) is a complete list of encrypted files, and you can personally verify this.

Encryption was produced using a **unique** public key [RSA-2048](#) generated for this computer. To decrypt files you need to obtain the **private key**.

The **single copy** of the private key, which will allow you to decrypt the files, located on a secret server on the Internet; the server will **destroy** the key after a time specified in this window. After that, **nobody and never will be able** to restore files...

To obtain the private key for this computer, which will automatically decrypt files, you need to pay **100 USD / 100 EUR** / similar amount in another currency.

Click «Next» to select the method of payment and the currency.

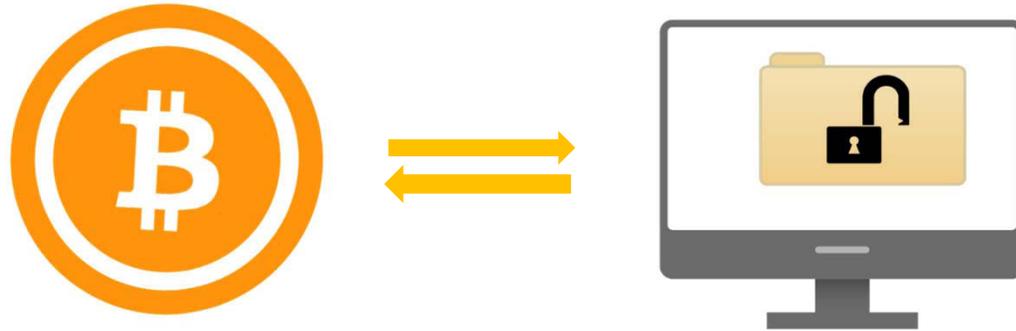
Any attempt to remove or damage this software will lead to the immediate destruction of the private key by server.

Private key will be destroyed on
9/8/2013
5:52 PM

Time left
56 : 16 : 12

Next >>

The Payment/Recovery



Payment doesn't guarantee 100% decryption of files



May need to recover from uninfected backup, if any

What to Do

- Plan in advance
- Call IT Specialist
- Call FBI
- Call legal ethics coun
- Call PLF



Resources
available at
www.osbplf.org

Articles:

- “Anatomy of Ransomware Attack: One Firm’s Story,” *In Brief*, January 2018
- “Beware Ransomware,” *In Brief*, August 2016
- “What to Do After A Data Breach,” *In Brief*, April 2016

CLE:

- Data Security/Data Breach: What Every Lawyer Needs to Know to Protect Client Information,” *Learning the Ropes*, November 2017



eCourt Tips

- Check and update email
- Set up proper email forwarding
- Whitelist @ojd.state.or.us;
@tylerhost.net; @tylertech.com
- Check Supplemental Local Rules

eCourt Self Help

<https://oregon.tylerhost.net/>

Court Information

Welcome to OJD HTML 5 eFiling Site

UTCR Updates:

The Chief Justice has adopted out of cycle changes to UTCR Chapter 21. These changes go into effect August 1, 2016. Chapter 21 can be accessed here: http://courts.oregon.gov/OJD/docs/programs/utcr/CJO_2016-027.pdf

IMPORTANT REMINDER: The electronic filing system DOES NOT automatically serve opposing parties when you eFile a document with the court. You must take specific steps to ensure you are properly serving opposing parties. For details on how this works, consult the eService Quick Reference Guide and UTCR Chapter 21.100. The UTCR can be accessed here: <http://courts.oregon.gov/OJD/programs/utcr/pages/utcrrules.aspx>

Statewide Policy and Standards for Acceptance of Electronic Filings. The policy and its standards can be accessed here:

Actions



Sign In



Register

Self Help

[Web Training Sessions](#)

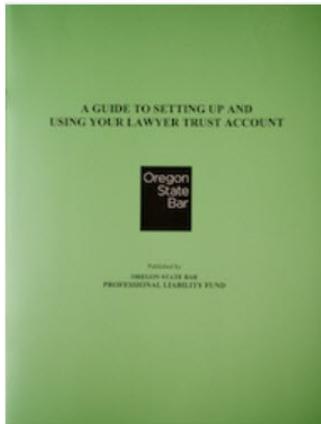
[Training Videos](#)

[User Guides](#)

Share your screen with [GoToAssist](#)

PLF Resources

Searchable Books



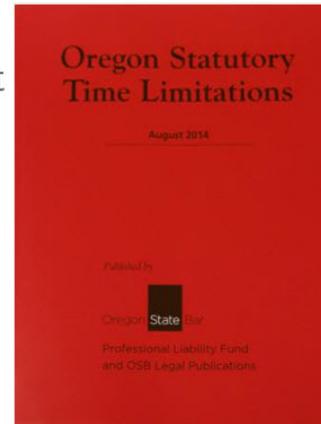
A Guide to Setting Up & Using Your Lawyer Trust Account (2016)



Download PDF



Order Print Copy



Oregon Statutory Time Limitations Handbook (2014)



Download PDF



Order Print Copy



A Guide to Setting Up & Running Your Law Office (2016)



Download PDF



Order Print Copy



Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (2015)



Download PDF



Order Print Copy

<https://www.osbplf.org/practice-management/publications.html>

PLF Resources

Discounts

Business Productivity

- Corel WordPerfect X7
- Corel PDF Fusion
- Corel Perfect Authority

Conflict Checking Software

- Client Conflict Check

Editing for Legal Profession

- WordRake

News Monitoring Service

- Zama

Practice Management Software

- Clio
- CosmoLex
- MyCase
- Rocket Matter

Contact Us

PLF Practice Management Advisors

www.osbplf.org

503-639-6911 | 800-452-1639

Sheila Blackford

sheilab@osbplf.org

Hong Dao

hongd@osbplf.org

Rachel Edwards

rachele@osbplf.org

Jennifer Meisberger

jenniferm@osbplf.org

 free and confidential

Downloaded Practice Aids and Forms – November 16, 2017

41 Office Systems Review Checklist

Opening a Law Office

163 Checklist for Opening A Law Office

66 Home-Based Law Office

Technology

44 ABA Technology Resources

99 Checklist for Scanning Client Files

25 Digital Signatures

41 Disclaimers for emails, ListServes, Usenets, Web Sites, & Newsletters

44 Document E-mail as a part of the Client File

18 How to Back-up Your Computer

21 How to Set Up and Use Client Folders in Outlook

33 Information Security Checklist for Small Businesses

40 Online Data Storage Providers

22 Our Paperless World

35 Paperless in One Hour

0 Removing Metadata

11 Resources for MAC Users

18 Retention of Electronic Records

47 Saving Text Messages To and From Clients

12 Setting up and Using Rules in Outlook to Automatically Sort Email

12 Setting Up and Using Signature Blocks in Outlook

11 Setting Up and Using Templates for Repetitive Emails in Outlook

27 Using Outlook for Case Management



CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE: January 31, 2018
TO: Helen Hierschbiel, OSB CEO
FROM: Carol J. Bernick, PLF CEO
RE: Futures Task Force

This memo supplements my memo dated January 8, 2018. I wanted to give you some additional information about the PLF's efforts to assist lawyers with accessing and using technology. In late September 2018, the PLF will host (possibly along with the Small and Solo Firm Section) a Tech Demo Day. The event will be held at the Bar Center. We have reserved the Columbia Room as well as some of the smaller conference rooms throughout the building to allow as many vendors as we can to set up and demonstrate their products.

We are currently considering vendors with the following types of products and services: productivity, accounting software for lawyers, practice management software, legal research, document creation/assembly, speech recognition, cloud backup, private cloud, email encryption, document management, virtual assistance, credit card processing, IT, and time tracking.

I suggested to our loss prevention staff the possibility of adding a project management vendor in light of the Task Force recommendations. We also discussed possibly working with the Bar to co-sponsor future events like this. My understanding is that the Bar Center is not an ideal place to hold this due to the noise that is generated from having multiple demonstrations going on at the same time. We have to balance between trying to "pack in" as many vendors as we can while also making sure each vendor has a meaningful opportunity to demonstrate its product. In other words, we need bigger space which would have a cost impact.

Please let me know if you have any questions.

CJB/clh

OREGON STATE BAR
Self-Navigators Workgroup

Meeting Date: January 18, 2018
Memo Date: February 9, 2018
From: Legal Services Program
Re: Self-Navigators Workgroup Update

The workgroup members from the Oregon Judicial Department (OJD), the OSB Lawyer Referral Service (LRS), the Oregon State Bar (OSB), and Legal Aid Services of Oregon (LASO) met on January 18, 2018 to continue discussing website coordination for Oregon's self-navigators. Guests from the Multnomah Bar Association (MBA) were invited to be part of the coordination effort. The workgroup began the meeting by reviewing and discussing the research conducted by LRS staff, Juan Costantini. Mr. Costantini had been charged with looking at the workgroup's websites under landlord/tenant law to review the content and determine which websites are helpful to self-navigators and which websites could be expanded or link to another resource. The intent of the research was to help the workgroup eliminate duplicity, fill in existing gaps in information and assure accurate and relevant cross referencing for self-navigators.

Mr. Costantini conducted a review of the websites and summarized his findings in an excel workbook. The workbook listed subject matter subtopics under the area of landlord/tenant law with links to the corresponding websites indicating which subtopics are present or missing and which subtopics are cross-referenced and duplicated. LRS discussed using a flagging system to keep links current; however, realized it would be more cost effective to keep one copy of the workbook with the workgroup submitting changes as needed.

A couple of areas were discussed for the continued work on the landlord/tenant worksheet.

1. The workgroup identified that the subject matter subtopics may not be complete due to a lack of available expertise in landlord/tenant law. The OJD suggests getting a landlord/tenant lawyer to review it for missing subtopics and adding those if needed. It was also suggested to cross reference the subtopics with barbri because it would have a comprehensive list of landlord/tenant law subtopics.
2. The gaps in the cross-referenced subtopics across the three websites might be due to each entity using a different subheading with the same information. OSB and LASO will take a closer look at their subtopic information and headings to assure the information is comprehensive and not duplicative.

Guests from the MBA shared their insights about the possible legal resource center at the new Multnomah County Courthouse opening in 2020. The MBA wants to create short videos to help self-navigators that come to the legal resource center. They also plan to host a hackathon to bring together legal, technology and social services to brainstorm an app and/or kiosk for self-navigators. They envision kiosks in public places to make answers more accessible without the fear of going to the court house. Kay Pulju demonstrated the videos produced by the OSB and found on the OSB website. The OSB

produces numerous videos across many legal areas to help self-navigators. Since the OSB has numerous videos available to self-navigators the MBA is going to rethink their strategy regarding producing videos given that the OSB has already taken a lead.

The next workgroup meeting will be held in mid-April 2018 to discuss the continued revisions to the landlord/tenant law worksheet and the information that will be gathered in the meantime on family law resources.

OREGON STATE BAR
Self-Navigators Workgroup

Meeting Date: October 18, 2017
Memo Date: October 24, 2017
From: Legal Services Program
Re: Self-Navigators Workgroup Update

The workgroup consisting of members from the Oregon Judicial Department (OJD), the OSB Lawyer Referral Service (LRS), the Oregon State Bar (OSB) and Legal Aid Services of Oregon (LASO) met to discuss the recommendations from the Futures Task Force on resources each entity produces for Oregon's self-navigators.

Currently each entity has a working website that is continually changing to assist self-navigators. The OJD is working on having mobile friendly pages and creating online services for ePay, eFiling and iForms. The interactive online forms self-guide self-navigators through the process electronically generating, completing, filing and respond to cases from any computer. The OJD strives to stay neutral in website content. The OSB focuses on self-navigators by offering a library of short videos on OSB tv Legal Q&A, narratives on a variety of topics and other resource links. Content and videos are based on referral request questions and issues reported by LRS personnel. The narratives with the use of Google Translate can be translated into over 100 languages. LASO's website connects into a national website: LawHelp.org. It is a website template of content which is mobile friendly and frequently available in Spanish. The website focuses on family and housing and links to other resources for sub focuses such as debt collection and other consumer/finance topics. LASO's website focuses on those areas of law that most effect the low income populations they serve.

Although budgets are not endless, each entity strives to maximize the usefulness of their websites by maintaining accurate and up to date content; keeping websites at a 6-8 grade reading level; basing content on current concerns and issues and condensing the number of clicks to retrieve information and achieve higher visibility through internet searches.

The workgroup discussed web site coordination with the goal to eliminate duplicity, fill in existing gaps in information and assure accurate and relevant cross referencing between the OJD, OSB and LASO websites. The workgroup decided the research should be conducted by LRS staff. The LRS would not only benefit from the research but they will be able to decipher which website would be helpful to the self-navigator and which website could expand or link to another resources. The workgroup agreed the first legal topic that should be researched is landlord/tenant as each website offers content in relation to their perspective entity.

The next workgroup meeting will be held in mid-January 2018 to discuss the findings of LRS staff research, implement recommendations and continue the discussion.

EXECUTIVE SUMMARY

CALL TO ACTION:
**Achieving Civil
Justice for All**

*Recommendations to the Conference of Chief Justices
by the Civil Justice Improvements Committee*

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Center for Constitutional
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The Call and a Strategic Response

Americans deserve a civil legal process that can fairly and promptly resolve disputes for everyone—rich or poor, individuals or businesses, in matters large or small. Yet our civil justice system often fails to meet this standard. Runaway costs, delays, and complexity are undermining public confidence in our system and denying people the justice they seek. This has to change. The Conference of Chief Justices (CCJ) is leading the charge to evolve this pillar of our democracy for the 21st century. Informed by data and proven experience, our Recommendations are a roadmap for restoring function and faith in a system that is too important to lose. We can again be the best choice for every citizen: affordable, efficient, and fair for all.

Restoring public confidence means rethinking how we work in fundamental ways. We need to put citizens back at the center of our system. We must ensure they are heard, respected, and capable of getting a just result, not just in theory, but in everyday practice. We have to harmonize the fairness of our process with the modern, flexible experience people expect. These Recommendations empower courts to embrace new procedures and technologies, to give each matter the resources it needs—no more, no less—and to prudently shepherd the cases we face now.

Given the profound challenges facing the civil justice system and the recent spate of reform efforts, the time was right to take a step back and examine the civil justice system holistically, consider the impact and outside assessments of the recent pilot projects, and develop a comprehensive set of recommendations for civil justice reform to meet the needs of the 21st century. The CCJ created the Civil Justice Improvements (CJI) Committee to develop the Recommendations that follow. They are grounded in research and supported by the experience of state court innovators who are challenging the status quo on behalf of citizens and succeeding. The Recommendations are crafted to work across local legal cultures and overcome the significant financial and operational roadblocks to change. With concerted action, we can realize the promise of justice for all. Our citizens deserve it. Our democracy depends on it.

With concerted action, we can realize the promise of justice for all. Our citizens deserve it. Our democracy depends on it.

Underlying Realities

Recent empirical research tells us the contemporary civil justice system is very different from the picture generally imagined by most judges and lawyers. High-value tort and commercial contract disputes are only a small proportion of civil caseloads. Instead, the vast majority of civil cases are debt collection, landlord/tenant, mortgage foreclosure, and small claims cases involving relatively modest monetary claims. Very little formal adjudication takes place in these cases. Most cases are disposed by default judgment or dismissal. At least one party, usually the defendant, is unrepresented in more than three-quarters of the cases.

Research also shows that some litigants with meritorious claims and defenses are effectively denied access to justice because it is beyond their financial means to litigate. Others, who have the resources and legal sophistication to do so, are opting for private alternatives to the civil justice system. Reductions in the proportion of civil cases resolved through formal adjudication threaten to erode a publicly accessible body of case law and undermine the ability of other branches of government to respond effectively to changing societal circumstances that become apparent through claims filed in state courts.

In response to these realities, courts must improve how they serve citizens in terms of efficiency, cost, and convenience and make the court system a more attractive option to achieve justice in civil cases.

The Recommendations are founded on several core premises:

- The court, not lawyers or the parties, must control the pace of litigation.
- The “court” is not solely the trial judge. The term encompasses the entire judicial branch including its staff and technological resources.
- Civil cases should be triaged immediately at filing to determine the amount of judicial attention needed to resolve all disputed issues in a just, timely, and cost-effective way.
- Based on the initial assessment, cases should be assigned to a pathway with procedural rules that provide a presumptively sufficient process to meet the needs of the case.
- Effective rules, procedures, and business practices are especially critical to ensure just, speedy, and inexpensive resolutions in uncontested cases and cases involving large asymmetries in legal expertise.

...courts must improve how they serve citizens in terms of efficiency, cost, and convenience...

Recommendations

RECOMMENDATION 1

Courts must take responsibility for managing civil cases from time of filing to disposition.

- 1.1** Throughout the life of each case, courts must effectively communicate to litigants all requirements for reaching just and prompt case resolution. These requirements, whether mandated by rule or administrative order, should at a minimum include a firm date for commencing trial and mandatory disclosures of essential information.
- 1.2** Courts must enforce rules and administrative orders that are designed to promote the just, prompt, and inexpensive resolution of civil cases.
- 1.3** To effectively achieve case management responsibility, courts should undertake a thorough statewide civil docket inventory.

RECOMMENDATION 2

Beginning at the time each civil case is filed, courts must match resources with the needs of the case.

RECOMMENDATION 3

Courts should use a mandatory pathway-assignment system to achieve right-sized case management.

- 3.1** To best align court management practices and resources, courts should utilize a three-pathway approach: Streamlined, Complex, and General.
- 3.2** To ensure that court practices and resources are aligned for all cases throughout the life of the case, courts must triage cases at the time of filing based on case characteristics and issues.
- 3.3** Courts should make the pathway assignments mandatory upon filing.
- 3.4** Courts must include flexibility in the pathway approach so that a case can be transferred to a more appropriate pathway if significant needs arise or circumstances change.
- 3.5** Alternative dispute resolution mechanisms can be useful on any of the pathways provided that they facilitate the just, prompt, and inexpensive disposition of civil cases.

Courts must take responsibility for managing civil cases from time of filing to disposition.

RECOMMENDATION 4

Courts should implement a Streamlined Pathway for cases that present uncomplicated facts and legal issues and require minimal judicial intervention but close court supervision.

- 4.1 A well-established Streamlined Pathway conserves resources by automatically calendaring core case processes. This approach should include the flexibility to allow court involvement and/or management as necessary.
- 4.2 At an early point in each case, the court should establish deadlines to complete key case stages, including a firm trial date. The recommended time to disposition for the Streamlined Pathway is 6 to 8 months.
- 4.3 To keep the discovery process proportional to the needs of the case, courts should require mandatory disclosures as an early opportunity to clarify issues, with enumerated and limited discovery thereafter.
- 4.4 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

RECOMMENDATION 5

Courts should implement a Complex Pathway for cases that present multiple legal and factual issues, involve many parties, or otherwise are likely to require close court supervision.

- 5.1 Courts should assign a single judge to complex cases for the life of the case, so they can be actively managed from filing through resolution.
- 5.2 The judge should hold an early case management conference, followed by continuing periodic conferences or other informal monitoring.
- 5.3 At an early point in each case, the judge should establish deadlines for the completion of key case stages, including a firm trial date.
- 5.4 At the case management conference, the judge should also require the parties to develop a detailed discovery plan that responds to the needs of the case, including mandatory disclosures, staged discovery, plans for the preservation and production of electronically stored information, identification of custodians, and search parameters.
- 5.5 Courts should establish informal communications with the parties regarding dispositive motions and possible settlement, so as to encourage early identification and narrowing of the issues for more effective briefing, timely court rulings, and party agreement.
- 5.6 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

Judges must manage trials in an efficient and time-sensitive manner...

RECOMMENDATION 6

Courts should implement a General Pathway for cases whose characteristics do not justify assignment to either the Streamlined or Complex Pathway.

- 6.1 At an early point in each case, the court should establish deadlines for the completion of key case stages, including a firm trial date. The recommended time to disposition for the General Pathway is 12 to 18 months.
- 6.2 The judge should hold an early case management conference upon request of the parties. The court and the parties must work together to move these cases forward, with the court having the ultimate responsibility to guard against cost and delay.
- 6.3 Courts should require mandatory disclosures and tailored additional discovery.
- 6.4 Courts should utilize expedited approaches to resolving discovery disputes to ensure cases in this pathway do not become more complex than they need to be.
- 6.5 Courts should establish informal communications with the parties regarding dispositive motions and possible settlement, so as to encourage early identification and narrowing of the issues for more effective briefing, timely court rulings, and party agreement.
- 6.6 Judges must manage trials in an efficient and time-sensitive manner so that trials are an affordable option for litigants who desire a decision on the merits.

RECOMMENDATION 7

Courts should develop civil case management teams consisting of a responsible judge supported by appropriately trained staff.

- 7.1 Courts should conduct a thorough examination of their civil case business practices to determine the degree of discretion required for each management task. These tasks should be performed by persons whose experience and skills correspond with the task requirements.
- 7.2 Courts should delegate administrative authority to specially trained staff to make routine case management decisions.

RECOMMENDATION 8

For right-size case management to become the norm, not the exception, courts must provide judges and court staff with training that specifically supports and empowers right-sized case management. Courts should partner with bar leaders to create programs that educate lawyers about the requirements of newly instituted case management practices.

Courts should conduct a thorough examination of their civil case business practices...

RECOMMENDATION 9

Courts should establish judicial assignment criteria that are objective, transparent, and mindful of a judge’s experience in effective case management.

RECOMMENDATION 10

Courts must take full advantage of technology to implement right-size case management and achieve useful litigant-court interaction.

- 10.1** Courts must use technology to support a court-wide, teamwork approach to case management.
- 10.2** Courts must use technology to establish business processes that ensure forward momentum of civil cases.
- 10.3** To measure progress in reducing unnecessary cost and delay, courts must regularly collect and use standardized, real-time information about civil case management.
- 10.4** Courts should use information technology to inventory and analyze their existing civil dockets.
- 10.5** Courts should publish measurement data as a way to increase transparency and accountability, thereby encouraging trust and confidence in the courts.

RECOMMENDATION 11

Courts must devote special attention to high-volume civil dockets that are typically composed of cases involving consumer debt, landlord-tenant, and other contract claims.

- 11.1** Courts must implement systems to ensure that the entry of final judgments complies with basic procedural requirements for notice, standing, timeliness, and sufficiency of documentation supporting the relief sought.
- 11.2** Courts must ensure that litigants have access to accurate and understandable information about court processes and appropriate tools such as standardized court forms and checklists for pleadings and discovery requests.
- 11.3** Courts should ensure that the courtroom environment for proceedings on high-volume dockets minimizes the risk that litigants will be confused or distracted by over-crowding, excessive noise, or inadequate case calls.
- 11.4** Courts should, to the extent feasible, prevent opportunities for self-represented persons to become confused about the roles of the court and opposing counsel.

Courts should publish measurement data as a way to increase transparency and accountability...

RECOMMENDATION 12

Courts must manage uncontested cases to assure steady, timely progress toward resolution.

- 12.1** To prevent uncontested cases from languishing on the docket, courts should monitor case activity and identify uncontested cases in a timely manner. Once uncontested status is confirmed, courts should prompt plaintiffs to move for dismissal or final judgment.
- 12.2** Final judgments must meet the same standards for due process and proof as contested cases.

RECOMMENDATION 13

Courts must take all necessary steps to increase convenience to litigants by simplifying the court-litigant interface and creating on-demand court assistance services.

- 13.1** Courts must simplify court-litigant interfaces and screen out unnecessary technical complexities to the greatest extent possible.
- 13.2** Courts should establish Internet portals and stand-alone kiosks to facilitate litigant access to court services.
- 13.3** Courts should provide real-time assistance for navigating the litigation process.
- 13.4** Judges should promote the use of remote audio and video services for case hearings and case management meetings.

Final judgments must meet the same standards for due process and proof as contested cases.

Next Steps

These Recommendations advocate “what” state courts must do to address the evident urgencies in the civil justice system. While many of the Recommendations can be implemented within existing budgets and under current rules of procedure, others will require significant change and steadfast, strong leadership to achieve that change. The next step is to develop strategies for “how” court leaders can overcome barriers to needed changes and actually deliver better civil justice.

COURT AND STAKEHOLDER STRATEGIES

We know that successful problem solving is preceded by careful problem definition. The CJI Committee began its work with a comprehensive empirical study of the current state of civil litigation across the country. The Committee urges state courts to undertake their own study to enable court leaders to diagnose the volume and characteristics of civil case dockets across the state and identify major barriers to reducing cost, delay, and inefficiency in civil litigation. Leaders can then sequence and execute strategies to surmount those barriers.

Initially the Committee urges court leaders to build internal support for change. This suggestion derives from the experience of the Committee during its two years of work. This diverse group of judges, court managers, trial practitioners, and organization leaders started their work with an accurate picture of the civil litigation system. Simultaneously, from across the country, they collected a sampling of best practices that demonstrate smart case management and superior citizen access to justice. They then closely analyzed and discussed the data over the course of several in-person, plenary meetings and innumerable conference calls and email exchanges. What resulted? Unanimous and enthusiastic support for major civil justice improvements. And, for each participant, there

arose intense convictions: The quality and vitality of the civil justice system is severely threatened. Now is the time for strong leadership by all chief justices and court administrators.

Behind these Recommendations is the fundamental tenet that frontline judges and administrators must have the opportunity to ponder facts about the civil justice system in their state and strategize about the Recommendations here. Once that opportunity and those deliberations occur, a wellspring of support for civil justice improvement will take shape within the judiciary. With a supportive judicial branch, courts can face down tough issues and undertake needed improvements.

Court improvement efforts must involve the bar. The Washington State Bar provides a prime example of lawyers, sobered by evidence of growing civil litigation costs, taking bold actions to improve the fair resolution of cases. After four years of labor, the Bar’s Task Force on the Escalating Costs of Civil Litigation last year issued a series of recommendations to make courts affordable and accessible, including a call to “educate the **judges and lawyers** who will be responsible for making the recommendations a reality.”

Likewise, national organizations such as the American Board of Trial Advocates, the American Civil Trial Roundtable, the American College of Trial Lawyers, and the National Creditors Bar Association have contributed to the framing of these Recommendations. Such groups can have a continuing role in promoting them. Some of them have state counterparts that can collaborate with court leaders to educate key constituencies about the state’s top civil justice needs and help develop strategies to implement recommendations that fit their state or locality.

Future Assistance

Recognizing that organizational change is a process, not an event, the NCSC and IAALS will collaborate to assist court leaders who desire to implement civil justice change. Steps are underway to put the Recommendations into action. For more information and access to implementation tools, go to: ncsc.org/civil

ACKNOWLEDGEMENTS

CJI COMMITTEE STAFF

Judge Gregory E. Mize

(Committee Reporter)

Judicial Fellow

National Center for State Courts

Shelley Spacek Miller, JD

Research Analyst

National Center for State Courts

Paula Hannaford-Agor, JD

Director, Center for Juries Studies

National Center for State Courts

Corina Gerety, JD

Director of Research

IAALS

Scott E. Graves, PhD

Court Research Associate

National Center for State Courts

Brittany Kauffman, JD

Director, Rule One Initiative

IAALS

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300 Newport Avenue
Williamsburg, VA 23185

ncsc.org/civil



OREGON STATE BAR

Board of Governors Agenda

From: Policy & Governance Committee
Meeting Date: February 23, 2018
Re: Proposed Amendments to Bylaw 4.10

Action Recommended

Approve the proposed amendment to OSB Bylaws Article 4 to add an award for Technology & Innovation.

Options

1. Approve the amendment.
2. Send back to the Policy & Governance Committee for further work.
3. Do nothing.

Background and Discussion

A prevailing theme in the Futures Task Force Report was to encourage the use of technology and innovation to increase access to justice—particularly in lower income and rural communities in Oregon. In fact, recommendations 7.2 and 7.3 in the task force report specifically call out the need for the bar to promote the use of technology and innovation as a means to support both the court and legal aid efforts to improve access to justice. The challenge, as always, is how to effectively accomplish that goal in a cost-effective manner.

With that goal in mind, the Policy & Governance Committee began to discuss in 2017 the possibility of creating an OSB Technology and Innovation Award in order to highlight and give recognition to those who use technology and innovation in ways that advance the bar's mission. The award would be yet another tool to provide appreciation for and awareness of such work, with the ultimate goal of stimulating further innovation that serves the bar's mission. At its January 2018 meeting, the Policy & Governance Committee settled on the criteria for such an award, which is set forth below:

Section 4.10 President's Technology & Innovation Award

The criteria for the President's Technology & Innovation Award are as follows: The nominee may be an individual or entity; the nominee must have made a significant contribution in Oregon toward promoting respect for the rule of law, improving the quality of legal services or increasing access to justice through new technology or other innovations.

The Policy & Governance Committee now recommends that the Board of Governors adopt the proposed changes to Article 4 of the OSB Bylaws in order to establish the Technology & Innovation Award.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: February 22, 2018
From: Helen M. Hirschbiel, CEO
Re: Proposed Referral Fees/Fee Sharing Committee

Action Recommended

Recommend the Board of Governors approve creation of a committee to study the rules of professional conduct related to lawyers' payment for referrals and sharing of legal fees. Decide on a charge for the committee. Provide feedback regarding makeup of the committee.

Background

At the November 4, 2017 House of Delegates meeting, the HOD voted to refer back to the Board for further study BOG Resolution #3, which resolved that amendments to Oregon Rules of Professional Conduct 5.4(a)(5) and 7.2(b) be submitted to the Oregon Supreme Court for adoption. The proposed amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force Regulatory Committee. The Futures Task Force charge was to:

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 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 BOG regarding the role the OSB should play, if any, in regulating such delivery models.

The discussion at the HOD meeting revealed that members of the HOD were unified in their commitment to improve access to justice. Further, members expressed an interest in exploring ways to ensure that lawyers have the ability to utilize modern tools to connect with clients, but wanted to avoid making changes to the rules that could erode consumer protection.

There are a number of factors to consider in deciding what charge to give a committee appointed to continue study of these rules and the makeup of such a committee. First, in light of the conversation at the HOD meeting, and because the HOD resolution that proposed

amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force, the P&G Committee should consider whether the Futures Task Force and Regulatory Committee charges and findings should serve as a backdrop for continued study of these rules.

Second, the P&G Committee should consider whether to expand the scope of study to include alternative business structures. An alternative business structure (ABS) is an entity that provides legal services but is not exclusively owned by lawyers. In essence, it allows non-lawyers to own or invest in law firms. Alternative business structures are likely the wave of the future and, like referral fees, also implicate RPC 5.4. The issues at play for ABS are somewhat different than those for referral fees, however. In addition, a study of ABS would likely necessitate an exploration of entity regulation, which would promise to be a major undertaking. Thus, the Policy & Governance Committee may want to recommend that the BOG limit the scope of study to whether lawyers should be allowed to pay for-profit entities for referrals and, if so, by what model.

If the P&G Committee were to keep the scope of study narrow, but retain the Futures Task Force work as a backdrop, the charge for the special committee might be to:

Study the rules that govern the circumstances under which a lawyer may pay a for-profit company for directing clients to that lawyer (esp. 5.4(a)(5) and 7.2(b)), in light of changing models for obtaining and delivering legal services. Consider how such rules should be amended in order to account for these changes, while still protecting the public and allowing for greater access to legal services.

If the P&G Committee wants to cast a broader net for issues to tackle, the charge for such a committee might be to:

Study RPC 7.2 and 5.4 in light of the findings of the Futures Task Force and consider whether such rules should be amended to allow for payment of referrals and alternative business structures. If so, make recommendations for how such rules should be amended in order to better address the needs of legal consumers while still providing protection to the public.

Whatever the scope of study for this special committee, any renewed effort to consider amendments to Oregon RPC 5.4 and 7.2 should include a broad range of stakeholders from a variety of practice areas, as well as persons well-versed in the needs of legal consumers and modern methods of meeting those needs.

Options

1. **Adopt special committee charge with narrow focus.** This approach would enable a more limited, structured conversation about ethics issues related to payment of referral and advertising fees, as outlined above.
2. **Adopt special committee charge with a broader focus.** This approach would allow the Committee to study a broad range of ethics issues related to collaboration with nonlawyers, including referral fees and alternative business structures.

OREGON STATE BAR

Board of Governors Agenda

From: Policy & Governance Committee
Meeting Date: February 23, 2018
Re: Proposed Amendments to Bylaw 1.2

Action Recommended

Approve the proposed amendments to OSB Bylaw 1.2 to reflect changes to the bar's strategic functions and goals adopted by the Board of Governors in February 2017.

Options

1. Approve the amendments.
2. Send back to the Policy & Governance Committee for further work.
3. Do nothing.

Background and Discussion

At its retreat in November 2015, the Board of Governors expressed an interest in undertaking a review of its functions in order to ensure that they are still aligned with the mission and accurately reflect the work of the Oregon State Bar. During the course of 2016, the Policy & Governance Committee reviewed and discussed the functions and goals and ultimately submitted the attached for the Board of Governors' approval at its meeting in February 2017. The BOG approved the committee's recommendation.

The bylaws now require amendment, so that they reflect the functions and goals adopted by the BOG. The proposed bylaw amendments are set forth below.

Proposed Amendments

Section 1.2 Purposes

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

The Bar fulfills that mission through the following functions:

~~(A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.~~

~~(B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.~~

~~(C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.~~

~~(D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.~~

~~(E) We are leaders helping lawyers serve a diverse community.~~

~~(F) We are advocates for access to justice.~~

(A) We are a regulatory body, protecting the public by ensuring the competence and integrity of lawyers.

(B) We are a partner with the judicial system, supporting and protecting the quality and integrity of the judicial system.

(C) We are a professional organization, promoting the professional excellence of bar members.

(D) We are advocates for diversity, equity and inclusion within the legal community and the provision of legal services.

(E) We are champions for access to justice, fostering the public's understanding of and access to legal information, legal services, and the justice system.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
From: Policy & Governance Committee
Re: Proposed Amendments to the Fee Dispute Resolution Rules

Action Recommended

The Committee recommends that the Board of Governors adopt the attached amendments to the OSB Fee Dispute Resolution Rules to implement the recommendations of the 2017 Fee Mediation Task Force.

Background

Last year, the BOG appointed a task force to review the Fee Dispute Resolution Program and, in particular, the program's treatment of mediation confidentiality issues. The BOG approved the committee's report (also attached) in July. This agenda item requests approval of the resulting changes to the program rules.

In January 2018, the Supreme Court approved an amendment to Oregon RPC 8.3 stating that the rule does not require disclosure of mediation communications protected by statute.

The accompanying changes to the program rules are needed to align the program rules with the amended Oregon RPC 8.3 and the task force's recommendations.

Proposed Amendments

1. Rule 1.1 is amended to remove the prior language providing for a limited waiver of mediation confidentiality in the context of a mandatory RPC 8.3 ethics report to the Client Assistance Office.
2. A new Rule 7.6 is added to clarify that the mediation program is not intended, and may not be used, to mediate a malpractice case or an ethics complaint. The amended rule expressly states that the mediation may resolve disputes over the distribution of client property, including client files.
3. Rules 10.4 and 10.5 are amended to remove references to mediation, and Rule 10.8 is repealed.

Fee Dispute Resolution Rules

Rules of the Oregon State Bar on Mediation and Arbitration of Fee Disputes *Effective September 2015*

TABLE OF CONTENTS

Section 1 Purpose	2
Section 2 Mediation and Arbitration Panels; Advisory Committee.....	2
Section 3 Training	2
Section 4 Initiation of Proceedings.....	2
Section 5 Amounts in Dispute	3
Section 6 Selection of Mediators and Arbitrators	4
Section 7 Mediation	5
Section 8 Arbitration Hearing.....	5
Section 9 Arbitration Award	6
Section 10 Confidentiality	7
Section 11 Arbitrator Immunity and Competency to Testify	8
Appendix A	9

Section 1 Purpose

1.1 The purpose of these Rules is to provide a voluntary method to resolve fee disputes between active members of the Oregon State Bar maintaining offices in Oregon and their clients; between those members and other active members of the Oregon State Bar; and between active members of a state bar other than Oregon and their clients who either are residents of the state of Oregon or have their principal place of business in Oregon. ~~Parties who agree to participate in this program expressly waive the requirements of ORS 36.600 to 36.740 to the extent permitted by ORS 36.610 except as specifically provided herein.~~

Section 2 Mediation and Arbitration Panels; Advisory Committee

2.1 The Fee Dispute Resolution Administrator (“Administrator”) shall appoint attorney members to mediation panels in each board of governors region, from which mediators will be selected. The normal term of appointment shall be three years, and a mediation panelist may be reappointed to a further term. All mediation panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the board of governors region of appointment.

2.2 The Administrator shall appoint attorney and public members to arbitration panels in each board of governors region, from which arbitrators will be selected. The normal term of appointment shall be three years, and an arbitration panelist may be reappointed to a further term. All attorney panelists shall be active or active pro bono members in good standing of the Oregon State Bar with a principal business office in the board of governors region of appointment. All public panelists shall reside or maintain a principal business office in the board of governors region of appointment and shall be neither active nor inactive members of any bar.

2.3 General Counsel shall appoint an advisory committee consisting of at least one attorney panel member from each of the board of governors regions. The advisory committee shall assist General Counsel and the Administrator with training and recruitment of arbitration and mediation panel members, provide guidance as needed in the interpretation and implementation of the fee dispute rules, and make recommendations to the board of governors for changes in the rules or program.

Section 3 Training

3.1 The Oregon State Bar will offer training opportunities to panelists regarding mediation and arbitration techniques and the application of RPC 1.5 in fee disputes.

3.2 The Administrator may request information about panelists’ prior training and experience and may appoint panelists based on their related training and experience.

Section 4 Initiation of Proceedings

4.1 A mediation proceeding shall be initiated by the filing of a written petition and mediation agreement. The mediation agreement must be signed by one of the parties to the dispute and filed with General Counsel’s Office within 6 years of the completion of the legal services involved in the dispute.

4.2 An arbitration proceeding shall be initiated by the filing of a written petition and arbitration agreement. The petition must be signed by one of the parties to the dispute and filed with General Counsel's Office within 6 years of the completion of the legal services involved in the dispute.

4.3 Upon receipt of a petition and agreement(s) signed by the petitioning party, the Administrator shall forward a copy of the petition and the agreement(s) to the respondent named in the petition by regular first-class mail e-mail or facsimile or by such other method as may reasonably provide the respondent with actual notice of the initiation of proceedings. Any supporting documents submitted with the petition shall also be provided to the respondent. If the respondent desires to submit the dispute to mediation or arbitration the respondent shall sign the agreement(s) and return the agreement(s) to the Administrator within twenty-one (21) days of receipt. A twenty-one (21) day extension of time to sign and return the petition may be granted by the Administrator. Failure to sign and return the agreement within the specified time shall be deemed a rejection of the request to mediate or arbitrate.

4.4 A lawyer who is retained by a client who was referred by the OSB Modest Means Program or OSB Lawyer Referral Program may not decline to arbitrate if such client files a petition for fee arbitration.

4.5 If the respondent agrees to mediate or arbitrate, the Administrator shall notify the petitioner who shall, within twenty-one (21) days of the mailing of the notice, pay a filing fee of \$75 for claims of less than \$7500 and \$100 for claims of \$7500 or more. The filing fee may be waived at the discretion of the Administrator based on the submission of a statement of the petitioner's assets and liabilities reflecting inability to pay. The filing fee shall not be refunded, except on a showing satisfactory to General Counsel of extraordinary circumstances or hardship.

4.6 If the request to mediate or arbitrate is rejected, the Administrator shall notify the petitioner of the rejection and of any stated reasons for the rejection.

4.7 The petition, mediation agreement, arbitration agreement and statement of assets and liabilities shall be in the form prescribed by General Counsel, provided however, that mediation and arbitration agreements may be modified with the consent of both parties and the approval of General Counsel.

4.8 After the parties have signed a mediation or arbitration agreement, if one party requests that a mediation or arbitration proceeding not continue, the Administrator shall dismiss the proceeding. A dismissed proceeding will be reopened only upon agreement of the parties or receipt of a copy of an order compelling arbitration pursuant to ORS 36.625.

Section 5 Amounts in Dispute

5.1 Any amount of fees or costs in controversy may be mediated or arbitrated. The Administrator may decline to mediate or arbitrate cases in which the amount in dispute is less than \$250.00.

5.2 The sole issue to be determined in all fee dispute proceedings under these rules shall be whether the fees or costs charged for the services rendered were reasonable in light of the factors set forth in RPC 1.5.

Section 6 Selection of Mediators and Arbitrators

6.1 Each party to a mediation shall receive with the petition and mediation agreement a list of the members of the mediation panel from the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.2 Each party to an arbitration shall receive with the petition and arbitration agreement a list of the members of the arbitration panel in the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.3 Each party may challenge without cause, and thereby disqualify as mediators or arbitrators, not more than two panelists. Each party may also challenge any panelist for cause. Any challenge for cause must be made by written notice to the Administrator, shall include an explanation of why the party believes the party cannot have a fair and impartial hearing before the panelist, and shall be submitted with the required fee. Challenges for cause shall be determined by General Counsel, based on the reasons offered by the challenging party. Upon receipt of the agreement signed by both parties, the Administrator shall select the appropriate number of panelists from the list of unchallenged panelists to hear a particular dispute.

6.4 All mediations shall be mediated by one lawyer panelist selected the board of governors region in which a lawyer to the dispute maintains his or her law office. The Administrator shall give the parties notice of the mediator's appointment.

6.5 Disputed amounts of less than \$10,000 shall be arbitrated by one lawyer panelist. Disputed amounts of \$10,000 or more shall be arbitrated by three panelists, including two lawyer arbitrators and one public arbitrator. If three (3) arbitrators are appointed, the Administrator shall appoint one lawyer arbitrator to serve as chairperson. The Administrator shall appoint panelists from the board of governors region in which a lawyer to the dispute maintains his or her law office. The Administrator shall give notice of appointment to the parties of the appointment. Regardless of the amount in controversy, the parties may agree that one lawyer arbitrator hear and decide the dispute. If three arbitrators cannot be appointed in a fee dispute from the arbitration panel of the board of governors region in which a dispute involving \$10,000 or more is pending, the dispute shall be arbitrated by a single arbitrator. If, however, any party files a written objection with the Administrator within ten (10) days after receiving notice that a single arbitrator will be appointed under this subsection, two (2) additional arbitrators shall be appointed.

6.6 Any change or addition in appointment of mediators or arbitrators shall be made by the Administrator. When necessary, the Administrator may appoint mediators or arbitrators from a region other than the board of governors region in which a lawyer to the dispute maintains his or her law office.

6.7 Before accepting appointment, a mediator or arbitrator shall disclose to the parties and, if applicable, to the other arbitrators, any known facts that a reasonable person would consider likely to affect the impartiality of the mediator or arbitrator in the proceeding. Mediators and arbitrators have a continuing duty to disclose any such facts learned after appointment. After disclosure of facts required by this rule, the mediator or arbitrator may be appointed or continue to serve only if all parties to the proceeding consent; in the absence of consent by all parties, the Administrator

will appoint a replacement mediator or arbitrator and, if appropriate, extend the time for the hearing.

6.8 In the absence of consent by all parties, no person appointed as a mediator may thereafter serve as an arbitrator for the same fee dispute.

Section 7 Mediation

7.1 The mediator shall arrange a mutually agreeable date, time and place for the mediation. The mediator shall provide notice of the mediation date, time and place to the parties and to the Administrator not less than 14 days before the mediation, unless the notice requirement is waived by the parties.

7.2 The mediation shall be held within ninety (90) days of appointment of the mediator by the Administrator. Upon request of a party, or upon his or her own determination, the mediator may adjourn, continue or postpone the mediation as the mediator determines necessary.

7.3 Any communications made during the course of mediation are confidential to the extent provided by law. ORS 36.220. Mediations are not public meetings; the mediator has the sole discretion to allow persons who are not parties to the mediation to attend the proceedings.

7.4 If the parties reach a settlement in mediation, the mediator may draft a settlement agreement consistent with RPC 2.4 to memorialize the parties' agreement.

7.5 At the conclusion of the mediation, the mediator shall notify the Administrator if the fee dispute was resolved. The mediator shall not provide a copy of the settlement agreement to the bar.

7.6 A program mediation must 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 is permitted in any program mediation.

Section 8 Arbitration Hearing

8.1 The chairperson or sole arbitrator shall determine a convenient time and place for the arbitration hearing to be held. The chairperson or sole arbitrator shall provide written notice of the hearing date, time and place to the parties and to the Administrator not less than 14 days before the hearing. Notice may be provided by regular first class mail, e-mail, or facsimile or by such other method as may reasonably provide the parties with actual notice of the hearing. Appearance at the hearing waives the right to notice.

8.2 The arbitration hearing shall be held within ninety (90) days after appointment of the arbitrator(s) by Administrator, subject to the authority granted in subsection 8.3.

8.3 The arbitrator or chairperson may adjourn the hearing as necessary. Upon request of a party to the arbitration for good cause, or upon his or her own determination, the presiding arbitrator may postpone the hearing from time to time.

8.4 Arbitrators shall have those powers conferred on them by ORS 36.675. The chairperson or the sole arbitrator shall preside at the hearing. The chairperson or the sole arbitrator may receive any evidence relevant to a determination under Rule 5.2, including evidence of the value of the lawyer's services rendered to the client. He or she shall be the judge of the relevance and materiality of the evidence offered and shall rule on questions of procedure. He or she shall exercise all powers relating to the conduct of the hearing, and conformity to legal rules of evidence shall not be necessary. Arbitrators shall resolve all disputes using their professional judgment concerning the reasonableness of the charges made by the lawyer involved.

8.5 The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing. Any party to an arbitration may be represented at his or her own expense by a lawyer at the hearing or at any stage of the arbitration.

8.6 On request of any party to the arbitration or any arbitrator, the testimony of witnesses shall be given under oath. When so requested, the chairperson or sole arbitrator may administer oaths to witnesses testifying at the hearing.

8.7 Upon request of one party, and with consent of both parties, the panel or sole arbitrator may decide the dispute upon written statements of position and supporting documents submitted by each party, without personal attendance at the arbitration hearing. The chairperson or sole arbitrator may also allow a party to appear by telephone if, in the sole discretion of the chairperson or sole arbitrator, such appearance will not impair the ability of the arbitrator(s) to determine the matter. The party desiring to appear by telephone shall bear the expense thereof.

8.8 If any party to an arbitration who has been notified of the date, time and place of the hearing but fails to appear, the chairperson or sole arbitrator may either postpone the hearing or proceed with the hearing and determine the controversy upon the evidence produced, notwithstanding such failure to appear.

8.9 Any party may have the hearing reported at his or her own expense. In such event, any other party to the arbitration shall be entitled to a copy of the reporter's transcript of the testimony, at his or her own expense, and by arrangements made directly with the reporter. As used in this subsection, "reporter" may include an electronic reporting mechanism.

8.10 If during the pendency of an arbitration hearing or decision the client files a malpractice suit against the lawyer, the arbitration proceedings shall be either stayed or dismissed, at the agreement of the parties. Unless both parties agree to stay the proceedings within 14 days of the arbitrator's receipt of a notice of the malpractice suit, the arbitration shall be dismissed.

Section 9 Arbitration Award

9.1 An arbitration award shall be rendered within thirty (30) days after the close of the hearing unless General Counsel, for good cause shown, grants an extension of time.

9.2 The arbitration award shall be made by a majority where heard by three members, or by the sole arbitrator. The award shall be in writing and signed by the members concurring therein or by the sole arbitrator. The award shall state the basis for the panel's jurisdiction, the nature of the dispute, the amount of the award, if any, the terms of payment, if applicable, and an opinion

regarding the reasons for the award. Awards shall be substantially in the form shown in Appendix A. An award that requires the payment of money shall be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards.

9.3 Arbitrator(s) may award interest on the amount awarded as provided in a written agreement between the parties or as provided by law, but shall not award attorney fees or costs incurred in the fee dispute proceeding. An attorney shall not be awarded more than the amount for services billed but unpaid. A client shall not be awarded more than the amount already paid, and may also be relieved from payment of services billed and remaining unpaid.

9.4 The original award shall be forwarded to the Administrator, who shall mail certified copies of the award to each party to the arbitration. The Administrator shall retain the original award, together with the original fee dispute agreement. Additional certified copies of the agreement and award will be provided on request. The OSB file will be retained for six years after the award is rendered; thereafter it may be destroyed without notice to the parties.

9.5 If a majority of the arbitrators cannot agree on an award, they shall so advise the Administrator within 30 days after the hearing. The Administrator shall resubmit the matter, de novo, to a new panel within thirty days.

9.6 The arbitration award shall be binding on both parties, subject to the remedies provided for by ORS 36.615, 36.705 and 36.710. The award may be confirmed and a judgment entered thereon as provided in ORS 36.615, 36.700 and ORS 36.715.

9.7 Upon request of a party and with the approval of General Counsel for good cause, or on General Counsel's own determination, the arbitrator(s) may be directed to modify or correct the award for any of the following reasons:

- a. there is an evident mathematical miscalculation or error in the description of persons, things or property in the award;
- b. the award is in improper form not affecting the merits of the decision;
- c. the arbitration panel or sole arbitrator has not made a final and definite award upon a matter submitted; or
- d. to clarify the award.

Section 10 Confidentiality

10.1 The resolution of a fee dispute through the Oregon State Bar Fee Dispute Resolution Program is a private, contract dispute resolution mechanism, and not the transaction of public business.

10.2 Except as provided in paragraph 10.4 below, or as required by law or court order, all electronic and written records and other materials submitted by the parties to General Counsel's Office, or to the mediators or arbitrators, and any award rendered by the arbitrator(s), shall not be subject to public disclosure, unless all parties to an arbitration agree otherwise. The Oregon State Bar considers all electronic and written records and other materials submitted by the parties to

General Counsel's Office, or to the mediators or arbitrators, to be submitted on the condition that they are kept confidential.

10.3 Mediations and arbitration hearings are closed to the public, unless all parties agree otherwise. Witnesses who will offer testimony on behalf of a party may attend an arbitration hearing, subject to the chairperson's or sole arbitrator's discretion, for good cause shown, to exclude witnesses.

10.4 Notwithstanding paragraphs 10.1, 10.2, and 10.3, lawyer ~~mediators and~~ arbitrators shall inform the Client Assistance Office when they know, based on information obtained during the course of an arbitration proceeding, that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

10.5 Notwithstanding paragraphs 10.1, 10.2, and 10.3, and 10.4, all electronic and written records and other materials submitted to General Counsel's Office or to the ~~mediators or~~ arbitrators during the course of the proceeding, and any award rendered by the arbitrator(s), shall be made available to the Client Assistance Office and/or Disciplinary Counsel for the purpose of reviewing any alleged ethical violation in accordance with BR 2.5 and BR 2.6.

10.6 Notwithstanding paragraphs 10.1, 10.2, 10.3 and 10.4, General Counsel's Office may disclose to the Client Assistance Office or to Disciplinary Counsel, upon the Client Assistance Office's or Disciplinary Counsel's request, whether a dispute resolution proceeding involving a particular lawyer is pending, the current status of the proceeding, and, at the conclusion of an arbitration proceeding, in whose favor the arbitration award was rendered.

10.7 Notwithstanding paragraphs 10.1, 10.2 and 10.3, if any lawyer whose employment was secured through the Oregon State Bar Modest Means Program or Lawyer Referral Program refuses to participate in fee arbitration, the Administrator shall notify the administrator of such program(s).

~~**10.8** Mediators and parties who agree to participate in this program expressly waive the confidentiality provisions of ORS 36.222 to the extent necessary to allow disclosures pursuant to Rule 7.5, 10.4, 10.5 and 10.6.~~

Section 11 Immunity and Competency to Testify

11.1 Pursuant to ORS 36.660, arbitrators shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. All other provisions of ORS 36.660 shall apply to arbitrators participating in the Oregon State Bar dispute resolution program.

Appendix A

Oregon State Bar Fee Arbitration

) Case No.

Petitioner

)

v.

) Arbitration Award

)

Respondent

)

Jurisdiction

Nature of Dispute

Amount of Award

Opinion

Award Summary

The arbitrator(s) find that the total amount of fees and costs that should have been charged in this matter is: \$

Of which the Client is found to have paid: \$

For a net amount due of: \$

Accordingly, the following award is made: \$

Client shall pay Attorney the sum of: \$

(or)

Attorney shall refund to Client the sum of: \$

(or)

Nothing further shall be paid by either attorney or client.

/Signature(s) of Arbitrator(s)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 21, 2017

From: Richard G. Spier, Chair, BOG Fee Mediation Task Force

Re: Report of the Fee Mediation Task Force

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)¹ and made confidential by ORS 36.220.²

¹ "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").

² 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.³
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."

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.

³ [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 mediators⁴ 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)⁵ 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."⁶ Whether the parties actually understand and appreciate the

⁴ 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).

⁵ "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).

⁶ 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.⁷

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

Task Force’s recommendations, the BOG should delete the reference to “mediators” in the rule.

⁷ “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)⁸ 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:

⁸ 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.)⁹

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

⁹ 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.¹⁰

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,¹¹ it also recognized that the central purpose of any program mediation is

¹⁰ 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.

¹¹ 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.

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.¹²

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.¹³

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

¹² 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.

¹³ 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,¹⁴ 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

¹⁴ 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.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
From: Policy & Governance committee
Re: Proposed Alternative Pathways to Becoming a Lawyer Committee

Action Recommended

Approve creation of a committee to study alternative pathways to becoming a lawyer.

Background

At the November 2016 House of Delegates meeting, the HOD approved a resolution directing the Board of Governors to

appoint a Volunteer Committee to study the advantages of implementing a 'Writing for the Bar Mentorship Program,' by which a Diversity of well-qualified persons would have the opportunity to take the Bar Exam and become valued Member of the Oregon State Bar.

Because staff resources were consumed by the Futures Task Force during 2017, this initiative was stalled until now. We have, however, several eager volunteers who have been waiting patiently in the wings to begin work on this topic.

In addition to being a directive from the HOD, this initiative is aligned with the BOG's strategic focus over the last couple of years. The Board of Governors has repeatedly expressed concern about mounting law school debt and the pressure such debt places on new lawyers who often have struggled to find law-related jobs and make ends meet. Citing findings from the ABA Commission on the Future of Legal Services, the OSB Futures Task Force noted that new lawyers remain un- and underemployed, notwithstanding the persistent access to justice gap:

Total student debt burdens now average in excess of \$140,000—challenging new lawyers' ability to sustain traditional law practices that might address some of the unmet legal need—while legal education remains essentially unchanged.¹

If the law school debt burden could be reduced—or even eliminated—then lawyers may be in a better position to charge less money and thereby help to meet some of the unmet legal need. The BOG has little, if any, influence on the cost of a legal education or on the economy surrounding legal services. Further, it does not set the admissions requirements; the Supreme Court makes those decisions upon the recommendation of the Board of Bar Examiners. That

¹ OSB Futures Task Force Executive Summary, page 4.

said, the BOG can make recommendations to the BBX for changes in the admission requirements that may help ease the cost of a legal education.

“Writing for the Bar” is a concept that would allow a person to sit for the Oregon Bar Exam and become licensed as a lawyer without attending law school. It would require a change to the admissions rules and provide one option to reduce law school debt. Another option would be to change the admissions rules to require only two years of law school in order to become a lawyer in Oregon, rather than the current requirement of three years.

Policy & Governance Committee recommends that a committee be appointed to study these two options and report back to the Board of Governors with a recommendation about whether to pursue implementation of either or both. If the recommendation is to pursue a program, the report should provide details of the essential elements of the program, the anticipated cost of implementation and operation, and how success will be measured.

A list of potential committee members will be provided at the meeting.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
Memo Date: February 9, 2018
From: Susan Grabe
Re: Final Report of OSB/OJD Task Force on Oregon eCourt

Action Recommended

Accept the Final Report of the OSB/OJD Task Force on Oregon eCourt, and direct OSB Public Affairs Staff to continue to engage with the OJD on eCourt related issues in the future, possibly including periodic surveys as needed.

Background

The Oregon State Bar and the Oregon Judicial Department originally convened the eCourt Implementation Task Force in May of 2008. (The task force was renamed the “Task Force on Oregon eCourt” in April 2016). The final report of the task force is attached for the Board of Governors consideration and acceptance.

The purpose of the task force was to bring the experiences and expertise of practicing lawyers into the decision-making process as implementation of Oregon eCourt moved forward.

Since that time OSB staff have worked collaboratively with OJD staff to make the transition to an electronic court environment as smooth as possible and especially to make sure that the concerns of bar members are taken into account.

Formal implementation of Oregon eCourt ended in July of 2016, when the last of Oregon’s judicial districts went live. Since that time, the task force has met less frequently and has focused on issues related to users’ experiences with the system, reliability and efficiency of the system, and funding of eCourt itself. OSB Public Affairs staff assisted the task force with a survey in December of 2017 that asked attorneys about their experiences using the system. The summary of the results of that survey is attached.

The Final Task Force Report includes a summary of actions taken by the task force, major concerns raised by attorneys during the rollout and some suggestions going forward. In addition to the report, we would recommend that the OSB continue to engage with the courts on improving user experience wherever possible. This may include ad hoc committees formed to look at discrete issues such as eService, as well as following up with the OSB membership on their experiences with the system in years to come – possibly in the form of additional surveys.

Final Report of the OSB / OJD Task Force on Oregon eCourt Implementation

February 23, 2018

The Oregon State Bar/Oregon Judicial Department (OSB/OJD) eCourt Implementation Task Force convened for the first time in May 2008. The original membership consisted of a mixture of lawyers, judges, and OSB and OJD staff who came together to strategize on ways to ensure that Oregon eCourt was successfully implemented. Over time, the membership expanded to include other court stakeholders, such as representatives from companies doing business with OJD and the courts.

The Task Force's original charge was:

To work cooperatively with the Oregon Judicial Department to assist in the implementation of the Oregon eCourt initiative over the next five years; provide input and feedback from bar members on the implementation of Oregon eCourt; develop a strategy to communicate with and educate bar members about Oregon eCourt programs; and provide periodic updates to the Board of Governors.

Over the next eight years, the group served as a conduit between practicing attorneys, OSB, the Professional Liability Fund (PLF), other stakeholders, and OJD, helping to ensure that the manner in which the Oregon eCourt system was implemented took into account the needs of the public and of attorneys working with the courts every day. With Oregon eCourt's final implementation in mid-2016, the Task Force transitioned to less frequent meetings but continued to monitor the system's usage and provided feedback to the OJD regarding questions or concerns raised by OSB members.

The Task Force was chaired by former OSB Board of Governors member Mark Comstock. Over the eight years between its creation and OJD's final Oregon eCourt implementation, dozens of OSB members as well as numerous OJD staff members regularly participated in meetings, which were generally held either in the OSB offices in Tigard or at the chair's office in Salem. Meetings were open to the public, and meeting notices were distributed via an email list that grew to include nearly 200 recipients.

Pre-Implementation

In the early years, the Task Force coordinated with OJD extensively on changes that needed to be made to the Uniform Trial Court Rules, to provide a framework for the statewide transition to an electronic court environment. That work involved outreach to bar members, especially through bar sections and committees, as well as the PLF, to gather feedback on proposed rules, and resulted in many changes to alleviate practicing lawyers concerns.

One of the major areas in which the Task Force sought early feedback regarded the scope and manner of providing online document access. As reported in the Task Force's First Interim Report:

All members of the Task Force and court staff acknowledge that a tension exists between two important policy goals: the need to provide as much information to the public through eCourt as possible about cases within the court system, and the responsibility maintain reasonable data security to safeguard sensitive information provided to the courts.

The Task Force sent draft proposals to the chairs of the Business Law, Business Litigation, Computer and Internet Law, Juvenile Law, Family Law, Estate Planning and Administration, and Criminal Law Sections as well as other interested groups to solicit feedback. Many of those groups provided extensive feedback either in writing or in person at future Task Force meetings, and many of those groups' concerns were accommodated in OJD's ongoing efforts to plan a structure for providing online document access with an accompanying new Draft UTCR Chapter 22. OJD has followed the initial structure of the draft rule to date in opening up statewide remote online access to certain users, which - since early 2014 -- includes all active OSB members.

The Task Force also worked to communicate proposed UTCR changes – both regarding document access and otherwise – to the general OSB membership through numerous media, including the Bar Bulletin, Capitol Insider, Bar News email alerts, and on the OSB's website.

Early on, the Task Force – as well as OJD workgroups tasked with creating the draft UTCRs – struggled with a large number of very specific and often very technical questions. For example, it was initially unclear what kinds of personally identifying information would be available through remote electronic document access. Intuitively, many lawyers imagined a state system working similarly to the federal PACER system in which almost all information contained in filings is made public. However, the difference in variety of cases and filings in state court – each with their own unique complications and problems – in conjunction with the high number of self-represented litigants in state court - made that approach unfeasible. Those concerns led to months, and in some cases years, of discussions about the appropriate manner in which to make court information available to the public.

The Task Force also provided input on a package of Supplementary Local Rules that OJD adopted to apply to each Oregon eCourt that went live, once implementation began.

Pilot Courts and Early Implementation

Oregon eCourt implementation initially began in 2009-10, with several pilot courts around the state, but including only electronic content management in small claims and landlord-tenant cases, in four pilot courts. In early 2011, OJD transitioned to Tyler Technology's Odyssey single-solution system -- an integrated system that includes case management, document management, eFiling, financial, and other components. OJD planned a new staged, five-year rollout, where the Odyssey case management, document management, and financial system went live in all case types in a court at once. OJD began implementation with a pilot court (Yamhill County) in mid-2012, followed by three early adopter courts (Crook-Jefferson, Linn, Jackson) over the next nine months. Beginning in mid-2013, it then followed a rolling schedule where groups of courts around the state went online every several months through mid-2016, with the largest courts going live as stand-alone events (Multnomah, Clackamas, Washington-Oregon Tax Court). OJD has configured and added other integrated components to the Oregon eCourt system over time, including eFiling (see next section), interactive forms, and jury management.

The Task Force's major role during these early stages transitioned to reviewing the efficacy of implementation at each stage of the rollout and discussing problems encountered by local bar members, as well as issues surrounding statewide consistency. The OSB, in its role in facilitating the Task Force's work, solicited feedback from local bar associations and practicing attorneys in local counties as to the successes and failures encountered during implementation. The goal in all cases was to advise the OJD – through the Task Force – of any issues that would compromise access to justice or otherwise cause problems for local attorneys and look for solutions before moving on the next group of counties.

In most cases, local implementation went smoothly. In general, implementation in earlier counties progressed more slowly and was more likely to run into unexpected problems, but OJD learned from each rollout, and later counties tended to progress more and more smoothly and experience fewer issues as part of implementation.

Examples of issues that the Task Force addressed in the early rollouts were (1) necessary shut-downs of the Oregon Judicial Information Network (OJIN) during go-live -- including access issues for lawyers and other stakeholders, such as title companies -- and how to most effectively communicate that information to OSB members and minimize disruption; (2) how to provide critical judgment-entry information to title companies, OSB members, and others; and (3) generally, many issues relating to the transition from paper-based to electronic-based courthouses.

During this time, the Task Force decided to encourage attorneys to contact OSB directly with questions or concerns about Oregon eCourt, which OSB would then pass along to the Task Force as necessary. To that end, OJD added significant information to its website informing attorneys about resources available if they have questions, including contact information for staff who would be able to direct them to the appropriate person to address their concerns. Also, OJD, OSB, and PLF staff developed effective working relationships and consistent channels of communication that facilitated problem-solving in this time period.

eFiling Implementation

OJD began rolling out the eFiling and eService component of the Oregon eCourt system, File & Serve, in 2013, about a year after the initial pilot court implementation. OJD followed the same court implementation schedule for File & Serve, first implementing in the courts that already had gone live and then making File & Serve part of a staged implementation for those that remained -- installing File & Serve in the remaining courts about six weeks after each court's initial system implementation. In December 2014, OJD implemented mandatory eFiling for OSB members, for all courts who then were using File & Serve; in the remaining courts, mandatory eFiling rules were triggered about six weeks after File & Serve implementation. OJD added mandatory eFiling for the appellate courts in 2015.

Throughout the planning and rollout of File & Serve, the Task Force addressed many issues relating to eFiling and eService -- including input on multiple updates to UCR Chapter 21 (Filing and Service by Electronic Means; Electronic Files of the Court), practical, mechanical, and transactional cost concerns, and statewide consistency issues. OJD also worked with OSB and PLF staff to facilitate eFiling trainings around the state, as well as providing notifications to OSB members about eFiling implementations, mandatory transitions, and system down-times.

Late and Post-Implementation

As the statewide rollout progressed, the Task Force continued to address issues that arose over time, for example: (1) vetting and facilitating OSB section and member comment on proposed amendments to Oregon eCourt-related UTCRs, such as UTCR 5.100 (proposed orders and judgments), UTCR 21.120 (retention of documents by eFilers), and many other rules (eFiling/eService and otherwise); (2) raising and addressing lawyer needs in the system, such as automatic email notification of entry of orders and judgments, and consistency improvements in accepting eFilings; and (3) discussing updated subscription plans for case and document access. The Task Force also provided a forum for discussing legislative proposals regarding Oregon eCourt funding – including funding derived from fees paid by the civil bar – that ultimately informed decisions later made by the Oregon Legislature. And, the Task Force discussed additional ongoing system updates, such as OJD's 2015 implementation of interactive online forms, with new form packets being added each year to assist self-represented litigants and the courts alike.

As implementation moved into the later stages, some of the Task Force's focus shifted to issues related to maintaining and improving upon the existing system. With the new focus came a new charge for the Task Force during its final year:

To work cooperatively with the Oregon Judicial Department and OSB members to monitor the ongoing operation of Oregon eCourt; to gather input and feedback from OSB members on how well Oregon eCourt is working for them and their staff; to propose solutions for problems identified by OSB members and court staff; to maintain communication with OJD and continue to educate bar members about Oregon eCourt programs; and to provide periodic updates to the Board of Governors.

Ongoing Task Force discussions included both technical issues related to the capabilities of the system itself and policy issues regarding how the system will be managed and funded in the future. Many of those discussions are likely to continue, as access to Oregon eCourt becomes more and more synonymous with access to the court system itself.

Two User Satisfaction Surveys

The final group of counties to go live with Oregon eCourt did so at the end of June 2016, with eFiling for those counties added in August. During the spring leading up to the end of formal implementation, the OSB – at the request of OJD's independent quality assurance consultant – conducted a survey of OSB members and their staff regarding their overall satisfaction with Oregon eCourt. While the survey was not conducted by the Task Force itself, the responses are instructive as to the success of the statewide implementation.

The OSB received 850 survey responses, and the demographic information suggests that a broad cross-section of Oregon attorneys and their staff responded. Overall, the survey results showed a large degree of satisfaction with Oregon eCourt. Significant majorities of respondents indicated separately that eFiling had expanded access to the courts, increased productivity, and lowered costs for their practice. Likewise with the new subscription-based service that provides OSB members with case information and

remote document access (the Oregon Judicial Case Information Network (OJCIN)), the vast majority of respondents indicated both that they were able to successfully use the system to find the information they were looking for and that the system was more efficient than their previous experiences with the old case management system and the courts.

Survey respondents also provided extensive feedback regarding difficulties they have had and suggested improvements to the Oregon eCourt system, which are worth discussing in their own right. Overall, however, the survey responses were quite positive.

A follow-up survey was conducted in conjunction with creating this report in December of 2017. The second survey asked some questions, which were similar to the original survey, to assess any significant changes in responses, as well as addressing some new areas that had been topics of discussion within the task force. Some of the new issues addressed in the second survey included compliance with UTCR 21.100 and the observed time for entry of documents into OECL.

The second survey largely received similar results to the first, with more than 70% of respondents indicating that eFiling had expanded their ability to file pleadings and approximately the same number indicating that it had improved the productivity of their office. A plurality of respondents indicated that it also reduced operating expenses and client costs.

Conclusion

The OSB/OJD Oregon eCourt Task Force has proved to be a successful partnership for OSB and OJD that has provided great benefit to Oregon's lawyers and to the courts as a whole. Through the Task Force, the OSB has had an ongoing opportunity to advance the interest of its members relating to their work in the courts, provide practical input to the OJD, and obtain information about the development, implementation, and maintenance of Oregon eCourt. In turn, OJD has been able to learn -- from the perspective of lawyers, staff, and others who interact with the courts on a daily basis -- how it can develop and use Oregon eCourt to most effectively serve the citizens of Oregon, who rely on the courts to enforce laws, resolve disputes in a fair and timely manner, and ensure access to justice.

2017 eCourt User Survey Results

Executive Summary

In December of 2017 the OSB Public Affairs Department, on behalf of the OSB/OJD eCourt Implementation Task Force, released a survey for OSB members soliciting feedback on Oregon eCourt. This new survey followed up on a survey in May of 2016 that accompanied the formal end of eCourt implementation. The intention of this new survey was to inform the creation of the final task force report that accompanies the formal end of the Implementation Task Force.

Many questions were repeated for the purpose of comparing the answers between the two surveys and seeing if there were any major shifts in opinion. Some additional questions were also included in the new survey for the purpose of looking at specific issues that had more recently been raised by the task force.

Overall Favorability

Most responses were generally favorable, with over 71% of respondents indicating that electronic filing had expanded their ability to file pleadings (Q3) and approximately 70% indicating that it had increased the productivity of their office (Q4). In both of these cases favorable responses were about 5% higher than in the previous survey.

A plurality of respondents – just over 43% - indicated that it had reduced expenses, while only 17% indicated it had increased expenses (Q5). These results are almost identical to the results in the 2016 survey.

Both surveys asked essentially the same question regarding the user's overall experience with OJD File and Serve, in which they were asked to rate their level of satisfaction on a scale of 0-10. Users showed a notably higher level of overall satisfaction in the 2017 survey.

2016 – 21.2% responded 0-4; 30.3% responded 5-6; 39.7% responded 7-8; 8.8% responded 9-10.

2017 – 12.71% responded 0-4; 25% responded 5-6; 44.25% responded 7-8; 18% responded 9-10.

Questions Regarding eService

One complaint that had been made by respondents in the 2016 survey is that some attorneys do not add their service contact information to each case when they use the eFiling system, despite being required to do so by UTCR 21.100. A question was added to the 2017 survey to address this specific issue.

The reality of this problem was borne out by the survey results, with only 58% of respondents indicating they always comply with the rule, and further 12% indicating they comply "most of the time". About 12% of respondents answered that they comply "never", "almost never", or "sometimes"; while 17% of

respondents indicated they were unaware of the rule. (Q6) A large number of respondents specifically commented on this issue, and suggested some version of not allowing attorneys to file at all without first including service information. (Q8) Practitioners who self-identified as practicing in Family Law, Criminal Law, and Litigation/Dispute Resolution appear to have reported somewhat higher levels of familiarity and compliance with the rule, although the sample sizes are relatively small.

A related question asked about what methods of service users are choosing to employ. Only 41% of respondents indicated they primarily serve documents through OJD File and Serve. (Q7) Most respondents indicated they still choose to use a different method of service. While many respondents commented that they employ multiple methods of service, some indicated a lack of trust in File and Serve's eService system. Practitioners who self-identified as practicing in Criminal Law and Juvenile Law appear to most frequently use electronic services through OJD File and Serve.

Delay in documents appearing in the register

Two new questions were also added addressing what is sometimes called "latency" – in this case referring to the amount of time between the submission of a document for filing and notification that the document has been entered in the register. While these questions don't address the technical functioning of the system, they do address the attorney's experience in filing documents.

In the case of documents other than unsigned orders, 77% of respondents indicated that on average a document posted to the register within 3 days, while less than 5% indicated it took 10 days or longer. (Q10)

However, in the case of orders submitted for judicial signature, only 26% indicated the document had generally been processed within 3 days. 34% indicated it averaged 10 days or longer, and 10% indicated that it generally took 21 days or longer. (Q11)

Conclusions

Overall the survey provided similar results to the 2016 survey, but displayed a modest increase in satisfaction with the system that we might expect to see 18 months after final implementation.

Comments provided by respondents provide a wealth of information regarding specific concerns and experiences and are worth reading. While the comments point to a number of areas where it would be nice to ultimately see improvement, many complaints reflect more on policy decisions that have been made regarding the nature of changing services than point to any failure in the system itself.



FINANCIAL STATEMENTS

December 31, 2017- Final 2017

Narrative Summary

The bar finished 2017 with a **Net Operating Revenue (NOR)** of **\$771,121**, which was almost double the budgeted NOR. This marked another year of the NOR well exceeding the budget. The primary reason for the large NOR were expenses falling 3.2% below budget. This decrease was generally in every program or department. More detail follows.

- **Membership Fee revenue** was \$33,920 below budget, and only \$18,653 more than 2016. The increase from 2016 is solely due to the additional fees paid by members after the January 31 deadline.
- **Program Fee revenue** exceeded the budget by 1.1%. That increase is due to how CLE Seminars revenue was recorded due to a change in the contract with the online registrant and program content provider.

Net Revenue also was exceptional due to the *Realized and Unrealized Gains* on the portfolio managed by the two investment firms. The gains in 2016 were \$424,065 – the gains in 2017 were even greater at \$615,282.

Executive Summary

Revenue	Actual 12/31/2017	12 Month Budget 12/31/2017	Budget Variance	% of Budget	Actual 12/3012016
Member Fees	\$ 7,936,080	\$7,970,000	(\$33,920)	-0.4%	\$ 7,917,427
Program Fees	3,904,871	3,862,265	42,606	1.1%	3,577,224
Other Income	401,369	407,232	(5,863)	-1.4%	338,060
Total Revenue	12,242,320	12,239,497	2,823	0.0%	11,832,711
Expenses					
Salaries & Benefits	8,666,314	8,772,400	(106,086)	-1.2%	8,308,836
Direct Program, G & A	2,804,885	3,050,186	(245,301)	-8.0%	2,550,377
Contingency	-	25,000	(25,000)	-100.0%	6,577
Total Expense	11,471,199	11,847,586	(376,387)	-3.2%	10,865,790
Net Operating Rev (Exp)	771,121	\$ 391,911	379,210		966,921
Fanno Creek Place	(594,997)	(633,222)			(603,146)
Net Rev Bef Mkt Adj	176,124	\$ (241,311)			363,775
Unrealized Investment Gains /(Losses)	439,349				367,272
Realized Investment Gains/(Losses)	175,933				56,793
Publ Inventory Increase/Decrease (COGS)	0				(14,898)
Net Revenue	\$ 791,406				\$ 772,942

↑
Positive
Budget
Varianc

The Best Financial News about 2017

The bar now has had a continuing number of years where the actual Net Operating Revenue (NOR) exceeded the budget. That results in more cash available to the bar.

The chart below shows that at the end of 2017 the bar had \$1.5 million more available than at the end of 2016. The **short-term** increase is due to the higher NOR's, higher interest rates, and large deposits for unclaimed assets - all adding to more short-term funds. The **long-term** funds growth is due to the healthy equities market in 2017.

Type	Source	2017	2016	Change
Short-term	Local Government Investment Pool	\$ 4,211,714	\$ 3,459,395	\$ 752,319
Long-term	Becker Capital/ Washington Trust Bank	\$ 6,298,062	\$ 5,546,711	\$ 751,351
Total		\$ 10,509,776	\$ 9,006,106	\$ 1,503,670

The amount in the LGIP is the highest balance at year end since 2007, the year the bar sold the former bar center. The interest rate paid in December was 1.7% - the highest rate since January 2009.

Programs Over-Budget

Admissions: The Net Revenue at \$52,059 was \$89,000 less than 2016. Revenue was down as the number who sat for the exam in 2017 was 46 fewer than the previous year. Expenses also were up 7.3% as all expense categories were higher than the previous year.

The bottom line – Admissions Net Revenue still was \$9,600 over budget.

Disciplinary Counsel: Revenue exceeded the budget and was 29% higher than the previous year at \$106,561. As is usually the case Reinstatement Fees were 43% of the revenue. Personnel costs were 1.6% over budget, but Direct Program expenses were \$54,000 under budget as costs for contract services, court reporter, investigations, and travel expense all were well below budget.

General Counsel: This department's Net Expense was \$187,000 under spent as the Adjudicator position which was funded for four months had not been hired and Contract

Services for the use of outside legal counsel was \$35,075 unspent.

In policy established years ago by the Board of Governors after the bar paid over \$300,000 for outside legal counsel, any amount not spent from the Contract Services budget for outside counsel is moved to a Reserve.

After that transfer the Reserve for outside legal counsel stands at \$312,170.

MCLE: This program revenue grew for the fourth consecutive year and exceeded its budget by 6.5%. The revenue of \$365,890 from sponsor and late fees is probably the highest in the program's history. Net Revenue of \$66,465 exceeded the budget by \$22,300 even though it was \$10,600 less than the prior year. Almost all the decline from 2016 was due to higher indirect costs.

Lawyer Referral: Another banner financial year for Lawyer Referral. Revenue and Net Revenue reached all-time highs. The 12% fee revenue was \$818,157, well over budget, and \$113,600 more than 2016. Net Revenue was \$180,928 – almost double 2016’s Net Revenue.

The 12% referral fee revenue meant members earned \$6.8 million from the referrals.

The high revenue number contradicts the statement a year ago when it was expected that “this revenue source may have reached its peak.” More accurate is the amount of

revenue from these referral fees can fluctuate significantly year over year.

Others:

Governance: over budget due to lower expenses by \$34,200.

Lawyer Mentoring: over budget \$62,500 due to lower personnel costs and registration fees \$11,100 over budget meaning 311 members completed the mentoring program.

Member Services: improvement over budget by \$49,300 due to lower personnel costs.

Programs Under-Budget

Bulletin: Even though expenses were below budget and less than 2016 the program missed the budget by \$44,200. All sources of advertising revenue were less than 2016 as was the case in 2015.

CLE Seminars: Revenue and expenses were up substantially from 2016. The large increases were due to the contract with InReach, whereas the bar received the gross revenue for InReach services and the bar paid the same for the related expenses. In spite of this, Net Expense was \$205,000, but a \$37,700 improvement over 2016.

Communications:

This program was \$64,800 over its net expense budget due to personnel and indirect costs. Personnel is 78% of this department’s budget and there was as a reassignment of personnel during the year. A plus was a 30% increase in the revenue received from the job placement board. This revenue doubled in 2016 and reached \$39,452 in 2017.

Indirect Costs:

These costs are a combination of the expenses for Accounting & Finance, Creative Services, Human Resources, IT, Distribution Center, and a portion of the bar center.

These costs exceeded the budget by \$40,800. The primary reasons were contract personnel filling in at vacant positions, the hiring and recruiting that mirrors the vacancies, and contract personnel for the AMS conversion.

Others:

Client Assistance Office: higher personnel and indirect costs.

Legal Publications: missed budget by \$78,400 due to much lower book sales and higher indirect costs.

New Lawyers

Division: over expense budget \$25,400 due to more allocation of personnel

Fanno Creek Place (the Bat Center)

The net expense of \$594,997 was \$7,200 less than 2016. Revenue was virtually the same as 2016 and .5% over budget. Operating expenses were 6% higher, but were offset by the vacancy in the facilities manager position.

At the end of the year, using the cost of the bar center on the balance sheet (\$20.137 million) and the outstanding mortgage (\$10.923 million), there is \$9.214 million equity in the building.

Two Noteworthy events --

- The year ends with vacancies in two offices totaling 3,315 s.f. As of mid-February 2018, there is one prospect for the smaller space.
- On January 28, 2018, the occupation of the bar center was 10 years ago.

Restricted Funds

Client Security Fund: *Claims Paid* were only \$28,929. The budget placeholder was \$200,000 leading to a fund balance of \$1,258,312 at year end.

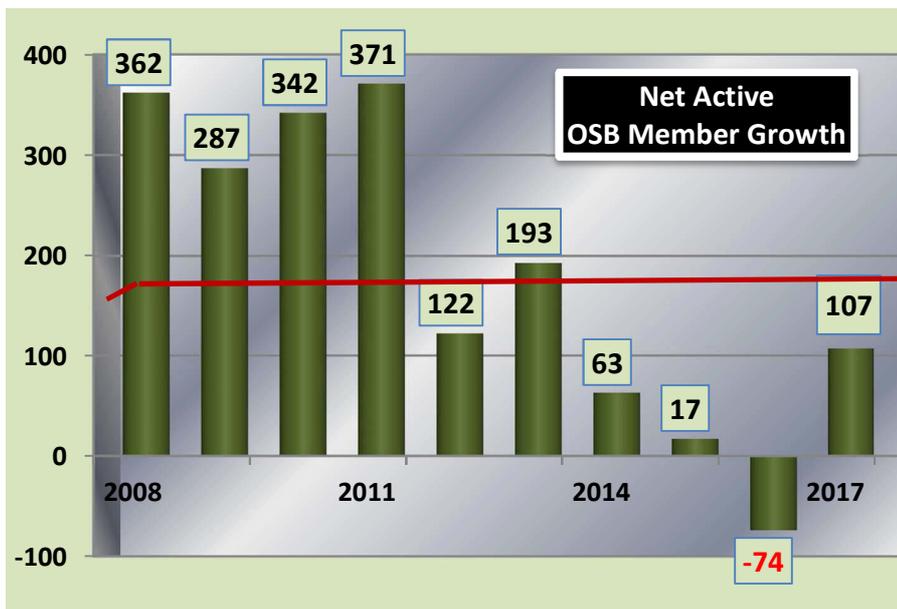
Diversity & Inclusion: The program generated a net revenue of \$97,793, well over the budget by \$62,500. Position vacancies existed part of the year

resulting also in lower Direct Program costs, the largest of which was \$27,000 in fewer law clerk placements. At year end the Fund Balance was \$542,281.

Legal Services: The Fund Balance is \$70,564, considerably lower than beginning the year as revenue received in previous years was disbursed in 2017.

Membership Stats

A Ten-Year Chart - An Obvious Contrast: The number of **Active** members of the bar rebounded from a decline in 2016 to a growth of 107 in 2017. The increase is due to the high passage rate from the July bar exam. The number of **Inactive** members grew only by 15, the lowest amount since the 1980's.



In spite of the increase in 2017, the chart of the 10-year change in Active membership shows the most recent four years are substantially different than the first four years. The red line is the ten-year average.

Funds Available vs Reserve Requirements

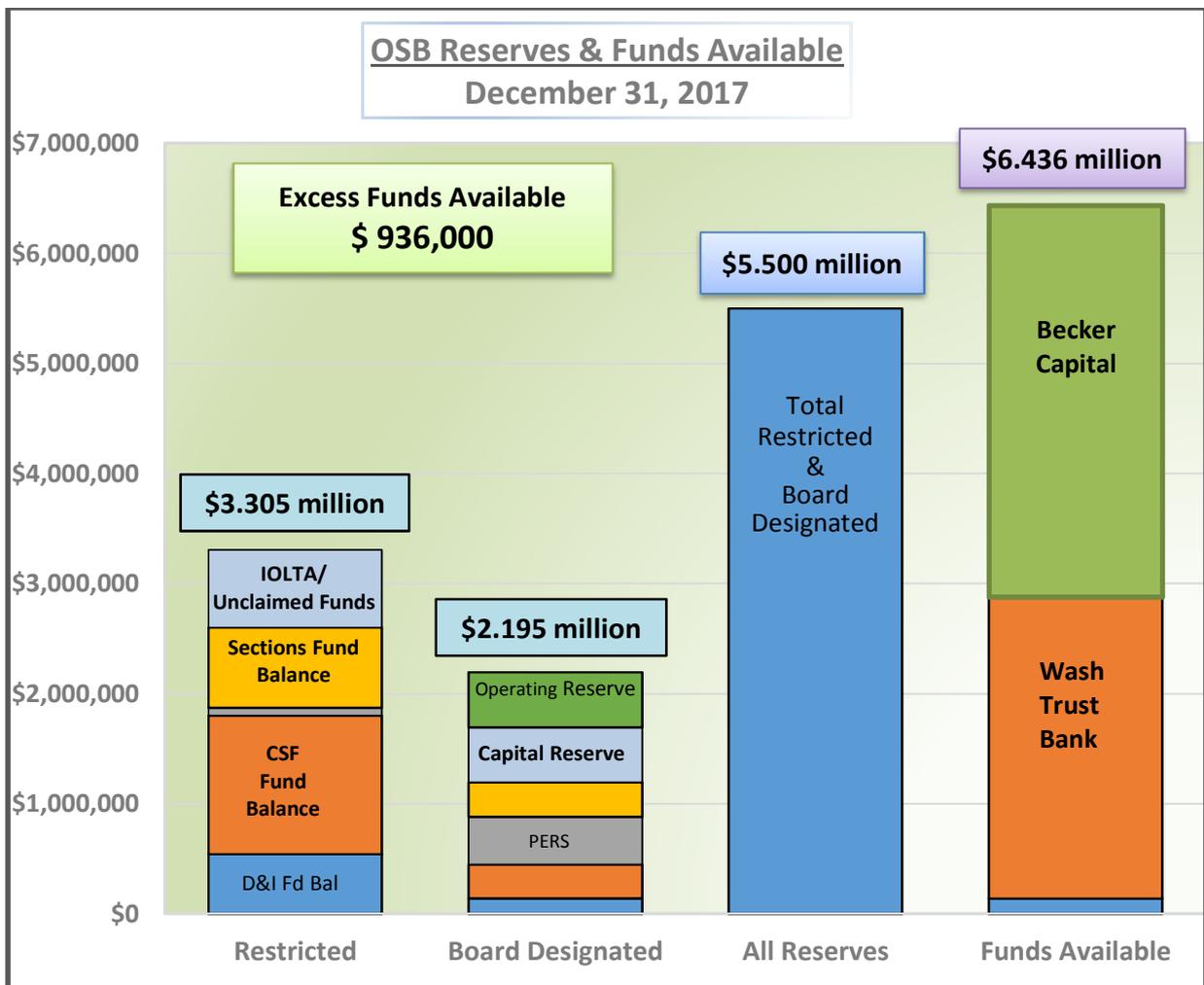
More Excess Funds:

Due to the growing investment portfolio, the amount of funds in excess of the reserve and contingency requirements stands at \$936,000 –

an amount \$216,000 more than a year ago.

All Reserves grew \$367,000 primarily due to the increase in the Unclaimed Assets. **Funds Available** grew by \$583,000.

The long-term investment portfolio balance at year end was \$6,298,062. The growth during 2017 was \$751,351, or a 13.5% gain.



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
From: Guy Greco, Board Development Committee Chair
Re: Appointments to various bar groups

Action Recommended

Approve the Board Development Committee's recommendations for member and non-member appointments to the following groups.

Background

Legal Services Program Committee

The Legal Services Program Committee oversees the OSB Legal Services Program and the funds appropriated to the bar by the Oregon Legislature. The committee is in need of one new member and **Laurie Craghead** (922663) is recommended based on her demonstrated commitment to access to justice and the geographic balance she brings to the committee. If appointed, Ms. Craghead's term would expire on December 31, 2020.

Loan Repayment Assistance Program Committee

The Loan Repayment Assistance Program Committee selects program recipients and sets program policy guidelines. One new member is needed to fill the seat designated for a practitioner from civil area of public service law. **Meghan Collins** (101834), a Legal Aid Services of Oregon lawyer, is recommended for the position. If appointed her term would expire December 31, 2020.

Minimum Continuing Legal Education Committee

The MCLE Committee provides input, analysis and evaluation of the program that accredits education programs for Oregon attorneys. One new public member is needed through December 31, 2020. **Oksana Davletshina** is recommended based on her experience as a lawyer from Russia.

State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. The committee is in need of one new member and **Chris Shaffner** (021662) is recommended to help balance the gender and geographic balance. Ms. Shaffner's term would expire December 31, 2021.

Uniform Criminal Jury Instructions Committee

The Uniform Criminal Jury Instructions Committee develops uniform jury instructions for use in criminal trials. One new member is needed and **Courtney Quale-Conrad** (085811) is recommended based on her geographic area and the perspective she offers from her employment experience on both sides of criminal cases. Ms. Quale-Conrad's term would expire December 31, 2019.

Oregon Law Commission

The Oregon Law Commission was created by the legislature to conduct law reform and propose new substantive and procedural provisions to improve Oregon law. One new member is needed and **Christa Obold Eshleman** (043801) is recommended based on her experience in juvenile dependency issues and the Commission's ongoing need for a practitioner with this perspective.

The Supreme Court makes appointments to the following bar groups based on recommendations from the Board of Governors. The Board Development Committee identified the following new member appointment recommendations for the BOG and Supreme Court's consideration.

Disciplinary Board

The Disciplinary Board is a component of the disciplinary process where board members act as judges in possible ethics violation cases. Panels consist of an adjudicator, a lawyer, and a public member. They determine if the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. New members are needed to fill vacant seats in region 3 and region 5.

Kelly L. Andersen (791464) is an experienced litigator offering a history of service as bar counsel for disciplinary cases. His appointment would aid in the gender balance of region 3 board members. If appointed his term would end on December 31, 2019.

Rebecca Cambreleng (133209) has a well-rounded legal career and experience as a lawyer from another state. If approved for appointment Ms. Cambreleng would bring better gender balance to region 5 and would serve through December 31, 2020.

Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. As required by OSB bylaw 20.2, only ¼ of the committee's membership can be in private practice. Two new members are needed and **Halal A. Ilias** (143449) and **Vanessa L. Crakes** (032436) are recommended for terms through December 31, 2020.

Oregon Board of Bar Examiners

To: Board of Governors Development Committee
Memo Date: January 26, 2018
Meeting Dates: February 22 – 23, 2018
From: Troy Wood, Admissions Manager
Re: Proposed Co-Graders for the July 2018 Bar Exam

The Board of Bar Examiners (BBX) wishes to consider the following candidates to possibly serve as co-graders for the August 2018 grading session. Pursuant to Section 28.2 of the Oregon State Bar Bylaws, the BBX hereby solicits the input of the Oregon State Bar's Board of Governors regarding these candidates. In making these selections, the BBX considered the lawyer's career experience, their area legal expertise, their demographic and geographic diversity and their experience grading or assisting the BBX in other matters.

STEFFAN ALEXANDER	Admitted 2013
Portland	Private Practice, Litigation
Black Male	No Experience as Co-Grader
Other BBX Service:	No other service
TODD E. BOFFERDING	Admitted 1988
Hood River	Private Practice, Real Estate/Family
White Male	Has Co-Graded in the Past
Other BBX Service:	No other service
ROSA CHAVEZ	Admitted in 2003
Eugene	University of Oregon
Hispanic Female	Has Co-Graded in the Past
Other BBX Service:	No other service
MARISHA CHILDS	Admitted 2012
Vancouver	Private Practice, Elder Law & Estates
Black Female	Has Co-Graded in the Past
Other BBX Service:	No other service
CHRISTY A. DOORNINK	Admitted 2003
Portland	Private Practice, Workers Comp.
White Female	No Experience as a Co-Grader
Other BBX Service:	No other service

DENISE FJORDBECK Salem White Female Other BBX Service:	Admitted 1982 DOJ, Admin & Environmental Has Co-graded in the Past Prior BBX member
LISSA K. KAUFMAN Portland White Female Other BBX Service:	Admitted 1997 Private Practice, Family & Consumer Has Co-Graded in the Past No other service
RICHARD A. WEILL Troutdale White male Other BBX Service:	Admitted 1982 Private Practice, Family law No Experience as a Co-Grader Served as a C&F Special Investigator
KENDRA MATTHEWS Portland White Female Other BBX Service:	Admitted 1996 Private Practice, Admin & Criminal Has Co-Graded in the Past No other service
SARAH A. PETERS Eugene White Female Other BBX Service:	Admitted 2007 Private Practice, Environmental No Experience as a Co-Grader No other service
MANDI PHILPOTT Gladstone White Female Other BBX Service:	Admitted 2002 Private Practice, Family Law Has Co-Graded in the Past No other service
ANTHONY ROSILEZ Klamath Falls Hispanic Male Other BBX Service:	Admitted 1996 Klamath Community College, Labor & Employment No Experience as a Co-Grader No other service
MICHAEL J. SLAUSON Salem White Male Other BBX Service:	Admitted 2001 DOJ, Criminal & Constitutional Has Co-Graded in the Past No other service

ADRIAN T. SMITH Portland White Lesbian Female Other BBX Service:	Admitted 2012 Juvenile & Criminal Has Co-Graded in the Past No other service
MIRANDA SUMMER Portland Bi-Racial Lesbian Female Other BBX Service:	Admitted 2007 Private Practice, Family Law & Workers Comp No Experience as a Co-Grader No other service
KATHERINE E. WEBER Oregon City White Female Other BBX Service:	Admitted 1994 Circuit Ct Judge No Experience as a Co-Grader No other service
GLEN H. UJIFUSA, JR. Portland Asian Male Other BBX Service:	Admitted 2006 Multnomah County DA's Office No Experience as a Co-Grader No other service
SIMON WHANG Portland Asian Male Other BBX Service:	Admitted 2003 Office of City Attorney Has Co-Graded in the Past No other service
JENNIFER JANE MARTIN Portland White Female Other BBX Service:	Admitted 1984 US Attorney's Office No Experience as a Co-Grader No other service

OREGON STATE BOARD OF BAR EXAMINERS

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, OR 97281-1935
(503) 620-0222 or (800) 452-8260 • www.osbar.org

January 29, 2018

Helen M Hierschbiel
Executive Director
Oregon State Bar
PO Box 231935
Tigard, OR 97281

RE: *Board of Governors' Approval of Board of Bar Examiners Actions*

Dear Ms. Hierschbiel:

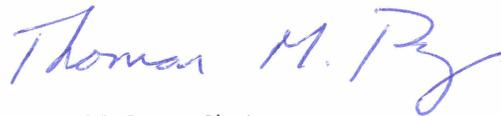
Stephanie Eames resigned from the Oregon State Board of Bar Examiners (BBX) effective December 31, 2017. This necessitates the appointment of a new member to serve out the rest of Ms. Eames' three-year term (ending September 30, 2019). At our January 19, 2018 meeting, the BBX determined that they would recommend Ernest Warren, Jr. to replace Ms. Eames.

Mr. Warren is highly qualified for the BBX. Ernie has been approved by the Board of Governors as an exam co-grader and has regularly co-graded bar exams in the past. He is an efficient and reliable grader.

While our rules do not dictate a process for replacing a board member, in the spirit of OSB and BBX cooperation and OSB Bylaws Section 28.2, the BBX hereby solicits input from the Board of Governors related to Mr. Warren's appointment as a BBX member.

Our goal is to have Mr. Warren's appointment placed on the earliest possible public meeting agenda of the Oregon Supreme Court. Please let me know if you need anything further from the BBX. Thank you in advance for your assistance in this process.

Sincerely,



Thomas M. Ryan, Chair
Oregon State Board of Bar Examiners

cc: Ernest Warren, Jr.



OREGON STATE BAR Board of Governors Agenda

Meeting Date: February 22-23, 2018
Memo Date: February 5, 2018
From: Carol J. Bernick, PLF CEO
Re: PLF Report

Unfortunately, our board meetings had to occur on the same day and, therefore, I will not attend the BOG meeting to give my regular PLF report. This memo and the attached exhibits will have to substitute.

A. Financial Update (Exhibit 1)

The December 31, 2017 financial statements are attached as Exhibit 1. On virtually every matrix, the PLF's financial performance for last year and its current financial position are excellent. Our investment return in 2017 was approximately 13%, resulting in an increase to our portfolio of just over \$7 million. We released almost \$4 million of claim reserves which is unprecedented in the history of the PLF. This release was based on actuarial analysis of our claims frequency and severity, both of which were lower than anticipated.

The PLF ended the year with a \$20 million Net Position, almost \$7 million over our adopted goal. As I have mentioned previously, the PLF will be analyzing how to respond to that positive financial position by reviewing a potential reduction in our assessment for 2019 and our current coverage limits.

B. Actuarial Report (Exhibit 2)

Our actuarial report for determination of reserves for unpaid indemnity and unpaid expense as of December 31, 2017 is attached as Exhibit 2. Because the exhibits to that analysis are so voluminous, I have omitted them.

C. Investments Statement (Exhibit 3)

Attached as Exhibit 3 is a copy of our quarterly performance report from our investment advisors, RVK, as of December 31, 2017.

D. Paperless Assessment

For the first time in its history, the PLF went paperless for its entire assessment and exemption process. The staff at the PLF did an excellent job in making the interface user-friendly. We had no crashes or other unanticipated problems for the PLF or for the membership. Particular thanks goes to the Oregon State Bar staff who delayed an important update to its own system originally scheduled to occur a few

days before our assessment deadline. Perhaps the best indication of the success of the paperless initiative is that as of today, February 5, 2018, I have not received a single complaint from a covered party about the paperless system, asking for a waiver of any late fee due to an alleged lack of notice of the change in system or any other problem that has bubbled up for my review.

E. Claims and Defense Counsel Evaluations

As in the past, we have provided you a copy of our 2017 statistics from our evaluation forms sent to covered parties upon the closing of their claim. *See* Exhibit 4. We closed 809 claims in 2017 and received 316 evaluations (almost 40% return). Well over 92% of respondents were very satisfied with the overall handling of their claim. None of the respondents indicated they were not satisfied with the overall handling of their claim.

F. Director of Claims

Madeleine Campbell is off to an excellent start in her first month as Director of Claims.

CJB/clh

Attachments:

Exhibit 1 – PLF Draft December 31, 2017 Financial Statements

Exhibit 2 – PLF Actuarial Analysis through December 31, 2017

Exhibit 3 – PLF Investments Statement

Exhibit 4 – Covered Party Evaluations for 2017

CJB/clh

Processed on 1/30/2018

**Oregon State Bar
Professional Liability Fund
Financial Statements
12/31/2017**

TABLE OF CONTENTS

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

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Statement of Net Position
12/30/2017**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$9,119,185.13	\$6,930,779.84
Investments at Fair Value	57,535,846.92	50,383,557.38
Due from Reinsurers	150,822.99	590,655.91
Other Current Assets	728,911.46	1,027,341.61
Net Fixed Assets	534,475.48	673,304.30
Claim Receivables	64,864.82	70,272.46
Other Long Term Assets	<u>5,000.00</u>	<u>6,150.00</u>
TOTAL ASSETS	<u>\$68,139,106.80</u>	<u>\$59,682,061.50</u>
 <u>LIABILITIES AND FUND POSITION</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$306,981.45	\$292,282.26
Due to Reinsurers	\$4,722.74	\$43,598.90
Deposits - Assessments	11,670,673.00	10,771,504.30
PERS Pension Liability	3,687,715.04	3,687,715.04
Liability for Compensated Absences	380,963.74	414,472.04
Liability for Indemnity	12,300,000.00	13,468,746.60
Liability for Claim Expense	12,900,000.00	13,531,253.40
Liability for Future ERC Claims	2,900,000.00	3,100,000.00
Liability for Suspense Files	1,500,000.00	1,600,000.00
Liability for Future Claims Administration (AOE)	2,300,000.00	2,600,000.00
Excess Ceding Commission Allocated for Rest of Year	861.16	0.00
Primary Assessment Allocated for Rest of Year	<u>(306.00)</u>	<u>0.00</u>
Total Liabilities	<u>\$47,951,611.13</u>	<u>\$49,509,572.54</u>
Change in Net Position:		
Retained Earnings (Deficit) Beginning of the Year	\$10,172,488.96	\$6,471,371.49
Year to Date Net Income (Loss)	<u>10,015,006.71</u>	<u>3,701,117.47</u>
Net Position	<u>\$20,187,495.67</u>	<u>\$10,172,488.96</u>
TOTAL LIABILITIES AND FUND POSITION	<u>\$68,139,106.80</u>	<u>\$59,682,061.50</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Revenues, Expenses, and Changes in Net Position
12 Months Ended 12/30/2017**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
REVENUE					
Assessments	\$24,168,892.00	\$24,325,000.00	\$156,108.00	\$24,299,773.00	\$24,325,000.00
Installment Service Charge	327,213.00	330,000.00	2,787.00	329,097.00	330,000.00
Other Income	129,038.98	111,000.00	(18,038.98)	54,494.67	111,000.00
Investment Return	<u>6,570,998.07</u>	<u>1,751,183.00</u>	<u>(4,819,815.07)</u>	<u>3,423,144.99</u>	<u>1,751,183.00</u>
TOTAL REVENUE	<u>\$31,196,142.05</u>	<u>\$26,517,183.00</u>	<u>(\$4,678,959.05)</u>	<u>\$28,106,509.66</u>	<u>\$26,517,183.00</u>
EXPENSE					
Provision For Claims:					
New Claims at Average Cost	\$17,923,500.00			\$18,877,500.00	
Actuarial Adjustment to Reserves	(3,919,611.70)			(2,460,144.84)	
Net Changes in AOE Liability	(300,000.00)			200,000.00	
Net Changes in ERC Liability	(200,000.00)			0.00	
Net Changes in Suspense File Liab.	(100,000.00)			0.00	
Coverage Opinions	76,778.36			122,071.62	
General Expense	18,473.80			16,417.55	
Less Recoveries & Contributions	(60,810.30)			(69,279.89)	
Budget for Claims Expense		<u>\$19,075,000.00</u>			<u>\$19,075,000.00</u>
Total Provision For Claims	<u>\$13,438,330.16</u>	<u>\$19,075,000.00</u>	<u>\$5,636,669.84</u>	<u>\$16,686,564.44</u>	<u>\$19,075,000.00</u>
Expense from Operations:					
Administrative Department	\$2,636,260.87	\$2,656,039.00	\$19,778.13	\$2,748,321.60	\$2,656,039.00
Accounting Department	898,359.35	882,350.00	(16,009.35)	859,277.54	882,350.00
Loss Prevention Department	2,140,521.16	2,214,830.00	74,308.84	2,244,670.11	2,214,830.00
Claims Department	2,898,780.01	2,925,689.00	26,908.99	2,669,497.61	2,925,689.00
Allocated to Excess Program	<u>(1,083,879.96)</u>	<u>(1,083,880.00)</u>	<u>(0.04)</u>	<u>(1,065,979.92)</u>	<u>(1,083,880.00)</u>
Total Expense from Operations	<u>\$7,490,041.43</u>	<u>\$7,595,028.00</u>	<u>\$104,986.57</u>	<u>\$7,455,786.94</u>	<u>\$7,595,028.00</u>
Depreciation and Amortization	\$154,873.88	\$160,507.00	\$5,633.12	\$162,794.20	\$160,507.00
Allocated Depreciation	<u>(20,349.96)</u>	<u>(20,350.00)</u>	<u>(0.04)</u>	<u>(24,261.00)</u>	<u>(20,350.00)</u>
TOTAL EXPENSE	<u>\$21,062,895.51</u>	<u>\$26,810,185.00</u>	<u>\$5,747,289.49</u>	<u>\$24,280,884.58</u>	<u>\$26,810,185.00</u>
NET POSITION - INCOME (LOSS)	<u>\$10,133,246.54</u>	<u>(\$293,002.00)</u>	<u>(\$10,426,248.54)</u>	<u>\$3,825,625.08</u>	<u>(\$293,002.00)</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
12 Months Ended 12/30/2017**

<u>EXPENSE:</u>	<u>CURRENT</u>	<u>YEAR</u>	<u>YEAR</u>	<u>VARIANCE</u>	<u>YEAR</u>	<u>ANNUAL</u>
	<u>MONTH</u>	<u>TO DATE</u>	<u>TO DATE</u>		<u>TO DATE</u>	<u>BUDGET</u>
		<u>ACTUAL</u>	<u>BUDGET</u>		<u>LAST YEAR</u>	<u>BUDGET</u>
Salaries	\$447,924.20	\$4,726,789.68	\$4,698,648.00	(\$28,141.68)	\$4,438,970.63	\$4,698,648.00
Benefits and Payroll Taxes	152,406.96	1,658,200.94	1,683,243.00	25,042.06	1,915,221.90	1,683,243.00
Investment Services	12,045.82	48,691.91	44,000.00	(4,691.91)	43,393.50	44,000.00
Legal Services	0.00	8,588.50	10,000.00	1,411.50	26,296.75	10,000.00
Financial Audit Services	0.00	23,000.00	23,000.00	0.00	22,000.00	23,000.00
Actuarial Services	0.00	24,735.00	30,000.00	5,265.00	24,995.00	30,000.00
Claims Audit Services	0.00	0.00	0.00	0.00	4,870.97	0.00
Information Services	4,202.85	66,074.24	71,000.00	4,925.76	65,639.31	71,000.00
Document Scanning Services	0.00	24,399.32	30,000.00	5,600.68	31,181.32	30,000.00
Other Professional Services	8,799.34	97,958.99	86,175.00	(11,783.99)	103,471.73	86,175.00
Staff Travel	940.04	19,717.74	27,600.00	7,882.26	18,647.47	27,600.00
Board Travel	9,859.38	53,660.92	41,500.00	(12,160.92)	50,613.63	41,500.00
NABRICO	0.00	5,483.00	15,000.00	9,517.00	14,172.00	15,000.00
Training	1,184.33	23,027.84	39,000.00	15,972.16	38,730.20	39,000.00
Rent	44,731.25	551,586.99	535,783.00	(15,803.99)	547,994.03	535,783.00
Printing and Supplies	9,178.68	102,504.62	79,000.00	(23,504.62)	66,961.70	79,000.00
Postage and Delivery	1,898.50	26,738.76	26,500.00	(238.76)	28,196.67	26,500.00
Equipment Rent & Maintenance	1,071.87	40,554.42	41,761.00	1,206.58	40,537.29	41,761.00
Telephone	3,168.57	53,268.01	50,500.00	(2,768.01)	50,561.04	50,500.00
L P Programs (less Salary & Benefits)	58,622.00	432,956.67	519,750.00	86,793.33	496,437.00	519,750.00
Defense Panel Training	0.00	86,837.84	98,448.00	11,610.16	4,125.00	98,448.00
Bar Books Grant	16,666.63	200,000.00	200,000.00	0.00	200,000.00	200,000.00
Insurance	3,430.83	44,704.28	43,000.00	(1,704.28)	44,650.53	43,000.00
Library	4,041.77	31,217.62	31,500.00	282.38	29,024.32	31,500.00
Subscriptions, Memberships & C/C Char	46,879.94	223,224.10	253,500.00	30,275.90	215,074.87	253,500.00
Allocated to Excess Program	(90,323.33)	(1,083,879.96)	(1,083,880.00)	(0.04)	(1,065,979.92)	(1,083,880.00)
TOTAL EXPENSE	<u>\$736,729.63</u>	<u>\$7,490,041.43</u>	<u>\$7,595,028.00</u>	<u>\$104,986.57</u>	<u>\$7,455,786.94</u>	<u>\$7,595,028.00</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Revenue, Expenses, and Changes in Net Position
13 Months Ended 12/31/2017**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$871,163.87	\$795,000.00	(\$76,163.87)	\$791,294.50	\$795,000.00
Prior Year Adj. (Net of Reins.)	(1.99)	0.00	1.99	0.33	0.00
Profit Commission	(3,317.54)	30,000.00	33,317.54	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>165,758.80</u>	<u>131,809.00</u>	<u>(33,949.80)</u>	<u>170,388.92</u>	<u>131,809.00</u>
TOTAL REVENUE	<u>\$1,082,909.14</u>	<u>\$1,001,809.00</u>	<u>(\$81,100.14)</u>	<u>\$1,053,097.22</u>	<u>\$1,001,809.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	<u>\$1,180,799.01</u>	<u>\$1,201,880.00</u>	<u>\$21,080.99</u>	<u>\$1,153,343.83</u>	<u>\$1,201,880.00</u>
Allocated Depreciation	<u>\$20,349.96</u>	<u>\$17,200.00</u>	<u>(\$3,149.96)</u>	<u>\$24,261.00</u>	<u>\$17,200.00</u>
NET POSITION - INCOME (LOSS)	<u>(\$118,239.83)</u>	<u>(\$217,271.00)</u>	<u>(\$99,031.17)</u>	<u>(\$124,507.61)</u>	<u>(\$217,271.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
13 Months Ended 12/31/2017**

	<u>CURRENT MONTH</u>	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$0.00	\$595,719.96	\$595,720.00	\$0.04	\$589,926.96	\$595,720.00
Benefits and Payroll Taxes	0.00	200,164.92	200,165.00	0.08	192,801.00	200,165.00
Investment Services	0.00	808.09	2,500.00	1,691.91	1,606.50	2,500.00
Office Expense	0.00	87.29	0.00	(87.29)	0.00	0.00
Allocation of Primary Overhead	0.00	287,995.08	287,995.00	(0.08)	283,251.96	287,995.00
Reinsurance Placement & Travel	0.00	13,681.87	20,000.00	6,318.13	8,096.33	20,000.00
Training	0.00	0.00	5,000.00	5,000.00	485.00	5,000.00
Printing and Mailing	0.00	3,609.25	10,500.00	6,890.75	5,743.13	10,500.00
Program Promotion	0.00	14,104.95	18,000.00	3,895.05	14,150.00	18,000.00
Other Professional Services	0.00	29,295.20	17,000.00	(12,295.20)	29,372.85	17,000.00
Software Development	<u>0.00</u>	<u>35,332.40</u>	<u>45,000.00</u>	<u>9,667.60</u>	<u>27,910.10</u>	<u>45,000.00</u>
TOTAL EXPENSE	<u>\$0.00</u>	<u>\$1,180,799.01</u>	<u>\$1,201,880.00</u>	<u>\$21,080.99</u>	<u>\$1,153,343.83</u>	<u>\$1,201,880.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
13 Months Ended 12/31/2017**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$0.00	\$111,986.06	\$0.00	\$131,775.46
Intermediate Term Bond Funds	0.00	383,219.93	0.00	293,083.84
Domestic Common Stock Funds	0.00	228,961.21	0.00	202,566.46
International Equity Fund	0.00	173,893.98	0.00	231,836.46
Real Estate	0.00	144,056.80	0.00	190,341.84
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>110,272.97</u>	<u>0.00</u>	<u>210,468.78</u>
Total Dividends and Interest	<u>\$0.00</u>	<u>\$1,152,390.95</u>	<u>\$0.00</u>	<u>\$1,260,072.84</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	\$0.00	(\$87,953.08)	\$0.00	(\$34,742.09)
Intermediate Term Bond Funds	0.00	269,801.83	0.00	173,166.96
Domestic Common Stock Funds	0.00	2,132,967.60	0.00	990,256.55
International Equity Fund	0.00	2,363,529.51	0.00	136,915.83
Real Estate	0.00	147,873.01	0.00	252,378.82
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>727,653.80</u>	<u>0.00</u>	<u>815,485.00</u>
Total Gain (Loss) in Fair Value	<u>\$0.00</u>	<u>\$5,553,872.67</u>	<u>\$0.00</u>	<u>\$2,333,461.07</u>
TOTAL RETURN	<u>\$0.00</u>	<u>\$6,706,263.62</u>	<u>\$0.00</u>	<u>\$3,593,533.91</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$0.00	\$35,132.20	\$0.00	\$45,769.78
Gain (Loss) in Fair Value	<u>0.00</u>	<u>130,626.60</u>	<u>0.00</u>	<u>124,619.14</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$0.00</u>	<u>\$165,758.80</u>	<u>\$0.00</u>	<u>\$170,388.92</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Balance Sheet
12/30/2017**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$7,570,363.29	\$5,234,830.82
Investments at Fair Value	56,091,309.21	49,060,827.49
Due From Excess Fund	40.00	60.68
Other Current Assets	728,871.46	1,027,280.93
Net Fixed Assets	534,475.48	673,304.30
Claim Receivables	64,864.82	70,272.46
Other Long Term Assets	<u>5,000.00</u>	<u>6,150.00</u>
TOTAL ASSETS	<u>\$64,994,924.26</u>	<u>\$56,072,726.68</u>
 <u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$301,531.27	\$276,752.93
Deposits - Assessments	10,524,248.00	9,326,261.00
PERS Pension Liability	3,687,715.04	3,687,715.04
Liability for Compensated Absences	380,963.74	414,472.04
Liability for Indemnity	12,300,000.00	13,468,746.60
Liability for Claim Expense	12,900,000.00	13,531,253.40
Liability for Future ERC Claims	2,900,000.00	3,100,000.00
Liability for Suspense Files	1,500,000.00	1,600,000.00
Liability for Future Claims Administration (ULAE)	2,300,000.00	2,600,000.00
Assessment and Installment Service Charge Allocated for Remainder of Year	(306.00)	<u>0.00</u>
Total Liabilities	<u>\$46,794,152.05</u>	<u>\$48,005,201.01</u>
Net Position		
Net Position (Deficit) Beginning of the Year	\$8,067,525.67	\$4,241,900.59
Year to Date Net Income (Loss)	<u>10,133,246.54</u>	<u>3,825,625.08</u>
Total Net Position	<u>\$18,200,772.21</u>	<u>\$8,067,525.67</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$64,994,924.26</u>	<u>\$56,072,726.68</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Balance Sheet
12/31/2017**

ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,548,821.84	\$1,695,949.02
Due from Reinsurers	150,822.99	590,655.91
Investments at Fair Value	<u>1,444,537.71</u>	<u>1,322,729.89</u>
TOTAL ASSETS	<u>\$3,144,182.54</u>	<u>\$3,609,334.82</u>

LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable & Refunds Payable	\$5,450.18	\$15,468.65
Due to Primary Fund	\$0.00	\$60.68
Due to Reinsurers	4,722.74	43,598.90
Deposits of Next Year's Assessment	<u>1,146,425.00</u>	<u>1,445,243.30</u>
Ceding Commission Allocated for Remainder of Year	<u>861.16</u>	<u>0.00</u>
Total Liabilities	<u>\$1,157,459.08</u>	<u>\$1,504,371.53</u>
Net Position		
Net Position (Deficit) Beginning of Year	\$2,104,963.29	\$2,229,470.90
Year to Date Net Income (Loss)	<u>(118,239.83)</u>	<u>(124,507.61)</u>
Total Net Position	<u>\$1,986,723.46</u>	<u>\$2,104,963.29</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$3,144,182.54</u>	<u>\$3,609,334.82</u>

Rudd and Wisdom, Inc.

CONSULTING ACTUARIES

Mitchell L. Bilbe, F.S.A.
 Evan L. Dial, F.S.A.
 Philip S. Dial, F.S.A.
 Philip J. Ellis, A.S.A.
 Charles V. Faerber, F.S.A., A.C.A.S.
 Mark R. Fenlaw, F.S.A.
 Brandon L. Fuller, F.S.A.

Christopher S. Johnson, F.S.A.
 Oliver B. Kiel, F.S.A.
 Dustin J. Kim, A.S.A.
 Edward A. Mire, F.S.A.
 Rebecca B. Morris, A.S.A.
 Amanda L. Murphy, F.S.A.

Michael J. Muth, F.S.A.
 Khiem Ngo, F.S.A., A.C.A.S.
 Elizabeth A. O'Brien, F.S.A.
 Chelsea E. Stewart, A.S.A.
 Raymond W. Tilotta
 Ronald W. Tobleman, F.S.A.
 David G. Wilkes, F.S.A.

January 18, 2018

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 December 31, 2017

Dear Betty Lou:

At your request, we have performed an actuarial analysis of PLF claims experience from inception through December 31, 2017, to determine the liability for unpaid indemnity and unpaid expense on claims reported as of December 31, 2017. Based on this analysis, we have estimated the reserve for unpaid indemnity to be in a range of \$10.4 million to \$13.5 million, with \$12.3 million as the indicated reserve. Similarly, we estimate the reserve for unpaid expense to be between \$10.5 million and \$15.0 million, with an indicated reserve of \$12.9 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 December 31, 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 December 31, 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 was a special claim situation for the PLF that needed to be addressed. One of the PLF insured attorneys 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 was not a large exposure to the Primary Fund from this event. However, we modified our approach to valuing these claims, especially as it pertains to claim counts. These claims were reported in 2012 and 2013. As these claims have matured, the impact on the PLF liabilities has diminished because none of the claims were near the limit. We will address this issue later in the narrative.

As of December 31, 2017, there are 129 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 12. That occurred in 2000. There were 11 such claims in 2008 and 2009. 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 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 indemnity claims has been as expected, while claim development for expense claims has been less than expected.

If we had continued to use the June 30, 2017 factors, then our estimate of ultimate incurred claims and the corresponding liability would have been approximately \$5,000 lower for indemnity and \$205,000 higher for expense. The factors from December 31, 2016 produce results that also would have been approximately \$407,000 higher for indemnity and \$875,000 higher for expense.

Exhibits 4A (indemnity) and 4B (expense) display the comparison analysis for claim development between June 30, 2017 and December 31, 2017. Similarly, Exhibits 5A and 5B present the analysis for claim development between December 31, 2016 and December 31, 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 regression analysis and professional judgment to project the average severity of the claims reported in 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 (0.10%) on average severities since 1991. Since 1993, the trend has been somewhat higher (0.14%). In recent years, the trend has been negative. 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 (3.09%) 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 11 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 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 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 2016

For claims reported prior to 2016, 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 June 30, 2017 and December 31, 2016. Our estimate of the ultimate incurred liability for the indemnity portion of these claims is approximately \$43,000 less than we had

projected for incurred indemnity at June 30, 2017 and approximately \$632,000 less than we had projected at December 31, 2016. Our estimate of the ultimate incurred liability for the expense portion of these claims is approximately \$434,000 less than we had projected at June 30, 2017 and approximately \$1,139,000 less than we had projected at December 31, 2016.

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 \$8,654. The average severity for expense is comparable to recent experience at \$10,950.

For claims reported in 2016, our current estimate reflects a 50% emphasis on the results produced by the development factors and a 50% 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 \$9,400 severity for indemnity and an \$11,200 severity for expense.

Using the assumptions from the 2016 assessment study, we estimated that 2016 would produce 924 claims (13.00% x 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 \$20,102 each [50% x (\$8,654 + \$10,950) + 50% x (\$9,400 + \$11,200)]. Thus, the present estimate of claims (\$16.87 million = 839 claims x \$20,102) is approximately \$2.54 million less than the expected incurred claims (\$19.40 million = 924 claims x \$21,000).

Claims Reported in 2017

During 2017, 827 claims have been reported. Those claims represent an 11.50% 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 \$8,679. The average severity for expense is less than recent experience and our expectations at \$8,659.

For claims reported in 2017, 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 \$9,600 severity for indemnity and an \$11,000 severity for expense.

Using the assumptions from the 2017 assessment study, we estimated that 2017 would produce 935 claims (13.00% x 7,193 attorneys) with an average severity of \$21,000 per claim. As mentioned above, the PLF has actually incurred 827 claims, which we have valued at \$20,600 each. Thus, the present estimate of claims (\$17.04 million = 827 claims x \$20,600) is approximately \$2.60 million less than the expected incurred claims (\$19.64 million = 935 claims x \$21,000).

Claims To Be Reported in the First Half of 2018

In the June 30, 2017 valuation, we recommended a total average severity of \$21,000 to value each new claim in the second half of 2017. The last six months of 2017 have subsequently produced both lower frequency and lower severity than we expected. The assessment study for 2018 assumes a \$20,000 severity for claims reported in 2018. It seems reasonable to assume that claim costs will be somewhat lower for 2018 than we have previously assumed. For that reason, we believe that you should value claims at \$20,000 each for the first half of 2018. We suggest that claims incurred in the first half of 2018 should be allocated as follows:

<i>2018 Claims</i>	<i>Selected Severity</i>	
	<i>Indemnity</i>	<i>Expense</i>
Reported in First Half of Year	\$ 9,000	\$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 December 31, 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 December 31, 2017 (in Thousands)</i>		
	<i>Low</i>	<i>Indicated</i>	<i>High</i>
<i>Indemnity</i>	\$10,400	\$12,300	\$13,500
<i>Expense</i>	10,500	12,900	15,000
<i>Total</i>	\$20,900	\$25,200	\$28,500

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 December 31, 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 11 of the past 13 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 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 \$4.8 million of surplus, and 80% confidence indicates that the Fund should hold \$7.9 million of surplus. A 90% confidence level requires \$12.2 million of surplus. The corresponding values at June 30, 2017 were close than these values but the values at December 31, 2016 were not that close and lower by approximately \$1 million at all confidence levels. This further demonstrates 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 \$12.2 million is the appropriate amount of surplus at a 90% confidence level, then we believe that there is a 90% probability that the claim

Ms. Betty Lou Morrow

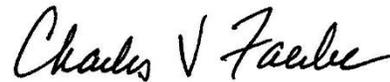
Page 10

January 18, 2018

reserves on the Fund's balance sheet plus \$12.2 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,

A handwritten signature in cursive script that reads "Charles V. Faerber".

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

CVF: ms

N:\Clients\OPLF\WPFiles\2018\Morrow0117.doc



Quarterly Investment Performance Analysis

Oregon State Bar Professional Liability Fund

Period Ended: December 31, 2017



Table Of Contents

1	Capital Markets Review	Page 3
2	Total Fund	Page 10
3	Investment Manager Profiles	Page 21
4	Addendum & Glossary	Page 34

Capital Markets Review

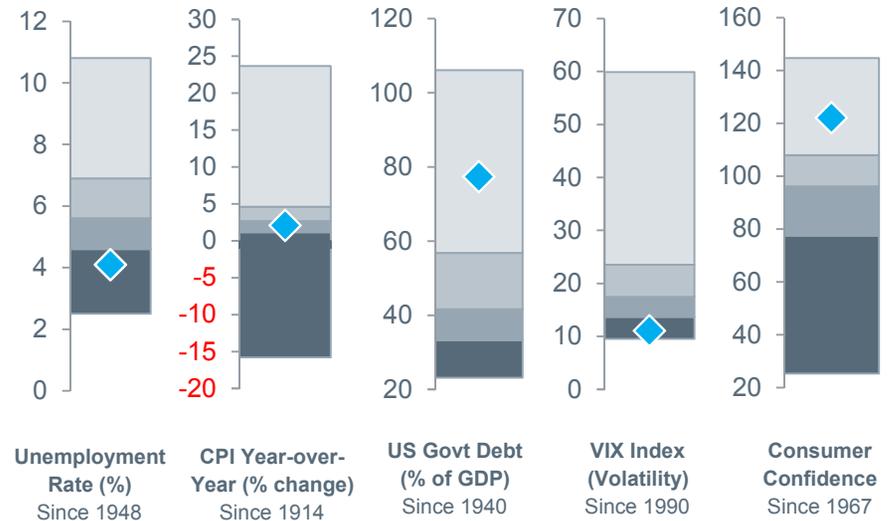


Fourth Quarter Economic Environment

Key Economic Indicators

Price action across global financial markets continued to be driven by expectations of ongoing economic growth and generally accommodative central bank policies, with equity markets trading to record levels and global sovereign debt yields continuing to trade within recent ranges. The nominal Treasury curve continued to flatten over the quarter. Market participants suggest that recent and expected monetary policy actions, as well as expectations for increased Treasury issuance amidst fiscal stimulus policies, are driving short-maturity and mid-maturity yields higher. Comparatively, longer-dated yields proved stable, and reportedly continue to be heavily influenced by relatively modest expectations for sustained US economic growth and building inflation expectations. Finally, the US dollar continued to depreciate over the quarter, weakening by 1% against major currencies amidst continued economic improvements across developed international and emerging markets. The depreciation over the quarter contributed to a total dollar depreciation of nearly 10% for the year.

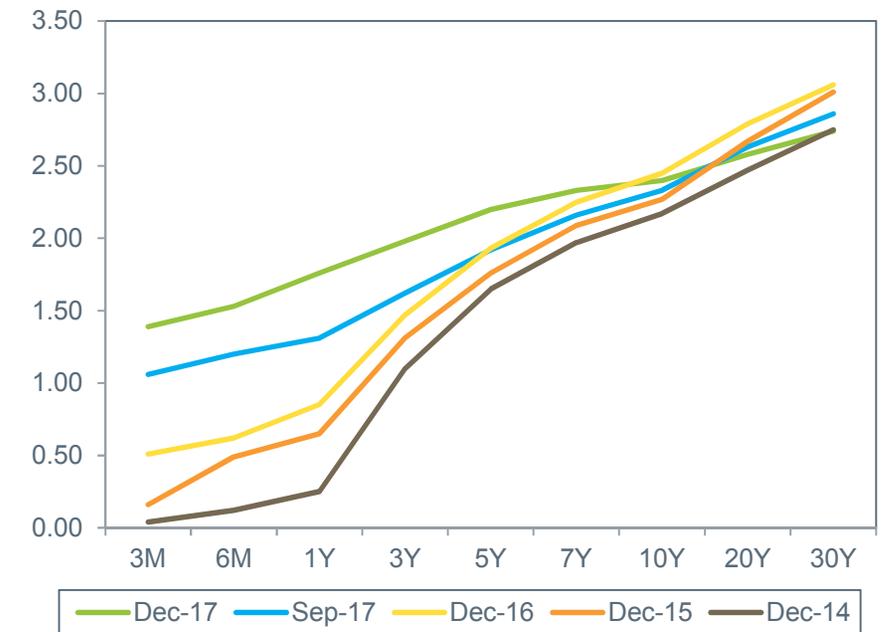
Key Economic Indicators



Economic Indicators

	Dec-17	Sep-17	Dec-16	Dec-14	20 Yr
Federal Funds Rate (%)	1.33 ▲	1.06	0.55	0.06	2.12
Breakeven Infl. - 1 Yr (%)	0.85 ▼	1.24	1.27	-0.21	N/A
Breakeven Infl. - 10 Yr (%)	1.98 ▲	1.85	1.97	1.68	N/A
CPI YoY (Headline) (%)	2.1 ▼	2.2	2.1	0.8	2.1
Unemployment Rate (%)	4.1 ▼	4.2	4.7	5.6	5.9
Real GDP YoY (%)	2.5 ▲	2.3	1.8	2.7	2.3
PMI - Manufacturing	59.3 ▼	60.2	54.3	54.7	52.3
USD Total Wtd Idx	87.47 ▼	88.10	95.72	85.07	86.73
WTI Crude Oil per Barrel (\$)	60.4 ▲	51.7	53.7	53.3	57.5
Gold Spot per Oz (\$)	1,303 ▲	1,280	1,152	1,185	831

Treasury Yield Curve (%)



Market Performance (%)

	QTD	CYTD	1 Yr	5 Yr	10 Yr
S&P 500 (Cap Wtd)	6.64	21.83	21.83	15.79	8.50
Russell 2000	3.34	14.65	14.65	14.12	8.71
MSCI EAFE (Net)	4.23	25.03	25.03	7.90	1.94
MSCI EAFE SC (Net)	6.05	33.01	33.01	12.85	5.77
MSCI Emg Mkts (Net)	7.44	37.28	37.28	4.35	1.68
Bloomberg US Agg Bond	0.39	3.54	3.54	2.10	4.01
BofA ML 3 Mo US T-Bill	0.28	0.86	0.86	0.27	0.39
NCREIF ODCE (Gross)	2.07	7.62	7.62	11.53	5.03
Wilshire US REIT	1.70	4.18	4.18	9.35	7.28
HFRI FOF Comp	2.02	7.73	7.73	3.99	1.08
Bloomberg Comdty (TR)	4.71	1.70	1.70	-8.45	-6.83

Treasury data courtesy of the US Department of the Treasury. Economic data courtesy of Bloomberg Professional Service. Breakeven Inflation does not have 20 years of history; therefore, its 20-year average is shown as N/A.

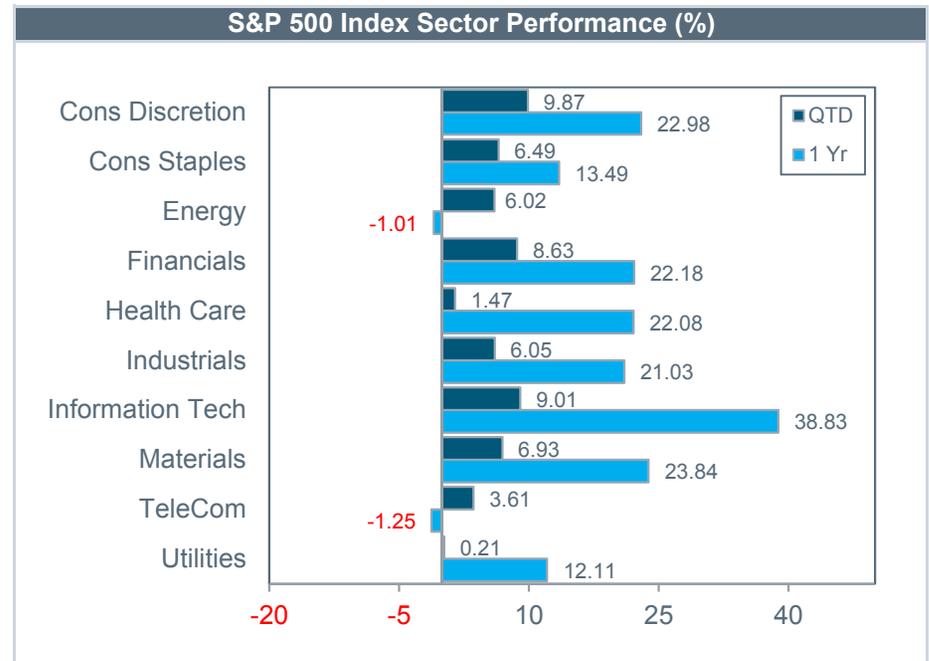
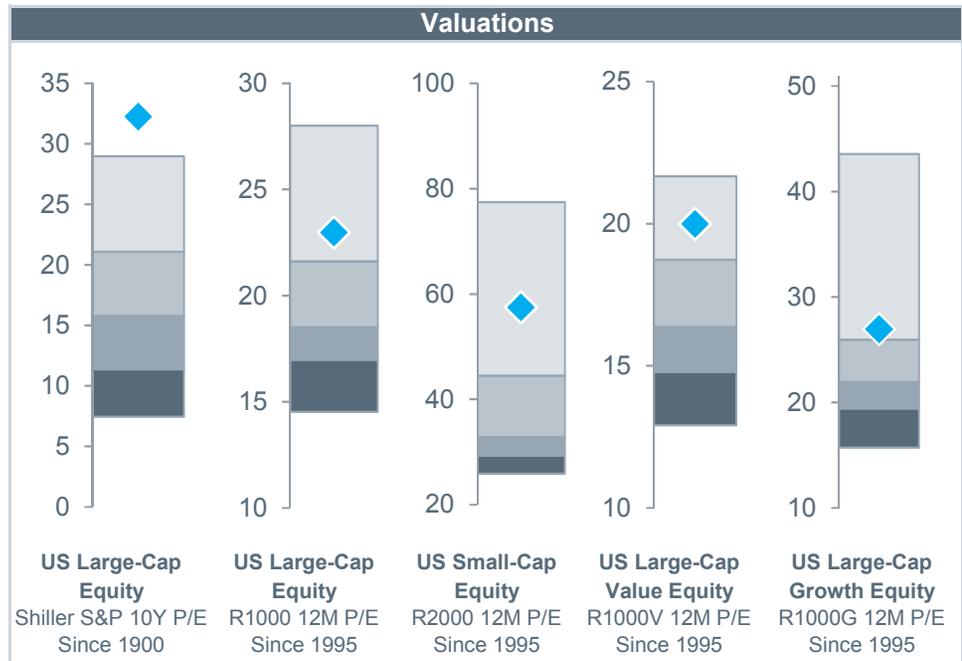
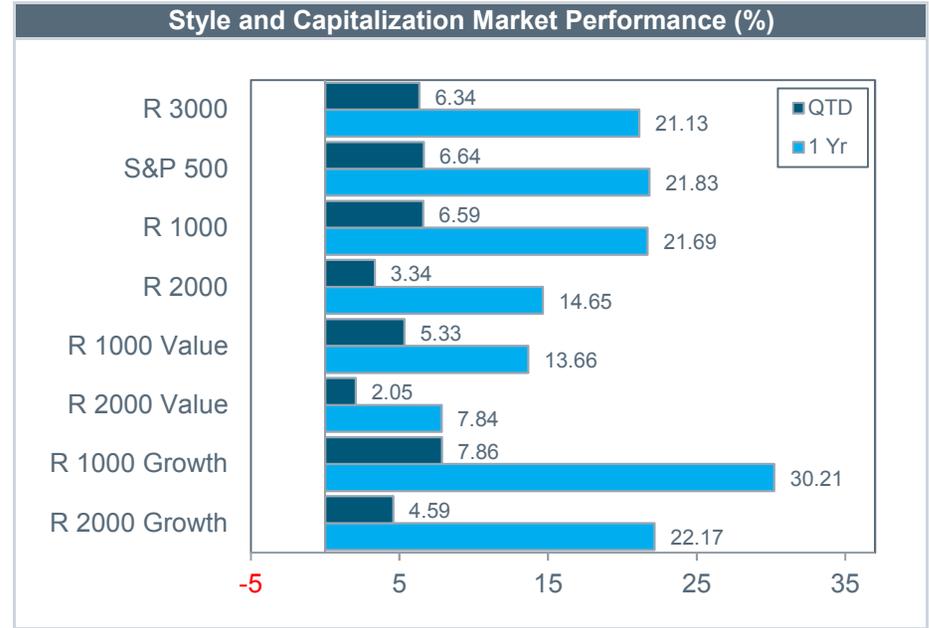


Fourth Quarter Review

Broad Market
 A small subset of companies particularly dominated broad market returns in 2017, with FAANG (Facebook, Amazon, Apple, Netflix, and Google), averaging returns of nearly 50% during 2017. As a result, many active managers with light or absent exposure to this lineup of companies experienced difficulty in keeping pace with their respective benchmarks.

Market Cap
 Large cap stocks outpaced small cap stocks for the quarter, with the Russell 1000 outperforming the Russell 2000 by 325 basis points.

Style and Sector
 Growth stocks led value stocks for the quarter, and the Russell 1000 Growth Index outperformed its value counterpart by 16.6% for the year. Consumer discretionary and tech stocks posted quarterly returns upwards of 9%, with tech stocks posting a 2017 return of nearly 39%.



Valuation data courtesy of Bloomberg Professional Service and Robert J. Shiller, Irrational Exuberance, Second Edition. P/E metrics shown represent the 5th through 95th percentiles to minimize the effect of outliers.



Fourth Quarter Review

Developed Markets

Developed international markets had a strong quarter, though they lagged the US market. However, they outpaced the domestic market for 2017. In 2017, the EAFE Index returned 25.03% vs. 21.13% for the Russell 3000 Index.

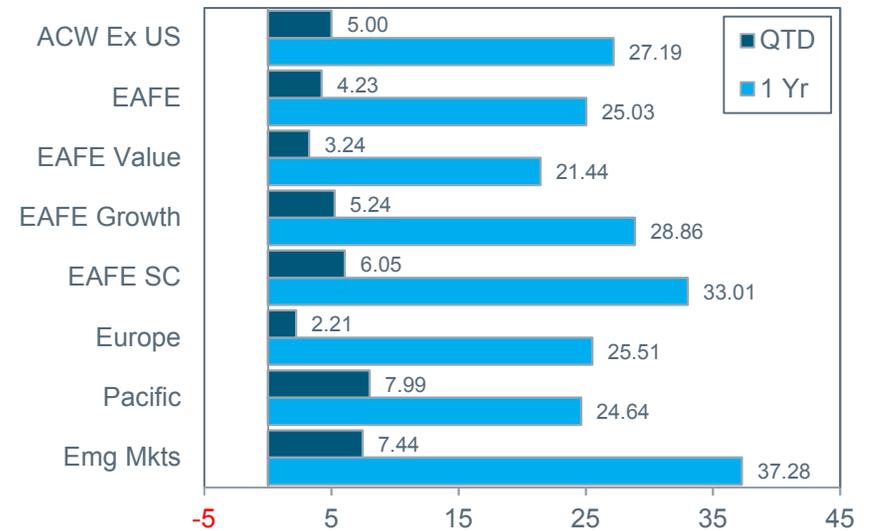
Emerging Markets

Emerging markets outperformed domestic and developed international markets for both the quarter and year, with the Emerging Markets Index outpacing the EAFE Index by 321 basis points for the quarter, and 1225 basis points for the year.

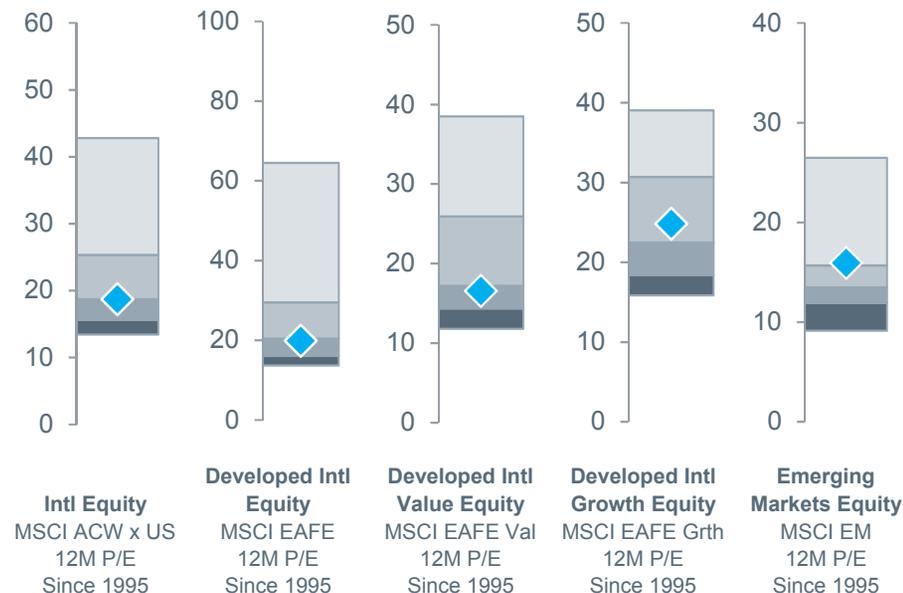
Market Cap & Style

The outperformance of value stocks last year did not persist, with growth stocks solidly outperforming for the quarter and year. Small cap also outperformed large cap for both Q4 and 2017.

MSCI Style and Capitalization Market Performance (%)



Valuations



MSCI Region Performance (%)



Valuation data courtesy of Bloomberg Professional Service.

P/E metrics shown represent the 5th through 95th percentiles to minimize the effect of outliers. All returns are shown net of foreign taxes on dividends.



Fourth Quarter Review

Broad Market

The flattening yield curve during the quarter and year detracted from the performance of short duration bonds, while contributing to the performance of long duration bonds. A flatter yield curve has caused some tactical investors and portfolio managers to shorten the duration of their portfolios as the perceived relative value of shorter-dated securities has increased.

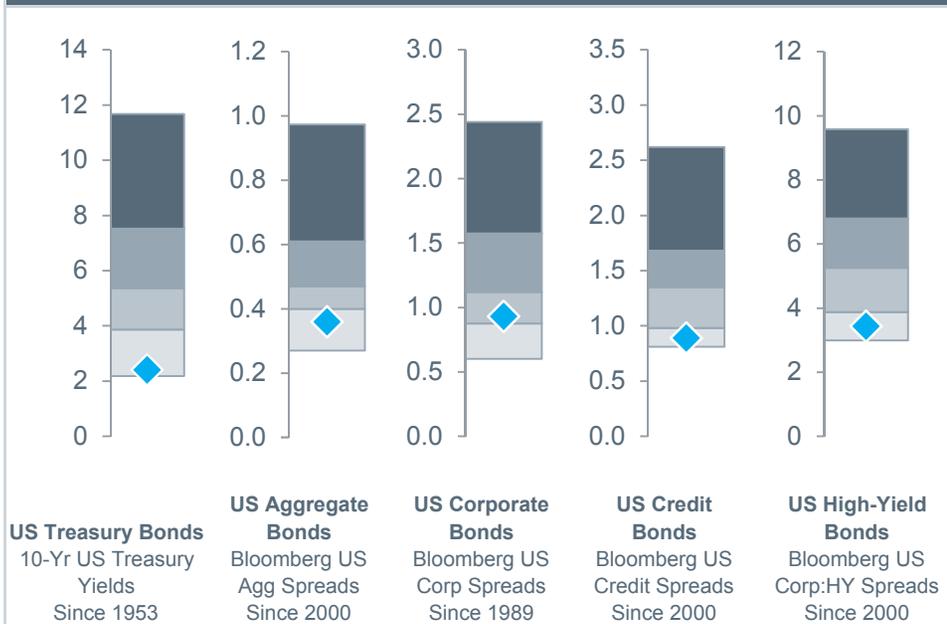
Credit Market

Investment grade and high yield credit spreads started the year below long-term averages and continued to grind tighter.

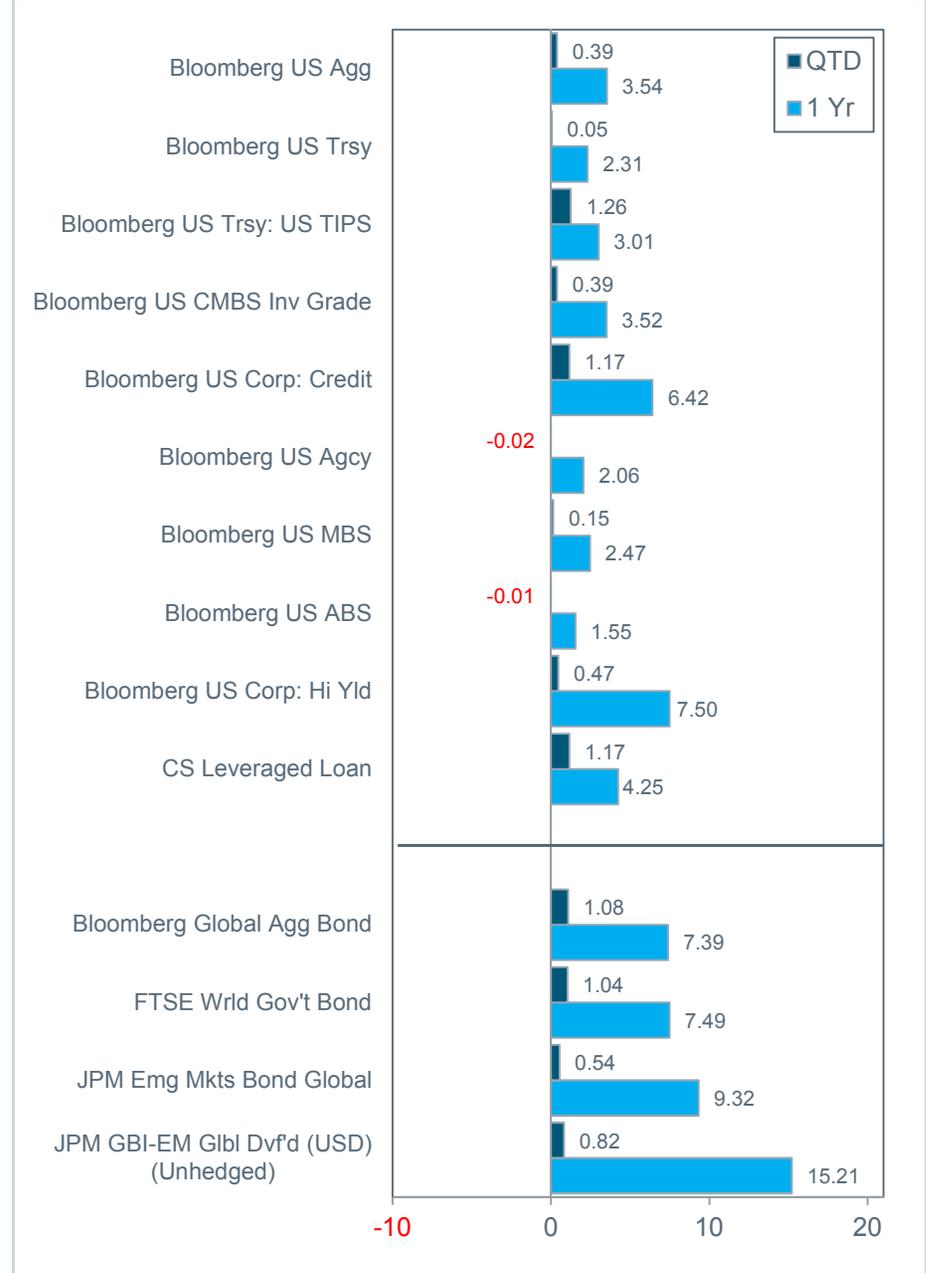
Emerging Market Debt

Non-US dollar denominated emerging market debt was the best performing sub-asset class within fixed income over the course of 2017, returning 15.21%. Important drivers of this performance included the improving fundamentals and stabilizing political environments experienced by many countries during the year.

Valuations



Fixed Income Performance (%)



Valuation data courtesy of Bloomberg Professional Service. Valuations shown represent the 5th through 95th percentiles to minimize the effect of outliers.

Fourth Quarter Review - Absolute Return

General Market - Hedge Funds

Hedge funds largely provided positive performance, as most fundamentally oriented managers benefited from low inter-stock correlation and a positive return environment across most underlying global risk assets. Multi-Strategy manager returns were generally positive during the quarter, but suffered in November due to corporate merger scrutiny by the DoJ. The best performing broad hedge fund category for the year has been traditional Equity Long-Short (ELS).

General Market - Global Tactical Asset Allocation (GTAA)

GTAA managers provided strong performance in Q4 to finish an already successful 2017. Global equity and global fixed income markets were broadly supportive during the quarter, providing a welcome backdrop for most multi-asset strategies. Although GTAA managers performed well in absolute terms, most modestly underperformed relative to a static, undiversified blend of US 60/40. The modest underperformance of tactical managers relative to this static benchmark was generally pronounced for managers who adhere to value-oriented investment processes.

Fourth Quarter Review - Real Assets

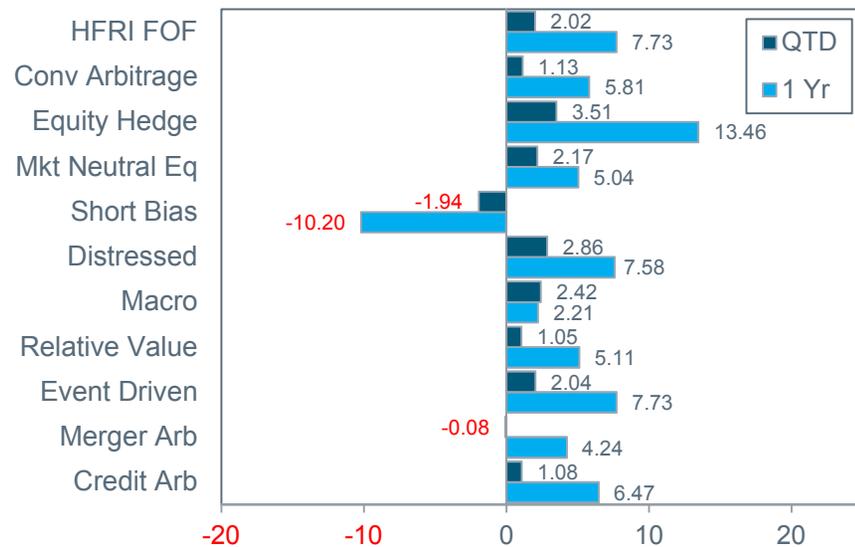
General Market - Diversified Inflation Strategies (DIS)

Performance for Diversified Inflation Strategies (“DIS”) in Q4 ranged widely, with managers providing positive performance in a quarter where market-based measures of future expected inflation increased. Market expectations increased from 1.85% to 1.98% based on the 10 year Treasury break-evens.

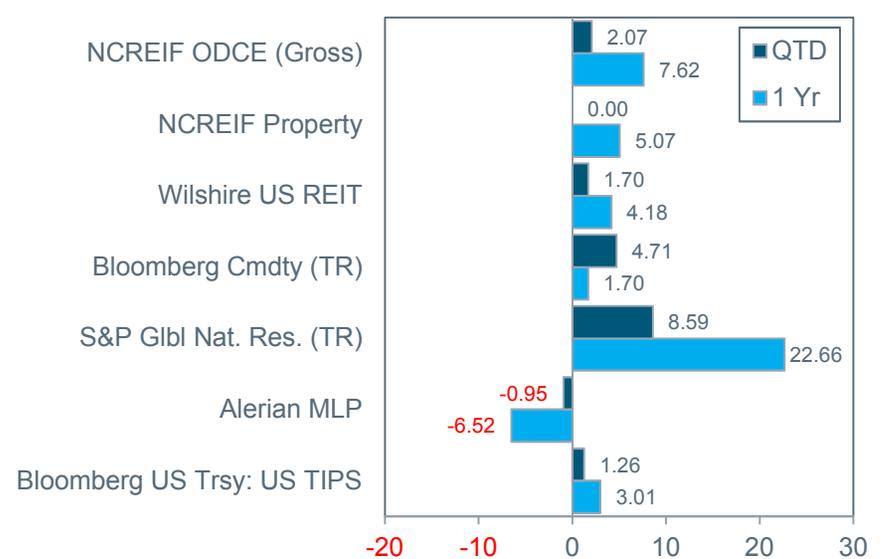
General Market - Real Estate

Real estate valuations remain healthy, supported by continuing strength in the overall economy. The core private real estate index, NCREIF-ODCE returned 2.1% (preliminary) during Q4, comprised of 1.1% income and 1.0% appreciation. Market participants characterized this as another quarter of normalizing returns reinforcing investor expectations of lower returns going forward as the market enters the later stages of the recovery. Investors in publicly traded real estate outperformed their private market counterparts during the quarter as measured by FTSE/NAREIT All REIT’s index return of 2.4%.

HFRI Hedge Fund Performance (%)



Real Asset Performance (%)



Annual Asset Class Performance

As of December 31, 2017

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Best	61.34	33.16	34.00	35.97	39.38	8.44	78.51	28.60	22.49	20.00	38.82	31.78	15.02	21.31	37.28
	55.81	31.45	26.19	32.18	16.23	5.24	58.21	26.85	15.99	18.23	32.39	19.31	9.59	17.13	33.01
	47.25	25.55	21.39	26.34	15.97	2.06	46.78	22.04	13.56	17.59	29.30	13.69	4.23	11.96	25.03
	38.59	20.25	21.36	19.31	11.63	-2.35	31.78	18.88	9.24	17.32	22.78	12.50	1.38	11.77	21.83
	36.18	18.33	13.82	18.37	11.17	-10.01	28.60	16.83	7.84	16.35	13.94	5.97	0.55	11.19	14.65
	28.96	13.06	13.54	16.32	10.25	-21.37	27.17	16.36	4.98	16.00	8.96	4.89	0.05	8.77	10.71
	28.68	11.14	7.49	15.79	6.97	-26.16	26.46	15.12	2.11	15.81	7.44	3.64	-0.27	7.24	7.73
	23.93	10.88	5.34	11.86	6.60	-33.79	18.91	15.06	0.10	10.94	1.86	3.37	-0.31	6.67	7.62
	11.61	9.15	4.91	10.39	5.49	-35.65	11.47	10.16	-4.18	8.78	0.07	2.45	-1.44	4.68	7.50
	9.28	8.56	4.55	4.85	5.00	-37.00	11.41	7.75	-5.72	6.98	-2.02	0.04	-3.30	2.65	4.18
	8.39	8.46	3.07	4.34	1.87	-39.20	5.93	6.54	-12.14	4.79	-2.60	-2.19	-4.41	2.18	3.54
	5.88	6.86	2.84	2.72	1.45	-43.38	1.92	6.31	-13.32	4.21	-8.61	-4.90	-4.47	1.00	3.01
	4.11	4.34	2.74	2.07	-1.57	-47.01	0.21	5.70	-15.94	0.11	-8.83	-4.95	-14.92	0.51	1.70
Worst	1.15	1.33	2.43	0.49	-17.55	-53.33	-29.76	0.13	-18.42	-1.06	-9.52	-17.01	-24.66	0.33	0.86
	S&P 500 - US Large Cap	R 2000 - US Small Cap	MSCI EAFE (Net) - Int'l Dev.	MSCI EAFE SC (Net) - Int'l SC	MSCI EM (Net) - Int'l Emg Mkts	Bloomberg US Agg Bond - FI	Bloomberg US Corp: Hi Yield - FI	Bloomberg US Trsy: US TIPS - FI	Bloomberg US Gov/Credit: Lng - FI	NCREIF ODCE (Gross) - Real Estate	Wilshire US REIT - REITs	HFRI FOF Comp Index - ARS	Bloomberg Cmdty (TR) - Commod.	BofA ML 3 Mo T-Bill - Cash Equiv	

NCREIF ODCE (Gross) performance is reported quarterly; performance is shown N/A in interim-quarter months.

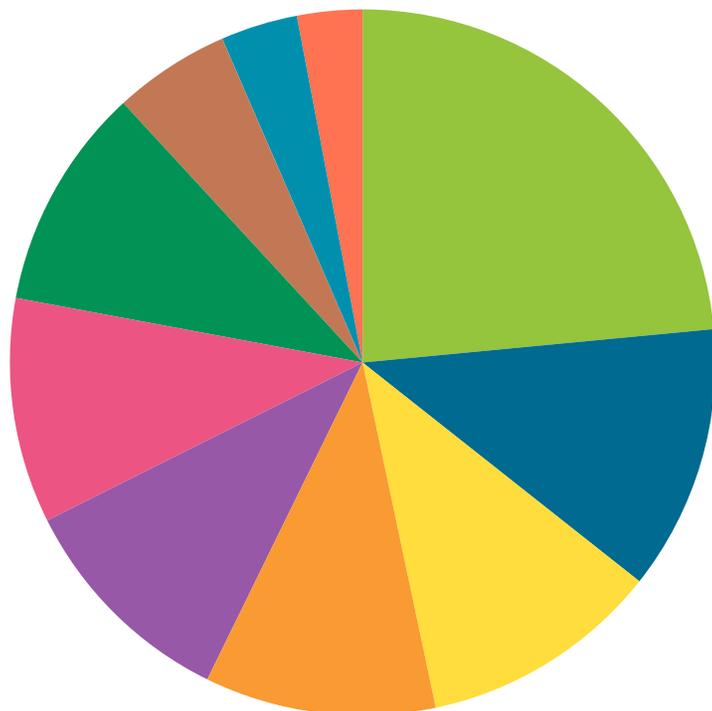


Total Fund



Asset Allocation by Manager

December 31, 2017 : \$57,535,847



	Market Value (\$)	Allocation (%)
Vanguard TSM Idx;Inst (VITSX)	13,518,836	23.50
Westwood Income Opp;Inst (WHGIX)	6,992,055	12.15
DoubleLine:Cr Fxd In;I (DBLFX)	6,348,039	11.03
Guggenheim:TR Bd;Inst (GIBIX)	6,080,518	10.57
WellsFargo:SD Gv Bd;I (WSGIX)	5,960,111	10.36
Dodge & Cox Intl Stock (DODFX)	5,935,448	10.32
American Funds EuPc;F2 (AEPFX)	5,874,259	10.21
RREEF America REIT II (CF)	3,077,238	5.35
Voya:Floating Rate;I (IFRIX)	2,030,493	3.53
Barings Core Property Fund, LP (CF)	1,718,850	2.99

Schedule of Investable Assets

Periods Ending	Beginning Market Value (\$)	Net Cash Flow (\$)	Gain/Loss (\$)	Ending Market Value (\$)	% Return	Unit Value
CYTD	50,383,557	415,533	6,736,757	57,535,847	13.40	113.40

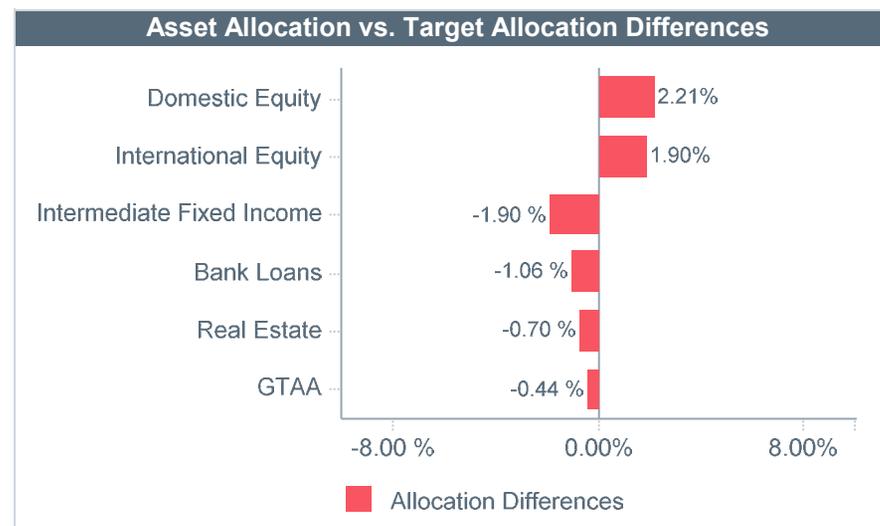
Performance shown is net of fees. Allocations shown may not sum up to 100% exactly due to rounding. Market value for RREEF America REIT II (CF) is preliminary as of 12/31/2017.

Total Fund ex Low Duration Composite

Asset Allocation, Performance, Asset Allocation vs. Target & Schedule of Investable Assets

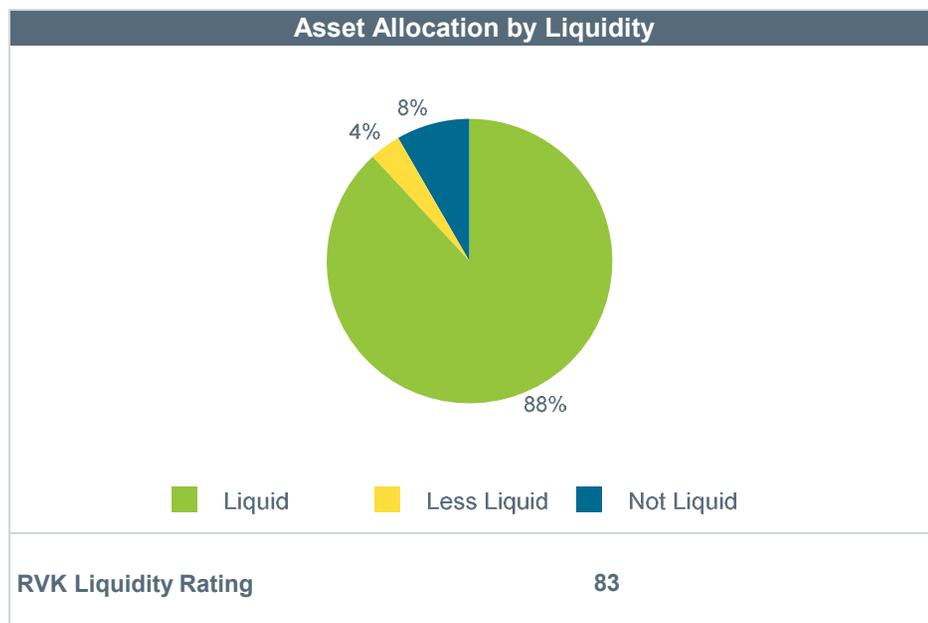
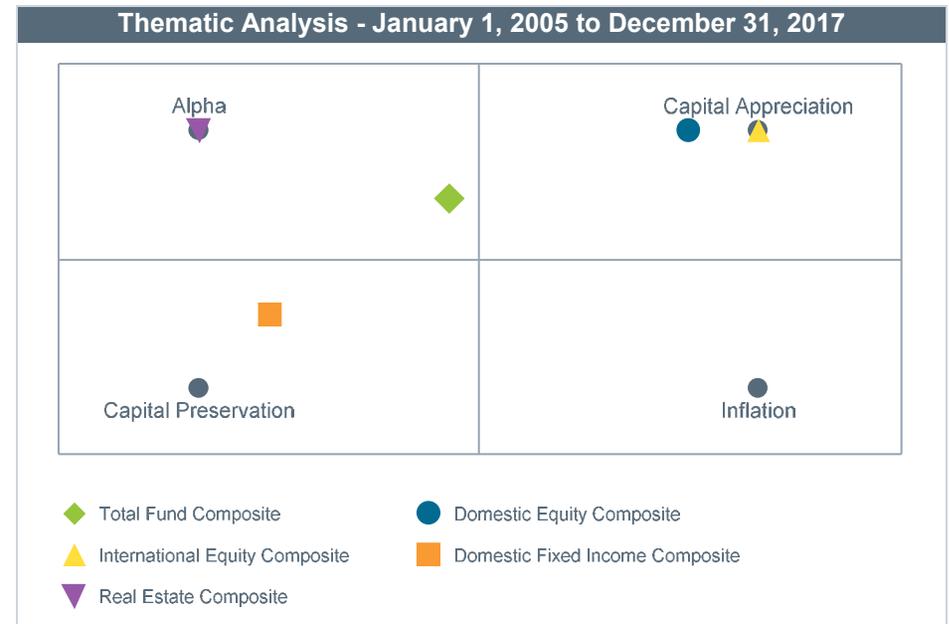
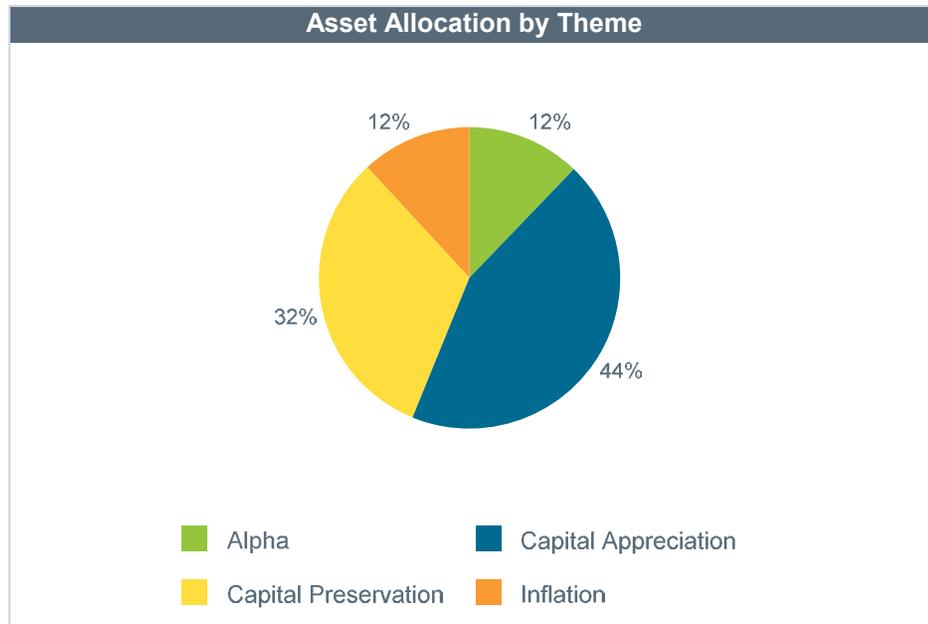
Asset Allocation & Performance				
	Allocation		Performance (%)	
	Market Value (\$)	%	QTD	CYTD
Total Fund ex Low Duration Composite	51,575,736	100.00	3.10	14.87
Domestic Equity Composite	13,518,836	26.21	6.34	21.17
Vanguard TSM Idx;Inst (VITSX)	13,518,836	26.21	6.34	21.17
International Equity Composite	11,809,707	22.90	2.67	27.37
American Funds EuPc;F2 (AEPFX)	5,874,259	11.39	4.19	31.02
Dodge & Cox Intl Stock (DODFX)	5,935,448	11.51	1.21	23.94
Intermediate Fixed Income Composite	12,428,557	24.10	0.87	5.55
DoubleLine:Cr Fxd In;I (DBLFX)	6,348,039	12.31	0.47	4.66
Guggenheim:TR Bd;Inst (GIBIX)	6,080,518	11.79	1.29	6.49
Bank Loans Composite	2,030,493	3.94	0.97	N/A
Voya:Floating Rate;I (IFRIX)	2,030,493	3.94	0.97	N/A
Real Estate Composite	4,796,088	9.30	1.81	6.48
Barings Core Property Fund, LP (CF)	1,718,850	3.33	1.44	6.55
RREEF America REIT II (CF)	3,077,238	5.97	2.02	6.44
GTAA Composite	6,992,055	13.56	3.35	10.96
Westwood Income Opp;Inst (WHGIX)	6,992,055	13.56	3.35	10.96

Asset Allocation vs. Target Allocation			
	Market Value (\$)	Allocation (%)	Target (%)
Domestic Equity	13,518,836	26.21	24.00
International Equity	11,809,707	22.90	21.00
Intermediate Fixed Income	12,428,557	24.10	26.00
Bank Loans	2,030,493	3.94	5.00
Real Estate	4,796,088	9.30	10.00
GTAA	6,992,055	13.56	14.00
Total Fund	51,575,736	100.00	100.00



Schedule of Investable Assets						
Periods Ending	Beginning Market Value (\$)	Net Cash Flow (\$)	Gain/Loss (\$)	Ending Market Value (\$)	% Return	Unit Value
CYTD	46,447,980	-1,584,967	6,712,724	51,575,736	14.87	114.87

Performance shown is net of fees. Allocations shown may not sum up to 100% exactly due to rounding. Market value for RREEF America REIT II (CF) is preliminary as of 12/31/2017.



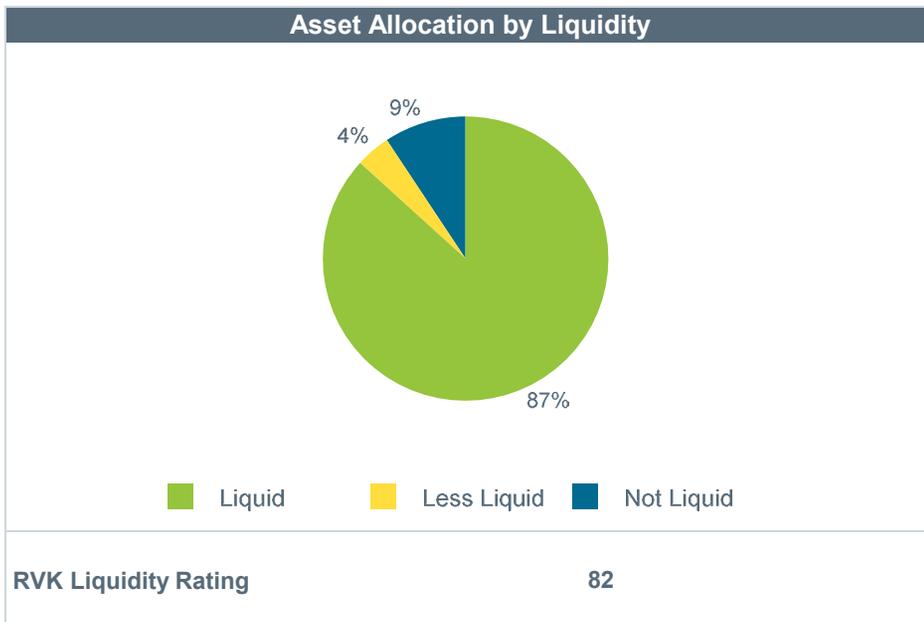
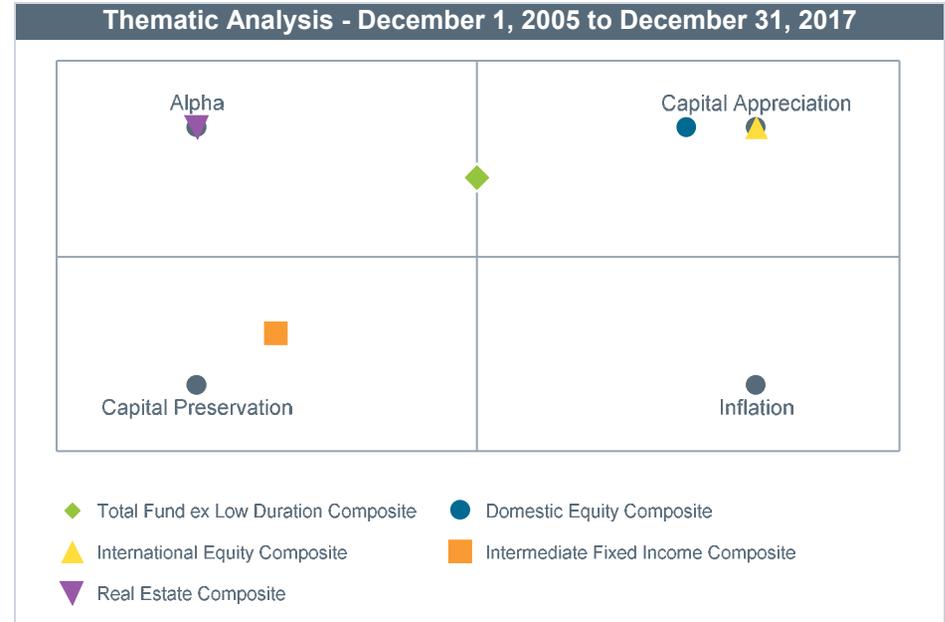
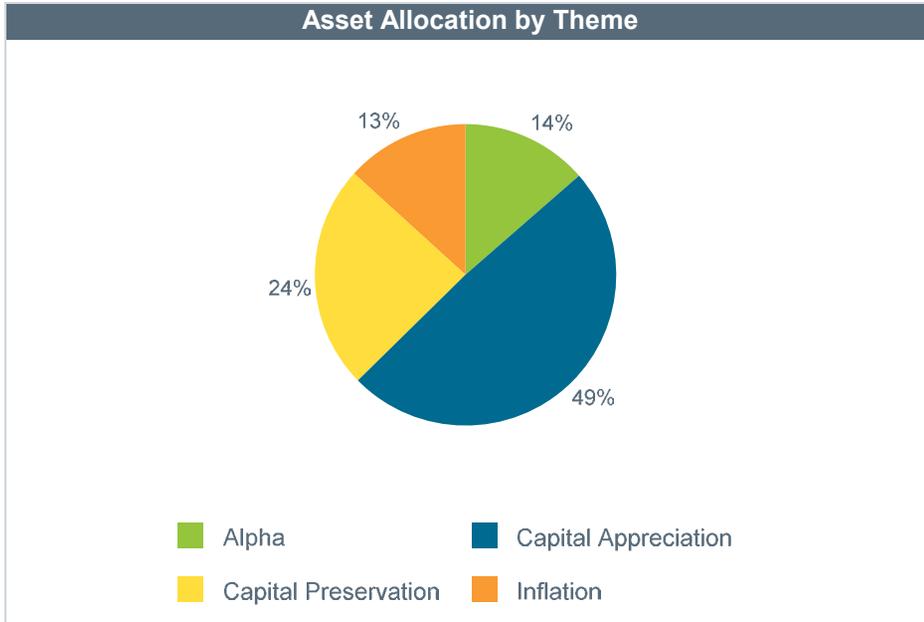
Correlation Matrix - 10 Years

	A	B	C	D
A	1.00			
B	0.56	1.00		
C	-0.37	-0.26	1.00	
D	0.46	0.85	-0.02	1.00

A = HFRI EH: Eq Mkt Neut Index (Alpha)
 B = MSCI ACW Index (USD) (Gross) (Capital Appreciation)
 C = Bloomberg US Gov't Bond Index (Capital Preservation)
 D = Real Return Custom Index (Inflation)

Asset Allocation by Theme is based on dedicated manager allocations; as such, thematic allocations are approximations. The RVK Liquidity Rating is calculated using beginning of month investment weights applied to each corresponding asset class liquidity rating. Please see the Glossary for additional information regarding liquidity, thematic, and custom index descriptions.





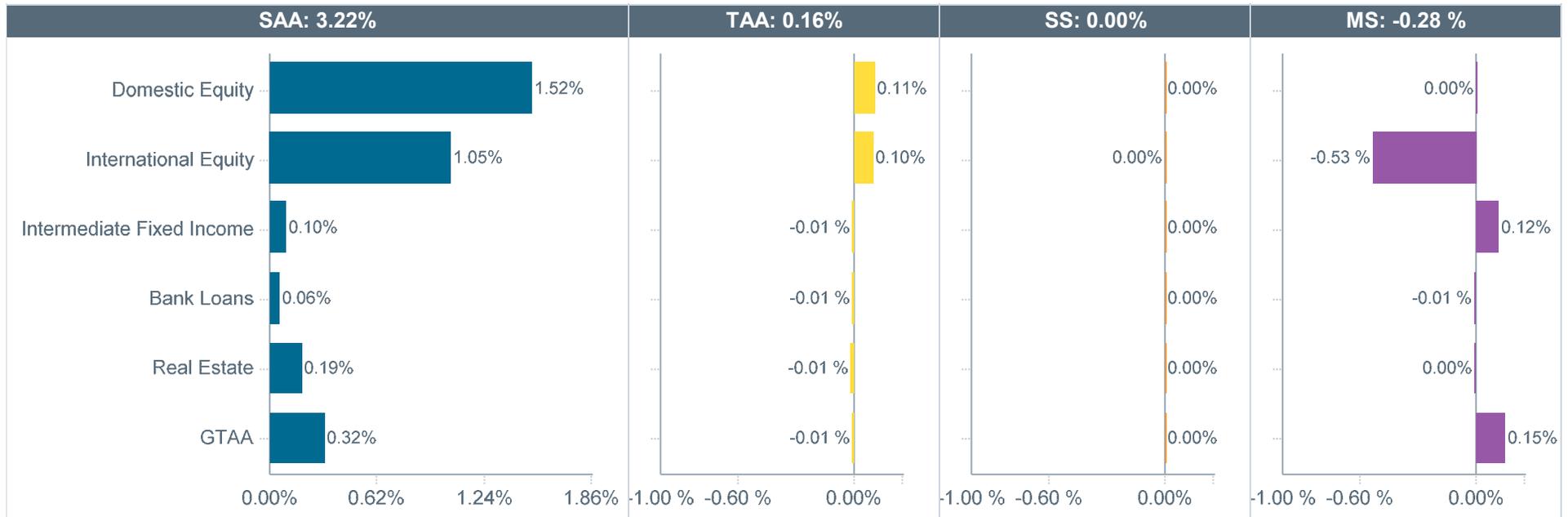
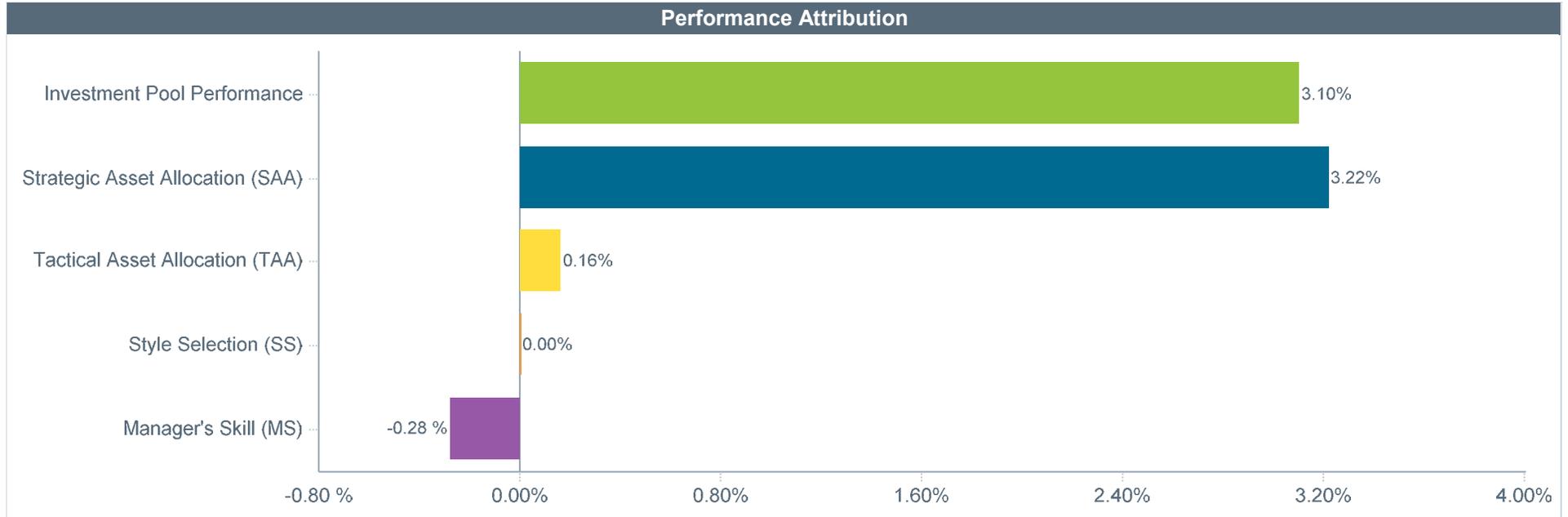
Correlation Matrix - 10 Years

	A	B	C	D
A	1.00			
B	0.56	1.00		
C	-0.37	-0.26	1.00	
D	0.46	0.85	-0.02	1.00

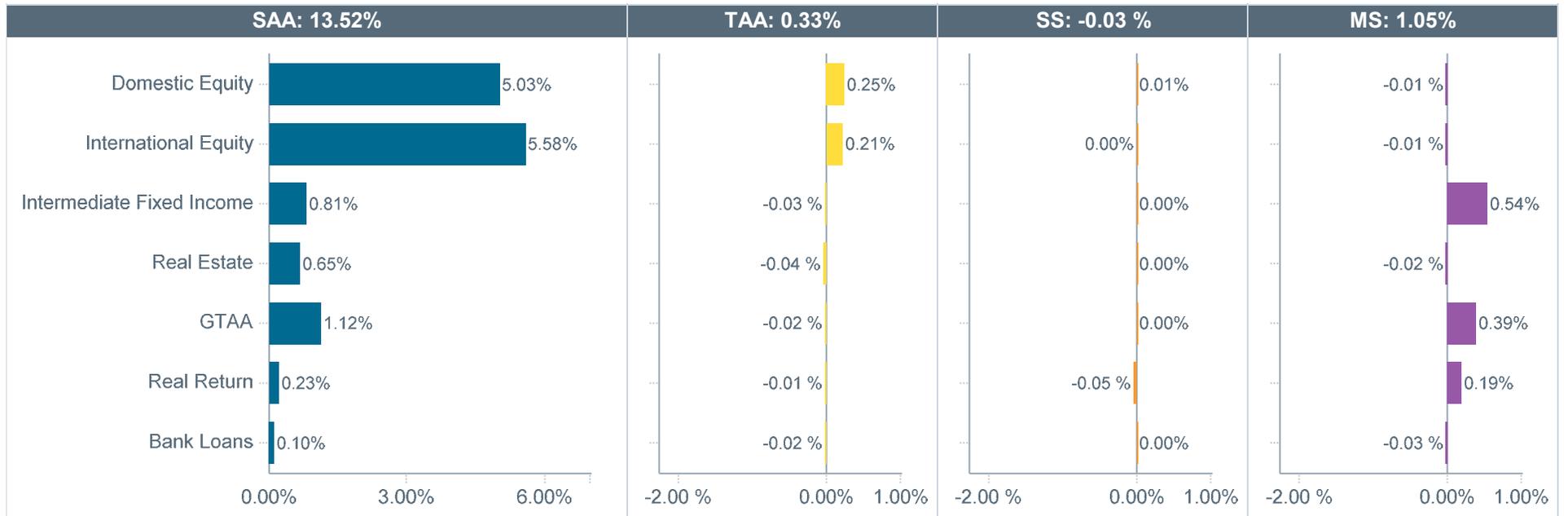
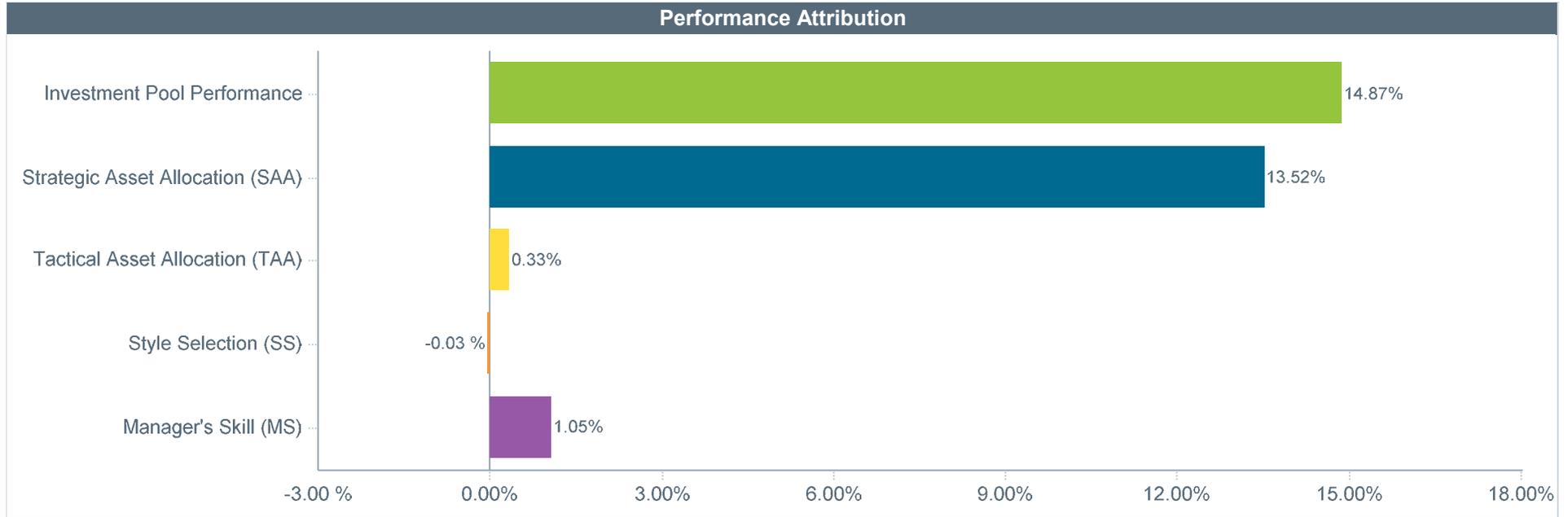
Legend:

- A = HFRI EH: Eq Mkt Neut Index (Alpha)
- B = MSCI ACW Index (USD) (Gross) (Capital Appreciation)
- C = Bloomberg US Gov't Bond Index (Capital Preservation)
- D = Real Return Custom Index (Inflation)

Asset Allocation by Theme is based on dedicated manager allocations; as such, thematic allocations are approximations. The RVK Liquidity Rating is calculated using beginning of month investment weights applied to each corresponding asset class liquidity rating. Please see the Glossary for additional information regarding liquidity, thematic, and custom index descriptions.



Performance shown is net of fees. Calculation is based on monthly periodicity. See Glossary for additional information regarding the Total Fund Attribution - IDP calculation.



Performance shown is net of fees. Calculation is based on monthly periodicity. See Glossary for additional information regarding the Total Fund Attribution - IDP calculation.

Oregon State Bar Professional Liability Fund
Comparative Performance

As of December 31, 2017

	QTD	CYTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012	Since Incep.	Inception Date
Total Fund Composite	2.74	13.40	13.40	6.32	6.86	6.13	4.56	6.82	-0.77	4.79	10.62	11.35	6.89	03/01/1989
Actual Allocation Index	2.99	12.35	12.35	6.18	6.62	6.11	4.17	6.13	0.38	4.61	10.02	8.82	-	
Difference	-0.25	1.05	1.05	0.14	0.24	0.02	0.39	0.69	-1.15	0.18	0.60	2.53	-	
Total Fund ex Low Duration Composite	3.10	14.87	14.87	7.21	7.90	6.99	4.85	8.06	-0.72	5.72	12.25	12.49	5.61	12/01/1999
Actual Allocation ex Low Duration Index	3.38	13.85	13.85	6.90	7.59	7.06	5.11	6.98	0.31	5.97	11.38	10.36	5.58	
Difference	-0.28	1.02	1.02	0.31	0.31	-0.07	-0.26	1.08	-1.03	-0.25	0.87	2.13	0.03	
Domestic Equity Composite	6.34	21.17	21.17	11.13	15.26	11.76	6.67	12.62	0.57	12.51	31.73	12.69	7.96	01/01/2005
Russell 3000 Index	6.34	21.13	21.13	11.12	15.58	13.50	8.60	12.74	0.48	12.56	33.55	16.42	8.67	
Difference	0.00	0.04	0.04	0.01	-0.32	-1.74	-1.93	-0.12	0.09	-0.05	-1.82	-3.73	-0.71	
Vanguard TSM Idx;Inst (VITSX)	6.34	21.17	21.17	11.08	15.55	13.48	8.72	12.67	0.39	12.58	33.51	16.39	15.34	07/01/2012
Vanguard Spl TSM Index	6.34	21.19	21.19	11.09	15.56	13.49	8.71	12.68	0.40	12.58	33.51	16.44	15.35	
Difference	0.00	-0.02	-0.02	-0.01	-0.01	-0.01	0.01	-0.01	-0.01	0.00	0.00	-0.05	-0.01	
IM U.S. Multi-Cap Core Equity (MF) Median	6.03	20.33	20.33	9.41	14.39	11.98	7.35	9.86	-1.10	10.89	33.63	15.61	14.42	
Rank	41	37	37	14	19	15	14	28	30	27	52	34	25	
International Equity Composite	2.67	27.37	27.37	7.79	8.82	6.44	2.56	4.52	-5.93	-1.20	23.35	20.51	6.65	01/01/2005
MSCI ACW Ex US Index (USD) (Net)	5.00	27.19	27.19	7.83	6.80	4.93	1.84	4.50	-5.66	-3.87	15.29	16.83	5.75	
Difference	-2.33	0.18	0.18	-0.04	2.02	1.51	0.72	0.02	-0.27	2.67	8.06	3.68	0.90	
American Funds EuPc;F2 (AEPFX)	4.19	31.02	31.02	9.55	9.09	6.94	3.77	0.92	-0.57	-2.41	20.44	19.54	7.93	01/01/1998
MSCI ACW Ex US Index (USD) (Net)	5.00	27.19	27.19	7.83	6.80	4.93	1.84	4.50	-5.66	-3.87	15.29	16.83	-	
Difference	-0.81	3.83	3.83	1.72	2.29	2.01	1.93	-3.58	5.09	1.46	5.15	2.71	-	
IM All ACWI Ex US (MF) Median	4.12	28.33	28.33	8.18	7.45	5.75	2.06	0.88	-1.26	-4.55	17.74	18.37	6.08	
Rank	48	33	33	27	15	16	17	50	38	20	26	28	8	
Dodge & Cox Intl Stock (DODFX)	1.21	23.94	23.94	5.96	8.50	6.26	3.17	8.26	-11.35	0.08	26.31	21.03	10.79	10/01/2011
MSCI ACW Ex US Index (USD) (Net)	5.00	27.19	27.19	7.83	6.80	4.93	1.84	4.50	-5.66	-3.87	15.29	16.83	8.70	
Difference	-3.79	-3.25	-3.25	-1.87	1.70	1.33	1.33	3.76	-5.69	3.95	11.02	4.20	2.09	
IM All ACWI Ex US (MF) Median	4.12	28.33	28.33	8.18	7.45	5.75	2.06	0.88	-1.26	-4.55	17.74	18.37	9.47	
Rank	99	83	83	81	23	32	27	4	94	8	4	18	19	

Performance shown is net of fees. Inception dates shown represent the first full month following initial funding. Indices show "N/A" for "Since Inception" returns when the fund contains more history than the corresponding benchmark. Please see the Addendum for additional information regarding custom indices.



Oregon State Bar Professional Liability Fund
Comparative Performance

As of December 31, 2017

	QTD	CYTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012	Since Incep.	Inception Date
Intermediate Fixed Income Composite	0.87	5.55	5.55	3.71	2.99	4.19	5.62	4.75	0.89	5.76	-1.76	10.40	5.81	12/01/2005
Bloomberg US Agg Bond Index	0.39	3.54	3.54	2.24	2.10	3.20	4.01	2.65	0.55	5.97	-2.02	4.21	4.33	
Difference	0.48	2.01	2.01	1.47	0.89	0.99	1.61	2.10	0.34	-0.21	0.26	6.19	1.48	
DoubleLine:Cr Fxd In;l (DBLFX)	0.47	4.66	4.66	3.12	2.97	4.88	-	4.11	0.63	6.86	-1.20	8.15	3.17	06/01/2013
Bloomberg US Agg Bond Index	0.39	3.54	3.54	2.24	2.10	3.20	4.01	2.65	0.55	5.97	-2.02	4.21	2.50	
Difference	0.08	1.12	1.12	0.88	0.87	1.68	-	1.46	0.08	0.89	0.82	3.94	0.67	
IM U.S. Broad Market Core Fixed Income (MF) Median	0.35	3.58	3.58	2.16	1.96	3.19	3.97	2.85	0.00	5.55	-1.98	5.98	2.31	
Rank	25	9	9	5	4	1	-	15	16	8	20	12	6	
Guggenheim:TR Bd;Inst (GIBIX)	1.29	6.49	6.49	4.61	4.84	-	-	6.20	1.23	8.25	2.20	12.92	4.61	01/01/2015
Bloomberg US Agg Bond Index	0.39	3.54	3.54	2.24	2.10	3.20	4.01	2.65	0.55	5.97	-2.02	4.21	2.24	
Difference	0.90	2.95	2.95	2.37	2.74	-	-	3.55	0.68	2.28	4.22	8.71	2.37	
IM U.S. Broad Market Core Fixed Income (MF) Median	0.35	3.58	3.58	2.16	1.96	3.19	3.97	2.85	0.00	5.55	-1.98	5.98	2.16	
Rank	1	1	1	1	1	-	-	1	4	1	1	1	1	
Low Duration Fixed Income Composite	-0.26	0.76	0.76	0.83	0.77	1.62	2.85	1.30	0.43	1.35	0.02	6.02	3.31	12/01/2005
BofA ML 1-3 Yr US Trsy Index	-0.25	0.42	0.42	0.62	0.56	0.69	1.44	0.88	0.54	0.62	0.36	0.43	2.14	
Difference	-0.01	0.34	0.34	0.21	0.21	0.93	1.41	0.42	-0.11	0.73	-0.34	5.59	1.17	
Wells Fargo:SD Gv Bd;l (WSGIX)	-0.26	0.78	0.78	0.83	0.71	1.18	2.37	1.23	0.47	1.06	0.01	2.29	0.83	01/01/2015
Bloomberg US Gov't 1-3 Yr Bond Index	-0.27	0.45	0.45	0.63	0.58	0.71	1.53	0.87	0.57	0.64	0.37	0.51	0.63	
Difference	0.01	0.33	0.33	0.20	0.13	0.47	0.84	0.36	-0.10	0.42	-0.36	1.78	0.20	
IM U.S. Short Term Treasury/Govt Bonds (MF) Median	-0.24	0.55	0.55	0.52	0.40	0.62	1.45	0.67	0.21	0.57	-0.61	0.91	0.52	
Rank	56	37	37	20	17	10	6	10	26	29	16	9	20	
Bank Loans Composite	0.97	-	-	-	-	-	-	-	-	-	-	-	1.60	07/01/2017
S&P/LSTA Lvg'd Loan Index	1.11	4.12	4.12	4.44	4.03	4.45	4.85	10.16	-0.69	1.60	5.29	9.66	2.16	
Difference	-0.14	-	-	-	-	-	-	-	-	-	-	-	-0.56	
IM U.S. Bank Loans (MF) Median	0.99	3.53	3.53	3.82	3.42	3.83	3.75	8.91	-1.21	0.52	5.10	8.85	1.96	
Rank	53	-	-	-	-	-	-	-	-	-	-	-	78	
Voya:Floating Rate;l (IFRIX)	0.97	2.79	2.79	3.61	3.52	4.04	-	7.64	0.53	1.65	5.16	9.18	1.60	07/01/2017
S&P/LSTA Lvg'd Loan Index	1.11	4.12	4.12	4.44	4.03	4.45	4.85	10.16	-0.69	1.60	5.29	9.66	2.16	
Difference	-0.14	-1.33	-1.33	-0.83	-0.51	-0.41	-	-2.52	1.22	0.05	-0.13	-0.48	-0.56	
IM U.S. Bank Loans (MF) Median	0.99	3.53	3.53	3.82	3.42	3.83	3.75	8.91	-1.21	0.52	5.10	8.85	1.96	
Rank	53	82	82	58	45	36	-	72	19	7	48	42	78	

Performance shown is net of fees. Inception dates shown represent the first full month following initial funding. Indices show "N/A" for "Since Inception" returns when the fund contains more history than the corresponding benchmark. Please see the Addendum for additional information regarding custom indices.



Oregon State Bar Professional Liability Fund
Comparative Performance

As of December 31, 2017

	QTD	CYTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012	Since Incep.	Inception Date
Real Estate Composite	1.81	6.48	6.48	9.81	10.70	11.07	4.14	8.26	14.88	11.00	13.12	10.15	6.51	01/01/2005
NCREIF ODCE Index (AWA) (Net)	1.86	6.68	6.68	9.43	10.52	11.04	4.07	7.79	13.95	11.46	12.90	9.79	6.87	
Difference	-0.05	-0.20	-0.20	0.38	0.18	0.03	0.07	0.47	0.93	-0.46	0.22	0.36	-0.36	
Barings Core Property Fund, LP (CF)	1.44	6.55	6.55	9.35	9.30	10.39	4.28	8.62	12.99	8.64	9.82	10.18	9.45	01/01/2012
NCREIF ODCE Index (AWA) (Net)	1.86	6.68	6.68	9.43	10.52	11.04	4.07	7.79	13.95	11.46	12.90	9.79	10.40	
Difference	-0.42	-0.13	-0.13	-0.08	-1.22	-0.65	0.21	0.83	-0.96	-2.82	-3.08	0.39	-0.95	
RREEF America REIT II (CF)	2.02	6.44	6.44	9.99	11.27	11.47	4.41	8.12	15.63	11.95	14.50	10.12	7.24	01/01/2003
NCREIF ODCE Index (AWA) (Net)	1.86	6.68	6.68	9.43	10.52	11.04	4.07	7.79	13.95	11.46	12.90	9.79	7.30	
Difference	0.16	-0.24	-0.24	0.56	0.75	0.43	0.34	0.33	1.68	0.49	1.60	0.33	-0.06	
GTAA Composite	3.35	10.96	10.96	4.83	-	-	-	6.66	-2.67	9.10	-	-	6.13	11/01/2013
60% MSCI ACW (Net)/40% Bbrg Gbl Agg Idx	3.85	17.09	17.09	6.47	6.81	6.14	4.32	5.69	-2.47	2.78	12.05	11.45	5.64	
Difference	-0.50	-6.13	-6.13	-1.64	-	-	-	0.97	-0.20	6.32	-	-	0.49	
Westwood Income Opp;Inst (WHGIX)	3.35	10.96	10.96	4.87	7.57	7.56	7.33	6.66	-2.57	9.10	14.49	7.95	6.16	11/01/2013
Westwood Custom Index	2.27	8.13	8.13	5.00	6.76	7.30	5.89	5.37	1.61	12.88	6.15	9.98	6.50	
Difference	1.08	2.83	2.83	-0.13	0.81	0.26	1.44	1.29	-4.18	-3.78	8.34	-2.03	-0.34	

Performance shown is net of fees. Inception dates shown represent the first full month following initial funding. Indices show "N/A" for "Since Inception" returns when the fund contains more history than the corresponding benchmark. Please see the Addendum for additional information regarding custom indices.

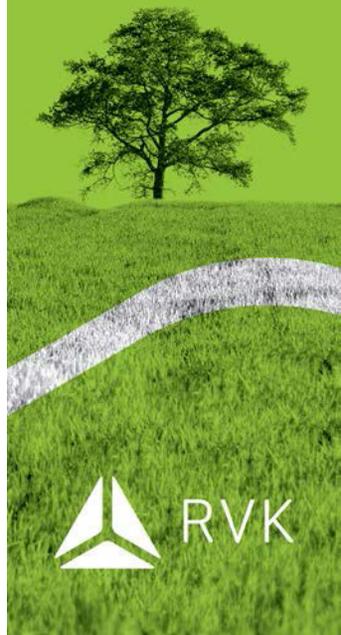
Oregon State Bar Professional Liability Fund
Comparative Performance - Composite

As of December 31, 2017

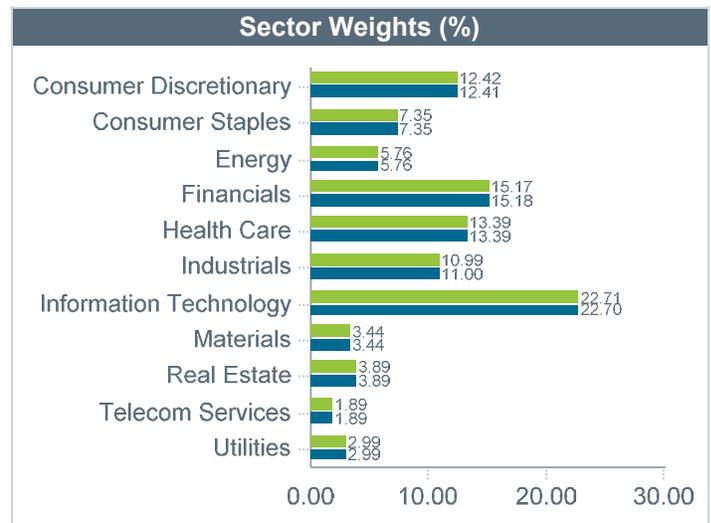
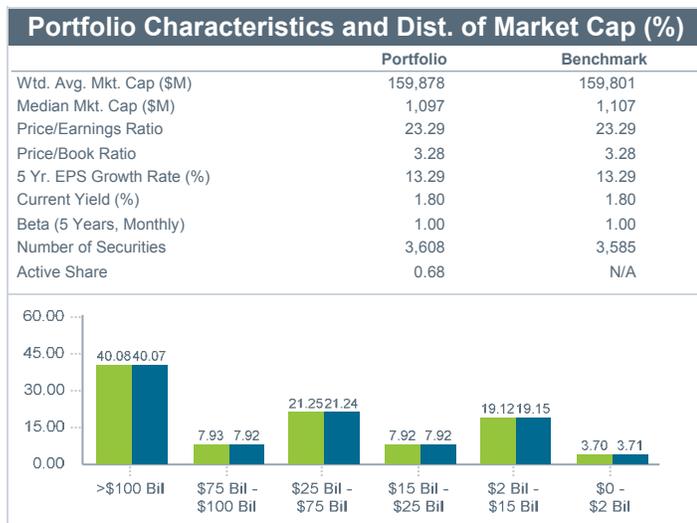
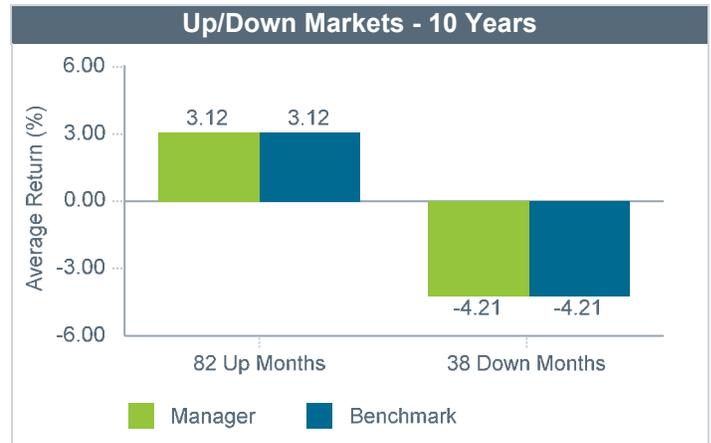
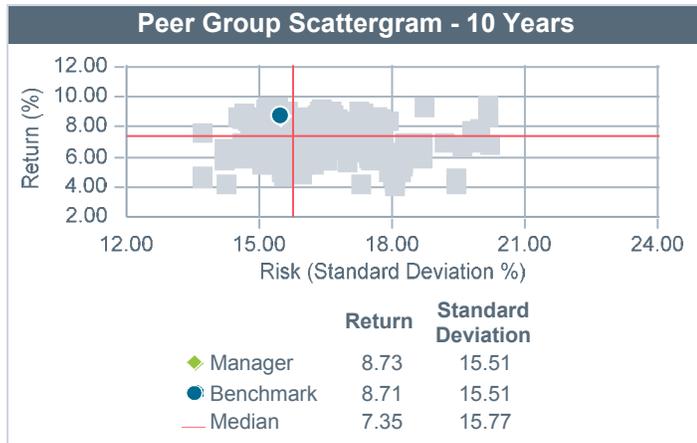
	QTD	CYTD	1 Year	2 Years	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012	Since Incep.	Inception Date
Total Fund Composite	2.87	13.97	13.97	10.63	6.88	7.42	6.69	5.11	7.39	-0.24	5.38	11.16	12.00	6.46	01/01/2005
Actual Allocation Index	2.99	12.35	12.35	9.20	6.18	6.62	6.11	4.17	6.13	0.38	4.61	10.02	8.82	-	
Difference	-0.12	1.62	1.62	1.43	0.70	0.80	0.58	0.94	1.26	-0.62	0.77	1.14	3.18	-	
Total Fund ex Low Duration Composite	3.23	15.45	15.45	12.00	7.79	8.47	7.57	5.42	8.66	-0.18	6.32	12.80	13.18	7.00	01/01/2005
Actual Allocation ex Low Duration Index	3.38	13.85	13.85	10.36	6.90	7.59	7.06	5.11	6.98	0.31	5.97	11.38	10.36	6.38	
Difference	-0.15	1.60	1.60	1.64	0.89	0.88	0.51	0.31	1.68	-0.49	0.35	1.42	2.82	0.62	
Domestic Equity Composite	6.35	21.21	21.21	16.86	11.17	15.41	12.08	7.12	12.67	0.62	12.69	32.25	13.33	8.43	01/01/2005
Russell 3000 Index	6.34	21.13	21.13	16.86	11.12	15.58	13.50	8.60	12.74	0.48	12.56	33.55	16.42	8.67	
Difference	0.01	0.08	0.08	0.00	0.05	-0.17	-1.42	-1.48	-0.07	0.14	0.13	-1.30	-3.09	-0.24	
US Equity Segment	5.92	20.52	20.52	16.58	10.73	14.89	12.84	8.12	12.44	0.20	11.08	33.34	16.60	8.30	
Rank	23	39	39	40	33	36	65	73	46	35	19	62	96	48	
International Equity Composite	2.83	28.14	28.14	16.08	8.45	9.49	7.11	3.27	5.16	-5.34	-0.59	24.10	21.23	7.41	01/01/2005
MSCI ACW Ex US Index (USD) (Net)	5.00	27.19	27.19	15.29	7.83	6.80	4.93	1.84	4.50	-5.66	-3.87	15.29	16.83	5.75	
Difference	-2.17	0.95	0.95	0.79	0.62	2.69	2.18	1.43	0.66	0.32	3.28	8.81	4.40	1.66	
Intl. Equity Segment	4.81	27.89	27.89	15.45	8.85	8.50	6.61	3.35	4.33	-2.94	-2.28	18.65	18.37	6.70	
Rank	94	48	48	38	60	18	37	53	36	79	26	12	12	23	
Intermediate Fixed Income Composite	1.00	6.08	6.08	5.66	4.21	3.50	4.69	6.12	5.24	1.39	6.28	-1.27	10.92	6.30	12/01/2005
Bloomberg US Agg Bond Index	0.39	3.54	3.54	3.09	2.24	2.10	3.20	4.01	2.65	0.55	5.97	-2.02	4.21	4.33	
Difference	0.61	2.54	2.54	2.57	1.97	1.40	1.49	2.11	2.59	0.84	0.31	0.75	6.71	1.97	
US Fixed Income Segment	0.63	4.85	4.85	4.60	3.08	2.71	4.08	4.96	4.24	0.02	6.01	-1.81	7.76	5.09	
Rank	37	34	34	39	28	33	41	25	41	11	44	39	12	25	
Low Duration Fixed Income Composite	-0.16	1.21	1.21	1.47	1.26	1.23	2.09	3.32	1.73	0.84	1.86	0.53	6.54	3.78	12/01/2005
BofA ML 1-3 Yr US Trsy Index	-0.25	0.42	0.42	0.65	0.62	0.56	0.69	1.44	0.88	0.54	0.62	0.36	0.43	2.14	
Difference	0.09	0.79	0.79	0.82	0.64	0.67	1.40	1.88	0.85	0.30	1.24	0.17	6.11	1.64	
Bank Loans Composite	1.16	-	-	-	-	-	-	-	-	-	-	-	-	1.99	07/01/2017
S&P/LSTA Lvg'd Loan Index	1.11	4.12	4.12	7.10	4.44	4.03	4.45	4.85	10.16	-0.69	1.60	5.29	9.66	2.16	
Difference	0.05	-	-	-	-	-	-	-	-	-	-	-	-	-0.17	
Real Estate Composite	2.06	7.54	7.54	8.43	10.89	11.71	12.11	4.91	9.32	16.00	12.08	13.83	12.12	7.35	01/01/2005
NCREIF ODCE Index (AWA) (Gross)	2.07	7.62	7.62	8.19	10.42	11.53	12.07	5.03	8.77	15.02	12.50	13.94	10.94	7.86	
Difference	-0.01	-0.08	-0.08	0.24	0.47	0.18	0.04	-0.12	0.55	0.98	-0.42	-0.11	1.18	-0.51	
GTAA Composite	3.57	11.89	11.89	9.70	5.71	-	-	-	7.56	-1.85	10.04	-	-	7.03	11/01/2013
60% MSCI ACW (Net)/40% Bbrg Gbl Agg Idx	3.85	17.09	17.09	11.24	6.47	6.81	6.14	4.32	5.69	-2.47	2.78	12.05	11.45	5.64	
Difference	-0.28	-5.20	-5.20	-1.54	-0.76	-	-	-	1.87	0.62	7.26	-	-	1.39	

Performance shown is gross of fees. Inception dates shown represent the first full month following initial funding. Indices show "N/A" for "Since Inception" returns when the fund contains more history than the corresponding benchmark. Please see the Addendum for additional information regarding custom indices

Investment Manager Profiles



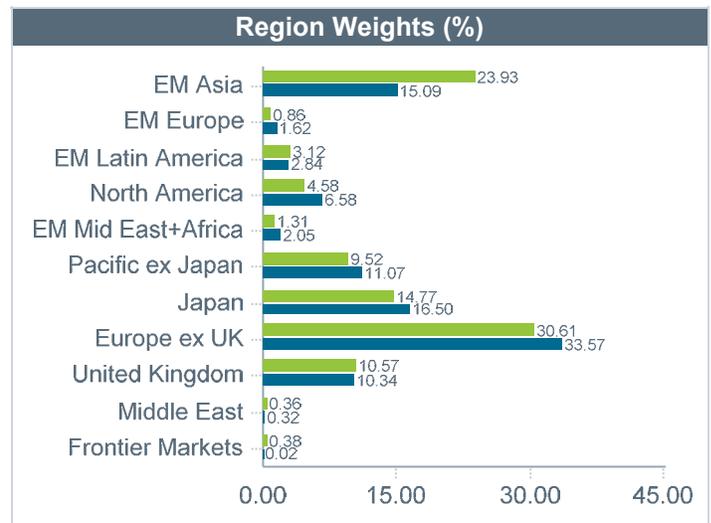
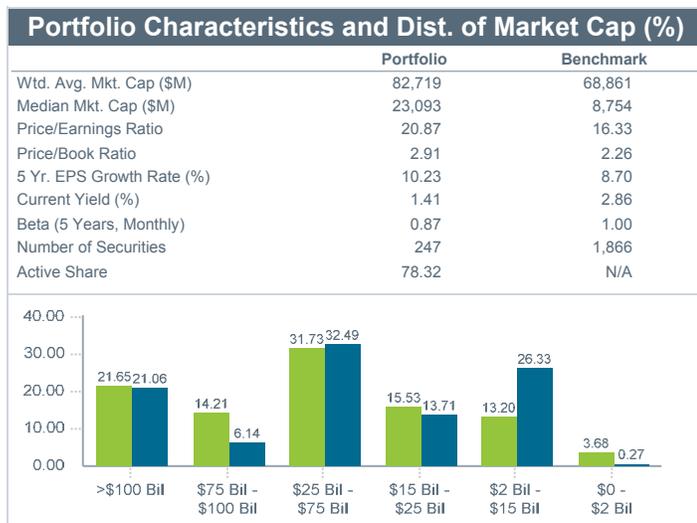
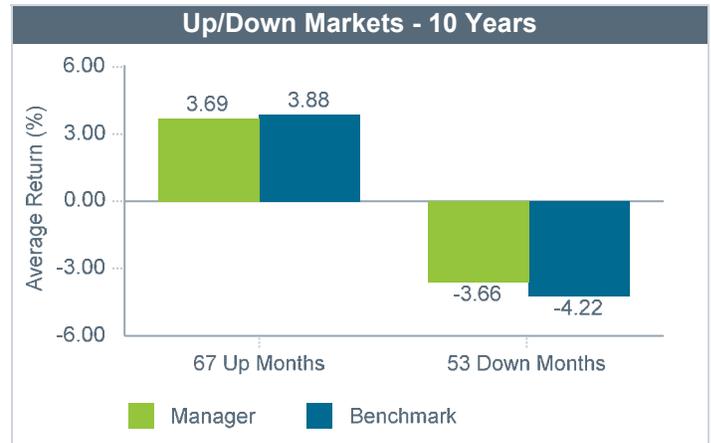
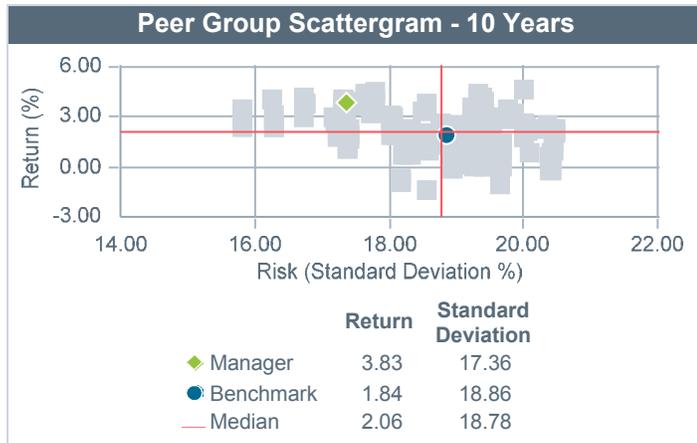
Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	6.34	21.17	11.09	15.55	13.49	8.73	12.67	0.42	12.56	33.49	16.42
Benchmark	6.34	21.19	11.09	15.56	13.49	8.71	12.68	0.40	12.58	33.51	16.44
Difference	0.00	-0.02	0.00	-0.01	0.00	0.02	-0.01	0.02	-0.02	-0.02	-0.02
Peer Group Median	6.03	20.33	9.41	14.39	11.98	7.35	9.86	-1.10	10.89	33.63	15.61
Rank	41	37	14	19	14	14	28	29	28	52	34
Population	811	777	648	562	492	389	759	743	727	700	690



Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks. Benchmark consists of DJ US TSM Index (formerly known as the DJ Wilshire 5000 Index) through 04/22/2005; MSCI US Brd Mkt Index (USD) (Net) through 06/02/2013; and CRSP US Tot Mkt Index thereafter.

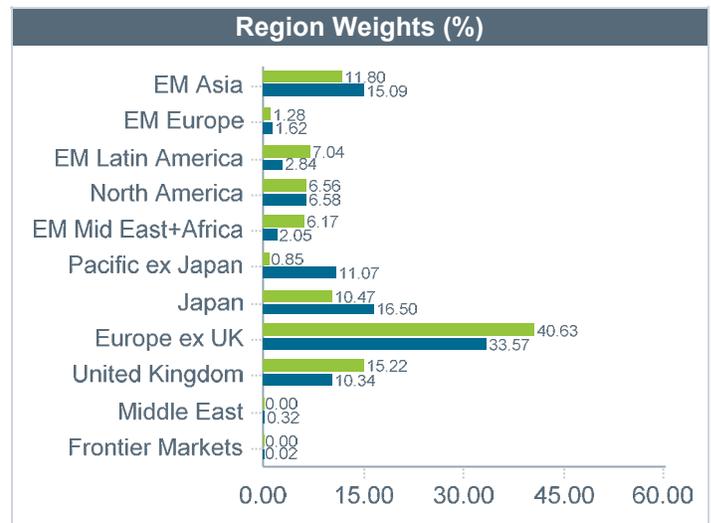
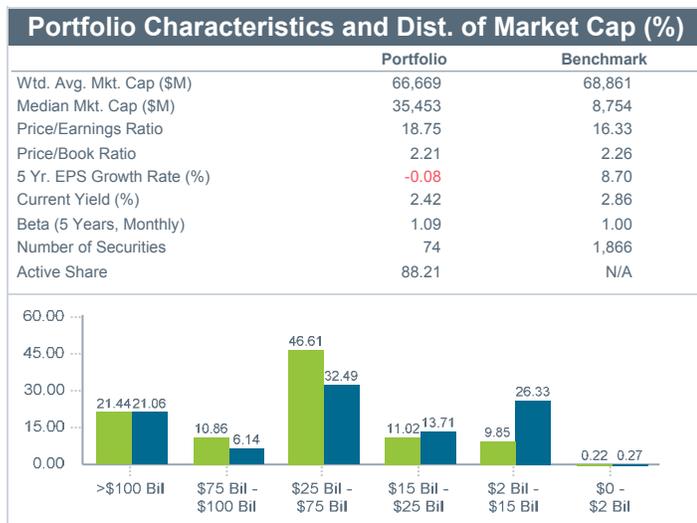
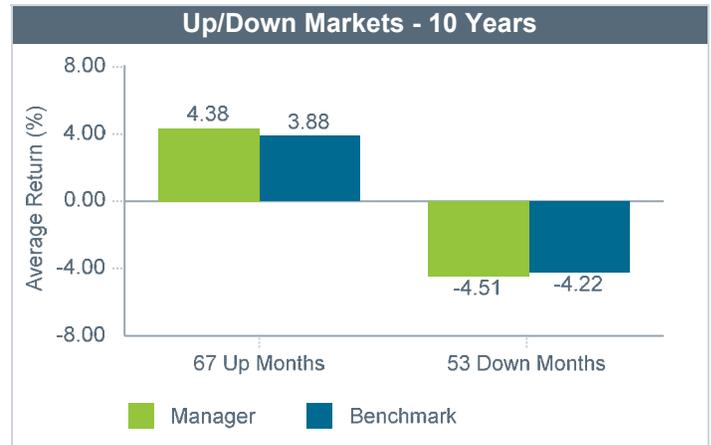
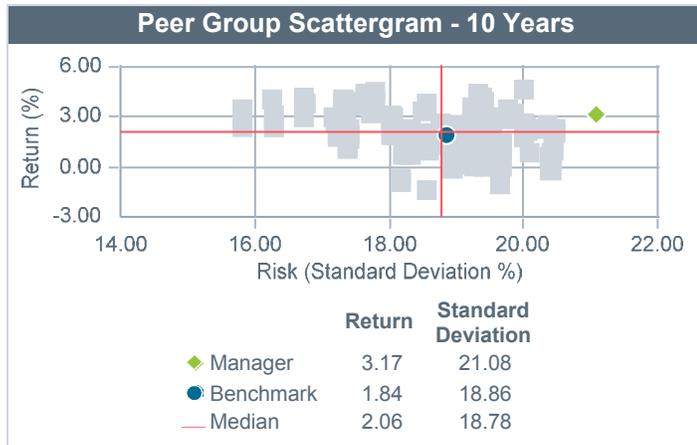


Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	4.19	31.02	9.55	9.09	6.95	3.83	0.92	-0.57	-2.41	20.44	19.54
Benchmark	5.00	27.19	7.83	6.80	4.93	1.84	4.50	-5.66	-3.87	15.29	16.83
Difference	-0.81	3.83	1.72	2.29	2.02	1.99	-3.58	5.09	1.46	5.15	2.71
Peer Group Median	4.12	28.33	8.18	7.45	5.75	2.06	0.88	-1.26	-4.55	17.74	18.37
Rank	48	33	27	15	16	17	50	38	20	26	28
Population	476	476	380	346	310	233	482	417	396	375	359



Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks.

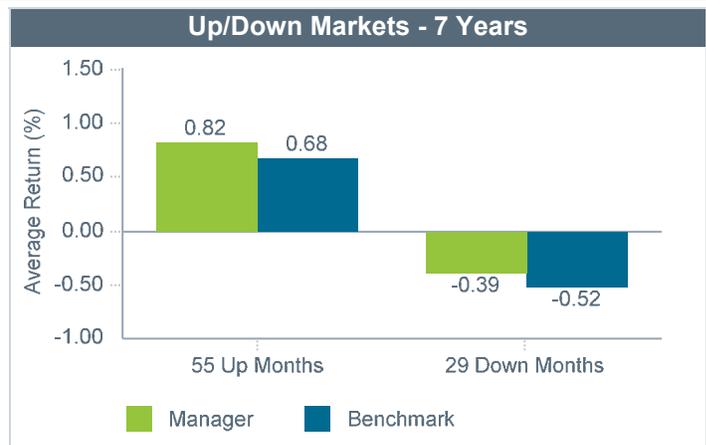
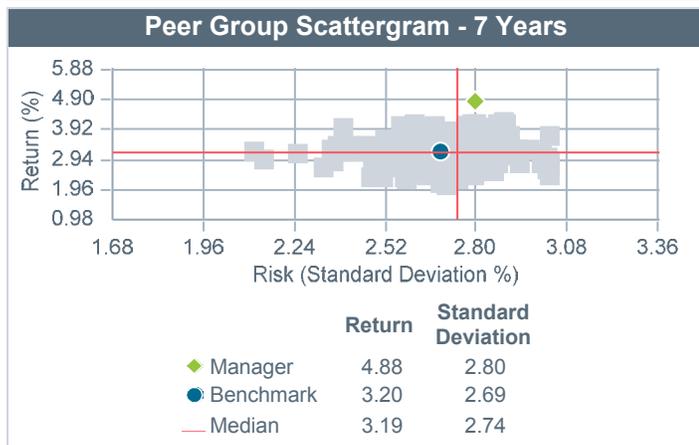
Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	1.21	23.94	5.96	8.50	6.26	3.17	8.26	-11.35	0.08	26.31	21.03
Benchmark	5.00	27.19	7.83	6.80	4.93	1.84	4.50	-5.66	-3.87	15.29	16.83
Difference	-3.79	-3.25	-1.87	1.70	1.33	1.33	3.76	-5.69	3.95	11.02	4.20
Peer Group Median	4.12	28.33	8.18	7.45	5.75	2.06	0.88	-1.26	-4.55	17.74	18.37
Rank	99	83	81	23	32	27	4	94	8	4	18
Population	476	476	380	346	310	233	482	417	396	375	359



Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks.

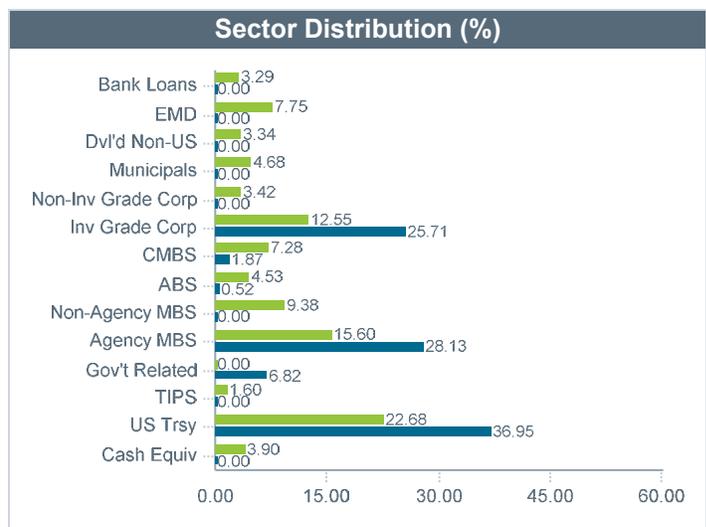


Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	0.47	4.66	3.12	2.97	4.88	N/A	4.11	0.63	6.86	-1.20	8.15
Benchmark	0.39	3.54	2.24	2.10	3.20	4.01	2.65	0.55	5.97	-2.02	4.21
Difference	0.08	1.12	0.88	0.87	1.68	N/A	1.46	0.08	0.89	0.82	3.94
Peer Group Median	0.35	3.58	2.16	1.96	3.19	3.97	2.85	0.00	5.55	-1.98	5.98
Rank	25	9	5	4	1	N/A	15	16	8	20	12
Population	527	500	435	396	347	299	501	485	476	474	469



Portfolio Characteristics

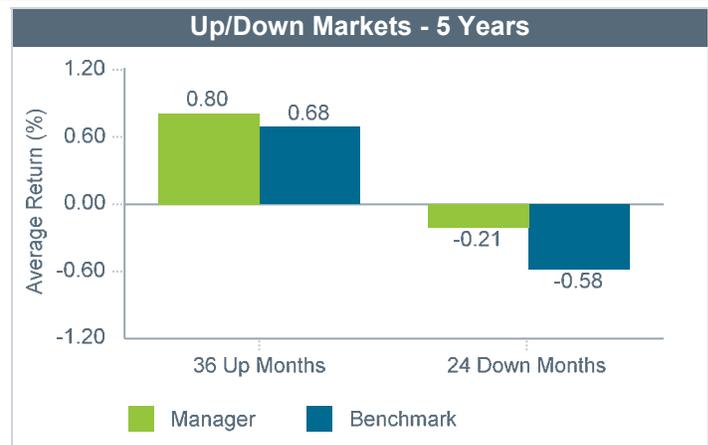
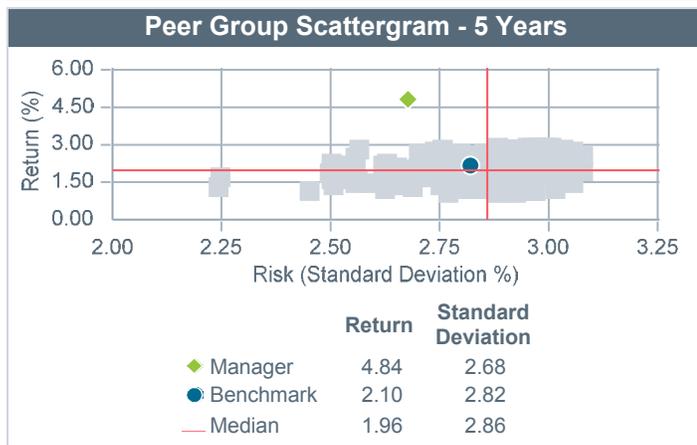
	Portfolio	Benchmark
Effective Duration	4.60	5.98
Spread Duration	N/A	6.21
Avg. Maturity	6.57	8.27
Avg. Quality	A2	Aa1/Aa2
Yield To Maturity (%)	3.03	2.72
Coupon Rate (%)	3.68	3.06
Current Yield (%)	3.09	N/A
Holdings Count	1,230	9,734



Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks.

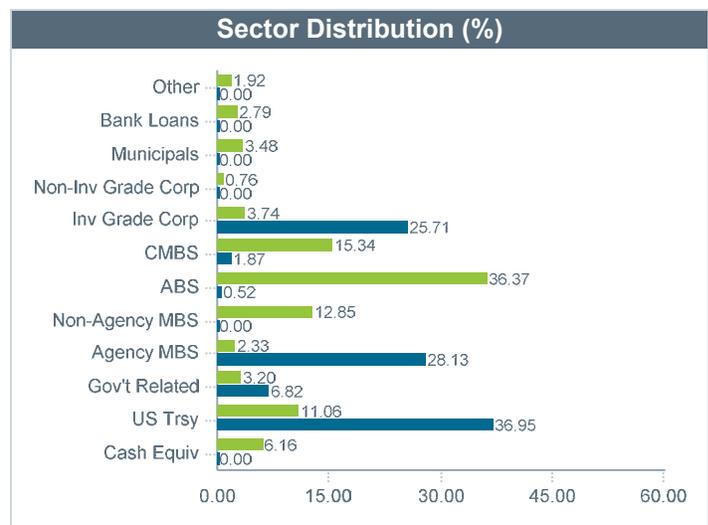


Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	1.29	6.49	4.61	4.84	N/A	N/A	6.18	1.23	8.25	2.20	12.92
Benchmark	0.39	3.54	2.24	2.10	3.20	4.01	2.65	0.55	5.97	-2.02	4.21
Difference	0.90	2.95	2.37	2.74	N/A	N/A	3.53	0.68	2.28	4.22	8.71
Peer Group Median	0.35	3.58	2.16	1.96	3.19	3.97	2.85	0.00	5.55	-1.98	5.98
Rank	1	1	1	1	N/A	N/A	1	4	1	1	1
Population	527	500	435	396	347	299	501	485	476	474	469



Portfolio Characteristics

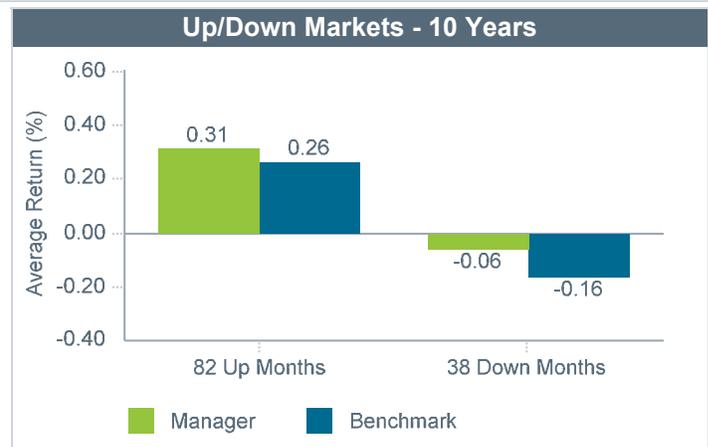
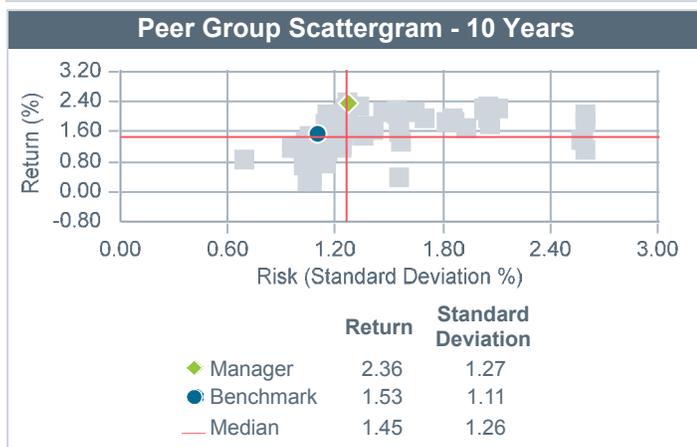
	Portfolio	Benchmark
Effective Duration	4.10	5.98
Spread Duration	4.36	6.21
Avg. Maturity	8.22	8.27
Avg. Quality	A1	Aa1/Aa2
Yield To Maturity (%)	3.22	2.72
Coupon Rate (%)	1.99	3.06
Current Yield (%)	3.13	N/A
Holdings Count	843	9,734



Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks. Allocation to "Other" consists of preferred stock, equities, private placement, cash collateral, FX forwards and derivatives.

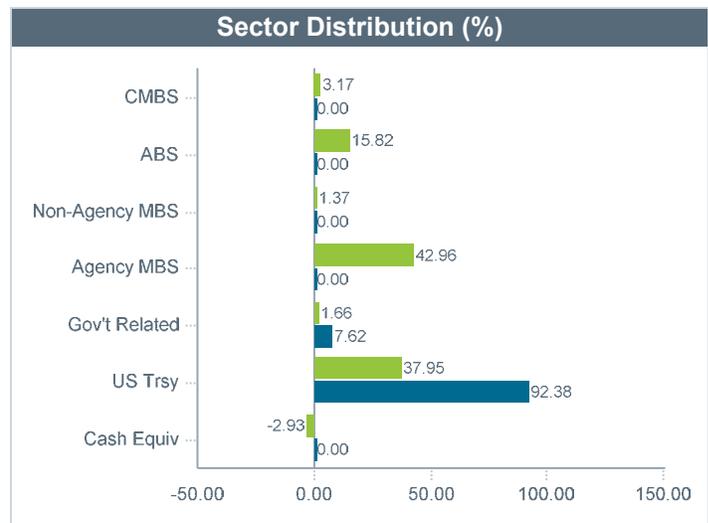


Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	-0.26	0.77	0.81	0.70	1.18	2.36	1.22	0.45	1.06	0.01	2.29
Benchmark	-0.27	0.45	0.63	0.58	0.71	1.53	0.87	0.57	0.64	0.37	0.51
Difference	0.01	0.32	0.18	0.12	0.47	0.83	0.35	-0.12	0.42	-0.36	1.78
Peer Group Median	-0.24	0.55	0.52	0.40	0.62	1.45	0.67	0.21	0.57	-0.61	0.91
Rank	55	38	20	17	13	6	11	28	29	16	9
Population	136	130	122	116	106	89	132	137	139	149	141



Portfolio Characteristics

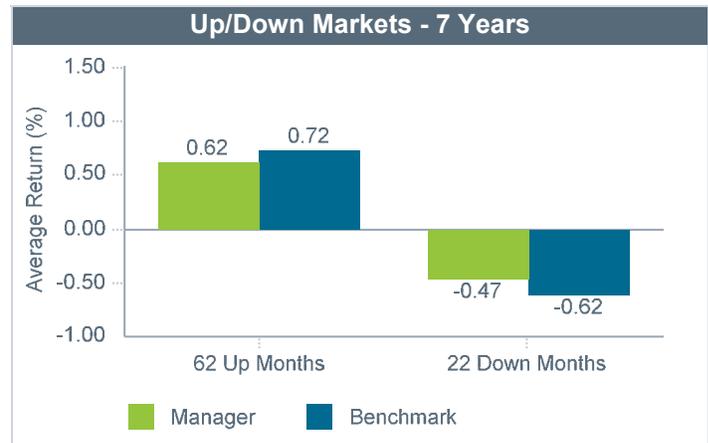
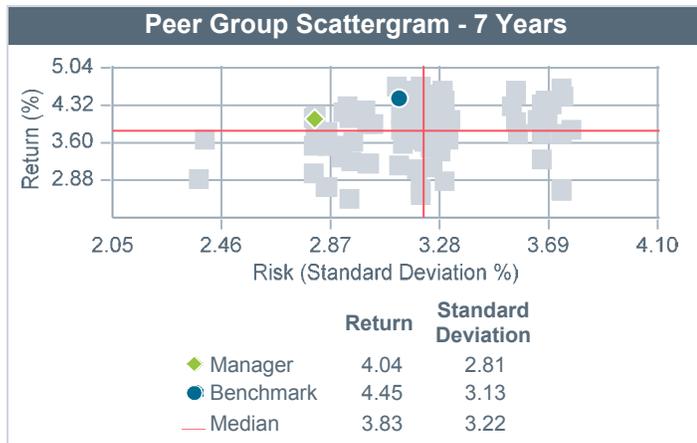
	Portfolio	Benchmark
Effective Duration	2.02	1.93
Spread Duration	N/A	1.95
Avg. Maturity	2.95	1.98
Avg. Quality	Aaa	Aaa/Aa1
Yield To Maturity (%)	2.25	1.90
Coupon Rate (%)	2.72	1.67
Current Yield (%)	2.64	N/A
Holdings Count	188	255



Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks.



Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	0.97	2.79	3.61	3.52	4.04	N/A	7.64	0.53	1.65	5.16	9.18
Benchmark	1.11	4.12	4.44	4.03	4.45	4.85	10.16	-0.69	1.60	5.29	9.66
Difference	-0.14	-1.33	-0.83	-0.51	-0.41	N/A	-2.52	1.22	0.05	-0.13	-0.48
Peer Group Median	0.99	3.53	3.82	3.42	3.83	3.75	8.91	-1.21	0.52	5.10	8.85
Rank	53	82	58	45	36	N/A	72	19	7	48	42
Population	238	228	203	162	104	67	229	217	212	175	166



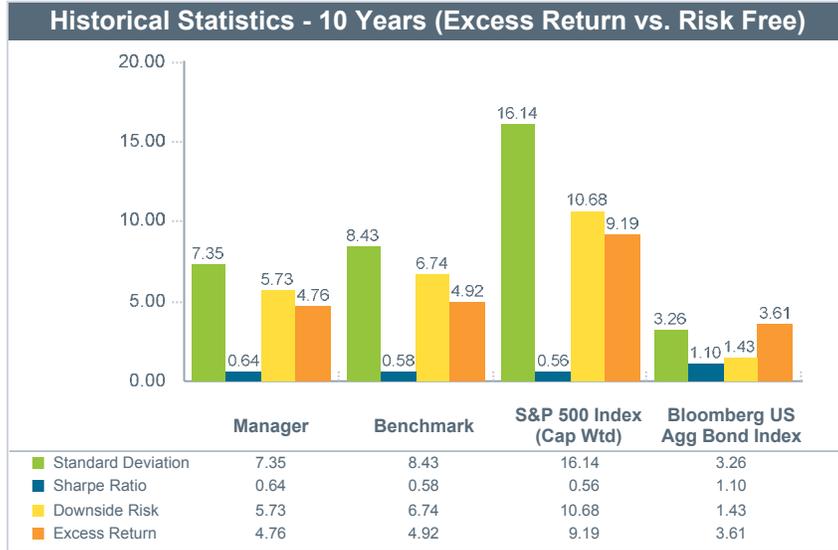
Portfolio Characteristics

	Portfolio	Benchmark
Effective Duration	0.12	N/A
Spread Duration	N/A	N/A
Avg. Maturity	5.48	5.16
Avg. Quality	B1	B1
Yield To Maturity (%)	N/A	5.43
Coupon Rate (%)	5.09	4.78
Current Yield (%)	N/A	5.43
Holdings Count	443	1,176



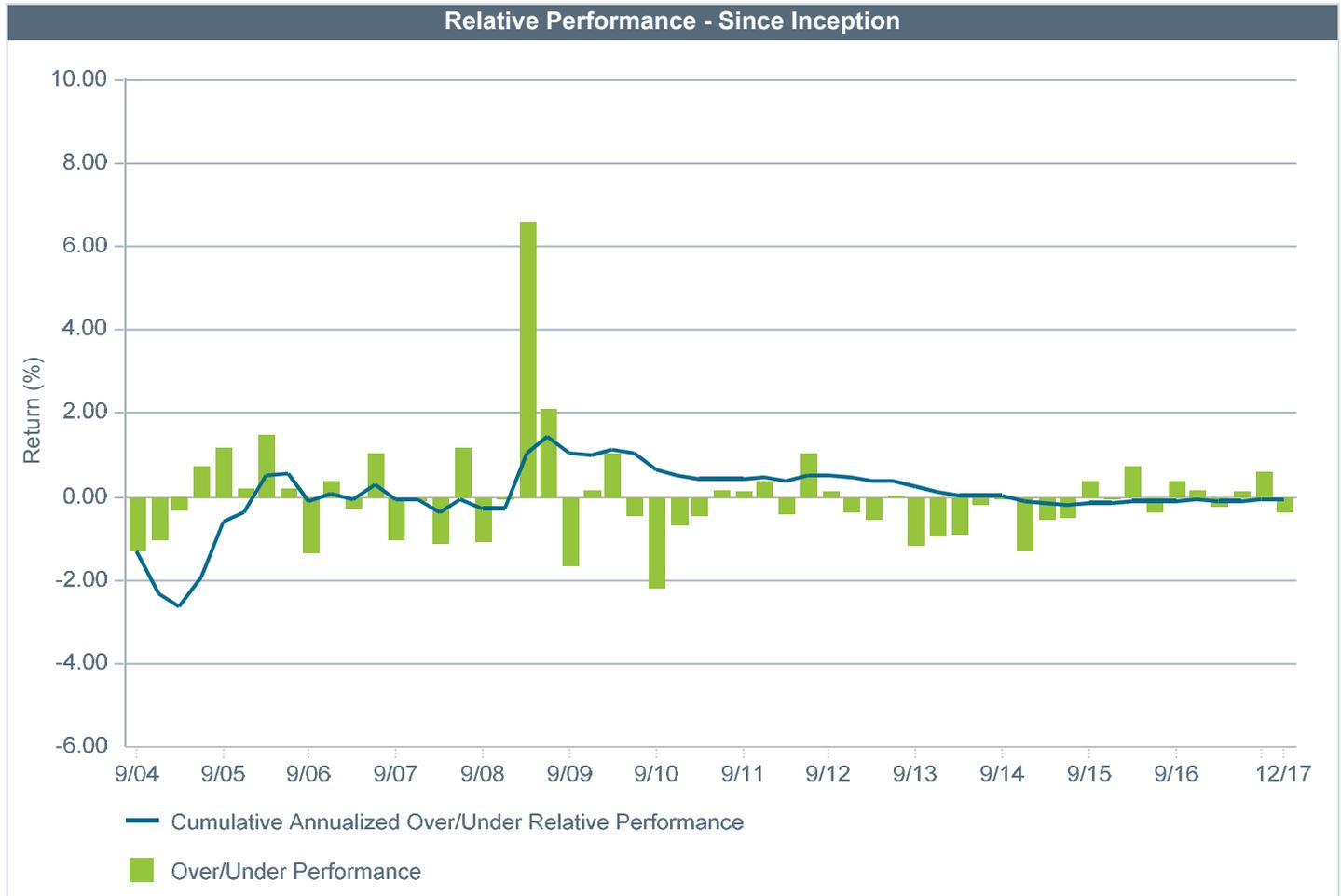
Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Parentheses contain percentile ranks.

Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	1.71	7.70	10.53	10.49	11.42	4.96	9.80	14.19	9.82	11.03	11.33
Benchmark	2.07	7.62	10.42	11.53	12.07	5.03	8.77	15.02	12.50	13.94	10.94
Difference	-0.36	0.08	0.11	-1.04	-0.65	-0.07	1.03	-0.83	-2.68	-2.91	0.39



Actual Correlation - 10 Years

	Actual Correlation
NCREIF ODCE Index (AWA) (Gross)	0.96
S&P 500 Index (Cap Wtd)	0.17
Russell 2000 Index	0.13
MSCI EAFE Index (USD) (Net)	0.03
MSCI Emg Mkts Index (USD) (Net)	-0.08
Bloomberg US Agg Bond Index	-0.28
Bloomberg US Trsy: US TIPS Index	-0.01
Wilshire US REIT Index	0.13
HFRI FOF Comp Index	0.15
Bloomberg Cmdty Index (TR)	0.16
BofA ML 3 Mo US T-Bill Index	-0.21
Cons Price Index (Unadjusted)	0.28



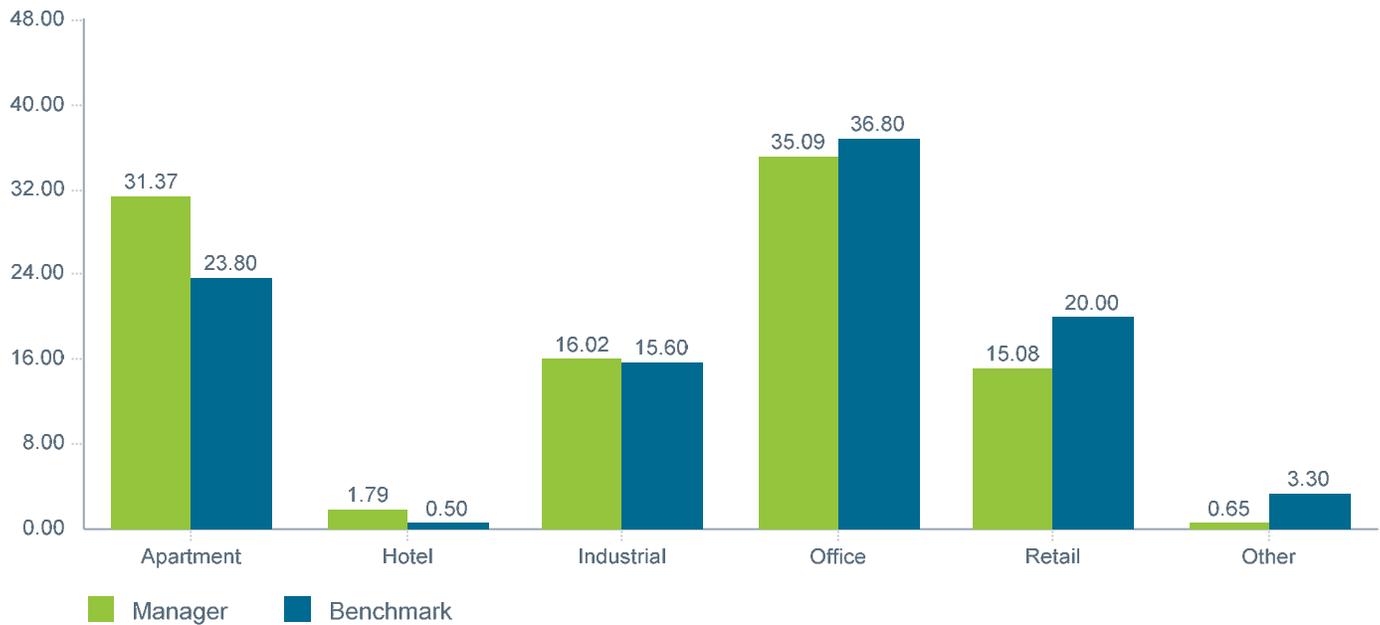
Investment Strategy

The Barings Core Property Fund is a diversified commingled fund comprised primarily of stabilized income-producing real estate that seeks to provide attractive total returns with reduced risk. The Fund invests primarily in high quality assets within the four major sectors tracked by the NCREIF ODCE Index. The Fund favors wholly-owned assets as such ownership enables it to act in an unimpeded fashion to address issues without delay and to control all decisions regarding properties. The Fund controls risk through diversification of property type, geographic area, lifecycle, leverage and tenancy. The Fund may invest up to 10% of its gross assets in “value-added” type real estate investment opportunities.

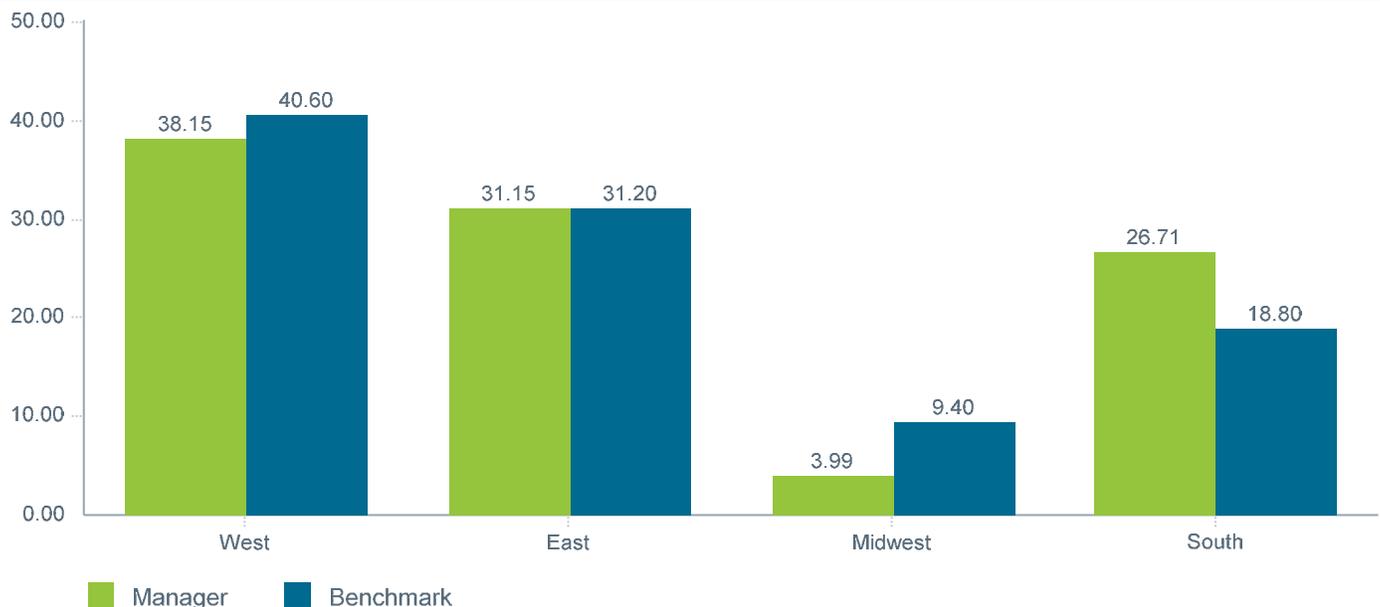
Investment Profile

Fund Inception	2004
Legal Structure	LP
Fund Structure	Open-End
Gross Real Estate Assets (\$M)	4,124
Fund Leverage %	20.22
Portfolio Occupancy %	85.08
Cash Reserve %	4.00
Number of Investments	56
Number of Limited Partners	121

Property Type Allocation (%)



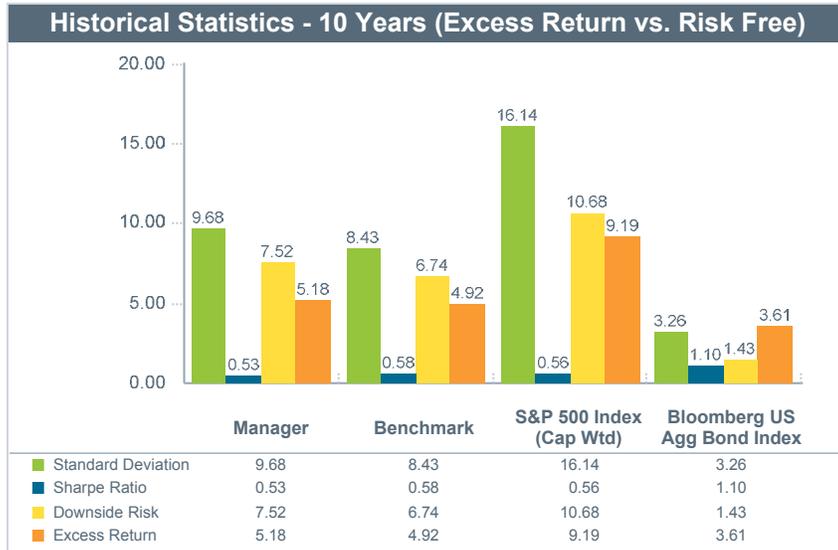
Geographic Allocation (%)



Performance shown is gross of fees and product specific. Calculation is based on quarterly periodicity. Investment profile data shown is provided by the investment manager and is as of the most recently available quarter end. Allocation data shown is based on NAV. Manager allocation to "Other" consists of land. Benchmark allocation to "Other" consists of entertainment (theaters, golf courses, bowling alleys), healthcare (hospitals, clinics), manufactured homes, parking lots, self-storage units, senior living, and undeveloped land.

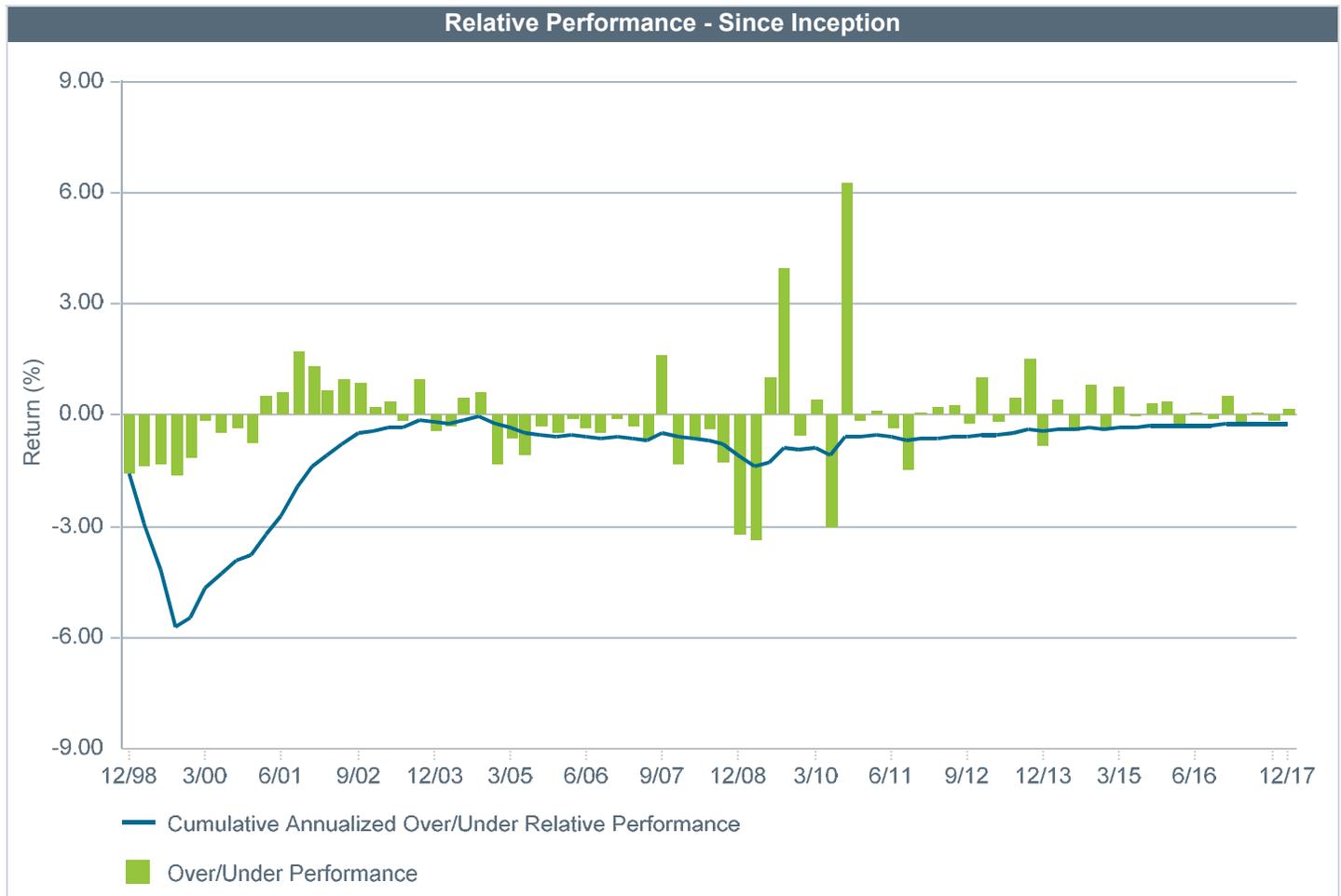


Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	2.25	7.44	11.03	12.22	12.52	5.17	9.14	16.74	13.03	15.04	12.40
Benchmark	2.07	7.62	10.42	11.53	12.07	5.03	8.77	15.02	12.50	13.94	10.94
Difference	0.18	-0.18	0.61	0.69	0.45	0.14	0.37	1.72	0.53	1.10	1.46



Actual Correlation - 10 Years

	Actual Correlation
NCREIF ODCE Index (AWA) (Gross)	0.95
S&P 500 Index (Cap Wtd)	0.39
Russell 2000 Index	0.35
MSCI EAFE Index (USD) (Net)	0.30
MSCI Emg Mkts Index (USD) (Net)	0.10
Bloomberg US Agg Bond Index	-0.19
Bloomberg US Trsy: US TIPS Index	-0.06
Wilshire US REIT Index	0.39
HFRI FOF Comp Index	0.28
Bloomberg Cmdb Index (TR)	0.26
BofA ML 3 Mo US T-Bill Index	-0.19
Cons Price Index (Unadjusted)	0.20



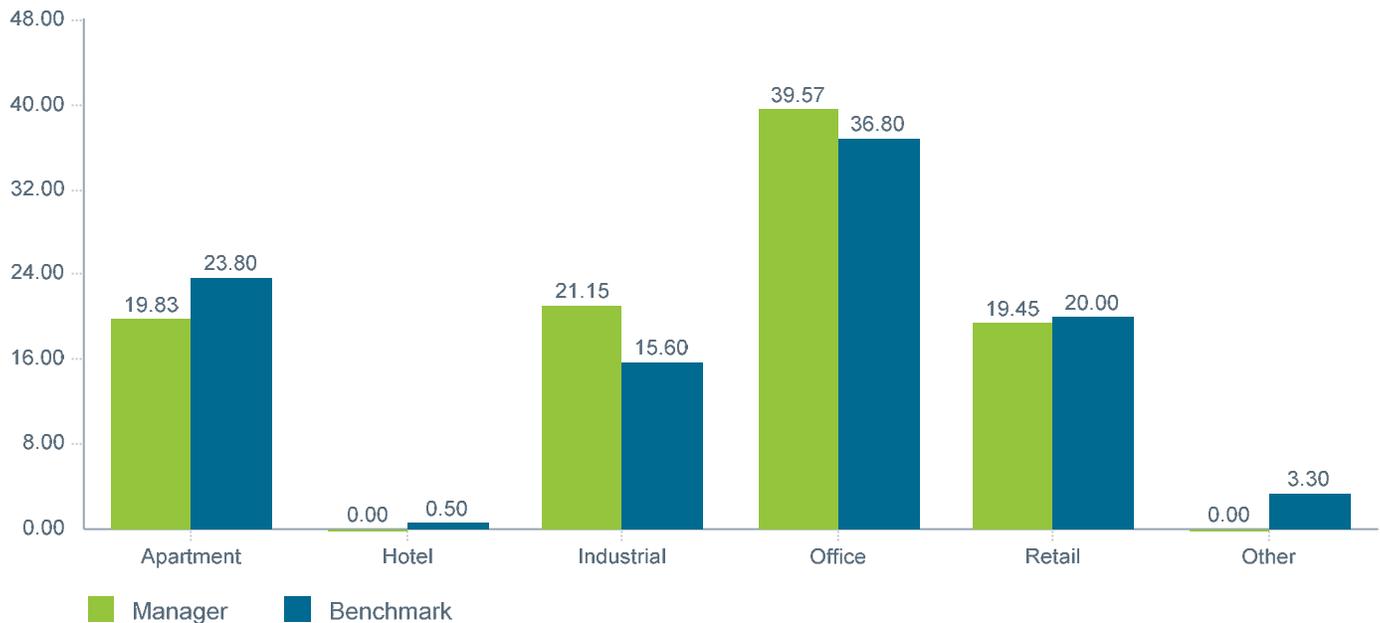
Investment Strategy

The RREEF America REIT II is a core real estate investment commingled fund designed to provide investors with competitive returns from low-risk/core investments and selected moderate-risk/enhanced return investments in real estate. The Fund seeks to provide preservation of capital, a steady income dividend, enhanced returns from portfolio construction, active management, selective value added investments, and long term liquidity. The Fund is qualified under the Internal Revenue Code as a real estate investment trust (REIT) and emphasizes the active management of stable, well located, properties among the four primary real estate sectors in major metropolitan markets throughout the US.

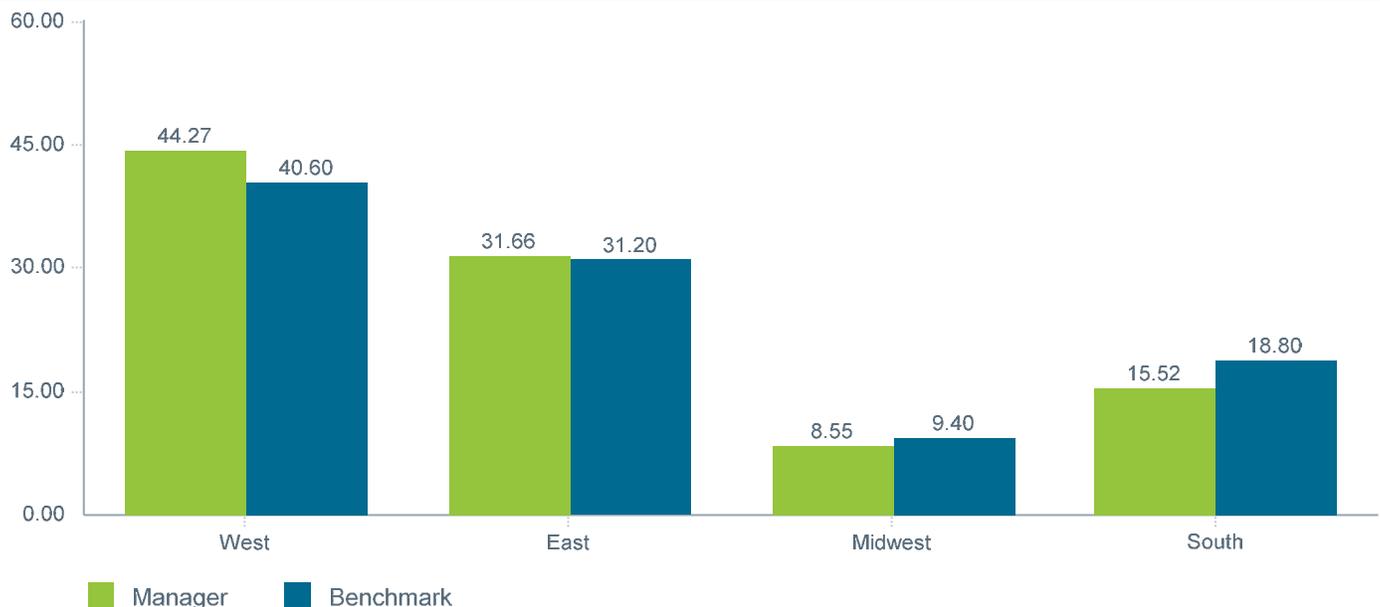
Investment Profile

Fund Inception	1998
Legal Structure	REIT
Fund Structure	Open-End
Gross Real Estate Assets (\$M)	11,988
Fund Leverage %	20.10
Portfolio Occupancy %	92.22
Cash Reserve %	2.90
Number of Investments	100
Number of Limited Partners	294

Property Type Allocation (%)



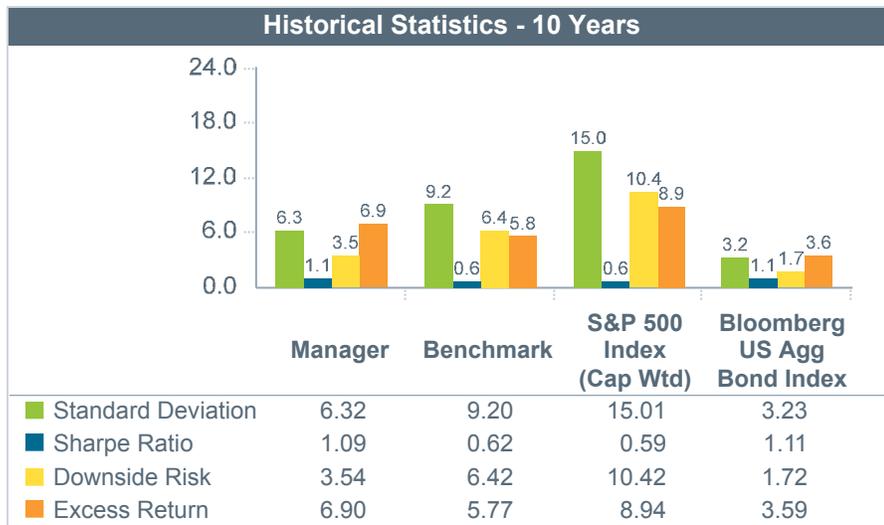
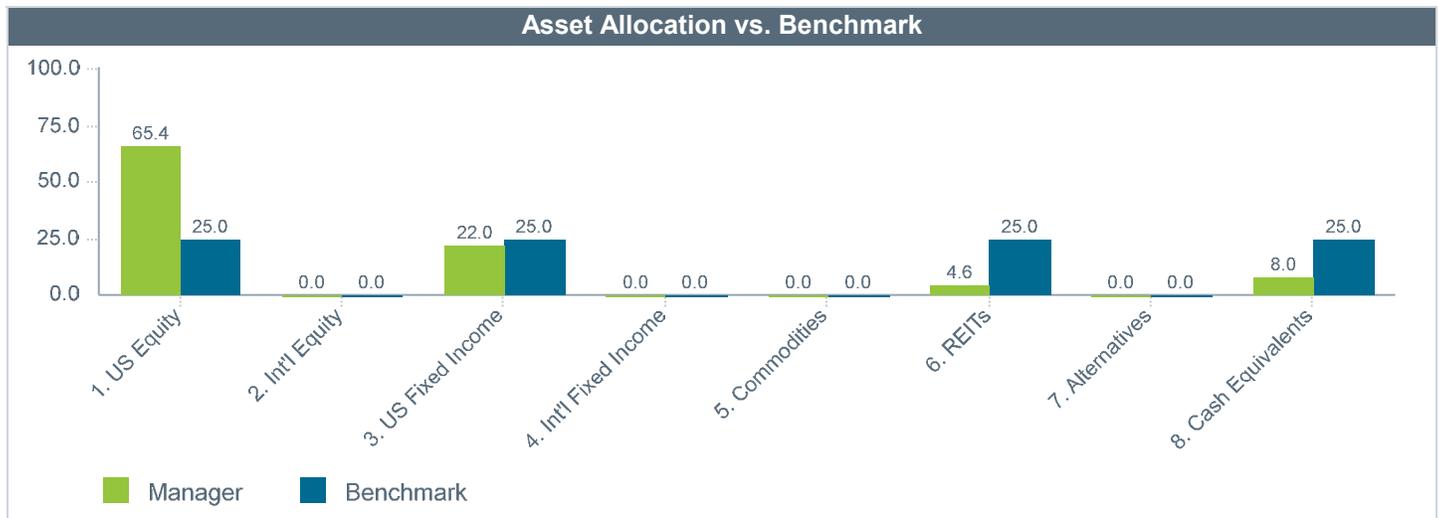
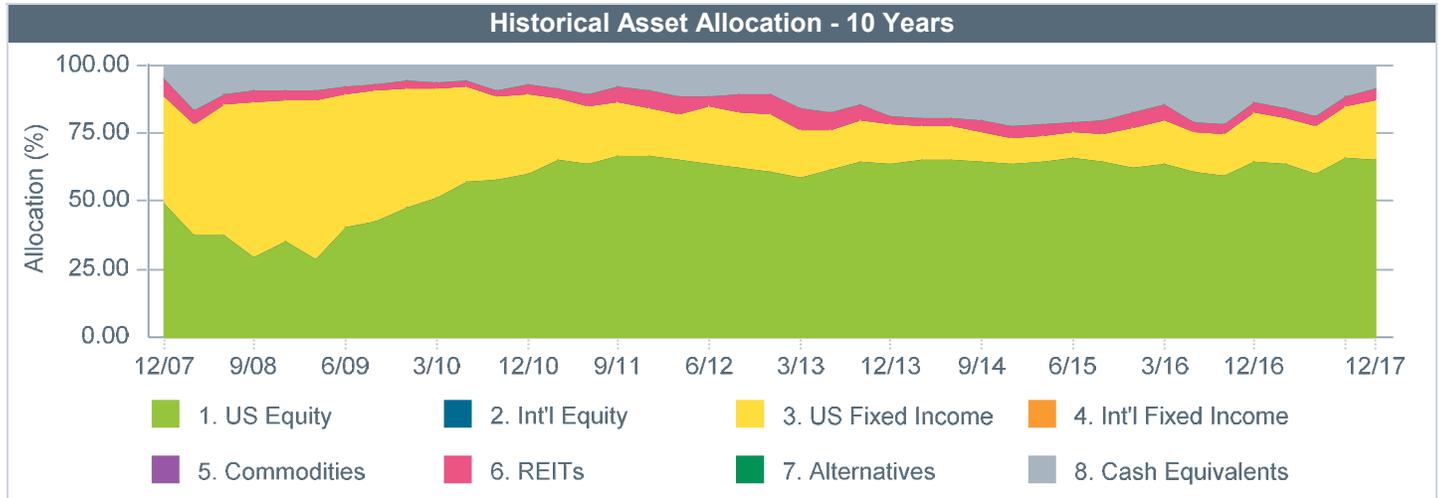
Geographic Allocation (%)



Performance shown is gross of fees and product specific. Calculation is based on quarterly periodicity. Investment profile data shown is provided by the investment manager and is as of the most recently available quarter end. Allocation data shown is based on NAV. Benchmark allocation to "Other" consists of entertainment (theaters, golf courses, bowling alleys), healthcare (hospitals, clinics), manufactured homes, parking lots, self-storage units, senior living, and undeveloped land.



Performance											
	QTD	1 Year	3 Years	5 Years	7 Years	10 Years	2016	2015	2014	2013	2012
Manager	3.35	10.96	4.87	7.57	7.56	7.33	6.66	-2.57	9.10	14.49	7.95
Benchmark	2.27	8.13	5.00	6.76	7.30	5.89	5.37	1.61	12.88	6.15	9.98
Difference	1.08	2.83	-0.13	0.81	0.26	1.44	1.29	-4.18	-3.78	8.34	-2.03



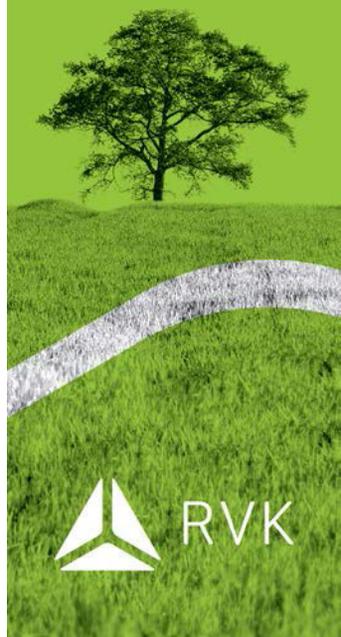
Actual Correlation - 10 Years

	Actual Correlation
Westwood Custom Index	0.71
S&P 500 Index (Cap Wtd)	0.78
Russell 2000 Index	0.69
MSCI EAFE Index (USD) (Net)	0.73
MSCI Emg Mkts Index (USD) (Net)	0.64
Bloomberg US Agg Bond Index	0.17
Bloomberg US Trsy: US TIPS Index	0.27
Wilshire US REIT Index	0.63
HFRI FOF Comp Index	0.57
Bloomberg Cmnty Index (TR)	0.48
BofA ML 3 Mo US T-Bill Index	-0.10
Cons Price Index (Unadjusted)	0.09

Performance shown is net of fees and product specific. Calculation is based on monthly periodicity. Benchmark consists of 25% S&P 500 Index (Cap Wtd), 25% FTSE NAREIT All Eq REITs TR Index, 25% FTSE 3 Mo T-Bill Index, and 25% FTSE 10 Yr Trsy Index.



Addendum & Glossary



Performance Related Comments

- Performance shown is net of fees, unless otherwise noted.
- In 02/2011, assets invested in American Funds EuPc;A (AEPGX) were transferred in-kind to American Funds EuPc;F-2 (AEPFX). As such, client specific performance shown prior to 02/2011 is representative of the A share class.
- In 10/2014, assets invested in Vanguard TSM Idx;Sig (VTSSX) were transferred in-kind to Vanguard TSM Idx;Adm (VTSAX). As such, client specific performance shown prior to 10/2014 is representative of the Signal share class.

Manager Transition Comments

- In 09/2013, Aurora Offshore Fund II (CF) was liquidated. The full redemption was received on 10/24/2013.
- Westwood Income Oppty;Inst (WHGIX) was funded in 10/2013 with proceeds from full redemption of Aurora Offshore Fund II (CF).
- In 05/2014, Platte River Fund, LP (CF) was liquidated, and the proceeds were reinvested in Vanguard TSM Idx;Sig (VTSSX). The full redemption was received on 05/13/2014.
- In 12/2014, PIMCO:Tot Rtn;Inst (PTTRX) and PIMCO:Low Dur;Inst (PTLDX) were liquidated, while Guggenheim;TR Bd;Inst (GIBIX) and WellsFargo:SD GV Bd;I (WSGIX) were funded.
- In 04/2016, shares of Vanguard TSM Idx;Adm (VTSAX) were exchanged for Vanguard TSM Idx;Inst (VITSX).
- In 09/2016 the fund name for the Cornerstone Patriot Fund was changed to Barings Core Property Fund, LP (CF) to reflect the integration and rebranding of Babson, Cornerstone, and Wood Creek into one global firm under the name of Barings. There were no significant changes to the investment teams or executive leadership at the firm as a result of this rebranding.
- In 11/2016, PIMCO:Comm RR Str;Inst (PCRIX) was liquidated.
- In 12/2016, Vanguard Infl-Prot;Adm (VAIPX) was liquidated.
- In 05/2017, PIMCO:All Asset;Inst (PAAIX) was liquidated. The proceeds were used to fund VOYA:Floating Rate;I (IFRIX) in 06/2017.

Index Comments

- The **Target Allocation Index** is calculated monthly and currently consists of 24% Russell 3000 Index, 21% MSCI ACW Ex US Index (USD) (Net), 26% Bloomberg US Agg Bond Index, 5% S&P/LSTA Lvg'd Loan Index, 10% NCREIF ODCE Index (AWA) (Net), and 14% Westwood Custom Index.
 - From 12/2016 to 05/2017, the **Target Allocation Index** consisted of 24% Russell 3000 Index, 21% MSCI ACW Ex US Index (USD) (Net), 26% Bloomberg US Agg Bond Index, 10% NCREIF ODCE Index (AWA) (Net), 14% Westwood Custom Index, and 5% Real Return Custom Index.
 - From 11/2013 to 11/2016, the **Target Allocation Index** consisted of 20% Russell 3000 Index, 19% MSCI ACW Ex US Index (USD) (Net), 22% Bloomberg US Agg Bond Index, 10% NCREIF ODCE Index (AWA) (Net), 14% Westwood Custom Index, and 15% Real Return Custom Index.
 - From 11/2010 to 09/2013, the **Target Allocation Index** consisted of 20% Russell 3000 Index, 19% MSCI ACW Ex US Index (USD) (Net), 22% Bloomberg US Agg Bond Index, 10% NCREIF ODCE Index (AWA) (Net), 14% HFN FOF Multi-Strat Index (Net), and 15% Real Return Custom Index.
 - From 05/2006 to 10/2010, the **Target Allocation Index** consisted of 21% Russell 3000 Index, 21% MSCI ACW Ex US Index (USD) (Net), 22% Bloomberg US Agg Bond Index, 10% NCREIF ODCE Index (AWA) (Net), 14% HFN FOF Multi-Strat Index (Net), and 12% Real Return Custom Index.
 - From 12/2005 to 04/2006, the **Target Allocation Index** consisted of 21% Russell 3000 Index, 20% MSCI ACW Ex US Index (USD) (Net), 31% Bloomberg US Agg Bond Index, 8% NCREIF Property Index, 10% HFN FOF Multi-Strat Index (Net), and 10% Real Return Custom Index.
- The **Actual Allocation Index** and **Actual Allocation ex Low Duration Index** are calculated monthly using beginning of month asset class weights applied to each corresponding manager benchmark return.
- The **Vanguard Spl Tot Stock Mkt Index** consists of DJ US TSM Index (formerly known as the DJ Wilshire 5000 Index) through 04/22/2005; MSCI US Brd Mkt Index (USD) (Net) through 06/02/2013; and CRSP US Tot Mkt Index thereafter.
- The **Westwood Custom Index** consists of 25% S&P 500 Index (Cap Wtd), 25% FTSE NAREIT All Eq REITs TR Index, 25% FTSE 3 Mo T-Bill Index, and 25% FTSE 10 Yr Trsy OTR Index.

**Oregon State Bar Professional Liability Fund
Fee Schedule**

As of December 31, 2017

	Fee Schedule	Market Value As of 12/31/2017 (\$)	Estimated Annual Fee (\$)	Estimated Annual Fee (%)
Vanguard TSM Idx;Inst (VITSX)	0.03 % of Assets	13,518,836	4,056	0.03
American Funds EuPc;F2 (AEPFX)	0.60 % of Assets	5,874,259	35,246	0.60
Dodge & Cox Intl Stock (DODFX)	0.64 % of Assets	5,935,448	37,987	0.64
DoubleLine:Cr Fxd In;l (DBLFX)	0.44 % of Assets	6,348,039	27,931	0.44
Guggenheim:TR Bd;Inst (GIBIX)	0.59 % of Assets	6,080,518	35,875	0.59
WellsFargo:SD Gv Bd;l (WSGIX)	0.42 % of Assets	5,960,111	25,032	0.42
Voya:Floating Rate;l (IFRIX)	0.76 % of Assets	2,030,493	15,432	0.76
Barings Core Property Fund, LP (CF)	1.10 % of First \$15 M 1.00 % of Next \$10 M 0.80 % Thereafter	1,718,850	18,907	1.10
RREEF America REIT II (CF)	0.95 % of Assets	3,077,238	29,234	0.95
Westwood Income Opp;Inst (WHGIX)	0.83 % of Assets	6,992,055	58,034	0.83
Total Fund Composite		57,535,847	287,734	0.50

Glossary

Active Share - Measures the degree to which the holdings of a fund differ from the holdings of the benchmark. Active share is calculated by taking the sum of the absolute value of the differences of the weight of each holding in the fund versus the weight of each holding in the benchmark and dividing by two.

Alpha - A measure of the difference between a portfolio's actual returns and its expected performance, given its level of risk as measured by beta. It is a measure of the portfolio's historical performance not explained by movements of the market or a portfolio's non-systematic return.

Alpha Ratio - A measure of a portfolio's non-systematic return per unit of downside risk. It is measured by dividing the alpha of a portfolio by the downside risk. The non-systematic return is a measure of a portfolio's historical performance not explained by movements of the market.

Average Quality - Bond quality ratings are reported using the investment managers' and the index providers' preferred rating agency. *Average Quality for managers unable to provide this statistic is instead provided by Morningstar; if unavailable on Morningstar, it has been estimated using a credit quality distribution provided by the manager.* There are two primary rating agencies in the US. *Moody's* assigns ratings on a system that employs up to four symbols (consisting of letters and numbers) such as, Aaa, Aa2, etc., with Aaa being the highest or safest rating. *Standard & Poor's (S&P)* employs a system that uses + and - along with letters such as AAA, AA+, etc. The two rating agencies' systems are summarized below:

<u>S&P</u>	<u>Moody's</u>	<u>Explanation</u>	<u>S&P</u>	<u>Moody's</u>	<u>Explanation</u>
Higher Credit Quality – Investment Grade			Lower Credit Quality – Below Investment Grade		
AAA	Aaa	Prime/Highest credit quality	BB+	Ba1	Speculative/Low credit quality
AA+	Aa1	High credit quality	BB	Ba2	
AA	Aa2		BB-	Ba3	
AA-	Aa3		B+	B1	Highly speculative
A+	A1	Upper-medium credit quality	B	B2	
A	A2		B-	B3	
A-	A3		CCC+	Caa1	Substantial credit/default risk
BBB+	Baa1	Lower-medium credit quality	CCC	Caa2	Extremely speculative
BBB	Baa2		CCC-	Caa3	
BBB-	Baa3		CC	Ca	Vulnerable to default
			C	Ca	
			D	C	In default

Benchmark Effect – The difference between the composite's benchmark return and the blended return of each respective managers' benchmark within the composite.

Beta - A measure of the sensitivity of a portfolio to the movements in the market. It is a measure of a portfolio's non-diversifiable or systematic risk.

Box Plots - A graphical representation of the distribution of observations. From top to bottom, the four boxes represent the spread between the maximum value and the minimum value in each quartile. A quartile represents the values that divide the observations into four quarters (i.e., 1st quartile, 2nd quartile, 3rd quartile, and 4th quartile). The median observation is where the 2nd quartile and 3rd quartile meet.

Buy and Hold Attribution - At the beginning of the time period under analysis, the manager and benchmark portfolios are broken down into segments (i.e., styles, sectors, countries, and regions) based on the desired type of attribution. The formula assumes zero turn-over to the manager and benchmark portfolios throughout the period and calculates the segment returns ("buy and hold returns") to arrive at performance attribution. Due to portfolio turnover, buy and hold attribution may not accurately represent quarterly performance relative to the benchmark. Country, region, sector, and style allocations are as of the date one quarter prior to the reporting date, and the returns shown are for those segments throughout the quarter reported. Due to disclosure guidelines set by each investment manager, equity characteristics shown are as of the most recent date available. The following is the methodology for segment classification:

Sector - Attribution is calculated using the Global Industry Classification Standard (GICS) which is a detailed and comprehensive structure for sector and industry analysis. Stocks are classified by their primary sector, as defined by S&P Capital IQ data.

Country/Region - Attribution is calculated using the Morgan Stanley Capital International (MSCI) region standards. Stocks are classified by their domicile country/region, as defined by S&P Capital IQ data.

Style - Stocks are classified into the following style boxes: large/mid/small vs. growth/neutral/value. Stocks are classified along large/mid/small categories at the time of the Russell index rebalancing, using the index market cap boundaries as cutoff points. Stocks are classified along growth/neutral/value categories at the time of the Russell index rebalancing, using the price/book ratio as supplied by S&P Capital IQ. Stocks in the Russell 3000 Index portfolio are sorted by price/book ratio; names with the highest price/book ratio that make up 1/3 of the total market capitalization are assigned to the growth category, names that make up the subsequent 1/3 of the total market capitalization are assigned to the neutral category, while the balance of the names are assigned to the value category.

Portfolio Characteristics and Buy and Hold Attribution reports utilize product-specific data for all mutual funds and commingled funds.

Capital Markets Review -

Breakeven Inflation - Measures the expected inflation rate at each stated maturity by taking the difference between the real yield of the inflation-linked maturity curve and the yield of the closest nominal Treasury maturity.

Consumer Confidence - Measures domestic consumer confidence as defined by the degree of optimism on the state of the economy that consumers express through saving and spending.

Consumer Price Index (CPI) - Measures the change in the price level of consumer goods and services.

Federal Funds Rate - The interest rate at which a depository institution lends funds maintained at the Federal Reserve to another depository institution overnight. It is one of the most influential interest rates in the US economy, since it affects monetary and financial conditions, which in turn have a bearing on key aspects of the broad economy including employment, growth and inflation.

Option-Adjusted Spread - Measures the flat spread of an index or bond to the Treasury yield curve after removing the effect of any embedded options.

Purchasing Managers Index (PMI) - Measures economic activity by surveying purchasing managers on a monthly basis as to whether business conditions have improved, worsened, or stayed the same.



Glossary

Real Gross Domestic Product (Real GDP) - An inflation-adjusted measure that reflects the value of all goods and services produced by an economy in a given year.

US Dollar Total Weighted Index - Measures the value of the US Dollar relative to a basket of other world currencies. It is calculated as the weighted geometric mean of the dollar's value versus the EUR, GBP, CAD, SEK, CHF, and JPY.

Unemployment Rate - The percentage of the total labor force that is unemployed but actively seeking employment.

VIX - Measures the implied volatility of S&P 500 Index options by looking at the market's expectation of the S&P 500 Index volatility over the next 30 day period. Commonly referred to as the "fear index" or the "fear gauge."

Cash Flow Effect - The composite's active return minus the sum of each managers' active return minus the benchmark effect.

Consistency - The percentage of quarters that a product achieved a rate of return higher than that of its benchmark. The higher the consistency figure, the more value a manager has contributed to the product's performance.

Convexity - A measure of the shape of the curve that describes the relationship between bond prices and bond yields.

Correlation - A statistical measure of the relationship between asset class returns. A value of 1.00 is a perfect correlation; that is, the asset classes always move in the same direction. A value of -1.00 indicates a perfect negative correlation, in which the asset classes always move in opposite directions of each other. A value of 0 indicates there is no relationship between the direction of returns of the two asset classes. Correlation calculations only consider the direction of changes relative to two variables and not the magnitude of those changes.

Coupon Rate - The percentage rate of interest paid on a bond or fixed income security; it is typically paid twice per year.

Current Yield - The annual income of a security divided by the security's current price.

Down Market Capture - Down market by definition is negative benchmark return and down market capture represents the ratio in % terms of the average portfolios return over the benchmark during the down market period. The lower the value of the down market capture the better the product's performance.

Downside Risk - A measure similar to standard deviation, but focuses only on the negative movements of the return series. It is calculated by taking the standard deviation of the negative monthly returns. The higher the factor, the riskier the product.

Earnings Per Share - It is backward looking, calculated using the one year current EPS divided by the one year EPS five years ago.

Effective Duration - The approximate percentage change in a bond's price for a 100 basis point change in yield.

Excess Return vs. Market - Average of the monthly arithmetic difference between the manager's return and the benchmark return over a specified time period, shown on an annualized basis.

Excess Return vs. Risk Free - Average of the monthly arithmetic difference between the manager's return and the risk-free return (i.e., BofA ML 3 Mo US T-Bill Index unless specified otherwise) over a specified time period, shown on an annualized basis.

Excess Risk - A measure of the standard deviation of a portfolio's performance relative to the risk free return.

Expense Ratios - Morningstar is the source for mutual fund expense ratios.

Gain/Loss - The net increase or decrease in the market value of a portfolio excluding its Net Cash Flow for a given period.

Indices - All indices and related information are considered intellectual property and are licensed by each index provider. The indices may not be copied, used or distributed without the index provider's prior written approval. Index providers make no warranties and bear no liability with respect to the indices, any related data, their quality, accuracy, suitability and/or completeness.

Information Ratio - Measured by dividing the active rate of return by the tracking error. The higher the information ratio, the more value-added contribution by the manager.

Liability Driven Investing (LDI) - A method to optimally structure asset investments relative to liabilities. The change in liabilities is estimated by the Ryan Labs Generic PPA Index of appropriate duration for that Plan. This benchmark is based on generic data and is therefore an approximation. RVK is not an actuarial firm, and does not have actuarial expertise.

Estimated Funded Status - The estimated ratio of a Plan's assets relative to its future liabilities. This is calculated by dividing the Plan's asset market value by the estimated present value of its liabilities. The higher the estimated funded status, the better the Plan's ability to cover its projected benefit obligations. An estimated funded status of 100% indicates a Plan that is fully funded.

Estimated PV of Liabilities - An estimate of a Plan's future liabilities in present value terms. The beginning of the period liability is provided by the Plan's actuary. The period-end present value liability estimate provided in this report is derived by applying the estimated percentage change generated using the Ryan Labs Generic PPA Index with duration similar to that reported on the most recent actuarial valuation report.

Duration of Liabilities - The sensitivity of the value of a Plan's liabilities to changes in interest rates, as calculated by the Plan's actuary.

Duration of Assets - The dollar-weighted average duration of all the individual Plan assets.

Estimated Plan Hedge Ratio - The estimate of how well a Plan's investment portfolio is hedged against changes in interest rates - a primary driver of funded status movements. This is calculated by dividing the dollar-weighted values of both the Plan asset duration by the liability duration and multiplying by the estimated funded status. An estimated plan hedge ratio of zero indicates that the Plan's liabilities have not been hedged, whereas a value of one indicates fully hedged.

Modified Duration - The approximate percentage change in a bond's price for a 100 basis point change in yield, assuming the bonds' expected cash flows do not change.

Glossary

Mutual Fund Performance - Whenever possible, manager performance is extended for any share class that does not have 10 years of history. Using Morningstar's methodology, a single ticker within the same fund family (often the oldest share class) is chosen to append historical performance.

Net Cash Flow - The sum, in dollars, of a portfolio's contributions and withdrawals. This includes all management fees and expenses only when performance shown is gross of fees.

Peer Groups -

Plan Sponsor Peer Groups - RVK utilizes the Mellon Analytical Solutions Trust Universe along with the Investment Metrics Plan Sponsor Universe. The combined Mellon Analytical Solutions Trust Universe and Investment Metrics Plan Sponsor Universe is used for comparison of total fund composite results and utilizes actual client returns compiled from consultant and custodial data. The Plan Sponsor Peer Group database includes performance and other quantitative data for over 2,100 plans which include corporate, endowment, foundation, public, and Taft Hartley plans. Plan Sponsor Peer Groups are gross of fees.

Institutional Peer Groups (Separate Account and Commingled Fund) - RVK utilizes the Investment Metrics Separate Account and Commingled Fund Manager Peer Groups for peer comparison and rankings. The Separate Account and Commingled Fund Peer Group database includes performance and other quantitative data for over 1,000 investment management firms, 6,400 investment products, across 100 standard peer groups. Separate Account and Commingled Fund Peer Groups are gross of fees.

Mutual Fund (MF) Peer Groups - RVK utilizes the Lipper Mutual Fund Manager Peer Groups for peer comparison and rankings. The Lipper Manager Peer Group database includes performance and other quantitative data for over 700 investment management firms and 24,500 investment products, across more than 140 standard peer groups. Mutual Fund Peer Groups are net of fees.

For more information on Peer Groups, visit <https://www.invmetrics.com/style-peer-groups>.

Percentile Rankings - Percentile rank compares an individual fund's performance with those of other funds within a defined peer group of managers possessing a similar investment style. Percentile rank identifies the percentage of a fund's peer group that has a higher return (or other comparative measurement) than the fund being ranked. Conversely, 100 minus the individual fund's ranking will identify the percentage of funds within the peer group that have a lower return than the fund being ranked.

1 - Highest Statistical Value

100 - Lowest Statistical Value

Example: American Funds AMCP;R-4 (RAFEX) is ranked in the 4th percentile within the IM US Equity Large-Cap Growth Funds (MF) Peer Group for the Sharpe Ratio. Within the IM US Equity Large-Cap Growth Funds peer group, 4% of the other funds performed better than American Funds AMCP;R-4 (RAFEX), while 96% of the funds performed worse.

Performance Methodology - RVK calculates performance for investment managers and composites using different methodologies.

Investment Managers - Performance is calculated for interim periods between all large external cash flows for a given month and geometrically linked to calculate period returns. An external cash flow is defined as cash, securities, or assets that enter or exit a portfolio. RVK defines a "large cash flow" as a net aggregate cash flow of $\geq 10\%$ of the beginning-period portfolio market value or any cash flow that causes RVK calculated performance to deviate from manager/custodian reported performance in excess of 5 basis points for a given month.

Composites - The Modified Dietz methodology is utilized to calculate asset class, sub-asset class, and total fund composite performance. The Modified Dietz method calculates a time-weighted total rate of return that considers the timing of external cash flows; however, it does not utilize interim period performance to mitigate the impact of significant cash in- and outflows to the composite.

RVK calculates performance beginning with the first full month following inception. Since inception performance may vary from manager reported performance due to RVK using the first full month of returns as the inception date. Performance for both managers and composites is annualized for periods greater than one year.

Portfolio Characteristics - Due to disclosure guidelines set by each investment manager, portfolio characteristics shown are as of the most recent date available.

Price to Earnings Ratio - The ratio of a company's share price to its per-share earnings

Private Equity Quartile Ranks - Private Equity quartile ranks are generated using vintage year peer group data provided by Thomson Reuters, and are based on each fund's annualized, since inception internal rate of return (IRR). Three Private Equity peer groups are available via Thomson Reuters: Buyout, Venture, and All Private Equity. Ranks are available quarterly, at a one-quarter lag.

Return - Compounded rate of return for the period.

% Return - The time-weighted rate of return of a portfolio for a given period.

R-Squared - The percentage of a portfolio's performance explained by the behavior of the appropriate benchmark. High R-Squared means a higher correlation of the portfolio's performance to the appropriate benchmark.

Risk Free Benchmark - BofA ML 3 Mo US T-Bill Index unless specified otherwise.

Glossary

RVK Liquidity Rating - A qualitative method for determining the relative amount of liquidity in a portfolio. The characteristics considered when determining relative liquidity include trading volume, gates for redemption, leverage, nature of transactions, and pricing mechanisms. The RVK Liquidity Rating is calculated using beginning of month investment weights applied to each corresponding asset class liquidity rating.

<u>Asset Class</u>	<u>RVK Liquidity Rating</u>	<u>Asset Class</u>	<u>RVK Liquidity Rating</u>
<u>Liquid Investments</u>		<u>Less Liquid Investments</u>	
T-Bills and Treasuries	100	Fixed Income Plus Sector	50
Cash Equivalents	98	Bank Loans	50
TIPS	95	Stable Value (Plan Sponsor Directed)	50
US Large Cap Equity	95	Absolute Return Strategies	35
Diversified Real Return	93		
Stable Value (Participant Directed)	91		
Non-US Large Cap Equity	90	<u>Not Liquid Investments</u>	
Global Tactical Asset Allocation	88	Core Real Estate	25
US Small Cap Equity	85	Core Plus Real Estate	15
REITS	85	Non-Core Real Estate	5
Non-US Small Cap Equity	85	Private Equity Funds of Funds	5
Emerging Markets Equity	85		
Core Fixed Income	85		
Core Plus Fixed Income	80		

Sector Allocation - Negative fixed income sector allocation reflects manager's use of derivatives, short selling, or interest rate swaps.

Sharpe Ratio - Represents the excess rate of return over the risk-free return (i.e., BofA ML 3 Mo US T-Bill Index unless specified otherwise), divided by the standard deviation of the excess return to the risk free asset. The result is the absolute rate of return per unit of risk. The higher the value, the better the product's historical risk-adjusted performance.

Simple Alpha - The difference between the manager's return and the benchmark's return.

Spread Duration - The approximate percentage change in a bond's price for a 100 basis point change in its spread over a Treasury of the same maturity.

Standard Deviation - A statistical measure of the range of a portfolio's performance. The variability of a return around its average return over a specified time period.

Time Period Abbreviations - **QTD** - Quarter-to-Date. **CYTD** - Calendar Year-to-Date. **FYTD** - Fiscal Year-to-Date. **YOY** - Year Over Year.

Thematic Classification - Represents dedicated manager allocations; as such, thematic allocations are approximations. RVK categorizes the following asset classes as Alpha, Capital Appreciation, Capital Preservation, and Inflation:

<u>Alpha</u>	<u>Capital Appreciation</u>	<u>Capital Preservation</u>	<u>Inflation</u>
Absolute Return Strategies	Public Equity	Core Fixed Income	TIPS
Currency Overlay	Private Equity	CMBS Fixed Income	Bank Loans
	Preferred Securities	Asset Backed Fixed Income	Core Real Estate
	High Yield	Domestic Core Plus Fixed Income	Real Return
	Convertible Fixed Income	Mortgage Backed Fixed Income	Inflation Hedges
	TALF Funds	International Developed Fixed Income	REITS
	Distressed Debt	Cash Equivalents	Commodities
	Emerging Market Fixed Income	Stable Value	
	Value Added Real Estate		
	Opportunistic Real Estate		

Total Fund Attribution – The Investment Decision Process (IDP) model provides an approach to evaluating investment performance that applies to all asset classes and investment styles. The IDP model is based on a top-down hierarchy framework of investment decisions, with each decision contributing to the overall profit or loss. The IDP approach starts from the strategic asset allocation and follows the flow of the investments down to the manager's skill.

Strategic Asset Allocation (SAA) – The percentage return gained or lost from the long-term strategic asset allocation decision, the most significant determinant of long-term performance. SAA is the product of the target asset allocation multiplied by the corresponding benchmark returns.

Tactical Asset Allocation (TAA) – The percentage return gained or lost from not having been precisely allocated at the target asset allocation mix, whether by deviations that are tactical in nature or a by-product of moving towards the target mix. TAA is the product of the actual asset allocation multiplied by the broad asset class benchmarks, less the SAA.

Style Selection (SS) – The percentage return gained or lost from intentional style biases within each asset class (e.g. value rather than core or overweight to emerging markets relative to benchmark). SS is the product of the actual manager allocation within each asset class multiplied by their specific benchmark, less TAA.

Manager's Skill (MS) – The percentage return gained or lost from manager value added relative to their specific benchmark. MS is the product of the actual manager allocation multiplied by their achieved excess return.

Total Fund Beta - Total Fund Beta is calculated using the S&P 500 as the benchmark. It represents a measure of the sensitivity of the total fund to movements in the S&P 500 and is a measure of the Total Fund's non-diversifiable or systematic risk.

Tracking Error - A measure of the standard deviation of a portfolio's performance relative to the performance of an appropriate market benchmark.



Glossary

Treynor Ratio - Similar to Sharpe ratio, but focuses on beta rather than excess risk (standard deviation). Treynor ratio represents the excess rate of return over the risk-free rate (i.e., BofA ML 3 Mo US T-Bill Index unless specified otherwise) divided by the beta. The result is the absolute rate of return per unit of risk. The higher the value, the better historical risk-adjusted performance.

Unit Value - The dollar value of a portfolio, assuming an initial nominal investment of \$100, growing at the compounded rate of %Return for a given period.

Up Market Capture - Up market by definition is positive benchmark return and up market capture represents the ratio in % terms of the average portfolios return over the benchmark during the up market period. The higher the value of the up market capture the better the product's performance.

Yield to Maturity - The rate of return achieved on a bond or other fixed income security assuming the security is bought and held to maturity and that the coupon interest paid over the life of the bond will be reinvested at the same rate of return. The 30-Day SEC Yield is similar to the Yield to Maturity and is reported for mutual funds.

Yield to Worst - The bond yield calculated by using the worst possible yield taking into consideration all call, put, and optional sink dates.

PORTLAND

CHICAGO

NEW YORK

Disclaimer of Warranties and Limitation of Liability - This document was prepared by RVK, Inc. (RVK) and may include information and data from some or all of the following sources: client staff; custodian banks; investment managers; specialty investment consultants; actuaries; plan administrators/record-keepers; index providers; as well as other third-party sources as directed by the client or as we believe necessary or appropriate. RVK has taken reasonable care to ensure the accuracy of the information or data, but makes no warranties and disclaims responsibility for the accuracy or completeness of information or data provided or methodologies employed by any external source. This document is provided for the client's internal use only and does not constitute a recommendation by RVK or an offer of, or a solicitation for, any particular security and it is not intended to convey any guarantees as to the future performance of the investment products, asset classes, or capital markets.





CAROL J. BERNICK
CHIEF EXECUTIVE OFFICER

MEMORANDUM

DATE: January 9, 2018
TO: OSB Board of Governors
FROM: Carol J. Bernick
RE: 2017 Claims Attorney and Defense Counsel Evaluations

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

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

The PLF Claims Department closed 809 claims in 2017 and received 316 evaluations (39% of claims closed) from the Covered Parties. The results of the 2017 evaluations are as follow:

PLF OVERALL:

Total Responses	Very Satisfied	% of Responses	Satisfied	% of Responses	Not Satisfied	% of Responses
316	293	92.72%	23	7.28%	0	0.00%

PLF CLAIMS ATTORNEY:

Total Responses	Very Satisfied	% of Responses	Satisfied	% of Responses	Not Satisfied	% of Responses
315	297	94.29%	17.5	5.56%	0.5	0.15%

DEFENSE COUNSEL:

Total Responses	Very Satisfied	% of Responses	Satisfied	% of Responses	Not Satisfied	% of Responses
200	188	94.00%	12	6.00%	0	0.00%

We are pleased with both the level of response (39%) and the degree of satisfaction expressed by our Covered Parties. The evaluations reflected 100% of our Covered Parties were very satisfied/satisfied with the overall handling of their claim, 99.85% were very satisfied/satisfied with the performance of their PLF Claims Attorneys, and 100% were very satisfied/satisfied with the performance of their defense or repair counsel. The evaluations showed Covered Parties being very satisfied/satisfied with the performance of their PLF Claims Attorneys. It is hard to imagine how we could obtain more favorable responses.

CJB/ms

Att.

c: Cindy Hill (w/att.)



CONFIDENTIAL EVALUATION FORM
November 14, 2017

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

Covered Party: [CP] **Bar No.:** [OSB#]
Claimant(s): [CL] **PLF Claim No.:** [File #]
PLF Claims Staff Attorney: <Claims Attorney>
Assigned Defense Counsel: [DP Counsel Name or N/A]

I. PLF CLAIMS STAFF:

- I. (a) How satisfied were you overall with the handling and disposition of the above referenced matter?
 Very Satisfied Satisfied Not Satisfied
- I. (b) How satisfied were you overall with the services provided by the PLF staff attorney?
 Very Satisfied Satisfied Not Satisfied
- I. (c) Were you kept fully informed by the PLF staff attorney? **Yes** **No**
- I. (d) If this matter was settled, did you find the settlement reasonable? **Yes** **No**
- I. (e) Other comments or suggestions:

II. DEFENSE OR REPAIR COUNSEL: (Complete this section only if outside defense or repair counsel was assigned to this matter.)

- II. (a) How satisfied were you overall with the services of the assigned defense or repair counsel?
 Very Satisfied Satisfied Not Satisfied
- II. (b) Were you kept fully informed at all stages? **Yes** **No**
- II. (c) Did you find the fees charged reasonable? **Yes** **No**

III. LOSS PREVENTION/GENERAL:

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

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

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

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

The Oregon Attorney Assistance Program (OAAP) provides free and confidential assistance with alcohol and chemical dependency, career satisfaction, stress management, procrastination, and gambling addiction. If you would like more information, contact one of our OAAP Attorney Counselors at (503) 226-1057:

Shari R. Gregory, ext. 14
Doug Querin, ext. 12
Bryan R. Welch, ext. 19

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

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

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

Estimated number of hours you spent on this claim: _____

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

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

OREGON STATE BOARD OF BAR EXAMINERS

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, OR 97281-1935
(503) 620-0222 or (800) 452-8260 • www.osbar.org

February 14, 2018

Helen Hirschbiel
Oregon State Bar
PO BOX 231935
Tigard, Oregon 97281-1935

Re: **Increasing Bar Exam Application Fees.**

Dear Ms. Hirschbiel:

The Oregon Board of Bar Examiners (BBX) is considering raising its application fees. While such an increase requires approval only from the Oregon Supreme Court (ORS 9.210(3)), the BBX recognizes that the Oregon State Bar (OSB) is a stakeholder in the total amount of admission fees recovered and wishes to consult with and receive support from the Board of Governors (BOG) for this fee increase proposal.

The BBX proposes a \$125 increase to the OSB application fee, bringing the total application fee to \$750, with the hope that it could be in place for February 2019 bar exam applicants. The last time the Application Fee was increased was in 2009, when it was raised from \$525 to \$625. *See History of Admission Fees attached.*

This increase is sought to defray increased bar exam administration costs, including those charged by the National Conference of Bar Examiners (NCBE) to Uniform Bar Examination (UBE) jurisdictions. The fee increase also accounts for the fact that the number of bar applicants is likely to diminish in coming years. The data and factors considered by the BBX in making this proposal includes the following:

Bar exam expenses are greater today than they were in 2009.

Bar Exam Expenses in 2009	Exam Expenses in 2017	Difference
\$265.94 per applicant (with 858 applicants)	\$365.57 per applicant (with 667 applicants)	+\$99.63 (-191 applicants)

The two primary factors that impact the costs per applicant are: 1) as a result of becoming a UBE jurisdiction, the NCBE charges the OSB approximately \$50 more per applicant for exam materials; and 2) we have almost 200 fewer bar exam applicants than we had in 2009.

While consistently generating surpluses that have been paid into the Bar's treasury, we have for many years operated on thin margins. The BBX 2018 Budget calls for a surplus of only \$34,023 from projected revenues of \$834,220 (a 4% margin). *See 2018 Budget attached.*

This surplus would be entirely eliminated if we have 54 fewer applicants than we did in 2017. 2017's applicant totals were 41 less than 2016. Already, it appears that this year's February Bar exam will be a handful less than last February's exam totals, which was a near record low for recent February exams. The last time any BBX fee was increased was 2012 when the investigation fee for out-of-state lawyers was increased by \$200.

A \$750 application fee would be in close proximity to the mean of all UBE jurisdictions and below the mean of all Western States.

The mean application fee of all UBE states is approximately \$724. A \$750 Oregon Application Fee would be within 3.6% of the UBE mean. However, Oregon has the 6th most expensive cost of living among all UBE jurisdictions. When each UBE State's application fee is adjusted to Oregon's cost of living, the mean application fee is approximately \$873, far below what we propose.

The mean bar application fee for Western States is approximately \$773. A \$750 Oregon Application Fee would be approximately 3.1% below the Western State mean.

Oregon's Application fee has not kept up with inflation since its last raise in 2009.

According to CPI data provided by the Oregon Department of Administrative Services, Oregon's Application Fee would need to be \$788.75 in order to have the same buying power that the \$625 application fee had in 2009. In other words, inflation has eroded the value of the 2009 application fee by approximately 26%. However, the BBX is only looking to increase its application fee by 20%.

BBX revenues and losses are paid into and from the treasury of the Oregon State Bar.

As previously mentioned, The BBX budget has operated with a razor thin margin the last few years. Some unforeseen expense or circumstance could easily move the BBX's financials into the red, forcing the OSB to cover those losses. That has not happened in recent memory, and we presume the BOG would like to continue to avoid that.

I assure the BOG that the BBX is mindful of its expenses. In the last 5 years, the admissions department has been reduced from 4.5 fte positions to 3.0 fte positions. We

continue to explore ways to reduce expenses, as we are not interested in charging applicants any more than is absolutely necessary.

In the light of the current status of the BBX's finances and the foregoing data, the BBX hopes that this application fee increase proposal will receive support from the Oregon State Bar and the Board of Governors.

The chair of the BBX Finance Committee, Stephanie Tuttle, will present this concern at the next BOG meeting. Please let me know if you require any additional information before that meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Ryan". The signature is written in a cursive, slightly slanted style.

Thomas M. Ryan, Chair

Enclosures: History of Admission Fees
2018 Budget

CC: Camille Green
Stephanie Tuttle

APPLICATION FEE HISTORY

<u>Year</u>	<u>Amount(s)</u>	<u>Explanation</u>
1861	\$ 5.00	
1913	\$ 10.00	Exam
	\$ 20.00	Attorney Certificates
1936	\$ 20.00	
1945	\$ 35.00	
1949	\$ 35.00	Any applicant for admission upon examination, except as next noted:
	\$ 85.00	By an applicant for admission upon first examination who has been previously admitted to the bar of another state or foreign country; and
	\$ 35.00	For each subsequent examination.
	\$ 125.00	By an applicant for admission on certificate from another state or foreign country
1951	\$ 35.00	Any applicant for admission upon the Student Examination, except as next noted:
	\$ 85.00	By an applicant for admission upon Student Examination who has been previously admitted to the bar of another state, District of Columbia, federal territory, or a foreign country where the common law of England exists as a basis of its jurisprudence, first examination, and
	\$ 35.00	For each subsequent examination.
	\$ 125.00	By an applicant for admission on the Attorney's Examination -- an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country

Application Fee History
Page 2 of 5

		where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and
	\$ 75.00	For each subsequent examination.
1956	\$ 50.00	Any applicant for admission upon the Student Examination, except as next noted:
	\$ 100.00	Any applicant for admission upon the first Student Examination who has been previously admitted to the bar of another state, District of Columbia, federal territory, or a foreign country where the common law of England exists as a basis of its jurisprudence, and
	\$ 50.00	For each subsequent examination
	\$ 125.00	By an applicant for the first Attorney Examination -an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and
	\$ 75.00	For each subsequent examination.
1961	\$ 50.00	Any applicant for admission upon the Student Examination, except as next noted:
	\$ 125.00	For first Student Examination by an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, and
	\$ 50.00	For each subsequent examination

Application Fee History
Page 3 of 5

\$ 150.00	For first Attorney Examination -- an applicant who has been admitted to the bar of another state, the District of Columbia, federal territory, or foreign country where the common law of England exists as a basis of its jurisprudence, where the requirements for admission are substantially equivalent to those of the state of Oregon, and has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the filing of the application, and
\$ 75.00	For each subsequent examination.

CURRENT FEE STRUCTURE BEGINS

1966	\$ 75.00	Application Fee - Student and Attorney Examination Applicants and, in addition:
	\$ 75.00	Investigation Fee by any applicant who: (a) On the date of the first application in Oregon is, or at any time has, engaged in the practice of law; or (b) On the date of the second or any subsequent application in Oregon is, or at any time since the last previous application in Oregon has, engaged in the practice of law.
	\$ 25.00	Late Filing Fee
1970	\$ 125.00	Application Fee - Student and Attorney Examination Applicants - increased by \$50.
	\$ 100.00	Investigation Fee by any applicant who: (Please see 1966 for provisions) - increased by \$25.
	\$ 50.00	Late Filing Fee increased by \$25.

Application Fee History
Page 4 of 5

1974	\$ 150.00	Application Fee - Student and Attorney Examination Applicants - increased by \$25.
1979	\$ 200.00	Application Fee - Student and Attorney Examination Applicants (\$10.00 non-refundable portion to obtain application kit) increased by \$50.
July 1985	\$ 250.00	Application Fee - All Applicants - Entire Examination -- NO Attorney Examination -- increased by \$50.
1987	\$ 325.00	Application Fee increased by \$75.
1991	\$ 400.00	Application Fee increased by \$75.
	\$ 150.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) and are applying for the first time. Increased by \$50.
	\$ 100.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) who are reapplying within 12 months of having paid the \$150.00 Investigation Fee. Increased by \$50.
	\$ 100.00	Late Filing Fee increased by \$50.
July, 1999	\$450.00	Application Fee increased by \$50.
	\$200.00	Late Filing Fee increased by \$100.
2000	\$ 525.00	Application Fee increased by \$100.
2002	\$ 225.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) and are applying for the first time.

Application Fee History
Page 5 of 5

	\$ 175.00	Investigation Fee for applicants who are admitted elsewhere (see July 1985 for provisions) who are reapplying within 12 months of having paid the \$225.00 Investigation Fee.
2009	\$625.00	Application Fee increased by \$100.
	\$250.00	Late Filing Fee increased by \$50.
2012	\$425.00	Investigation Fee increased by \$200.
	\$350.00	Late Filing Fee increased by \$100.

Admissions

2018 Budget

<i>Account #</i>	<i>Account Description</i>	<i>Y-T-D</i> <small>As of: 8/30/2017</small>	<i>Current Budget</i>	<i>2018 Budget</i>	<i>Budget Inc (Dec)</i>
<i>Revenues</i>					
101-4070-000	Applications - Bar Exam	442,375	473,750	463,125	-10,625
101-4070-100	Applications - W/O Bar Exam	75,000	120,000	121,250	1,250
101-4180-000	Supreme Court Certificate revenue	3,520	9,000	9,000	0
101-4320-000	Investigation Fees - Bar Exam	62,725	60,625	89,950	29,325
101-4320-100	Investigation Fees - W/O Bar Exam	51,000	81,600	82,450	850
101-4355-000	Late Fees - Bar Exam	32,900	21,000	28,000	7,000
101-4490-000	Photocopies	1,010	5,000	5,000	0
101-4560-000	Registration Packets - Bar Exam	0	0	0	0
101-4560-100	Registration Packets - W/O Bar Exam	0	0	0	0
101-4620-013	Sales - Prior Year Bar Exams	0	0	0	0
101-4670-000	Services to Other Bars	125	250	250	0
101-4750-000	Laptop Fees	10,247	34,650	35,195	545
101-4999-000	Miscellaneous Income	0	0	0	0
Total Revenues		\$678,902	\$805,875	\$834,220	\$28,345
<i>Salaries & Benefits</i>					
101-6100-000	Employee Salaries - Regular	122,930	220,900	245,400	24,500
101-6105-000	Employee Taxes & Benefits - Regular	48,920	87,900	100,400	12,500
101-6150-000	Employee Recognition Bonus	0	0	0	0
101-6200-000	Employee Salaries - Temporary	237	1,800	1,648	-152
101-6205-000	Employee Taxes & Benefits - Temporary	18	180	165	-15
101-6300-000	Long Term Temporary Employee - Agency	0	0	0	0
Total Salaries & Benefits		\$172,105	\$310,780	\$347,613	\$36,833
<i>Direct Program Expenses</i>					
101-7090-000	Bank Fees-Credit card	0	6,500	150	-6,350
101-7100-000	Bar Exam Analysis	0	0	0	0
101-7110-000	Bar Exam Multistate Fees - MBE	13,312	46,400	84,474	38,074
101-7110-100	Bar Exam Multistate Fees - MPT	5,225	20,300	0	-20,300
101-7110-200	Bar Exam Multistate Fees - MEE	5,225	20,300	0	-20,300
101-7130-000	Bar Exam Special Testing Conditions	558	15,600	15,600	0
101-7135-000	Laptop Exp - Special Testing Conditions	0	0	0	0
101-7135-100	Bar Exam Laptop Testing Exp - Electrical	4,490	6,000	5,850	-150
101-7140-000	Bar Exam Specific expenses	4,732	7,000	7,000	0
101-7170-000	Bar Exam Cards and Certificates	0	100	0	-100
101-7175-000	Supreme Court Certificates	1,335	1,500	1,500	0
101-7265-000	Contract Services	0	0	0	0
101-7360-000	Facilities	19,155	28,000	14,790	-13,210
101-7415-000	Hearings	0	500	3,000	2,500
101-7450-000	Investigation - Character/Fitness	1,382	2,500	2,500	0
101-7500-000	Office Equipment- < \$500, tagged	0	100	500	400
101-7570-000	Maintenance - Equipment	0	0	0	0
101-7765-000	Legal Research	0	0	0	0
101-7930-016	Travel & Expense - Board	46,136	124,650	129,013	4,363
101-7940-000	Travel & Expense - Others	0	2,000	2,070	70
Total Direct Program Expenses		\$101,550	\$281,450	\$266,447	(\$15,003)
<i>General & Administrative Expenses</i>					

Admissions

2018 Budget

<i>Account #</i>	<i>Account Description</i>	<i>Y-T-D</i> <small>As of: 8/30/2017</small>	<i>Current Budget</i>	<i>2018 Budget</i>	<i>Budget Inc (Dec)</i>
<i>General & Administrative Expenses</i>					
101-9400-000	Messenger & Delivery Services	0	100	100	0
101-9500-000	Office Supplies	631	2,000	2,000	0
101-9600-000	In House Printing	1,533	3,000	3,000	0
101-9620-000	Postage	1,258	4,500	4,500	0
101-9640-000	Professional Dues	303	200	1,023	823
101-9680-000	Publications & Subscriptions	0	200	200	0
101-9700-000	Small furn & equip < \$500	0	0	0	0
101-9800-000	Telephone	0	0	0	0
101-9830-000	Training & Education	39	1,500	2,178	678
101-9850-000	Travel & Expense - Staff	6,500	19,356	21,022	1,666
101-9999-000	Miscellaneous Expense	0	0	0	0
<i>Total General & Administrative Expenses</i>		\$10,264	\$30,856	\$34,023	\$3,167
<i>Total Expenses</i>		\$283,919	\$623,086	\$648,083	
<i>Net Operating Revenue (Expense)</i>		\$394,983	\$182,789	\$186,137	
101-9000-000	<i>Less: Indirect Cost Allocation</i>	\$81,887	\$140,378	\$144,589	
<i>Net Revenue (Expense)</i>		\$313,096	\$42,411	\$41,548	

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
From: Legal Ethics Committee
Re: Proposed OSB Formal Ethics Opinion 2017-XXX: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

Issue

The Board of Governors must decide whether to adopt the attached proposed formal ethics opinion.

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 the OSB Estate Planning Section's request for a formal ethics opinion to resolve issues of professional conduct that arise when a lawyer is representing both a husband and wife in preparation of estate plans involving the waiver of the spousal elective share. The opinion reaches a different conclusion than what was expected by the Estate Planning Section. Because of the different conclusion, the Legal Ethics Committee has reached out to the section on several occasions to discuss the proposal and get feedback.

Most recently, after concerns were expressed by BOG members about the proposed opinion at the November BOG meeting, the LEC reached out again to the chair of the Estate Planning Section and to the two BOG members who had expressed concerns. Based on those conversations, the opinion was revised for clarification. The LEC now presents the revised opinion to the BOG for adoption.

Attachments:

Proposed OSB Formal Ethics Op No. 2017-XXX Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

FORMAL OPINION 2016:xxxx

Conflicts of Interest, Current Clients: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

Facts:

Married Couple approaches Lawyer jointly and asks Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years and both have children from their previous marriages. They have no children from their current marriage.

Married Couple own their house as tenants by the entirety, but have kept the majority of their assets separate. Spouse A has substantially more assets than Spouse B. They inform Lawyer that it is their individual intent that they would prefer that their estate plans provide that their separate assets be distributed to their children by their previous marriages and their jointly owned assets pass to the surviving spouse by right of survivorship.

Because of the value of Spouse A=s separate property, it is clear to Lawyer that Spouse B would have an elective share claim if Spouse A were to die first. An elective share claim would defeat Married Couple=s current intentions for their estate plan.

Married Couple do not have a prenuptial agreement.

Questions:

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?
2. May Lawyer advise both Spouse A and Spouse B as to whether they should waive their elective share rights as provided in ORS 114.620(1)?
3. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?
4. After Spouse A and Spouse B have agreed to waive the elective share, may Lawyer advise Married Couple concerning their estate plan?

Conclusions:

1. Yes.
2. No, qualified.
3. No, qualified.
4. Yes.

Discussion:

Oregon RPC 1.7 provides:

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

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.”

1. Lawyer May Provide Information About The Elective Share And Its Potential Waiver To Both Spouses.

Under Oregon's elective share statute, a surviving spouse may elect to receive a percentage share of the decedent's estate according to a formula based on the length of the marriage. ORS 114.605. Absent a waiver of that right, the elective share will override a contrary provision in the decedent's will. *Id.* However, that legal right can be waived. Under ORS 114.620, a spouse may enter into a written agreement, before or after the marriage, to waive his or her elective share. Such agreement to waive the elective share is a type of pre-nuptial or post-nuptial agreement. *In re Estate of Richard B. Wilber*, 75 A3d 1096, 1099 (2013).

Providing general information about the elective share does not create a significant risk that Lawyer's responsibility to one client will be materially impaired by his responsibilities to the other. Each spouse has a fiduciary obligation to the other requiring full disclosure and fairness. *Day v. Vitus*, 102 Or App 97, 792 P2d 1240 (1990); *Matter of Marriage of Eltzroth*, 67 Or App 520, 526, 679 P2d 1369 (1984); *Bauer v. Bauer*, 1 Or App 504, 464 P2d 710 (1970). Providing information about the elective share and its waiver to both spouses is consistently with each spouse's duty to each other. Therefore, it does not create a significant risk of impairing Lawyer's obligation to either spouse for Lawyer to provide such information to both spouses.

2. Advice to Waive Elective Share Presents A Current Client Conflict Of Interest.

Spouses often seek joint representation in estate planning. Typically, the interests of the spouses will be aligned for such purposes. However, there are exceptions in which simultaneous representation would be prohibited. Formal Opinion 2005-86. "For example, spouses with children by prior marriages may have very different opinions concerning how their estates should be divided." *Id.* Thus, an attorney was reprimanded for representing both spouses in revising their estate plans in *In re Plinski*, 16 DB Rptr 114 (2002). In that case, the spouses' interests were adverse because they had children from prior marriages, their respective estates were of different values, they had ongoing financial disagreements, and one spouse was, for reasons of health and disposition, likely susceptible to pressure from the other. *Id.*

An agreement to waive the elective share presents such conflicting interests. As with any pre-nuptial or post-nuptial agreement, it requires one or both spouses to give up potentially valuable legal rights. Such agreement may be particularly fraught with issues that could impair a lawyer's ability to provide competent and diligent representation to both spouses. By definition, it contemplates that the spouses might leave the majority of their estates to others. One or both spouses may wish to provide for children from another marriage. There may be a potential imbalance between the spouses' respective estates, such that the right to an elective share could be more important to one spouse than the other. One spouse may be more sophisticated than the other; one may be in better health and more likely to benefit from the elective share. Waiver elective shares might even require renegotiation of the terms of a prenuptial agreement. Any of those factors creates "a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." RPC 1.7(a)(2).

Some conflicts may be waivable with informed consent confirmed in writing. RPC 1.7(b)(1) allows such waiver if “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.” Comment 15 to the ABA Model Rule 1.7 notes that “[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest.” The *Restatement of Law Governing Lawyers* § 122, comment g.iv, explains:

“The general standard . . . assesses the likelihood that the lawyer will, following consent, be able to provide adequate representation to the clients. The standard includes the requirements both that the consented-to conflict not adversely affect the lawyers relationship with either client and that it not adversely affect the representation of either client. In general, if a reasonable and disinterested lawyer would conclude that one or more of the affected clients could not consent to the conflicted representation because the representation would likely fall short in either respect, the conflict is nonconsentable.”

Were Lawyer to represent both spouses with respect to an agreement to waive the elective share, Lawyer would be literally representing both sides of an agreement likely to benefit one client more than the other. Such conflict may be waivable in limited circumstances, but it is perilous. The Oregon Supreme Court observed, in a case where an attorney drafted an employment contract while representing both the employer and the employee, that “[i]t is never proper for a lawyer to represent clients with conflicting interests no matter how carefully and thoroughly the lawyer discloses the possible effect and obtains consent.” *In re Jans*, 295 Or 289, 295, 666 P2d 830 (1983). It explained:

“It is of the utmost importance that the attorney representing both parties to a transaction reflect upon the rationales behind conflict of interest proscriptions. It is not sufficient that the attorney believes himself able adequately to represent potentially differing interests, or even that all parties have consented. The possibility of subconsciously favoring the interests of either party, the appearance of impropriety that may arise from even the slightest dissatisfaction, the likelihood of receiving confidential information from one party that is damaging or helpful to the other, and the possibility that a court will subsequently disagree with the attorney's decision that he was able adequately to represent both interests—all dictate extreme caution in these situations.

The temptation to represent potentially conflicting interests is particularly difficult to resist in family disputes. Often the attorney is the ‘family lawyer’ and has represented husband, wife, and even the children on previous occasions. . . . If the parties have not clearly understood the lawyer's ethical responsibilities *ab initio*, the ensuing rancor may be directed toward him.”

Id. at 295 n 7 (quoting Aronson, *Conflict of Interest*, 52 Wash L Rev 807, 826–27 (1977)); see also *In re Robertson*, 290 Or 639, 648, 624 P2d 603 (1981) (lawyer is disciplined for representing both buyer and seller of real property).

Comment 30 to ABA Model Rule 1.7 notes that “[a] particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality.” Attorney-client privilege is typically waived among clients who are jointly represented. OEC 503(4)(e). Such lack of confidentiality may make it difficult for Lawyer to explore whether one spouse has concerns about waiving the elective share, since that spouse may be reluctant to fully share those concerns with the other spouse. That, in turn, impairs Lawyer’s ability to fully advise each spouse.

In addition to potentially impairing the lawyer’s ability to represent the spouse who might object to waiving the elective share, the conflict also creates risk for the other spouse. A spouse may make certain estate planning decisions based on what he or she believes to be other spouse’s waiver of the elective share. A later finding that the waiver was invalid, due to the attorney’s conflictive representation, would likely frustrate the decedent’s estate plan that counted on that waiver of elective share.

Under the facts as presented here, the conflict is very likely to be nonconsentable. The facts listed are likely to impair Lawyer’s ability to give complete, competent and diligent advice to both spouses as to waiver of the elective share. In particular, the existence of children from previous marriages and the imbalance between the spouses’ separate estates heightens their need for thorough and independent advice. One may reasonably expect Lawyer’s ability to render such advice to be impaired by Lawyer’s duties to the other spouse.

There may be other circumstances in which a lawyer could reasonably believe that he or she could provide competent and diligent representations to both parties to an agreement to waive the elective share. That is more likely if the elective share appears unlikely to substantially affect the estate plan,¹ the spouses do not have children from prior marriages, their separate assets are similar in value, they are both highly sophisticated and unlikely to be susceptible to pressure, and they are similarly positioned with respect to life expectancy. See *In re Plinski*, 16 DB Rptr 114 (2002). Additionally, Formal Opinion No. 2005-86 set forth a list of factors that, in rare circumstances, might

¹ It is not always clear, at the time an estate plan is created, whether a devise is likely to be more or less than the elective share. The value of the estate and the devise may be changed by fluctuating values of joint and separate assets, unforeseen expenses, and other inheritances or gifts. Additionally, the statutory percentage of the elective share changes with the length of the marriage.

allow for joint representation during a divorce. Although that opinion addressed different circumstances, some of the listed factors may be applicable here, including:

- “(3)The marital estate must not contain substantial assets or liabilities;
- (4) The parties must have fully agreed on the disposition of all assets and liabilities [or, here, waiver of the elective share] before consulting the lawyer;
- (5) The lawyer must be in a position to conclude that each party has provided full disclosure of all assets . . .”

To sum up, the more important the elective share appears to be to either spouse, the less likely the conflict is to be waivable, and vice versa.

A lawyer weighing the totality of these factors might reasonably believe that he or she could competently and diligently represent both spouses with respect to an agreement to waive the elective share. Even in a case where the conflict is waivable, the lawyer would still be required to obtain both clients’ informed consent pursuant to RPC 1.7(b).

3. Preparation of Agreement Waiving Elective Share.

The same analysis applies with respect to preparing the agreement to waive the elective share. Once Lawyer has undertaken to represent both spouses with respect to estate planning, there is a conflict if he represents either spouse with respect to drafting an agreement to waive the elective share. For example, an attorney drafted a property settlement on behalf of divorcing spouses in *Matter of Marriage of Eltzroth*, 67 Or App 520, 679 P2d 1369 (1984). The lawyer “acted only as a scrivener” and “did not provide independent advice to either party.” *Id.*, 67 Or App at 526. Nonetheless, the Court of Appeals noted that it did “not condone the conduct of the attorney in continuing to represent both parties” to the agreement. *Id.* at n 7.

This conflict may be avoided if Lawyer has not yet undertaken representation of one of the spouses with respect to estate planning. As attorney for only one of the spouses, Lawyer may prepare an agreement mutually waiving the elective share on behalf of the spouse that Lawyer represents. It is not mandatory that both parties to a prenuptial or postnuptial agreement be represented by counsel, although that is a factor in determining whether such agreement is enforceable. *Matter of Marriage of Leathers*, 98 Or App 152, 779 P2d 619 (1989).

4. Advice Concerning Estate Plan after Execution of Agreement to Waive Elective Share.

Once the issue of waiver of the elective share has been eliminated by execution of an agreement, Lawyer may represent Spouse A and Spouse B in preparation of their estate planning, absent other circumstances that would create a conflict of interest under RPC 1.7.

FORMAL OPINION 2016:xxxx

Conflicts of Interest, Current Clients: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

Facts:

Married Couple approaches Lawyer jointly and asks Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years and both have children from their previous marriages. They have no children from their current marriage.

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Questions:

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?
2. May Lawyer advise both Spouse A and Spouse B as to whether they should waive their ~~respective~~-elective share rights as provided in ORS 114.620(1)?
3. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?
4. After Spouse A and Spouse B have agreed to waive the elective share, may Lawyer advise Married Couple concerning their estate plan?

Conclusions:

1. Yes.
2. No, qualified.
3. No, qualified.
4. Yes.

Discussion:

Oregon RPC 1.7 provides:

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

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
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1. Lawyer May Provide Information About The Elective Share And Its Potential Waiver To Both Spouses.

Under Oregon’s elective share statute, a surviving spouse may elect to receive a percentage share of the decedent’s estate according to a formula based on the length of the marriage. ORS 114.605. Absent a waiver of that right, the elective share will override a contrary provision in the decedent’s will. *Id.* However, that legal right can be waived. Under ORS 114.620, a spouse may enter into a written agreement, before or after the marriage, to waive his or her elective share. Such agreement to waive the elective share is a type of pre-nuptial or post-nuptial agreement. *In re Estate of Richard B. Wilber*, 75 A3d 1096, 1099 (2013).

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An agreement to waive the elective share presents such conflicting interests. As with any pre-nuptial or post-nuptial agreement, it requires one or both spouses to give up potentially valuable legal rights. Such agreement may be particularly fraught with issues that could impair a lawyer’s ability to provide competent and diligent representation to both spouses. By definition, it contemplates that the spouses might leave the majority of their estates to others. One or both spouses may wish to provide for children from another marriage. There may be a potential imbalance between the spouses’ respective estates, such that the right to an elective share could be more important to one spouse than the other. One spouse may be more sophisticated than the other; one may be in better health and more likely to benefit from the elective share. Waiver elective shares might even require renegotiation of the terms of a prenuptial agreement. Any of those factors

creates “a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client.” RPC 1.7(a)(2).

Some conflicts may be waivable with informed consent confirmed in writing. RPC 1.7(b)(1) allows such waiver if “the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.” Comment 15 to the ABA Model Rule 1.7 notes that “[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest.” The *Restatement of Law Governing Lawyers* § 122, comment g.iv, explains:

“The general standard . . . assesses the likelihood that the lawyer will, following consent, be able to provide adequate representation to the clients. The standard includes the requirements both that the consented-to conflict not adversely affect the lawyer’s relationship with either client and that it not adversely affect the representation of either client. In general, if a reasonable and disinterested lawyer would conclude that one or more of the affected clients could not consent to the conflicted representation because the representation would likely fall short in either respect, the conflict is nonconsentable.”

Were Lawyer to represent both spouses with respect to an agreement to waive the elective share, Lawyer would be literally representing both sides of an agreement likely to benefit one client more than the other. Such conflict may be waivable in limited circumstances, but it is perilous. The Oregon Supreme Court observed, in a case where an attorney drafted an employment contract while representing both the employer and the employee, that “[i]t is never proper for a lawyer to represent clients with conflicting interests no matter how carefully and thoroughly the lawyer discloses the possible effect and obtains consent.” *In re Jans*, 295 Or 289, 295, 666 P2d 830 (1983). It explained:

“It is of the utmost importance that the attorney representing both parties to a transaction reflect upon the rationales behind conflict of interest proscriptions. It is not sufficient that the attorney believes himself able adequately to represent potentially differing interests, or even that all parties have consented. The possibility of subconsciously favoring the interests of either party, the appearance of impropriety that may arise from even the slightest dissatisfaction, the likelihood of receiving confidential information from one party that is damaging or helpful to the other, and the possibility that a court will subsequently disagree with the attorney’s decision

that he was able adequately to represent both interests—all dictate extreme caution in these situations.

The temptation to represent potentially conflicting interests is particularly difficult to resist in family disputes. Often the attorney is the ‘family lawyer’ and has represented husband, wife, and even the children on previous occasions. . . . If the parties have not clearly understood the lawyer's ethical responsibilities *ab initio*, the ensuing rancor may be directed toward him.”

Id. at 295 n 7 (quoting Aronson, *Conflict of Interest*, 52 Wash L Rev 807, 826–27 (1977)); see also *In re Robertson*, 290 Or 639, 648, 624 P2d 603 (1981) (lawyer is disciplined for representing both buyer and seller of real property).

Comment 30 to ABA Model Rule 1.7 notes that “[a] particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality.” Attorney-client privilege is typically waived among clients who are jointly represented. OEC 503(4)(e). Such lack of confidentiality may make it difficult for Lawyer to explore whether one spouse has concerns about waiving the elective share, since that spouse may be reluctant to fully share those concerns with the other spouse. That, in turn, impairs Lawyer’s ability to fully advise each spouse.

In addition to potentially impairing the lawyer’s ability to represent the spouse who might object to waiving the elective share, the conflict also creates risk for the other spouse. A spouse may make certain estate planning decisions based on what he or she believes to be other spouse’s waiver of the elective share. A later finding that the waiver was invalid, due to the attorney’s conflictive representation, would likely frustrate the decedent’s estate plan that counted on that waiver of elective share.

Under the facts as presented here, the conflict is very likely to be nonconsentable. The facts listed are likely to impair Lawyer’s ability to give complete, competent and diligent advice to both spouses as to waiver of the elective share. In particular, the existence of children from previous marriages and the imbalance between the spouses’ separate estates heightens their need for thorough and independent advice. One may reasonably expect Lawyer’s ability to render such advice to be impaired by Lawyer’s duties to the other spouse.

There may be other circumstances in which a lawyer could reasonably believe that he or she could provide competent and diligent representations to both parties to an agreement to waive the elective share. That is more likely if the elective share appears unlikely to substantially affect the estate plan,¹ the spouses do not have children from prior marriages, their separate assets are similar

¹ It is not always clear, at the time an estate plan is created, whether a devise is likely to be more or less than the elective share. The value of the estate and the devise may be changed by fluctuating values of joint and separate assets, unforeseen expenses, and other inheritances or gifts. Additionally, the statutory percentage of the elective share changes

in value, they are both highly sophisticated and unlikely to be susceptible to pressure, and they are similarly positioned with respect to life expectancy. See *In re Plinski*, 16 DB Rptr 114 (2002). Additionally, Formal Opinion No. 2005-86 set forth a list of factors that, in rare circumstances, might allow for joint representation during a divorce. Although that opinion addressed different circumstances, some of the listed factors may be applicable here, including:

- “(3)The marital estate must not contain substantial assets or liabilities;
- (4) The parties must have fully agreed on the disposition of all assets and liabilities [or, here, waiver of the elective share] before consulting the lawyer;
- (5) The lawyer must be in a position to conclude that each party has provided full disclosure of all assets . . .”

To sum up, the more important the elective share appears to be to either spouse, the less likely the conflict is to be waivable, and vice versa.

A lawyer weighing the totality of these factors might reasonably believe that he or she could competently and diligently represent both spouses with respect to an agreement to waive of the elective share. Even in a case where the conflict is waivable, the lawyer would still be required to obtain both clients’ informed consent pursuant to RPC 1.7(b).

3. Preparation of Agreement Waiving Elective Share.

The same analysis applies with respect to preparing the agreement to waive the elective share. Once Lawyer has undertaken to represent both spouses with respect to estate planning, there is a conflict if he represents either spouse with respect to drafting an agreement to waive the elective share. For example, an attorney drafted a property settlement on behalf of divorcing spouses in *Matter of Marriage of Eltzroth*, 67 Or App 520, 679 P2d 1369 (1984). The lawyer “acted only as a scrivener” and “did not provide independent advice to either party.” *Id.*, 67 Or App at 526. Nonetheless, the Court of Appeals noted that it did “not condone the conduct of the attorney in continuing to represent both parties” to the agreement. *Id.* at n 7.

This conflict may be avoided if Lawyer has not yet undertaken representation of one of the spouses with respect to estate planning. As attorney for only one of the spouses, Lawyer may prepare an agreement mutually waiving the elective share on behalf of the spouse that Lawyer represents. It is not mandatory that both parties to a prenuptial or postnuptial agreement be represented by counsel, although that is a factor in determining whether such agreement is enforceable. *Matter of Marriage of Leathers*, 98 Or App 152, 779 P2d 619 (1989).

with the length of the marriage.

4. Advice Concerning Estate Plan after Execution of Agreement to Waive Elective Share.

Once the issue of waiver of the elective share has been eliminated by execution of an agreement, Lawyer may represent Spouse A and Spouse B in preparation of their estate planning, absent other circumstances that would create a conflict of interest under RPC 1.7.

MEMORANDUM

TO: OREGON STATE BAR

FROM: ESTATE PLANNING & ADMINISTRATION EXECUTIVE COMMITTEE

DATE: January 21, 2014

RE: Request for Ethics Opinion Concerning Information and Advice That Can Be Given to a Married Couple Regarding Their Elective Marital Share Rights

Facts:

Married Couple approach Lawyer jointly and ask Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years, and both have children from their previous marriages. They have no children from their current marriage.

Married Couple own their house as tenants by the entirety, but have kept the majority of their assets separate. Spouse A has more assets than Spouse B. After substantive discussions with Lawyer, Married Couple decide that they would like their estate plan to reflect that upon the first of them to die, the separate assets of the deceased spouse will be distributed to his/her surviving children and their jointly owned residence will be distributed to the surviving spouse.

Because of the value of Spouse A's separate property, it is clear to Lawyer that Spouse B would have an elective share claim if Spouse A were to die first. An elective share claim would defeat Married Couple's current intentions for their estate plan.

Married Couple do not have a prenuptial agreement.

Questions:

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?
2. May Lawyer advise Married Couple to waive their respective elective share rights as provided in ORS 114.620(1)?
3. If after having been advised that they are allowed to seek separate counsel,

Married Couple choose not to be represented by separate counsel and provide Lawyer with written informed consent to the conflict, may Lawyer continue to advise Married Couple concerning their estate plan?

4. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. Yes, qualified.
4. Yes, qualified.

Discussion:

This request for an ethics opinion raises questions concerning potential conflicts between current clients and their lawyer in the context of representing both husband and wife when preparing their mutual estate plan. These issues have been previously addressed in Formal Opinion 2005-86. The subject of this opinion letter seeks to expand the conclusions of Formal Opinion 2005-86 by analyzing whether an attorney's actions in representing a married couple with regard to preparing a mutual waiver of their elective share rights as part of their estate planning fall within the exception described in Oregon RPC 1.7(b).

Oregon RPC 1.7 provides:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client;
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
 - (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.
- (b) Notwithstanding the existence of a current conflict of

interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

Questions 1 & 2. Advising Married Couple Regarding Elective Share Rights

In preparing Married Couple's estate plans, Lawyer has a duty to represent them competently (RPC 1.1) and a duty to keep them reasonably informed (RPC 1.4). A lawyer who recognizes that an elective share claim exists in a couple's desired estate plan, and who chooses not to advise the couple of the elective share laws for fear of losing one or both clients due to a perceived conflict of interest, fails in his/her duty to competently represent them. Furthermore, in these situations, the information that Lawyer provides should include a recommendation that a mutual waiver of the spouses' elective share rights could provide the remedy, so that their mutually agreed estate plan would be followed.

Questions 3 & 4. Joint Representation of Married Couple and Preparation of Elective Share Waiver Agreements

The American College of Trust and Estate Counsel (ACTEC) points out many reasons why married couples seek, and usually prefer, joint representation for their estate planning needs:

(1) Joint representation of married couples offers more economical and better coordinated estate plans prepared by counsel who has a better overall understanding of all of the relevant family and property considerations.

(2) A married couple's interests in cooperation often clearly predominate over their limited inconsistent interests.

(3) Advising related clients who have somewhat differing goals may be consistent with their interests and the lawyer's traditional role as the lawyer for the "family."

(4) Estate planning is fundamentally nonadversarial in nature.¹

¹ See ACTEC Commentary on MRPC 1.7 (Conflict of Interest: Current Clients).

For the above reasons, married couples who have mutually agreeable estate plans are often best served if one lawyer provides the necessary legal services, even in the context of blended families such as that of Married Couple. In fact, it is rare that spouses seek separate estate planning lawyers.

Jointly representing both parties with regard to a waiver of elective share rights raises similar issues and concerns as those experienced when a lawyer jointly represents both parties to a prenuptial agreement. Both situations involve parties in a highly personal and intimate relationship who are not dealing entirely at arm's length. Both situations involve a lawyer who is in the precarious position of advising two parties to the waiver of certain statutory rights where such waiver will undoubtedly adversely affect one party to a greater extent than the other. The main difference, of course, is that the parties to an elective share waiver agreement are now married. They are no longer merely contemplating marriage and the potential for divorce, and in most cases, the marital relationship is not adversarial. Rather, the parties' interests are more closely aligned, and they are more likely to have already taken actions during the course of their marriage that have altered their rights or interests in the property they own. Furthermore, unlike the situation with a prenuptial agreement, where the conflict between the parties is apparent at the onset of the representation, the conflict surrounding an elective share issue may not be apparent to the lawyer until well into the estate planning engagement, and an abrupt termination of that engagement to allow the clients to seek separate counsel is not practical or economically feasible for most couples. An elective share waiver agreement seeks only to enforce the estate plan of the deceased spouse and to prevent the surviving spouse (or perhaps a fiduciary acting on behalf of the surviving spouse) from circumventing the jointly agreed upon estate plan. By entering into an elective share waiver agreement, Married Couple can ensure that assets at their death will be distributed to their intended beneficiaries. For these reasons, an elective share waiver is simply another agreement, among the many agreements and transfers of rights and property that often occur between spouses in the estate planning process.

In rare circumstances, factors relating to the preparation of a waiver of the elective share may create an actual conflict that is not waivable. For example, if a spouse does not wish to disclose confidences affecting the other spouse's estate plan or if the estate plan favors one spouse's family over the surviving spouse and the spouses are in disagreement over such plan, joint representation may not be possible. However, assuming these factors are not present, Lawyer should be able to proceed with joint representation and the preparation of the elective share waiver as long as both spouses give written informed consent and the other requirements of RPC 1.7(b) are met, namely:

1. Lawyer reasonably believes that he/she will be able to provide competent and diligent representation to each affected client

Lawyer should analyze the joint and individual interests of Married Couple and carefully consider the level of conflict between them. Lawyer should discuss with Married Couple the implications of joint representation in waiving elective share rights. Lawyer must be able to articulate the impact of the waiver of elective share rights for each spouse and

reasonably believe that each of them understands how the elective share, and the waiver thereof, affects their individual estate planning intentions. Married Couple must consent to continued representation by Lawyer.

2. The representation is not prohibited by law

The Oregon Revised Statutes do not contain any prohibition against joint representation of spouses after they are married. *See, e.g.*, Formal Opinion 2005-86.

3. The representation does not obligate Lawyer to contend for something on behalf of one client that he/she has a duty to oppose on behalf of another client

At the heart of the lawyer's responsibility to the client is the duty of loyalty. Loyalty can be a difficult matter when the lawyer represents two persons, such as Married Couple, whose estate planning is interrelated. Joint representation does not, however, in and of itself obligate Lawyer to contend for something on behalf of one client that he/she has a duty to oppose on behalf of the other.

This third requirement may not be met if Lawyer had previously represented only the wealthier spouse with regard to his/her estate planning and was now jointly representing Married Couple only in the context of waiving elective share rights, or if Lawyer knows, or has reason to know, that one spouse has certain confidences that will be expected to be kept from the other spouse, which could affect that spouse's decision about waiving his/her elective share rights. RPC 1.9. If Lawyer determines that the representation of either spouse will create obligations for Lawyer that will adversely affect his/her representation of the other spouse, then Lawyer, in that circumstance, should decline the joint representation.

4. Each affected client gives informed consent, confirmed in writing

Informed consent, as defined by the RPC, "denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." RPC 1.0(g). In this context, to be informed, Married Couple must understand the elective share laws and how those laws pertain to each spouse personally and to the estate plan in general. The requirement of communicating "adequate information" requires that each spouse acknowledge that he/she has provided Lawyer and the other spouse full disclosure of the nature and extent of his/her assets, and requires that Lawyer advise Married Couple as to what each spouse would be entitled to receive under the elective share statutes if a waiver were not in effect. The informed consent must be in writing and signed by each spouse. The writing must also reflect a recommendation that Married Couple seek independent legal advice to determine if consent should be given. *Id.*

Summary

The joint representation of Married Couple in entering into an elective share waiver agreement should not be distinguished from the joint representation of the spouses in the context of their overall estate plan. The joint representation of spouses in the context of estate planning is well recognized legally and ethically, and the titling and ownership of assets is an integral part of an estate plan. The right of spouses to be jointly represented in an agreement intended to preserve their estate plan should be viewed as an extension of the overall estate planning process meeting the requirements of RPC 1.7(b). Therefore, in the context of providing Married Couple estate planning advice, where (1) Lawyer advises Married Couple of the potential conflict issues, (2) Lawyer recommends that the spouses seek separate counsel, (3) the spouses each have access to, but choose not to be represented by, independent counsel, and (4) both spouses give written informed consent, Lawyer may jointly represent Married Couple in preparing an elective share waiver agreement.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
From: Legal Ethics Committee
Re: Proposed OSB Formal Ethics Opinion 2018-XXX: Seeking Disqualification of Judges

Issue

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

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 and motion for change of judge who may have a reputation for favoring plaintiffs over defendants in personal injury lawsuits.

This opinion was first presented to the BOG at its September 2017 meeting. A BOG member expressed concerns about the opinion's use of the phrase "affidavit of prejudice" when such phrase was no longer referenced in the statute. The Legal Ethics Committee reached out to the BOG member and made changes to the opinion to address the concerns. The Legal Ethics Committee now recommends adoption of the opinion as revised.

Attachments:

Proposed OSB Formal Ethics Op No. 2017-XXX Seeking Disqualification of Judges (redline and clean)

Project 14-08

FORMAL OPINION NO. 2018-xxx

**Candor, Independent Professional Judgment, Communication,
Seeking Disqualification of Judges**

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 and motion for change of judge pursuant to ORS 14.260.¹ Lawyer believes that there are potential pros and cons to doing so. Lawyer is also concerned, however, that if Lawyer moves to disqualify Judge X in Defendant’s case he will need to start regularly filing similar motions 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 for change of judge has passed, could be adversely affected.

Questions:

1. May Lawyer file an affidavit for change of judge against Judge X in Defendant’s case?
2. May Lawyer consider the impact that filing an affidavit for change of judge 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?

¹Historically, such affidavits were referred to as “affidavits of prejudice,” although that terminology no longer appears in the current version of ORS 14.260.

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 14.260.² 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.” The affidavit need not state specific grounds for the attorney’s or party’s belief. ORS 14.260(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 in bad faith. *Id.*³ The motion and affidavit must be filed within certain statutory time limits, and a party or attorney may not file more than two affidavits in any one case. ORS 14.260(4)-(6).⁴

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

The first question implicates the ethical restrictions that govern a lawyer’s decision as to whether to file an affidavit for change of judge 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.⁵ There are several relevant Oregon RPCs.

² Additional grounds for disqualification are set forth in ORS 14.210.

³ See also *State ex rel. Kafoury v. Jones*, 315 Or 201, 207 (1992).

⁴ For a more thorough discussion of motions and affidavits for change of judge under ORS 14.260, see 1 *Criminal Law* § 12.6-2 (OSB Legal Pub 2013).

⁵ 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

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 for change of judge. 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.” As far as the Oregon RPCs are concerned, 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 an affidavit and 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

circumstances under which an attorney’s filing of an affidavit for change of judge under ORS 14.260 is *ethically* permissible under the Oregon Rules of Professional Conduct.

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 a motion to disqualify 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.⁶ Using an affidavit for change of judge as a means of judge or forum shopping, or for other strategic advantage, constitutes bad faith and, thus, Lawyer would violate Oregon RPCs 3.3, 8.2, and 8.4 by filing an affidavit and motion to disqualify a judge primarily for those reasons.

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

Filing an affidavit for change of judge can have significant consequences for a lawyer. Lawyers may be concerned about the effect that filing such an affidavit 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:

.....

⁶ These examples are not intended to be exhaustive.

- (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 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.⁷

In the context of a disqualification motion, this means that Lawyer must evaluate whether to file an affidavit for change of judge 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 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.

⁷ For a broader discussion on the duties to exercise loyalty and independent judgment, see the Annotation to ABA Model Rule 2.1.

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

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.

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 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 against Judge X.⁸

If, however, Lawyer has concluded that he or she could legally and ethically file an affidavit for change of judge 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

⁸ 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).

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 for change of judge. As the *Restatement (Third) of the Law Governing Lawyers* states:

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.⁹

The timing of that discussion will depend on the specific circumstances of the representation and how potential disqualification issue 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 for change of judge. In some situations, however, a lawyer may need to decide about filing an affidavit for change of judge without any reasonable opportunity to consult with the client beforehand—such as when the lawyer faces an impending deadline or when applicable rules or substantive law requires the lawyer to either file the affidavit immediately or risk waiver. If reasonably necessary under the circumstances, a lawyer may decide whether to file an affidavit for change of judge 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.¹⁰

⁹ *Restatement (Third) of the Law Governing Lawyers* § 20 cmt. b (2000).

¹⁰ 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].

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.”¹¹ Criminal defense lawyers should consider, among other things, whether the decision to file an affidavit for change of judge in his or her client’s specific case implicates the client’s fundamental rights under the Sixth Amendment. That issue is beyond the scope of what this Committee can opine on.

¹¹ Annotation to ABA Model Rule 1.4 at 36-37 (citing various authorities).

DRAFT

Project 14-08

FORMAL OPINION NO. **20172018-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”~~affidavit and motion ~~to disqualify Judge X for change of judge~~ pursuant to ORS 14.260.¹ 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~~moves to disqualify Judge X in Defendant’s case he will need to start regularly filing similar motions ~~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 for change of judge~~ has passed, could be adversely affected.

Questions:

1. May Lawyer file an affidavit ~~of prejudice for change of judge~~ against Judge X in Defendant’s case?
2. May Lawyer consider the impact that filing an affidavit ~~of prejudice for change of judge~~ could have on Lawyer’s other clients or the Lawyer’s reputation generally?

¹ Historically, such affidavits were referred to as “affidavits of prejudice,” although that terminology no longer appears in the current version of ORS 14.260.

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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."~~² 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~~The affidavit need not state specific grounds for the attorney's or party's belief. ORS 14.260(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.*³ 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).⁴

1. *May Lawyer File an Affidavit for Change of Judge 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~~ for change of judge when there is concern about a judge's perceived reputation against a certain class of litigants,

² Additional grounds for disqualification are set forth in ORS 14.210.

³ See also *State ex rel. Kafoury v. Jones*, 315 Or 201, 207 (1992).

⁴ For a more thorough discussion of ~~affidavits of prejudice~~ motions and affidavits for change of judge under ORS 14.260, see 1 *Criminal Law* § 12.6-2 (OSB Legal Pub 2013).

rather than the specific parties or attorneys in the case.⁵ There are several relevant Oregon RPCs.

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 for change of judge~~. 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.” As far as the Oregon RPCs are concerned, ~~These~~ these are subjective inquiries. Lawyer must consider each question independently in light of the specific facts, procedural

⁵ 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 for change of judge~~ under ~~the provisions of~~ ORS 14.260 is *ethically* permissible under the Oregon Rules of Professional Conduct.

posture, and applicable law of his or her case. Only if Lawyer can truthfully answer yes to both questions may Lawyer ethically file an affidavit and 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 a motion to disqualify 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.⁶ Using affidavits of prejudice an affidavit for change of judge as a form-means of judge or forum shopping, or for other strategic advantage, is a form constitutes of bad faith and, thus, Lawyer would violate Oregon RPCs 3.3, 8.2, and 8.4 by filing an affidavit of prejudice an affidavit and motion to disqualify a judge primarily for those reasons.

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

Filing an affidavit of prejudice for change of judge can have significant consequences for a lawyer. Lawyers may be concerned about the effect that filing such 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).

⁶ These examples are not intended to be exhaustive.

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 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.⁷

In the context of a disqualification motion, this means that Lawyer must evaluate whether to file an affidavit ~~of prejudice~~ **for change of judge** 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

⁷ For a broader discussion on the duties to exercise loyalty and independent judgment, see the Annotation to ABA Model Rule 2.1.

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~~ for Change of Judge*

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.

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.⁸

⁸ 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).

If, however, Lawyer has concluded that he or she could legally and ethically file an affidavit ~~for change of judge 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 for change of judge~~. As the *Restatement (Third) of the Law Governing Lawyers* states:

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.⁹

The timing of that discussion will depend on the specific circumstances of the representation and how ~~the issue regarding~~ potential disqualification issue 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 for change of judge*. In some situations, however, a lawyer may ~~be required~~ need to decide about filing an affidavit ~~of prejudice for change of judge~~ without any reasonable opportunity to consult with the client beforehand—such as when the lawyer faces an impending deadline or when applicable rules or substantive law requires the lawyer to either file ~~an affidavit of prejudice the affidavit~~ immediately or risk waiver. If reasonably necessary under the circumstances, a lawyer may decide whether to file an affidavit ~~of prejudice for change of judge~~ 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

⁹ *Restatement (Third) of the Law Governing Lawyers* § 20 cmt. b (2000).

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.¹⁰

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.”¹¹ Criminal defense lawyers should consider, among other things, whether the decision to file an affidavit ~~of prejudice~~for change of judge 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.

¹⁰ 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].

¹¹ Annotation to ABA Model Rule 1.4 at 36-37 (citing various authorities).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
Memo Date: February 5, 2018
From: MCLE Committee
Re: Review Regulation Amendment and Housekeeping matters re rule numbering

Action Recommended

1. Approve the proposed amendment to MCLE Regulation 5.200(g) to clarify that members may claim CLE credit for writing or grading a local component bar exam question.
2. Approve several rule and regulation amendments to reflect recent legislative amendments.
3. Seek limited housekeeping amendment authority from Supreme Court to correct rule numbering when needed.

Background – Item #1

Oregon is now a Uniform Bar Exam (UBE) jurisdiction, which means that the BBX no longer writes any bar exam questions. However, the BBX has the option of creating a local component exam and, if the BBX exercises this option, members would be required to draft their own local questions. Presently, we satisfy the local component by requiring UBE applicants to comply with MCLE Rule 3.3(b).

Therefore, the BBX requested that Regulation 5.200(g) be amended as set forth below to reflect the new reality of the UBE. The MCLE Committee approved this regulation amendment at its December 2017 meeting.

MCLE Rule 5.9 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period.

Regulation 5.200(g) Service as a Bar Examiner. Three (3) credits may be claimed for writing a bar exam or local component question and three (3) credits may be claimed for grading a bar exam or local component question.

Background – Item #2

During the 2017 Legislative Session, ORS Chapter 9 and the OSB's Rules of Procedure were amended to remove the Local Professional Responsibility Committee from the disciplinary process. Therefore, references to the LPRC must be deleted. Rule 5.10 should be amended as follows:

Rule 5.10 Legal Ethics Service. Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, ~~Local Professional Responsibility Committees~~, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

Background – Item #3

Recently, the Oregon Supreme Court indicated it would be open to considering a grant of authority to the bar to correct rule numbering errors on an ongoing basis. This authority would save bar staff and court staff time and reduce member confusion.

For instance, several rule and regulation amendments were approved in 2017 which resulted in new rule numbering. Once the rules were approved, the numbering of remaining rules and regulations were no longer accurate. Further cross-references must be updated.

Specific rule and regulation numbering corrections are set forth below. However, staff proposes that the bar seek broader authority to generally make numbering changes to ensure accuracy and consistency, as needed.

Rule Amendments

Rule 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)~~ 5.15(a).¹

¹ The following rule amendments, which were approved by the BOG in November 2017, will be submitted to the Supreme Court for approval:

~~**Rule 5.11 Jury Instructions Committee Service.** Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.~~ **Credit for Committee and Council Service.** Credit may be claimed for serving on committees that are responsible for drafting court legal rules or jury instructions that are designed to aid the judicial system and improve the judicial process. Examples include service on the Oregon State Bar Uniform Civil Jury Instructions Committee, Uniform Criminal Jury Instructions Committee, Oregon Council on Court Procedures, Uniform Trial Court Rules Committee, and the Federal Bar Association's Local Rules Advisory Committee.

~~**Rule 5.12 Oregon Council on Court Procedures.** Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.~~

If the Supreme Court approves these amendments, this will be Rule 5.14(a).

(c) Abuse Reporting. One hour must be on the subject of a lawyer's statutory duty to report child abuse and elder abuse (see ORS 9.114).²

(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)~~ 5.15(c).³

Rule 5.6 Other Professionals. Notwithstanding the requirements of Rules ~~5.12~~ 5.14 (a) and (b), participation in an educational activity offered primarily to or by other professions or occupations may be accredited as a CLE activity if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards. The MCLE Program Manager may accredit the activity for fewer than the actual activity hours if the MCLE Program Manager determines that the subject matter is not sufficient to justify full accreditation.

Rule 5.8 Legal Research and Writing.

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

- (a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule ~~5.12~~ 5.14(b); and

Rule 5.16 Other Professionals. Notwithstanding the requirements of Rules 5.6 and ~~5.12~~ 5.14(a) and (b), credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer.

Note: If the Supreme Court approves the amendments set forth in Footnote 1, the following rule numbering will change:

Current Rule 5.12 – will be deleted (merged with Rule 5.11)

Current Rule 5.13 – will change to 5.12

Current Rule 5.14 – will change to 5.13

Current Rule 5.15 – will change to 5.14

Current Rule 5.16 – will change to 5.15

² The Supreme Court approved this rule amendment effective January 1, 2018.

³ If the Supreme Court approves the amendments in Footnote 1 above, this will be Rule 5.14(c).

Current Rule 5.17 – will change to 5.16

Regulation Amendments

Regulation 3.600 Introductory Course in Access to Justice. In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule ~~5.13(c)~~ 5.15(c)⁴ and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

Regulation 5.200(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule ~~5.9~~ 5.10.

⁴ If the Supreme Court approves the amendments in Footnote 1, this will be Rule 5.14(c).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
Memo Date: February 9, 2018
From: Judith Baker Legal Services Program Director
Re: Updates to Legal Services Program Standards and Guidelines

Action Recommended

The Legal Services Program (LSP) Committee is recommending that the BOG approve revisions to the LSP Standards and Guidelines.

Background

The Legal Services Program Standards and Guidelines (Standards and Guidelines) were developed in 1998 and apply to all programs providing civil legal aid services in Oregon who receive funding from the OSB Legal Services Program (LSP). The Standards and Guidelines outline the OSB's governing structure and oversight authority as well as provider structure and use of fund requirements.

The LSP Committee is charged with reviewing and making recommendations to the BOG on the Standards and Guidelines and their periodic review. The LSP Committee has reviewed and is recommending approval of the revisions to the Standards and Guidelines (see attached). The revisions fit into three categories:

1. Small style and heading changes distributed throughout the Standards and Guidelines
2. The addition of a reference to ORCP 32 O in the Statutory Authority Section on page 7 and the addition of the text of ORCP 32 O regarding Cy-près awards.
3. Updates to pages 7, 8, and 19 prepared by Bar Counsel to align the standards and guidelines with ORS 9.572 *et seq.*, the statute authorizing the Legal Services Program. The changes clarify the roles of the Legal Services Program Committee and the Director of the Legal Services Program

Oregon State Bar

Legal Services Program

Standards and Guidelines

May 29, 1998

Revised February 22, 2018

Deleted: Revised September 5, 2014

Table of Contents

I. Mission Statement	5
II. Governing Structure.....	7
A. Statutory Authority	7
B. Governing Committee.....	7
1. Purpose	7
2. Relationship to the Legal Services Program Director	7
3. Duties to the OSB Board of Governors	7
4. Membership.....	7
5. Term of Appointment	8
6. Liaisons to Committee	8
7. Meetings	8
8. Quorum	8
9. Subcommittees	8
C. Program Staff	8
1. Director of Legal Services Program.....	8
III. Standards and Guidelines for Providers	10
A. Statement of Goal.....	10
B. Provider Structure.....	10
1. Non Profit.....	10
2. Board of Directors.....	10
3. Staff Attorney Model	11
4. Pro Bono Program.....	11
5. Efficient Use of Resources	11
C. Provider Use of Funds and Eligibility Guidelines	11
1. Use of Funds.....	11
2. Eligibility Guidelines	11

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 2

Deleted: *September*

Deleted: 5

Deleted: 4

3. Payment of Costs	11
4. Recovery of Attorney Fees.....	11
D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar	12
1. Procedures for Establishing Priorities.....	12
2. Avoidance of Competition with Private Bar	12
E. Provider Grievance Committee and Process	13
1. Grievance Committee	13
2. Grievance Process	13
F. Additional Standards for Providers.....	13
IV. Cooperative Collaboration by Providers.....	14
A. Mechanism for Cooperation:.....	14
V. Oversight by OSB Legal Services Program	15
A. Funding of Providers	15
1. Presumptive Funding	15
2. Additional Funds	16
B. Performance Evaluation of Providers	16
C. Annual Reporting Requirements	17
1. Annual Audit	17
2. Annual Report	17
D. Accountability Process	17
1. Process	17
E. Complaint Procedure	18
1. Complaints about Legal Services Providers	18
2. Complaints from Applicants to the OSB LSP	18
F. Non-Compliance by Provider	18
1. Informal Negotiation.....	18
2. Formal 30 Day Notice.....	19
3. Mediation.....	19

Deleted: September

Deleted: 5

Deleted: 4

4. Hearing.....	19
5. Suspension of Funding.....	19
6. Termination of Services	20
Appendix A1 – Statutory Authority – Program.....	21
Legal Services Program	21
9.572 Bar to establish Legal Services Program; director; advisory and technical committees	21
9.576 Review of providers; mediation; hearing; suspension of funding.....	21
9.577 Legal Aid Account.....	22
9.578 Other funding sources.	22
Appendix A2 – Statutory Authority – Funding.....	23
Statutory Allocation	23
9.577 Legal Aid Account.....	23
Unclaimed Lawyer Trust Account Funds	23
98.386 Deposit of funds.....	23
Pro Hac Vice Fees.....	24
9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.....	24
Cy-près Awards	25
ORCP 32 O – Payment of damages.	25
Appendix B – Oregon State Bar Bylaws, Article 13 – Pro Bono	26
Section 13.1 Aspirational Standard	26
Section 13.2 Program Certification.....	26
Subsection 13.200 Procedure	26
Subsection 13.201 Criteria.....	26
Subsection 13.202 Volunteer Recognition	27
Appendix C – OSB Civil Legal Services Task Force May, 1996.....	28
Appendix D – Declaration of Angel Lopez and Charles Williamson.....	44

Deleted: September

Deleted: 5

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I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high-quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

OSB Civil Legal Services Task Force Final Report, May 1996, Appendix I, Page 1 & 2

"Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon's statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- *Protect the individual rights of low income clients;*
- *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 5

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- Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”

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II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (*Appendix A1*). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ~~ORS 9.241 (3)~~ and ORCP 32 O (*Appendix A2*) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

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B. Governing Committee

1. **Purpose:** The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.

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2. **Relationship to the Legal Services Program Director:** The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.

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3. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:

- The Standards and Guidelines for the OSB LSP and their periodic review
- Applications for funding to the OSB LSP
- Disbursement of funds and annual OSB LSP budget
- Assessment of Provider Programs
- Annual reporting by the Providers
- Legislative issues involving the legal aid filing fee funds
- Complaints and grievances about Providers
- Additional work of the OSB LSP

4. Membership

- a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.

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b. Membership: The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

- 1) Commitment to the basic principles of access to justice
- 2) Ability to advance the mission of the OSB LSP
- 3) Knowledge and understanding of providing quality legal services to low-income people.
- 4) History of support for legal services providers
- 5) Representation of a geographic area with special attention given to practice area specialties.

5. Term of Appointment: Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.

6. Liaisons to Committee: The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.

7. Meetings: The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.

8. Quorum: Five members constitute a quorum for voting purposes.

9. Subcommittees: The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. Program Staff

1. Director of Legal Services Program: The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.

a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

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- These Standards and Guidelines and their periodic review
- Applications for funding
- Disbursement of funds and Annual OSB LSP budget
- Assessment of Provider Programs
- Annual Reporting by the Providers
- Legislative Issues regarding the filing fee funds
- Complaints and grievances about Providers
- Additional work of the OSB LSP

b. The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

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III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 *et seq.* These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996 (*Appendix C*). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high-quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (*Appendix D*), while maintaining the Provider's ability to offer a broad array of high quality legal services consistent with the Mission Statement.

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B. Provider Structure

1. **Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
2. **Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
 - a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
 - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and

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community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

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3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 13 of the Oregon State Bar Board Bylaws (Appendix B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider's ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. Provider Use of Funds and Eligibility Guidelines

1. **Use of Funds:** A Provider shall use funds received pursuant to ORS 9.572 et seq. only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines:** The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.
3. **Payment of Costs:** Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 et seq. However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.
4. **Recovery of Attorney Fees:** A Provider may also recover and retain attorney fees from opposing parties as permitted by law.

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D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

- 1. Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
 - a. The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program's employees, and support services.
 - b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.
 - 1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
 - 2) The resources of the Provider;
 - 3) The availability of free or low-cost legal assistance in a particular category of cases or matters;
 - 4) The availability of other sources of training, support, and outreach services;
 - 5) The relative importance of particular legal problems to the individual clients of the Provider;
 - 6) The susceptibility of particular problems to solution through legal processes;
 - 7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
 - 8) Whether legal efforts will result in efficient and economic delivery of legal services; and
 - 9) Whether there is a need to establish different priorities in different parts of the Provider's service area.
- 2. Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide

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representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

E. Provider Grievance Committee and Process

1. **Grievance Committee:** The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.
2. **Grievance Process:** The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.
 - a. The procedures shall minimally provide:
 - 1) Information to a client at the time of the initial visit about how to make a complaint;
 - 2) Prompt consideration of each complaint by the director of the program, or the director's designee; and
 - 3) If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

F. Additional Standards for Providers

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

- [American Bar Association Standards for the Provision of Civil Legal Aid, August 2006.](#)
- ["Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, August 2013.](#)
- [Legal Services Corporation Performance Criteria, 2007.](#)
- [Oregon Rules of Professional Conduct.](#)

Oregon State Bar Legal Services Program
Standards and Guidelines

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors ~~February 22, 2018~~ – Page 13

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IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

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V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad-based, full range of advocacy approaches and services to clients.

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A. Funding of Providers

1. Presumptive Funding: To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

a. Initial Funding: Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

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Funding will continue under presumptive funding until:

- 1) Provider is found not in compliance at which point Section V.F. will be implemented
- 2) Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or
- 3) OSB LSP no longer receives funding under ORS 9.572 et seq.

b. Distribution of Funds: Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

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c. Modification of Grants: A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.

d. Subcontracting of Funds: Providers may subcontract with others to provide specific services or to enhance services under the following conditions:

- 1) The subcontract is for no more than one year;
- 2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider's annualized grant;
- 3) The subcontract is for services within the parameters of these Standards and Guidelines;
- 4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to ~~low-~~ income people, or with a law firm or attorney;
- 5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
- 6) For all subcontracts, the Provider must give the OSB LSP 30 days' notice of intent to subcontract along with a copy of the proposed subcontract.

2. **Additional Funds:** If there are funds over those allocated for presumptive funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high-quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association's Standards for Monitoring and Oversight of Civil Legal Services Programs.

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C. Annual Reporting Requirements

1. **Annual Audit:** All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.
2. **Annual Report:** Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
 - a. The numbers and types of cases and matters in which legal services were delivered;
 - b. A listing of the Provider's staff and Governing Body;
 - c. A copy of its budget;
 - d. A narrative description of the Provider's operations, including a description of its needs assessment, priority setting, and grievance processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. Accountability Process

1. **Process:** The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider's self-assessment and improvement.

The process has three components:

- a. A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
- b. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
- c. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 17

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E. Complaint Procedure

1. Complaints about Legal Services Providers

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.
- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

2. **Complaints from Applicants to the OSB LSP:** Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee's funding recommendation.

F. Non-Compliance by Provider

1. **Informal Negotiation:** When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 18

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2. **Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
3. **Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

4. **Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance. ORS 9.576(3).

5. **Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Director, in consultation with the OSB LSP Committee, the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

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- 6. **Termination of Services:** If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.

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Appendix A1 – Statutory Authority – Program

Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

- (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.
- (2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.
- (3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

- (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.
- (2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.
- (3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the

provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]

Appendix A2 – Statutory Authority – Funding

Statutory Allocation

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

- (1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.
- (2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for

*Oregon State Bar Legal Services Program
Standards and Guidelines – Appendix A2
Adopted by the Board of Governors May 29, 1998
Amendments adopted by the Board of Governors September 5, 2014 – Page 23*

the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

- (3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:
- (a) Any costs in connection with sale of unclaimed property;
 - (b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and
 - (c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

- (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.
- (2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.
- (3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]

Cy-près Awards

ORCP 32 O – Payment of damages.

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

- (1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and
- (2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[\$O added by 2015 c.2 §3]

Appendix B – Oregon State Bar Bylaws, Article 13 – Pro Bono

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Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system, and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Executive Director determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

- (a) Purpose: The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:
 - (1) Persons of limited means.
 - (2) Underserved populations with special legal needs.
 - (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.
- (b) Compensation: The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.
- (c) Fees: The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit

or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

- (d) Quality Control: The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.
- (e) Diversity: The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.
- (f) Professional Liability Coverage: The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Appendix C – OSB Civil Legal Services Task Force May, 1996

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996



**This Appendix Contains the Key Findings and Recommendations from the
Report. For a Full Copy of the Report
Please call the OSB at 620 0222 - Ext. 323**

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
Hon. Neil R. Bryant, Bend
Edward L. Clark, Jr., Salem
Michael E. Haglund, Portland
Hon. Jack L. Landau, Salem
James T. Massey, Sisters
Katherine A. McDowell, Portland
Katherine H. O'Neil, Portland
Lawrence B. Rew, Pendleton
Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch

OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings

and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps

which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year. **Marion-Polk** There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

A. Quality and Independence

Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource – of many – for providing access to the justice system for low income Oregonians.

B. Preservation of Funding Allocation

Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

C. Independence and Access

Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

The consortium should include:

Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. Reorganization/Restructuring for Efficiency of Delivery

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. Development of Non-Restricted Entities

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and

administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. Development/Expansion of New Resources

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.

6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon?
How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base -- components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

Campaign for Equal Justice Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

Filing Fee Surcharge Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

Oregon Law Foundation/IOLTA Programs providing civil legal services to low

income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.

3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.

4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state /court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

Appendix D – Declaration of Angel Lopez and Charles Williamson

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

CARMEN VELAZQUEZ, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, <i>et al.</i> , Defendants.	97 Civ. 00182 (FB)
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DAVID F. DOBBINS, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, Defendant.	01 Civ. 8371 (FB)
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DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON

Angel Lopez and Charles Williamson, declare as follows:

1. I, Angel Lopez, am the President of the Oregon State Bar ("OSB").

2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified

in the Mission Statement of the *OSB Civil Legal Services Task Force Final Report*, May 1996, and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon's statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- * Protect the individual rights of low income clients;
 - * Promote the interests of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;
 - * Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and
 - * Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.

5. The mission of the OSB Legal Services Program, as set out above, was written by the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.

Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services

Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately \$ 2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC "program integrity" regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program

because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center (“OLC”), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon (“LASO”) provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon’s thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.

12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon's large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of "program integrity" requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,

web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The "separate entity" restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less

effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the “program integrity” requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon’s coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the *OSB Civil Legal*

Services Final Report was to support “Full Service Law Centers” that provide all LSC restricted work, “particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.” The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office’s pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney’s time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many

desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002.

We declare under penalty of perjury that the foregoing is true and correct.

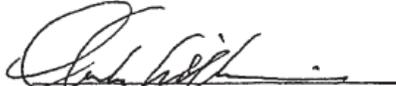
Executed on June 12, 2002

Portland, Oregon

OREGON STATE BAR



Angel López
President



Charles Williamson
President Elect

Oregon State Bar

*Legal Services
Program*

Standards and Guidelines

May 29, 1998

Revised February 22, 2018

Table of Contents

I. Mission Statement	5
II. Governing Structure.....	7
A. Statutory Authority	7
B. Governing Committee.....	7
1. Purpose	7
2. Relationship to the Legal Services Program Director	7
3. Duties to the OSB Board of Governors	7
4. Membership.....	7
5. Term of Appointment	8
6. Liaisons to Committee	8
7. Meetings	8
8. Quorum.....	8
9. Subcommittees	8
C. Program Staff	8
1. Director of Legal Services Program.....	8
III. Standards and Guidelines for Providers	10
A. Statement of Goal.....	10
B. Provider Structure.....	10
1. Non Profit.....	10
2. Board of Directors.....	10
3. Staff Attorney Model	11
4. Pro Bono Program.....	11
5. Efficient Use of Resources	11
C. Provider Use of Funds and Eligibility Guidelines	11
1. Use of Funds.....	11
2. Eligibility Guidelines	11

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 2

3. Payment of Costs	11
4. Recovery of Attorney Fees.....	11
D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar	12
1. Procedures for Establishing Priorities.....	12
2. Avoidance of Competition with Private Bar	12
E. Provider Grievance Committee and Process	13
1. Grievance Committee	13
2. Grievance Process.....	13
F. Additional Standards for Providers.....	13
IV. Cooperative Collaboration by Providers.....	14
A. Mechanism for Cooperation:.....	14
V. Oversight by OSB Legal Services Program	15
A. Funding of Providers	15
1. Presumptive Funding	15
2. Additional Funds	16
B. Performance Evaluation of Providers.....	16
C. Annual Reporting Requirements	17
1. Annual Audit	17
2. Annual Report	17
D. Accountability Process	17
1. Process	17
E. Complaint Procedure	18
1. Complaints about Legal Services Providers	18
2. Complaints from Applicants to the OSB LSP.....	18
F. Non-Compliance by Provider	18
1. Informal Negotiation.....	18
2. Formal 30 Day Notice.....	19
3. Mediation.....	19

4. Hearing.....	19
5. Suspension of Funding.....	19
6. Termination of Services	20
Appendix A1 – Statutory Authority – Program.....	21
Legal Services Program	21
9.572 Bar to establish Legal Services Program; director; advisory and technical committees.	21
9.576 Review of providers; mediation; hearing; suspension of funding.....	21
9.577 Legal Aid Account.....	22
9.578 Other funding sources.	22
Appendix A2 – Statutory Authority – Funding.....	23
Statutory Allocation	23
9.577 Legal Aid Account.....	23
Unclaimed Lawyer Trust Account Funds	23
98.386 Deposit of funds.....	23
Pro Hac Vice Fees.....	24
9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.....	24
Cy-près Awards	25
ORCP 32 O – Payment of damages.	25
Appendix B – Oregon State Bar Bylaws, Article 13 – Pro Bono	26
Section 13.1 Aspirational Standard	26
Section 13.2 Program Certification.....	26
Subsection 13.200 Procedure.....	26
Subsection 13.201 Criteria.....	26
Subsection 13.202 Volunteer Recognition	27
Appendix C – OSB Civil Legal Services Task Force May, 1996.....	28
Appendix D – Declaration of Angel Lopez and Charles Williamson.....	44

I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To use the filing fee revenue to fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996; and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high-quality legal services to low-income Oregonians.

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

OSB Civil Legal Services Task Force Final Report, May 1996, Appendix I, Page 1 & 2

“Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- *Protect the individual rights of low income clients;*
- *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*

- *Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”*

II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (*Appendix A1*). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ORS 9.241 (3) and ORCP 32 O (*Appendix A2*) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. **Purpose:** The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.
2. **Relationship to the Legal Services Program Director:** The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.
3. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:
 - The Standards and Guidelines for the OSB LSP and their periodic review
 - Applications for funding to the OSB LSP
 - Disbursement of funds and annual OSB LSP budget
 - Assessment of Provider Programs
 - Annual reporting by the Providers
 - Legislative issues involving the legal aid filing fee funds
 - Complaints and grievances about Providers
 - Additional work of the OSB LSP
4. **Membership**
 - a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.

b. Membership: The OSB LSP Committee will consist of 9 members: 7 members, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney members should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

- 1) Commitment to the basic principles of access to justice
 - 2) Ability to advance the mission of the OSB LSP
 - 3) Knowledge and understanding of providing quality legal services to low-income people.
 - 4) History of support for legal services providers
 - 5) Representation of a geographic area with special attention given to practice area specialties.
5. **Term of Appointment:** Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.
6. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.
7. **Meetings:** The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.
8. **Quorum:** Five members constitute a quorum for voting purposes.
9. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. Program Staff

1. **Director of Legal Services Program:** The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.
 - a. The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:

- These Standards and Guidelines and their periodic review
 - Applications for funding
 - Disbursement of funds and Annual OSB LSP budget
 - Assessment of Provider Programs
 - Annual Reporting by the Providers
 - Legislative Issues regarding the filing fee funds
 - Complaints and grievances about Providers
 - Additional work of the OSB LSP
- b.** The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs providing civil legal services in Oregon who receive, or who may apply to receive, funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 *et seq.* These Standards and Guidelines apply only to services funded by filing fees received from the OSB LSP.

A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996 (*Appendix C*). The filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high-quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (*Appendix D*), while maintaining the Provider's ability to offer a broad array of high quality legal services consistent with the Mission Statement.

B. Provider Structure

1. **Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.
2. **Board of Directors:** A Provider shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
 - a. A majority of the directors should be active or active emeritus members of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
 - b. At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and

*Oregon State Bar Legal Services Program
Standards and Guidelines*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors February 22, 2018 – Page 10

community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

3. **Staff Attorney Model:** A Provider shall have at least one active member of the Oregon State Bar on staff.
4. **Pro Bono Program:** A Provider shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to section 13 of the Oregon State Bar Board Bylaws (Appendix B), as a part of its system of delivery of legal services.
5. **Efficient Use of Resources:** A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider’s ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. Provider Use of Funds and Eligibility Guidelines

1. **Use of Funds:** A Provider shall use funds received pursuant to ORS 9.572 et seq. only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

2. **Eligibility Guidelines:** The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider’s mission and written priorities.
3. **Payment of Costs:** Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 et seq. However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.
4. **Recovery of Attorney Fees:** A Provider may also recover and retain attorney fees from opposing parties as permitted by law.

D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

- 1. Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
 - a.** The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program's employees, and support services.
 - b.** In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.
 - 1)** The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
 - 2)** The resources of the Provider;
 - 3)** The availability of free or low-cost legal assistance in a particular category of cases or matters;
 - 4)** The availability of other sources of training, support, and outreach services;
 - 5)** The relative importance of particular legal problems to the individual clients of the Provider;
 - 6)** The susceptibility of particular problems to solution through legal processes;
 - 7)** Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
 - 8)** Whether legal efforts will result in efficient and economic delivery of legal services; and
 - 9)** Whether there is a need to establish different priorities in different parts of the Provider's service area.
- 2. Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide

representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

E. Provider Grievance Committee and Process

- 1. Grievance Committee:** The Board of Directors of a Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.
- 2. Grievance Process:** The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.
 - a.** The procedures shall minimally provide:
 - 1)** Information to a client at the time of the initial visit about how to make a complaint;
 - 2)** Prompt consideration of each complaint by the director of the program, or the director's designee; and
 - 3)** If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

F. Additional Standards for Providers

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

- [American Bar Association Standards for the Provision of Civil Legal Aid, August 2006.](#)
- ["Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, August 2013.](#)
- [Legal Services Corporation Performance Criteria, 2007.](#)
- [Oregon Rules of Professional Conduct.](#)

IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and members of the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

V. Oversight by OSB Legal Services Program

The filing fees collected for legal services by the OSB LSP will continue to be used to support programs providing basic civil legal assistance to low-income Oregonians. The increase in court fees was calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad-based, full range of advocacy approaches and services to clients.

A. Funding of Providers

1. Presumptive Funding: To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6 million dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

a. Initial Funding: Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

Funding will continue under presumptive funding until:

- 1) Provider is found not in compliance at which point Section V.F. will be implemented
 - 2) Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or
 - 3) OSB LSP no longer receives funding under ORS 9.572 et seq.
- b. Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services to the under-served populations and to encourage a full range of services throughout Oregon.

- c. **Modification of Grants:** A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.
- d. **Subcontracting of Funds:** Providers may subcontract with others to provide specific services or to enhance services under the following conditions:
 - 1) The subcontract is for no more than one year;
 - 2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider’s annualized grant;
 - 3) The subcontract is for services within the parameters of these Standards and Guidelines;
 - 4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;
 - 5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
 - 6) For all subcontracts, the Provider must give the OSB LSP 30 days’ notice of intent to subcontract along with a copy of the proposed subcontract.

2. Additional Funds: If there are funds over those allocated for presumptive funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that filing fees funds are effectively being used to provide high-quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association’s Standards for Monitoring and Oversight of Civil Legal Services Programs.

C. Annual Reporting Requirements

1. **Annual Audit:** All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.
2. **Annual Report:** Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
 - a. The numbers and types of cases and matters in which legal services were delivered;
 - b. A listing of the Provider's staff and Governing Body;
 - c. A copy of its budget;
 - d. A narrative description of the Provider's operations, including a description of its needs assessment, priority setting, and grievance processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. Accountability Process

1. **Process:** The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider's self-assessment and improvement.

The process has three components:

- a. A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
- b. A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and
- c. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

E. Complaint Procedure

1. Complaints about Legal Services Providers

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.
- b. Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
- c. Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
- d. Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
- e. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
- f. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.

2. **Complaints from Applicants to the OSB LSP:** Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee's funding recommendation.

F. Non-Compliance by Provider

1. **Informal Negotiation:** When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

- 2. Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
- 3. Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

- 4. Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance. ORS 9.576(3).

- 5. Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Director, in consultation with the OSB LSP Committee, the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

6. **Termination of Services:** If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.

Appendix A1 – Statutory Authority – Program

Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

- (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.
- (2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.
- (3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

- (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.
- (2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.
- (3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the

Oregon State Bar Legal Services Program

Standards and Guidelines – Appendix A1

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors September 5, 2014 – Page 21

provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]

Appendix A2 – Statutory Authority – Funding

Statutory Allocation

9.577 Legal Aid Account.

- (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.
- (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.
- (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

[2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

- (1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.
- (2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for

*Oregon State Bar Legal Services Program
Standards and Guidelines – Appendix A2*

Adopted by the Board of Governors May 29, 1998

Amendments adopted by the Board of Governors September 5, 2014 – Page 23

the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

- (3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:
 - (a) Any costs in connection with sale of unclaimed property;
 - (b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and
 - (c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

- (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.
- (2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.
- (3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]

Cy-près Awards

ORCP 32 O – Payment of damages.

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

- (1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and
- (2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[§O added by 2015 c.2 §3]

Appendix B – Oregon State Bar Bylaws, Article 13 – Pro Bono

Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system, and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Executive Director determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

- (a) Purpose: The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:
 - (1) Persons of limited means.
 - (2) Underserved populations with special legal needs.
 - (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.
- (b) Compensation: The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.
- (c) Fees: The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit

or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

- (d) **Quality Control:** The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.
- (e) **Diversity:** The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.
- (f) **Professional Liability Coverage:** The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Appendix C – OSB Civil Legal Services Task Force May, 1996

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996



**This Appendix Contains the Key Findings and Recommendations from the
Report. For a Full Copy of the Report
Please call the OSB at 620 0222 - Ext. 323**

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
Hon. Neil R. Bryant, Bend
Edward L. Clark, Jr., Salem
Michael E. Haglund, Portland
Hon. Jack L. Landau, Salem
James T. Massey, Sisters
Katherine A. McDowell, Portland
Katherine H. O'Neil, Portland
Lawrence B. Rew, Pendleton
Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch

OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings

and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps

which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year. **Marion-Polk** There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

A. Quality and Independence

Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource – of many – for providing access to the justice system for low income Oregonians.

B. Preservation of Funding Allocation

Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

C. Independence and Access

Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

The consortium should include:

Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. **Reorganization/Restructuring for Efficiency of Delivery**

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. **Development of Non-Restricted Entities**

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and

administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. **Development/Expansion of New Resources**

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.

6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon? How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base – components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

Campaign for Equal Justice Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

Filing Fee Surcharge Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

Oregon Law Foundation/IOLTA Programs providing civil legal services to low

income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.

3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.

4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state /court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

Appendix D – Declaration of Angel Lopez and Charles Williamson

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

CARMEN VELAZQUEZ, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, <i>et al.</i> , Defendants.	97 Civ. 00182 (FB)
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DAVID F. DOBBINS, <i>et al.</i> , Plaintiffs, v. LEGAL SERVICES CORPORATION, Defendant.	01 Civ. 8371 (FB)
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DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON

Angel Lopez and Charles Williamson, declare as follows:

1. I, Angel Lopez, am the President of the Oregon State Bar ("OSB").

2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified

in the Mission Statement of the *OSB Civil Legal Services Task Force Final Report*, May 1996, and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon's statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- * Protect the individual rights of low income clients;
 - * Promote the interests of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;
 - * Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and
 - * Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.

5. The mission of the OSB Legal Services Program, as set out above, was written by the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.

Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services

Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately \$ 2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC "program integrity" regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program

because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center (“OLC”), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon (“LASO”) provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon’s thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.

12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon's large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of "program integrity" requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,

web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The "separate entity" restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less

effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the “program integrity” requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon’s coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the *OSB Civil Legal*

Services Final Report was to support “Full Service Law Centers” that provide all LSC restricted work, “particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.” The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office’s pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney’s time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many

desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

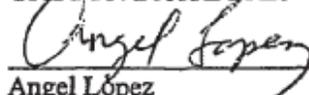
21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002.

We declare under penalty of perjury that the foregoing is true and correct.

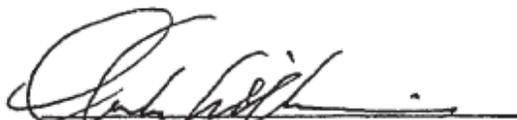
Executed on June 12, 2002

Portland, Oregon

OREGON STATE BAR



Angel López
President



Charles Williamson
President Elect

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2017-28 GERBER (Yang) Request for BOG Review

Action Requested

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

Discussion

Summary of Facts

Wai Thomas Yang retained Susan Gerber on July 25, 2011 to represent him in a post-conviction relief petition (PCR). Mr. Yang is not fluent in English and had another inmate assist him with the filing of his claim.

Mr. Yang signed a fee agreement with Ms. Gerber and the Rader Stoddard firm, for a "flat fee earned upon receipt of \$5000.00, plus any expenses and costs incurred on Client's behalf." Although the fee was described as a "flat fee earned upon receipt" the agreement also provided that Ms. Gerber would provide Mr. Yang with a monthly statement of fees, costs, and expenses, and that the "Client would be responsible for paying all fees, costs and expenses in excess of the flat fee." Despite the terms of the fee agreement, Mr. Yang disputes the amount of the retainer his family paid to Ms. Gerber. In his claim, Mr. Yang asserts his family paid a retainer of \$10,000; a contemporaneous letter from Ms. Gerber acknowledged receipt of \$5,000.

Mr. Yang hired Ms. Gerber to seek post-conviction relief to challenge his 1997 criminal convictions for robbery, theft, kidnapping and burglary. His conviction was affirmed by the Oregon Court of Appeals in 1999, and the Oregon Supreme Court declined to hear his appeal on March 21, 2000. Eleven years, later, Mr. Yang hired Ms. Gerber to file a PCR petition challenging the conviction. According to Ms. Gerber's former partner PCR practitioner Vicki Vernon, depending on the procedural posture of Mr. Yang's PCR petition, it may not have been time barred at the time he hired Ms. Gerber to perform the work.

Records reflect Ms. Gerber met with Mr. Yang in prison on September 23, 2011 and met with another related individual. She sent Mr. Yang letters in 2012 and 2013. The letters suggest that from 2011 to 2013 Ms. Gerber was reviewing documents and drafting affidavits to support the filing of a PCR Petition. All of Ms. Gerber's letters were on Rader Stoddard letterhead. Court records reflect Ms. Gerber never filed a PCR petition.

Mr. Yang was not able to provide any billing records regarding Ms. Gerber's work on the matter. When the investigator contacted Ms. Gerber's former partner Mark Rader, he offered to search for billing records, but did not follow-up despite several requests.

In March, 2014, Ms. Gerber left the Rader Stoddard firm and formed the firm of Gerber & Vernon LLC. It is unclear whether Mr. Yang's file went with her to the new firm. There is no evidence that Ms. Gerber notified Mr. Yang of the move.

In 2014, the bar began to receive bar complaints regarding Ms. Gerber. On November 20, 2014, Ms. Gerber was transferred to involuntary inactive membership on the basis of a substance abuse issue. She remains on involuntary inactive status to this day.

On May 19, 2015, the Client Assistance Office (CAO) received a complaint from Mr. Yang. On May 21, 2015, CAO responded and informed Mr. Yang that Ms. Gerber was no longer an active member of the bar and suggested that he may wish to file a claim with the Client Security Fund.

On July 18, 2017, Mr. Yang filed a claim for CSF reimbursement and sent a separate letter to the CAO. In his letter to the CAO, Mr. Yang explained "I would like to be reimbursed if she has no time to work on my case and adequately represent me, because she has been suspended from practicing."

When the CSF investigator asked Mr. Yang why he waited until 2017 to file his CSF claim he explained he did not follow up earlier because he has patience, and was attempting to give Ms. Gerber time to reform herself. He also stated it was "difficult to find someone who can understand my language and can help me." In an additional letter received by the investigator on October 16, 2017, Mr. Yang explained that he tried to contact Ms. Gerber prior to filing his CSF claim, but he was waiting to hear from her.

CSF Committee Analysis

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. Reimbursement of a legal fee paid is allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. CSF Rule 2.2.3.

In this case, the CSF Committee did not find dishonest conduct as defined by CSF Rule 2.21. While Ms. Gerber did not file a PCR petition, the Committee found evidence that she provided legal services to Mr. Yang that were more than minimal or insignificant from the date she was hired until 2013. Mr. Yang received a visit from Ms. Gerber and three letters outlining her work.

Further, in order for a loss to be eligible for CSF reimbursement, a statement of claim must be filed with the Bar within two years after the latest date 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. CSF Rule 2.1.8. The CSF Committee found that Mr. Yang's July 18, 2017 statement of claim fell outside of two years as measured from the date Ms. Gerber was transferred to involuntary inactive status (November 20, 2014) or the date which he knew or should have known of the existence of the loss (May 21, 2015).

For all these reasons, the CSF Committee denied Mr. Yang's claim for reimbursement from the Client Security Fund. Staff recommends the BOG do the same.

Ms. Helen Hierschbiel
CEO / Executive Director
Oregon State Bar
P. O. Box 231935
Tigard, OR 97281-1935

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Oregon State Bar
Executive Director

Re: Client Security Fund Claim No: 2017-28
Request for Oregon State Bar Board of
Governor's review of November 04, 2017
Client security fund committee decision.

Dear Ms: Helen Hierschbiel

I am writing this communication with the hope that it is received in good faith. I am requesting that the board of governors for the Oregon State Bar review the November 04, 2017 decision by the Client Security Review Fund Committee, denying the claim concerning Ms. Susan R. Gerber, and the \$10,000.00 my family gave to Ms. Gerber.

The committee's finding that there was "no evidence of dishonesty" and that my claim "was not submitted within two years. Dishonesty is not the main question Ms. Gerber received \$10,000.00 from my family to represent me in a Post-Conviction proceeding. She was unable to fulfill this duty because of her acts that caused her to be suspended from the practice of law in Oregon, based on her conduct. Conduct that apparently violated a Bar Rule of Ethical behavior. Whether her conduct was dishonest or not, it warranted suspension, why should she be enriched by my families \$10,000.00?

I attempted to get my family funds returned in May 21, 2015 and was told that I had to wait for Ms. Gerber to be re-instated. "I would like to let you know (Ms. Gerber's information) that the prison legal library is not updated and the information I get is not always accurate". I was never informed of any time limitation for recovering my family funds. To have the Client Security Fund Committee deny my claim is contrary to the principles of right and fairness. These actions are borderline criminal in nature, reminiscent of a gang of Calcutta-back-alley-street-thugs. And not the behavior of an Ethical Organization that insure that its paying customers are not punished for the behavior of an attorney. "the claim is filed with the bar within 2 years after the latest of: the lawyers conviction, judgment date or date of disbarment, suspension, reprimand or resignation; or the date the claimant knew or should known of the loss. No claim will be considered submitted more than Six years after the loss".

I respectfully request that the Board of Governors review my Claim with a critical eye on all of the circumstances of this matter. Review the letters I sent to the state bar; review their responses to me;

review the circumstances surrounding Ms. Gerber being suspended and eventually disbarred.

Finally, what facts were considered to deny my claim? What are the requirement for me to be eligible to receive my own funds? Why should Ms. Gerber or any one associated with her, be enriched with the funds of my family? How do I lose \$10,000.00 in this process? “Eligible Claims: as a result of the dishonest conduct, the lawyer was found guilty of a crime; a civil judgment was obtained against the lawyer; or if the loss, if \$5,000.00 or less, the lawyer was disbarred, suspended, reprimanded or resigned from the bar”.

I have been very patient since this ordeal started. I have suffered an injustice perpetrated by the judicial system of Clackamas County District Attorney's Office. I have attorneys neglect my case, with no redress. And now I am being told that I do not meet the “requirements for eligibility for reimbursement” of my family funds. Under what ethical moral or human principle of right is this action considered fair and just. “ Note: Also you may not be aware of this, but I believe it is important to bring it to your attention. I struggle with the English language. English is not my native tongue and therefore, I find it hard to fully express myself. In fact, this letter which you are reading right now has been written with the assistance of another person. I am respectfully requesting that this matter be postponed, to give me a right to consult with an attorney and an interpreter assist me on the legal process. It is a basic principle in law of fair and just”.

I am requesting the return of my family funds. There is no justification to not return my family funds. Ms. Gerber created her situation and my family should not be punished for it. Thank you for your consideration.

Sincerely yours

Wai Thomas Yang
SID# 11862012
OSP
2605 state street
Salem, OR 97310

Nov. 14, 2017


RADER, STODDARD & PEREZ, P.C.

Attorneys at Law

Licensed in Oregon & Idaho

Please respond to:

Ontario Office []
381 W. Idaho Ave.
Ontario, OR 97914
(541) 889-2351
fax (541) 889-6672

Salem Office [x]
189 Liberty St., NE, Ste. 210
Salem, OR 97301
971-239-4771

RETAINER AGREEMENT

THIS RETAINER AGREEMENT ("Agreement") is made this 21 st day of July, 2011, between Wai Thomas Yang, hereinafter referred to as "Client," and Susan R. Gerber of Rader, Stoddard & Perez, P.C., Attorneys at Law, hereinafter referred to as "Attorney":

1. Client agrees to employ Attorney for representation in a legal matter in connection with Post-Conviction Relief.

2. Attorney has consented to accept such employment and agrees to render the services required of her as Attorney by this Agreement on the terms and conditions herein stated. Client agrees to cooperate fully with Attorney and others working on Client's case by keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making all payments. Client also agrees to keep Attorney informed of any change of address or telephone number within five (5) days of the change.

3. The fee for legal services on behalf of Client shall be Client's sole responsibility and shall be a flat fee earned upon receipt of \$5000.00, plus any expenses and costs incurred on Client's behalf.

4. Client has deposited with Attorney the sum of \$5000.00. Attorney will provide Client with a monthly statement of fees, costs, and expenses. Client is responsible for paying all fees, costs, and expenses in excess of the flat fee.

5. Attorney reserves the right to withdraw from further representation of Client at any time on reasonable written notice to Client at Client's last known mailing address.

6. Attorney may appoint another attorney to assist with the closure of Attorney's law office in the event of Attorney's death, disability, impairment, or incapacity. In such event, Client agrees that the assisting attorney can review Client's file to protect Client's rights and can assist with the closure of Attorney's law office. ?

7. Attorney will send Client information and correspondence throughout the case. These copies will be Client's file copies. Attorney will also keep the information in Attorney's file. When Attorney has completed all the legal work necessary for Client's case, Attorney will close Attorney's file and return original documents to Client. Attorney will then store the file for approximately 10 years. Attorney will destroy the file after that period of time.

8. Client acknowledges reading a copy of this Agreement and consents to its terms.

Susan R. Gerber
Date: 7-21-11

Client/Client's representative
Date: 7/25/11

Oregon Department of Corrections - Inmate Mail
Institution D.S.P. SID 11862012
Name YANG, Lisa Thomas
Address 2608 State Street
City Salem State OR Zip 97310



To: MS Helen Aierschbie1

CEO/Executive Director D.S.B.

P.O. Box 231935

Tigard, OR 97281-1935

October 23, 2017

CLIENT SECURITY FUND
INVESTIGATION REPORT

Re: CSF Claim No. : 2017-28
Claimant : Wai Thomas Yang
Lawyer : Susan R. Gerber
Investigator : Ronald W. Atwood

RECOMMENDATION

I recommend denial of this claim; this claim was filed after the two-year limitation in rule 2.8. In addition, there is no indication of theft or dishonest activity on behalf of Susan Gerber.

SUMMARY

For those of you who are not fully aware of Susan Gerber's history, the following is important to know. She was admitted to the Bar in 1999. She was employed by the State of Oregon as an Assistant Attorney General starting in 2001; she was assigned to defend Post Conviction Relief (PCR) petitions. She had a good reputation. Unfortunately, she had a fight with her significant other that was eventually charged as an assault in 2010; she pled out. She lost her job as a result.

Ms. Gerber moved into private practice, settled in Ontario in 2011 and started to represent prison inmates in PCR matters. Initially, things went well and she was a member of a firm in Ontario. She was doing a good job and had a good reputation. Unfortunately, personal problems developed again, her physical issues worsened and she was addicted to pain medication; this began after a knee surgery in the summer of 2013. Her partner left her shortly after her knee surgery. By December of 2013 the firm she was working at, Rader, Stoddard & Perez, began to dissolve. She went out on her own effective January 1, 2014. She missed a few hearings and complaints were filed with the Bar. Ultimately, she was placed on disabled status on November 20, 2014; if you pull her up in the membership directory, she is listed as suspended – non-disciplinary. This was intended to be a temporary move, so that she could go through drug treatment and then restart her practice. Unfortunately, she never completed treatment and eventually moved to Illinois, which is where we believe she is now.

The claimant is Wai Thomas Yang. He claims his English is poor, but he is able to draft long letters chastising the legal system and the prior representation by his lawyers. His correspondence to me is attached; please note these letters focus on his initial conviction and very little is said about any attempts at post conviction

relief. He says he needs someone to write his letters for him; I have not been able to confirm that fact.

He was charged with a number of felonies in 1996, which included robbery in the 1st degree, aggravated theft in the 1st degree, assault in the 3rd degree, kidnapping in the 1st and 2nd degree and burglary in the 1st degree. He was convicted of most charges on June 18, 1997; he filed an appeal in the Court of Appeals that was denied September 22, 1999. The Oregon Supreme Court declined to take his case on March 21, 2000. He was sentenced to 90 months¹ in prison and five years of probation. I also understand there has been a separate contraband charge.

Susan Gerber was not retained until 2011 some 11 years after the Supreme Court denied his appeal. Normally, a PCR petition is filed shortly after all direct appeals are completed, which in this case would have been 2000. I spoke to Vicki Vernon, our resident Susan Gerber expert,² who told me that there is a very narrow set of circumstances that will allow an appeal to be filed, even so long after the last appeal. Thus, I cannot say that taking the case in 2011 was dishonest. It is just unusual. It should be noted Ms. Gerber was working at Rader, Stoddard & Perez at the time and this retention occurred two years prior to the reemergence of her personal problems.

Mr. Yang signed the retainer agreement July 25, 2011³; it is an earned upon receipt agreement with monthly statements contemplated. Two terms are worth reviewing:

“3. The fee for legal services on behalf of Client shall be Client’s sole responsibility and shall be a flat fee earned upon receipt of \$5000.00, plus any expenses and costs incurred on Client’s behalf.

“4. Client has deposited with Attorney the sum of \$5000.00. Attorney will provide Client with a monthly statement of fees, costs, and expenses. Client is responsible for paying all fees, costs, and expenses in excess of the flat fee.”

If you read these two terms carefully, this is a flat fee case and it is not a flat fee case. The law firm reserved the right to charge more than \$5000.00 for the services provided. It also indicates that a monthly statement will be sent out. I was not provided with any billing documentation by the claimant.

¹ If you divide his original 90-month sentence by 12, you get 7.5 years, which tells me he remains in prison for some other reason.

² Ms. Vernon either worked for or was a partner with Ms. Gerber for about three months in 2014. When Ms. Gerber was placed in involuntary inactive status, Ms. Vernon took over and completed the representation of several of Ms. Gerber’s cases. I have consulted with her on several of the Gerber cases I have investigated.

³ The Retainer Agreement is attached.

During the course of this investigation, I called the number on the letterhead of the firm where Ms. Gerber was working and spoke to a receptionist. The first time I called, I was told I would need to talk to Mr. Rader who was no longer with the firm, but that she would get a message to him. I did not get a return call. The second time I called I learned that no lawyer who was with the firm at the time of these events remained at the office. Again she offered to get a message to Mr. Rader. I then went to the Bar's membership directory and called the number indicated. I was able to speak to Mr. Rader; he described Ms. Gerber as the gift that keeps on giving. He confirmed the firm had dissolved. He promised to review what records he had to see if there were any billing records. He hinted that she may have simply worked this file and did not enter it into their system; I find this hard to believe. I followed-up with a couple of emails, but as of this writing have not heard anything from him. Based on his comments, I assume she took this file with her, but that is an assumption since there are no letters that are dated after she left the firm.

Mr. Yang believes he and his family paid a fee of \$10,000.00. We have a letter from Ms. Gerber acknowledging receipt of \$5000.00; her letter is dated July 21, 2011. The retainer agreement acknowledges receipt of \$5000. We interviewed his niece, Ms. Qiao Hong Chen, who stated two payments of \$5000 each were made by money order; she thought the payments were made two to three years earlier. She has no paperwork to document her payments and has moved several times since 2011. Thus, at this point I can only document one payment of \$5000.

Mr. Wang provided us with some material. This material includes a letter from Ms. Gerber that documents she met with him in prison on September 23, 2011. Ms. Gerber documents a meeting with Stuart Boyd on November 1, 2011. There is a letter from her in 2012 advising the claimant of a strategy decision as well a copy of a letter she sent to Mr. Alexander Shaw. Finally, in 2013 she sent Mr. Yang a copy of her letter and a copy of an affidavit sent to Mr. Eric Barbee. In all three years she was reviewing documents and drafting affidavits for use in a PCR petition. Thus, she was doing some work that would be required to file the necessary petition. Checking with OJIN it is apparent a PCR petition was never filed. All of the letters provided have the firm letterhead; Ms. Gerber apparently was working for the Rader Stoddard firm during the entirety of her representation of Mr. Yang. What I cannot tell is whether she took this case when she left the Rader Stoddard firm or the status of the retainer at the time she left the firm. However, I assume she took the case with her.

Mr. Yang believes his loss occurred in 2011 and that nothing was done on this case. Although a PCR petition was never filed, it is clear Ms. Gerber worked on the case in 2011, 2012 and 2013. Thus, his initial belief nothing was done is incorrect. The statement feels false, since he gave me several letters she wrote to him. On the other hand, if doing something requires the filing of a document, then she did nothing in his eyes. However, for our purposes, she did substantial work. Further, he claims he paid \$10,000 and I can only document \$5000.

Mr. Yang states that he learned of his loss in 2015.⁴ Linn Davis sent the letter on behalf of the Bar; he is an Assistant General Counsel working in the Client Assistance Office. I interpret Mr. Davis' letter to be in response to an ethical complaint. His basic message is that they cannot process a disciplinary matter while Ms. Gerber is in involuntary inactive status. The letter also advised Mr. Yang that if he thought money had been taken from him for services never provided he should file a claim with the Client Security Fund. Finally, he was advised that he could seek the services of a lawyer.

My only communication with Mr. Yang is in writing.⁵ This matter started in the Rader Stoddard firm. Ms. Gerber eventually left that firm and her personal problems primarily occurred when she was practicing on her own. Although I assume she would have taken this file with her when she left, whether she did or not is pure speculation.

The claim was filed with the Client Security Fund July 18, 2017. It was received in the Bar offices July 25, 2017. On the same day he signed the Client Security Fund claim forms he also signed a letter directed to Linn Davis, Assistant General Counsel at the Bar. It was received in the Client Assistance Office of the Bar on July 24, 2017.⁶ Since the two documents were date stamped on separate days, I conclude they were sent separately. That conclusion is supported by the letter sent by Mr. Davis of the CAO on August 14, 2017, as discussed below.⁷

The letter from Mr. Yang to the Bar is very interesting. In its first paragraph, he mentions his family retained Susan Gerber to represent him in a PCR proceeding. He states that he has heard nothing from her since 2011.⁸ He then wrote the following sentence:

"It is not my intention to accuse her of any negligence or professional malpractice; however, I would like to be reimbursed if she has no time to work on my case and adequately represent me, because she has been suspended from practicing." (Emphasis in the original.)

Following that sentence are a couple of additional sentences where he states that lawyers routinely take his family's money, but that he has never fired a lawyer. The next eight long paragraphs are a wandering articulate diatribe against the legal system, the criminal justice system in particular. He mentions collusion between his pettifogging defense lawyer and the DA who worked on his original criminal trial. He discusses two separate cases numbers. He mentions an eminent criminal

⁴ The Bar's letter of May 21, 2015 is attached.

⁵ We did interview his niece.

⁶ This letter is attached.

⁷ Mr. Davis' letter is also attached.

⁸ We know this statement is simply wrong from what he sent me directly when I asked for it.

defense lawyer from Eugene. He alleges a conspiracy, destruction of documents and the use of perjured testimony. All of this latter information relates to his original criminal trial and conviction. While wandering, it is also very articulate; it is not what you would expect from someone with a language issue.

When this file was first assigned, we interviewed the niece and learned some information, generally about payments made to Ms. Gerber. I then sent Mr. Yang a letter specifically asking why he waited to file his claim. There is no explanation in his first letter to me to explain why he did nothing between 2011, when he first retained Ms. Gerber, and 2015, when he was notified she was not able to practice. His explanation for waiting over two years after he was notified in 2015 that she could not practice he wrote the following:

“In this regard, I always have had patience to wait until others have the opportunity to reform themselves, perhaps she might have a chance for reinstatement, so that she can work on my case without any negative impact. In my life time, I always look for positively within others. Also here, it is very difficult to find someone who can understand my language and can help me.”

Our rules require a client seeking redress from the Client Security Fund to attempt to collect from the defalcating lawyer prior to filing a claim.

Mr. Yang sent another letter to Bar on September 15, 2017.⁹ It is included to complete the background on this matter. There is nothing in this material relating to Susan Gerber and the work she did for him. However, it illustrates the issue that is most important to him, his initial conviction; issues relating to Susan Gerber are clearly of little importance here.

As a final note, I sent another letter to Mr. Yang dated September 21, 2017.¹⁰ I thought it important to follow-up on questions raised at the time of our September meeting. His response was received in our office on October 16, 2017.¹¹ He says he tried to contact her; he also says he was waiting to hear from her. He says he did not want to cause her any trouble and was waiting for her. He says he was being patient. He says he tried to get in touch with her; he provides no details. He says he never received a bill from her.

I conclude the following from this correspondence. First, Mr. Yang knew Susan Gerber was suspended from practicing law at the time his letters were written. Second, he repeats the incorrect statement she had done nothing on his

⁹ The Affidavit of Mailing, a two-page letter, a Notice of Complaint totaling six pages and a motion totaling two pages using a Court of Appeals caption is attached.

¹⁰ This letter is attached.

¹¹ His letter to me is attached as are further letters and documents that are more properly addressed to Ms. Davis; copies have been shared with the Client Assistance Office.

case. Third, he did not allege any dishonest conduct. Fourth, the primary purpose of his correspondence was to complain about what he calls the “Clique of Clackamas County v. Yang 96-0718,” which is not the subject of this complaint.¹² Fifth, although he alleges he tried to get in touch with her, he provides no details. He provided me with copies of letter she sent to him, but no copies of letters he sent to her.

Mr. Yang admits he learned of his loss on May 21, 2015 when he was notified by the Bar that Ms. Gerber was transferred to involuntary inactive membership on November 20, 2014.¹³ In the letter he wrote me, Mr. Yang stated he learned of the ability to get money from the Client Security Fund from two other inmates, Mr. Scott¹⁴ and Mr. Kevin.¹⁵ He states he did not follow-up on the notification because he has patience and wanted to give people the chance to reform them selves. He does not explain why he waited until July 2017 before filing the claim or what led him to decide to file the claim at the time he did. Mr. Scott and Mr. Kevin received their money in 2016; Mr. Yang does not explain why he waited another year before filing his claim since they are supposedly the ones who recommended he make the filing. He had to know people were getting money a full year before he filed his claim.

I am mindful we have language problems here. However, that does not fully explain the delay. He says Ms. Gerber did nothing on the file, which means he waited from 2011 to 2017 before acting. We have a letter from her in 2013, which means she stopped work in that time frame, which is still four years before he filed the claim. He waited just over two years from the time he was notified by the Bar Ms. Gerber was inactive before filing this claim without a good reason for waiting. He waited a year after he knew people were receiving money. We are tasked to know the law. I do not think the claimant gets a do over because the letter from the Bar did not speak of the two-year limitation.

If members of the committee are inclined to waive the two-year statute, there one other issue needs to be addressed. The following rules apply to cases in which the allegation is that my lawyer did not on my case other than to take my money. Rule 2.2 states in part:

¹² Susan Gerber had nothing to do with his original conviction in the late 90s.

¹³ I have looked at the CAO file. Not only does it contain the exchange of letters from 2017, it also contains a copy of the letter to Mr. Yang that was sent May 21, 2015, which is the date mentioned on the claim form. The 2015 letter does recommend Mr. Yang file a claim with the Client Security Fund. The letter does not discuss anything about timing. The claim that was eventually sent to the Bar notes it is the 2012 version of the form. Thus, I conclude the claimant used the form sent to him in 2015.

¹⁴ The report on Scott Graue v. Susan Gerber was presented at the January 2016 meeting and the claim was approved in the amount of \$12,500.

¹⁵ The report on Kenneth Middleton v. Susan Gerber is dated February 29, 2016; the recommendation to pay \$8500 was approved at the March 2016 meeting.

“2.2.1 In a loss resulting from a lawyer’s refusal or failure to refund an unearned legal fee, “dishonest conduct” shall include (i) a lawyer’s misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned.

“2.2.2 A lawyer’s failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

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

This is an earned upon receipt fee agreement. The agreement provides the claimant is to pay the full fee for the time spent by the lawyer, up to the maximum fee noted in the agreement. The claimant pays the full fee, unless the lawyer quits early and has not put in enough time to cover the full amount. There is no indication the lawyer will ever reimburse an unearned amount; the fee is earned upon receipt. By the way, this agreement is different from the agreement used by Ms. Gerber when she went out on her own.

Looking at the agreement, 2.2.1 does not apply because there is no unearned fee.

Looking at 2.2.2, the failure to complete an engagement is not dishonest conduct absent evidence of misrepresentation, false promise or dishonest conduct. His only allegation is that she failed to complete the engagement. He initially said she did nothing; we can tell she did something on this matter. There are no allegations to invoke this rule.

Looking at 2.2.3, reimbursement is only provided if the lawyer provided no services or the services were minimal or insignificant. She worked on this matter during three years, draft affidavits and sent her client letters. While she did not complete the assignment, I cannot say her work was minimal or insignificant.

Looking at these latter rules, even if the two-year statute is waived, reimbursement is still not required.

FINDINGS AND CONCLUSIONS

1. Susan Gerber was admitted to practice law in the state of Oregon at most times pertinent to this matter.
2. Wai Thomas Yang retained Susan Gerber in 2011 to investigate and prepare a post conviction relief petition; Ms. Gerber was working for the Rader Stoddard firm at the time of retention.
3. The amount paid to Rader, Stoddard & Perez was only \$5000.
4. Ms. Gerber worked on the file between 2011 and 2013; there is no evidence she filed a petition for post conviction relief.
5. Ms. Gerber was placed in involuntary inactive status on November 20, 2014.
6. Mr. Yang was advised Ms. Gerber could not longer practice law in the state of Oregon no later than May 21, 2015.
7. Other than a phone call placed by his niece on an unknown date, Mr. Yang made little effort that is documented to contact Ms. Gerber after he received the May 21, 2015 notification she had been placed in inactive status; nor is there evidence of much of an effort to make contact between 2013, when he received his last letter from Ms. Gerber and the date of the Bar's notification.
8. The explanation provided by Mr. Yang for his failure to contact the Bar sooner was his belief he should give her time to reform herself, would contact him or that he should be patient.
9. Mr. Yang failed to act within two years of the last time he heard from Ms. Gerber in 2013.
10. Mr. Yang failed to act within two years of the latest date he knew of his loss, 2015.
11. The only basis to waive the two year requirement are language issues and given the articulate nature of the letters he has sent in, the language issues are not an excuse for not filing the complaint earlier.
12. The fee agreement provides the fee is earned upon receipt; it does not provide for any reimbursement if the engagement is not completed.

13. Mr. Yang did not allege misrepresentation, false promise or dishonest conduct.
14. The services provided by Ms. Gerber were more than minimal or insignificant.
15. The primary concern of his correspondence in this matter relates to his original conviction, not any conduct from Ms. Gerber.
16. The claim should be denied.

AFFIDAVIT OF MAILING

CASE NAME: Clique of Clackamas County V. Yang, Wai Thomas

CASE NUMBER: #96-0718

COMES NOW, Wai Thomas YANG being duly sworn on oath, depose and say: That I am incarcerated by the Oregon Department of Corrections at O.S.P.

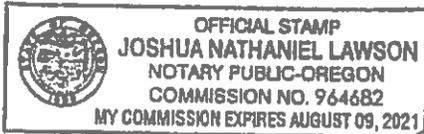
That on the 15 day of September, 2017, I personally placed in the Correctional Institution's mailing service A TRUE COPY of the following:

"It is a basic principle in law that a signature, conviction obtained under threat, conspiracy, duress or coercion is not binding on the signing party". Therefore, the ratification process was not legally concluded.

Notice of complaint, Seek restorative justice:RE: Litigant's Grievance: Clique of Clackamas County V. Yang, Wai Thomas case #96-0718.

I placed the above in a securely enclosed, postage prepaid envelope, to the person(s) named at the places addressed below:

Mr. Burris, Christopher Edward 704 Main street Ste 220 Oregon city, OR 97045 and Mr. Kraft, Wayne S. Clackamas County DA's office, 1610 Red soils CT Ste D, Oregon city, OR 97045



September 15, 2017
(Signature)

State of Oregon

County of Marion

Signed and sworn to (or affirmed) before me on September 15, 2017 by Wai Yang

Joshua Nathaniel Lawson
Notary Public-State of Oregon

My Commission expires: 8/9/2021

Ms. Hirschbil, Helen M.
CEO/Executive director
P. O. Box 231935
Tigard, OR 97281-1935

Dear Sir/Madam.

I am Yang, Wai Thomas. I have a nice family, three children and a wife. I do not speak or write English well, but I am a harmless person. I have been suffering injustice and abused by some individuals that put the laws into their own hands. As my English teacher said: "Regardless of what happened in the street or what the allegations are, when we bring it to court we must follow the law, if you do not follow the law, you have already defeated yourself, truthfully, we can not deny that, the law is our best witness and judge. This is what we call the rule of law in this country". Pettifogger Burris and Kraft, as we understand our past, you had treated me unethical, unprofessional and unlawfully. You need to correct your own fault or the state has an obligation to correct the problem.

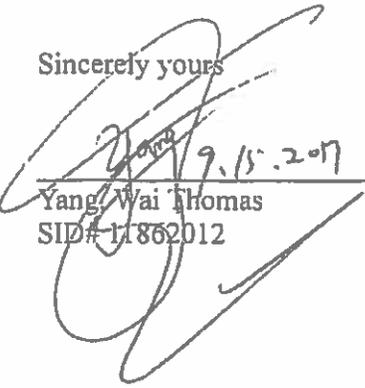
To whom it may concern and I am writing this communication with the hope that which is received in good faith and considered with the same good spirit. Thank you very much for your precious time and concern regarding this case. It is from the bottom of my heart that I thank you and I do appreciate all that you have done for justice. Who has the authority and courage to stand up against corruption in the past and present for our community? Who cares about our social injustice, especially minorities who are voiceless.

I am seeking justice from the Federal Government or State, because they have an obligation to provide and assist me in order to begin an independent investigation to solve my family's grievance, for which we continue to suffer for more than 21 years.

History has taught us that when faced with difficult decisions, a judge must handle all allegations. In the case at hand, a son-in-law of a Governor, has broken the law against a farmer. By law, the judge must punish the son-in-law of the Governor, and by doing so the judge would make the people happy. However, it may also cost the judge his career. But on the other hand, if he lets the case go, it will bring him into a harbour of injustice. For obvious reasons, this matter has become a difficult decision to make, causing sleepless nights and stressful days for the judge. The judge's wife has noticed that something was troubling her husband's mind, and when she asked her husband if something was wrong, he explained to her his difficult situation.

After listening to her husband, she says: "use different measures to fit different needs, do what is only within one's ability to do". Then she suggested that he remedy the victims grievance without having to punish the son-in-law of the Governor. By doing so the judge would distant himself from any habouring of injustice, he would also be warning the Governor's son-in-law of any future unlawful or embarrassment situation, and finally he would free the victims from their continuous suffering of injustice and abuse from the Governor's son-in-law. This way, it is beneficial to all parties.

Sincerely yours


9.15.2017

Yang Wai Thomas
SID# 11862012

Hirschbil, Helen M.
Attorney at law
P. O. Box 231935
Tigard, OR 97281

NOTICE OF COMPLAINT

Seek restorative justice:

RE: Litigant's Grievance: Clique of Clackamas County v. Yang #96-0718;

Dear: Sir/Madam

RE-officials: Burris, Watson, and Wayne, ask yourself, how many of you guys cowardly gang up on a harmless man (innocent), cowards, you guys are lawless. you have defeated yourself, the law is silent but powerful and it is our best witness and judge. You are a loser, redeem yourself. "Today not for the sake of your victims beg or sympathy, not for the sake of laws against, but for the sake of obtaining right from wrong to confer your own soul"(because your conscience knows who you are). Do not be cowardly anymore, no matter what cause you guys have for me (in the past unlawful treatment). Nobody is perfect, be manly, you shall speak the truth and the truth shall set you free. come face your victims and be lawful in solving this unhappy past, let the bright future come to us. Gentleman always have an open mind, may justice be mercy on you.

Real wisdom seeks to solve rather than to adhere to ignorance. On April 06, 1996, at about 11:20PM, I got a call from my friend Mr. Ma saying there had been an accident and that he needed me to meet him at the Seven-Eleven store near the Chinese restaurant in Lake Oswego. At about 12:45AM, April 07, 1996, Lake Oswego, the police arrested me and Clackamas County indicted me on case #96-0718 for a crime I did not commit and my trial date was set on June 04, 1996.

On May 31, 1996, Pettifoggers Burris, Watson and D.A. Wayne conspired in my case #96-0718 to deprive me of a fundamentally fair trial. They used the falsified replaced case #96-1071 which lead to my conviction (A right of fair trial is clearly established, if "at the time of the challenged conduct... every reasonable official would have understood that he was doing violated that right"). They unlawfully (scam) replaced case #96-0718 with case #96-1071 in which discovery and all documents

pertaining to the original case #96-0718 were destroyed which would have exonerated me. They unlawfully used falsified discovery and statements from case #96-1071 to accuse me in court which lead to my conviction. I have been incarcerated for over 21 years, my family has contacted lawyers to try to work on my case. Each time a lawyer contacts these clique, the lawyer quits representing me. I do not know what they talked about, but I understand that, after these men destroyed the original case #96-0718 (obstruction justice), my legal nightmare in limbo began and I have to face unlawful accusations and continue being incarcerated by clique's unlawful practicing.

When an official is corrupt, it diminishes his authority and he loses his respect; History has taught us when a king is corrupt, he becomes a mad dog, it diminishes his prestige and he loses his empire. In my case #96-0718, court appointed pettifogger (Burriss, Christopher Edward #814787) and the D.A. (Wayne Kraft) who were responsible for prosecuting case #96-0718 unlawfully conspired against me and went beyond the scope of their authority and jurisdiction. The officer of today not only persists in his crimes, but tries to gloss over them. As I understand, law and knowledge will guard me from the ways of evil men, it will guard me from men who twist their words, men like pettifogger leave the straight paths to walk in dark ways, they take delight in doing what is unlawful, they take joy in twisting everything around, their ways are crooked. This is not coincidence of how Jesus felt when he said: "Oh lord forgive them, because they do not know what they are doing!" Today my feelings are the same. Justice! Let there be mercy on them, because narrow minded people have carried the disease of prejudice and greediness in their hearts, and they do not know when they have abused people with their authority as men of the law and regardless themselves break the law often! Cowards do not follow the law, and they take joy in harming others all the time without remorse or compassion (because, in this nation, no man or law dares to judge them; only their victims speak out and cry for justice).

Perhaps, not justice itself, even a little boy knows justice itself would not dare to prosecute a case, if that meant violating the rule of law ordained by the government to put a man in prison. If it does, the court employees who broke the law become criminals against the government they are paid to protect. Officers should know that the basic principle of injury to someone who has never offended you is always wrong and criminal, immunity can be granted to those who follow the letter and spirit of the law. What is lawful or unlawful? Since May 31, 1996 this case has been hard for me to understand. (1) why did the clique conspired to destroy the original discovery and all documents pertaining to case #96-0718? Where there is smoke, there is fire. (Lawfully, this case was not qualified to bring to court in the first place). (2) why did they falsifying discovery with a replacement case #96-1071 instead of the

original case #96-0718 less than two weeks before my trial date of June 04, 1996? Thereof, the court employee become a law breaker, it breeds contempt for law, it invites every man to become a law unto himself, it invites anarchy (when an officer do not follow the law, it loses his authority and becomes a criminal). Indeed, this corrupted officer has chosen to put the law into his own hands, they have used my language barrier as a reason to take advantage of case #96-0718 illegally (scam and abused me). This clique has committed all kinds of crime against me. As for me, I never waived any of my constitutional rights provided by the U.S. government. I know that I have been prejudiced by the clique of Clackamas County court, not the law. Justice saw to it, this case should suffer no injustice, justice stood covering both parties with a strong shield, permitting neither to triumph unjustly. As the old saying goes, "no matter how small the needle a chicken can not swallow it (as long as I obey the law)". The law is the one I will trust in, it will keep my feet from being caught in a trap, and the law puts foolish officers to shame. I stand alone with the law against corruption and deception. I have never been afraid to be in prison, the path I do what is right is like the first gleam of dawn, it shines brighter and brighter until the full light of day (justice comes); but the way of pettifogger does what is unlawful is like deep darkness, they do not know what makes them trip and fall (judgment day). Because I know I did not have any victims, God and the law has been my constant companion and ally (on my side).

I was convicted in Clackamas County by the clique's unlawful process in violation of the Due Process Clause of the 14th Amendment. I am to be released in April 2026, but I can not in good conscience walk out of this place without knowing if the corrupt individuals who did this crime against me and my family will be held accountable by justice and be punished to the full extent of the law. If justice does not prevail, it is because of its bias or lack of authority to correct its inferior officers wrong doing. (Therefore, the lower courts are formed in a slovenly, haphazard manner, resulting in utter disorganization); perhaps something happened to the smoke which caused it to enter the bush and become mist (appeal: from 1997 to 2000, harbour). I want to remain in prison until these corrupt officers above the law are brought to justice. Otherwise, how can justice prevail or fairness for millions of prisoners who have committed less offensive crimes and are locked up in prison? Plus, billions of their families, relatives, and friends also suffer injustice with them. From ancient to present day, what does the government need a high court for? It's main purpose is to punish the lower court employees when they break the law which the government set in place and keep the law in order. In this regard perhaps because of a lack of leadership (in the past decades), it should be mentioned that people and scholars have pointed out the growing dissatisfaction of the people with the abuse of power and

misgovernance by officials at the local level. If the government is aggressively promoting the “rule of law” which has been a loud and clear message that violation of the rule of law by even government officials would lead to severe punishment if a strong leadership existed.

I have always believed that justice would be delayed, but never denied. Therefore, Mahatma Gandhi has taught me to be compassionate, and to maintain patience as my strength against injustice and tyranny. Since only cowardly, wicked men resort to violence and lies to solve their problems and earn their curse in the process, the more illegal they conduct themselves the harder they will fall. They have done that to themselves. It boils down to being selfish and doing what they want to do and not caring for anyone else (superior) or law. This country was founded upon the principles of liberty, rule of law, and justice. For government's prestige sake, the high court should uphold the rule of law. In reality, any misjudged case would not only harm litigants and their families, but also seriously damage the credibility of judicial authorities! Judicial justice is the life-line of the rule of law, to prevent and correct any miscarriage of justice is the bottom line for the high court when it performs the highest supervision of duty. By law, the high court shoulders the responsibility for supervision of other judicial authorities and prosecutors. It will carefully review all complaint material, once any sign of due process was in violation or misjudgment is found. The high court will launch further probes, if the high court believes the trial court made wrong verdicts, or due process was in violation, it will protest in a timely manner and put forward suggestions for correction. The high court will strictly examine the facts, evidence, procedures and laws applied to exclude illegal evidence, illegal discovery, and any kinds of falsified documents. The high court will try to use the most accurate accusation to ensure that all cases can withstand legal scrutiny and the test of time, a long term mechanism to prevent injustice from the trial court occurring is conducive to the development of the government's rule of law. Without which, this great and noble country's court house would be a den of thieves and scum.

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litigants are not trouble, admitting there is a problem and then solving it is all people want and it is what high courts are supposed to do!

For protect its prestige sake, "To correct one case of miscarriage of justice is more important and valuable than to punish a thousand criminals. People who do not train or understand the law, this is truth of what literate call them innocent people and it is an excuse for them violated the law once. But not for the officers, because they have been training with the law, and represented the state and get paid well for their duty to maintain law & order without prejudice as a standard for the government's stipulate. They understand the law and are supposed to lead by example for others to follow, but some of them intentionally break the law. That is more serious and dangerous against the government which they work for, it corrupts the integrity and security of the whole justice system, etc. In the end justice should prevail and the government should crack-down on corrupt officers. Throughout time this is the greatest test and shows the merits of the government from ancient to present day." We can not deny that. The corrupt officers are trouble makers, same as court unfairness and corruption. They benefit themselves as county corrupt employees and fail to live by the rule of law the government ordained (they are unqualified for official job).

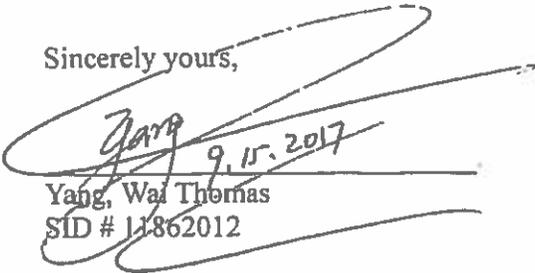
As I understand, on April 25, 1996 my family retained attorney Mr. Ken Morrow, after Mr. Morrow reviewed my case #96-0718, he said: "we are ready for trial on June 04, 1996, because the state has no legal ground to indicted you in this case in the first place, it only wastes tax-payers money and time, any conviction in case #96-0718 will be illegal (in appeal court)". In Mr. Morrow's experience and theory. Therefore, without the rule of law and justice, there is no government, in this regard, it is wrong to destroy the original case #96-0718; then make up a falsified replacement case #96-1071 against me in court (it is an obvious scam), those clique taking it as license to commit crimes instead of protect the laws. Not only for my sake, we must remember our laws and constitution to the government. For government's sake, they have to recognize themselves as an officer, not criminals, for fear that worse should befall to these who break the laws which the state give them a license to practice and to obey. This truth is our salvation!

What caused case #96-1071 injustice and crime of prosecution itself? The root of injustice and crimes are: (1) conspired to destroy the original case #96-0718, (2) make up a falsified replacement case #96-1071, (3) used perjury documents and testimony, (4) used scam case #96-1071 for prosecution with fake evidence. All above mentioned are injustice and criminal for the prosecution itself. It all proof that the court of Clackamas appointed pettifogger (Burris) conspired with the D.A. (Wayne) in

my case #96-0718, by destroying and falsifying the facts of the original case. They illegally and effectively replaced case #96-0718 with #96-1071, they falsified the facts in the discovery, and eventually falsified the documents of case #96-1071 that accuse me in court. Even with this corruption and concerted efforts by the Prosecutor and court of Clackamas appointed pettifogger (Burriss) together, they can unlawfully change any documents they want in their own trial court, but they can not change the truth and law stipulate by the Government ordained which give equality to all. Even the justice would not dare to act without clear evidence 'being substantial' (it maintains self prestige and integrity for all). No matter how they used the illegal and falsified case #96-1071 against me in court, but the victims of the alleged crimes claims. They described that the perpetrator had a gun and a knife, also that he had stolen from them \$10,000. The fact, contradictory, none of this substantial evidence I had ever touched or was found in my possession, and my DNA was not present anywhere near them, including the knife found at the crime scene. It is the law and truth that puts foolish pettifogger to shame (without nepotism, they would never be qualified for a law enforcement job).

It is absolutely necessary to give the final say to the high authorities, since anyone of us could be wrongfully diagnosed one day. In this regard, I am a subject of this government and I do have the legal right to demand justice, and I repeat, the justice must have evidence; and not just any evidence, but substantial proof, he would be mad to act without it (Only foolish people whom have no self respect do-law & order lack of responsibility). After more than two decades, I am still in doubt, whether or not the police officers withheld substantial evidence or the perpetrator got away with it. (the money \$10,000 and a gun). The police, court of Clackamas appointed (Burriss) pettifogger and the D.A. (Wayne) of the trial court have the responsibility to adhere to my demands for justice, and why they illegally put me in prison and continue to hold me for a crime without truth or any substantial evidence? (if an animal resembles a palm fruit cluster, how can it be butchered? when the lower court falls into corrupted justice is born).

Sincerely yours,



9.15.2017
Yang, Wai Thomas
SID # 11862012

IN THE COURT OF APPEALS OF THE STATE OF OREGON.

STATE OF OREGON)
)
 V.) NO: 96-0718, 96-1071, CA-A99237
)
 WAI THOMAS YANG)

The petitioner moves the Court order to postpone any proceedings on this case's until the case have legal counsel and an interpreter without this here have no way to proceed or understanding and legal defending this cases, the right of Counsel is guarantee by both States Constitutional protection clause issue on the legal process.

The following sources for information, records document etc. That I am not able to provide.

- | | |
|--------------------------|-------------------------|
| Physicians | Attorneys |
| Medical Institutions | Psychologist |
| Employers | Educations Institutions |
| Finance Companies | Correctional Facilities |
| Law Enforcement Agencies | Court record |
| | Mental Hospitals |

This information is needed my Attorney to collecting and may better represent me in pending legal matter

I know that the Court must uphold of the fair and just way to proceed. Please due procedure with this legal matter.

Authorities:

- | | |
|--|-----------------------|
| U.S.C. 1st, 5th, 6th, 8th, 9th, 13th and 14th. Amendments. | |
| ORS: 11th, 12th, and 7th, section 8 | |
| ORS: 136.290 | ORS: 1.3000 |
| ORS: 185.310 | ORS: 137.651 et seg |
| ORS: 1.410 To 1.480 | ORS: 36.100 TO 36.210 |
| ORS: 185.410 | ORS: Chapter 185 |
| ORS: 1.725 to 1.750 | Common Law |
| ORS: 1.810 | |

Respectfully submitted by

Wai Thomas Yang
Petitioner pro se

AFFIDAVIT OF MAILING

CASE NAME: Clique of Clackamas County V. Yang, Wai Thomas

CASE NUMBER: #96-0718

COMES NOW, Wai Thomas YANG being duly sworn on oath, depose and say: That I am incarcerated by the Oregon Department of Corrections at O.S.P.

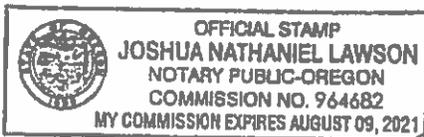
That on the 15 day of September, 2017, I personally placed in the Correctional Institution's mailing service A TRUE COPY of the following:

"It is a basic principle in law that a signature, conviction obtained under threat, conspiracy, duress or coercion is not binding on the signing party". Therefore, the ratification process was not legally concluded.

Notice of complaint, Seek restorative justice:RE: Litigant's Grievance: Clique of Clackamas County V. Yang, Wai Thomas case #96-0718.

I placed the above in a securely enclosed, postage prepaid envelope, to the person(s) named at the places addressed below:

Mr. Burris, Christopher Edward 704 Main street Ste 220 Oregon city, OR 97045 and Mr. Kraft, Wayne S. Clackamas County DA's office, 1610 Red soils CT Ste D, Oregon city, OR 97045



September 15, 2017
(Signature)

State of Oregon

County of Marion

Signed and sworn to (or affirmed) before me on September 15, 2017 by Wai Yang

Joshua Nathaniel Lawson
Notary Public-State of Oregon

My Commission expires: 8/9/2021

Ms. Hirschbil, Helen M.
CEO/Executive director
P. O. Box 231935
Tigard, OR 97281-1935

Dear Sir/Madam.

I am Yang, Wai Thomas. I have a nice family, three children and a wife. I do not speak or write English well, but I am a harmless person. I have been suffering injustice and abused by some individuals that put the laws into their own hands. As my English teacher said: "Regardless of what happened in the street or what the allegations are, when we bring it to court we must follow the law, if you do not follow the law, you have already defeated yourself, truthfully, we can not deny that, the law is our best witness and judge. This is what we call the rule of law in this country". Pettifogger Burris and Kraft, as we understand our past, you had treated me unethical, unprofessional and unlawfully. You need to correct your own fault or the state has an obligation to correct the problem.

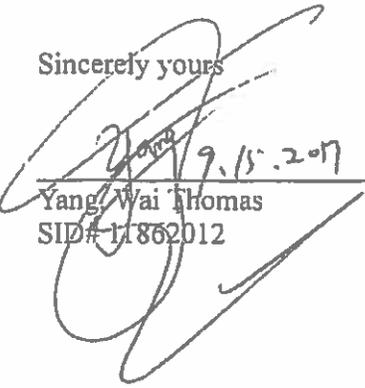
To whom it may concern and I am writing this communication with the hope that which is received in good faith and considered with the same good spirit. Thank you very much for your precious time and concern regarding this case. It is from the bottom of my heart that I thank you and I do appreciate all that you have done for justice. Who has the authority and courage to stand up against corruption in the past and present for our community? Who cares about our social injustice, especially minorities who are voiceless.

I am seeking justice from the Federal Government or State, because they have an obligation to provide and assist me in order to begin an independent investigation to solve my family's grievance, for which we continue to suffer for more than 21 years.

History has taught us that when faced with difficult decisions, a judge must handle all allegations. In the case at hand, a son-in-law of a Governor, has broken the law against a farmer. By law, the judge must punish the son-in-law of the Governor, and by doing so the judge would make the people happy. However, it may also cost the judge his career. But on the other hand, if he lets the case go, it will bring him into a harbour of injustice. For obvious reasons, this matter has become a difficult decision to make, causing sleepless nights and stressful days for the judge. The judge's wife has noticed that something was troubling her husband's mind, and when she asked her husband if something was wrong, he explained to her his difficult situation.

After listening to her husband, she says: "use different measures to fit different needs, do what is only within one's ability to do". Then she suggested that he remedy the victims grievance without having to punish the son-in-law of the Governor. By doing so the judge would distant himself from any habouring of injustice, he would also be warning the Governor's son-in-law of any future unlawful or embarrassment situation, and finally he would free the victims from their continuous suffering of injustice and abuse from the Governor's son-in-law. This way, it is beneficial to all parties.

Sincerely yours


9.15.2017
Yang Wai Thomas
SID# 11862012

Hirschbil, Helen M.
Attorney at law
P. O. Box 231935
Tigard, OR 97281

NOTICE OF COMPLAINT

Seek restorative justice:

RE: Litigant's Grievance: Clique of Clackamas County v. Yang #96-0718;

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litigants are not trouble, admitting there is a problem and then solving it is all people want and it is what high courts are supposed to do!

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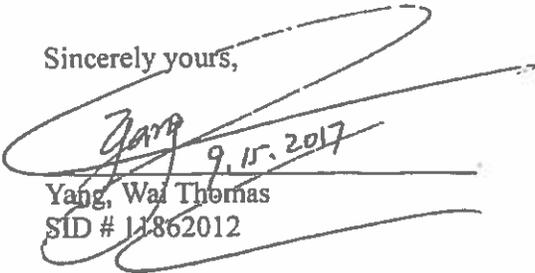
As I understand, on April 25, 1996 my family retained attorney Mr. Ken Morrow, after Mr. Morrow reviewed my case #96-0718, he said: "we are ready for trial on June 04, 1996, because the state has no legal ground to indicted you in this case in the first place, it only wastes tax-payers money and time, any conviction in case #96-0718 will be illegal (in appeal court)". In Mr. Morrow's experience and theory. Therefore, without the rule of law and justice, there is no government, in this regard, it is wrong to destroy the original case #96-0718; then make up a falsified replacement case #96-1071 against me in court (it is an obvious scam), those clique taking it as license to commit crimes instead of protect the laws. Not only for my sake, we must remember our laws and constitution to the government. For government's sake, they have to recognize themselves as an officer, not criminals, for fear that worse should befall to these who break the laws which the state give them a license to practice and to obey. This truth is our salvation!

What caused case #96-1071 injustice and crime of prosecution itself? The root of injustice and crimes are: (1) conspired to destroy the original case #96-0718, (2) make up a falsified replacement case #96-1071, (3) used perjury documents and testimony, (4) used scam case #96-1071 for prosecution with fake evidence. All above mentioned are injustice and criminal for the prosecution itself. It all proof that the court of Clackamas appointed pettifogger (Burris) conspired with the D.A. (Wayne) in

my case #96-0718, by destroying and falsifying the facts of the original case. They illegally and effectively replaced case #96-0718 with #96-1071, they falsified the facts in the discovery, and eventually falsified the documents of case #96-1071 that accuse me in court. Even with this corruption and concerted efforts by the Prosecutor and court of Clackamas appointed pettifogger (Burriss) together, they can unlawfully change any documents they want in their own trial court, but they can not change the truth and law stipulate by the Government ordained which give equality to all. Even the justice would not dare to act without clear evidence 'being substantial' (it maintains self prestige and integrity for all). No matter how they used the illegal and falsified case #96-1071 against me in court, but the victims of the alleged crimes claims. They described that the perpetrator had a gun and a knife, also that he had stolen from them \$10,000. The fact, contradictory, none of this substantial evidence I had ever touched or was found in my possession, and my DNA was not present anywhere near them, including the knife found at the crime scene. It is the law and truth that puts foolish pettifogger to shame (without nepotism, they would never be qualified for a law enforcement job).

It is absolutely necessary to give the final say to the high authorities, since anyone of us could be wrongfully diagnosed one day. In this regard, I am a subject of this government and I do have the legal right to demand justice, and I repeat, the justice must have evidence; and not just any evidence, but substantial proof, he would be mad to act without it (Only foolish people whom have no self respect do-law & order lack of responsibility). After more than two decades, I am still in doubt, whether or not the police officers withheld substantial evidence or the perpetrator got away with it. (the money \$10,000 and a gun). The police, court of Clackamas appointed (Burriss) pettifogger and the D.A. (Wayne) of the trial court have the responsibility to adhere to my demands for justice, and why they illegally put me in prison and continue to hold me for a crime without truth or any substantial evidence? (if an animal resembles a palm fruit cluster, how can it be butchered? when the lower court falls into corrupted justice is born).

Sincerely yours,



9.15.2017
Yang, Wai Thomas
SID # 11862012

Mr. Ronald W. Atwood, P. C.
Attorney at Law
P. O. Box 40028
Portland, OR 97240

RECEIVED

AUG 30 2017

Ronald W. Atwood, PC

Dear Mr. Ron:

I am writing this communication with the hope that which is received in good faith and considered with the same good spirit! It is my apologies for taking such a long time to respond back to your letter, I am in constant need of assistance with all my correspondence due to my lack of fluent English, I am going to type it up as quickly as I can send it to you. Thank you very much for your precious time and concern regarding my case. It is from the bottom of my heart that I thank you for your help and I do appreciate all that you have done for me.

(answer to the first question) I talk to my niece on the phone and ask for the receipt. She told me since she move twice to Washington then she move again to California. She can not find the receipt right now, but as soon as she find it, she will mail it to me. (In 2011 my family retained Ms. Gerber for \$10.000 to represent me in my post-conviction relief proceeding. In 2011 and 2013 my niece sent twice five thousand dollars to Ms. Gerber).

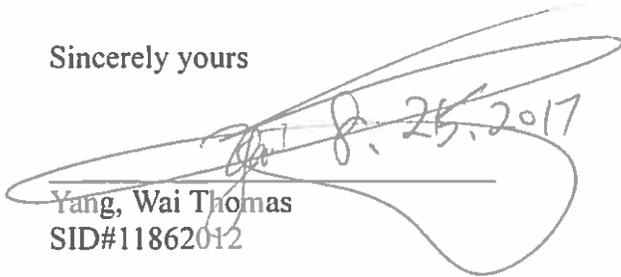
(answer to the second question) (a), (b), (c). Yes, I have letters & documents. The copies send to you with this letter together. (d) No.

(answer to the Third question) (a) what did you learn? I learn...Mr. Scott, an inmate her at O.S.P. Told me, he paid Ten thousand dollars to retain Ms. Gerber to represent him and Ms. Gerber had done a good job on his case. (b) how did you learn it? Another inmate, Mr. Kevin told me, Ms. Gerber had done a bad job on his case and he told his lawyer and was able to get his money back.

(answer to the fourth question) On May 21, 2015, I got a letter from Oregon State Bar which said: "By order of the Oregon Supreme court, pursuant to BR 3.2 Ms. Gerber was transferred to an involuntarily inactive membership status with the Oregon State Bar on November 20, 2014. As a result she may not practice law in Oregon and can not return to active bar member status without submitting a formal application for reinstatement, which will require her to show good moral character, general fitness to practice and that her resumption of justice of law will not be detrimental to the administration of justice or the public interest". In this regard, I always have had patience to wait until others have the opportunity to reform themselves, perhaps she might have a chance for reinstatement, so that she can

work on my case without any negative impact. In my life time, I always look for positively within others. Also here, it is very difficult to find someone who can understand my language and can help me.

Sincerely yours

A handwritten signature in black ink, which appears to be 'Wai Thomas', is written over a horizontal line. To the right of the signature, the date '8.25.2017' is written in the same ink. The signature and date are partially enclosed by a large, loopy scribble that extends to the right and then loops back under the signature.

Yang, Wai Thomas
SID#11862012

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Attorney at Law
P. O. Box 40028
Portland, OR 97240

RECEIVED

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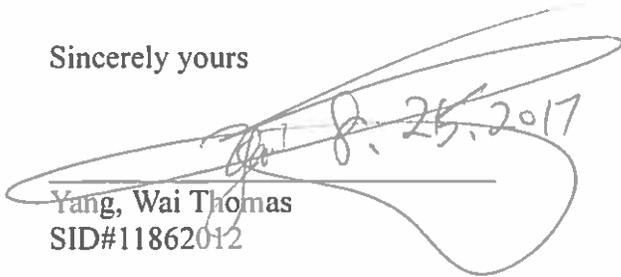
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Yang, Wai Thomas
SID#11862012

May 21, 2015

Received via e-mail

SEP 18 2017

Ronald W. Atwood, PC

Wai T. Yang
OSP #11862012
2605 State Street
Salem, OR 97310-0505

Re: **Subject: LDD 1500653**
Susan R. Gerber (Wai T. Yang)

Dear Mr. Yang:

The Oregon State Bar has received your recent correspondence concerning Susan R. Gerber.

The Client Assistance Office (CAO) is responsible for reviewing concerns regarding Oregon lawyers. Under Bar Rule of Procedure (BR) 2.5 and as resources permit, CAO determines the manner and extent of review required to determine whether there is sufficient evidence to support a reasonable belief that misconduct may have occurred warranting a referral to Disciplinary Counsel's Office. Misconduct means a violation of the rules of professional conduct and applicable statutes that govern lawyer conduct in Oregon.

By order of the Oregon Supreme Court, pursuant to BR 3.2, Ms. Gerber was transferred to an involuntarily inactive membership status with the Oregon State Bar on November 20, 2014. As a result, she may not practice law in Oregon and cannot return to active bar member status without submitting a formal application for reinstatement, which will require her to show good moral character, general fitness to practice, and that her resumption of the practice of law will not be detrimental to the administration of justice or the public interest. BR 8.1(a)(vii); BR 8.1(b). However, it also means that disciplinary investigations or proceedings are held in abeyance until that status changes. If Ms. Gerber applies for reinstatement, I expect that she will be required to address the allegations that are held in abeyance prior to her reinstatement. We have referred your correspondence to Disciplinary Counsel to be held for investigation when investigation is permitted.

Since your correspondence includes allegations that Ms. Gerber has taken money for services that were never provided, I enclose information and an application form for the Bar's Client Security Fund (CSF). The CSF was created to help reimburse clients who lose money or property as a result of dishonest conduct by their lawyer. Because the CSF claim process is not a disciplinary investigation or proceeding, you may pursue that claim without awaiting a further order from the court.

Wai T. Yang
Page 2

If you need further assistance from an attorney, you should retain a new attorney or ask the court before whom your petition is pending to appoint an attorney for you. You should also contact that court for information regarding the status of your post-conviction matter.

Thank you for notifying us of your concerns.

Yours,

Linn D. Davis
Assistant General Counsel
Ext. 332

LDD/jmm
Enclosure

cc w/encl: Wayne Mackeson, Attorney at Law

E-mail submissions to: cao@osbar.org Use subject line: LDD 1500653

May 21, 2015

Received via e-mail

SEP 18 2017

Ronald W. Atwood, PC

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Assistant General Counsel
Ext. 332

LDD/jmm
Enclosure

cc w/encl: Wayne Mackeson, Attorney at Law

E-mail submissions to: cao@osbar.org Use subject line: LDD 1500653



Ronald W. Atwood, P.C.

Attorney at Law

P.O. Box 40028
Portland, OR 97240-0028
(503) 525-0963
Fax (503) 525-0966
E-mail: ratwood@ronaldwatwood.com

Ronald W. Atwood **~

Licensed in Oregon*
Washington^ and
Montana~

Legal Assistants

Sara Turner

Emily Craft

Jessica Woods

Katelyn Steiger

September 21, 2017

Mr. Wai Thomas Yang
SID 11862012
Oregon State Penitentiary
2605 State St.
Salem, OR 97310-0505

Re: Claimant : Wai Thomas Yang
Lawyer : Susan R. Gerber
CSF Claim No. : 2017-28

Dear Mr. Yang:

I received your first letter August 30, 2017. Thank you for sending it to me and for including documents sent to you by Susan Gerber. I do have a few questions for you.

First, I understand you felt you could be patient to allow her to reform herself. Why then did you in July of this year decide to finally file a claim knowing for two years she could not practice law?

Second, I understand you received records by the Oregon State Bar in May of 2015 that advised you Ms. Gerber was unable to practice law, but that you could file a claim with the Client Security Fund if you thought she owed you money after failing to perform the work she stated she would perform for you. When you received that information in May 2015, did you review it and why did you not file a claim then?

Third, it looks from the information you sent us that Ms. Gerber worked on your case in 2011, 2012 and 2013. Did you make any efforts to follow-up with her between 2013 and 2015 when you learned she was unable to practice law?

Fourth, have you at any time reached out to Ms. Gerber since 2015 to try to get your money back?

Mr. Wai Thomas Yang
September 21, 2017
Page 2

Fifth, during 2011, 2012 and 2013 when Ms. Gerber was working on your case, did you receive any billing information from Susan Gerber or the law firm she was working for? I ask because the money you sent should have been placed in a client trust account and then transferred to their business account as Ms. Gerber worked on the matter. You should have received a written notice when they moved money from one account to the other.

Fifth, when Ms. Gerber left the Rader, Stoddard & Perez firm, did she take this file with her or did it stay with that firm?

I look forward to hearing from you.

Very truly yours,

RONALD W. ATWOOD, P.C.

A handwritten signature in cursive script that reads "Ronald W. Atwood". The signature is written in dark ink and is positioned above the typed name.

RONALD W. ATWOOD
RWA/kps



Ronald W. Atwood, P.C.

Attorney at Law

P.O. Box 40028
Portland, OR 97240-0028
(503) 525-0963
Fax (503) 525-0966
E-mail: ratwood@ronaldwatwood.com

Ronald W. Atwood **~

Licensed in Oregon*
Washington^ and
Montana~

Legal Assistants

Sara Turner

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Jessica Woods

Katelyn Steiger

September 21, 2017

Mr. Wai Thomas Yang
SID 11862012
Oregon State Penitentiary
2605 State St.
Salem, OR 97310-0505

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Lawyer : Susan R. Gerber
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RONALD W. ATWOOD
RWA/kps

Linn D. Davis
Assistant General Counsel
P.O. Box 231935
Tigard, OR 97281-1935



RE: Litigant's Grievance: Clique of Clackamas county v. Yang 96-0718;

RE: subject LDD #1500653 Ms. Susan R. Gerber (Wai T. Yang)

In 2011 my family retained Ms. Gerber for \$10,000 to represent me in my Post-conviction relief proceedings. It has been several years now and I have not been provided any information in regards to the status of my case. I have not received any documentation or pleadings filed with the court. It is not my intention to accuse her of any negligence or professional malpractice; however, I would like to be reimbursed if she has no time to work on my case and adequately represent me, because she has been suspended from practicing. It has been a routine occurrence for lawyers to take my family's money without ever having fulfilled their legal obligation, the cost has been a tremendous burden on my family. I have never fired any lawyer that my family retained because I honestly believed that justice would prevail, I am now of the opinion that these lawyers should have return the money that they took from my family, because they failed to provide me adequate representation.

In my personal experience, court appointed lawyers are corrupt more often than not by virtue of their loyalty to the state judiciary. Court appointed lawyers earn their living by taking advantage of the legally illiterate and naive (because innocent people are so easy to scam). In my case # 96-0718, court appointed pettifogger (Burriss, Christopher Edward #814787) and the D.A. (Wayne Kraft) who were responsible for prosecuting case #96-0718 unlawfully conspired against me and went beyond the scope of their authority and jurisdiction. Whether true or not? This is not coincidence of how Jesus felt when he said: "Oh lord forgive them, because they do not know what they are doing!" today my feelings are the same. Law and justice! Let there be mercy on them, because they have carried disease of prejudice and greediness in their hearts, and they do not know when they have abused people with their post as men of the law and regardless themselves break the law often! Cowards do no follow the law, and they like to harm others all the time without remorse or compensations.

Perhaps, not justice itself, even a little boy knows justice itself would not dare to prosecute a case, if that meant violating the rule of law established by government to put a man in prison. If it does, the court employees who broke the law become criminals themselves against the government they are paid to uphold. Officers should know that the basic principle of injury to someone who has never

offended you is always wrong and crime, immunity can be granted to those who follow the letter and spirit of the law. What is lawful or unlawful? From the beginning this case has been hard for me to understand. (1) why clique conspired to destroy the original discovery and all documents pertaining to case #96-0718? (2) why they made up falsified discovery with a replacement case # 96-1071 instead of the original case # 96-0718 less than two weeks before my trial date of June 04, 1996? Because of my language barrier, they use it as a reason to take advantage of case #96-0718 illegally and abused me. These clique have committed all kinds of crime against me. As for me, I never waived any of my constitutional rights provided by the government established. I know that I have been prejudiced by clique of Clackamas county court, not the law. I stand alone with the law against corruption and deception. I have never been afraid to be in prison, because I know I did not have any victims, God and the law has been my constant companion and ally.

I was convicted in Clackamas county by clique's unlawful process in violation of the Due Process Clause of the 14th Amendment. I am to be released in April 2026, but I can not in good conscience walk out of this place without knowing if the corrupt individuals who did this crime against me and my family will be held accountable by justice. And be punished to the full extent of the law. If justice did not prevail, its because of its bias or lack of authority to mend its own officials problem, perhaps something happened to the smoke which caused it to enter the bush and become mist. I want to remain in prison until these corrupt officers above the law are brought to justice. Otherwise, how can justice prevail or fairness for millions of prisoners who have committed less offensive crimes be locked up in prison? From ancient to present day, what does the government need a high court for? It's main purpose is to punish the lower court employees when they break the law which the government set in place and keep the law in order. In this regard, it should be mentioned that people and scholars have pointed out the growing dissatisfaction of the people with the abuse of power and misgovernance by officials at the local level. If the government is aggressively promoting the "rule of law" which has been a loud and clear message that violation of the rule of law by even government officials will lead to severe punishment.

I have always believed that justice would either be delayed but not denied. Therefore: Mahatma Gandhi has taught me to be compassionate, and to maintain patience as my strength against injustice and tyranny, since only cowardly, wicked men resort to violence and lies to solve their problems and earn their curse in the process, the more illegal they conduct themselves the harder they will fall. They've done that to themselves, it boils down to being selfish and doing what they want to do and not caring for anyone else or law. This country was founded upon the principles of liberty, rule of law, and justice. There must be... the high court should uphold the rule of law. In reality, any misjudged case

would not only harm litigants and their families, but also seriously damage the credibility of judicial authorities! Judicial justice is the life-line of the rule of law, to prevent and correct any miscarriage of justice is the bottom line for the high court when it performs the highest supervision of duty. By law, the high court shoulders the responsibility for supervision of other judicial authorities and prosecutors will carefully review all complaint material, once any sign of due process is in violation or misjudgment is found, the high court will launch further probes, if the high court believes the trial court made wrong verdicts, or due process is in violation, it will protest in a timely manner and put forward suggestions for correction. The high court will strictly examine the facts, evidence, procedures and laws applied to exclude illegal evidence, illegal discovery, and any kinds of falsified documents. The high court will try to use the most accurate accusation to ensure that all cases can withstand legal scrutiny and the test of time, a long term mechanism to prevent injustice from the trial court occurring is conducive to the development of the government's rule of law. without which, this great and noble country's court house would be a den of thieves and scum.

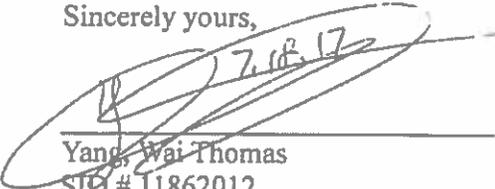
I will continue to look for pro Bono lawyers whose character is professional and who are honest and uphold protecting the rule of law also an interpreter who understands my language to work on my case. Therefore, the high authorities should really change their attitude toward litigants. By law, they are not doing litigants any favor. "It is their responsibility to address litigants grievances from the lower court's employees abuse and it is their duty to protect people, the integrity and security of justice as whole." This is what a wise leader does-for the interest of government and the rule of law, he cleans up his own back yard, because litigants are not trouble, admitting there is a problem and then solving it is all people want and it is what high courts are supposed to do!

"To correct one case of miscarriage of justice is more important and valuable than to punish a thousand criminals. People who do not train or understand the law, this is truth of what literate call them innocent people and it is a excuse for them violated the law once. But not for the officers, because they has been training with the law, and represented the state and get paid for their duty to maintain law & order without prejudice as a standard for the government's provided, they understand the law and are supposed to lead by example for others to follow, but some of them intentionally break the law, that is more serious and dangerous against the government which they work for, it corrupts the integrity and security of the whole justice system, etc. In the end justice should prevail and the government should crack-down on corrupt officers. Throughout time this is the greatest test and shows the merits of the government from ancient to present day." We can not deny that. The corrupt officers are trouble makers, same as court unfairness and corruption, they benefit themselves as county corrupt employees and fail to live by the rule of law the government established.

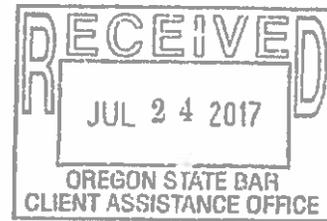
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I have the legal right to demand justice, after more than two decades, I am still in doubt, whether or not the police officers withheld evidence or the perpetrator got away with the evidence. (the money \$10,000 and a gun). The police, court of Clackamas appointed (Burriss) pettifogger and the D.A. (Wayne) of the trial court have the responsibility to adhere to my demands for justice, and why they illegally put me in prison and continue to hold me for a crime without truth or any evidence?

Sincerely yours,


Yang, Wai Thomas
SID # 11862012

Linn D. Davis
Assistant General Counsel
P.O. Box 231935
Tigard, OR 97281-1935



RE: Litigant's Grievance: Clique of Clackamas county v. Yang 96-0718;

RE: subject LDD #1500653 Ms. Susan R. Gerber (Wai T. Yang)

In 2011 my family retained Ms. Gerber for \$10,000 to represent me in my Post-conviction relief proceedings. It has been several years now and I have not been provided any information in regards to the status of my case. I have not received any documentation or pleadings filed with the court. It is not my intention to accuse her of any negligence or professional malpractice; however, I would like to be reimbursed if she has no time to work on my case and adequately represent me, because she has been suspended from practicing. It has been a routine occurrence for lawyers to take my family's money without ever having fulfilled their legal obligation, the cost has been a tremendous burden on my family. I have never fired any lawyer that my family retained because I honestly believed that justice would prevail, I am now of the opinion that these lawyers should have return the money that they took from my family, because they failed to provide me adequate representation.

In my personal experience, court appointed lawyers are corrupt more often than not by virtue of their loyalty to the state judiciary. Court appointed lawyers earn their living by taking advantage of the legally illiterate and naive (because innocent people are so easy to scam). In my case # 96-0718, court appointed pettifogger (Burriss, Christopher Edward #814787) and the D.A. (Wayne Kraft) who were responsible for prosecuting case #96-0718 unlawfully conspired against me and went beyond the scope of their authority and jurisdiction. Whether true or not? This is not coincidence of how Jesus felt when he said: "Oh lord forgive them, because they do not know what they are doing!" today my feelings are the same. Law and justice! Let there be mercy on them, because they have carried disease of prejudice and greediness in their hearts, and they do not know when they have abused people with their post as men of the law and regardless themselves break the law often! Cowards do no follow the law, and they like to harm others all the time without remorse or compensations.

Perhaps, not justice itself, even a little boy knows justice itself would not dare to prosecute a case, if that meant violating the rule of law established by government to put a man in prison. If it does, the court employees who broke the law become criminals themselves against the government they are paid to uphold. Officers should know that the basic principle of injury to someone who has never

offended you is always wrong and crime, immunity can be granted to those who follow the letter and spirit of the law. What is lawful or unlawful? From the beginning this case has been hard for me to understand. (1) why clique conspired to destroy the original discovery and all documents pertaining to case #96-0718? (2) why they made up falsified discovery with a replacement case # 96-1071 instead of the original case # 96-0718 less than two weeks before my trial date of June 04, 1996? Because of my language barrier, they use it as a reason to take advantage of case #96-0718 illegally and abused me. These clique have committed all kinds of crime against me. As for me, I never waived any of my constitutional rights provided by the government established. I know that I have been prejudiced by clique of Clackamas county court, not the law. I stand alone with the law against corruption and deception. I have never been afraid to be in prison, because I know I did not have any victims, God and the law has been my constant companion and ally.

I was convicted in Clackamas county by clique's unlawful process in violation of the Due Process Clause of the 14th Amendment. I am to be released in April 2026, but I can not in good conscience walk out of this place without knowing if the corrupt individuals who did this crime against me and my family will be held accountable by justice. And be punished to the full extent of the law. If justice did not prevail, its because of its bias or lack of authority to mend its own officials problem, perhaps something happened to the smoke which caused it to enter the bush and become mist. I want to remain in prison until these corrupt officers above the law are brought to justice. Otherwise, how can justice prevail or fairness for millions of prisoners who have committed less offensive crimes be locked up in prison? From ancient to present day, what does the government need a high court for? It's main purpose is to punish the lower court employees when they break the law which the government set in place and keep the law in order. In this regard, it should be mentioned that people and scholars have pointed out the growing dissatisfaction of the people with the abuse of power and misgovernance by officials at the local level. If the government is aggressively promoting the "rule of law" which has been a loud and clear message that violation of the rule of law by even government officials will lead to severe punishment.

I have always believed that justice would either be delayed but not denied. Therefore: Mahatma Gandhi has taught me to be compassionate, and to maintain patience as my strength against injustice and tyranny, since only cowardly, wicked men resort to violence and lies to solve their problems and earn their curse in the process, the more illegal they conduct themselves the harder they will fall. They've done that to themselves, it boils down to being selfish and doing what they want to do and not caring for anyone else or law. This country was founded upon the principles of liberty, rule of law, and justice. There must be... the high court should uphold the rule of law. In reality, any misjudged case

would not only harm litigants and their families, but also seriously damage the credibility of judicial authorities! Judicial justice is the life-line of the rule of law, to prevent and correct any miscarriage of justice is the bottom line for the high court when it performs the highest supervision of duty. By law, the high court shoulders the responsibility for supervision of other judicial authorities and prosecutors will carefully review all complaint material, once any sign of due process is in violation or misjudgment is found, the high court will launch further probes, if the high court believes the trial court made wrong verdicts, or due process is in violation, it will protest in a timely manner and put forward suggestions for correction. The high court will strictly examine the facts, evidence, procedures and laws applied to exclude illegal evidence, illegal discovery, and any kinds of falsified documents. The high court will try to use the most accurate accusation to ensure that all cases can withstand legal scrutiny and the test of time, a long term mechanism to prevent injustice from the trial court occurring is conducive to the development of the government's rule of law. without which, this great and noble country's court house would be a den of thieves and scum.

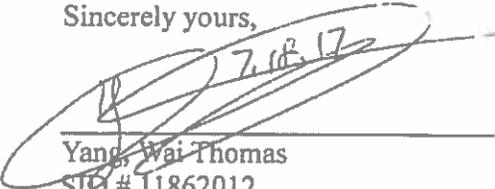
I will continue to look for pro Bono lawyers whose character is professional and who are honest and uphold protecting the rule of law also an interpreter who understands my language to work on my case. Therefore, the high authorities should really change their attitude toward litigants. By law, they are not doing litigants any favor. "It is their responsibility to address litigants grievances from the lower court's employees abuse and it is their duty to protect people, the integrity and security of justice as whole." This is what a wise leader does-for the interest of government and the rule of law, he cleans up his own back yard, because litigants are not trouble, admitting there is a problem and then solving it is all people want and it is what high courts are supposed to do!

"To correct one case of miscarriage of justice is more important and valuable than to punish a thousand criminals. People who do not train or understand the law, this is truth of what literate call them innocent people and it is a excuse for them violated the law once. But not for the officers, because they has been training with the law, and represented the state and get paid for their duty to maintain law & order without prejudice as a standard for the government's provided, they understand the law and are supposed to lead by example for others to follow, but some of them intentionally break the law, that is more serious and dangerous against the government which they work for, it corrupts the integrity and security of the whole justice system, etc. In the end justice should prevail and the government should crack-down on corrupt officers. Throughout time this is the greatest test and shows the merits of the government from ancient to present day." We can not deny that. The corrupt officers are trouble makers, same as court unfairness and corruption, they benefit themselves as county corrupt employees and fail to live by the rule of law the government established.

As I understand, on April 25, 1996 my family retained attorney Mr. Ken Morrow, after Mr. Morrow reviewed my case 96-0718, he said: we are ready for trial on June 04, 1996, because the state has no legal ground to indicted you in this case in the first place, it only wastes tax-payers money and time, any conviction in case 96-0718 will be illegal. What caused case 96-1071 injustice & crime of prosecution itself? The root of injustice & crime are: (1) conspiring to destroy the original case 96-0718, (2) made up falsified replacement case 96-1071, (3) used perjury documents & testimony, (4) used illegal case 96-1071 for prosecution without any evidence. All above mentioned are injustice & criminal for the prosecution itself. It all proof that the court of Clackamas appointed pettifogger (Burriss) conspired with the D.A (Wayne) in my case #96-0718, by destroying and falsifying the facts of the original case. They illegally and effectively replaced case #96-0718 with #96-1071, they falsified the facts in the discovery, and eventually falsified the documents of case #96-1071 that accused me in court. Even with this corruption and concerted efforts by the Prosecutor and court of Clackamas appointed pettifogger (Burriss) together, they can illegally change any documents they want in their own trial court, but they can not change the truth and law provided by the Government established which give equality to all. No matter how they used the illegal and falsified case # 96-1071 against me in court, but the victims of the alleged crimes claims. They described that the perpetrator had a gun and a knife, also that he stolen from them \$10,000. However, none of this evidence I had ever touched or was found in my possession, and my DNA was not present anywhere near them, including the knife found at the crime scene.

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Sincerely yours,



Yang, Wai Thomas
SID # 11862012

Received via e-mail
SEP 18 2017
Ronald W. Atwood, PC

Oregon State Bar

August 14, 2017

Wai T. Yang
OSP #11862012
2605 State Street
Salem, OR 97310

Re: Susan R. Gerber (Wai T. Yang)

Dear Mr. Yang:

On November 20, 2014, Ms. Gerber was transferred to involuntary inactive Bar membership status. I have enclosed a copy of the Supreme Court's order. Ms. Gerber remains on inactive status due to disability and, as a result, this office may not require her to respond in substance to the allegations raised in your complaint. However, the information you have provided will remain a part of her membership file and, if Ms. Gerber applies to be reinstated to active membership status, the Bar will ask her to respond to the ethics issues raised by your concerns.

You should also be aware of the Oregon State Bar's Client Security Fund (CSF). The CSF was created in 1967 to help reimburse clients who have lost money or property as a result of dishonest conduct by their attorney. I have enclosed additional information regarding the CSF, including an application for reimbursement; you may also find this information on the Oregon State Bar's website at: <http://www.osbar.org/csf/>.

Yours,

Linn D. Davis
Assistant General Counsel
Ext. 332

LDD/kng

E-mail submissions to: cao@osbar.org Use subject line: LDD 1500653

Received via e-mail
SEP 18 2017
Ronald W. Atwood, PC

Oregon State Bar

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Yours,

Linn D. Davis
Assistant General Counsel
Ext. 332

LDD/kng

E-mail submissions to: cao@osbar.org Use subject line: LDD 1500653

RADER, STODDARD & PEREZ, P.C.

Attorneys at Law
Licensed in Oregon & Idaho
Please respond to:

Ontario Office []
381 W. Idaho Ave.
Ontario, OR 97914
(541) 889-2351
fax (541) 889-6672

Salem Office [x]
189 Liberty St., NE, Ste. 210
Salem, OR 97301
971-239-4771

RETAINER AGREEMENT

THIS RETAINER AGREEMENT ("Agreement") is made this 21 st day of July, 2011, between Wai Thomas Yang, hereinafter referred to as "Client," and Susan R. Gerber of Rader, Stoddard & Perez, P.C., Attorneys at Law, hereinafter referred to as "Attorney":

1. Client agrees to employ Attorney for representation in a legal matter in connection with Post-Conviction Relief.

2. Attorney has consented to accept such employment and agrees to render the services required of her as Attorney by this Agreement on the terms and conditions herein stated. Client agrees to cooperate fully with Attorney and others working on Client's case by keeping appointments, appearing for depositions, producing documents, attending scheduled court appearances, and making all payments. Client also agrees to keep Attorney informed of any change of address or telephone number within five (5) days of the change.

3. The fee for legal services on behalf of Client shall be Client's sole responsibility and shall be a flat fee earned upon receipt of \$5000.00, plus any expenses and costs incurred on Client's behalf.

4. Client has deposited with Attorney the sum of \$5000.00. Attorney will provide Client with a monthly statement of fees, costs, and expenses. Client is responsible for paying all fees, costs, and expenses in excess of the flat fee.

5. Attorney reserves the right to withdraw from further representation of Client at any time on reasonable written notice to Client at Client's last known mailing address.

6. Attorney may appoint another attorney to assist with the closure of Attorney's law office in the event of Attorney's death, disability, impairment, or incapacity. In such event, Client agrees that the assisting attorney can review Client's file to protect Client's rights and can assist with the closure of Attorney's law office.

7. Attorney will send Client information and correspondence throughout the case. These copies will be Client's file copies. Attorney will also keep the information in Attorney's file. When Attorney has completed all the legal work necessary for Client's case, Attorney will close Attorney's file and return original documents to Client. Attorney will then store the file for approximately 10 years. Attorney will destroy the file after that period of time.

8. Client acknowledges reading a copy of this Agreement and consents to its terms.

Susan R. Gerber
Date: 7-21-11

Wai Thomas Yang
Client/Client's representative
Date: 7/25/11

RADER, STODDARD & PEREZ, P.C.

Attorneys at Law
Licensed in Oregon & Idaho
Please respond to:

Ontario Office []
381 W. Idaho Ave.
Ontario, OR 97914
(541) 889-2351
fax (541) 889-6672

Salem Office [x]
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Susan R. Gerber
Date: 7-21-11

Client/Client's representative
Date: 7/25/11

Mr. Ronald W. Atwood, P. C.
Attorney at Law
P. O. Box 40028
Portland, OR 97240-0028

RECEIVED

OCT 16 2017

Ronald W. Atwood, PC

RE: Litigant's Grievance: Clique of Clackamas county Vs Yang #96-0718;

RE: claimant : Wai Thomas Yang
Lawyer : Susan R. Gerber

Dear Mr. Atwood.

I am writing this letter with the hope that it is received in good faith. I am in receipt of your letter dated September 21, 2017. before answering your questions, I believe it is important that you understand the ordeal that I have personally been put through over the last 21 plus years. The injustice I have received from the Clackamas county judicial process has been difficult on me as well as my family and loved ones.

In April 07 1996, I was arrested and falsely accused of a home invasion and robbery. I spoke no English at the time and had no knowledge of the crime committed. I did not understand how the judicial system worked, but I immediately learned that the court appointed lawyers , police and prosecutors were not concerned with the laws and truth. Documents were altered, lost, changed, and ignored. Twenty-one years later, I am still incarcerated for a crime I never committed. I have seen and experienced a lot on inhumanity, but I have not abandon my humanity and compassion for other human beings. And, I most certainly do not want to cause any human suffering.

To answer your first question: "why in July of this year decide to file a claim knowing for two years she could not practice law?" I have been attempting to contact Ms. Gerber for well over 3 years. The law library here is outdated and I could not get updated information as to here whereabouts. I was sincerely hoping to hear from her to resolve this matter. I did not and do not want to add to her stress.

To answer your second question: "why didn't I file a claim in May 2015 and did I review the information given to me by the Oregon State Bar?" In all honesty my intentions were to never accuse Ms. Gerber or (anyone) of doing me wrong. I wanted an explanation for her abandoning my legal case. I did not want to pile on more problems, and I really didn't feel right causing more problems for her while others were also busy accusing her of other things, I'd rather wait until she resolved her personal matters. I did review the material provided by the Oregon State Bar (OSB). The OSB made it appear that I could not do any thing until she was reinstated.

To answer your third question: "Did I make any effort to follow-up with her between 2013 and 2015 when I learned she was unable to practice law?" I stopped hearing from Ms. Gerber in about 2013. I have made several attempts to contact her since 2013, 2014, 2015, 2016 and 2017.

To answer your fourth question: "How I at any time reached out to Ms. Gerber since 2015 to try to get my money back?" As previously explained, the answer is yes. I've made several attempts to contact Ms. Gerber. I've written several letters and even sent her electronic emails through the prison email system. Unfortunately, she never responded to any of them.

To answer your fifth question: "Did I receive any billing information from Ms. Gerber or the law firm she worked for and did she take the file or did it stay with the firm?" Unfortunately, I never received any billing statements and I do not know the whereabouts of my file. I can only assume it is still with her or the firm, but I do not know.

Mr. Atwood, I hope this letter sufficiently answers your questions. I have answered them the best I can. Perhaps it would be important for you to understand that I still struggle with the English language and that I had assistance with writing this letter. In fact, I am sure it is my language barrier that allowed me to be taken advantage of and that made it difficult to know the right course of action in this matter. The bottom line with all of this is that I entered into an agreement with Ms. Gerber in good faith and did not receive the services I was promised. Thank you for your time and consideration of this matter. I look forward to hearing from you in the future.

Sincerely yours

WAI THOMAS YANG
SID #11862012
OSP
2605 state street
Salem, OR 97310

A handwritten signature in blue ink, appearing to read "Wai Thomas Yang", with a date "10/13/17" written below it. The signature is enclosed in a large, light blue circular scribble.

Mr. Ronald W. Atwood, P. C.
Attorney at Law
P. O. Box 40028
Portland, OR 97240

RECEIVED

OCT 16 2017

Ronald W. Atwood, PC

Dear Mr. Atwood

Dear Mr/Ms: Davis

I am writing this letter with the hope that it is received in good faith. Thank you for your correspondence which was dated October 04, 2017. However, before I address your letter, I believe it is important and vital that you understand the ordeal that I personally have been put through over the past 21 plus years. The injustice which I have received from Clackamas county, its staff and personnel, and the judicial process in its entirety have been very difficult for me and for my family as well.

The law is obviously broken when an individual violates a law. If the Oregon State Bar's (OSB) disciplinary authority is limited to regulatory actions regarding an attorney's membership. The State Bar should notify the attorney and give him or her an opportunity to correct their mistakes. The favor would be on the side of the attorney, plus it would bring light to the violation of the law, so it may not happen again in the future.

First and foremost, unfortunately, I respectfully disagree with this disposition. With all due respect, at this time I will forego referring this matter to general counsel until a later date, and I reserve my right to process until when justice prevails.

I am respectfully requesting that this matter is postponed, to give me a right to consult with an attorney. On the other hand, I would request a postponement to give Mr. Burriss an opportunity to correct his mistakes before this matter is presented in front of a general counsel is necessary. In case you have not noticed, I am not a man who wants to capitalize on a situation or take advantage of another person's mistakes, because I am not a "bloodsucker". I truly believe that a good man always seeks peace and harmony to resolve their misunderstandings, and tolerance towards others is a good man's first step.

Also you may not be aware of this, but I believe it is important to bring it to your attention. I struggle with the English language. English is not my native tongue and therefore, I find it hard to fully express myself. In fact, this letter which you are reading right now has been written with the assistance of another person.

Before I end this letter, please allow me to thank you in advance for sharing your precious time

and for assisting me with this matter. Hopefully Mr. Burris can find it in his heart and in good conscience correct his wrong doing which was done to me and my family.

Thank you for your time and understanding in this matter. I will be in touch.

Sincerely yours

Wai Thomas Yang
SID# 11862012
OSP
2605 state street
Salem, OR 97310

Yang 10.12.17.

AFFIDAVIT OF MAILING

CASE NAME: Clique of Clackamas County V. Yang, Wai Thomas

CASE NUMBER: #96-0718

COMES NOW, _____ being duly sworn on oath, depose and say: That I am incarcerated by the Oregon Department of Corrections at O.S.P.

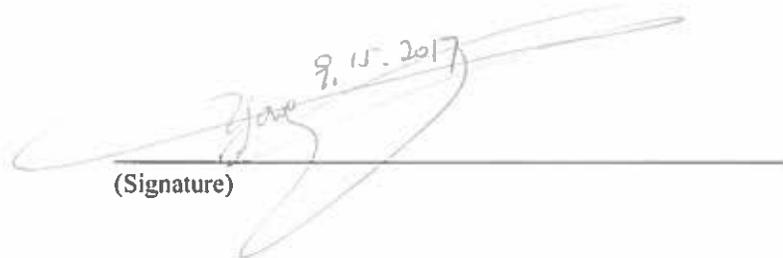
That on the 15 day of September, 2017, I personally placed in the Correctional Institution's mailing service A TRUE COPY of the following:

"It is a basic principle in law that a signature, conviction obtained under threat, conspiracy, duress or coercion is not binding on the signing party". Therefore, the ratification process was not legally concluded.

Notice of complaint, Seek restorative justice:RE: Litigant's Grievance: Clique of Clackamas County V. Yang, Wai Thomas case #96-0718.

I placed the above in a securely enclosed, postage prepaid envelope, to the person(s) named at the places addressed below:

Mr. Burris, Christopher Edward 704 Main street Ste 220 Oregon city, OR 97045 and Mr. Kraft, Wayne S. Clackamas County DA's office, 1610 Red soils CT Ste D, Oregon city, OR 97045

9.15.2017


(Signature)

State of Oregon

County of _____

Signed and sworn to (or affirmed) before me on _____

*Sept, 15. 2017.
I file Notice of
Complaint
against Lawyers.
Mr. Burris and Wayne*

Notary Public-State of Oregon

My Commission expires: _____

Mr. Ronald W. Atwood, P. C.
Attorney at Law
P. O. Box 40028
Portland, OR 97240

RECEIVED

OCT 16 2017

Ronald W. Atwood, PC

dear Mr. Ron:

I am Wai Thomas Yang. I have a nice family. Three children and a wife. I do not speak or write English well, but I am a harmless person. I have been suffering injustice and abused by some individuals that put the laws into their own hands. As my English teacher said: "Regardless of what happened in the street or what the allegations are, when we bring it to court we must follow the law, if you do not follow the law, you have already defeated yourself, truthfully, we can not deny that, the law is our best witness and judge. This is what we call the rule of law in this country". Pettifogger Burriss and Kraft, as we understand our past, you had treated me unethical, unprofessional and unlawfully. You need to correct your own fault or the state has an obligation to correct the problem.

To whom it may concern and I am writing this communication with the hope that which is received in good faith and considered with the same good spirit. Thank you very much for your precious time and concern regarding this case. It is from the bottom of my heart that I thank you and I do appreciate all that you have done for justice. Who has the authority and courage to stand up against corruption in the past and present for our community? Who cares about our social injustice, especially minorities who are voiceless.

I am seeking justice from the Federal Government or State, because they have an obligation to provide and assist me in order to begin an independent investigation to solve my family's grievance, for which we continue to suffer for more than 21 years.

History has taught us that when faced with difficult decisions, a judge must handle all allegations. In the case at hand, a son-in-law of a Governor, has broken the law against a farmer. By law, the judge must punish the son-in-law of the Governor, and by doing so the judge would make the people happy. However, it may also cost the judge his career. But on the other hand, if he lets the case go, it will bring him into a harbour of injustice. For obvious reasons, this matter has become a difficult decision to make, causing sleepless nights and stressful days for the judge. The judge's wife has noticed that something was troubling her husband's mind, and when she asked her husband if something was wrong, he explained to her his difficult situation.

After listening to her husband, she says: “use different measures to fit different needs, do what is only within one’s ability to do”. Then she suggested that he remedy the victims grievance without having to punish the son-in-law of the Governor. By doing so the judge would distant himself from any habouring of injustice, he would also be warning the Governor’s son-in-law of any future unlawful or embarrassment situation, and finally he would free the victims from their continuous suffering of injustice and abuse from the Governor’s son-in-law. This way, it is beneficial to all parties.

Sincerely yours



Yang, Wai Thomas
SID# 11862012

Mr. Ronald W. Atwood, P. C.
Attorney at Law
P. O. Box 40028
Portland, OR 97240-0028

NOTICE OF COMPLAINT

RECEIVED
OCT 16 2017
Ronald W. Atwood, PC

Seek restorative justice:

RE: Litigant's Grievance: Clique of Clackamas County v. Yang #96-0718;

Dear: Sir/Madam

RE-officials: Burris, Watson, and Wayne, ask yourself, how many of you guys cowardly gang up on a harmless man (innocent), cowards, you guys are lawless. you have defeated yourself, the law is silent but powerful and it is our best witness and judge. You are a loser, redeem yourself. "Today not for the sake of your victims beg or sympathy, not for the sake of laws against, but for the sake of obtaining right from wrong to confer your own soul"(because your conscience knows who you are). Do not be cowardly anymore, no matter what cause you guys have for me (in the past unlawful treatment). Nobody is perfect, be manly, you shall speak the truth and the truth shall set you free. come face your victims and be lawful in solving this unhappy past, let the bright future come to us. Gentleman always have an open mind, may justice be mercy on you.

"It is a basic principle in law that a signature, conviction obtained under conspiracy, threat, duress or coercion is not binding on the signing party". Therefore, the ratification process was not legally concluded. Real wisdom seeks to solve rather than to adhere to ignorance. On April 06, 1996, at about 11:20PM, I got a call from my friend Mr. Ma saying there had been an accident and that he needed me to meet him at the Seven-Eleven store near the Chinese restaurant in Lake Oswego. At about 12:45AM, April 07, 1996, Lake Oswego, the police arrested me and Clackamas County indicted me on case #96-0718 for a crime I did not commit and my trial date was set on June 04, 1996.

On May 31, 1996, Pettifoggers Burris, Watson and D.A. Wayne conspired in my case #96-0718 to deprive me of a fundamentally fair trial. They used the falsified replaced case #96-1071 which lead to my conviction (A right of fair trial is clearly established, if "at the time of the challenged conduct... every reasonable official would have understood that he was doing violated that right"). They unlawfully (scam) replaced case #96-0718 with case #96-1071 in which discovery and all documents

pertaining to the original case #96-0718 were destroyed which would have exonerated me. They unlawfully used falsified discovery and statements from case #96-1071 to accuse me in court which lead to my conviction. I have been incarcerated for over 21 years, my family has contacted lawyers to try to work on my case. Each time a lawyer contacts these clique, the lawyer quits representing me. I do not know what they talked about, but I understand that, after these men destroyed the original case #96-0718 (obstruction justice), my legal nightmare in limbo began and I have to face unlawful accusations and continue being incarcerated by clique's unlawful practicing.

When an official is corrupt, it diminishes his authority and he loses his respect; History has taught us when a king is corrupt, he becomes a mad dog, it diminishes his prestige and he loses his empire. In my case #96-0718, court appointed pettifogger (Burriss, Christopher Edward #814787) and the D.A. (Wayne Kraft) who were responsible for prosecuting case #96-0718 unlawfully conspired against me and went beyond the scope of their authority and jurisdiction. The officer of today not only persists in his crimes, but tries to gloss over them. As I understand, law and knowledge will guard me from the ways of evil men, it will guard me from men who twist their words, men like pettifogger leave the straight paths to walk in dark ways, they take delight in doing what is unlawful, they take joy in twisting everything around, their ways are crooked. This is not coincidence of how Jesus felt when he said: "Oh lord forgive them, because they do not know what they are doing!" Today my feelings are the same. Justice! Let there be mercy on them, because narrow minded people have carried the disease of prejudice and greediness in their hearts, and they do not know when they have abused people with their authority as men of the law and regardless themselves break the law often! Cowards do not follow the law, and they take joy in harming others all the time without remorse or compassion (because, in this nation, no man or law dares to judge them; only their victims speak out and cry for justice).

Perhaps, not justice itself, even a little boy knows justice itself would not dare to prosecute a case, if that meant violating the rule of law ordained by the government to put a man in prison. If it does, the court employees who broke the law become criminals against the government they are paid to protect. Officers should know that the basic principle of injury to someone who has never offended you is always wrong and criminal, immunity can be granted to those who follow the letter and spirit of the law. What is lawful or unlawful? Since May 31, 1996 this case has been hard for me to understand. (1) why did the clique conspired to destroy the original discovery and all documents pertaining to case #96-0718? Where there is smoke, there is fire. (Lawfully, this case was not qualified to bring to court in the first place). (2) why did they falsifying discovery with a replacement case #96-1071 instead of the original case #96-0718 less than two weeks before my trial date of June 04, 1996? Thereof, the court employee become a law breaker, it breeds contempt for law, it invites every man to become a law unto

himself, it invites anarchy (when an officer do not follow the law, it loses his authority and becomes a criminal). Indeed, this corrupted officer has chosen to put the law into his own hands, they have used my language barrier as a reason to take advantage of case #96-0718 illegally (scam and abused me). This clique has committed all kinds of crime against me. As for me, I never waived any of my constitutional rights provided by the U.S. government. I know that I have been prejudiced by the clique of Clackamas County court, not the law. Justice saw to it, this case should suffer no injustice, justice stood covering both parties with a strong shield, permitting neither to triumph unjustly. As the old saying goes, “no matter how small the needle a chicken can not swallow it (as long as I obey the law)”. The law is the one I will trust in, it will keep my feet from being caught in a trap, and the law puts foolish officers to shame. I stand alone with the law against corruption and deception. I have never been afraid to be in prison, the path I do what is right is like the first gleam of dawn, it shines brighter and brighter until the full light of day (justice comes); but the way of pettifogger does what is unlawful is like deep darkness, they do not know what makes them trip and fall (judgment day). Because I know I did not have any victims, God and the law has been my constant companion and ally (on my side).

I was convicted in Clackamas County by the clique's unlawful process in violation of the Due Process Clause of the 14th Amendment. I am to be released in April 2026, but I can not in good conscience walk out of this place without knowing if the corrupt individuals who did this crime against me and my family will be held accountable by justice and be punished to the full extent of the law. If justice does not prevail, it is because of its bias or lack of authority to correct its inferior officers wrong doing. (Therefore, the lower courts are formed in a slovenly, haphazard manner, resulting in utter disorganization); perhaps something happened to the smoke which caused it to enter the bush and become mist (appeal: from 1997 to 2000, harbour). I want to remain in prison until these corrupt officers above the law are brought to justice. Otherwise, how can justice prevail or fairness for millions of prisoners who have committed less offensive crimes and are locked up in prison? Plus, billions of their families, relatives, and friends also suffer injustice with them. From ancient to present day, what does the government need a high court for? It's main purpose is to punish the lower court employees when they break the law which the government set in place and keep the law in order. In this regard perhaps because of a lack of leadership (in the past decades), it should be mentioned that people and scholars have pointed out the growing dissatisfaction of the people with the abuse of power and misgovernance by officials at the local level. If the government is aggressively promoting the “rule of law” which has been a loud and clear message that violation of the rule of law by even government officials would lead to severe punishment if a strong leadership existed.

I have always believed that justice would be delayed, but never denied. Therefore, Mahatma

Gandhi has taught me to be compassionate, and to maintain patience as my strength against injustice and tyranny. Since only cowardly, wicked men resort to violence and lies to solve their problems and earn their curse in the process, the more illegal they conduct themselves the harder they will fall. They have done that to themselves. It boils down to being selfish and doing what they want to do and not caring for anyone else (superior) or law. This country was founded upon the principles of liberty, rule of law, and justice. For government's prestige sake, the high court should uphold the rule of law. In reality, any misjudged case would not only harm litigants and their families, but also seriously damage the credibility of judicial authorities! Judicial justice is the life-line of the rule of law, to prevent and correct any miscarriage of justice is the bottom line for the high court when it performs the highest supervision of duty. By law, the high court shoulders the responsibility for supervision of other judicial authorities and prosecutors. It will carefully review all complaint material, once any sign of due process was in violation or misjudgment is found. The high court will launch further probes, if the high court believes the trial court made wrong verdicts, or due process was in violation, it will protest in a timely manner and put forward suggestions for correction. The high court will strictly examine the facts, evidence, procedures and laws applied to exclude illegal evidence, illegal discovery, and any kinds of falsified documents. The high court will try to use the most accurate accusation to ensure that all cases can withstand legal scrutiny and the test of time, a long term mechanism to prevent injustice from the trial court occurring is conducive to the development of the government's rule of law. Without which, this great and noble country's court house would be a den of thieves and scum.

I will continue to look for Pro Bono lawyers whose character is professional and who are honest and uphold protecting the rule of law, also an interpreter who understands my language to work on my case. Therefore, the high authorities should really change their attitude toward litigants. By law, they are not doing litigants any favor. "It is their power to shelter the justice from ruin by the lower court and they are responsible to address litigants grievances from the lower court's employees abuse and it is their duty to protect people, the integrity and security of justice as whole." It is a leader of the state that gains glory who first himself obeys the laws of his state (without harbour), this is what a wise leader does-for the interest of government and the rule of law, he cleans up his own back yard, because litigants are not trouble, admitting there is a problem and then solving it is all people want and it is what high courts are supposed to do!

For protect its prestige sake, "To correct one case of miscarriage of justice is more important and valuable than to punish a thousand criminals. People who do not train or understand the law, this is truth of what literate call them innocent people and it is an excuse for them violated the law once. But not for the officers, because they have been training with the law, and represented the state and get paid

well for their duty to maintain law & order without prejudice as a standard for the government's stipulate. They understand the law and are supposed to lead by example for others to follow, but some of them intentionally break the law. That is more serious and dangerous against the government which they work for, it corrupts the integrity and security of the whole justice system, etc. In the end justice should prevail and the government should crack-down on corrupt officers. Throughout time this is the greatest test and shows the merits of the government from ancient to present day.” We can not deny that. The corrupt officers are trouble makers, same as court unfairness and corruption. They benefit themselves as county corrupt employees and fail to live by the rule of law the government ordained (they are unqualified for official job).

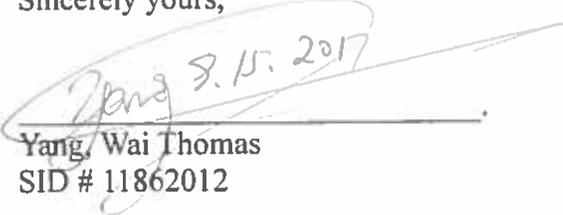
As I understand, on April 25, 1996 my family retained attorney Mr. Ken Morrow, after Mr. Morrow reviewed my case #96-0718, he said: “we are ready for trial on June 04, 1996, because the state has no legal ground to indicted you in this case in the first place, it only wastes tax-payers money and time, any conviction in case #96-0718 will be illegal (in appeal court)”. In Mr. Morrow's experience and theory. Therefore, without the rule of law and justice, there is no government, in this regard, it is wrong to destroy the original case #96-0718; then make up a falsified replacement case #96-1071 against me in court (it is an obvious scam), those clique taking it as license to commit crimes instead of protect the laws. Not only for my sake, we must remember our laws and constitution to the government. For government's sake, they have to recognize themselves as an officer, not criminals, for fear that worse should befall to these who break the laws which the state give them a license to practice and to obey. This truth is our salvation!

What caused case #96-1071 injustice and crime of prosecution itself? The root of injustice and crimes are: (1) conspired to destroy the original case #96-0718, (2) make up a falsified replacement case #96-1071, (3) used perjury documents and testimony, (4) used scam case #96-1071 for prosecution with fake evidence. All above mentioned are injustice and criminal for the prosecution itself. It all proof that the court of Clackamas appointed pettifogger (Burris) conspired with the D.A. (Wayne) in my case #96-0718, by destroying and falsifying the facts of the original case. They illegally and effectively replaced case #96-0718 with #96-1071, they falsified the facts in the discovery, and eventually falsified the documents of case #96-1071 that accuse me in court. Even with this corruption and concerted efforts by the Prosecutor and court of Clackamas appointed pettifogger (Burris) together, they can unlawfully change any documents they want in their own trial court, but they can not change the truth and law stipulate by the Government ordained which give equality to all. Even the justice would not dare to act without clear evidence 'being substantial' (it maintains self prestige and integrity for all). No matter how they used the illegal and falsified case #96-1071 against me in court, but the

victims of the alleged crimes claims. They described that the perpetrator had a gun and a knife, also that he had stolen from them \$10,000. The fact, contradictory, none of this substantial evidence I had ever touched or was found in my possession, and my DNA was not present anywhere near them, including the knife found at the crime scene. It is the law and truth that puts foolish pettifogger to shame (without nepotism, they would never be qualified for a law enforcement job).

It is absolutely necessary to give the final say to the high authorities, since anyone of us could be wrongfully diagnosed one day. In this regard, I am a subject of this government and I do have the legal right to defend the laws and demand justice, and I repeat, the justice must have evidence; and not just any evidence, but substantial proof, he would be mad to act without it (Only foolish people whom have no self respect do-law & order lack of responsibility). After more than two decades, I am still in doubt, whether or not the police officers withheld substantial evidence or the perpetrator got away with it. (the money \$10,000 and a gun). The police, court of Clackamas appointed (Burris) pettifogger and the D.A. (Wayne) of the trial court have the responsibility to adhere to my demands for justice, and why they illegally put me in prison and continue to hold me for a crime without truth or any substantial evidence? (if an animal resembles a palm fruit cluster, how can it be butchered? when the lower court falls into corrupted justice is born).

Sincerely yours,


Yang, Wai Thomas
SID # 11862012

Client Security Fund Application for Reimbursement

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

2017-28

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

JUL 25 2017

Oregon State Bar Executive Director

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

a. Full Name: Wai Thomas YANG #11862012
b. Street Address: 2605 state Street
c. City, State, Zip: Salem, OR 97310-0505
d. Phone: (Home) N/A (Cell) N/A (Work) N/A (Other) N/A
e. Email: N/A

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

a. Lawyer's Name: Susan R. GERBER
b. Firm Name: Rader, Stoddard and Perez, P.C.
c. Street Address: 93 SW 2nd AVE
d. City, State, Zip: Ontario, OR 97914
e. Phone: (503) 830-7360
e. Email: gerblaw@msm.com

3. Information about the representation:

a. When did you hire the lawyer? July 2011
b. What did you hire the lawyer to do? post-conviction Relief Proceedings
my family retained Ms. Gerber to represent me in a post-conviction relief proceedings
c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
\$10,000
d. Did anyone else pay the lawyer to represent you? Yes, my family.
e. If yes, explain the circumstances (and complete item 10B on page 3)
my niece Ms. Chen, Qiao Hong made the arrangements
f. How much was actually paid to the lawyer? \$10,000
g. What services did the lawyer perform? None, was suspended from practicing law.
May 21, 2015 I have received the information from Oregon state bar.
That Ms. Gerber was on inactive status beginning Nov 20, 2014.

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? In 2011 when Ms. Gerber failed to do anything

b. When did you discover the loss? MAY 21, 2015.

c. Please describe what the lawyer did that caused your loss DUE to Some personal of her incident Ms Gerber Was suspended by the Oregon state bar, and could not practice law

d. How did you calculate your loss? Nothing was done on my case

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.

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: HAVE had no contact with Ms Gerber.

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

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

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

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

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

Oregon State Bar Client Assistance Office or Disciplinary Counsel

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

NO

8. Please give the name and the telephone number of any other person who may have information about this claim: Ms. Chen, Qiao Hong
Tel: (971) 344 - 6680

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: Chen, Qiao Hong
Address: 3420 E Sprague Ave Spokane WA 99202
Phone: (971) 344 - 6680

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.)

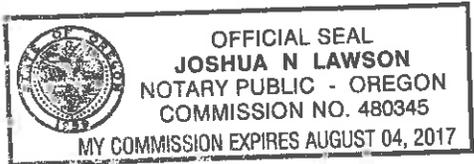
State of Oregon)
County of Marion) ss

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 18 day of July, 2017.



Notary's Signature [Signature]
Notary Public for Oregon
My Commission Expires 8/4/2017

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

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

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

[Handwritten Signature]
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

RADER, STODDARD & PEREZ, P.C.

Attorneys at Law

*Licensed in Oregon & Idaho

**Licensed in Illinois and Oregon

Please respond to:

Ontario Office []
381 W. Idaho Ave.
Ontario, OR 97914
(541) 889-2351
fax (541) 889-6672
Mark Rader*
Steve Stoddard*
Renee Denison*
Amber Kolsrud

Salem Office [x]
189 Liberty St., NE, Ste. 210
Salem, OR 97301
971-239-4771
Manuel Perez*
Susan Gerber**
Cell (503) 830-7360

June 17, 2011

Wai Thomas Yang
SID #11862012
OSP
2605 State Street
Salem, Oregon 97310-0505

Dear Mr. Yang,

Thank you for your letter of June 14, 2011. I would be happy to discuss your case with you. My initial fee for a post-conviction case would be, at the lowest, \$5000.00. I would charge the lower rate because you were referred by a mutual friend. If your case was more involved or required lengthy discovery and trial preparation, I would have to charge additional amounts after the \$5000.00 is utilized. However, to begin your case, I would need a retainer of \$5000.00.

If you think you can retain me for the \$5000.00, please write to me or call my cell phone collect and I will schedule an appointment in person immediately.

Sincerely,



Susan R. Gerber
Attorney at Law
Rader, Stoddard & Perez, P.C.
189 Liberty St. NE Ste. 210
Salem, Oregon 97301
(503) 830-7360
gerblaw@msn.com

RADER, STODDARD & PEREZ, P.C.

Attorneys at Law

*Licensed in Oregon & Idaho
**Licensed in Illinois and Oregon
Please respond to:

Ontario Office []
381 W. Idaho Ave.
Ontario, OR 97914
(541) 889-2351
fax (541) 889-6672
Mark Rader*
Steve Stoddard*
Renee Denison*
Amber Kolsrud

Salem Office [x]
189 Liberty St., NE, Ste. 210
Salem, OR 97301
971-239-4771
Manuel Perez*
Susan Gerber**
Cell (503) 830-7360

July 21, 2011

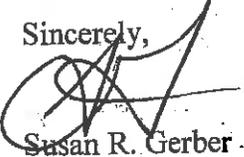
Wai Thomas Yang
SID #11862012
OSP
2605 State Street
Salem, Oregon 97310

Dear Mr. Yang,

I received in the mail today your money order for \$5000.00. Thank you, I will schedule a meeting with you immediately. Please feel free to call my cell phone number listed below collect at anytime. I will be out of town next week but will schedule our visit for the day I return and in the meantime, please feel free to call me. I look forward to working with you and looking at your case. I have also enclosed a retainer agreement that you should review and sign if you feel it is okay with you. It is simply our formal agreement to work together. We can also discuss it when we meet.

Please contact me if you have any questions

Sincerely,


Susan R. Gerber
Attorney at Law
Rader, Stoddard & Perez, P.C.
189 Liberty St., NE, Ste. 210
Salem, OR 97301
503-830-7360
gerblaw@msn.com

Encl: Retainer Agreement

Proof of service.

I hereby certify that I have served the foregoing notice for postpone any proceeding on this case's upon Mr. Timothy L, sylwester. Assistant Attorney General 400 Justice Building Salem OR 97310 .

Attorney for plaintiff-appellant by mailing to him a true copy there of this 28 day of JAN, 2000

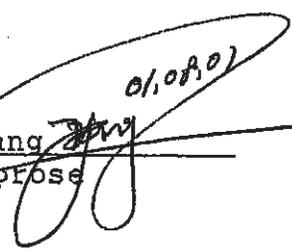
Authorities

U.S.C. 1st, 5th, 6th, 7th, 8th, 9th, 13th, and 14th. Amentments.
ORC: 11th, 12th, and 7th section 8
ORS: 136.290 ORS: 1.3000
ORS: 185.310 ORS: 137.651 et seg
ORS: 36.100 TO 36.210 ORS: 1.410 TO 1.480
ORS: 185.410 ORS: Chapter 185
ORS: 1.725 to 1.750 Common Law
ORS: 1.810

Dear Mr/Ms Linn D, Davis

Please help me find a pro Bono attorney to represent me

Respectfully Submitted by

Wai Thomas Yang 
Petitioner prose

NO. 100
Name YANGL, Wai Thomas
Address O.S.P 11862012
2605 State Street
City Salem OR 97310

MR/MS. Linn D. Da

Ass:stant General Coun

P.O. Box 231935

Tigard, OR 97281-19



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 22, 2018
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2016-42 KRULL (H) Request for BOG Review

Action Requested

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

Discussion

Summary of Facts

Kathy Heredia retained Julie Krull on January 24, 2012 to represent her husband, Victor Ortega Heredia, on an immigration matter. Ms. Heredia's husband was undocumented, but was seeking to adjust his status. Mr. Heredia's application for immigration benefits was complicated by the fact the misdemeanor charges were filed alleging a charge of Sex Abuse III, and it was likely he would end up in removal proceedings.

The retainer agreement provided that Ms. Heredia would make an initial payment of \$5000, followed by monthly payments of \$500, until she had paid a total of \$9,000. She ultimately paid \$8450 to Ms. Krull. The agreement provides that the fee is a fixed, nonrefundable fee.

After the bar initiated disciplinary proceedings, Ms. Krull resigned Form B. Ms. Heredia then went to attorney Phil Hornik, a well-known seasoned immigration practitioner for assistance. Based on Ms. Krull's file materials and Mr. Hornik's summary, it appears that Ms. Krull performed work reviewing materials from the criminal proceeding and researching whether a conviction would impact Mr. Heredia's ability to obtain immigration status. The records indicate the client was happy with the work Ms. Krull had performed and Mr. Hornik was not critical of her work.

Ms. Krull maintains that she performed $\frac{3}{4}$ of the work required in the matter, although Mr. Hornik did not confirm her assessment.

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. CSF Rule 2.1.2 also provides “A lawyer’s failure to perform or complete a legal engagement does not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.”

The CSF Committee did not find evidence of dishonesty. While Ms. Krull did not complete the representation, the Committee found evidence that she provided “substantial, significant” legal services to Mr. Heredia that were more than minimal or insignificant from the date she was hired until she resigned Form B. In her appeal, Ms. Heredia seeks a partial refund, but agrees there was no dishonesty.

Accordingly, the CSF Committee denied Ms. Heredia’s claim for reimbursement from the Client Security Fund. Staff recommends the BOG do the same.

November 25, 2017

Helen Hirschbiel
CEO / Executive Director
Oregon State Bar
PO Box 231935
Tigard, OR 97281-1935

On November 4th the Client Security Fund Committee denied our Client Security Fund claim with the reason that there was no evidence of dishonesty. My husband and I both agree that there was no dishonesty.

Victor, my husband called and spoke to Camille Greene and asked why was Julie's honesty considered the reason for our denial. Camille was kind enough to look at our application and found that we had stated on the application that Julie's dishonesty was the reason for our loss.

We were merely referencing the reason why Ms. Krull was no longer able to practice law and represent us. We are seeking a partial refund, as we had paid in full but did not receive the service stated in the contract.

On the January 3rd, 2016 letter to Ms. Beverly Michaelis we state, "we are unsure what is the next step in receiving a refund for the services not rendered." In that same letter, we also state how much we would still prefer to continue to have representation by Ms. Krull. If we believed she was being dishonest, we would not have been begging for her.

We would like the Oregon State Bar Board of Governors to review the case and determine if a partial refund is merited based on the fact that Julie was unable to provide the service she was hired for. Specifically, applying for change of status through immigration services.

We apologize for the confusion,



Victor & Keeley Heredia

(503)705-5295

(503)929-5808

October 13, 2017

CLIENT SECURITY FUND
INVESTIGATION REPORT

Re: CSF Claim No.: 2016-42
Claimant : Keeley Heredia
Lawyer : Julie Krull

RECOMMENDATION

It is my recommendation that we deny this claim on the grounds that substantial services were rendered and the fee agreement does not require reimbursement of an unearned fee.

SUMMARY

Julie A. Krull was admitted to the Bar in 1996; she was also admitted in Louisiana. Her practice primarily involved immigration matters. The Supreme Court accepted her Form B resignation effective November 12, 2015. At the time of her resignation, one formal complaint had been filed against her and six more were under investigation.

Keeley Lee¹ signed a Retainer Agreement on January 24, 2012; Ms. Krull was retained to address several immigration matters for Ms. Lee's husband, Victor Ortega Heredia. Victor's mother and grandmother brought him to this country illegally when he was three years old. At the time she was retained, there was concern about a removal proceeding. Mr. Heredia was accused of Sex Abuse III for kissing a co-worker without her consent. It is a misdemeanor. No such proceeding was filed during Ms. Krull's representation.

The retainer agreement indicates the matter was to be handled for a non-refundable flat fee of \$9000. Representation was not to begin until an initial payment of \$5000 was made. It looks like a total of \$8450 was paid to Ms. Krull.²

¹ The claim with the Client Security Fund was filed by Keeley Heredia on September 29, 2016. At the time the Retainer Agreement was signed, she was known as Keeley Lee; the file does not indicate when she changed her name. Nor does that fact appear to be particularly important.

² The claim is for \$9000. However, the paperwork in the file documents payments totaling \$8450. Payments were to be made in \$500 increments; one of the checks turned out to be for \$350.

The retainer agreement states that it is a fixed, non-refundable flat fee, which is earned upon receipt for her work. Although the initial payment was \$5000, the agreement contemplated monthly payments of \$500 until the total of \$9000 was reached. Near the end of the agreement, there is a sentence as follows: "We agree that the attorney is not required to complete work in our case and that she can stop representing us at any time, for any reason, or if we do not comply with the requirements of this agreement." There is no clause that requires her to refund unearned fees or to reimburse the client if the assignment is not completed. There is another interesting sentence that states: "We agree that if she stops representing us, we will pay her for the work she has done up to that time." I interpret this to mean that partial payment is all that is required if the representation ends and the entire flat fee of \$9000 is not paid. In that event, the agreement contemplates partial payment for the work completed. There is nothing in the agreement to require partial repayment by Ms. Krull.

After Ms. Krull left the practice of law, Mr. and Ms. Heredia retained Philip Hornik to complete the assignment. He gave us a very nice summary of the work performed by Ms. Krull. We also have quite a bit of file material from her file.³ It contains notes and logs outlining her work. There are a number of emails with communication between the client and the lawyer as well as between Ms. Krull and the criminal defense attorney. There is instructional material to be used to obtain references to be used in obtaining a green card. There are records from the criminal proceeding. Mr. Hornik states she researched the impact of the criminal conviction on Mr. Heredia's ability to obtain a green card. He re-interviewed a number of potential witnesses to make sure their information was current and if they would make a good witness. He was not critical of what she had done. She said she had completed about three quarters of the task; Mr. Hornik could not confirm that statement.

The records indicate the client was happy with the work Ms. Krull performed. I do not know all of the facts behind the dissolution of her practice, but the death of a family member played a part. Thus, the issue to decide is whether a refund is owed under these circumstances.

The rules require the presence of dishonest conduct before an award is made. Rule 2.2.1 applies when there is an unearned legal fee. However, in this case, we have a flat-fee, non-refundable earned upon receipt. With this agreement, the money could be placed in the general business account and did not need to go into a trust account.

Rule 2.2.2 provides, "A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false

³ It is our understanding that the PLF took over her files at the time of her resignation. We understand the Mr. & Ms. Heredia were given their file, which they eventually gave to Mr. Hornik.

promise or dishonest conduct.” Rule 2.2.3 indicates that reimbursement is not allowed if no legal services are provided or the legal services that were actually provided were minimal or insignificant. In this case, it is clear that Ms. Krull provided significant legal services. It had value and was extensive.

FINDINGS AND CONCLUSIONS

1. Ms. Julie Krull and Ms. Keeley Heredia had an attorney client relationship whose goal was to prevent removal proceedings and to obtain a green card for Ms. Heredia’s husband, Victor Heredia.
2. Ms. Heredia signed an attorney retention agreement that provided the fee was for a flat-fee, non-refundable earned upon receipt.
3. The attorney retention agreement did not provide for a refund if the assignment was not completed; in fact, the agreement allowed the attorney to resign at any time for any reason and it was up to the client to pay any fees earned up to that time that remained unpaid.
4. Ms. Krull provided substantial, significant work on the matter.
5. Rule 2.2.3 bars recovery on the facts of this case.

Client Security Fund Application for Reimbursement

2016-42 rec'd 10/03/2016

Return completed form to:

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

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: Keeley Heredia
- b. Street Address: 4044 SW Binford Ave.
- c. City, State, Zip: Gresham, OR 97080
- d. Phone: (Home) _____ (Cell) (503) 929-5808
(Work) _____ (Other) _____
- e. Email: KeeleyLee@gmail.com

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

- a. Lawyer's Name Julie A. Krull
- b. Firm Name Julie A. Krull, P.C.
- c. Street Address: 1020 S.W. Taylor Street
- d. City, State, Zip: Portland, OR 97205
- d. Phone: (503) 224-3031
- e. Email: JulieKrull@yahoo.com

3. Information about the representation:

- a. When did you hire the lawyer? January 24, 2012
- b. What did you hire the lawyer to do? Representation for my husband, Victor Heredia, at bond hearing, request for Cancellation of Removal for Non-Lawful Permanent Residents in immigration court, and adjustment of status.
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
Please see attached for agreement.
- d. Did anyone else pay the lawyer to represent you? _____ No
- e. If yes, explain the circumstances (and complete item 10B on page 3):
N/A
- f. How much was actually paid to the lawyer? \$9,000
- g. What services did the lawyer perform? None

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? 12/07/15

b. When did you discover the loss? 12/07/15

c. Please describe what the lawyer did that caused your loss Julie Krull formally resigned without service. Before she resigned, there was a formal complaint pending against Krull, alleging that between April 2008 and August 2014, Krull engaged in misconduct including: neglect of legal matters, failure to keep clients reasonably informed, and comply with reasonable request for information, clearly excessive fees, etc.

d. How did you calculate your loss? This was the amount we paid

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. We requested a refund to the Oregon State Bar Professional Liability Fund. Letter is attached

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

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

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

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

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

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

Oregon State Bar Client Assistance Office or Disciplinary Counsel

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

Yes, Philip Hornik (503) 243-2733

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

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

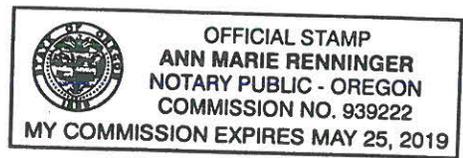
- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded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

Name: Keelley Haradia
Address: 4044 SW Binford Ave. Gresham, OR 97080
Phone: 503-929-5808

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 Multnomah Clackamas)ss



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

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

Keelley Haradia
Claimant's Signature

Signed and sworn (or affirmed) before me this 29 day of September, 2016.

Notary's Signature Ann Marie Renninger
Notary Public for Oregon
My Commission Expires May 25, 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.

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

Claimant's Signature

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

Without charge

Under the attached fee agreement

Attorney's Signature

Attorney's Bar No.

Attorney's Phone

Attorney's Address

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. Wait for client response.
2015	39	Boone, Charles P	Morningstar, Jonah	\$ 8,000.00	\$ 8,000.00		Steinberg	9/24/16 CSF stayed. Re-assigned 1/20/18
2016	27	Roden, Joseph	Morningstar, Jonah	\$ 9,385.50	\$ 9,385.50		Steinberg	9/24/16 CSF stayed. Re-assigned 1/20/18
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		Atwood / Dippel	11/4/17 CSF Deny 2/23/18 BOG Review
2017	02	McLaren Hall, Rebecca Jean	Merrill, Nick	\$ 2,500.00	\$ 1,500.00	\$ 1,500.00	Young	12/21/17 ck sent \$1500
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	wait for her new address 971.930.5610
2017	07	Clymer, Joseph & Deborah	Campbell, Jefferson G. Jr	\$ 1,235.00	\$ 1,235.00		Ledgerwood	
2017	08	Jay, Sandra	Milstein, Jeffrey S.	\$ 2,730.00	\$ 2,730.00		Taylor	claimant has rep
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	Ms. Wicht paid.
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	24	Lopez-Contreras, Rosalina	Hudson, Howard	\$ 6,410.00	\$ 6,410.00		Jones	atty pd - rod will send proof
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	28	Yang, Wai Thomas	Gerber, Susan R.	\$ 10,000.00	\$ 10,000.00		Atwood	11/4/17 CSF Deny 2/23/18 BOG Review Pay 3r party
2017	29	Vega-Flores, Gustavo	Coran, Theodore C	\$ 10,000.00	\$ 10,000.00		Young	
2017	31	Martinez, Ernesto Vazquez	Martinez, Leslie	\$ 1,800.00	\$ 1,800.00		Braun	
2017	32	Taylor, Marnie	Mitchell-Phillips, Kenneth	\$ 2,500.00	\$ 2,500.00		Braun	
2017	33	Niklas, Louise (Trustee: Eubanks, Anne C)	Bauer, Henry L. ESTATE	\$ 24,000.00	\$ 24,000.00		Cooper	
2017	34	Dillon, Tammi lee	Smith, Robert J. ESTATE	\$ 1,500.00	\$ 1,500.00		Roy	
2017	36	Grishkevich, Alex	Mitchell-Phillips, Kenneth	\$ 1,525.44	\$ 1,525.44		Braun	pay any reward to Hanna
2017	37	Bateman, Donald L	Smith, Robert J. ESTATE	\$ 1,750.00	\$ 1,750.00		Roy	
2017	38	Tukhashvili, Givi N.	Vanagas, Timothy	\$ 4,000.00	\$ 4,000.00		Young	
2017	39	Richman, Tommy J. and Nicole	Hall, Brett	\$ 26,000.00	\$ 26,000.00		Cooper	
2017	40	Anderson, Terri Lynn	Mitchell-Phillips, Kenneth	\$ 6,250.00	\$ 6,250.00		Braun	
2017	41	Bingham, Cory Lee	Perry, Megan M	\$ 6,000.00	\$ 6,000.00		Atwood	3/10/18 to CSF
2017	42	Gardner, Evan	Mitchell-Phillips, Kenneth	\$ 300.00	\$ 300.00		Braun	
2017	43	Sherman, Julie Annette	Smith, Robert J. ESTATE	\$ 46,110.93	\$ 46,110.93		Roy	
2017	44	Zuniga, Lourexel	Mitchell-Phillips, Kenneth	\$ 4,454.00	\$ 4,454.00		Braun	
2017	45	Brown, Carol	Deveny, Lori E.	\$ 66,667.00	\$ 50,000.00		Jones	
2017	46	Wise, Daniel Kevin	Smith, Robert J. ESTATE	\$ 2,000.00	\$ 2,000.00		Roy	
2017	47	Smarr, Linda for James Lound Trust	Gray, Roger	\$ 2,000.00	\$ 2,000.00		Cooper	
2017	48	Yovan, Stefan Shawn	Campbell, Jefferson G. Jr	\$ 17,921.57	\$ 17,921.57		Ledgerwood	
2018	01	Gehrke, Brandy	Long, Andrew	\$ 400.00	\$ 400.00		Hisey	
2018	02	Frackowiak, James	Long, Andrew	\$ 3,400.00	\$ 3,400.00		Hisey	
2018	03	Evered, Andrea Burke	Johnson, Ron	\$ 3,952.50	\$ 3,952.50		Roy	
2018	04	Huebner, Jocelyn M.	Long, Andrew	\$ 200.00	\$ 200.00		Hisey	
2018	05	Grotz, David G	Long, Andrew	\$ 19,581.00	\$ 19,581.00		Hisey	
2018	06	Ho, Amy	Solomon, Glenn	\$ 4,575.00	\$ 4,575.00		Whitlock	
2018	07	Beutler, Stuart J	Long, Andrew	\$ 1,200.00	\$ 1,200.00		Hisey	
					\$ 371,730.94	\$ 1,500.00		
		Funds available for claims and indirect costs allocation as of November 30, 2017			\$ 1,265,639.00			
			Fund Excess	\$ 893,908.06				

OREGON STATE BAR
Client Security - 113
For the Eleven Months Ending Thursday, November 30, 2017

Description	November 2017	YTD 2017	Budget 2017	% of Budget	November Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$1,461	\$13,301	\$12,500	106.4%	\$923	\$8,267	60.9%
Judgments	50	639	1,000	63.9%	90	630	1.5%
Membership Fees	645	225,322	231,200	97.5%	390	225,821	(0.2%)
TOTAL REVENUE	2,156	239,262	244,700	97.8%	1,403	234,718	1.9%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	4,034	31,127	32,700	95.2%	1,036	12,583	147.4%
Employee Taxes & Benefits - Reg	1,076	7,330	13,000	56.4%	417	4,675	56.8%
TOTAL SALARIES & BENEFITS	5,110	38,457	45,700	84.2%	1,453	17,258	122.8%
DIRECT PROGRAM							
Claims	1,000	27,429	200,000	13.7%	27,145	130,874	(79.0%)
Collection Fees	0	0	1,000	0.0%	0	0	0.0%
Committees	0	176	150	117.1%	0	0	0.0%
Travel & Expense	0	1,204	1,800	66.9%	0	1,349	(10.7%)
TOTAL DIRECT PROGRAM EXPENSE	1,000	28,809	202,950	14.2%	27,145	132,223	(78.2%)
GENERAL & ADMINISTRATIVE							
Office Supplies	0	0	150	0.0%	0	0	0.0%
Photocopying	0	0	50	0.0%	0	0	0.0%
Postage	12	97	150	64.9%	16	127	(23.5%)
Professional Dues	0	0	200	0.0%	0	0	0.0%
Telephone	7	68	200	33.9%	16	71	(5.0%)
Training & Education	0	4,575	600	762.5%	0	545	739.4%
Staff Travel & Expense	577	1,806	1,094	165.1%	0	295	512.5%
TOTAL G & A	596	6,546	2,444	267.8%	32	1,038	530.3%
TOTAL EXPENSE	6,706	73,812	251,094	29.4%	28,630	150,519	(51.0%)
NET REVENUE (EXPENSE)	(4,550)	165,450	(6,394)	#####	(27,227)	84,199	96.5%
Indirect Cost Allocation	2,779	30,570	33,349	91.7%	2,655	29,206	4.7%
NET REV (EXP) AFTER ICA	(7,329)	134,880	(39,743)	#####	(29,882)	54,993	145.3%

Fund Balance beginning of year 1,130,760
Ending Fund Balance 1,265,639

ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds
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Statistics since inception of program			
\$ 1,256,982	\$ 518,900	\$ 1,775,882	Total of all Submitted Unclaimed Property
\$ (79,984)	\$ (149,733)	\$ (229,718)	Total of all Claimed Property
\$ (32,648)	\$ -	\$ (32,648)	Total of Property Returned/Forward to Other Jurisdictions
\$ (510,179)	\$ (346,346)	\$ (856,525)	Total Funds Distributed to Programs
\$ 13,967	\$ -	\$ 13,967	Interest Earned
\$ 648,138	\$ 22,821	\$ 670,959	Balance of Funds on Hand by Fund

Breakdowns by Year

2017			
\$ 414,026	\$ -	\$ 414,026	Funds Collected
\$ (12,058)	\$ (88,322)	\$ (100,380)	Funds Claimed
		\$ -	Funds Returned
\$ 401,968	\$ (88,322)	\$ 313,646	Subtotal
\$ (69,576)		\$ (69,576)	Funds Disbursed
\$ 3,957		\$ 3,957	Interest Earned
\$ 197,397	\$ 111,117	\$ 308,514	Previous Year Fund Balance
\$ 529,762	\$ 22,795	\$ 552,557	Fund Balance

2016			
\$ 43,099	\$ -	\$ 43,099	Funds Collected
\$ (1,423)	\$ (7,993)	\$ (9,417)	Funds Claimed
\$ (50)		\$ (50)	Funds Returned
\$ 41,626	\$ (7,993)	\$ 33,633	Subtotal
\$ (117,500)		\$ (117,500)	Funds Disbursed
\$ 2,382		\$ 2,621	Interest Earned
\$ 269,545	\$ 119,136	\$ 388,681	Previous Year Fund Balance
\$ 197,397	\$ 111,117	\$ 308,514	Fund Balance

2015			
\$ 155,965	\$ -	\$ 155,965	Funds Collected
\$ (43,154)	\$ (15,708)	\$ (58,862)	Funds Claimed
\$ (216)		\$ (216)	Funds Returned
\$ 112,595	\$ (15,708)	\$ 96,888	Subtotal
\$ -	\$ (155,000)	\$ (155,000)	Funds Disbursed
\$ 2,191		\$ 2,191	Interest Earned
\$ 154,759	\$ 289,843	\$ 444,602	Previous Year Fund Balance
\$ 269,545	\$ 119,136	\$ 388,681	Fund Balance

2014			
\$ 54,420	\$ 518,900	\$ 573,320	Funds Collected
\$ (19,390)	\$ (37,711)	\$ (57,100)	Funds Claimed
\$ (591)		\$ (591)	Funds Returned

ULTA Annual Report

Annual Unclaimed Fund	Farmers Class Action Fund	Total All Funds	
\$ 34,439	\$ 481,189	\$ 515,629	Subtotal
\$ (61,103)	\$ (191,346)	\$ (252,449)	Funds Disbursed
\$ 2,416		\$ 2,416	Interest Earned
\$ 179,007	-	\$ 179,007	Previous Year Fund Balance
\$ 154,759	\$ 289,843	\$ 444,602	Fund Balance

ULTA Annual Report

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

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

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

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

OREGON STATE BAR
Board of Governors Agenda

Meeting Date: February 23, 2018
From: Helen M. Hirschbiel, CEO
Re: Operations and Activities Report

Executive Director's Activities November 17, 2017 to February 23, 2018

Date	Event
11/20/17	Interviews for new I.T. Director; ACDI meeting & student social
11/21/17	Interviews for new I.T. Director; Souede investiture
11/28/17	CEJ board meeting
11/29/17	Meeting with Wells Fargo Bank
12/1/17	Meeting with Peggy Nagae
12/4/17	Interviews for new Adjudicator
12/5/17	Interviews for new Adjudicator
12/6/17	Meet with Columbia Bank; Schwabe Holiday Party
12/7/17	Meet with Chief Justice; PLF Orientation
12/8/17	PLF board mtg.; Celebrate Diversity of the Bench
12/11/17	Lunch w/ PLF CEO
12/12/17	Meet w/ Vanessa; Queen's Bench Holiday Lunch; Adjudicator interviews
12/14/17	Adjudicator interviews; mtg. w/ Peggy Nagae
12/15/17	OSCCIF Winter mtg.; OR CJI TF mtg.; Professionalism Commission mtg.
12/16/17	LEC mtg
12/18/17	Lunch w/ PLF CEO
12/19/17	Meet w/ Vanessa; Teleconference re: Adjudicator interviews
12/20/17	Breakfast w/ CEOs
12/21/17	ONLD retreat conference call; meet w/ Chris Costantino re: 2019 calendar
12/27/17	Review Director of F&O; Meet w/ Michael Levelle
12/28/17	Budget Work Plan w/ Vanessa, David Wade, Rod Wegener
1/3/18	Questions for F&O interviews
1/4/18	Meeting w/ Peggy Nagae; BOG/MBA Reception
1/5/18	BOG meetings; Employee Appreciation Lunch; interviews for I.T. Director
1/8/18	Interviews for F&O
1/9/18	Directors' mtg.; OR Supreme Court Public mtg.; Nan Waller Reception
1/10/18	Lunch w/ Adjudicator; CEJ Board mtg.
1/11/18	Breakfast w/ Rich
1/12/18	I.T. Director Interviews
1/22/18	ACDI Orientation & Meeting
1/24/18	Lunch w/ LEC Chair
1/25/18	MCBA Dinner
1/26/17	Meet w/ Peggy Nagae
1/27/18	OLIO Employment Retreat
1/30-2/1/18	ABA Mid-Year mtg in Vancouver, BC
2/2/18	OR Bench Bar Commission; ABA PIC mtg

2017 Program Evaluations

Oregon State Bar
2017 Program Evaluations
Table of Contents

Client Assistance Office.....	3
CLE Seminars.....	6
Communications & Public Services.....	11
Disciplinary Counsels Office.....	16
Diversity & Inclusion	20
Finance & Operations	
General Counsel.....	23
Human Resources	29
Legal Publications	
Legal Services.....	41
Minimum Continuing Legal Education.....	46
Member Services	49
New Lawyer Mentoring Program.....	53
Public Affairs	55
Referral and Information Services	60

Program Evaluation 2017 Client Assistance Office (CAO)

I. Goal Statement

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

II. Program Description

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

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

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

III. Volunteers/Partnerships

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

IV. Outcomes and Evaluation

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

Program measures call for CAO to process a high volume of inquiries and complaints in a timely manner. In 2017, CAO logged 2,046 matters and disposed of about 1,942 matters. For purposes of comparison: in 2016, CAO logged 2,027 and disposed 1,938; in 2015, CAO logged 1,937 matters and disposed 1,629; in 2014, CAO logged 1,936 matters and disposed 1,783. The CAO staff handles a great deal of telephone contacts. Substantive calls handled by the department average over 20 per day. Only a fraction are logged into the database.

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

Program measures call for CAO to dispose of 70% of complaints and inquiries within sixty days of receipt. In 2017, CAO disposed of about 63% of complaints and inquiries within that time. Average disposition time for all dispositions was 66 days. The chief source of the slower disposition time is staff turnover. Long time staff lawyer Troy Wood was promoted to Admissions Manager. Instead of three staff lawyers, CAO was staffed for several months by two lawyers, assisted by some part-time help from retired bar staff. CAO's ability to remain close to program measures and maintain a high quality of dispositions was a considerable feat.

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

CAO continues to provide high quality analysis in the disposition of matters. Of the 1,942 matters disposed of in 2017, 13.7% (267) were referred to Disciplinary Counsel. (Cf. 2016 14.5%; 2015 12.5%; and 2014 13.2%). 1,020 matters were dismissed. In about 87 instances, CAO was able to contact the lawyer concerned and resolve the client's issue. In the remaining matters, CAO provided information or referrals to other programs.

Program measures state that at least 90% of CAO dismissals should be affirmed on review by General Counsel. In 2017, there were 233 requests for General Counsel review of CAO dismissals. Eight matters were referred to Disciplinary Counsel after review. Over 96% of CAO dismissals were affirmed.

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

CAO staff lawyers are all experienced lawyers familiar with a wide range of legal issues. CAO staff lawyers consult with each other and review each other's work to maintain quality and help ensure a sound decision making process. CAO staff lawyers attend MCLE programs and participate in other opportunities to maintain and improve skills such as membership and participation in the ABA Center for Professional Responsibility. At the bar level, CAO lawyers meet periodically with General Counsel and Disciplinary Counsel staff lawyers to help ensure

consistency of analysis and approach. Weekly CAO staff meetings help CAO staff to spot and address problems as they arise.

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

CAO lawyers contributed approximately 25 hours of continuing legal education presentations in different programs for members around the state. The presentations included ethics school, mandatory abuse reporting, and other subjects related to lawyers' professional responsibilities. In addition to presenting in the Portland area, CAO lawyers spoke at events in St Helens, Eugene, Seaside and Salem. CAO lawyers also wrote for publication in the *OSB Bulletin* and the *Oregon Trial Lawyer* magazine.

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

CAO's continued operation as a mostly paperless office has reduced costs and, especially in connection with public records inquiries, increased the utility of CAO records. In 2018 CAO staff will review forms and processes for further improvements.

2017 Program Evaluation CLE Seminars Department

Program Goal Statement

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

Program Description

As a provider of CLE seminars, the OSB operates in a highly competitive market that is defined by hundreds of other CLE providers and significant disruption to the traditional CLE delivery models, including below market-registration rates and bulk pricing options. To meet these challenges while providing a meaningful educational experience, the Seminars Department is increasingly using technology to deliver a wide range of CLE seminars and products in a variety of formats and pricing options that recognize changing CLE expectations among legal professionals.

Volunteers/Partnerships

Volunteers: 352 attorneys and other professionals volunteered as planners and speakers in 2017, some more than once, to fill 437 opportunities.

Partnerships: The CLE Seminars Department cosponsored seminars with 19 sections and the Professionalism Commission, and the following Washington State Bar entities: the Debtor-Creditor Rights Section, the Business Law Section, and WSBA CLE. The CLE Seminars Department also augmented its original CLE programming with offerings from four educational partners: the State Bar of Arizona, CLE Seminars.com, Mesa CLE, and WebCredenza.

Outcomes and Evaluation

Outcome #1: Promote professional excellence and professional development by providing readily available 24/7 access to OSB CLE seminars, services, and information.

Measures: Continue a creative and flexible approach to program and product formats to meet changing member priorities for attending in-person events.

In 2017 the CLE Seminars Department produced 49 in-person seminars. Almost all of the events were also webcast live, and all of the seminars

were recorded and made available as on demand product (video or audio) or on hard media (CD or DVD).

Maintain on-demand seminar inventory sufficient to satisfy MCLE self-study reporting requirements.

The membership had 24/7 online access to 34.25 hours of audio streaming, 87.25 hours of MP3 downloads, 39.25 hours of individual CLE sessions on video, and 487.75 hours of entire CLE seminars on video. In addition to general credit seminars, the offerings included legal ethics, practical skills, elder abuse reporting, and access to justice credits.

Continue to support sales of seminars on hard media (audio CDs and DVDs).

Hard media (CD and DVD) was still utilized by members, with 438 CD sales, 68 DVD sales, and 37 rentals of the department's 15-credit reciprocity set.

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

Measures: Survey attendees and sections regarding their satisfaction with topics, format, logistics, and staffing.

The department continued to provide high quality CLE content for the membership. Of those returning a seminar evaluation, 89.79% rated the overall quality of the seminar as "very good" or "excellent." Onsite seminar staff were rated "very good" or "excellent" by 95.88% of those who responded, while the onsite check-in process garnered a "very good" or "excellent" response by 95.34% of those who turned in an evaluation.

In 2017, 13 section chairs rated the department's CLE services in the Membership Services Department's section survey (1 – 5 scale). The average ratings ranged from 4.2 (providing accurate information on co-sponsoring CLEs and staff assistance with program planning and logistics) to 4.7 (courtesy of staff). Timely distribution notices regarding programs had an average rating of 4.3.

Comments from section chairs ranged from "Took a while for cosponsorship info to be released, some questions in the role out, was not a fan to begin with" to "Every year this department hits it out of the park on the CLE's they help us with."

Evaluate revenue-sharing model for programs cosponsored with sections.

The department's traditional revenue sharing model for section cosponsored events was calculated on a per capita basis for different categories of seminar registrations. In 2017, the department decided to use a revenue sharing model based upon a percentage of the seminar's net revenue. The launch of this new model will coincide with the department's new AMS components, which are scheduled to launch in early 2018.

Promote cosponsorship and other revenue-sharing services to sections.

The department received several inquiries during the year from sections that previously had not cosponsored with the bar. While not all of the inquiring sections cosponsored in 2017, the department successfully cosponsored a half day seminar with the Construction Law Section in December, 2017, and the section indicated an interest in future cosponsorship.

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

Measures: Implement in-house webcasting and on-demand catalog hosting.

This measure is tied into the bar's new AMS. Because of project delays, in-house webcasting and on-demand catalog hosting were pushed back until early 2018. But progress was made throughout the year by CLE staff and the new project manager in moving the needle closer towards implementation.

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

New pricing models were part of creating efficiencies with the bar's new AMS. Similar to the in-house webcasting and on-demand catalog hosting, new pricing models will be examined once the new AMS has been implemented.

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

During 2017, we continued to move towards all electronic correspondence and began sending speaker evaluations via email, which

created savings on postage, reduced the bar's carbon footprint, and saved on staff time to prepare print correspondence.

Staffing needs also changed in 2017. At the end of 2016, a full-time position was eliminated and the Marketing Specialist retired. This provided the opportunity to reevaluate job responsibilities, as well as regrade the Marketing Specialist position. The new grade was slightly lower than previously. After the Event Coordinator left in June, 2017, that position's responsibilities was also reevaluated, resulting in a new position at a lower grade. Although the new position will not be filled until 2018, both departures created opportunities to lower staffing costs during 2017.

Outcome #4: Advance diversity, equity, and inclusion among speakers and planners; engage in programming that promotes access to justice

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

Of the CLE speakers and planners who indicated a gender, the following were identified: 18.47% female, 22.16% male, .57% transgender, and .28% other. 29.26% selected "declined to state," and 29.26% did not indicate a gender at all. This last figure includes non-member speakers for which data was not available.

The following ethnicities were identified by CLE speakers and planners: 48.01% white, 2.56% Asian, 1.70% American Indian, 1.70% multiple ethnicities, 1.42% Hispanic, and .57% Black. 15.91% selected "decline to state," and 28.13% did not indicate any ethnicity.

The majority of speakers and planners hailed from Multnomah County (49.43%), followed by Marion County (6.82%), Washington County (6.25%), Lane County (5.40%), Clackamas County (3.69%), and Deschutes County (2.27%). Benton, Clatsop, Columbia, Jackson, Jefferson, Klamath, Lincoln, Polk, and Umatilla counties were presented by 4.24% of the speakers and planners, while 21.88% of the speakers and planners lived outside the state.

Develop CLE programming that advances access to justice.

2017 marked the 75th anniversary of Executive Order 9066, which resulted in interning thousands of Japanese Americans who lived along the West Coast of United States. The department sponsored a free, three-credit CLE program examining the legal implications of the Order, both historically

and in the context of today's political climate. The response to this event was overwhelming, with more than 130 people attending in-person and almost 315 viewing the webcast.

The department also sponsored its first LGBT-focused seminar on transgender law.

During the year, the department participated in developing the bar's 2018 – 2020 Diversity Action Plan. As a result, the department will create future CLE programming and provide CLE resources to the bar membership that will help achieve the Plan's goals.

2017 Program Measures

Communications & Public Services Department

I. Program Goal Statement

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

II. Program Description

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

Public Communications comprises programs and services designed to educate the public about laws, lawyers and the legal system, and also how to find help with legal problems. Education efforts focus on the bar's website, including legal information videos, and specialty publications.

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

Media relations are also coordinated by department staff. Media relations works with statewide news outlets to provide background on bar policies and processes, including regulatory functions and specific disciplinary cases. Staff also provide spokespeople to comment on any story with a law-related element, actively promote coverage of bar programs and initiatives, and support the judicial branch in responding to media enquiries and unjust criticism of the judiciary.

III. Volunteers/Partnerships

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

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

IV. Outcomes and Evaluation

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

Our primary, ongoing goal is to ensure consistent coverage of bar priorities in the editorial and marketing content of the *Bulletin*, bar website and various electronic newsletters and bulk messaging. In 2017 each issue of the *Bulletin* included columns on legal ethics, law practice management and legal writing. The magazine balances features on substantive law and legal trends with features, profiles and opinion pieces that touch on OSB priority issues. Priority coverage in 2017 included:

- Access to Justice -- “A Place to Call Home” (affordable housing); “Open Minds?” (finding impartial jurors); “Building a Responsive Network” (pro bono immigration services); “Fundamental Culture Change” (rule of law in developing countries); “A Labor of Love” (workers’ rights).
- Diversity, Equity & Inclusion -- “A Heart Person Takes the Helm” (president’s feature); “Changing the World” (women’s foundation report); “A Civil Rights Frontier” (transgender issues).
- Future of Law Practice/Tech -- “A Profession on the Edge” (multi-issue series on futures issues); “Beyond Bricks and Mortar” (virtual practice); “Running With the Machines” (AI in law).
- Practice Opportunities/Professionalism: “Heading North on 1010” (rural practice); “Pledging Integrity and Civility” (professionalism).

Information on OSB programs and events are included in the *Bulletin* as well as email communications and e-newsletters. In 2017 the department sent out 42 Bar News and BOG Update emails, which achieved an average open rate of 30% (the same as 2016). A/B testing of subject lines showed that members were 8% more likely to open a Bar News or BOG Update email if the subject line contained the keyword “OSB” in it. Special emails (inviting members to participate in surveys or informing them of important news) had average open rates of 46%. Comparison of email opens confirms that targeted messages are more effective than generic all-member messages.

The open rate for LRS reminder emails was 53%, and the open rate for 30-Day Late and 60-Day Late invoice reminders for panelists – a very small, targeted group – averaged 99%. The number of recipients for these Late Invoice emails also dropped significantly over the year, from 18 in January of 2017 to just 2 in December.

Our top priority for 2017 was the launch of a new web user interface for the bar’s new membership database. Members were required to create new passwords for the system, and notified of the requirement through *Bulletin* ads, website instructions, e-newsletters, and a broadcast email sent to all active members one week prior to the Sept. 12 cutover date. Membership response was immediate, with over 600 members setting up new passwords each day in the first week. By the end of the year 74% of all active and inactive members had updated their passwords.

As part of the password update campaign, and to spread awareness of futures issues, an on-demand version of the 2016 Futures CLE was linked to the new login page, making it available free of charge to any member who updated his or her password. By the end of the year 3,077 people had viewed portions of the video and 344 completed the three-hour program. The MCLE department has received many positive comments from members reporting their completion of the program, including: "I think this was one of the best and most thought-provoking presentations the Oregon State Bar has organized. Thank you for making it available. I don't think I would have sought out the topic, but it is an important topic."

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

Staff continue to support the marketing efforts of CLE Seminars and Legal Publications, also offering advice and services on communication campaigns for other departments. Special projects in 2017 include development of a *Bulletin* ad series for the OLF's Leadership Bank program and development of new websites for several bar groups and the Public Affairs Department. The new sites are branded to the bar and maintained on our platform, but the staff and volunteers who use the sites have the ability to update information and maintain their sites largely on their own.

Our first area of focus for 2017 was to complete the review and planning process for changes in how sections present CLE seminars. Portions of our multi-year plan were delayed by the Aptify changes, but others moved forward, including resolution of the section cosponsorship issue and continuing efforts to more effectively market CLE seminars. Enhanced marketing of CLE Seminars has been a multi-year project, beginning with the transition of the department's website to the main OSB site. Other marketing enhancements have included: A featured product carousel on the CLE home page and inclusion of CLE carousel ads on the OSB home page, member login page and BarBooks pages; creation of a consistent CLE/Legal Pubs section in the center of each OSB Bulletin; experimentation with email announcements, including the use of GroupMetrix software to tracking the effectiveness of different approaches; increases attention to cross-promotion opportunities with Legal Publications, the Bulletin, past programs and current outside events.

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

The communications department provides legal information to the public in multiple forms, primarily delivered through the bar's website. Most visitors access this information through our Legal Topic Index. Topics are updated on an ongoing basis, and 45 topics were reviewed and revised by lawyer volunteers and a staff editor in 2017. A total of 1,202,411 pages were viewed, with the most popular topics related to landlord/tenant law and family law. Overall page views were down slightly from 2016, which may be partly due to resource-related delays in rebuilding our web pages to be responsive for different screen sizes. It may also be partially due to the increasing popularity of our video offerings.

In 2016 we launched “Legal Q&A,” a series of short (2-3 minutes) videos, each of which features a lawyer answering a common legal question. The questions are posted on the web page, and viewers click on an embedded video to learn the answer. In 2017 we completed a total of 61 new Legal Q&A videos, including 10 in Spanish and 2 in Vietnamese. In total, the videos were played 28,477 times. The videos are formatted to display effectively on mobile devices, although most viewers access them via desktop computer. That may change when our website is redesigned to be responsive to varying screen sizes and types.

Another goal for 2017 was to complete a revision of the guidebook *Legal Issues for Older Adults* as a web-based product. After connecting with Oregon’s Department of Human Services, we were able to greatly expand our plans due to our partner’s grant funding. The 120-page handbook was professionally translated into Spanish, Mandarin, Russian and Vietnamese. Print copies are being made available to all public libraries in Oregon, along with many social service agencies. A less expensive print-on-demand version will be available for purchase through the OSB Order Desk, and pdf copies of all versions will also be available for free download from our website.

Outcome #4: The OSB is a trusted source of information and expertise for statewide media.

Media relations staff typically receives 6 to 10 calls per week from Oregon media, with the volume increasing any time major law-related stories are in the news. We maintain a roster of highly respected subject matter experts willing to provide analysis to enhance the quality of legal news coverage. We also seek out coverage of important trends and issues impacting Oregon communities, and in keeping with OSB priorities. Working closely with the Bar Press Broadcasters Council, staff works to influence legal news coverage on a systemic basis through joint education programs and policy input.

In 2017 the council drafted amendments to the uniform trial court rule governing use of cameras and other recording devices in courtrooms, and engaged in a statewide dialogue between media and court personnel about how to modernize the rule. The Oregon Supreme Court will consider the rule amendments in the spring of 2018. If adopted, the changes will also precipitate a fairly broad education and communications campaign aimed (separately) at both media and courts.

Outcome #5: OSB provides exceptional customer service to both members and the public.

Our priorities for 2017 was to launching the new single sign-on process for our website while avoiding disruptions to the annual regulatory compliance cycle. The sign-on process launched in September, which allowed time for many members to update their passwords before the compliance cycle began. We coordinated closely with the PLF, which adopted an email-only notification process this year. Despite the changes, online payments continued to increase during the initial month, as shown below:

Fee cycle	Successful transactions	% change	Amount collected	% change
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2018	4,161	+15.9%	\$1,916,373.00	+17.3%
2017	3,589	+10.7%	\$1,634,106.00	+9.8%
2016	3,243	+34.6%	\$1,489,512.00	+38.9%
2015	2,410	-21.1%	\$1,072,057.00	-20.9%
2014	3,055	NA	\$1,356,320.00	NA

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

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

Improved coverage of section and committee events will be a goal for the new online calendar we will develop as part of the Aptify conversion. The new calendar will be automatically populated by information entered into the event registration module, and bar groups will be required to use the event system. The new process will provide greater visibility for committee and section events while requiring less staff time than is currently spent on registrations alone.

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

The department has three distinct budgets – Communications, Bulletin and Creative Services. In Communications, staff costs increased as media relations was merged into this group. Special events met their budget projections, and revenue for our online career center once again exceeded projections, totaling \$39,452 (nearly double the budgeted amount). The *Bulletin* should finish close to projections, with some cost increases in 2017 due to the departure of a long-time staff member. With some restructuring of responsibilities, total expenses should decrease in 2018. The Creative Services Budget is projected to meet budget projections.

The department continues to support other bar programs and affiliate groups by providing free ad space in the Bulletin, and also promoting programs and events online and through email marketing. The value of donated space to CLE Seminars and Legal Publications totaled \$22,610, with an additional value of \$37,400 to other bar programs and affiliates such as the Campaign for Equal Justice.

2017 Program Evaluation Disciplinary Counsel's Office

Program Goal Statement

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

Program Description

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

Volunteers/Partnerships

Volunteers: The State Professional Responsibility Board, which is responsible for making charging decisions and overseeing the ensuing prosecution, is comprised of eight lawyers and two public members. The lawyer members are representative of the seven bar regions; the public members are at-large. The Disciplinary Board is comprised of 67 geographically-assigned lawyers and public members from whom trial panelists who serve as adjudicatory officers are selected. DCO also occasionally enlists a volunteer bar member to serve as lead counsel in a disciplinary matter, although no such volunteers were sought during 2017. Other members of the bar may serve as attorney monitors in both diversions and probations.

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

Outcomes and Evaluation

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

The target measures are a means of assessing the pace at which cases are proceeding from time of receipt to disposition, whether by dismissal, stipulated outcome, or trial. The “initial action” typically means sending an initial letter requesting information of a respondent, but might also be seeking additional information from the complainant or obtaining information from a third party as a first step. The “probable cause” decision is determining that the matter should be dismissed or be presented to the SPRB. Additional time is built in for the period of time that it takes to draft the memorandum to the SPRB making the recommendation. The length of time between taking a matter to the SPRB with a recommendation and filing the formal complaint typically allows time for negotiation before the filing of the formal complaint. Requesting a trial panel typically has not occurred until discovery is near completion.¹

This chart compares information for 2017 and 2016. During 2017, the average time to take initial action was slightly longer. A “probable cause decision” is measured by either dismissing the matter or determining that it should be referred to the SPRB. Making that decision took longer in 2017, which means that investigations were taking longer on average. The length of time to complete an investigation is increased when there is more material than average that is either submitted, sought, or obtained (or all three); when there are delays in seeking or receiving information; and when, once all of the information is garnered, it takes a longer than average time to review and analyze. Once a decision was made about whether to dismiss or take to the SPRB, staff was only slightly beyond the target time period in taking the cases to the SPRB, but admittedly took two months longer on average than in 2016. By contrast, formal complaints were filed on average more than a month earlier than in 2016 and trial panels were requested more than a month sooner than the target. There was also an increase by nearly 25% in the percentage of cases resolved without a trial. Finally, a smattering of cases in 2017 that were not measured as “prevailing” included three matters (two of which involved one lawyer) that were tried and dismissed by a trial panel. One of them is on appeal; the two involving the one lawyer the SPRB chose not to appeal. In one other matter, the SPRB reconsidered and dismissed a matter previously authorized for formal prosecution.

¹ Beginning January 1, 2018, DCO is mandated to ask for the assignment of a trial panel within 30 days following a respondent’s timely filing of an answer BR 4.1(f).

<i>Step</i>	<i>Target</i>	<i>2017 Average</i>	<i>2016 Average</i>
Initial Action	14 days from receipt	18 days	12 days
Probable cause decision	4 months (120 days) from receipt	177 days	77 days
Recommendation to SPRB	9 months from receipt	10 months	7.3 months
SPRB review of staff dismissals	90% upheld	100%	100%
File formal complaint	60 days from SPRB authorization	89 days	124 days
Request trial panel	120 days from formal complaint	124 days	139 days
Resolve 70% without trial		75%	53%
Initial trial setting	Within 6 months of assignment to a trial panel	164 days to hearing ²	11 of 18
Prevail in 90% of formal cases		Prevailed in 97.7%	100%

Outcome #2: Increase bar and public contacts

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

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

Diversion under Oregon BR 2.10 continues to be an option considered by the SPRB in eligible cases. Both DCO and SPRB are mindful that the facts of a case and the circumstances of a respondent lawyer must be such that there is an identifiable condition or issue that can be impacted by remedial action in order for diversion to be a successful outcome. An administrative staff member monitors all diversions, probations, conditional admissions, and conditional reinstatements and a single staff attorney handles any enforcement measures that arise from failures to abide by diversionary or probationary terms. The form language of diversion agreements and stipulated probationary orders form are under continued review. As of the end of 2017, 32 different matters are being monitored.³

² This number reflects the target measure as described. The 2016 number reflected the number of trial settings that took place within 6 months of the trial panel assignment.

³ Beginning January 1, 2018, DCO will have the sole ability to offer and negotiate diversions. SPRB authority will still be required to negotiate a stipulation that includes probationary terms. Trial panels may also impose probationary terms as a part of a sanction.

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

Completing a review of the Bar Rules that govern the attorney discipline system begun in 2014, on January 6, 2017, the Board of Governors voted unanimously to recommend a set of proposed revisions to the rules to the Oregon Supreme Court. After a public comment period expired on March 20, 2017, the Oregon Supreme Court scheduled reviewing the proposed changes on its May 2, 2017, public hearing agenda and entered an implementation order thereafter. The order provided an effective date of January 1, 2018.

Outcome #4: Process regulatory work in timely manner

In 2017, DCO timely processed 586 pro hac vice applications; 18 arbitration registrations; 1444 status transfers, which included 272 resignations and 197 reinstatements; and issued 899 good standing certificates. Staff responded to 1,882 public records requests by providing more than 4,865 copies and 79 computer disks, and 1 flash drive of records, as well as facilitating 17 in-person reviews. Response time was generally within 48 hours.

Outcome #5: Continue with technology improvements

During 2017, DCO staff members continued to participate in the development and planned launch of the new association management software. DCO continues to enhance, through currently available technology and software, the extent to which documentation is stored and transmitted electronically, in order to reduce paper and postage costs and render records more readily accessible through means other than a paper file, working with IDT to make incremental refinements in the disciplinary database. The transition of more Oregon courts to electronically searchable records has further reduced onsite visits and awaiting mailed copies of requested records, which has positively impacted disciplinary investigations. Public records requests are increasingly responded to electronically as well.

Outcome #6: Conduct a successful Ethics School

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

2017 Program Measures Diversity & Inclusion

Goal Statement

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

Program Description

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

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

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

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

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

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

In 2016 the DAC presented a year two DAP implementation report to the Board of Governors. Efforts in 2016 focused on revising the DAP and implementing year three strategies and action items to achieve our goals.

Volunteers/Partnerships

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

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

Outcomes

Outcome #1: Conduct outreach with legal employers to determine best practices for retaining lawyer employees from nondominant cultures

Measure: Collect information from legal employers.

Outcome #2: Develop resources to assist legal employers in creating a diverse workforce.

Measure: Create a business case identifying the benefits of employing lawyers from nondominant cultures.

Outcome #3: Increase D&I program effectiveness.

Measure: Analyze current effectiveness based on data, current trends, and known issues.

Outcome #3: Support diverse law students in Oregon, including students from nondominant cultures, through mentorship and community building, to encourage them to practice in Oregon upon graduation.

Measure: Collaborate with Oregon law schools and other partners to create a robust and effective Opportunities for Law in Oregon (OLIO) orientation program.

Outcome #4: Create awareness in the legal community about existing programs, to encourage individuals from nondominant cultures to pursue legal education.

Measure: Create a list of schools with pre-law programs, high schools with mock trial programs, and other educational organizations with school engagement initiatives.

Outcome #5: Review the applicable minimum continuing legal education (MCLE) rules and regulations to determine whether programs approved for access-to-justice credit support the DAC's mission.

Measure: Identify and develop any changes needed to the MCLE rules and regulations.

Outcome #6: Promote Legal Employers Toolkit to legal employers.

Measure: Work with the OSB Diversity Section to complete toolkit.

Outcome #7: Increase outreach to a diverse group of lawyers and nonlawyers, including individuals from nondominant cultures, for OSB volunteer positions.

Measure: Organize an event co-sponsored by the OSB's D&I Department, the BOG, and specialty bars, to explain OSB leadership opportunities, selection processes for OSB volunteer appointments, and application processes for the BOG and HOD.

Outcome #8: Address gaps and barriers to leadership positions within the BOG and specialty bars for underrepresented members of the bar.

Measure: Identify gaps and barriers.

Program Evaluation 2017 General Counsel's Office

I. Goal Statement

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

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

II. Program Description

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

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

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

General Counsel's Office provides administrative support to the Unlawful Practice of Law Committee, which investigates complaints of unlawful practice by persons who are not members of the Oregon State Bar. Based on the Committee's recommendation, the bar is authorized by statute to seek injunctive relief against unlawful practitioners. The Committee also issues informational letters as appropriate, and engages in public education and outreach through, among other activities, the issuance of advisory opinions.

General Counsel's Office provides ethics assistance to bar members, responding to approximately 4,000 telephone requests, 400 e-mail requests, and 20 requests for advice letters each year. General Counsel staff attorneys are regular contributors to the Bulletin and to continuing legal education programs of the bar and other organizations. The Office is liaison to the OSB Legal Ethics Committee, assisting in the development of formal opinions that are issued by the Board of Governors and in the development of proposed amendments to the Oregon Rules of Professional Conduct. General Counsel provides staff support to special task forces studying rules of professional conduct for lawyers and, occasionally, judges.

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

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

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

III. Volunteers/Partnerships

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

IV. Outcomes

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

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

In 2017, two new lawsuits were filed against the OSB and were successfully resolved. In one case, the federal court dismissed on its own motion; in the other, other parties (the bar was a "John Doe"

defendant) obtained a complete summary judgment. Several long-standing matters came to successful conclusions. Two additional matters remain pending, including one filed in 2018.

The bar responded to one substantial public records request that was then taken to the Department of Justice for review by the requesting party. The DOJ agreed with the bar's position.

In 2016, the bar's legal service program was named as a *cy pres* judgment creditor in a class action. When that judgment was appealed, the bar retained counsel on a reduced flat-fee basis to represent the bar's interests on appeal. As of 2017, the appeal is fully briefed and the bar is awaiting the court's decision.

An issue with PERS arose in 2016 that presented potential liability for the OSB and PLF. It was successfully resolved through a memorandum agreement in 2017.

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

Managers similarly received prompt and helpful assistance with issues throughout the year including personnel, contracts, public records and meetings, and other issues as they arose. The volume and complexity of contracts to review increases every year, particularly with respect to information technology, and staff is developing the expertise to handle these matters in house as much as possible. In addition, over the past year General Counsel has provided an increased level of support to staff on public records and meetings law issues.

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

Fee dispute resolution activity has declined in 2017. General Counsel's Office received 70 petitions in 2017, which is a decrease from 86 in 2016. The program, however, has continued to be utilized by a significant number of attorneys and clients, and continues to receive positive feedback.

The Fee Dispute Resolution Program is voluntary for both parties. This usually results in about 40% of the requests for either mediation or arbitration being closed without resolution, either because of no response from the respondent, or a respondent's open refusal to participate. In 2017 that rose to 61%.

In 2017 there were 41 fee mediations requested; nine went through mediation hearings. There were 24 arbitrations requested, and 13 went through arbitration hearings. There were five cases that did not settle in mediation and went through arbitration for a resolution.

In 2017, General Counsel's Office staffed a BOG Fee Mediation Task Force. The Task Force developed several recommended changes to the fee mediation program. As a result of the Task Force, General Counsel worked with the Legal Ethics Committee to develop a proposed amendment to Oregon RPC 8.3, which was adopted by the Court in January 2018. Recommended changes to the Mediation Handbook and forms are currently in process.

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

This service continues to be one of the most highly valued by members, at least based on the informal feedback received. Call volume continues at a high level (approximately 20-25 calls/day) and nearly every call is answered the day it is received.

In 2017, General Counsel's Office instituted a new calling cue, and began promoting the services of the Ethics Helpline on the bar website and The Bulletin. The calling cue has allowed bar staff to streamline the ethics request process, and respond to voicemail messages in a timelier manner. Anecdotally, it appears that call volume to the Ethics Helpline has increased over time. With the call cue in place, we will be able to more closely track call data in years to come.

Written inquiries are generally addressed within the office guideline of three business days from the date of receipt. GCO attorneys attended the ABA's National Conference on Professional Responsibility in 2017 and participated in other activities to keep them abreast of developments in the field. Members continue to complement GCO's regular Bulletin articles and CLE presentations. The office is recognized by members as a valuable resource on issues of professional responsibility.

In 2017, General Counsel provided staff report to the Regulatory Committee of the OSB Futures Task Force. In June 2017, the Task Force issued its Report and Recommendations to the Board. The Recommendations related to implementation of a paraprofessional licensing program, proposed amendments to the Oregon Rules of Professional Conduct, and increasing tools for self-navigators. One of the proposed amendments to Oregon RPC 7.3 was adopted by the Supreme Court in January 2018.

The Legal Ethics Committee presented three new formal ethics opinions to the Board of Governors in 2017, and a significant update to a fourth formal ethics opinion.

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

The UPL Committee received 51 complaints in 2017. The Committee continues to resolve complaints in a timely manner.

The Committee has participated in numerous outreach programs to promote education with the Oregon Chapter of the American Immigration Lawyers Association, the Mexican Consulate, and U.S. Customs and Immigration Services. General Counsel has staffed the Committee and has provided support to members engaged in drafting UPL Advisory Opinions regarding reoccurring Unlawful Practice of Law issues. The Committee recently completed one regarding JD Degrees and Advertising that will be forwarded to the Legal Ethics Committee and the Board of Governors for approval.

The Committee referred seven cases to the Board of Governors in 2017 for approval of prosecution. Two cases already are in the prosecution phase and five (related) cases are waiting approval. In 2017, the Oregon State Bar and the Oregonian collaborated on an article that was published to promote public awareness of the dangers of notario fraud.

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

The Disciplinary Board Clerk function enhances the integrity of the disciplinary process by separating the Disciplinary Board's operations from Disciplinary Counsel's Office. There have been no significant

errors or unfavorable incidents; on the contrary, the DB Clerk typically provides more service to Disciplinary Board members than is contemplated by the position and consistently receives high praise for the service provided.

Timelines for opinions and other responses from trial panels and regional chairs are not always met, an undoubted (and perhaps unavoidable) consequence of relying on volunteers with full-time jobs. Records management is accurate and timely, and efforts continue toward an entirely electronic filing process. General Counsel responded to a high number of inquiries in 2017 and provided procedural guidance to Disciplinary Board members and State Chair.

General Counsel hosted a Disciplinary Board Conference in 2017 for all Disciplinary Board members which was attended by 58 people. Evaluations reflect that the conference was valuable; the Conference will be held on an annual basis as a way of training the new volunteers for their role.

In 2017, General Counsel's Office was focused on implementing recommendations of the Disciplinary System Review Committee, as approved by the Board of Governors and the Oregon Supreme Court. These changes will take effect in the New Year.

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

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

General Counsel's Office received and reviewed 233 appeals from CAO in 2017. General Counsel's Office referred eight matters to Disciplinary Counsel's Office for further review. The numbers of days it takes for General Counsel's Office to complete its appellate review is less than 60 days. The requests for review stayed the same at approximately 19 appeals per month.

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

In 2017, the committee received approximately fifteen new cases and continued to monitor twelve cases from 2016. Ten of those received were regular referrals, four were Conditional Admissions, and one was Diversion. There are four regular referrals, six probations, two diversions, and one conditional admission still being monitored from 2016. These referrals come from many sources – other lawyers, members of the public, judges, and the CAO and SPRB. The Committee promptly conducts its initial investigations and make determinations about whether to assert jurisdiction and monitor lawyers.

Based on an initial evaluation and information provided during the attorney interview, the Committee decides whether to take jurisdiction. If jurisdiction is taken, the attorney enters into a monitoring agreement with the Committee. During monitoring, committee members maintain close and regular contact with the referred lawyer.

The committee closed approximately thirteen regular cases, three probation cases, and three conditional admissions in 2017.

The Committee has seen a rise in the amount of cases involving cognitive impairment and is considering increasing the amount of committee members.

In 2017, the Committee welcomed its first neuropsychologist member, who is well positioned to provide input on cognitive issues. The Committee also welcomed a physician who has a special focus in Addiction Medicine. Both additions have provided valuable expertise to the Committee.

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

General Counsel's Office promptly responds to regular inquiries from lawyers and members of the public about the program process. The Office filed monthly ULTA reports to the Accounting Department and quarterly ULTA reports to the Department of State Lands. The Office filed a yearly accounting of the funds to OLF for distribution of funds to legal programs.

General Counsel's Office has received garnishments from the Department of Revenue and the Department of Children's Services for ULTA funds. The Office will continue to work with garnishors and promptly respond to requests to avoid any timeline issues.

The General Counsel's Office communicates regularly with lawyers and public members to help them understand the processes for reporting and claiming Unclaimed Lawyer Trust Account Funds.

2017 Program Evaluation

Human Resources Department

I. Program Goal Statement

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

II. Program Description

The Human Resources Department provides direct service for all employment, training and development, performance evaluation, staff and member benefit administration, policy development, workers' compensation, and all safety-related activities for all bar departments and personnel. The department ensures compliance with federal and state human resources and safety requirements.

III. Volunteers/Partnerships

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

IV. Outcomes and Evaluation

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

Measures: Timely completion of process
Effective pre-screening to identify sufficient pool of qualified candidates
Seek opportunities to increase a diverse pool of qualified candidates
Monitor retention rates of new hires
Assist directors with succession planning

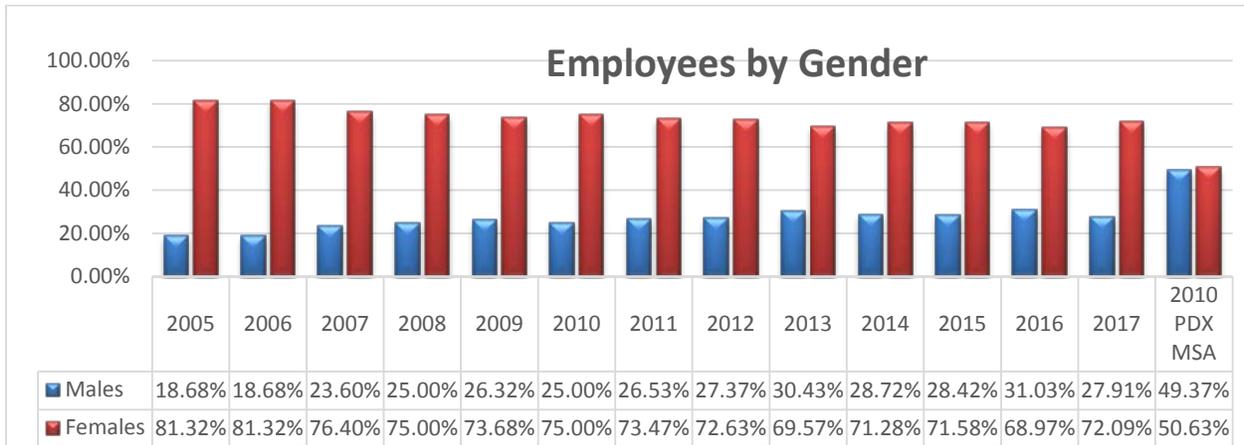
There were 23 open positions in 2017. Recruitment for one position has not started as the position and need are being evaluated. One position will not be replaced. Seven positions remained unfilled at the end of 2017. Of the fourteen filled positions, twelve were filled from the outside and two were internal fills. Eleven of the external hires remain employed with the bar. The twelfth external hire was for a casual position and that need has ended.

2017 Open Positions

Position Title	Exempt or Non Exempt	Date Recruitment Started	Date Offer Accepted	No. of Days Open	Internal or External Fill	Still Employed	Race	Sex
Accountant	Non Exempt	10/06/2017	10/06/2017	0	External	Yes	Caucasian	F
Accounting and Documentation Specialist	Non Exempt	Position Closed						
Accounting Specialist – A/R	Non Exempt	05/23/2017	07/21/2017	59	External	Yes	Caucasian	F
Adjudicator	Exempt	08/30/2017	12/20/2017	112	External	Yes	Caucasian	M
Admissions Manager	Exempt	01/27/2017	05/03/2017	96	Internal	Yes	Caucasian	M
Assistant Disciplinary Counsel – Litigation	Exempt	03/02/2017	05/25/2017	84	External	Yes	Caucasian	F
Assistant General Counsel and Client Assistance Office Attorney	Exempt	05/09/2019	08/11/2017	94	External	Yes	Caucasian	F
Associate Editor	Non Exempt	07/26/2017	10/18/2017	84	External	Yes	Caucasian	M
Bulletin Editor	Exempt	02/20/2017	02/20/2017	0	Internal	Yes	Caucasian	F
CLE Customer Service Specialist	Non Exempt	12/06/2017						
CLE Seminars Marketing Specialist	Non Exempt	02/13/2017	05/23/2017	99	External	Yes	Hispanic	F
CLE Seminars Program and Event Assistant	Non Exempt	09/26/2017						
Director of Finance and Operations	Exempt	09/22/2017						
Director of Information Technology	Exempt	08/01/2017						
Diversity & Inclusion External Coordinator	Non Exempt	02/16/2017	06/02/2017	106	External	Yes	Caucasian	F
Diversity & Inclusion Internal Coordinator	Non Exempt	02/16/2017	05/24/2017	97	External	Yes	Caucasian	F
Facilities Manager	Exempt	08/08/2017	10/17/2017	70	External	Yes	Caucasian	M
MCLE Program Assistant	Non Exempt							
Referral & Information Services Assistant	Non Exempt	10/13/2016						
Referral & Information Services Assistant - Bilingual	Non Exempt	08/31/2016	06/12/2017	285	External	Yes	Caucasian	M
Referral & Information Services Assistant - Bilingual	Non Exempt	11/15/2016						
Referral & Information Services Assistant - Bilingual	Non Exempt	07/25/2017						
Referral & Information Services Assistant – Casual	Non Exempt	02/10/2017	02/10/2017	0	External	No	Caucasian	F

During 2017, the bar hired fourteen new employees and, of those fourteen, five were males. Of the fourteen employees who left in 2017, eight were males: four retired, three left to pursue different careers, and one left for law school.

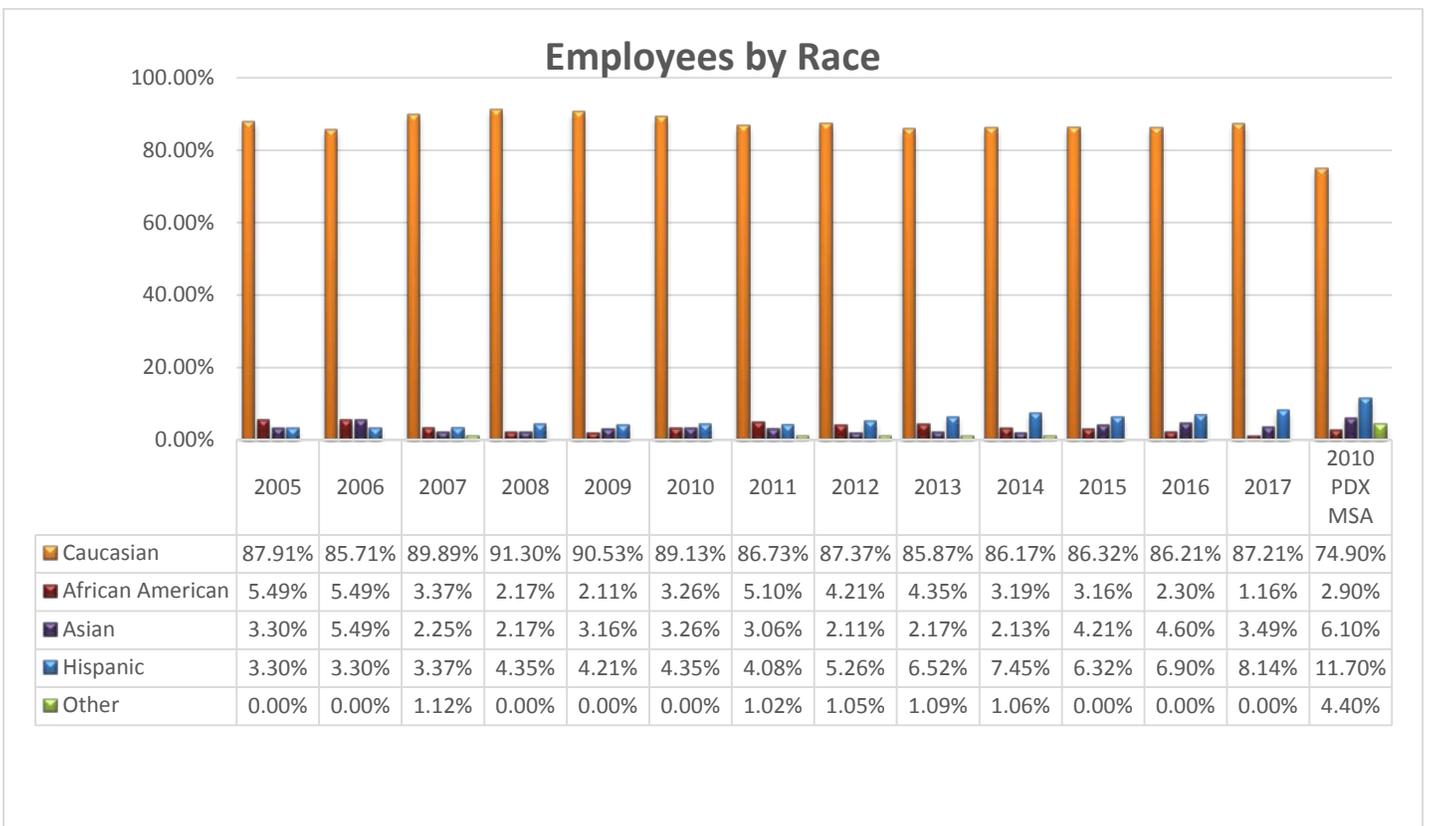
The female employee population increased by one and the male employee population decreased by three. The 2017 average turnover rate for males was 2.62% and 0.82% for females. In 2017, the bar hired eight females and six females left the bar.



The bar continues to focus on increasing the diversity of the applicant pool through outreach to the community, agencies, publications, and websites directed toward a more diverse community. The 2018-2020 Diversity Action Plan outlines additional strategies for increasing the applicant pool.

In 2017, the bar hired fourteen employees: three Hispanics, and ten Caucasians. Fourteen staff left the bar in 2017: one was African-American, one was Asian, one was Hispanic, and eleven were Caucasian.

Overall, bar staff decreased to 86. The 2017 average turnover rate for Caucasians was 1.24%, 4.17% for African-Americans, 2.08% for Asians, and 1.04% for Hispanics. The African-American employee left to relocate to another state, the Asian employee left to pursue a different career, and the Hispanic employee left to go to law school.



We continued to struggle with filling RIS Assistant positions in 2017. There were several high-level positions and those types of positions tend to take longer to fill.

Average days to fill all positions increased by 35.96 days. Hiring exempt staff in 2017 increased by 8.40 days and increased for non-exempt staff by 31.21 days.

Seven positions remain open at year end: CLE Customer Service Specialist, CLE Seminars Program and Event Assistant, Director of Finance and Operations, Director of Information Technology, and MCLE Program Assistant. The MCLE Program Assistant is being evaluated for departmental needs. The CLE Seminars Program and Event Assistant is the result of merging two positions into one.

Number of Days to Hire

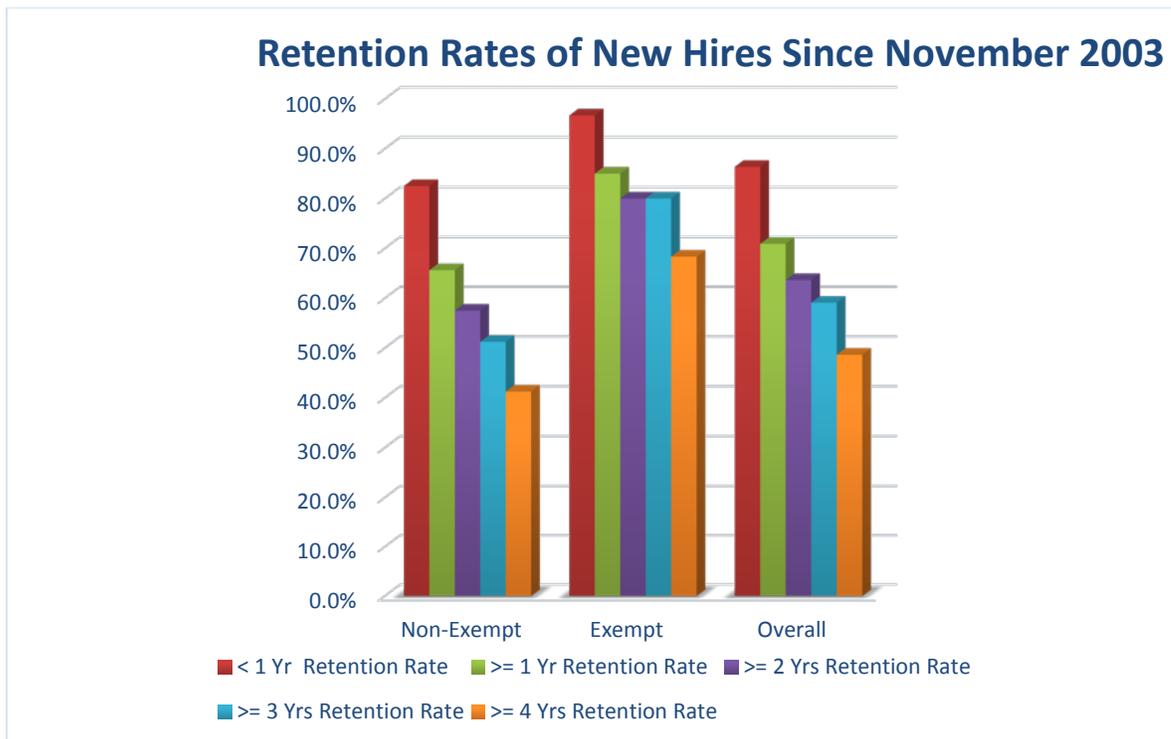
	Number of Filled Positions	Average Days to Fill	Variance (Days)	Number of Filled Non-Exempt Positions	Average Days to Fill	Variance (Days)	Number of Filled Exempt Positions	Average Days to Fill	Variance (Days)
2004	21	56.65	NA	17	60.40	NA	4	46.40	NA
2005	15	69.67	13.02	8	57.63	(2.77)	7	83.43	37.03
2006	18	74.06	4.39	13	70.77	13.14	5	82.60	(.83)
2007	19	76.64	2.58	14	69.72	(1.05)	5	96.00	13.40
2008	13	102.46	25.82	11	82.82	13.10	2	210.50	114.50
2009	7	65.00	(37.46)	5	63.60	(19.22)	2	72.00	(138.50)
2010	8	22.88	(42.12)	5	23.20	(40.40)	3	22.33	(49.67)
2011	24	55.42	32.54	21	57.57	34.37	3	40.33	18.00
2012	12	64.42	9.00	12	70.09	12.52	1	2.00	(16.00)
2013	19	65.00	58.00	13	44.77	(25.32)	6	108.83	106.83
2014	15	76.47	11.47	11	75.18	30.41	4	63.75	(45.08)
2015	22	51.18	(25.29)	15	37.58	(37.60)	7	83.80	20.05
2016	12	48.75	(2.43)	7	35.29	(2.29)	5	67.60	(16.20)
2017	24	84.71	35.96	8	66.50	31.21	6	76.00	8.40

Retention Rates of New Hires tracks the to-date retention rate of employees hired since November 2003. During this period, 220 positions have been filled and 118 of those employees have left the bar. Only fifteen have left for the sole reason of leaving for another job. Twenty-two employees have been involuntarily terminated by the bar (three completed a limited duration assignment). The remaining left voluntarily due to a variety of reasons to include:

- geographic relocation;
- increased commuting expenses;
- full-time employment;
- family decisions;
- health issues;
- returning to college or law school;
- internships;
- entering the military;
- retirement; and
- following their dreams such as starting a business or changing a career path.

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

In 2017, five employees retired from very long careers with the OSB, two employees relocated to another state, one employee entered law school, three employees chose a new career path, one employee felt it was time to take some time off, and two employees left for another position with higher pay. While two employees leaving for another position or higher pay seems like a low number, this is a significant increase for the OSB.



Annual Average Turnover Rate

2005	0.85%
2006	1.55%
2007	1.46%
2008	0.73%
2009	0.54%
2010	0.62%
2011	1.07%
2012	1.21%
2013	1.27%
2014	0.73%
2015	1.24%
2016	1.36%
2017	1.35%

Headcount

	Exempt Staff	Non-Exempt Staff	Total Staff	Total FTE
2005	46	45	91	82.972
2006	45	45	90	81.975
2007	45	45	90	84.850
2008	39	53	92	86.275
2009	38	57	95	89.050
2010	39	53	92	85.675
2011	41	57	98	88.950
2012	40	55	95	86.275
2013	39	53	92	84.400
2014	42	52	94	87.100
2015	42	53	95	89.350
2016	41	46	87	83.325
2017	41	45	86	82.200

There were five retirements in 2017. As of today, there are eleven employees eligible for full retirement. Four of those employees are directors or managers. One of those managers has already submitted a retirement notice for early 2018.

Employees Eligible for Full Retirement	July 2009		Jan 2010		Jan 2011		Jan 2012		Jan 2013		Jan 2014		Jan 2015		Jan 2016		Jan 2017		Jan 2018	
	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#
Less than one year	10	9	11	10	10	9	9	9	13	12	11	10	11	10	12	11	13	11	13	11
One year to five years	18	17	19	18	20	18	18	18	26	25	23	21	20	19	26	25	15	13	14	12
Five years to ten years	32	29	33	31	37	34	36	35	41	39	40	37	38	36	39	37	14	12	9	8

Outcome #2: Provide training and development programs and opportunities in a cost-efficient manner. Guide organizational strategy and compliance training needs, as well as personal and professional growth opportunities, to boost employee competence.

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

This year we offered subject matter including:

- Using benefits;
- Professional growth;
- Diversity;
- Health;
- Wellness; and
- Financial.

This listing of 2017 trainings does not recognize external training opportunities staff attended through their own department’s budget. The expense for all of these opportunities is \$355. We were fortunate that there was a sizeable credit from the American Red Cross that paid for all but \$15 of this year’s CPR and first aid training.

2017 Staff Training Opportunities

Name of Seminar	Date of Seminar	Cost of Seminar	Employees Invited
Cascade Centers Overview	January	\$0	All staff
Business Etiquette: More Than Just the Right Fork	January	\$39.95	All staff
Overcoming Depression in the Workplace	April	\$0	All staff
CPR (adult & child)/AED/First Aid/Blood-borne Pathogens	May	\$15	All staff and PLF
Debunking Dieting Myths	May	\$0	All staff
Multigenerations in the Workplace	June	\$300	All staff
Overcoming Depression in the Workplace	July	\$0	Directors and Manager
Understanding How Money Works	August	\$0	All staff
Caregivers	November	\$0	All staff

Outcome #3: Manage employee-related risk by maintaining the most cost effective and comprehensive workers' compensation and employment practices liability insurance coverage. Protect human and physical resources by training employees in critical aspects of safety and management skills. Manage a fully-functioning Safety Committee.

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

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

The Safety Committee met once each quarter. The committee reviewed two ergonomics issues, the supplies stocked in the first aid cabinets, and updating the safety inspection checklist. Both employees with ergonomics issues report improvement in their workstation and in their injury.

“Tip of the Month” continued throughout 2017 as employment law updates and HR tips were provided to managers and directors at the quarterly meetings. Topics for 2017 included:

- 13 “Nondefenses” to Workplace Harassment
- Mediating Workplace Conflicts: 9 Tips for Managers
- 7 Steps for Handling Employees with Attitude Problems
- NCAA Basketball Coach Offers Lessons in Leading High-Performing Teams
- Debunking 4 Myths about Millennials in the Workplace
- 3 Things Millennial Employees Need to Excel in Your Workplace
- Understand Millennials to Bolster Job Retention
- Move Over, Millennials; Generation Z is Here
- Why Are Some Employees Called Such Horrible Things?
- The “Great Manager” Checklist: How Do You Rate?
- Extroverts and Introverts: How to Get the Best Work from Both
- Report Reaffirms Generational Tendencies at Work
- Are You Overlooking Important Clues When Hiring a New Employee?
- 4 Simple Tweaks to Become a Better Manager
- How to Write Performance Goals: 10 Sample Phrases
- The Art of Giving Positive Feedback: 7 Simple Tips
- The Art of Giving Negative Feedback: a 7-Step Approach
- Some Good Advice on Delivering Bad News
- Empower Your People: 7 Ways to Help Employees Grow
- Performance Reviews: 20 Questions for Evaluating Intangibles
- 5-Step Plan to Set and Measure Performance Goals

The 2017 Employment Practices Liability (EPL) policy was renewed for an annual premium of \$12,252 reflecting a 29.64% increase. The EPL policy carries the same \$2,000,000 limit, third-party coverage, and directors and officers liability insurance (D&O). However the deductible was raised to \$35,000. The EPL portion of the premium decreased by 12.70% from \$5,362 to \$4,681. The D&O portion of the premium increased 35.97% from \$5,568 to \$7,571. This is the result of three claims with a total payout of \$72,867.

The workers’ compensation policy renewed with a \$13,931 premium reflecting an increase of 55.14%. The increase is due to one unresolved claim for which the insurance carrier set a high reserve. That reserve has already been reduced. However, the claim caused the experience modification factor, used in calculating our premium, to increase from .80 to 1.34. Additionally, this claim will affect our premium for the next three years.

Insurance Coverage and Activity

Policy Period	WORKERS' COMPENSATION INSURANCE					EMPLOYMENT PRACTICES and DIRECTORS & OFFICERS LIABILITY INSURANCE		
	Workers' Compensation Claims	Annual Premium	Variance	Dividend Received	Experience Modification Factor	Employment Practices Liability Claims	Annual Premium	Variance
2004 to 2005	1	\$8,450	(4.3%)	n/a	.79	1	\$9,765	(10.49%)
2005 to 2006	1	\$10,474	24.00%	n/a	.80	0	\$11,237	15%
2006 to 2007	0	\$9,819	(6.25%)	n/a	.82	0	\$8,633	(23.17%)
2007 to 2008	5	\$10,136	(0.015%)	\$1,123	.87	0	\$8,643	0.12%
2008 to 2009	2	\$9,873	(2.59%)	n/a	.88	0	\$8,224	(4.85%)
2009 to 2010	0	\$9,982	1.10%	n/a	1.04	0	\$7,961	(3.20%)
2010 to 2011	4	\$9,633	(3.5%)	\$3,832	1.07	0	\$8,119	1.98%
2011 to 2012	1	\$9,425	(2.16%)	\$3,268	1.09	0	\$6,928	(14.67%)
2012 to 2013	0	\$9,681	2.71%	\$3,655	0.98	0	\$6,880	(.69%)
2013 to 2014	1	\$10,447	7.92%	\$2,920	0.99	0	\$8,095	17.66%
2014 to 2015	0	\$10,514	0.64%	\$2,969	0.97	0	\$8,713	7.63%
2015 to 2016	0	\$9,897	(5.87%)	\$2,133	0.86	0	\$9,120	4.67%
2016 to 2017	1	\$8,964	(9.43%)	\$2,508	0.80	0	\$9,451	3.63%
2017 to 2018	2	\$13,931	55.41%	\$5,726	1.34	0	\$12,252	29.64%

Outcome #4: Comply with regulatory requirements through continual auditing and updating of current policies and practices.

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

The following employee policy was revised and distributed to all employees in 2017.

- Policy 5.5 Long-Term Disability Benefits and Salary Continuation Program

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

The Emergency Planning Committee was formed in 2017 to create and evaluate procedures for small emergencies; for example, the building is without power for an extended period of time.

2016 Program Evaluation Legal Services Program

Legal Services Program Goal Statement

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

Program Description

The Legal Services Program began in 1998, following the Oregon Legislature's appropriation of a portion of court filing fees to support civil legal services to the poor. The legislation required the OSB to manage the funds and employ a Director of Legal Services Program. The legislation also mandated the development of Standards and Guidelines for providers, and the creation of a Legal Services Program (LSP) Committee. The role of the LSP Committee is to assist and advise the Director in carrying out the LSP program review, to ensure compliance with the Standards and Guidelines, and to further the program's goals.

As part of the compliance phase, the Director of the LSP conducts an accountability process and facilitates integration of services between the various legal services providers. The Director also works with other funders, the private bar and other organizations in a statewide collaboration to improve access to civil justice in Oregon. The LSP has three staff, including the Director, who are shared between the LSP and the Oregon Law Foundation (OLF). The dual roles enhances the collaboration between the OLF, the LSP and other legal services funding sources.

The LSP includes the Pro Bono Program. Under the general supervision of the Director, the Assistant Director works with the OSB Pro Bono Committee to develop and implement strategies that will create a statewide culture of pro bono and greater participation by the private bar. The Assistant Director also administers the OSB Certified Pro Bono Program.

The LSP also manages the receipt and distribution of Unclaimed Lawyer Trust Account funds appropriated to legal services pursuant to ORS 98.368(2), pro hac vice funds received pursuant to ORS 9.241 (3), and cy- prè awards pursuant to ORCP 32 O.

Volunteers/Partnerships

The Legal Services Program Committee is comprised of seven attorney and two public member volunteers. The Pro Bono Committee is comprised of nineteen attorney volunteers.

Outcomes and Evaluation

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

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

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

The LSP continues to distribute the statutory allocated funds to legal aid on a monthly basis totaling \$5,950,000 annually. In addition, the LSP paid out \$277,000 in pro hac vice funds to the legal aid providers in 2016.

The LSP also continues to receive and hold unclaimed funds from lawyer trust accounts and to hold funds from the Strawn Farmers class action received in 2014. The LSP Committee recommended disbursing funds received during the annual cycle amounting to \$69,576 leaving \$100,000 in reserve following the reserve policy. Two-thirds of the Strawn Farmers class action had been distributed previously and due to the number of claims made against those funds the LSP determined that no additional funds should be disbursed. The LSP recommended that the remainder of these funds be held in reserve and reviewed each year to determine whether it remains reasonable given the amount of claims received over time.

The 2015 Legislative Session appropriated \$600,000 to the LSP for legal aid. The LSP also recommended that the funds be distributed in two parts with one payment in March 2016 and the other in January 2017 to accommodate new funding developments such as a reduction in the federal appropriation. The 2017 legislature did not appropriate general fund dollars to the LSP for legal aid.

In 2015, the Oregon legislature adopted HB 2700 which directs 50% of unclaimed class action funds (cy pres funds) to legal aid programs through the LSP. Although passing HB 2700 was an exciting event for legal aid, it is not believed to solve legal aid's funding shortfall. There are not many class actions filed in Oregon making cy pres funds unpredictable and infrequent. The LSP received \$30,000 from a cy pres award in 2016 and \$15,000 in 2017. These funds are still being held.

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

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

The LSP Committee engaged in site visits of legal aid offices across the state including Medford, Bend, Eugene and Portland. This was not only an effort to have the committee better understand what legal services each office provides and how offices work to understand community legal needs, but also an effort to strengthen the program's relationships and build goodwill with the regional offices. These visits were very well received by both legal aid staff and the LSP Committee.

The LSP Accountability Process and the Standards and Guidelines were reviewed and revised in 2017. The LSP Committee formed a subcommittee to review the LSP Accountability Process. The subcommittee revised the self-assessment tools to improve the information and data collected. The subcommittee also decided that the 2018 accountability process would include both the completion of the self-assessment tool by providers and site visits at three of the regional legal aid offices. The LSP Committee approved revisions to the Standards and Guidelines making them more in line with the framework of the statute.

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

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

Staff continues to work with organizations to help them through the certification process. The OSB has 23 Certified Programs representing 50 different volunteer opportunities and locations across the state. These Certified Programs allow Active Pro Bono attorneys, government-employed attorneys and House Counsel further options for engaging in pro bono work. Four new programs received Certification in 2017 and two additional programs are likely to receive Certification in early 2018.

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

Staff updated the online Pro Bono opportunity directory in 2017 to show current volunteer opportunities. In 2018, staff will work with the Pro Bono Committee to keep the directory up to date and to identify previously unlisted opportunities, particularly outside of the Portland Metro region.

The Assistant Director worked with the New Lawyer Programs Coordinator to invite pro bono programs to participate in the fair portion of the annual Pro Bono CLEs, Fair, and Celebration. The 2017 Fair was slightly less well-attended than prior years; however organizations reported better response from lawyers who visited their tables signing up to volunteer. At the Celebration portion of the evening, the ONLD Pro Bono Challenge awards were presented to lawyers and firms who reported the most hours in 2016. The Assistant Director is responsible for gathering reports and compiling the list of winners of the Challenge awards as well as the list of Lawyers who have provided 40 or more hours of direct pro bono representation for inclusion in the OSB Pro Bono Honor Roll published in the Bar Bulletin. Recognition at the fair of Challenge winners and publication of the Honor Roll are the two means that the Bar uses to recognize the pro bono activities of Oregon attorneys.

Staff continues to work with the ONLD and the MBA on promoting and supporting pro bono work. Staff serves on the Legal Aid Services of Oregon Pro Bono Committee and helps select the LASO/OLC pro bono award winners and draft pro bono related articles for the MBA's publication *Multnomah Lawyer*.

In 2017, the Pro Bono Committee promoted the new MCLE rule allowing attorneys to convert two hours of pro bono time into one hour of CLE credit. This effort included publishing articles in local and specialty bar newsletters as well as an in person presentation conducted by the Assistant Director and committee members to the Corporate Counsel association. The Pro Bono Committee also successfully coordinated a day of service event in partnership with an east Multnomah County organization that serves immigrants. In 2018, the Pro Bono Committee will work on coordinating another service event, potentially in coordination with the October Pro Bono Fair and Celebration week.

With the Bar's implementation of the new member management software, Aptify, progressing, an important goal for 2018 is to implement or have a clear path set for implementing the ABA Free Legal Answers site in Oregon. Free Legal Answers gives income-qualified individuals the opportunity to submit brief legal questions online and pro bono attorneys answer those questions through an online system. All but nine states have implemented ABA Free Legal

Answers. Where it has been implemented, states have reported the site as being transformative. Time, location, and scope of representation barriers to attorneys providing pro bono service are dissolved by Free Legal Answers, and states that have implemented the site have reported both an uptick in overall pro bono work and an increase in volunteering with traditional pro bono programs as new volunteers increase their pro bono commitment after starting with the Free Legal Answers site.

2017 Program Evaluation Minimum Continuing Legal Education

Program Goal Statement

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

Program Description

The MCLE Rules promulgated by the Supreme Court delegate oversight and administration of the MCLE program to the OSB Board of Governors. The BOG is charged with formulating new or amended MCLE Rules for the Court's approval; the BOG is also authorized to adopt regulations to implement the Rules. The MCLE Rules generally require all active members of the bar to complete 45 hours of continuing legal education every three years. Five of the hours must be in legal ethics or professionalism. One hour of training must be on the subject of a lawyer's statutory duty to report child and elder abuse. Members are also required to complete three access to justice credits in alternate reporting periods. New admittees are required to complete 15 credits including 10 practical skills, 2 legal ethics and a 3-credit introductory course in access to justice during their first reporting period. One of the ethics credit hours must be devoted to Oregon ethics and professionalism and four of the ten credits in practical skills must be devoted to Oregon practice and procedure.

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

Volunteers/Partnerships

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

Outcomes and Evaluation

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

In 2017, staff completed the processing of 4,684 compliance reports for the period ending 12/31/2016. 80% of the reports were reviewed by staff within ten business days of receipt. Notices of Noncompliance were sent to 450 members on March 2, 2017, which was 30 days after the filing deadline.

For the 2017 reporting period, 4,994 compliance reports were sent via email or regular mail in October 2017.

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

90% of all applications for accreditation were processed within 30 days of receipt of the completed application. For the majority of the year, applications were processed within 3-4 weeks of receipt in our office. During the peak months of January and December 2017, applications were processed only for those members who had a reporting period that just recently ended or a reporting period ending soon (12/31/2016 reporting period for apps processed in January 2017 and 12/31/2017 reporting period ending for apps processed in December 2017). In February and March 2017, all other applications received in December 2016 and January 2017 were processed. After that time, we were back on track to process applications within 3-4 weeks of receipt. (The longer processing time is due to removing the 30 day deadline to process applications from the MCLE Regulations and not hiring temporary help in the MCLE Department during the peak of the compliance cycle.)

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

OSB's MCLE Rules are among the most flexible and generous in the country, allowing for a wide range of programs and accredited activities from which members can meet their requirement. 7,622 programs were accredited between January 1 and December 31, 2017. Many members complete their entire requirement by screening online programs.

With the implementation of our new association management software in the summer of 2018, compliance reporting and submission of accreditation applications will be easier for members and sponsors.

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

The audit of 2016 reports was completed by the end of June 2017.

In May 2017, 22 members (.004%) were suspended for failure to meet their MCLE obligations. The standard for this outcome is less than 1% of the reporting group suspended for non-compliance.

Several MCLE reminders about upcoming deadlines were posted in the electronic Bar News or *Bulletin* in 2017. In early 2017, an FAQ about 2017 reporting requirements and deadlines was posted on the website. In July, email reminder notices were sent to members about their upcoming reporting period deadline. In May, an email reminder was sent to new admittees about their introductory access to justice credit requirement. In the fall of 2017, an FAQ about the new abuse reporting credit requirement was posted on the website. In addition, members were notified about this amendment via our website and in *Bulletin* notices.

2017 Program Measures

Member Services

Program Goal Statement

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

Program Description

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

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

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

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

Volunteers/Partnerships

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

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

Outcomes and Evaluation

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

Section membership continues to be a popular resource for bar members seeking professional development and networking opportunities within their practice area. In 2017 membership rates for sections remained at a steady level with nearly 8,000 members joining one or more sections for just over 17,700 total memberships purchased.

The department dedicates .8 FTE to assist the ONLD with administration, event planning, and administrative support. This year the ONLD focused a significant amount of resources on networking opportunities, practical skills training, and program review. The ONLD hosted several networking events throughout the state, partnering with the Washington County Bar Association, the Clackamas County Bar Association, the Linn Benton County Bar Association, the Federal Bar Association, the Mary Leonard Chapter of OWLS, The MBA YLS, the Workers Compensation Section, and the Solo and Small Firm Section. The ONLD hosted post-swearing in receptions for both the May and October swearing in ceremonies. It worked with each of the three law schools, providing panelists for mock interviews at Willamette, a speed networking social and a panel discussion about serving as in-house counsel at University of Oregon, and a networking panel and mixer at Lewis and Clark.

The ONLD continued its lead role in hosting the annual Pro Bono Celebration—expanding it to include simulcasted CLEs/Receptions in four disparate locations. In addition, the ONLD hosted several CLE programs throughout the state, with one-hour brown bag CLEs at the Multnomah Courthouse, CLEs in conjunction with the Executive Committee meetings, and the highly successful Uncommonly Discussed Issues Affecting Service Members & Veterans CLEs held in three locations around the state, and co-hosted with the Military & Veteran’s Section, Oregon Gay and Lesbian Lawyers Association, Consumer Financial Protection Bureau, Consumer Law Section and the Elder Law Section. Finally, the executive committee worked with OSB staff to modify and edit the New Lawyer Survey that went out in 2017 and was part of the initial review of new lawyer programming.

The program review of section services continued into 2017 with a focus on alternative structures and fund balances. Based on direction from the BOG Policy and Governance Committee, section’s with more than two years of operating revenue in reserve were informed of the need to spend their fund balance down. The expectation is for the BOG to review the progress of these sections in the spring of 2018. Section leadership continued to provide feedback on changes to the CLE sponsorship and registration services requirements. Implementation of these new requirements will begin in January 2019 after launching the events module of Aptify.

In partnership with President-Elect Nordyke, the department hosted an outreach conference call with representatives from 12 county bar association. Creating an opportunity for open dialog provided bar leaders a chance to discuss trends in their areas, seek feedback and support on a variety of topics, and expand their understanding of services available to each association. It was reported during the call that several bar associations struggled with volunteer recruitment and membership retention. Based on this feedback the department was able to provide support to five county bars to assist with volunteer recruitment.

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

Maintaining an adequate and diverse pool of lawyer and non-lawyer volunteer candidates remains a top priority. The department continues to support the BOG Board Development Committee with outreach to a variety of law-related groups, including county, minority, and specialty bar organizations. In 2017, more than 300 members completed the leadership and volunteer opportunities questionnaire and

indicated their interest in serving. While the number of volunteers remains steady from years past, significant strides were made in increasing the pool of members from nondominate cultures. Of the volunteers who self-identified their race or ethnicity, 12% were of the nondominate culture, compared to the overall OSB membership which sits at 9%. Nearly 4.7% of member volunteers self-identified as having a disability as compared to the OSB membership demographics of 1.37%.

Early in the year the Board of Governors approved creation of a policy and revisions to the OSB bylaws related to appointment of new volunteers. These changes incorporated the BOG Board Development Committee's practice of factoring in pending or prior disciplinary proceedings when determining a member's eligibility for appointment consideration. Documenting this policy improved transparency of the appointment process and improved consistency in the selection of new volunteers.

Ensuring a diverse pool of non-lawyer volunteer candidates continues as a focus for the department and the BOG Board Development Committee. As a result of increased outreach efforts and ongoing relationship building with community organizations, the overall number of public member volunteer applicants increased again this year to an all-time high of 43 applicants. Of those who applied, 30% self-identified as a racial or ethnic minority, 16% indicated they had a disability, and 5% indicated a sexual orientation other than heterosexual.

The department partners with the BOG Board Development Committee on recruitment of volunteers for the House of Delegates and Board of Governors elections. This year all but three of the HOD races were contested, and in the uncontested regions enough candidates ran to fill the open seats. Most notably, the two ABA House of Delegates positions were heavily contested with five candidates running for these often uncontested seats. The BOG election included one position in region 2 and two positions in region 5. Three candidates filed for the election resulting in uncontested races for each position. A special election held in late fall resulted in three candidates running for one open position. A review of the recruitment materials and procedures has resulted in changes to the online information and outreach contacts for future recruitment with the expectation to increase the number of candidates running for board positions.

Outcome #3: Maximize the number of LRAP loans awarded and ensure guidelines and policies facilitate the program goals.

In 2016 and 2017 approximately three dozen public service attorneys applied for an OSB LRAP, up from the approximately two dozen per year for 2013, 2014 and 2015. The applicants continue to represent every corner of the state and a variety of public service employers. What they have in common is high student debt and low income. Of the 37 public service attorneys who applied in 2017, 13 were selected to receive forgivable loans, ranging from \$3,000 to \$7,500.

There were several changes in bar staff liaison support to committees and sections over the course of the year. With 30% of liaisons new to the role, the department provided individual training for staff and continued to distribute a monthly resource checklist to keep liaisons informed of about issues effecting the groups they serve.

Outcome #4: Excellent customer service to the membership, bar groups, and staff.

Efforts in this area focused on the Aptify installation and launch of the membership records module. This included working with the development and implementation teams to ensure adequate testing was

conducted to avoid service disruptions for members. The new member interface was launched on September 12 which required all bar members to create a new password. Timing of the launch and new password requirement was key to ensuring members were not overly burdened during the compliance cycle. By the end of the year, 74% of all active and inactive members had created new passwords.

Feedback from the committee and section department evaluation survey remains positive. On a scale of 1 to 5, where 1 means poor and 5 means excellent, officers rated the department at 4.7 for providing accurate information, 4.9 for timely distribution of meeting notices, and 4.9 for courtesy of staff. Committee chairs rated the department at 4.9 for assistance with the appointment of new members.

Outcome #5: Events and services are cost-effective and conducted in fiscally responsible manner.

The department has three separate budgets, each of which ended 2017 with good results. Expenses for the Member Services budget were reduced by limiting in-state travel for staff liaisons and utilizing other methods for meeting attendance. Revenue and expenses for the Oregon New Lawyers Division were lower than projected as a result of forgoing the division's summer sunset cruise event. The Loan Repayment Assistance Program budget is projected to meet budget projections.

2017 Program Evaluation New Lawyer Mentoring Program

Program Goal Statement

The OSB New Lawyer Mentoring Program advances the OSB's mission to serve justice by improving the quality of legal services, promoting professionalism, and assisting new lawyers in transitioning from students into competent, ethical and professional lawyers.

Program Description

The NLMP launched in 2011, under Supreme Court rule, to assure that every new lawyer in Oregon would have the benefit of a more senior bar member to welcome them into the profession, and serve as a resource during their transition from student to practitioner.

Soon after admission, new lawyers who are actively practicing are matched to volunteer mentors for a one-year program. The program includes a six-part curriculum, including: introduction to the legal community; ethics and professionalism; law office management; working with clients; career satisfaction; and practical skills. Although this does provide some structure, the requirements within each curriculum area are minimal, allowing participants to shape the program to the specific needs of each lawyer.

At the completion of the program year, mentors and new lawyers receive eight and six MCLE credits respectively.

Volunteers/Partnerships

Since its inception, approximately 2,000 new lawyers have been connected with mentors, each of whom was a volunteer. Each year sees roughly 350 matched pairs moving through the program, which means 350 volunteer mentors. The NLMP partners with OSB Section and committee leadership, county and specialty bars, Inns of Court, and the Oregon Judicial Department in efforts to showcase the program, and to recruit additional volunteers.

Outcomes and Evaluation

Outcome #1: Recruitment and retention of volunteer mentors is effective in meeting the needs of new lawyers entering the program.

Bar members have been involved with the Program since its inception as committee members, CLE speakers, and as active participants (mentors and new lawyers). So far, 1,642 members have volunteered to serve as mentors, and 1,650 new lawyers have completed the program. In 2017 alone, 247 attorneys completed the program.

Recruiting volunteers continues to be a focus of the program, and 2017 was no exception. Last year, staff worked with the Agricultural, Consumer, Corporate Counsel, Debtor-Creditor, Intellectual Property, and Real Estate and Land Use sections to recruit additional mentors.

Nearly 250 mentors were recruited in this year, 25% of those were a result of the outreach with sections. Based on interests of new lawyers in 2018, staff will work with county and specialty bar associations along with additional sections to recruit more volunteers.

Outcome #2: Ensure NLMP activities, procedures, and rules support program goals.

2016 saw the start of a five-year Program review, with additional information garnered through the 2017 OSB President’s New Lawyer Survey. The statistics gathered over the years show continued wide-spread support for the program, with strong support for some modifications, such as a reduction in the reporting requirements, and reduction or elimination of the program completion fee. Staff is working with the BOG to determine the extent of changes to the program. Reviewing the impact of those changes will be important work in 2018 and 2019.

Again this year, there was a slight decrease in the number of PLF claims filed against lawyers with less than five years of practice in Oregon and members with less than 60 months of PLF coverage. A table of the number of claims filed since the program’s creation in 2011 follows:

	Less than 5 years practice in OR	Less than 60 months coverage
2011	69	106
2012	77	113
2013	56	89
2014	63	96
2015	58	84
2016	51	83
2017	50	74

Outcome #3: Continue to operate the program in a cost-efficient manner.

In July of 2017 the program was moved to the Member Services Department and the program staffing allocation was reduced by .8 FTE. As a result of this change, and while upholding the program’s high standard for member responsiveness, efficiencies were realized in matching program participants and processing compliance reports.

2017 Program Measures

Public Affairs Department

Program Goal Statement

The Public Affairs Department advances the bar's mission of promoting respect for the rule of law and increasing access to justice by advocating in the legislature for adequate funding of the judicial system and legal services for the poor, responding appropriately to challenges to a fair and impartial judiciary and to the court's authority to regulate the legal profession, and pursuing improvements to the administration of justice.

Program Description

The Board of Governors Public Affairs Committee develops the policies that guide the department's work and recommends positions the bar should take on public policy issues affecting the bar and the legal profession.

With the oversight of the Public Affairs Committee, the Public Affairs team provides information and assistance to bar groups, bar members and government bodies on a wide variety of bar-related legislation and public policy issues facing the profession, with special emphasis on access to justice and preserving the independence of the judiciary. The Public Affairs team works closely with OSB sections and committees on law improvement legislation and to identify responses to significant legal trends that affect the practice of law and the bar.

The focus of the Public Affairs team during 2017 has been legislative advocacy in the long session of the Oregon Legislature, outreach to the bar, legislators, and advocates in preparation for the upcoming short session in 2018 as well as the next long session in 2019, wrap-up of eCourt implementation, support of recommendations of Futures Task Force Report, and completion of the juvenile dependency parent and child and agency performance standards.

Volunteers/Partnerships

Volunteers: In addition to the members of the BOG Public Affairs Committee, the department collaborates with several hundred lawyer volunteers, the vast majority from bar sections and committees working on law improvement projects.

Partnerships: The department has working relationships with most other OSB departments. Outside coalition building is an ongoing activity, which currently emphasizes government leaders, business interest groups, political candidates, and local legal communities.

Outcome #1: Support and protect the quality and integrity of the judicial system.

A. Support adequate funding for the Judicial Branch in the Legislature.

The Public Affairs Committee designated adequate funding for the judicial department, indigent defense, and legal services as the bar's highest legislative priorities for 2017.

In this vein, the Public Affairs team coordinated with the Court and advocated for funding of the judicial system, eCourt, courthouse facilities, and judicial compensation. Activities included BOG members testifying in support of adequate funding for the judicial branch, indigent defense, and legal services, and hosting the bar's annual Day at the Capitol.

During the 2017 legislative session, the Public Affairs team coordinated and supported BOG members and bar members testifying in support of adequate funding for the Oregon Judicial Department, low- and moderate-income civil legal services, and indigent defense at the Oregon State Legislature's budget hearing held throughout Oregon. Because of the Public Affairs team's efforts, the bar, through its volunteers, voiced its support for adequate funding at every public hearing (Ashland, Salem, Hermiston, Eugene, and Madras).

In 2017 the Public Affairs team co-hosted with the Oregon Judicial Department a Citizens Campaign for Court Funding breakfast. In addition, the Public Affairs team worked with the court, legislators, and non-partisan staff to provide a legal perspective on funding for Oregon eCourt, specifically the increase in civil court filing fees and the use of criminal fines, fees, and assessments, and a proposed agency assessment to provide adequate funding for Oregon eCourt.

B. Responds appropriately to challenges to a fair and impartial judiciary.

During the 2017 legislative session, the Public Affairs team, at the request of the Public Affairs Committee, engaged on five bills which could have affected the practice of law. These bills addressed judicial compensation, civil court filing fees, telephone testimony, licensing, and alternate jurors. With the exception of judicial compensation, the efforts of the Public Affairs team resulted in either amendments that improved the bill or the bill being tabled to allow for additional work during the interim.

C. Participate meaningfully in the judicial selection process.

In 2017, the Public Affairs team, which staffs the Appellate Screening Special Committee, organized and staffed four appellate interview processes with 64 applicants (2 Supreme Court, 1 Court of Appeals, and 1 Tax Court vacancy). The Public Affairs team worked in conjunction with the Governor's office throughout the judicial review process. This included organizing and staffing judicial vacancy meetings under very tight timelines, interviewing 42 applicants, working closely with the Governor and her staff, and organizing and publishing results. As part of this process, the Public Affairs team, at the direction of the committee, updated the applicant questionnaire to ensure that applicants have the opportunity to address their experiences with diverse communities and with individuals unlike themselves.

In addition, in 2017 the Public Affairs team distributed notices for 18 appellate and other judicial vacancies to lawyers, specialty bars, and interested groups.

D. Promote understanding of and respect for the rule of law, the judicial system and the legal profession.

Over the course of the year, the Public Affairs team published 14 issues of *The Capitol Insider*, a newsletter on legislative and public affairs issues of interest to bar members. In 2017, the Public Affairs team, in conjunction with the Creative Services Department, successfully migrated the *Capitol Insider* to a new web-based platform which allowed for a better reading experience as well as bringing the publication in line with other bar publications.

The Public Affairs team published the 2017 edition of *Legislation Highlights*, a comprehensive overview of 2017 legislation organized by practice area. The Public Affairs team also wrote a legislative overview for the Oregon Woman Lawyers newsletter at the end of the legislative session.

The Public Affairs team co-sponsored two CLEs at the Capitol for lawyers, legislators, staff, and lobbyists with 20-25 attendees during the September and November legislative days. In addition, the Public Affairs director presented legislative updates to specialty groups (e.g. Deschutes County and to the American Academy of Matrimonial Lawyers) outside of the capitol.

In support of the findings of the Futures Task Force, the Public Affairs team organized meetings including BOG members, the Chief Justice, and legislative leadership to discuss possible paths. During the 2017 September legislative days, the Public Affairs team drafted testimony and coordinated BOG member participation addressing the future of the legal profession to the Joint Senate and House Judiciary Committees.

E. Pursue improvements to the administration of justice

During the 2017 Legislative Session, the Public Affairs team managed seven law improvement bills generated by sections and committees. Six of the seven bills passed through the legislature and were ultimately signed into law by the governor. This included drafting testimony, working with bar members who travelled to Salem to testify, educating legislators, and ensuring deadlines were met. In addition, the Public Affairs team actively engaged with sections on seven bills which affected the practice of law in a particular area of law including business law, debtor-creditor, criminal law, administrative law, elder and estate planning, and juvenile law. Further in addition to bills listed in previous sections.

The Public Affairs team worked closely with sections to keep members informed about legislation that could affect the practice of their members. Prior to and during session, the Public Affairs team identified and matched 2,253 of the 2,827 introduced bills for 45 of the

legislative contacts and managed the bar's bill tracking system for sections. In total, 4,601 bill referrals were made to the sections and committees.

A number of times throughout the session, the Public Affairs team was asked to engage bar volunteers when legal or technical questions arose. Throughout the legislative session, the Public Affairs team, with the support of the Public Affairs Committee, actively engaged on 21 bills and a number of funding requests in addition to the bar priorities identified prior to the opening of the session. These legislative concepts required significant engagement by the Public Affairs team, including organizing or participating in workgroups, providing technical feedback either formally or informally, and submitting testimony.

In preparation for the 2018 legislature and at the request of the BOG, the Public Affairs team and General Counsel's office researched and crafted consumer protection legislation. The Public Affairs team reached out to legislators and stakeholders in fall 2017 to solicit feedback. Ultimately, a bill was introduced for the 2018 legislative session which included a clarification that attorney-client privilege includes lawyer referral services.

In preparation for 2019 legislative session, the Public Affairs team presented to section and committee members regarding the law improvement process and timeline. During the fall of 2017, the Public Affairs team visited with 16 sections and committees to discuss the law improvement program.

During 2017, the Public Affairs team provided active staff support to the ORS Procedure and Practice Committee, the Council on Court Procedures, and the State Family Law Advisory Committee (SFLAC). In addition, the Public Affairs team provided section support for the following sections: Administrative Law, Consumer Law, the Debtor-Creditor Legislative Group, Elder Law, Estate Planning and Administrative Law, and Family Law.

After 10 years of active engagement, the Public Affairs team completed a report as the Oregon Judicial Department/Oregon State Bar eCourt Implementation Task Force including a survey of bar members regarding Oregon eCourt. More than 300 members responded with detailed feedback on the implementation process, including its successes and failures.

The Public Affairs team continued to staff Oregon Law Commission work groups including Probate Modernization, Collaborative Law, and Juvenile Court Records.

Outcome #2: Promote diversity, equity and inclusion within the legal community and the provision of legal services.

This year the Public Affairs team, in conjunction with the Oregon State Legislature's Senate Judiciary Committee, co-hosted a CLE addressing Procedural Fairness in the Judicial System. The CLE, presented by Judge Nan Waller and Judge Maureen McKnight was attended by legislators, staff, and lobbyists.

As noted above, in 2017 the bar's Appellate Screening Special Committee has been actively involved in screening candidates for four appellate positions. In addition, there have been 14 other judicial position notices sent out to Oregon's bar members. As part of the outreach process, the Public Affairs team, at the request of the committee, has reached out to specialty bars to ensure that bar members from non-dominant cultures are aware of judicial opportunities.

In addition, the Public Affairs team, at the direction of the committee, has updated the applicant questionnaire to ensure that applicants have the opportunity to address their experiences with diverse communities and with individuals unlike themselves.

Outcome #3 - Support adequate funding for low- and moderate-income legal services and indigent defense.

In 2017, the Public Affairs team continued to focus on funding for low- and moderate-income civil legal services and indigent defense. The Public Affairs team provided coalition support to legal aid by meeting with legislators, stakeholders, and the executive branch in support of annual COLA increase in funding and continuing education efforts on the need for increased funding. In addition, the Public Affairs team led the Oregon delegation at the ABA Lobby Day in Washington DC in support of federal funding for the Legal Services Corporation.

For indigent defense, the Public Affairs team organized testimony in support of the Public Defense Service Commission's requested budget by BOG members down in Salem. Further, the Public Affairs team participated in the Governor's Dependency Task Force stemming from SB 222 (2015). The Public Affairs team supported funding requests from the Public Defense Services Commission, the Department of Justice, and the Department of Human Services. The Task Force generated two work groups, Parent Child Representation and Agency Representation which the Public Affairs team staffed.

As mentioned above, the Public Affairs team hosted a successful Day at the Capitol in Salem during the legislative session with an impressive turnout of legislative leaders and bar members to support funding for civil legal services and indigent defense.

2017 Program Evaluation Referral and Information Services

Program Goal Statement

Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.

Program Description

The Lawyer Referral Service (LRS) began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. Approximately 550 OSB members participate as LRS panel attorneys. The Referral and Information Services Department (RIS) also offers several other programs that help both the people and the lawyers of Oregon. The Modest Means Program (MMP) is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice for youth ages 13-17. Lawyer to Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

Outcomes and Evaluation

Outcome #1: Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner.

Total call volume from the public increased 1.88% over 2016 with a total of 75,799 received. Even with increased volume, RIS was able to provide service to more callers and capture more referrals by focusing on reducing the number of callers who abandon the call queue due to long wait times. Despite a constant staff shortage, only 2.08% of callers abandoned an RIS call line in 2017.

A new training schedule was continued throughout 2017, 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 and verified all of the contact information in 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 major challenge in 2017, with four .5 FTE positions currently remaining open. Working with the HR department and Creative Services, 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. Initial resume screening and phone interviews are now being conducted by the RIS manager, which should improve the likelihood of hiring qualified candidates in a timely manner.

In 2017 RIS received a .5 FTE increase in order to move all accounting responsibilities into RIS and out of the accounting department. This change should improve the department's ability to track remittance payments and make invoice adjustments for the panelists.

Outcome #2: Increase member and public awareness of RIS programs.

The public-oriented focus for 2017 was to continue increasing traffic to the OSB website, including the Legal Help page, to inform potential clients about available resources. Throughout 2017, RIS worked with other staff in 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 continued its two Google Ad Word campaigns. The first campaign, "OSB Website," focuses on increasing the use of the OSB public website by people looking for information on legal topics. The second campaign, "RIS," focuses on directing potential clients to the online referral request form for the Lawyer Referral Service for a specific area of law. This campaign is coordinated with the release of "Legal Q & A" videos that are produced by other communications department staff. The "key words" used in the ads are the same as the legal topic covered in the videos. This dual approach should draw increased traffic to the OSB website and the online referral page.

Overall call volume increased in 2017, reaching 75,799 calls and 5,654 online referral requests. RIS made 49,642 total referrals – a 3.9% increase in referrals over the previous year! The totals by program area are:

LRS	47,339
Modest Means	2,169
Problem Solvers	101
Military Assistance	33

Outreach to members remained focused on current panelists; with total LRS registration remaining stable in 2017, 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 team to create several MMP recruitment advertisements for the Bar *Bulletin* in order to boost attorney participation. Other outreach efforts will be a focus for 2018.

Outcome #3: Adapt services to meet both public and members' needs.

Following up on the BOG's directive to explore Modest Means Program expansion, RIS worked with the Public Service Advisory Committee (PSAC) to monitor a Modest Means pilot project with a panel for disability benefits. The pilot launched at the start of the 2014-2015 LRS program year on September 1, 2014 and was scheduled to end on August 31, 2015. However, the PSAC decided to extend the pilot two additional years in order to obtain more data prior to making a final determination. At its first meeting of 2018, the PSAC voted to make the pilot project a permanent panel under the Modest Means Program

The PSAC also made some substantial changes to the eligibility and removal requirements for the Lawyer Referral Service. Due to concerns over consumer protection, the PSAC spent the entire year formulating a set of standards tied to the OSB disciplinary system that is similar to the requirements for attorney to participate in the New Lawyer Mentoring Program. In addition to the existing eligibility requirements for LRS, a prospective panelist can have no public reprimands in the past year; no suspensions of up to sixty days in the past three years; and no suspensions of more than sixty days in the past five years. The PSAC also approved a set of internal guidelines for the RIS Manager to use in deciding whether to remove a panelist from the service or deny a panelist's registration. The manager may now consider:

1) after consultation with CAO and/or DCO, the likelihood that formal charges will be brought against the attorney; 2) how and to what extent the matter may affect the quality of the attorney's representation of his or her clients; 3) whether the nature and quality of the underlying offense, if known by the client, would be likely to have a substantial effect on the client's willingness to be represented by the attorney; and 4) whether the continued membership of the attorney is likely to bring discredit or disfavor on, or otherwise adversely affect the public's perception of the Oregon State Bar Lawyer Referral Service. These changes will go into effect at the start of the 2018-2019 program year.

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

Examine how the Oregon State Bar can best serve its members by supporting all aspects of their continuing development and better serve and protect the public in the face of a rapidly evolving profession facing potential changes in the delivery of legal services. Those changes include the influence of technology, the blurring of traditional jurisdictional borders, new models for regulating legal services and educating legal professionals, public expectations about how to seek and obtain

affordable legal services, and innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

The RIS Manager was part of the Innovations work group of the OSB Futures Task Force to develop recommendations on enhancing the provision of legal services to all Oregonians. This involved making recommendations related to RIS and its public outreach programs. A cross-department team is currently implementing one recommendation: Better coordination of online information materials offered by OSB, the Oregon Judicial Department and Legal Aid Services of Oregon. The team has already identified gaps and areas of overlap for landlord/tenant law, and are now moving into family law. This is an ongoing project that coincides with another cross-department goal for 2017, which was to develop and maintain the bar's legal information materials for the public.

Outcome #4: Implement break even budget based upon adoption of percentage fees revenue model.

In 2017 LRS collected \$818,156 in percentage fee revenue, which represents \$6,817,966 in business generated for panelists. 2017 LRS registration revenue was \$104,720— about \$10,000 less than average. Therefore, total LRS revenue for 2016 was \$922,426. Department expenses totaled \$499,608, and the indirect cost allocation (ICA) totaled \$241,891. Therefore, total net revenue for the program was \$180,928. Based on recommendations of staff and the PSAC, the BOG elected to make no changes to the LRS fee structure for the 2016-17 program year. Consideration of a threshold amount that would trigger application of percentage fees (with the effect of keeping brief service matters exempt from percentage fees) will be considered by the BOG in 2018.

The combination of registration and percentage fee revenue resulted in a net revenue for the fourth time in the program's history (2014, 2015 and 2016 being the first three), once again exceeding budget projections. Total revenue since percentage fee implementation is \$3,768,296, which represents \$26,476,650 in business generated for LRS panelists.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 23, 2018
Memo Date: February 9, 2018
From: Dawn M. Evans, Disciplinary Counsel
Re: Disciplinary/Regulatory Counsel's Status Report

1. Decisions Received.

a. Supreme Court

Since the Board of Governors met in November 2017, the Supreme Court took the following action in disciplinary matters:

- Issued an order in *In re J. Andrew Keeler*, accepting this Lake Oswego lawyer's stipulation to a 1-year suspension.
- Accepted the Form B resignation from Portland lawyer *Kenneth Stephen Mitchell-Phillips*.
- Issued an order transferring Portland lawyer *William M. Keller* to involuntary inactive status pursuant to BR 3.2.
- Issued an order in *In re Andrew Long*, suspending this Portland lawyer until his BR 3.1 hearing sanction is issued.
- Issued an opinion in *In re Samuel A. Ramirez*, suspending this La Pine lawyer for 1 year. The court affirmed the trial panel opinion concluding that the disciplinary proceeding was not barred by the statute of limitations, finding violations of RPC 1.1, RPC 1.3, RPC 1.7(a)(2), RPC 1.7(b), and RPC 1.8(h), and that the appropriate sanction was a 1-year suspension.
- Issued an order in *In re Amber N. Wolf*, accepting this West Linn lawyer's stipulation to a 1-year suspension, all but 90 days stayed, 2-year probation.

b. Disciplinary Board

No appeal was filed in the following cases and the trial panel opinions are now final:

- *In re Dale Maximiliano Roller* of Salem (disbarment).
- *In re James C. Jagger* of Eugene (60-day suspension with formal reinstatement).

- *In re Dirk D. Sharp* of Bend (disbarment).
- *In re David R. Ambrose* of Portland (dismissed).

One Disciplinary Board trial panel opinion has been issued since November 2017:

- A trial panel recently issued an opinion in *In re Mark O. Griffith* of Portland (18-month suspension).

In addition to these trial panel opinions, the Disciplinary Board/Adjudicator approved stipulations for discipline in: *In re M. Christian Bottoms* of Portland (30-day suspension), *In re Jaculin L. Smith* of Portland (6-month suspension with formal reinstatement), *In re Richard G. Cohn-Lee* of Oregon City (reprimand), *In re Raylynn J. Peterson* of Portland (6-month suspension, all but 30 days stayed, 2-year probation), *In re James F. O’Rourke* of Gresham (reprimand), *In re Lyle Bosket* of Salem (30-day suspension, all stayed, 2-year probation), *In re Jennifer Barrett* of Roseburg (90-day suspension), *In re Manuel C. Hernandez* of Bandon (60-day suspension, all but 30 days stayed, 1-year probation), and *In re Robert G. Klahn* of Pendleton (120-day suspension).

The Disciplinary Board Chairperson/Adjudicator approved BR 7.1 suspensions in *In re Dana C. Heinzelman* of Salem, *In re Jennifer Barrett* of Roseburg, and *In re Andrew M. Seher* 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; under advisement
- In re Sandy N. Webb* – 2-year suspension; OSB appealed; oral argument November 9, 2017; under advisement
- In re Gary B. Bertoni* – 1-year suspension; accused appealed; oral argument January 22, 2018; under advisement
- In re Lisa D. T. Klemp* – disbarment; accused appealed; oral argument January 22, 2018; under advisement
- In re Steven L. Maurer* – dismissed; OSB appealed; oral argument June 27, 2018
- In re Andrew Long* – BR 3.1 petition pending, hearing February 12-13, 2018
- In re James R. Eckley* – reciprocal discipline matter pending

The following matters are under advisement before the Adjudicator of the Disciplinary Board:

In re Erin C. Walters – BR 3.1 petition pending

The following matters are under advisement before a trial panel of the Disciplinary Board:

In re Matthew A. Wilson – November 6-8, 2017; TPO due
February 12, 2018

3. Trials.

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

In re Cory J. Larvik – March 7-8, 2018
In re Brian A. Buchanan – March 22-23, 2018
In re Loren Andrew Gramson – April 5, 2018
In re Eric J. Nisley – April 17-18, 2018

4. Diversions.

The SPRB approved the following diversion agreements since November 2017:

In re Tara Kaylene Millan – January 1, 2018
In re Tammi M. Caress – February 1, 2018
In re Robert Le – February 1, 2018
In re Maite Uranga – February 1, 2018

5. Admonitions.

The SPRB issued 5 letters of admonitions in December 2017 and January 2018. The outcome in these matters is as follows:

- 5 lawyers have accepted their admonitions;
- 0 lawyers have rejected their admonitions;
- 0 lawyers have asked for reconsiderations;
- 0 lawyers have time in which to accept or reject their admonition.

6. New Matters.

Below is a table of complaint numbers in 2018, compared to prior years, showing both complaints (first #) and the number of lawyers named in those complaints (second #):

MONTH	2014	2015	2016	2017	2018
January	29/31	18/19	30/30	17/17	34/34
February	24/25	28/28	38/38	49/49	
March	41/45	22/22	28/30	19/20	
April	45/47	17/17	26/26	22/22	
May	23/24	24/24	27/30	48/51	
June	23/24	31/31	38/39	19/20	
July	43/44	27/27	41/42	31/31	
August	19/21	28/29	28/28	24/27	
September	24/24	21/21	25/25	15/15	
October	25/25	38/39	39/39	37/37	
November	19/19	24/25	26/27	36/40	
December	21/23	20/20	25/28	27/28	
TOTALS	336/352	298/302	371/382	344/357	34/34

As of February 1, 2018, there were 291 new matters awaiting disposition by Disciplinary Counsel staff or the SPRB. Of these matters, 31% are less than three months old, 18% are three to six months old, and 52% are more than six months old. Fifteen of these matters were on the January SPRB agenda.

DME/rh

DRAFT: 2/1/2018

OSB Draft Statement on White Nationalism and Normalization of Violence

As the United States continues to grapple with a resurgence of white nationalism and the normalization of violence and racism, the Oregon State Bar remains steadfastly committed to the vision of a justice system that operates without discrimination and is fully accessible to all Oregonians. As we pursue that vision during times of upheaval, it is particularly important to understand current events through the lens of our complex and often troubled history. The legacy of that history was seen last year in the streets of Charlottesville, and in the attacks on Portland's MAX train. We unequivocally condemn these acts of violence.

We equally condemn the proliferation of speech that incites such violence. Even as we celebrate the great beneficial power of our First Amendment, as lawyers we also know it is not limitless. A systemic failure to address speech that incites violence emboldens those who seek to do harm, and continues to hold historically oppressed communities in fear and marginalization.

As a unified bar, we are mindful of the breadth of perspectives encompassed in our membership. As such, our work will continue to focus specifically on those issues that are directly within our mission, including the promotion of access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone. The current climate of violence, extremism and exclusion gravely threatens all of the above. As lawyers, we administer the keys to the courtroom, and assist our clients in opening doors to justice. As stewards of the justice system, it is up to us to safeguard the rule of law and to ensure its fair and equitable administration. We simply cannot lay claim to a healthy justice system if whole segments of our society are fearful of the very laws and institutions that exist to protect them.

In today's troubling climate, the Oregon State Bar remains committed to equity and justice for all, and to vigorously promoting the law as the foundation of a just democracy. The courageous work done by specialty bars throughout the state is vital to our efforts and we continue to be both inspired and strengthened by those partnerships. We not only refuse to become accustomed to this climate, we are intent on standing in support and solidarity with those historically marginalized, underrepresented and vulnerable communities who feel voiceless within the Oregon legal system.

Oregon State Bar
Meeting of the Board of Governors
November 18, 2017
Open Session Minutes

President Michael Levelle called the meeting to order at 12:30 p.m. on November 18, 2017. The meeting adjourned at 4:25 p.m. Members present from the Board of Governors were John Bachofner, Whitney Boise, Jim Chaney, Chris Costantino, Eric Foster, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, Kerry Sharp and Elisabeth Zinser. Not present were Rob Gratchner, Guy Greco, and Ray Heysell. Staff present were Helen Hirschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, and Camille Greene. Also present: Kaori Eder, ONLD Chair, Jennifer Nicholls, ONLD Chair-elect; Carol Bernick, PLF CEO; Tim Martinez, PLF Board of Directors; Kelly Harpster, Futures Task Force Paraprofessional Workgroup Chair; and 2018 BOG-elect members: Colin Andries, John Grant, Michael Rondeau, and David Wade.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as re-ordered, by consensus.

2. 2018 President & President-elect Elections

Ms. Nordyke confirmed Ms. Costantino as 2018 President-elect. Mr. Levelle confirmed Ms. Nordyke as 2018 President.

3. Strategic Areas of Focus for 2017

A.1. Paraprofessional Licensing

Ms. Hirschbiel recounted the Futures Task Force Recommendation to establish a Paraprofessional Licensing Implementation Committee and the BOG's decision at its September 2017 meeting to instead establish an "Exploration Committee." Ms. Hirschbiel reported that in recruiting members to serve on the exploration committee, she has encountered issues of concern as outlined in her memo. **[Exhibit A]** Ms. Hirschbiel then introduced Ms. Harpster who served as the Futures Task Force Paraprofessional Licensing Workgroup Chair and invited her to share some of her concerns.

Ms. Harpster noted the difficulty in getting people to serve on another committee charged with studying the proposal without the Board's commitment to the concept. She noted that bar task forces have studied and reported on the paraprofessional licensing concept in 1992, 2015 and most recently in 2017. Because of this, it was difficult to convince individuals to revisit the issue as part of the Futures Task Force Paraprofessional Licensing Workgroup. Fleshing out the details of the proposal set forth in the Futures Task Force Report will require considerable volunteer time and effort. It will involve soliciting input from stakeholders and shaping that input into a detailed, viable program. Volunteers are likely to be reluctant to commit to that work, knowing that the work is likely to be shelved down the road. Further, some individuals may not be committed to building consensus, knowing there is a possibility of killing the proposal entirely. Ms. Harpster encouraged the Board to make a decision about whether it wants to proceed with paraprofessional licensing, or not. If it does, then the Board should clearly say so, by establishing an implementation committee as recommended by the Task Force. If it does not, then it would be better to take a step back from the idea for the time being.

Ms. Hirschbiel noted four options for the Board to consider as outlined in her memo. Mr. Levelle asked the board to consider these four options and opened the floor for discussion.

Ms. Costantino said that she sees potential problems with assumptions made in the proposal, but generally supports the concept, especially as a tool for serving unmet needs in routine family law matters, and would like to take the steps necessary to flesh out the details. She volunteered to be on the committee to work out these details and see how paraprofessional licensing might be accomplished.

Motion:

Mr. Mansfield moved, Ms. Rastetter seconded that the board adopt the recommendation of the Futures Task Force to create a paraprofessional licensing implementation committee charged with engaging stakeholders to develop a plan for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force Report. Mr. Levelle opened the floor for discussion.

Ms. Rice would like to know additional details about the program before agreeing to pursue implementation as it is difficult to support a program without knowing its details. Mr. Foster agreed. Mr. Levelle supports an "Implementation" rather than "Exploration" committee. Ms. Reeves suggested they change "consistent with" to "considering" in order to give the committee some flexibility in establishing details of the program, because the committee may wish to propose a program that diverges from the task force recommendations after hearing stakeholder input. Mr. Sharp understands how the proposal may cause concern for attorneys, but he believes licensing paraprofessionals helpful for the public of Oregon who need legal services, and he prefers we move forward. Mr. Ramfjord suggested the board vote on the motion. Mr. Peachey agreed and added there should be a law school representative on the committee.

The board voted in favor of the motion. Ms. Rice, Mr. Foster and Ms. Reeves were opposed.

A.2. Futures Task Force Recommendation Status Update

Ms. Hirschbiel gave an update on the current status of task force recommendations. **[Exhibit B]** In the future these will be included in her CEO report to the board. She encouraged the board to give input and not lose sight of the work the task force has done.

2017 HOD Summary of Actions

Mr. Levelle gave a summary of the 2017 HOD meeting and noted a need for action regarding next steps with respect to the proposed amendment to RPC 5.4 that was referred back to the BOG for further study. Mr. Levelle invited discussion from board members and staff about how to proceed. Mr. Bachofner said, in reference to the resolution to amend RPC 5.4, it is an issue of the board narrowing the focus of the proposal to the areas of most need. Mr. Grant suggested the board communicate more with the membership so they do not feel they were caught off guard. Ms. Costantino asked if we could publish the agenda earlier to give the membership more time to consider the resolutions. Ms. Hirschbiel reminded the board that they could put a resolution on the agenda at any time during the year. She suggested the board consider expanding the scope of the study of the amendment to RPC 5.4 to allow for consideration of alternative business structures. Ms. Nordyke said the board will develop a timeline for further study.

Motion:

Mr. Peachey moved, Mr. Ramfjord seconded, that a committee be established to continue study of possible amendments to RPC 5.4, including the possibility of allowing for alternative business structures. The motion passed unanimously.

3B. Review of New Lawyer Programs Update

Ms. Nordyke encouraged the board to evaluate and share the survey data re: the review of the new lawyer program that was presented at the board's retreat on November 17, 2017.

Ms. Reeves asked why we are hosting a Rural Summit at the OSB Center. Ms. Nicholls said it was because the cost of an alternative location was prohibitive and that webcasting would be available at the OSB Center.

3C. Diversity Action Plan

Ms. Hirschbiel asked Mr. Puente to present the draft Diversity Action Plan for BOG review. **[Exhibit C]** The Diversity Advisory Committee's (DAC) first area of focus was the operational side of the OSB. The second focus was the bar membership, and the third was the public. The DAC focused on creating systemic change

and accountability. This strategic plan included goal ownership by DAC members and is focused on being proactive rather than reactive – be leaders.

Ms. Reeves outlined the ways the board be involved: active engagement with specialty bars, apply the diversity & inclusion lens to all decisions they make, and cultivate diverse leadership through recruitment and appointments.

Mr. Grant asked for clarification on the data sources for these goals and the measurement tools involved. Ms. Hirschbiel said that data driven goals were a big part of developing the plan and determining the definition of diversity. The DAC recommends that the bar concentrate on collecting data and promoting inclusion, and in hopes that increased diversity will follow.

Motion: Ms. Rice moved, Mr. Foster seconded, that the board accept the draft Diversity Action Plan. The motion passed unanimously. The final draft will be presented to the board at a special open session on January 5, 2018.

Mr. Levelle wanted to be certain the Diversity & Inclusion budget is on the board's radar in 2018. Ms. Hirschbiel assured him she will make sure it is on the Budget & Finance Committee agenda in early 2018.

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

Board Development Committee

Mr. Ramfjord gave a summary of the appointment process and asked the board to approve the Board Development Committee's various recommended appointments. **[Exhibit D]**

Motion: The board voted unanimously in favor of accepting the committee recommendations. The motion passed unanimously.

Budget & Finance Committee

Mr. Chaney gave a financial update and presented the 2018 budget for approval. **[Exhibit E]**

Motion: The board voted unanimously in favor of approving the 2018 budget. The motion passed unanimously.

Policy & Governance Committee

Ms. Nordyke asked Ms. Hollister to present the Committee recommendation that the Board of Governors adopt the amendments to the OSB Bylaws to reconcile the Bylaws with recent amendments to the Bar Act and the Bar Rules of Procedure. **[Exhibit F]**

Motion: The board voted unanimously in favor of amending the OSB Bylaws as presented in the committee motion. The motion passed unanimously.

Ms. Nordyke said the committee will ask the board to approve the committee recommendation to add the President's Technology & Innovation Award at a future meeting.

Public Affairs Committee

Ms. Rastetter gave a general update on legislative activity. The committee is working on section input for legislative proposals which are due April 1, 2018 for the 2019 long session.

Ms. Grabe updated the board on the public affairs department's coordination with the attorney general's office on consumer protection legislation. She gave an update on the proposed self-help centers legislation that is active in the 2018 short session. The first center would be placed in the Multnomah County Courthouse as a pilot project.

5. Professional Liability Fund

Ms. Bernick gave a general update and presented the 2018 Primary, Excess and ProBono Plans for approval. Ms. Campbell will be taking Bruce Schafer's position as Director of Claims when he retires. Mr. Martinez reported on the PLF financial status. The PLF portfolio is very balanced and has been helped by the market rise. Claims are down over the past four years. The incoming Chair, Dennis Black, will focus on the budget to eliminate drastic changes in the future. Mr. Martinez reported that several states are inquiring about the PLF with an interest in implementing a program in their state.

Motion: Ms. Zinser moved, Mr. Mansfield seconded, and the board voted in favor of approving the plans. Mr. Bachofner, Mr. Chaney, and Mr. Peachey abstained. The motion passed.

6. OSB Committees, Sections, Councils and Divisions

Oregon New Lawyers Division

Ms. Eder gave an update on the current activities of the ONLD which included reaching out to the PLF to coordinate the Learning the Ropes seminar, members attending the ABA conference in Colorado, a Pro Bono Celebration afternoon of three hours of CLEs which was also simulcast in four locations, and various other past and future activities covered in the written report. She introduced the 2018 ONLD Chair, Jennifer Nicholls, who gave a brief update on the Regional Rural Summit scheduled for September 21, 2018.

Legal Ethics Committee

Proposed OSB Formal Ethics Opinion 2017-XXX: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share.

Ms. Hirschbiel presented the Legal Ethics Committee (LEC) request for the Board of Governors to decide whether to adopt the attached proposed formal ethics opinion. **[Exhibit G]**

Motion: Ms. Rice moved, Mr. Foster seconded, to table the adoption of the formal ethics opinion until the next board meeting when more information will be provided. The motion passed unanimously.

Ms. Hirschbiel will return the opinion to the LEC for more information at their December 16, 2017 meeting.

MCLE Committee Rule Amendment

Ms. Hollister presented the MCLE Committee request that the board approve the MCLE Committee's recommendation to amend the MCLE Rules and Regulations to allow members to claim Category II credit for service on certain committees and councils that are responsible for drafting court legal rules or jury instructions. **[Exhibit H]**

Motion: Mr. Bachofner moved, Ms. Nordyke seconded, to approve the recommended amendment as presented. The motion passed unanimously. The rule will go to the Supreme Court for approval.

Report of the President

Mr. Levelle called the board's attention to the statement on the Washington State Bar Association's (WSBA) website re: white nationalism. He has a Farewell Remarks article in the December 2017 *Bulletin* asking what can the membership do within the Keller limitations. He asked the board to become vocal going forward, issuing statements, to raise awareness. Mr. Chaney opined that the WSBA statement did not go far enough and that the Board of Governors consider making a bolder statement. Mr. Puente said local attorneys have

asked what the bar's role is in this issue. Staff will present a draft statement for the Board to consider adopting at its special meeting in January 2018.

Mr. Levelle asked the board to discuss Lawrence K. Peterson's letter to the editor in the August/September 2017 *Bulletin* re: Disregarding Local Input in Selecting Judges. Ms. Rastetter noted that Mr. Peterson approached her and asked that the board consider the issue.

Motion: Mr. Bachofner moved, Mr. Boise seconded, to take no action. After discussion, the motion was withdrawn by Mr. Bachofner, Mr. Boise agreed.

Mr. Levelle will send a letter of response to Mr. Peterson.

Report of the President-elect

Ms. Nordyke reported on the Diversity Action Plan with the goal of looking for big and small solutions that are revenue neutral. She encouraged the board to think about these issues, talk with other lawyers, and study the statistics.

Report of the Chief Executive Officer

Ms. Hirschbiel highlighted some information contained in her written report to the Board.

Director of Regulatory Services

As written.

Director of Diversity & Inclusion

As written.

MBA Liaison Report

Ms. Reeves reported on the November 7 MBA board meeting. There was a robust discussion on fee sharing and they recently changed banks.

7. Consent Agenda

Mr. Levelle asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote. There was no request to do so.

Motion: Mr. Chaney moved, Ms. Nordyke seconded, and the board voted unanimously to approve all items on the consent agenda.

8. Closed Sessions – see CLOSED Minutes

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

The board went into closed session.

The board reconvened in open session to vote on the action item on the closed agenda.

Motion: Ms. Reeves moved, Mr. Mansfield seconded, to table the vote until the special board meeting in January.

The board went back into closed session to discuss the motion.

The board reconvened in open session to continue their vote on the action item on the closed agenda. The motion passed unanimously.

9. Good of the Order

**Oregon State Bar
Board of Governors Meeting
November 18, 2017
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law Litigation

Lara Dubuque and A-1 Quality Paralegal
(UPL Case No. 2016-27)

The UPL Committee seeks authority to seek an injunction against Josephine County paralegal Lara Dubuque, whose business, A-1 Quality Paralegal, has been the subject of seven prior UPL investigations. The committee has located two injured customers who are willing to cooperate. The case is also being referred to DOJ and the Secretary of State.

Ms. Hollister informed the board of the non-action items.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

C. Tort Claims Notices

Ms. Hollister informed the board of non-action items.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 19, 2017
From: Helen M. Hierschbiel, CEO
Re: Futures Task Force Recommendation re: Paraprofessional Licensing

Action Recommended

Reconsider the BOG decision to establish a Paraprofessional Licensing Exploration Committee.

Background

At its September 8, 2017 meeting, the Board of Governors decided to establish a Paraprofessional Licensing Exploration Committee as set forth in the attached memo.

In recruiting members for the committee, staff has encountered issues of concern. Some stakeholders see service on the committee as an opportunity to kill the proposal. Others are reluctant to volunteer their time to develop the proposal further, with the possibility that no action will be taken in the end.

In order to address these issues, staff recommends that the Board reconsider its decision to establish an Exploration Committee. Other options for action include:

1. Adopt the recommendation of the Futures Task Force Regulatory Committee to create a Paraprofessional Licensing Implementation Committee, charged with engaging stakeholders to develop a plan for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force Report. Recommend committee members for BOG appointment.
2. Continue to seek feedback from members and reconsider at a set date in the future.
3. Continue efforts to establish Exploration Committee.
4. Do nothing.

Attachment: September 8, 2017 BOG Memo

Status of OSB Futures Task Force Recommendations

I. Changes to Rules of Professional Conduct				
Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. 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	Approved by HOD.	Submit to OR Supreme Court for adoption.	December 2017
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	Referred back to BOG for further study.	Establish committee for further review and scope of charge. Send to LEC for further review of ethics issue.	
C. 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	Waiting for BOG decision on whether to license paraprofessionals.		

II. Regulation/Development of Alternative Legal Service Delivery Models

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
<p>A. Convene a paraprofessional licensing implementation committee to prepare a detailed proposal for Board and Supreme Court.</p>	<p>1.1 to 1.11 Pages 3-26</p>	<p>Developing exploration committee.</p>	<p>Bring to BOG for discussion and approval.</p>	
<p>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.</p>	<p>2.4 Pages 43-45</p>	<p>BOG sent to PAC. PA Director working with stakeholders.</p>	<p>Continue work with stakeholders.</p>	
<p>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.</p>	<p>3.2 Pages 48-51</p>	<p>BOG sent to PAC. PA Director working with stakeholders.</p>	<p>Continue work with stakeholders.</p>	

III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
<p>A. Establish an Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources</p>	<p>3.1 Pages 47-48</p>	<p>BOG sent to CEO. Committee established. First meeting held.</p>	<p>Continue meetings. Coordinate with OSCIF and OSC CJI re topic areas</p>	
<p>B. Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</p>	<p>3.3-3.4 Pages 51-54</p>	<p>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings.</p>	<p>Continue to attend OSC CJI meetings and report to BOG</p>	
<p>C. Develop Blueprint for Nonfamily Law Facilitation Office</p>	<p>5.2 Page 65</p>	<p>BOG sent to CEO. CEO attending OSC Civil Justice Initiative Task Force meetings</p>	<p>Do not pursue as separate initiative. Continue to attend OSC CJI meetings and report to BOG Continue to support court funding for self-navigator resources.</p>	
<p>D. Promote use of technology to increase A2J in Lower Income & Rural Communities</p>	<p>7.2 Page 70</p>	<p>BOG sent to CEO. LSP including technology in accountability review process. CEO attending Civil Justice Initiative Task Force meetings</p>	<p>Continue to attend OSC CJI meetings and report to BOG. Conduct accountability review process.</p>	
<p>E. Take steps to make legal services more accessible in Rural Areas</p>	<p>7.3 Page 71</p>	<p>BOG sent to CEO. LSP including rural service in accountability review process.</p>	<p>Conduct accountability review process.</p>	

		<p>Rural Opportunity Fellowship under review by D&I Director.</p> <p>Completion of series in OSB Bulletin on rural law practice opportunities.</p> <p>ONLD planning Rural Summit at OSB Center to explore access to justice issues on September 21, 2018</p>	<p>Complete review. Make changes as appropriate.</p> <p>Hold Summit.</p>	
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IV. Enhancement of Existing Bar Programs and Resources

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Ask PSAC to explore ways to increase availability to unbundled services offered through LRS	3.5 Pages 54-55	PSAC/LRS exploring.		
B. Continue to Improve & Enhance Resources for Self-Navigators	3.6 Pages 56-57	BOG sent to CEO. Participating in SFLAC pro se assistance subcommittee. Supporting court funding of self-navigator resources.	Continue SFLAC participation. Continue support of court funding for self-navigator resources.	
C. Work to improve the public perception of lawyers	7.4 Page 72	BOG sent to CEO. Media/public relations manager working with media.	Continue work with media.	
D. Expand the Lawyer Referral Service and Modest Means Program		BOG sent to CEO.		
1. Set Goal to increase LRS Inquiries by 11% by Next 4 Years	5.1 Page 64			
E. Enhance Practice Management Resources				
1. Develop Comprehensive Training Curriculum re Modern Law-Practice Management Methods	6.1 Page 65-68	Sent to PLF.		
2. Promote unbundled legal services	7.1 Page 69	Sent to PLF. Fee Agreement Compendium being updated to include broader sampling of alternative fee agreements. GCO continues to provide CLEs on ethics of unbundling.		

V. BOG Policy Development

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Embrace Data-Driven Decision-Making	4 Page 61		Send to PGC	2018
1. Adopt Data-Driven Decision Making Policy	4.1 Page 61		Send to PGC	
2. Adopt formal Set of Key Performance Indicators to Monitor State of Values	4.2 Page 62		Send to PGC	
3. Adopt Open-Data Policy	4.3 Page 62		Send to PGC	
4. Dedicate OSB Resources to Data collection, design and dissemination	4.4 Page 63	BOG sent to CEO. New Association Management Software (AMS) implementation in process. Legal Needs Study in process. Data collection for OSB Economic Survey complete. Data collection for survey of new lawyers complete.	Continue AMS implementation. Finish Legal Needs Study. Publish results of Economic Survey Discuss results of New Lawyer Survey and determine next steps.	2018

VI. Development of New Bar Programs

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Create Incubator/Accelerator Program	8 Page 86-93	Question included in new lawyer survey Under consideration as part of new lawyer program review		
1. Dedicate staff as project manager				
2. Form a Program Development Committee to help design and implement the program				

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?

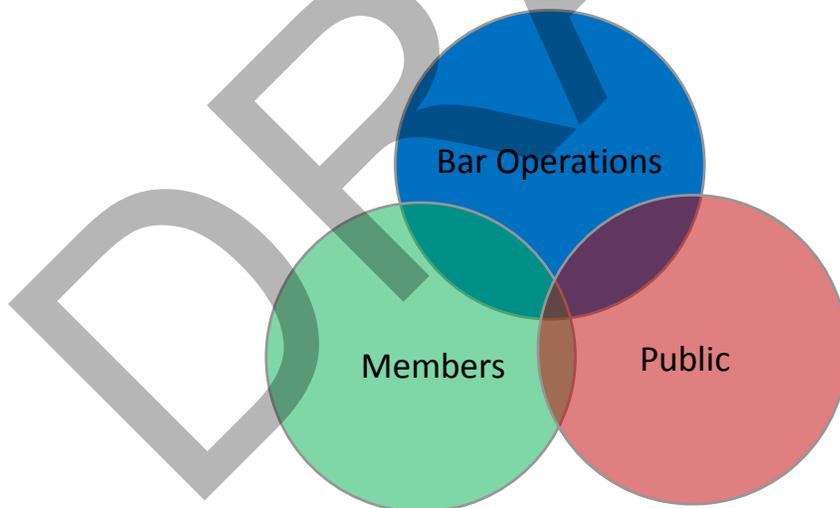
Diversity Action Plan Mission Statement

The Oregon State Bar practices and reflects the values of diversity, inclusion and equity in its service to the public and its members as well as in its internal operations.

Membership We strive to build and retain a diverse and inclusive bench and bar. We support members reaching their full professional potential by eliminating barriers and creating opportunities in the law.

Public Outreach We strive to achieve equitable access to legal services and to generate public awareness about the legal system and bar services among all Oregon communities.

Bar Operations We strive to create a welcoming environment where staff feel a sense of community and are fully engaged to achieve the bar's mission.



Membership Sphere

GOAL 1 Increase and sustain a diverse Oregon State Bar and bench.

STRATEGY 1 Identify and gather information on experiences of diverse lawyers.

ACTION 1 Conduct climate surveys.

2018 Create climate surveys to identify the barriers and opportunities faced by diverse lawyers in Oregon. COMMUNICATIONS

2018 Conduct climate surveys. COMMUNICATIONS

2018 Conduct exit surveys for diverse lawyers who leave the state or withdraw from active practice. COMMUNICATIONS

ACTION 2 Facilitate focus groups to gather feedback on member experiences.

2019 Create and conduct focus groups utilizing the information gleaned from the climate surveys. COMMUNICATIONS

2020 Report to bar leadership on the focus group findings. COMMUNICATIONS

ACTION 3 Analyze attorney fee rates and economic survey data to identify disparities for lawyers from non-dominant cultures.

2018 Correlate information gleaned from A1 and A2. COMMUNICATIONS

2019 Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

STRATEGY 2 Ensure the effective retention of diverse bar members.

ACTION 1 Develop D&I programs and other bar resources targeted to support diverse lawyers new to Oregon.

2019 Use the results from the DAP surveys and focus groups to identify new program needs. DIVERSITY & INCLUSION

2020 Expand D&I programming to address lateral hire retention. DIVERSITY & INCLUSION

2020 Expand D&I programming to address new member retention. DIVERSITY & INCLUSION

ACTION 2 Conduct outreach with legal employers to determine best practices for retaining diverse lawyer employees.

2018 Collect information from legal employers. DIVERSITY & INCLUSION

2019 Provide revised best practices toolkit to legal employers. DIVERSITY & INCLUSION

2020 Evaluate toolkit and outreach efforts. DIVERSITY & INCLUSION

ACTION 3 Develop resources to assist legal employers in creating a diverse workforce.

2018 Create a business case identifying the benefits of employing diverse lawyers. DIVERSITY & INCLUSION

2019 Create resources to assist employers with lateral hire retention programs. DIVERSITY & INCLUSION

2020 Begin to assess impact and reach of resources. DIVERSITY & INCLUSION

STRATEGY 3 Encourage, support, and promote diverse bar members in seeking judicial positions.

ACTION 1 Review the bar's process for obtaining feedback on judicial candidates to ensure it is qualitative in nature and supports the DAC's mission.

2018 Modify bar bylaws to eliminate bar polls for judicial selection process. PUBLIC AFFAIRS

2018 Survey specialty bars regarding judicial screening process. PUBLIC AFFAIRS

ACTION 2 Increase outreach to diverse bar members regarding judicial positions.

2018 Assess notice of judicial vacancy recipient list and webpage placement of notices. PUBLIC AFFAIRS

2018 Assess placement of judicial vacancy notice to specialty bars and publications. PUBLIC AFFAIRS

2018 Modify judicial appointment recommendations process to assess cultural competency. PUBLIC AFFAIRS

STRATEGY 4 Collaborate with and support specialty bars and other organizations that are composed of diverse memberships (hereinafter "specialty bars").

ACTION 1 Participate in meetings between specialty bars and OSB leadership to learn about specialty bars' experiences and perceptions of the OSB as an institution and of the OSB leadership. ("OSB leadership" to be defined through the development of the agenda with the specialty bars and the facilitator.)

2018 Work with specialty bars as requested in order to choose a facilitator and develop agendas. EXECUTIVE SERVICES

2018 Provide OSB financial support for facilitating dialogue. DIVERSITY & INCLUSION

2018 Attend the meetings and ensure OSB leadership participation, and follow up as appropriate. EXECUTIVE SERVICES

ACTION 2 Increase Board of Governors' awareness and support of the work engaged in by specialty bars.

2018 Organize a reception in conjunction with a BOG meeting, and invite specialty bars to attend and network with the BOG. EXECUTIVE SERVICES

2018 Invite specialty bars to attend and/or submit reports to BOG meetings, to report on their activities and events. EXECUTIVE SERVICES

2018 Ensure BOG representation at specialty bar events. EXECUTIVE SERVICES

2019 Implement changes to the BOG's participation in specialty bar work as agreed upon during the facilitated joint leadership meetings.

ACTION 3 Assist specialty bars in promoting their activities and events to OSB leadership and to OSB membership.

2018 Conduct outreach with specialty bars on the services OSB can provide. MEMBER SERVICES

2018 Improve placement and accessibility of specialty bar information on the OSB website. MEMBER SERVICES

2019 Include specialty bar events on the OSB website calendar in accordance with OSB communication guidelines. MEMBER SERVICES

2018 Invite specialty bars to have a table and to include promotional materials at OSB events in order to showcase their organizations and recruit members. MEMBER SERVICES

ACTION 4 Increase OSB technical support of specialty bars.

2018 Explore possibilities for adding information about joining specialty bars to membership fee statement (at dues payment/renewal). ACCOUNTING

2018 Enhance administrative support provided to specialty bars, such as managing event RSVPs, maintaining membership lists, and distributing event notices. MEMBER SERVICES

2018 Provide specialty bars free access to OSB membership lists through the public records process. MEMBER SERVICES

2018 Update and enhance resource list of OSB services to support specialty bars. MEMBER SERVICES

STRATEGY 5 Support an effective pipeline of diverse law students who feel sustained, welcomed, and encouraged to practice law in Oregon.

ACTION 1 Increase D&I program effectiveness.

2018 Analyze current effectiveness based on data, current trends, and known issues. DIVERSITY & INCLUSION

2019 Implement changes to D&I programming based on findings of analysis, to provide opportunities for law and pre-law students, including professional connections, legal experience, and financial support. DIVERSITY & INCLUSION

2019 Formalize D&I program applicant criteria and review the application process to ensure fairness, transparency, and applicant pool reach. DIVERSITY & INCLUSION

2020 Review progress based on implemented changes. DIVERSITY & INCLUSION

ACTION 2 Support diverse law students in Oregon through mentorship and community building, to encourage them to practice in Oregon upon graduation.

2018 Collaborate with Oregon law schools and other partners to create a robust and effective OLIO orientation program. DIVERSITY & INCLUSION

2019 Implement Oregon Council on Legal Education and Admissions to the Bar (OCLEAB) agenda item asking Oregon law schools to report on their diversity trends. ADMISSIONS

2020 Review progress based on implemented changes. DIVERSITY & INCLUSION

STRATEGY 6 Increase lawyer engagement in community organizations that encourage diverse individuals to pursue legal education.

ACTION 1 Create awareness in the legal community about existing programs, to encourage diverse individuals to pursue legal education.

2018 Create a list of schools with pre-law programs, high schools with mock trial programs, and other educational organizations with school engagement initiatives. DIVERSITY & INCLUSION

2019 Work with specialty bars, sections, committees and other bar members to encourage member participation in the programs. DIVERSITY & INCLUSION

2020 Obtain program feedback to evaluate effectiveness and reach. DIVERSITY & INCLUSION

GOAL 2 Identify and work to eliminate barriers for diverse members in the legal profession.

STRATEGY 1 Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.

ACTION 1 Review the applicable MCLE rules and regulations to determine whether programs approved for Access to Justice credit support the DAC's mission.

2018 *Develop any needed changes to the MCLE rules and regulations.* DIVERSITY & INCLUSION

2019 *Secure approval by MCLE Committee and Supreme Court of changes to MCLE rules and regulations.* MCLE

ACTION 2 Sponsor, promote, and encourage elimination-of-bias CLE programming, including implicit bias, equity, systemic racism, institutional racism, etc.

2018 *Deliver programming regarding ORPC 8.4.* CLE SEMINARS

ACTION 3 Promote Legal Employers Toolkit to legal employers.

2018 *Work with the Diversity Section to complete toolkit.* DIVERSITY & INCLUSION

2019 *Distribute toolkit.* DIVERSITY & INCLUSION

2020 *Obtain feedback from toolkit recipients.* DIVERSITY & INCLUSION

ACTION 4 Publish articles in the Bulletin related to diversity, equity, and inclusion.

2018 *Develop a pool of potential authors and publication schedule.* COMMUNICATIONS

2018 *Develop process for inviting specialty bars to submit article ideas or written submissions for publication in the Bulletin.* COMMUNICATIONS

2018 *Consider developing a regular column on diversity, equity and inclusion.* COMMUNICATIONS

2019 *Publish articles using the pool and according to the schedule.* COMMUNICATIONS

STRATEGY 2 The BOG functions in a way that is open and inclusive of different perspectives and experiences.

ACTION 1 Task the Board Development Committee with assessing needs and with using the assessment to provide programming for the BOG on diversity, equity and inclusion.

2018 *BOG members conduct a self-assessment on bias (e.g. implicit bias test from the Harvard Project Implicit [<https://implicit.harvard.edu/implicit/takeatest.html>]).* CEO

2018 *Include at least one session on implicit bias, institutional racism, or equity principles for BOG members each year.* CEO

ACTION 2 Adopt a BOG policy to review all bar programs, services, and activities with impact on lawyers from diverse backgrounds as a factor for evaluation.

2018 *Policy reviewed by BOG Policy & Governance Committee and BOG.* CEO

2018 *Implement policy and incorporate into BOG orientation materials and online resources.*

CEO

STRATEGY 3 Support an open and inclusive award selection process for all OSB groups.

ACTION 1 Encourage transparency in award nomination and selection process.

2018 Develop a policy and nomination form template for section awards. MEMBER SERVICES

2019 Encourage and assist sections and the ONLD with promoting their award nomination process with specialty bars. MEMBER SERVICES

STRATEGY 4 Review the admissions process to determine whether diverse candidates are disparately impacted.

ACTION 1 Create policies and procedures establishing the lawful collection and use of demographic data from applicants.

2018 Review current rules, policies and procedures to determine the legalities of collecting and using demographic data. ADMISSIONS

2019 Make changes to policies and procedures as needed in order to safeguard data collected from being used or made available for an admission decision related to any particular applicant. ADMISSIONS

2020 Make changes to policies and procedures, where necessary, in order to lawfully collect and use demographic data for statistical analysis. ADMISSIONS

ACTION 2 Collect data from the OSB Admissions Department, Oregon law schools, and applicants, to identify admissions trends of demographic groups.

2020 Ask OSB applicants to self-identify as part of the application process. ADMISSIONS

2020 Begin to review data in respect to identifying admissions trends by demographic. ADMISSIONS

DRAFT

GOAL 3 Enrich the OSB by increasing representation of diverse members in volunteer and leadership roles.

STRATEGY 1 Educate OSB member groups on the value of diversity, equity, and inclusion.

ACTION 1 Create a benefit statement supporting the value of diversity.

2018 Seek input from specialty bars and other stakeholders in creating the benefit statement.

MEMBER SERVICES

2018 Gather baseline data to determine current member involvement in OSB volunteer and leadership roles. MEMBER SERVICES

2019 Distribute benefit statement to bar groups. MEMBER SERVICES

2020 Evaluate effectiveness based on change in overall volunteer participation. MEMBER SERVICES

STRATEGY 2 Increase diversity on all OSB self-electing boards and in membership elected positions.

ACTION 1 Encourage a diverse pool of candidates for Board of Governors and House of Delegates elections.

2018 - 2020 BOG members actively encourage diverse members to run for vacant positions on the BOG and HOD (annually). MEMBER SERVICES

2018 Encourage specialty and local bars to inform their members of BOG and HOD vacancies, including list serve and website postings. MEMBER SERVICES

2018 Encourage specialty and local bars to promote the importance of voting in HOD/BOG elections to their membership. MEMBER SERVICES

ACTION 2 Increase representation of diverse members serving on self-electing boards to reflect the diversity of the OSB membership.

2018 BOG review of ONLD and section bylaws and policies to ensure the election process is transparent and supports equity and inclusion. CEO

2018 Meet with sections during the annual meeting process to share the benefit statement (S1, A1) MEMBER SERVICES

2019 Include demographic data on membership lists and rosters. MEMBER SERVICES

STRATEGY 3 Encourage diversity of volunteer speakers and planners for CLE events.

ACTION 1 Provide a resource list of specialty bar associations to bar groups planning CLE events.

2018 *Develop a list of specialty bars and include a description of the specialty bar's mission statement.* CLE SEMINARS

2019 *Incorporate the DAC's mission and specialty bars list in CLE co-sponsorship guidelines.* CLE SEMINARS

ACTION 2 Look for opportunities to collaborate with specialty bars for CLE events.

2018 *Conduct an inventory of existing bar CLE events that would be suitable for collaboration with specialty bars; evaluate available bar resources that could be utilized by specialty bars for their events.* CLE SEMINARS

2019 *Create a bar CLE resource guide for specialty bars.* CLE SEMINARS

2020 *Distribute the guide and begin CLE event collaboration with specialty bars.* CLE SEMINARS

ACTION 3 Look for opportunities to diversify the pool of CLE speakers.

2018 *Distribute the Leadership and Volunteer Opportunities CLE Speaker reports to Section Executive Committees annually with a reminder that the CLE planning committees have this resource and should consider diversity when selecting CLE subject matter experts.* MEMBER SERVICES

STRATEGY 4 Collaborate with the Board of Governors and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the Board of Governors.

ACTION 1 Increase the pool of diverse lawyers and non-lawyers for OSB volunteer positions.

2018 *Organize an event co-sponsored by OSB's D&I Department, the BOG, and specialty bars to explain OSB leadership opportunities, selection processes for OSB volunteer appointments, and application processes for BOG and HOD.* DIVERSITY & INCLUSION

2018 *Provide notices of volunteer and leadership opportunities to specialty and local bar organizations for distribution to their members and through their respective newsletters and to community organizations that support diverse individuals.* MEMBER SERVICES

2018 *Request that specialty and local bars include a link to the OSB Volunteer Survey on their websites.* MEMBER SERVICES

ACTION 2 Educate the Board Development Committee members on the need to review appointment recommendations and decisions through an equity lens.

2018 *Conduct an annual review of appointments with focus on demographic and geographic factors.* MEMBER SERVICES

ACTION 3 Ensure the appointment process is efficient and effective and that BOG has enough member information.

2018 *Board Development Committee reviews and refines internal processes.* MEMBER SERVICES

STRATEGY 5 Develop a leadership institute for diverse attorneys.

ACTION 1 Address gaps and barriers to leadership positions within the BOG and specialty bars for underrepresented members of the bar.

2018 Identify gaps and barriers. DIVERSITY & INCLUSION

2019 Craft proposed course curriculum. DIVERSITY & INCLUSION

2020 Course implementation. DIVERSITY & INCLUSION

STRATEGY 6 Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.

ACTION 1 Increase representation of diverse members on Legal Publications editorial review boards and as authors.

2018 Contact local and specialty bars when recruiting new editorial board members and authors.

LEGAL PUBLICATIONS

2019 Revise Editorial Review Board Guidelines to strongly encourage editorial review boards to consider diversity in identifying potential authors. LEGAL PUBLICATIONS

2020 Evaluate effectiveness of efforts to increase diversity of editorial boards and author pool. LEGAL PUBLICATIONS

ACTION 2 Include more detailed biographical information and pictures of authors in front matter of books, to showcase diversity involvement.

2018 Select two publications to include more detailed biographical information. LEGAL PUBLICATIONS

2019 Increase number of publications that include detailed biographical information. LEGAL PUBLICATIONS

STRATEGY 7 Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to diverse attorneys.

ACTION 1 Survey new lawyer participants to determine level of satisfaction with NLMP.

2018 Review existing new lawyer survey and determine whether additional information needs to be gathered. MEMBER SERVICES

2018 Modify survey as necessary and implement for all new lawyers upon program completion. MEMBER SERVICES

2019 Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

ACTION 2 Increase the pool of diverse mentors participating in the NLMP.

2018 Evaluate mentor availability and areas of underrepresentation. MEMBER SERVICES

2018 Conduct targeted outreach to ensure adequate availability of mentors from diverse member groups. MEMBER SERVICES

ACTION 3 Review NLMP database fields to ensure adequate information is available when matches are made.

2018 Revise NLMP forms as needed. MEMBER SERVICES

Public Outreach Sphere

GOAL 1 Increase representation and legal services to underserved and hard to reach communities in Oregon.

STRATEGY 1 Assess the civil legal needs of low income Oregonians statewide, including hard to reach populations.

ACTION 1 Conduct planned civil legal needs study (CLNS) that provides comprehensive information about the legal needs of low income Oregonians, including hard to reach populations.

2018 CLNS data has been gathered and analyzed. OLF

2018 CLNS has been published and shared with a wide range of stakeholders. OLF

2018 Conduct media campaign to share the results of the CLNS. COMMUNICATIONS

ACTION 2 Use the results of the CLNS to inform the legal services provided by the integrated statewide legal aid programs pursuant to the OSB Legal Services Standards and Guidelines.

2019 Legal aid providers have reviewed the results, and used these results to set priorities for legal services and to develop access strategies for low income Oregonians, including hard to reach populations. LSP

2020 A plan with goals to implement access strategies has been developed. LSP

ACTION 3 Use the results of the CLNS to inform the access strategies for low income and hard to reach populations by the Oregon State Bar.

2019 The OSB has reviewed the results of the CLNS for possible OSB program changes. LSP

2020 The OSB has developed a plan for implementing access strategies. LSP

STRATEGY 2 Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard to reach and diverse populations pursuant to the OSB Legal Services Standards and Guidelines.

ACTION 1 LSP staff conduct the accountability process outlined in the Standards and Guidelines.

2018 Staff, legal aid providers, and the LSP Committee have reviewed the current accountability process and have made changes as necessary, including incorporating review of effective technology. LSP

2018 The accountability process has been completed, and a report has been submitted to the BOG. LSP

2019 Legal aid providers implement recommendations from the 2018 review process. LSP

STRATEGY 3 Increase pro bono representation of low income Oregonians and hard to reach populations.

ACTION 1 Establish a baseline of current pro bono hours.

2018 Using ABA survey results and hours reported by OSB Certified Pro Bono Programs, establish a baseline of pro bono hours. LSP

ACTION 2 Utilize the results of the ABA pro bono survey to develop strategies that are focused on diverse and hard to reach populations.

2018 Identify barriers to lawyers doing pro bono work and develop a plan for addressing them. LSP

2019 Implement the plan to address barriers to lawyers doing pro bono work. LSP

2020 Survey membership on pro bono work. LSP

ACTION 3 Continue to monitor the use of the ABA Free Legal Answers resource.

2018 Determine whether ABA Free Legal Answers will work as a resource for the OSB (given Aptify and implementation concerns). LSP

2019 Implement (if it makes sense for the OSB as a service to the public). LSP

DRAFT

STRATEGY 4 Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low income Oregonians, including underserved and hard to reach communities in Oregon.

ACTION 1 Use the CLNS to inform banks about the scope of the unmet legal needs of low income Oregonians to support increased legal aid funding in Oregon.

2018 Increase Leadership Bank Program interest rate tiers to coincide with Federal Reserve Bank increases. OLF

2018 Incorporate CLNS results into talking points to work with the Oregon Bankers Association and banking community to increase interest rates on IOLTA accounts held in Oregon. OLF

2019 Continue to monitor interest rate increases and adjust Leadership Bank Program interest rates as needed. OLF

ACTION 2 Use the CLNS to inform the legislature about the scope of the unmet legal needs of low income Oregonians to support increased legal aid funding in Oregon.

2018 Establish diverse network of leaders to support relevant issues and trends. PUBLIC AFFAIRS

2018 Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS

2019 present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

ACTION 3 Conduct media outreach campaign to support funding efforts.

2018 Develop and execute CLNS media outreach campaign. COMMUNICATIONS

ACTION 4 Explore partnering with the philanthropic community on the importance of funding legal aid to alleviate poverty.

2018 Work with CEJ and the legal aid providers to develop a plan to partner with the philanthropic community. OLF

2019 Implement the plan. OLF

GOAL 2 Ensure all Oregonians are able to access the bar's public protection programs.

STRATEGY 1 Engage in outreach to marginalized communities regarding the availability and purpose of the bar's public protection programs¹.

ACTION 1 Develop relationships with community organizations working in the public protection arena.

2018 Identify and create a list of potential community partners. GENERAL COUNSEL

2019 Have a discussion with a representative from each identified group. GENERAL COUNSEL

ACTION 2 Design and utilize toolkit for member and public outreach on public protection programs.

2018 Create program description for public protection programs and collect related application/complaint forms. GENERAL COUNSEL

2019 Discuss and review the toolkit with representatives from community organizations and member representatives. GENERAL COUNSEL

2020 Share the toolkit with targeted audiences. GENERAL COUNSEL

STRATEGY 2 Develop a comprehensive approach for providing English language learners access to the bar's public protection programs.

ACTION 1 Develop policy to enable access to programs for persons who speak, read, or write languages other than English.

2018 Evaluate staffing and other resources in relation to language needs. GENERAL COUNSEL

2019 Write and adopt a policy providing that individuals who file complaints in languages other than English are heard. GENERAL COUNSEL

2020 Develop multi-lingual complaint/application forms and informational materials for public protection programs. COMMUNICATIONS

¹ OSB Public Protection Programs include the lawyer disciplinary process, unlawful practice of law complaints, client security fund, and malpractice coverage.

STRATEGY 3 Ensure that the operation of bar's public protection programs are fair, safe and welcoming to all.

ACTION 1 Collect demographic data and feedback from users who access the bar's public protection programs.

2018 Explore methods to collect data. COMMUNICATIONS

2019 Collect user demographic data and seek feedback on user experience. COMMUNICATIONS

ACTION 2 Analyze demographic data and feedback from users who access the bar's public protection programs.

2018 Analyze the data collected. GENERAL COUNSEL

2019-20 Meet with members, stakeholders, and possible community partners identified in Strategy 1 to discuss data and seek additional feedback. CEO

2020 Identify approaches for creating a more safe and welcoming public protection program process. GENERAL COUNSEL

2020 Develop plan to implement approaches. GENERAL COUNSEL

ACTION 3 Coordinate with the work of the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF).

2018 - 2020 Participate in and support the work of OSCCIF. CEO

DRAFT

GOAL 3 Expand availability of public education, outreach and self-navigation materials for underserved Oregon communities.

STRATEGY 1 Develop public legal informational materials that are accessible to all Oregonians.

ACTION 1 Improve the readability of all OSB public legal information materials.

2018 *The readability/grade level of existing content has been determined, and a target standard has been set – e.g., “Plain English” (8th grade reading level).* COMMUNICATIONS

2019 *The 30 most-accessed topics have been edited to meet the new standard.* COMMUNICATIONS

2020 *The next 30 most-accessed topics have been edited to meet the new standard.* COMMUNICATIONS

ACTION 2 Improve access to legal information materials for English-language-learners.

2018 *All public information materials have been presented online in formats that are compatible with the Google Translate app; professionally translated materials available to the OSB have been posted online.* COMMUNICATIONS

2019 *Professional translation of the 20 most-accessed topics have been produced in high-frequency languages.* COMMUNICATIONS

2020 *Professional translation of the next 20 most-accessed topics have been produced in high-frequency languages.* COMMUNICATIONS

ACTION 3 Increase availability of legal information provided in video and other non-text formats, featuring diverse presenters.

2018 *The production of Legal Q&A videos in English, Spanish and other high-frequency [define in DAP] languages has continued; video introductions for OSB public protection services in English and Spanish have been produced.* COMMUNICATIONS

2019 *An instructional video for new statewide dissolution forms (petitioner) in English and Spanish has been produced and/or promoted (in collaboration with justice system partners).* COMMUNICATIONS

2020 *Instructional videos for other statewide family law firms have been produced and/or promoted.* COMMUNICATIONS

ACTION 4 Increase the availability of legal information materials to people with disabilities and special needs.

2018 *Online materials have been reviewed for compatibility with screen readers; captioning for public information videos has been added.* COMMUNICATIONS

2019 *Updating and monitoring of materials has continued.* COMMUNICATIONS

2020 *Updating and monitoring of materials has continued.* COMMUNICATIONS

STRATEGY 2 Enhance outreach to underserved communities regarding the modest means and lawyer referral programs.

ACTION 1 Assess current service levels and legal needs of underserved communities.

2018 Compile internal statistics on the Lawyer Referral Service and Modest Means Program, including calls from English language learners, languages offered by panelists, and website translations. COMMUNICATIONS

2019 Compare services provided with results of the Civil Legal Needs Study (CLNS) to identify underserved communities and prioritize how the Lawyer Referral service is meeting their legal needs. LSP

ACTION 2 Implement outreach plan to underserved communities, including marketing and coordination with community partners.

2018 Begin outreach to already identified underserved communities. COMMUNICATIONS

2019 - 2020 Continue outreach methods and monitor effectiveness. COMMUNICATIONS

STRATEGY 3 Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.

ACTION 1 Establish a diverse network of lawyers and bar groups who are leaders in relevant areas of practice.

2018 Work with select committees, sections and specialty bars to support justice system issues. PUBLIC AFFAIRS

2019 Develop a framework to continue the discussion and coordinate ongoing efforts. PUBLIC AFFAIRS

ACTION 2 Adopt a plan for responding to breaking legal news when it offers opportunity to educate and/or enhance awareness of issues affecting underserved communities.

2018 Work with bar leaders on a media response policy. COMMUNICATIONS

2019 Develop and implement the policy. COMMUNICATIONS

GOAL 4 Improve the Administration of Justice to better serve under-represented and marginalized communities.

STRATEGY 1 Support OSB justice system funding priorities.

ACTION 1 Develop coalitions and collaborate with justice system partners and bar members to achieve OSB legislative priorities.

2018 Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS

2019 Host "Day at the Capitol" to activate members and educate legislative leadership. PUBLIC AFFAIRS

2019 Present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

STRATEGY 2 Collaborate with the courts and support the Procedural Fairness in Courts Initiative.

ACTION 1 Develop lunchtime CLE series (Lunch and Learn) at the Capitol for staff and public on implicit bias and procedural justice.

2018 Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

2019 Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

2020 Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

ACTION 2 Determine goals of Oregon State Council on Gender Inclusion and Fairness (OSCGIF) regarding data identification and collection.

2018 Develop plan on how to best assist. PUBLIC AFFAIRS

STRATEGY 3 Support access to justice in the legislative arena.

ACTION 1 Collaborate with other organizations to support procedural fairness and justice system reinvestment.

2019 *Day at the Capitol: Invite representatives from legal aid, indigent defense services, and coalition partners to participate in events.* PUBLIC AFFAIRS

ACTION 2 Develop coalitions to support access to justice initiatives.

2018 *Meet with coalition partners during the interim to discuss legislative concepts and funding priorities.* PUBLIC AFFAIRS

ACTION 3 Educate lawyer-legislators, bar members, and coalition partners about the need for legal aid services and indigent defense.

2018 *Host an access to justice event with coalition partners.* PUBLIC AFFAIRS

2019 *Host an access to justice event with coalition partners.* PUBLIC AFFAIRS

2020 *Host an access to justice event with coalition partners.* PUBLIC AFFAIRS

ACTION 4 Pursue Consumer Protection Initiatives

2018 *Pursue Consumer Protection Initiatives related to Futures Task Force.* PUBLIC AFFAIRS

2019 *Achieve progress in Consumer Protection Initiatives in 2019 legislative session* PUBLIC AFFAIRS

ACTION 5 Improve resources for self-navigators.

2018 - 2019 *(Re. self-navigators) Support Court Initiatives of the Futures Task Force.* GENERAL COUNSEL

2019 *Successful legislative session.* PUBLIC AFFAIRS

ACTION 6 Use the Civil Legal Needs Study to update legislators about the unmet legal needs of low income Oregonians to support increased legal aid funding.

2018 *Establish diverse network of leaders to support relevant issues and trends.* PUBLIC AFFAIRS

2019 *Successful legislative session.* PUBLIC AFFAIRS

Bar Operations Sphere

GOAL 1 Bar employees have a high level of diversity and inclusion competence and ownership.

STRATEGY 1 Provide educational opportunities for OSB employees.

ACTION 1 Provide one annual mandatory session focused on inclusion, equity or cultural competence for all staff.

2018 Topic and presenter identified and scheduled. HUMAN RESOURCES

2019 Topic and presenter identified and scheduled. HUMAN RESOURCES

2020 Topic and presenter identified and scheduled. HUMAN RESOURCES

ACTION 2 Provide one annual mandatory session focused on diversity, inclusion, equity, or cultural competence for managers and directors (in addition to the annual all-staff training).

2018 Topic and presenter identified and scheduled. HUMAN RESOURCES

2019 Topic and presenter identified and scheduled. HUMAN RESOURCES

2020 Topic and presenter identified and scheduled. HUMAN RESOURCES

ACTION 3 Provide at least one annual cultural awareness day for all employees.

2018 Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

2019 Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

2020 Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

ACTION 4 Develop a “tip of the month” feature on the intranet that focuses on information and topics relating to diversity, inclusion, equity, or cultural competence.

2018 Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION

2019 Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION

2020 Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION

STRATEGY 2 Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity and cultural competence.

ACTION 1 Update managers' and directors' performance evaluation templates to ensure that diversity and inclusion ownership and competence are included as leadership attributes to be evaluated.

2018 *Templates reviewed, changed as necessary and implemented for year.* HUMAN RESOURCES

2019 *Templates reviewed, changed as necessary and implemented for year.* HUMAN RESOURCES

2020 *Templates reviewed, changed as necessary and implemented for year.* HUMAN RESOURCES

ACTION 2 Encourage managers and directors to identify and participate in external educational opportunities that focus on professional development around diversity and inclusion.

2018 *D&I professional development discussed during performance evaluation.* CEO

2019 *D&I professional development discussed during performance evaluation.* CEO

2020 *D&I professional development discussed during performance evaluation.* CEO

STRATEGY 3 Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.

ACTION 1 Research best practices around diversity and inclusion language.

2018 *Collate findings into a best practices report.* DIVERSITY & INCLUSION

ACTION 2 Conduct an assessment of OSB language (including pronouns) used on all internal and external materials.

2018 *Identify language (and all language locations) for updating, using the best practices report.* DIVERSITY & INCLUSION

2019 *Develop a language update implementation plan.* DIVERSITY & INCLUSION

2019 *Implement consistent language updates per the implementation plan.* DIVERSITY & INCLUSION

ACTION 3 Update OSB staff regarding changes to best practices terminology and language.

2019 *Best practices language updates are included within the annual staff education session.* HUMAN RESOURCES

STRATEGY 4 Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.

ACTION 1 Review bylaws and identify bylaws that need to be amended.

2019 *Bylaws identified.* GENERAL COUNSEL

2020 *Amendments drafted and presented to the BOG for approval.* GENERAL COUNSEL

GOAL 2 Foster a welcoming and inclusive workplace and accessible programs, services and Bar Center.

STRATEGY 1 Acquire an understanding of the bar's workplace culture.

ACTION 1 Devise and conduct a workplace culture assessment.

2018 Workplace culture assessment conducted and data analyzed. HUMAN RESOURCES

ACTION 2 Evaluate employees' reasons for leaving the organization.

2018 Exit interview process reviewed and changes implemented. HUMAN RESOURCES

2019 Method for reviewing and analyzing data developed. HUMAN RESOURCES

2020 Current and historic data analyzed and evaluated. HUMAN RESOURCES

ACTION 3 Conduct an internal salary equity assessment.

2019 Assessment conducted by third-party contractor and data analyzed. HUMAN RESOURCES

STRATEGY 2 Use results of data collection to identify areas for improvement.

ACTION 1 Develop a plan to address areas that need improvement.

2020 Plan developed and implemented. HUMAN RESOURCES

STRATEGY 3 Identify and resolve barriers to the OSB being a welcoming environment for all.

ACTION 1 Develop and implement a plan to ensure inclusive restroom access for all employees and visitors.

2018 Plan developed and needed resources identified. DIVERSITY & INCLUSION

2019 Plan implemented. FINANCE AND OPERATIONS

ACTION 2 Develop and implement a policy and procedure to create an inclusive environment for gender neutral and transitioning transgender employees.

2019 Plan developed and needed resources identified. HUMAN RESOURCES

2020 Plan implemented. HUMAN RESOURCES

STRATEGY 4 Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services and Bar Center. (BART)

ACTION 1 Develop and implement a plan to identify and resolve barriers to OSB Center Facility.

2018 Building user feedback reviewed to identify ways to improve building accessibility.

GENERAL COUNSEL

2019 Plan created and needed resources identified to improve building accessibility. GENERAL

COUNSEL

2020 Accessibility plan implemented. GENERAL COUNSEL

ACTION 2 Ensure OSB websites are compatible with screen readers.

2018 Plan created to continue identifying and updating portions of the website that are not accessible to persons utilizing screen readers. GENERAL COUNSEL

2019 Website accessibility plan implemented. GENERAL COUNSEL

ACTION 3 Continue to educate bar staff and bar leaders about accessibility.

2018 Feedback gathered and areas identified where bar staff and bar leaders may require additional assistance or education on accessibility issues. GENERAL COUNSEL

2019 Bar staff training on accessibility held. GENERAL COUNSEL

2019 Accessibility guides and recommendations developed that respond to bar staff and bar leaders' needs. GENERAL COUNSEL

2020 Accessibility guidelines and recommendations distributed to bar staff and bar leaders. GENERAL COUNSEL

DRAFT

GOAL 3 Build a workforce that is diverse and inclusive at every level.

STRATEGY 1 Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.

ACTION 1 Evaluate categories currently used by OSB for measuring staff diversity.

2018 *Categories assessed and expanded as necessary. HUMAN RESOURCES*

2019 *Revised data collection implemented. HUMAN RESOURCES*

2020 *System developed and implemented for ongoing review and analysis of data. HUMAN RESOURCES*

ACTION 2 Investigate options for assessing the diversity of applicants.

2019 *Electronic application systems evaluated. HUMAN RESOURCES*

2020 *Application process updated. HUMAN RESOURCES*

STRATEGY 2 Ensure that the OSB recruitment process is inclusive and equitable.

ACTION 1 Assess the current OSB recruitment process.

2018 *Method for assessment is developed. DIVERSITY & INCLUSION*

2019 *Assessment conducted and data analyzed. DIVERSITY & INCLUSION*

ACTION 2 Identify areas for improvement and develop plan for improvement.

2019 *Plan developed. HUMAN RESOURCES*

2020 *Plan implemented. HUMAN RESOURCES*

STRATEGY 3 Increase the diversity of applicants for vacant positions at the OSB.

ACTION 1 Build relationships with external groups and organizations that are focused on diversity.

2018 *External groups and organizations identified. DIVERSITY & INCLUSION*

2018 *Plan developed for building relationship with identified organizations and appropriate to each organization. DIVERSITY & INCLUSION*

2019 *Plan implemented. DIVERSITY & INCLUSION*

ACTION 2 Expand outreach to a more diverse pool of potential applicants.

2018 *Evaluate current outreach for job openings to identify gaps. HUMAN RESOURCES*

2019 *Identify potential resources for additional outreach and their job posting requirements and needs. HUMAN RESOURCES*

2019 *Incorporate new resources into current advertising plans. HUMAN RESOURCES*

STRATEGY 4 Explore and utilize bias interrupters in the hiring process.

ACTION 1 Incorporate hiring committees into the hiring process.

2018 *Identify opportunities for use of hiring committees.* HUMAN RESOURCES

2018 *Investigate and experiment with alternative hiring models that incorporate hiring committees.* HUMAN RESOURCES

2019 *Develop training for hiring committee participants.* HUMAN RESOURCES

2019 *Identify staff interested in participating on hiring committees and provide training.* HUMAN RESOURCES

ACTION 2 Create accountability for hiring process decisions.

2018 *Implement a step within the hiring process that requires decision makers to state a reason why they did not choose to take applicants to the next stage.* HUMAN RESOURCES

2018 *Training provided for managers and directors on bias interrupters.* HUMAN RESOURCES

DRAFT

GOAL 4 Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.

STRATEGY 1 Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

ACTION 1 Review the current process(es) taking place organization-wide for selecting contractors, suppliers, vendors, and consultants.

2018 *Process reviewed and documented. DIRECTOR OF FINANCE AND OPERATIONS*

ACTION 2 Create and implement a policy or policies for contracting with third-party vendors that account for the various needs of the organization and consider a diverse vendor pool.

2018 *A diverse list of third-party vendors developed. DIRECTOR OF FINANCE AND OPERATIONS*

2019 *Policy developed. DIRECTOR OF FINANCE AND OPERATIONS*

2020 *Policy implemented. DIRECTOR OF FINANCE AND OPERATIONS*

DRAFT

PLAN IMPERATIVES

1. Throughout the Diversity Action Plan implementation process, the effectiveness of the strategies and action items for each goal should be reviewed and adjusted as necessary.
2. The process and criteria for appointment to the Diversity Action Council should be submitted to the BOG for review.

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 18, 2017
From: Per Ramfjord, Board Development Committee Chair
Re: Appointments to various bar committees, councils, and boards (2 of 2)

Action Recommended

On November 18 the Board Development Committee selected the following members for appointment:

Oregon Law Foundation Board of Directors

Ethan Knight, term expires 12/31/2021
Traci Ray, term expires 12/31/2021

Legal Services Program Committee

Chair: Brent Hall
Secretary: Sara Kobak
Members with terms expiring 12/31/2020:
Sarah Kobak
Hon. Tim Gerking
LaFreda Ceaser, public member

Loan Repayment Assistance Committee

Members with terms expiring 12/31/2020:
Richard Wesenberg
Justin Morton
Mei Tsai

Pro Bono Committee

Chair: Stephen Galloway
Secretary: Natalie Hedman
Members with terms expiring 12/31/2020:
Nicholas Reed
Michael Shin
Tiffany Hendrix Blackmon
Kevin Kress
Kelli Russell

Procedure & Practice Committee

Chair: Ben Cox
Secretary: Melissa Bobadilla
Members with terms expiring 12/31/2020:
Kristian Roggendorf
Karen Anerson
Andrew Narus
Faith Morse
Willa Perlmutter
Mathew Lysne

Public Service Advisory Committee

Chair: Diana Winther
Secretary: Janay Haas
Members with terms expiring 12/31/2020:
Rachel Bertoni
Tiffany Johnson
Kimberlee Petrie Volm
Andrew Kalloch
Maxine Tuan
Lisa Umscheid
Steven Boender

Uniform Civil Jury Instructions Committee

Chair: Jeffrey Armistead
Secretary: Jeffrey Young
Members with terms expiring 12/31/2020:
John Geil
Blair Townsen
Sheri Browning
David Rosen
Michael Hallinan

2018 BUDGET Final Report



November 18,
2017

Report to the Board of Governors

Purpose of This Report

- This is intended to be the last report of the 2018 Budget and any changes from this report will be the final budget for 2018.
- The Budget & Finance Committee reviewed the 2018 Budget at its July 21, September 8 and 22, and November 3 meetings and prior to the November 18 board meeting. The July meeting included numerous scenarios for possible actions for the 2018 and future years' budgets.
- During the development of the budget a projected net operating expense declined from \$117,500 to a small net operating revenue, but a positive one nonetheless.
- At the November 3 meeting the Committee discussed at length the salary pool for 2018 (4% is included in this budget report). The Committee will make its final recommendation at this meeting.

Quick Summary of the 2018 Budget

This report includes the revised budget and now reports a **Net Revenue of \$27,904.**

The **Active Membership Fee is reduced to \$552.00** from \$557.00. A reduction in the Client Security Fund assessment was approved at the September 22 meeting and reported at the November 3 HOD meeting.

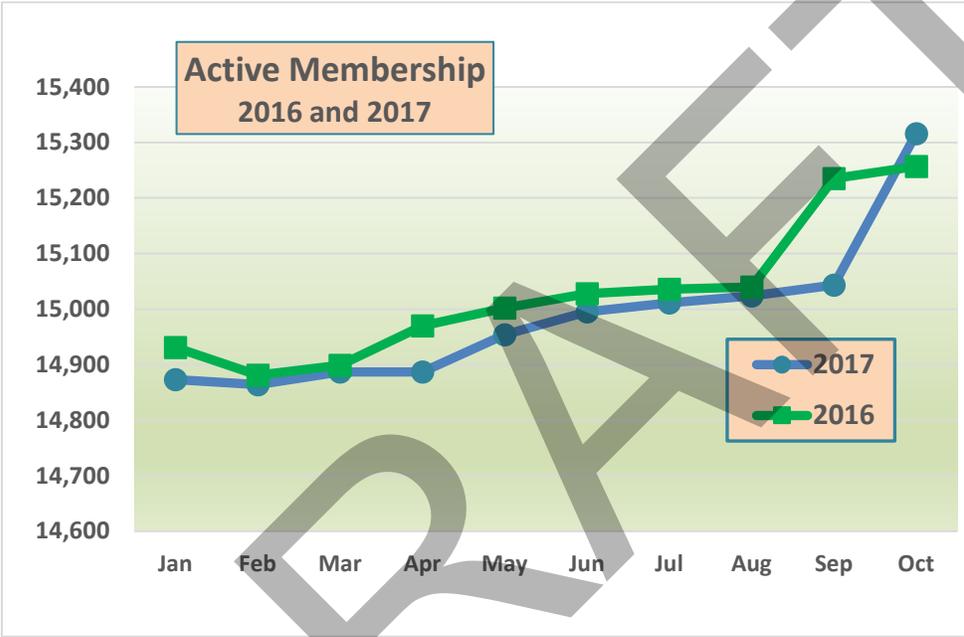
Changes from 2017 Budget to 2018 Budget:

- The 2017 Net Revenue is \$391,911 and the final Net Revenue will be higher.
- Revenue in 2018 declines \$18,400; Expenses increase \$344,300.

1. Membership Fees Revenue . . .

The chart below shows there were 59 more Active Members at October 2017 than October a year ago.

- However, using the same number of changes in membership status in the last two months of 2016 (which had 230 status changes), the Active Member count at the end of 2017 will be 18 less than the end of 2016.
- Since the Inactive Member count is projected to increase slightly in 2018 offsetting a projected slight decline in Active members, **the Member Fee revenue remains the same as the 2017 budget.**



An Interesting Fact

Will the Inactive Member count increase in 2018?

Answer: The Inactive Member count has increased from the previous year EVERY YEAR SINCE 1979 (39 consecutive years).

CONCLUSION ON MEMBERSHIP FEE REVENUE

With Active Members transferring to Retired, Inactive, Active Pro Bono status, or deceased, these member categories most likely will cancel any growth in the Active Member category in 2018.

Thus, the 2018 Member Fee revenue remains the same as the 2017 budget.

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

<i>Program</i>	Result Compared to 2017 Budget
Admissions	The BBX and Director project \$28,345 more revenue primarily due to the increase in <i>Investigation Fees</i> for California and Nevada lawyers entering by UBE scores
CLE Seminars	Due to when and the impact of the new Association Management software (AMS) and the change in Section co-sponsorship, revenue is hard to predict. In this phase revenue is lower by \$15,370.
Disciplinary Counsel	No increase in the <i>Reinstatement Fee</i> is included, but will be evaluated and seek Court approval in 2018 for 2019.
Lawyer Referral	<i>Percentage Fee</i> revenue is down \$70,000 which is closer to the expected revenue for 2017. Revenue is expected to average \$59,000 per month as it has for three years
Legal Publications	Revenue (<i>book sales</i>) is projected \$17,035 less than 2017. Sales of print books are expected to slowly decline year-over-year.
MCLE	Revenue is projected to be \$1,000 less in 2018 further affirming that this source of revenue is plateauing.

CONCLUSION OF NON-DUES REVENUE

Program Fee, or non-dues, revenue is \$47,260 less than the 2017 Budget as generally the major sources of Program Fee revenue decline from 2017.

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

- The PLF budget was approved on September 8 with a 4% salary pool. This was based on the PLF's recommendation on a July 2017 release from the Bureau of Labor Statistics that the Portland CPI-U had increased 4.4% from the previous year.
- The bar and PLF have always maintained the same salary pool, so a 4% pool is included in this phase of the budget.
- The chart compares the CPI-U and the amount of the salary pool since 2011:

<i>Rate/Year</i>	2017*	2016	2015	2014	2013	2012	2011
Portland CPI-U	4.4%	2.1	1.2%	2.4%	2.5%	2.3%	2.9%
Pool	3.0%	3.0%	2.0%	2.0%	2.0%	2.0%	3.0%
Pool Over/(Under) CPI-U	(1.4)	.9%	.8%	(.4%)	(.5%)	(.3%)	.1%

Notes:

- * The 2017 CPI-U number is for the first half of 2017.
- The CPI-U is not known until after the end of the year, i.e. although the CPI-U for 2016 was 2.1%, the 2017 pool of 3% was approved before the end of 2016.

- d) A 1% salary pool change is \$72,300 in salaries and benefits.
- e) The benefit costs of PERS also are a reason for the personnel cost increase. The employer rates increased an average of 4.41% in mid-2017, so those increases are in effect for a full year in 2018. The rate increases added \$107,700 to the personnel budget.

This cost increase could have been higher except for the departure of several long-time employees. The amount of salary at the highest PERS rate declined from 38% to 29%, and will continue to decline in the years ahead as more senior staff leave.

CONCLUSION FOR PERSONNEL COSTS

With the salary pool at 4%, the full year of the higher PERS rates, and the full year of new positions, the personnel budget will increase \$411,613 from the 2017 budget.

4. Direct Program & Administrative (non-Personnel) Expenses . . .

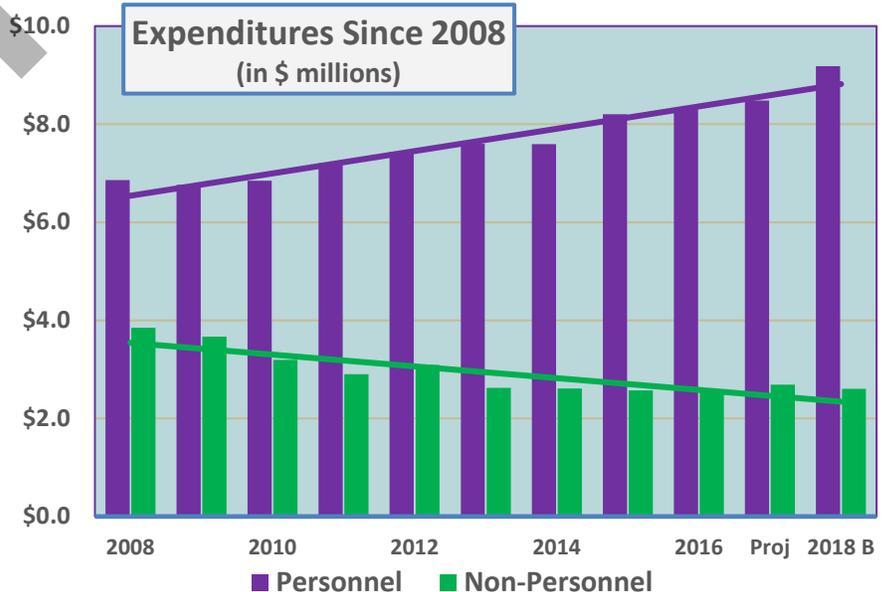
- Non-personnel costs are \$70,298 lower in 2018.
- Generally across the board most programs/departments cut or eliminated operating and administrative costs.
- The 2018 budget does not include costs for an economic survey (\$25,000 in 2017).

CONCLUSION FOR NON-PERSONNEL COSTS

Non-personnel costs continue to decline or at least plateau year-over-year.

The chart shows the challenge in future budgets. Personnel costs are increasing at a larger rate than non-personnel costs. This contradicts with limited or no increase in revenue.

Personnel costs are expected to be 75.3% of all bar operating expenditures in 2018.



5. Program Changes in the 2018 Budget . . .

After considerable discussion at the two previous meetings, there are few changes in the 2018 budget, and two apply to special assessments and not general bar operations

- A .75 FTE Adjudicator is included and assistant needs are absorbed by existing staff.
- The Client Security Fund assessment is reduced \$5.00.
- Diversity & Inclusion program expenses increase \$151,015.

6. What Stays the Same in 2018 . . .

Member Fee Assessment	The general member fee remains the same, but the fee becomes \$552.00 for active members with the reduction of the CSF assessment. The Inactive Member fee remains at \$125.00.
PLF Grant	\$200,000 grant for an undisclosed period
Fastcase	\$99,000 for the popular legal research library
Classroom Law Project	\$20,000 grant
Campaign for Equal Justice	\$45,000 grant
Council on Court Procedures	\$4,000 grant for council member travel expenses
Contract Legal Fees	\$40,000 for outside counsel
Outreach Programs	\$15,000 for legislative public policy
Contingency	\$25,000 for unusual or unexpected costs
Client Security Fund claims	\$200,000 as the annual placeholder amount

7. What the Five-Year Forecast Looks Like with a Net Revenue in 2018 . . .

2019	<ul style="list-style-type: none"> • By creating a small net revenue in 2018, the net expense in 2019 becomes a more manageable \$216,300. • Reserves remain well above the required levels.
2020	<ul style="list-style-type: none"> • Expect a fee increase of at least \$50.00 per active member. This will create a net revenue that will last for at least three years – four to five if other revisions are made. • <u>With a fee increase</u> - reserves are well above the required amounts. • <u>Without a fee increase</u> - the net expense will be in excess of \$400,000 and the reserve levels are maintained, but there is no excess.

2021	<ul style="list-style-type: none"> • With a fee increase in 2020 a net revenue exists and an excess of the reserves remains.
2022	
2023	<ul style="list-style-type: none"> • A manageable net expense exists. • The amount of reserve funds available are slightly less than the reserve levels. • The mortgage on the bar center is subject to a balloon payment in February. The bar should have no difficulty refinancing the mortgage, and the key factor will be the interest rate.

8. How to Maintain Fiscal Stability for Five Years Beginning in 2019 . . .

2019

1. **Charge the to the over 50-year members** the Active Member fee
2. **Increase the Reinstatement Fees** by \$250 (or another amount) to account for the time to process the reinstatements.
3. Maintaining the non-personnel cost adjustments of 2018 will cut the net expense to a more manageable amount, and possibly lead to a balanced budget.

2020

1. **Increase the Active member Fee by \$50.00.**

2019 to 2023

1. **Consider other sources of revenue** (reserves, service charge to sections, allow paralegals to become members, increase the lawyer referral percentage fee rate, etc.)
2. **The salary pool and another expected mid-year PERS rate increase** in 2019 and 2021 will have the greatest impact on operating costs.
3. **Evaluate programs or services for elimination or reduction** (New lawyers Division, New Lawyer mentoring Program, etc.)

9. Diversity & Inclusion . . .

- The program's expenditures are \$189,516 greater than a year ago. The additional costs are the placeholder of \$100,000 for initiating programs on diversity for members, increased costs for OLIO, and filling positions that were vacant for an extended period.
- The program will begin 2018 with a fund balance of approximately \$500,000.

10. Client Security Fund . . .

- At the September 22 Committee and board meetings, the assessment was reduced by \$5.00 to \$10.00. All active members pay this assessment.
- The lesser assessment generates \$77,800 less revenue. The 2018 net expense for the program is \$106,406.
- The budget includes a placeholder of \$200,000 for claims even though fortunately that amount has not been exceeded since 2013.
- The fund balance at the beginning of 2018 will approximate \$1.2 million. If claims remain at the average as this year and the previous three years (a little over \$100,000), the assessment can remain at \$10.00 for several more years.

11. Fanno Creek Place . . .

- Two vacancies of 3,138 s.f. are possible beginning 2018 and one other tenant is expected to renew.
- If those vacancies are filled by April 2018, the net expense will improve by \$56,400 over 2017.

12. Recommendation of the Budget & Finance Committee to the Board of Governors

- a. Decision on 2018 salary pool;
 - If a 4% salary pool, the Net Operating Revenue is \$27,904;
 - If a 3% salary pool, the Net Operating Revenue is \$100,200.
- b. Action on other budget related matters;
- c. Action on the 2018 budget as presented, or with Committee changes.

TABLE OF CONTENTS

Oregon State Bar Bylaws

(As amended by the Board of Governors through April 14, 2017)

Article 1 Purpose of Bar and Definitions..... 7
 Section 1.1 Definition7
 Section 1.2 Purposes7

Article 2 Board of Governors 8
 Section 2.1 Duties and Responsibilities8
 Subsection 2.100 General8
 Subsection 2.101 Election8
 Subsection 2.102 Board Committee and Other Assignments9
 Subsection 2.103 Judicial Campaigns.....9
 Subsection 2.104 Separation of Powers.....9
 Subsection 2.105 Amicus Curiae Briefs9
 Subsection 2.106 Indemnification.....9
 Subsection 2.107 Defense of Disciplinary Complaints and Proceedings 10
 Section 2.2 Officers 11
 Subsection 2.200 Duties 11
 Subsection 2.201 Election 12
 Subsection 2.202 Removal 12
 Section 2.3 Public Members 12
 Subsection 2.300 Appointment 12
 Subsection 2.301 Powers and Duties 13
 Subsection 2.302 Removal 13
 Subsection 2.303 Vacancies..... 13
 Section 2.4 Meetings 13
 Subsection 2.400 Robert’s Rules of Order..... 13
 Subsection 2.401 Regular Meetings 13
 Subsection 2.402 Special Meetings 13
 Subsection 2.403 Emergency Meetings 13
 Subsection 2.404 Minutes 14
 Subsection 2.405 Oregon New Lawyers Division Liaison 14
 Section 2.5 Expenses..... 14
 Subsection 2.500 General Policy 14
 Subsection 2.501 Conferences 14
 Subsection 2.502 Gifts..... 14
 Section 2.6 Conflicts of Interest 15
 Subsection 2.600 Definitions 15
 Subsection 2.601 Prohibited Actions 16
 Subsection 2.602 Disclosure of Conflict 17
 Subsection 2.603 Board Members as Witnesses in Bar Proceedings 17
 Section 2.7 Judicial Selection 18
 Subsection 2.700 General 18
 Subsection 2.701 Statewide and Circuit Court Elections 18
 Subsection 2.702 Circuit Court Appointments 18
 Subsection 2.703 Statewide Judicial Appointments 18

Section 2.8 Chief Executive Officer Executive Director	19
<i>Subsection 2.800 Duties</i>	19
<i>Subsection 2.801 Evaluation</i>	20
<i>Subsection 2.802 Service of Notice</i>	20
<i>Subsection 2.803 Board Member Contact with Staff</i>	20
Article 3 House of Delegates	20
Section 3.1 Duties and Powers	20
Section 3.2 Delegates	20
Section 3.3 Resolutions	21
Section 3.4 Meeting Agenda	21
Section 3.5 Parliamentary	21
Section 3.6 Initiative Petitions and Referenda	21
Section 3.7 Location	21
Article 4 Awards	22
Section 4.1 General Policy	22
Section 4.2 President’s Membership Service Award	22
Section 4.3 President’s Public Service Award	22
Section 4.4 President’s Diversity & Inclusion Award	22
Section 4.5 President’s Special Award of Appreciation	22
Section 4.6 Award of Merit	22
Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence	23
Section 4.8 President’s Public Leadership Award	23
Section 4.9 President’s Sustainability Award	23
Article 5 Oregon State Bar Delegates to the American Bar Association House of Delegates	23
Section 5.1 Selection	23
Section 5.2 Voting	23
Section 5.3 Expenses	24
Article 6 Membership Classification and Fees	24
Section 6.1 Classification of Members	24
<i>Subsection 6.100 General</i>	24
<i>Subsection 6.101 Active Pro Bono Status</i>	24
<i>Subsection 6.102 Retired Status</i>	25
<i>Subsection 6.103 Reinstatement</i>	25
Section 6.2 Register of Members	26
Section 6.3 Rights of Members	26
Section 6.4 Annual Membership Fees and Assessments	26
Section 6.5 Hardship Exemptions	26
Section 6.6 Waivers of Fees and Assessments	27
Section 6.7 Late Payment Penalty	27
Article 7 Financial Matters	27
Section 7.1 Management of Funds	27
<i>Subsection 7.100 General Policy</i>	27
<i>Subsection 7.101 Audit of the Books</i>	27
<i>Subsection 7.102 Borrowing</i>	27
<i>Subsection 7.103 Check Signatures</i>	28
<i>Subsection 7.104 Credit Policy</i>	28
<i>Subsection 7.105 Write-offs</i>	28

Section 7.2 Annual Budget	28
<i>Subsection 7.200 Approval by Board of Governors</i>	28
<i>Subsection 7.201 Contingency Fund</i>	29
<i>Subsection 7.202 Approval by Supreme Court</i>	29
<i>Subsection 7.203 Grants</i>	29
Section 7.3 Reserve Policy.....	29
<i>Subsection 7.300 Purpose</i>	29
<i>Subsection 7.301 General Fund</i>	29
<i>Subsection 7.302 Reserve Funds</i>	30
Section 7.4 Investment Policy.....	30
<i>Subsection 7.400 Purpose</i>	30
<i>Subsection 7.401 Investment Management</i>	30
<i>Subsection 7.404 Prudent Investor Rule</i>	31
Section 7.5 Expense Reimbursements.....	31
<i>Subsection 7.500 General Policy</i>	31
<i>Subsection 7.501 Eligible Expenses</i>	31
<i>Subsection 7.502 House of Delegates Meetings</i>	32
Section 7.6 Location of Office	32
Article 8 Public Records/Meetings	33
Section 8.1 Public Records.....	33
<i>Subsection 8.100 General Policy</i>	33
<i>Subsection 8.101 Public Record Requests and Bar Fees for Public Records</i> <i>Searches and Copies</i>	33
<i>Subsection 8.102 Public Disclosure of Client Assistance Office, Discipline</i> <i>Counsel's Office and Disciplinary Board Clerk Records</i>	33
Section 8.2 Public Meetings	35
<i>Subsection 8.201 Judicial Proceedings</i>	35
Article 9 Election Procedures	35
Section 9.1 Date of Elections	35
Section 9.2 Ballots	36
Section 9.3 Voting.....	36
Article 10 Diversity.....	36
Article 11 Communications.....	36
Section 11.1 General Policy	36
Section 11.2 Editorial Policy.....	37
Section 11.3 Media Relations	37
Section 11.4 Campaign Advertisements	37
Section 11.5 Membership Surveys and Questionnaires.....	37
Article 12 Legislation and Public Policy	37
Section 12.1 Guidelines.....	37
Section 12.2 Initiation of Legislation	38
<i>Subsection 12.200 House of Delegates and Membership</i>	38
<i>Subsection 12.201 Board of Governors</i>	38
Section 12.3 Legislative Process.....	38
Section 12.4 Committees and Sections	38
Section 12.5 Professional Liability Fund Legislation.....	39
Section 12.6 Objections to Use of Bar Dues	39
<i>Subsection 12.600 Submission</i>	39

<i>Subsection 12.601 Refund</i>	39
<i>Subsection 12.602 Arbitration</i>	39
Article 13 Pro Bono	40
Section 13.1 Aspirational Standard	40
Section 13.2 Program Certification	40
<i>Subsection 13.200 Procedure</i>	40
<i>Subsection 13.201 Criteria</i>	41
<i>Subsection 13.202 Volunteer Recognition</i>	41
Article 14 Committees	42
Section 14.1 Standing and Special Committees	42
Section 14.2 Joint Committees.....	42
Section 14.3 Committee Responsibilities	42
Section 14.4 Membership	42
Section 14.5 Financial Issues	42
Section 14.6 Legislation	42
Section 14.7 Administrative Services	43
Section 14.8 Committee Reports	43
Section 14.9 Quorum for Meetings	43
Article 15 Sections	43
Section 15.1 Purpose.....	43
Section 15.2 Formation	43
Section 15.3 Bylaws	43
Section 15.4 Finances.....	44
<i>Subsection 15.400 Dues</i>	44
<i>Subsection 15.401 Donations</i>	44
Section 15.5 Administrative Services.....	44
Section 15.6 Continuing Legal Education Activities	44
<i>Subsection 15.600 CLE Publications and Seminars Scheduling</i>	44
<i>Subsection 15.601 CLE Event Co-sponsorship with Bar</i>	44
<i>Subsection 15.602 Oregon State Bar Logo</i>	45
Section 15.7 Grants.....	45
Article 16 Continuing Legal Education	45
Section 16.1 Purpose.....	45
Section 16.2 OSB Continuing Legal Education Seminars Program	45
<i>Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts</i>	45
<i>Subsection 16.201 Expenses of Speakers and Planners</i>	46
Section 16.3 OSB Legal Publications Program	46
<i>Subsection 16.300 Benefit of Membership</i>	46
<i>Subsection 16.301 Discounts on Print Books</i>	46
<i>Subsection 16.302 Volunteer Copyright Agreement</i>	46
Article 17 Member Services	47
Section 17.1 Administrative Services	47
Section 17.2 Bar-sponsored Tours	47
Article 18 Discipline	47
Section 18.1 State Professional Responsibility Board.....	47
<i>Subsection 18.100 Duties</i>	47
<i>Subsection 18.101 Composition</i>	47

<i>Subsection 18.102 Expenses</i>	47
<i>Subsection 18.103 Notice to the Accused Respondent</i>	47
<i>Subsection 18.104 Disclosure of Contacts</i>	48
Section 18.2 Letters of Admonition	48
Section 18.3 Recovery of Costs/Collection of Judgments	48
Section 18.4 Disciplinary Correspondence	48
Section 18.5 Removing Lawyers from the Lawyer Referral Service Panel of Lawyers	48
Section 18.6 Suspension of Service	49
<i>Subsection 18.600 Applicability to BOG, LPRC and SPRB</i>	49
<i>Section 18.601 LPRC and SPRB Replacements</i>	49
<i>Section 18.602 Board of Governors Replacement</i>	49
Section 18.7 Adjudicator	49
Article 19 Legal Ethics Questions and Opinions	49
Section 19.1 General Counsel's Office	49
<i>Subsection 19.100 Submission and Questions</i>	49
<i>Subsection 19.101 Determination by General Counsel</i>	50
<i>Subsection 19.102 Ethics Advice to Bar Members</i>	50
<i>Subsection 19.103 Application of Oregon RPC 8.6</i>	50
Section 19.2 Limitation of Advice	50
Section 19.3 Legal Ethics Committee	50
<i>Subsection 19.300 Response to Inquiries</i>	50
<i>Subsection 19.301 Formal Opinion Process</i>	51
Article 20 Unlawful Practice of Law	51
Section 20.1 Definitions	51
Section 20.2 Unlawful Practice of Law Committee.....	52
Section 20.4 Other Investigators.....	52
Section 20.5 Processing Unlawful Practice of Law Complaints.....	52
<i>Subsection 20.500 Investigation</i>	52
<i>Subsection 20.501 Dispositions</i>	52
Section 20.6 Bar Counsel	53
<i>Subsection 20.600 Role of Bar Counsel</i>	53
<i>Subsection 20.601 Settlement Authority</i>	54
<i>Subsection 20.602 Referral to Bar Counsel</i>	54
Section 20.7 Public Outreach and Education	54
<i>Subsection 20.700 Public Outreach</i>	54
<i>Subsection 7.701 Informal Advisory Opinions</i>	54
Section 20.8 Records	54
Article 21 Client Security Fund	54
Article 22 Fee Arbitration	54
Article 23 Professional Liability Fund	55
Section 23.1 Board of Directors.....	55
Section 23.2 Authority	55
Section 23.3 Operation	56
Section 23.4 Reports	56
Section 23.5 Relationship with the Board of Governors	56
<i>Subsection 23.500 Liaisons</i>	56
<i>Subsection 23.501 Reports</i>	57

<i>Subsection 23.502 Release of Information</i>	57
<i>Subsection 23.503 BOG Members Participating in PLF Claims</i>	57
<i>Subsection 23.504 Annual Meeting</i>	57
<i>Subsection 23.505 Audit</i>	58
<i>Subsection 23.506 Location of Office</i>	58
<i>Subsection 23.507 Staff Responsibility</i>	58
Section 23.6 Assessment	58
<i>Subsection 23.600 Principles</i>	58
Article 24 Attorney Assistance	59
Section 24.1 Creation and Purpose	59
Section 24.2 Authority	59
<i>Subsection 24.200 State Lawyers Assistance Committee</i>	59
<i>Subsection 24.201 Professional Liability Fund Personal and Practice Management Assistance Committee</i>	59
Section 24.3 Composition.....	60
<i>Subsection 24.300 State Lawyers Assistance Committee</i>	60
<i>Subsection 24.301 Professional Liability Fund Personal and Practice Management Assistance Committee</i>	60
Section 24.4 State Lawyers Assistance Committee Review and Intake	60
<i>Subsection 24.400 Complaints and Referrals</i>	60
<i>Subsection 24.401 Designees</i>	61
<i>Subsection 24.402 Preliminary Assessment and Intake</i>	61
<i>Subsection 24.403 Notice to Referred Lawyer</i>	61
Section 24.5 State Lawyers Assistance Committee Investigations.....	62
<i>Subsection 24.500 Meeting with Referred Lawyer</i>	62
<i>Subsection 24.501 Release of Information</i>	62
<i>Subsection 24.502 Professional Evaluation</i>	62
<i>Subsection 24.503 Remedial Action Plan</i>	62
Section 24.6 State Lawyers Assistance Committee Records	63
Section 24.7 Other State Lawyers Assistance Committee Policies	63
<i>Subsection 24.700 Non-cooperation</i>	63
<i>Subsection 24.701 Confidentiality</i>	63
<i>Subsection 24.702 Duty to Report Unethical Conduct</i>	64
<i>Subsection 24.703 Statistical Data</i>	64
<i>Subsection 24.704 Public Meetings</i>	64
Article 25 Law Student Associates	64
Article 26 Sustainability	64
Article 27 Unclaimed Lawyer Trust Account Funds	65
Section 27.100 Purpose	65
Section 27.101 Administration	65
Subsection 27.102 Disbursement	65
Subsection 27.103 Claim Adjudication	65
Article 28 Admissions.....	67
Section 28.1 Board of Bar Examiners.....	67
Section 28.2 Nominations.....	67
Section 28.3 Liaisons	67
Section 28.4 Admissions Director	67
Section 28.5 Budget	67

Section 28.6 Amendments.....	68
Article 29 Amendment of Bylaws.....	68
Subject Index.....	69

Article 1 Purpose of Bar and Definitions

Section 1.1 Definition

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

- (A) "State Bar" and "Bar" mean the Oregon State Bar, as described in ORS Chapter 9.
- (B) "State Bar Act" and "Bar Act" mean ORS Chapter 9.
- (C) "Board of Governors" and "Board" mean the Board of Governors of the Oregon State Bar.
- (D) "House of Delegates" and "House" mean the House of Delegates of the Oregon State Bar created by ORS 9.136.
- (E) "President" means the President of the Oregon State Bar.
- (F) "President-elect" means the President-elect of the Oregon State Bar.
- ~~(G) "Vice President(s)" means the Vice President(s) of the Oregon State Bar.~~
- (G H) "**Chief Executive Officer**~~Executive Director~~" means the **Chief Executive Officer**~~Executive Director~~ of the Oregon State Bar.
- ~~(H I) "Governor" means a member of the Board of Governors of the Oregon State Bar.~~
- ~~(I J) "Member" means a member of the Oregon State Bar.~~

Section 1.2 Purposes

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

The Bar fulfills that mission through the following functions:

- (A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.
- (B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.
- (C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.

(D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.

(E) We are leaders helping lawyers serve a diverse community.

(F) We are advocates for access to justice.

Article 2 Board of Governors

Section 2.1 Duties and Responsibilities

Subsection 2.100 General

(a) The Board of Governors governs the Bar, except as provided in ORS 9.139. In doing so, the Board determines the general policies of the Bar and approves its budget each year. The **Chief Executive Officer**~~Executive Director~~, appointed by and acting under the supervision of the Board, implements, administers and supervises the Bar's operation and program activities within these Bylaws and ORS Chapter 9.

(b) The Board operates as a review body, a supervisor of top management performance and a representative body of all members. As such, the Board must plan for the welfare of the total Bar ahead of other considerations.

(c) Each board member is unique and contributes special talents to the successful governance of the Bar. Expressing viewpoints and sharing opinions on issues before the Bar is important.

(d) Each lawyer-board member represents a geographic constituency. As a representative, a lawyer-board member is expected to communicate with constituents about board actions and issues and to represent constituent viewpoints to the Board.

(e) In addition to each lawyer-board member's individual responsibility for communication with his or her constituency as set out in subparagraph (D) above, lawyer members of the Board and staff will have the responsibility to meet with local associations and other lawyer groups. Each year the President and **Chief Executive Officer**~~Executive Director~~ will develop a plan to visit the groups mentioned above with substantial participation by both the President and the **Chief Executive Officer**~~Executive Director~~.

(f) Board members are committed to attend all board meetings and other functions in person except when, in a board member's judgment, an emergency or compelling circumstance arises that prevents participation. Board members should notify staff of the desire to participate in board meetings by telephone when personal attendance is precluded by an emergency or compelling circumstance. Staff will arrange the telephone link at bar expense based on those requests.

Subsection 2.101 Election

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

(b) Candidate statements for the office of Governor from a region must be in writing. The **Chief Executive Officer**~~Executive Director~~ will prepare the forms for the candidate statements and supply the forms to the applicants. Applicants must

complete and file the form with the **Chief Executive Officer**~~Executive Director~~ by the date set by the Board. The **Chief Executive Officer**~~Executive Director~~ must conduct elections in accordance with the Bar Bylaws and the Bar Act.

Subsection 2.102 Board Committee and Other Assignments

At or shortly after the annual orientation and retreat, board members will be invited to indicate their preferences for board committee and other assignments. Members of the senior class will be invited to identify one or more board committees they would like to chair. The **Chief Executive Officer**~~Executive Director~~ and president-elect will develop a slate of assignments based on the preferences. Senior class members shall have priority in the choice of assignments, but the preferences of all member will be honored to the extent possible and appropriate. The proposed slate will be circulated to the board and any board member may request a change of assignments. The president-elect will make reasonable effort to accommodate any change requests, but the president-elect's decision will be final.

Subsection 2.103 Judicial Campaigns

The members of the Board must refrain from public involvement in judicial campaigns and appointments that in any way identifies them as members of the Board, officers of the Bar, or otherwise representing the Oregon State Bar.

Subsection 2.104 Separation of Powers

The Board will not nominate or appoint persons who work in or for the state executive or legislative departments to the following bodies: State Professional Responsibility Board, Disciplinary Board, Minimum Continuing Legal Education Board and Commission on Judicial Fitness and Disability. In the case of a challenge to the candidacy of a member of the Board of Governors under ORS 9.042, the Board will follow the procedures outlined in the statute.

Subsection 2.105 Amicus Curiae Briefs

A section or committee that wishes to enter an *amicus curiae* appearance before any trial court or appellate court must obtain prior approval from the Board. The request must be in writing and must include a synopsis of the question involved, the posture of the case, the position to be taken in the *amicus* appearance, and the anticipated cost of appearing *amicus curiae* including lawyer fees, if any. The question involved must directly or substantially affect admission to the practice of law, the practice of law, discipline of members of the bench or bar, the method of selecting members of the judiciary or other questions of substantial interest to the Bar or a committee or section. The Board will determine whether the question involved can be adequately presented to the court without the *amicus* appearance of the committee or section. All costs for appearance by a section must be paid by the section; if the Board approves the filing of an *amicus* appearance by a committee, the Bar will pay any costs for the appearance.

Subsection 2.106 Indemnification

The Bar must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ORS Chapter 30 relating to indemnification by public bodies, especially the provisions of ORS 30.285. The term

"officers, board members, directors, employees and agents" of the Bar includes subordinate groups established by the Bar or the Supreme Court to perform one or more of the Bar's authorized functions, including the Board of Bar Examiners, the Professional Liability Fund, the State Professional Responsibility Board, the Disciplinary Board, ~~the Local Professional Responsibility Committees~~ and bar counsel and the State Lawyers Assistance Committee. The right to and method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.

Subsection 2.107 Defense of Disciplinary Complaints and Proceedings

(a) The bar will defend any of its current and former officers, employees and agents (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the performance of his or her official duties on behalf of the bar as provided in this bylaw.

(b) The duty to defend does not apply in the case of malfeasance, gross negligence or willful or wanton neglect of duty.

(c) If any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Accused or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Accused which on its face falls within the provisions of subsection (a) of this bylaw, or which the Accused asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the bar and not within the scope of subsection (b) of this bylaw, the Accused may file a written request for a defense with the General Counsel, or if the request is by the General Counsel, the President of the bar. The General Counsel or President, as the case may be, will thereupon present his or her recommendations to the Board of Governors regarding the approval of an agreement to pay for the defense of the Accused, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Governors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to select counsel to defend the Accused, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on behalf of the bar, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

(d) If the Board agrees to pay for the defense of a complaint or disciplinary proceeding, the Accused shall cooperate fully with the lawyer(s) hired by the bar to defend the Accused. If the Board determines that the Accused has not cooperated with defense counsel or has otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter for which a defense is provided, the Board may at any time terminate the continued defense of the matter and require the Accused to reimburse the bar for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has failed to cooperate with defense counsel or otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter.

(e) If the Board concludes, after undertaking to pay for the Accused's defense, that the conduct was malfeasance, grossly negligent, or the willful or wanton neglect of duty, the Board will terminate the continued defense of the matter and require the Accused to reimburse the bar for all funds it has paid on account of the defense. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has engaged in such conduct.

(f) If the Accused in a disciplinary proceeding is found to have violated the rules of professional conduct, a disciplinary statute or disciplinary regulation, the Accused must reimburse the bar for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the entry of a final judgment imposing discipline on the Accused. Discipline for purposes of this bylaw should be a reprimand or greater sanction imposed by the Disciplinary Board or the Oregon Supreme Court or other court or agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the board may waive the reimbursement requirement.

(g) If the Board denies an Accused a defense under this bylaw or terminates the provision of such a defense under the terms of this bylaw and the Accused is found in any disciplinary proceeding for which a defense was denied or terminated not to have violated any rule of professional conduct or disciplinary statute or regulation, the bar will reimburse the Accused for his or her reasonable attorney fees and costs in defense of such matter so long as the Accused's conduct occurred in the performance of official duties on behalf of the bar and did not separately constitute malfeasance, gross negligence or willful or wanton neglect of duty, as, in good faith, is determined by the Board. Pro se representation does not qualify for the reimbursement of reasonable attorney fees and costs under this subsection.

Section 2.2 Officers

Subsection 2.200 Duties

(a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

(b) President-Elect

The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

(c) Immediate Past President

The Immediate Past President is a non-voting *ex officio* member of the Board. **Upon completion of the term for which the President is elected, the President becomes the Immediate Past-President for one year.** The duties of the

Immediate Past President will be as agreed between the Immediate Past President and the Board from time to time. Expenses of the Immediate Past President will be reimbursed as approved by the Board.

Subsection 2.201 Election

(a) Time of Election

The President and President-elect are elected at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect.

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the **Chief Executive Officer** ~~Executive Director~~ by September 1. Each candidate must submit with said notice a statement outlining the candidate's qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth-year class and the current President-elect, will interview each candidate and will meet with the remaining board members to discuss their view about each candidate's respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 30 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee's selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the **Chief Executive Officer** ~~Executive Director~~ not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

If there is only one candidate for an office, the candidate is deemed elected without a formal vote. When there are two nominees for President-elect, the candidate receiving the most votes will be elected. If there are three nominees for President-elect and no candidate receives more than 50 percent of the votes on the first vote, the candidate receiving the fewest votes is eliminated and another vote will be taken. Only board members present at the meeting may vote.

Subsection 2.202 Removal

Any officer of the Bar may be removed with or without cause on a three-fourths affirmative vote of all board members. That position is then filled by the Board, at the same or a subsequent meeting, using the above rules as far as applicable.

Section 2.3 Public Members

In addition to the resident active members of the Bar required by ORS 9.025, four public positions exist on the Board of the Bar.

Subsection 2.300 Appointment

Any person appointed to a public position on the Board must meet the qualifications set forth in ORS 9.025(1). Public members serve for a term of four years, beginning on January 1 of the year following appointment. Every attempt will be made to maintain geographic distribution; however, the priority will be to match the current needs of the Board with the areas of interest of the public members.

Subsection 2.301 Powers and Duties

Public members of the Board have the same voting rights as the lawyer members of the Board. They take the same oath of office and are charged with the same functions and duties as provided by statute and Board Policies. Public members cannot serve as officers of the Bar.

Subsection 2.302 Removal

Public members of the Board are subject to removal by the Board upon the following grounds and for the following reasons: A public member no longer meets the initial qualifications for appointment set forth in Subsection 2.300 of the Bar's Bylaws; or a public member commits an act substantially similar to the conduct proscribed by ORS 9.527 or fails to perform the duties of the office. If at least ten members of the Board propose that the public member be removed, the public member is given written notice of the proposed removal, together with the reasons therefore. The written notice must be given at least 15 days before the next regularly scheduled board meeting. Thereafter, on a vote of at least ten members of the Board, the public member is removed and the position is vacated.

Subsection 2.303 Vacancies

On the death, resignation or removal of a public member of the Board, the Board must appoint a replacement to serve the unexpired portion of the then vacant position. Any person so appointed must satisfy the qualifications for appointment set forth in Subsection 2.400 of the Bar's Bylaws and is subject to removal as set forth in Subsection 2.302 of the Bar's Bylaws.

Section 2.4 Meetings

Subsection 2.400 Robert's Rules of Order

Board meetings are governed by ORS Chapter 9, these bylaws, and the most recent edition of Robert's Rules of Order.

Subsection 2.401 Regular Meetings

Meetings of the Board are held at such times and places as the Board determines. The **Chief Executive Officer** ~~Executive Director~~ will provide notice of the time and place of all meetings in accordance with ORS 192.610 to 192.690.

Subsection 2.402 Special Meetings

A special meeting of the Board may be called by the President or by three Governors filing a written request with the **Chief Executive Officer** ~~Executive Director~~. If, within five days after a written request by three Governors, the President fails or refuses for any reason to set a time for and give notice of a special meeting, the **Chief Executive Officer** ~~Executive Director~~ must call the meeting and provide at least 24 hours' notice of the time and place of the special meeting in accordance with ORS 192.610 to 192.690.

Subsection 2.403 Emergency Meetings

When the President determines that a matter requires immediate attention of the Board, an emergency meeting may be called on less than 24 hours' notice. Notice must be given to members of the board, the media and other interested persons as

may be appropriate under the circumstances. The notice must indicate the subject matter to be considered. Only the matters for which the emergency meeting is called may be considered at the meeting.

Subsection 2.404 Minutes

Accurate minutes of all board meetings must be preserved in writing or in a sound, video or digital recording. The minutes must reflect at least the following information: members present, motions or proposals and their disposition, the substance of any discussion on any matter, and a reference to any document discussed at the meeting. The minutes must reflect the vote of each member of the Board by name if the vote is not unanimous. Draft minutes, identified as such, will be available to the public within a reasonable time after the meeting. Final minutes will be available to the public within a reasonable time after approval by the Board. The minutes of executive sessions will be available to the public except where disclosure would be inconsistent with the purpose of the executive session.

Subsection 2.405 Oregon New Lawyers Division Liaison

The Oregon New Lawyers Division ("ONLD") has a non-voting liaison to the Board, who must be a member of the ONLD Executive Committee. The ONLD liaison is appointed by the chair of the ONLD Executive Committee to serve for a one-year term. No person may serve more than three terms as ONLD liaison. If the ONLD liaison is unable to attend a meeting of the Board, the ONLD chair may appoint another member of the ONLD Executive Committee to attend the meeting.

Section 2.5 Expenses

Subsection 2.500 General Policy

All provisions of Section 7.5 of the Bar's Bylaws (Expense Reimbursements) apply to the Board of Governors with the following additions. Officers of the Board who, because of their office, must occupy a suite or special room other than the standard room occupied by most board members will be entitled to be reimbursed for the extra expense. Members of the Board who host board dinners will be reimbursed the actual cost of the dinner regardless of whether it is held in the board member's home or at a restaurant.

Subsection 2.501 Conferences

The Bar will reimburse the actual expenses of the President and/or President-elect and their spouses or partners and the **Chief Executive Officer**~~Executive Director~~, to any out-of-state conference that is included in the annual budget. Other attending board members are not eligible for any reimbursement unless specifically authorized by the Board. Each year the Bar will reimburse the actual expenses of the President-elect and spouse or partner and the **Chief Executive Officer**~~Executive Director~~, to attend the ABA Bar Leadership Conference or a comparable conference.

Subsection 2.502 Gifts

The expense of gifts by the Board to its retiring members is a budgeted expense.

Section 2.6 Conflicts of Interest

Bar officials are subject to the provisions of ORS Chapter 244, the Government Standards and Practices Act. Nothing in this section is intended to enlarge or contradict the statutory provisions as they may apply to bar officials. To the extent anything in ~~the~~ this section contradicts the provisions of ORS Chapter 244, bar officials shall be bound by the statutory provisions.

Subsection 2.600 Definitions

As used in Section 2:

(a) "Actual conflict of interest" means that the person, a relative of the person or a business with which the person or a relative of the person is associated will derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities.

(b) "Bar official" means members of the Board of Governors; appointees of the Board of Governors, including members of standing committees, ~~Local Professional Responsibility Committees~~, bar counsel panels, and the State Professional Responsibility Board; section officers and executive committee members; and bar staff.

(c) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed person and any other legal entity operated for economic gain, but excluding any income-producing not-for-profit corporation that is tax exempt under IRC §501(c) with which a bar official is associated only as a member or board director or in a non-remunerative capacity.

(d) "Business with which the person is associated" means:

(1) any private business or closely held corporation of which the bar official or the bar official's relative is a director, officer, owner, employee or agent or any business or closely held corporation in which the bar official or the bar official's relative owns or has owned stock worth \$1,000 or more at any point in the preceding year;

(2) Any publicly held corporation in which the bar official or the bar official's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; and

(3) Any publicly held corporation of which the bar official or the bar official's relative is a director or officer.

(e) Except as excluded by ORS 244.020(6), "gift" means something of economic value given to or solicited by a bar official, or a relative or member of the household of the bar official:

(1) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not bar officials or the relatives or members of the household of bar officials on the same terms and conditions; or

(2) For valuable consideration less than that required from others who are not bar officials.

(f) "Potential conflict of interest" means that the bar official, a relative of the bar official or a business with which the bar official or a relative of the bar official is associated, could derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities, unless the pecuniary benefit or detriment arises out of the following:

(1) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the bar official of the office or position.

(2) Any action in the bar official's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the bar official, or the bar official's relative or business with which the person or the bar official's relative is associated, is a member or is engaged.

(3) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(g) "Member of the household" means any person who resides with the bar official.

(f) "Relative" means the bar official's spouse, the bar official's Oregon Registered Domestic Partner, any children of the bar official or the bar official's spouse or Oregon Registered Domestic Partner, and siblings and parents of the bar official or the bar official's spouse or Oregon Registered Domestic Partner. Relative also means any individual for whom the bar official provides benefits arising from the bar official's public employment or from whom the bar official receives benefits arising from that individual's employment.

Subsection 2.601 Prohibited Actions

Regardless of whether an actual or potential conflict is disclosed:

(a) No bar official may use or attempt to use the person's official position to obtain any financial gain or the avoidance of any financial detriment that would not otherwise be available to the person, but for the bar official's holding of the official position, except official salary, reimbursement of expenses for official activities or unsolicited awards for professional achievement for the bar official, a relative of the bar official, a member of the household of the bar official, or for any business with which the bar official or the bar official's relative is associated.

(b) No bar official may attempt to further the personal gain of the bar official through the use of confidential information gained by reason of an official activity or position.

(c) No bar official or relative or member of the household of a bar official may solicit or receive, during any calendar year, any gift or gifts with an aggregate value of more than \$50 from any single source that could reasonably be known to have an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the bar official acting in the bar official's official capacity. This provision does not apply to bar officials who are subject to the Oregon Code of Judicial Conduct.

(d) No bar official may solicit or receive a promise of future employment based on an understanding that any official action will be influenced by the promise.

Subsection 2.602 Disclosure of Conflict

When met with an actual or potential conflict of interest, a bar official must disclose the conflict and take any other action required by this bylaw.

(a) If appointed by the **Chief Executive Officer** ~~Executive Director~~, the bar official must notify the **Chief Executive Officer** ~~Executive Director~~ of the nature of the conflict and request the Executive Director to dispose of the matter giving rise to the conflict. Upon receipt of the request, the **Chief Executive Officer** ~~Executive Director~~ will designate within a reasonable time an alternate to dispose of the matter, or will direct the bar official to dispose of the matter in a manner specified by the **Chief Executive Officer** ~~Executive Director~~.

(b) If the bar official is the **Chief Executive Officer** ~~Executive Director~~, she/he must notify the Board of Governors, through the President, of the nature of the conflict and request the Board of Governors to dispose of the matter giving rise to the conflict. Upon receipt of the request, the President will designate within a reasonable period of time an alternate to dispose of the matter, or will direct the **Chief Executive Officer** ~~Executive Director~~ to dispose of the matter in a manner specified by the Board of Governors.

(c) If the bar official is elected to or appointed by the Board of Governors or other appointing authority to serve on a board, committee, council, commission or other public body, the bar official must:

(1) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a bar official; (2) when met with an actual conflict of interest, announce publicly the nature of the actual conflict, and refrain from participating in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue, except that if the bar official's vote is necessary to meet a requirement of a minimum number of votes, the bar official may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

(d) When a bar official gives notice of an actual or potential conflict of interest under subsection 2.602(c), the conflict must be recorded in the minutes or other official record of the board, committee, council, commission or other public body on which the official serves, together with an explanation of how the conflict was resolved. If there are no minutes or other official record, then the bar official, in addition to the disclosure to the board, committee, council, commission or other public body, must disclose the conflict in writing to the **Chief Executive Officer** ~~Executive Director~~.

(e) No decision or action of the any bar official or of any board, committee, council, commission or other public body on which the official serves is invalid or voidable solely by reason of the failure to disclose an actual or potential conflict of interest.

Subsection 2.603 Board Members as Witnesses in Bar Proceedings

As provided in BR 5.3(c), a current member of the Board of Governors must not testify as a witness in any bar admission, discipline or reinstatement proceeding

except pursuant to subpoena. If requested by a party to be a witness in a bar proceeding, board members should urge the party to present the anticipated testimony through other witnesses. However, the parties ultimately decide whether a board member will be subpoenaed to testify as a witness in a bar proceeding.

Section 2.7 Judicial Selection

Subsection 2.700 General

The Bar plays an important role in state and federal judicial selection by conducting preference polls for contested elections and for circuit court appointments, and by interviewing and evaluating candidates for appellate court appointments. Any poll conducted by the Bar is for informational purposes only and will not constitute an official position of the Bar. Results of evaluations and polls will be made public as soon as practicable to the press, the candidates and the appointing authority.

Subsection 2.701 Statewide and Circuit Court Elections

For statewide and circuit court elections, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar's Bylaws. The ballot will contain all the candidates who will appear on the public election ballot. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture. In any general election that includes contested judicial positions, the Bar will conduct a poll only if there was no prior poll in the primary election, there has been a significant reduction in the number of candidates that appeared on the primary election ballot or it appears that the votes were relatively spread out among most of the candidates so that another poll could potentially produce an entirely different result from that of the primary election poll.

Subsection 2.702 Circuit Court Appointments

For circuit court judicial appointments, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar's Bylaws at the request of the Governor of the State of Oregon or the Board. If the Governor's Office or the Board requests a poll, the ballot must include the name of any eligible member of the Bar who has filed a candidate statement with the Bar by the appropriate deadline. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture.

Subsection 2.703 Statewide Judicial Appointments

(a) For judicial appointments to a statewide court, the Board will appoint an Appellate Selection Committee to conduct the Board's appellate recommendation process. Bar members will be notified of the impending appointment and will be invited to participate in the appellate recommendation process. If an appellate recommendation process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board may, in its discretion, forego conducting a separate appellate recommendation process and instead resubmit the

previous list of highly qualified candidates to the Governor without notification to members.

(b) Prior to commencement of the appellate recommendation process, the Appellate Selection Committee shall establish policies and criteria for conducting its review of candidates for each position, which may include, but is not limited to, review of the written applications; interviews of candidates; reports from judges or hearings officers; reports from members of the legal and general community; reports from references supplied by the candidate; and review of writing samples.

(c) The Appellate Selection Committee will recommend to the Board at least three candidates it believes are highly qualified, based on the statutory requirements of the position, information obtained in its review of candidates, and based on at least the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service. The Board will then determine the final list of highly qualified candidates to submit to the Governor. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.

(d) In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific inquiry from the Governor as to whether certain other candidates in the pool meet a "qualified" standard.

(e) Meetings of the Appellate Selection Committee are public meetings except for portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate review process. Discussion of reference reports by the committee and the Board will be in executive session pursuant to ORS 192.660(1)(f).

Section 2.8 ~~Chief Executive Officer Executive Director~~

Subsection 2.800 Duties

The **Chief Executive Officer** ~~Executive Director~~, appointed by and acting under the supervision of the Board, is the principal administrative officer of the Bar. The **Chief Executive Officer** ~~Executive Director~~ is responsible for the day-to-day operations of the Bar including, without limitation: hiring, managing and terminating bar personnel; negotiating and executing contracts; collecting debts owed to the bar and assigning debts for collection as deemed appropriate; and acquiring (through purchase or lease), managing and disposing of personal property related to the bar's operations, within the budget approved by the board. The **Chief Executive Officer** ~~Executive Director~~ will attend all meetings of the Board and the House of Delegates; will keep the Board informed of all agenda items with appropriate background information and staff or committee reports; and will keep a record of the proceedings of all such meetings. The **Chief Executive Officer** ~~Executive Director~~ is responsible for preparing an annual budget for the Board's Budget Committee. The **Chief Executive Officer** ~~Executive Director~~ performs other duties as imposed by the Bar Act, the Bar Bylaws or as otherwise directed by the Board.

Subsection 2.801 Evaluation

No later than December 1 of each calendar year, the Board will evaluate and assess the performance of the **Chief Executive Officer** ~~Executive Director~~. The evaluation will relate to the duties and responsibilities of him or her, progress toward established goals and the working relationships among the **Chief Executive Officer** ~~Executive Director~~, staff and the membership. The Board will conduct the evaluation in executive session. The Board or its representative will meet with the **Chief Executive Officer** ~~Executive Director~~ to discuss the evaluation.

Subsection 2.802 Service of Notice

When a statute or rule requires a petition, notice or other writing to be filed with or serve on the Bar or the Board, the **Chief Executive Officer** ~~Executive Director~~ is the designated agent for receipt.

Subsection 2.803 Board Member Contact with Staff

Board members will bring any requests for information, material or assistance to the **Chief Executive Officer's** ~~Executive Director's~~ or the **Chief Executive Officer** ~~Executive Director's~~ designee. The **Chief Executive Officer** ~~Executive Director~~ will assign appropriate staff to respond to board member requests. If a board member is dissatisfied with the **Chief Executive Officer's** ~~Executive Director~~ action regarding any request or if the **Chief Executive Officer** ~~Executive Director~~ believes a board member's request is inappropriate or unduly burdensome, the board member and **Chief Executive Officer** ~~Executive Director~~, as the case may be, may bring his or her concerns to the board for resolution. The **Chief Executive Officer** ~~Executive Director~~ has the discretion to authorize board member contact with staff regarding designated matters and concerning particular topics. Board members are free to contact staff to pass on compliments and information relevant to bar activities, but only the **Chief Executive Officer** ~~Executive Director~~ may be contacted regarding complaints about the conduct of a staff member or concerns about staff activities.

Article 3 House of Delegates

Section 3.1 Duties and Powers

The House of Delegates ("House") is a forum for the membership of the Bar and representatives of sections and local bars to advise the Board and to debate and decide matters of policy relating to the membership or the administration of justice as provided in the Bar Act, these Bylaws and other rules and regulations of the Bar. (See rules adopted by the House.)

Section 3.2 Delegates

On or before February 1 of each year, the Board must determine the number of delegates each region should have and whether there are vacancies. Once elected, however, a delegate may serve a full term even if the lawyer population of the region falls below the number required to entitle the region to the delegate. Elected delegates are subject to recall as provided in the Bar Act. Public member delegates are subject to removal by the Board on the same grounds that a public member of the Board is subject to removal under the Bar Act and these Bylaws.

Section 3.3 Resolutions

House member or bar member resolutions must include the name of the bar member who will present the resolution and an estimate of the financial impact, if any, of the resolution. This information must be submitted at least 45 days before the House of Delegates meeting. The Board must independently evaluate the financial impact of the resolution. If the Board's evaluation of the financial impact differs from the sponsor's, both positions must be included when the resolution is presented to the House. Only proposed legislative measures or resolutions that appear in full in the printed agenda may be considered, except that unusually long measures or resolutions may be summarized by bar staff. If this exception applies, then the Bar must provide delegates with copies of the full text of the measures at or before the House meeting at which the proposed measures or resolutions will be discussed and voted on.

Section 3.4 Meeting Agenda

After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in *Keller v. the State Bar of California*. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all bar members, at least 20 days in advance of the House meeting.

Section 3.5 Parliamentarian

The Board must designate a parliamentarian for each House meeting. The parliamentarian should be knowledgeable about parliamentary procedure and familiar with the Bar's Bylaws. The parliamentarian will serve without compensation; however, the Bar may pay the expenses for the parliamentarian to attend the House meeting as allowed in Subsection 7.501 of the Bar's Bylaws.

Section 3.6 Initiative Petitions and Referenda

An initiative petition of the membership or a referendum from the Board or House, brought under ORS 9.148, must be submitted to a vote of the active members. The proponent's question or measure must be printed or circulated to all members of the Bar, along with statements for and against the proposal. The Board determines the manner of circulating the required material. The Board also writes the ballot title and a factual summary of the proposal. Election procedures outlined in Article 9 of the Bar's Bylaws apply.

Section 3.7 Location

The meetings of the Bar's House of Delegates must be held within the geographical boundaries of the State of Oregon.

Article 4 Awards

Section 4.1 General Policy

The Board will select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

Section 4.2 President's Membership Service Award

The criteria for the President's Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections, boards or the Bar's legislative/public affairs process or similar activities through local bar associations or other law-related groups.

Section 4.3 President's Public Service Award

The criteria for the President's Public Service Awards is as follows: The nominee must have volunteered his or her time for the activity in which she or he was involved; the nominee must be an active member of the Oregon State Bar; the nominee must have made a significant contribution to the public through efforts involving pro bono services; coordination of local public service law-related events, such as those associated with Law Day; service with community boards or organizations or similar activities that benefit the public.

Section 4.4 President's Diversity & Inclusion Award

The criteria for the President's Diversity & Inclusion Award is as follows: The nominee must be an active member of the Bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of increasing diversity and inclusion in the legal profession in Oregon through progressive employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

Section 4.5 President's Special Award of Appreciation

The President's Special Award of Appreciation is a discretionary award of the President of the Bar, with the concurrence of the Board, to be presented to a person who has made recent outstanding contributions to the bar, the bench and/or the community. The award will be made in conjunction with the OSB Awards Dinner or House of Delegates events within the following guidelines. In any given year, there may be no award, one award or more than one award. The recipient may be a lawyer or a non-lawyer. The President will present his or her proposed award recipient to the Board at the same time the Board considers the Bar's other awards.

Section 4.6 Award of Merit

The Award of Merit is the highest honor that the Bar can bestow. The recipient may be (1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism or (2) a non-lawyer who has made outstanding contributions to the

bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year and only one award may be bestowed in any year.

Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence

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

Section 4.8 President's Public Leadership Award

The criteria for the President's Public Leadership Award are as follows: The nominee must not be an active or inactive member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

Section 4.9 President's Sustainability Award

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

Article 5 Oregon State Bar Delegates to the American Bar Association House of Delegates

Section 5.1 Selection

Candidate Statements for the House of Delegates of the American Bar Association ("ABA") must be in writing. The **Chief Executive Officer** ~~Executive Director~~ will prepare forms for the candidate statements and supply the forms to applicants. The applicants must file the forms with the **Chief Executive Officer** ~~Executive Director~~ not more than 90 nor less than 30 days before the election held in conjunction with the Oregon State Bar House of Delegates election. Election of ABA delegates must be conducted according to Article 9 of the Bar's Bylaws. The ABA delegates will be elected from the state at large and the term of office is two years. ABA delegates must be in-state active members of the Bar. The Board must fill a vacancy in the office of ABA delegate due to a delegate's resignation, death or any other reason in the same manner as provided in ORS 9.040(2) for board members.

Section 5.2 Voting

Each delegate to the ABA House of Delegates, as a condition of election, must vote substantially consistent with any position or direction of the Board of Governors, the Oregon State Bar House of Delegates or the Bar's membership.

Section 5.3 Expenses

The Oregon State Bar will reimburse Oregon State Bar delegates to the ABA House of Delegates their individual expenses in attending the ABA annual and mid-year meetings. Expenses subject to reimbursement under this section do not include those reimbursed by the ABA to individual delegates, and are limited to an amount established each year by the Board of Governors. Bar reimbursement of delegate expenses must not exceed each delegate's proportionate share of the total amount established by the Board of Governors each year.

Article 6 Membership Classification and Fees

Section 6.1 Classification of Members

Subsection 6.100 General

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon. Inactive members include Retired members.

Subsection 6.101 Active Pro Bono Status

(a) Purpose

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive status or even resign from membership in the Bar, and by lawyers who move to Oregon.

(b) Eligibility for Active Pro Bono Status

The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, a ~~Local Professional Responsibility Committee~~, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

(c) Membership Fees

Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee.

(d) Procedure

The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The **Chief Executive Officer** ~~Executive Director~~ or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.

(e) Reporting Requirement for Active Pro Bono Status

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyer must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

(f) Transfer from Active Pro Bono Status

Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

Subsection 6.102 Retired Status

(a) Purpose.

The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.

(b) Eligibility for Retired Status.

A member of the Bar who is at least 65 years old and who is retired from the practice of law (as defined in paragraph 6.100(b)) may be enrolled as a retired member.

(c) Membership Fees.

Retired members are assessed a fee that is equivalent to the inactive membership fee.

(d) Transfer of Membership.

Retired members wishing to resume regular active membership status must comply with BR 8.1 or 8.2, whichever is applicable. Retired members wishing to transfer to Active Pro Bono status must comply with BR 8.14.

Subsection 6.103 Reinstatement

Upon receipt of an application for reinstatement submitted under BR 8.1 of the Rules of Procedure, the bar shall publish notice of and a request for comment on the application on the bar's web site for a period of 30 days before the application is considered.

Section 6.2 Register of Members

The **Chief Executive Officer** ~~Executive Director~~ must keep a register of the enrollment of members of the Bar, which must contain such matters of information that the Board determines to be proper and desirable. The register is subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502). The register may be published in any manner the **Chief Executive Officer** ~~Executive Director~~ determines suitable, including in print or electronically. The published information must include at least the member's name, bar number, and current status.

Section 6.3 Rights of Members

Subject to the other provisions of these policies, all active members have equal rights and privileges including the right to hold an office of the Bar, the right to vote, and the right to serve on bar committees. Inactive members may be members, but not officers, of sections. Suspended members may remain members of or join sections during the term of their suspensions, but may not hold an office of the Bar, vote or serve on the Board of Governors, in the House of Delegates or on any bar committee or section executive committee.

Section 6.4 Annual Membership Fees and Assessments

The payment date for annual membership fees and assessments is set by the Board. If the payment date falls on a Saturday, a legal holiday or a day that the bar office is closed for any reason, including inclement weather or natural disaster, the due date of such fees and assessments is the next day that the bar office is open for business. As used in this section, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020, which includes Sunday as a legal holiday. The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive membership after January 31. However, a bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive status and pays the inactive membership assessment by that date, but does not timely submit a signed Request for Enrollment as an Inactive Member, may be allowed to complete the inactive transfer without payment of the active membership assessment, if extenuating circumstances exist. The **Chief Executive Officer's** ~~Executive Director's~~ decision regarding the existence of sufficient extenuating circumstances is final.

Section 6.5 Hardship Exemptions

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the **Chief Executive Officer** ~~Executive Director~~ may exempt or waive payment of annual membership fees and assessments of an active or inactive member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

Section 6.6 Waivers of Fees and Assessments

The **Chief Executive Officer** ~~Executive Director~~, may, each year, waive or exempt annual membership fees and assessments for members in active military service, the Peace Corps, VISTA or other volunteer programs serving the national interest or the legal profession, and for which the member receives only a subsistence income, stipend or expense reimbursement that is the member's principal source of income. Requests for waivers must be received on 15 days before the date that membership fees and assessments are due each year. Waivers will not be granted unless the lawyer's service encompasses the majority of a year except in the case of military waivers, which may be granted for less than a year under special circumstances such as a war of unknown duration.

Section 6.7 Late Payment Penalty

The amount of the late payment penalty assessed to members delinquent in the payment of fees is set by the Board.

Article 7 Financial Matters

Section 7.1 Management of Funds

Subsection 7.100 General Policy

All funds paid to the Bar will be received by the **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer and deposited to the account of the Bar in a checking account or accounts with a commercial bank. The **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer will make all disbursements from such accounts. The Board's Budget and Finance Committee will adopt the policy governing the investment, reinvestment, sale, conversion or other disposition of funds of the Bar, subject to the approval of the Board.

Subsection 7.101 Audit of the Books

The books of account of the Bar must be audited at least biennially, unless otherwise directed by the Board.

Subsection 7.102 Borrowing

(a) The President and either the **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer acting for and on behalf of the Bar, are authorized and empowered:

- (1) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender and approved by the Board, a sum deemed prudent and necessary to effectuate the mission of the Bar.
- (2) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.
- (3) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.

(4) To execute and deliver to any lender any financing statements, security agreements or other instruments in writing, of any kind or nature, that may be necessary to complete a financial transaction.

(5) To draw on or endorse to any lender the savings on deposit or to dispose of the proceeds there from as may be deemed advisable.

(6) To perform other acts and to execute and deliver to any lender other documents as may be deemed reasonable, necessary or proper.

(b) The President and either the **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer, acting for and on behalf of the Bar, are also authorized and empowered to execute and deliver documents to any lender to memorialize or otherwise complete any borrowing or other financial transaction that has been previously authorized by the Board of Governors.

Subsection 7.103 Check Signatures

Disbursements of \$10,000 or more require two of the following signatures: (One from each group or group one alone) Group One: **Chief Executive Officer** ~~Executive Director~~ and Chief Financial Officer. Group Two: General Counsel or Deputy General Counsel.

Subsection 7.104 Credit Policy

Generally, credit will be extended to all members of the Bar. However, credit will not be extended further to accounts that are 90 days past due. Credit may be denied to members who have had delinquent accounts in the past. The Chief Financial Officer must approve charges that exceed \$5,000. Credit will not be extended for payment of annual membership or regulatory fees. The Bar may take any reasonable and financially prudent methods to collect on accounts, including accounts of members of the Bar, that are 90 days past due.

Subsection 7.105 Write-offs

The **Chief Executive Officer** ~~Executive Director~~ has the authority to write off bar receivables that he or she has determined are uncollectible or for other financial reasons should be written off. In the calendar quarter after the fiscal year end, the Chief Financial Officer will prepare a list of all receivables over \$500 that the **Chief Executive Officer** ~~Executive Director~~ has written off. The list will be submitted to the Board at the first meeting of the second calendar quarter. The list should include the reason for the write-off.

Section 7.2 Annual Budget

The **Chief Executive Officer** ~~Executive Director~~ will develop a draft annual budget for review and approval by the Budget and Finance Committee. The Budget and Finance Committee will submit its recommendation for final approval to the Board.

Subsection 7.200 Approval by Board of Governors

After the annual budget is adopted, the Board must approve a substantive programmatic change not anticipated or included in the budget.

Subsection 7.201 Contingency Fund

A contingency fund will be established within the annual operating budget of the Bar, as a line item equal to one percent of the annual expenditure budget. The contingency fund is to be used for unanticipated expenditures that were not identified in the normal budget process. All expenditures from the contingency fund must be approved by the Board.

Subsection 7.202 Approval by Supreme Court

The Board will establish each year the budget of the Bar's admissions, discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. The admissions, discipline and Minimum Continuing Legal Education components of the Board's preliminary budget for the following year must be submitted to the Chief Justice of the Oregon Supreme Court for review and approval by the court. Any changes made by the court in the preliminary budgets of the Bar's admissions, discipline and Minimum Continuing Legal Education programs must be incorporated into the final budget approved by the Board. Additional provisions pertaining to the development and approval of the budget for the admissions component are set out in Article 28.

Subsection 7.203 Grants

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The bar's annual budget shall include an amount dedicated to providing such financial support, although that amount may change from year to year based upon the overall financial needs of the bar. This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

Section 7.3 Reserve Policy

Subsection 7.300 Purpose

The Bar maintains separate funds for the general and designated operations of the Bar and for its financial welfare. The separate funds are the General Fund, the Client Security Fund, the Affirmative Action Program, Legal Services and all sections funds. A distinct and separate fund balance will be maintained for each fund.

Subsection 7.301 General Fund

The General Fund will maintain cash reserves sufficient to assure fulfillment of obligations to the membership and provide funds for unforeseen future contingencies. The reserves will be used to sustain an acceptable level of operation and continue service to the membership if the standard level of operations is interrupted by unforeseen events. It is also used to offset the effects of an operational reversal until expenditures can be adjusted and to fund specific future capital enhancements and improvements in the operation of the Bar.

Subsection 7.302 Reserve Funds

Separate reserve funds will be established and maintained for the general operating fund and the Board-authorized capital reserve fund, defined as follows:

(a) General Operating Reserve Fund: Established and maintained within the annual budget to assure continued operation of the Bar in the event of a non-dues revenue reversal or a catastrophic event.

(b) Capital Reserve Fund: established by policy decisions based on predetermined activities to replace, replenish or preserve capital assets or capital improvements that are purchased or made infrequently, to meet current regulatory requirements or provide enhanced services to the membership. Capital reserve items are capital assets that cost more than \$5,000 or items whose implementation or purchase extend into more than one fiscal year or whose purchase is planned for a future year.

(c) Each fund will maintain a separate and distinct level of cash reserves, although the reserve funds may be merged for investment purposes to obtain a higher return on the total funds invested. The operating reserve of the General Fund will be a minimum of \$500,000. The capital reserve level will be determined by the Board based on predetermined activities.

Section 7.4 Investment Policy

Subsection 7.400 Purpose

This investment policy is established to provide direction and limits for the Bar's Chief Executive Officer and Chief Financial Officer and for any fee-for-service investment manager that have been engaged in investing financial assets held by the Bar. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity, and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The Bar's short-term investments consist of cash and cash equivalents anticipated to be needed and used within the Bar's current fiscal year, generally one year or less. The objective shall be to maximize liquidity and minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The Bar's long-term investments include all reserve balances and designated funds. The objective of these investments is to provide for long-term growth and stability and to achieve reasonable yields while minimizing exposure to risk. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. The long-term investments shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the preservation of capital or returns on investment to the Bar.

Subsection 7.401 Investment Management

The Chief Executive Officer or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as the officers may require. The Bar may

engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of the bar's Investment Policy and the specific direction of the Investment Committee.

Management and Monitoring of Performance

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall manage and monitor the investment policy and portfolio. All policy and bylaw changes will be reviewed and approved by the Budget & Finance Committee.

Subsection 7.404 Prudent Investor Rule

The standard of prudence to be used by any fee-for-service investment manager that is engaged by the Bar in managing the overall portfolio will be the Prudent Investor Rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

Section 7.5 Expense Reimbursements

Subsection 7.500 General Policy

Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors. Requests for expense reimbursement must be received in the Accounting Department not later than 30 days after the expense has been incurred. If an expense reimbursement form is submitted more than 30 days after the expense is incurred, it must be supported by an explanation for the delay. The Chief Financial Officer may deny any late-submitted request for which the justification is deemed insufficient. A person whose request for reimbursement is denied may request that the **Chief Executive Officer** ~~Executive Director~~ review the decision. Supporting documentation in the form of original receipts or copies of original receipts must be submitted with all requests for reimbursement of expenses while acting on official bar business.

Subsection 7.501 Eligible Expenses

Eligible reimbursable expenses while on official business include the following:

(a) Out-of-State Travel:

Out-of-state travel for board members will be reimbursed for those persons and meetings set forth in the Bar's annual budget or as otherwise approved by the Board of Governors. Employees must obtain prior approval of the **Chief Executive Officer** ~~Executive Director~~ prior to traveling out-of-state.

(b) Transportation:

Use of a personal automobile is reimbursed at the allowable IRS rate. Airfare is reimbursed at the actual cost of coach fare unless the flight is at least three hours and an upgrade to business class can be obtained for \$100 or less. Actual cost of taxi, bus or other public transportation is reimbursable. Actual cost of car rental at economy car rate when other transportation is not readily available.

(c) Lodging:

Actual cost for a moderately priced, double-occupancy room, except when the location of the meeting or conference requires other arrangements. Receipts for lodging must be attached to the reimbursement form.

(d) Meals:

Reimbursement for meals will be made at actual cost of the meal provided that the expense is supported by itemized receipts and meets the standard of reasonableness. A request for reimbursement for meals without receipts will be reimbursed according to the rates published under the Federal Travel Regulations as put out by the U.S. General Service Administration for federal government travel. Meals purchased for members of the Bar or other persons in the course of official bar business will be reimbursed at actual cost with submission of itemized receipts and an explanation provided it meets the standard of reasonableness. Official dinners of the Bar or law-related groups which staff, BOG members or volunteers and their spouses or guests are expected to attend will be paid for by the Bar and, if not, will be eligible for reimbursement.

(e) Miscellaneous Costs:

Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. Bar funds must not be used to pay the cost of alcoholic beverages.

Subsection 7.502 House of Delegates Meetings

(a) Elected delegates and ex officio delegates from sections and local bars will be reimbursed for their transportation to and from the annual HOD meetings. The reimbursement is limited to roundtrip mileage up to 400 miles at the allowable IRS rate. Requests for mileage reimbursement must be submitted on a form approved by the Bar within 30 days after the meeting.

(b) Public member delegates will be reimbursed for their transportation, meals and lodging as provided in Subsection 7.500 and 7.501.

Section 7.6 Location of Office

Unless otherwise ordered by the Board, the bar office will be maintained in the Portland metropolitan area.

Article 8 Public Records/Meetings

Section 8.1 Public Records

Subsection 8.100 General Policy

The records of the Bar are subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502).

Subsection 8.101 Public Record Requests and Bar Fees for Public Records Searches and Copies

(a) The **Chief Executive Officer** ~~Executive Director~~ will assign appropriate staff to respond to requests for public records. The **Chief Executive Officer** ~~Executive Director~~ will advise the board of any public records disputes that are taken by the requestor to the attorney general for further consideration.

(b) The **Chief Executive Officer** ~~Executive Director~~ will propose and the board will adopt a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.

(c) The fee schedule shall be reasonably calculated to reimburse the bar for the actual cost of making the records available. The charges for staff time shall be computed on the basis of the actual salary of the employee or employees engaged in responding to a particular public records request.

(d) The bar may estimate charges for delivering the requested documents and require the requestor to pay the estimated charges prior to the start of staff work to respond to the request. If the estimated cost of producing the records is \$25 or more, the bar will provide the estimate in writing and will take no action on the request until the requestor confirms that the bar should proceed. Any estimated fees paid in advance that exceed the actual cost of the search and production of public records will be refunded.

(e) The bar may furnish copies of public records without charge or at a substantially reduced fee if the **Chief Executive Officer** ~~Executive Director~~ or department manager determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(f) Public records shall be made available in alternative formats to qualified individuals with disabilities at no additional or at a reduced cost, provided that compliance with the request will not result in undue financial or administrative burden.

Subsection 8.102 Public Disclosure of Client Assistance Office, Discipline Counsel's Office and Disciplinary Board Clerk Records

(a) Except as provided otherwise herein, the following records of Client Assistance Office, Disciplinary Counsel's Office and the Disciplinary Board Clerk are open to inspection on request:

(1) Letters inquiring or complaining about the conduct of any member of the bar and all material submitted by inquirers, complainants, accused lawyers and other persons to the bar relating to such inquiries or complaints.

(2) All correspondence by bar employees with inquirers, complainants, accused lawyers, witnesses and other persons in the course of a disciplinary or Client Assistance Office investigation.

(3) Investigative reports and summaries concerning pending Client Assistance Office, disciplinary and reinstatement matters prepared by Client Assistance Office Counsel, Disciplinary Counsel, ~~a Local Professional Responsibility Committee~~, the SPRB or a bar investigator, to the extent they cover purely factual materials.

(4) The completed minutes of SPRB meetings.

(5) The formal complaint against a member of the bar, the accused lawyer's answer and all other documents in formal proceedings filed with the Disciplinary Board Clerk pursuant to the Rules of Procedure or statute.

(6) Letters of admonition issued by the SPRB when offered to an accused by Disciplinary Counsel.

(b) The following records are exempt from disclosure and will not be open to public inspection except as might otherwise be required by law:

(1) Investigative assignments made by Disciplinary Counsel or the SPRB to ~~a Local Professional Responsibility Committee~~ or other an investigator, to the extent they cover other than purely factual materials.

(2) Investigative reports or summaries concerning pending Client Assistance Office, disciplinary or reinstatement matters prepared by the Client Assistance Office, Disciplinary Counsel's Office, ~~a Local Professional Responsibility Committee~~, a bar investigator or the SPRB prior to a finding of probable cause in the matter, to the extent that they cover other than purely factual materials.

(3) The work product of bar counsel or Disciplinary Counsel.

(4) Communications between the Client Assistance Office and Disciplinary Counsel's Office, between bar counsel and Disciplinary Counsel's Office and between Disciplinary Counsel and the SPRB, regarding the merits of a prosecution or relating to matters of strategy to the extent they are privileged under OEC 503.

(5) Information of a personal nature submitted to the bar during a Client Assistance Office or disciplinary investigation, a reinstatement proceeding, pursuant to BR 3.2, 3.3 and 3.4 or otherwise, if the requirements of ORS 192.502(2) have been met. "Information of a personal nature" includes but is not limited to physical and mental health records, tax returns, trust and other bank account numbers, social security numbers, fingerprint cards, and credit reports.

(6) Communications between General Counsel's Office and the board, individual board members, the **Chief Executive Officer** ~~Executive Director~~ or bar staff that are protected by the attorney-client privilege.

(7) Other records that the bar deems exempt from disclosure under the Public Records Law.

(c) The Board of Governors may direct that member discipline histories be posted on the bar's web site or otherwise electronically. The nature of the information included and the period covered will be as determined by the Board of Governors from time to time.

Section 8.2 Public Meetings

All regular and special meetings of the Board of Governors, Board of Bar Examiners, committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).

Subsection 8.201 Judicial Proceedings

(a) Disciplinary and contested reinstatement hearings and hearings conducted pursuant to Title 3 of the Rules of Procedure, are open to the public, subject to the authority of the presiding official to maintain proper decorum and to exclude witnesses at the request of the Bar, an accused or applicant. Panels of the Disciplinary Board and any presiding official will comply with UTCR 3.180 when presented with requests to allow media coverage of proceedings.

(b) Meetings of ~~Local Professional Responsibility Committees~~ and the SPRB, and the deliberations of Disciplinary Board trial panels are closed to the public, pursuant to the exemption set forth in ORS 192.690(l) for judicial proceedings.

(c) Meetings of the Board of Governors relating to disciplinary and reinstatement matters are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings. Meetings of the Board of Governors may also be closed to the public in whole or part for consideration of any matter for which a closed session is authorized under ORS 192.660.

(d) The Board of Bar Examiners' consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law, **pursuant to ORS 9.210(4)**.

Article 9 Election Procedures

Section 9.1 Date of Elections

The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a candidate statement to the **Chief Executive Officer** ~~Executive Director~~ of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which candidate statements for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present candidate statement to the **Chief Executive Officer** ~~Executive Director~~ of the Bar at least 30 days before the election.

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a candidate statement to the **Chief Executive Officer** ~~Executive Director~~ of the Bar at least 30 days before the election. **Only members with a principle office address in**

Oregon will be eligible to vote for the ABA House of Delegates representatives.

Section 9.2 Ballots

The **Chief Executive Officer** ~~Executive Director~~ will prepare ballots whenever a contest exists and the ballots will be accompanied by the candidate statement that includes the candidate's name, law firm, principal office address, current full-face photograph, law school from which graduated, date of admission in Oregon, state and local bar activities, offices and other pertinent information. The statement must be submitted on a form prepared by the Bar, which will also indicate that the information supplied by the candidate has not been edited or verified by the Bar. A request for a candidate statement or the submission thereof will be considered public information. Ballots will be electronic.

Section 9.3 Voting

Members eligible to vote will be provided a secure link to the candidate statements and an online ballot. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. ~~Any member of the Bar will be permitted to be present while the ballots are canvassed.~~ **Voting must be completed on or before 5:00 p.m. on the day of the election.** The **Chief Executive Officer** ~~Executive Director~~ will announce the results of the balloting and will notify each candidate of the results of the election.

Article 10 Diversity

The Bar respects the diversity of its membership and its employees. Bar entities, including, but not limited to standing committees, section executive committees and Continuing Legal Education programs and publications, should reflect this diversity. "Reflect," as used in this article, does not require the application of strict quotas, but requires a good faith attempt to achieve representative participation. Reports of such efforts may be required of bar entities. In addition, no bar entity may discriminate on the basis of race, religion, color, gender, sexual orientation, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law. No professional, business or social functions of the Bar, or any of its sections, committees, affiliates or other authorized entities may be held at any private or public facility, which discriminates, based upon the terms listed above. Furthermore, advertisements or solicitations for employment must offer equal employment opportunities. The United States Armed Forces are exempt from this policy as it regards advertisements in the bar's communications.

Article 11 Communications

Section 11.1 General Policy

Communications of the Bar and its constituent groups and entities, including printed material and electronic communications, should be germane to the law, lawyers, the practice of law, the courts and the judicial system, legal education and the Bar in its role as a mandatory membership organization. Communications, other than permitted advertisements, should advance public understanding of the law, legal ethics and the professionalism and collegiality of the bench and Bar.

Section 11.2 Editorial Policy

The **Chief Executive Officer** ~~Executive Director~~ may establish editorial standards for bar communications and material permitted by the Bar to be included in its communications concerning such matters as advertising, political communication, profanity and obscenity, letters to the editor, use of artwork, photographs and illustrations, story placement, headlines and scheduling, advertising content and rates and similar topics. The **Chief Executive Officer** ~~Executive Director~~ as sole discretion to determine whether material submitted meets the standards set forth in or adopted pursuant to this policy and to accept or reject material submitted to the Bar for publication based on that determination. Editorial standards must comply with Article 10 Diversity.

Section 11.3 Media Relations

The Bar will be responsive to the needs of the media and will identify persons to speak for the Bar. All statements made to the media, whether oral or by news release, must be informational in nature and must avoid statements of personal opinion or positions not considered or adopted by the Board. The President is the official chief spokesperson for the Bar. If public appearances or statements by the chairperson or other officer or member of any bar committee are deemed necessary, prior authority must be obtained in advance from the President.

Section 11.4 Campaign Advertisements

Judicial candidates and candidates for Board of Governors, House of Delegates and American Bar Association positions may advertise at standard charges in the Bar Bulletin, but partisan political advertising is not allowed. Partisan political announcements or endorsements will not be accepted for publication as letters to the editor or feature articles.

Section 11.5 Membership Surveys and Questionnaires

- (A) Any survey or questionnaire to all members of the Bar from a section or non-bar person or group must have the prior approval of the Board regarding purpose and content.
- (B) A survey to specific groups of the membership from bar staff must have the prior approval of the President or President-elect. A survey to all members of the Bar must have the prior approval of the President or President-elect.
- (C) A section may survey its own membership without prior approval.

Article 12 Legislation and Public Policy

Section 12.1 Guidelines

Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or

affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Section 12.2 Initiation of Legislation

Subsection 12.200 House of Delegates and Membership

The Bar must sponsor legislative proposals approved by the House of Delegates or through a membership initiative to the Legislative Assembly directly following the House or membership action. Legislation not enacted may not be sponsored in the following session unless resubmitted by one of the methods set forth above or by action of the Board.

Subsection 12.201 Board of Governors

The Board may sponsor legislative proposals to the Legislative Assembly on its own initiative. The Board and its Public Affairs Committee has the authority between meetings of the House of Delegates to act on legislative and public policy matters pursuant to the guidelines established.

Section 12.3 Legislative Process

Because of the nature of the legislative process, the Board or its Public Affairs Committee retains the right to set priorities regarding the enactment of legislation, to propose amendments or consent to amendments to legislation and to sponsor or take positions on appropriate legislation. In so doing, the Board will make a reasonable effort to do the following:

Encourage as wide a participation of the membership as possible in formulating positions on legislative issues; inform members, especially sections and committees, of the Bar's legislative positions; respect divergent opinions of subgroups within the legal profession; provide assistance to bar sections and committees; avoid committing bar funds to issues that are divisive or result in creating factions within the profession; present major issues to the House of Delegates for approval; ensure that the Public Affairs Committee encompasses a balance of interest within the Bar and ensure that the Public Affairs Committee consults frequently with the Board.

Section 12.4 Committees and Sections

Any committee or section wishing to sponsor legislation or take a position on any rule or public policy issue will inform the Public Affairs Program, and through that office, the Board, of the exact nature of the legislation proposed. A copy of the bill, proposed rule or policy will be presented for consideration and approval of the Board. A committee or section of the Bar may not represent to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of that committee or section of the Bar without the majority approval of the members of that committee or, in the case of a section, the executive committee and the prior approval of the Board, except as follows. During a legislative session or during the interim, a bar committee or the executive committee of any section must contact the Bar's Public Affairs Program before taking any position on a bill, rule or public policy issue within its general subject area. The chair of the Board's Public Affairs Committee will determine, within 72 hours of notice of the issue, whether it is

appropriate for the Bar to take an official position or to allow the section or committee to take a position as requested. The full Public Affairs Committee or the full Board may be consulted before a final decision is made. Bar staff and the Public Affairs Committee of the Board will make every effort to accommodate committees and sections that wish to express positions on relevant issues. The Public Affairs Program shall be kept informed about the status of such positions and related activities.

Section 12.5 Professional Liability Fund Legislation

The Professional Liability Fund ("PLF") may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of the Board of Governors, except as is provided in Section 12.4 of the Bar's Bylaws.

Section 12.6 Objections to Use of Bar Dues

Subsection 12.600 Submission

A member of the Bar who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member's concerns to determine if the Board agrees with the member's objections. Member objections must be in writing and filed with the **Chief Executive Officer** Executive Director of the Bar. The Board will review each written objection received by the **Chief Executive Officer** Executive Director at its next scheduled board meeting following receipt of the objection. The Board will respond through the **Chief Executive Officer** Executive Director in writing to each objection. The Board's response will include an explanation of the Board's reasoning in agreeing or disagreeing with each objection.

Subsection 12.601 Refund

If the Board agrees with the member's objection, it will immediately refund the portion of the member's dues that are attributable to the activity, with interest paid on that sum of money from the date that the member's fees were received to the date of the Bar's refund. The statutory rate of interest will be used. If the Board disagrees with the member's objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. The **Chief Executive Officer** Executive Director and the member must sign an arbitration agreement approved as to form by the Board.

Subsection 12.602 Arbitration

If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association ("OSJA") for the designation of three active-status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The Bar and the objecting member will have one preemptory challenge to the list of arbitrators. The Bar and the objecting member must notify one another of a preemptory challenge within seven days after receiving the list of proposed arbitrators. If there are no challenges or only one challenge, the OSJA will designate the arbitrator. The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Oregon State Bar

Center or at another location in Oregon that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting member. The arbitrator will not be bound by rules of evidence. The presentation of witnesses will not be a part of the hearing process, although the arbitrator may ask the state bar representative and the objecting member and his or her lawyer, if any, questions. The hearing may be reported, but the expense of reporting must be borne by the party requesting it. The Bar and the objecting member may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties. The arbitrator will promptly decide the matter, applying the standard set forth in *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), to the expenditures to which the member objected. The scope of the arbitrator's review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator must file a written decision with the **Chief Executive Officer** ~~Executive Director~~ within 14 days after the hearing. The arbitrator's decision is final and binding on the parties. If the arbitrator agrees with the member's objection, the Bar will immediately refund the portion of the member's dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the date that the member's fees were received to the date of the Bar's refund. If the arbitrator agrees with the Bar, the member's objection is denied and the file in the matter closed. Similar or related objections, by agreement of the parties, may be consolidated for hearing before one arbitrator.

Article 13 Pro Bono

Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's **Chief Executive Officer** ~~Executive Director~~ determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

(a) Purpose:

The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:

- (1) Persons of limited means.
- (2) Underserved populations with special legal needs.
- (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.

(b) Compensation:

The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.

(c) Fees:

The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

(d) Quality Control:

The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.

(e) Diversity:

The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.

(f) Professional Liability Coverage

The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Article 14 Committees

Section 14.1 Standing and Special Committees

Standing or special committees of the Bar or any member or officer of those committees may be appointed or discharged by the President or the Board.

Section 14.2 Joint Committees

The Board has from time to time agreed to create joint committees between the Bar and other professional groups to develop better understanding between the two groups and to assist in resolving problems of mutual concern. These joint committees comprise a certain number of bar members and a certain number of members of other professional associations. All Bar Bylaws relating to committees apply to these joint committees. Lawyer members who participate in these joint committees are prohibited from engaging in any activity that seeks to restrain other groups of professionals from engaging in lawful professional activities.

Section 14.3 Committee Responsibilities

Committees are established so that members can study issues within the committee's charge and make recommendations to the Board. Before January 1 of each year the Board will forward a committee charge to the chair of each committee. This charge outlines the committee's ongoing general activities as well as specific issues to be considered for the year. The Board will consult with the previous committee members before adopting the committee charge. Committees may also recommend issues to the Board to be included in the charge at any time.

Section 14.4 Membership

All members of standing committees must be active members of the Bar. All members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year. The Board appoints members to fill vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

Section 14.5 Financial Issues

Committees have no budget; although they may make recommendations regarding the expenditure of funds already budgeted in a particular program area. A committee cannot incur any expense without prior authorization from the **Chief Executive Officer** ~~Executive Director~~.

Section 14.6 Legislation

Each committee must designate a member of the committee as a contact for legislative information and involvement. This member is to work with and coordinate all activities with the Director of Public Affairs and the Public Affairs Committee of the Board.

Section 14.7 Administrative Services

The Bar's meeting rooms will be available on a first-come first-served basis. All committees are encouraged to use the Bar's meeting rooms whenever possible. The Bar will assist committees with providing meeting notices in accordance with the requirements of the Public Meetings Law. If the Bar does not produce the meeting notice, the committee member who produces the notice must provide a copy to the Bar. The Bar will assign a bar liaison to each committee. The bar liaison serves as a resource of information for the committee. Each committee will have a contact person who is a member of the Board. It is not anticipated that the board member will attend the meetings of the committee on a regular basis.

Section 14.8 Committee Reports

Each committee must file an annual report of its activities with the **Chief Executive Officer** ~~Executive Director~~ for the preceding year by December 1 of each year. Other reports may be required from time to time.

Section 14.9 Quorum for Meetings

A quorum, consisting of a majority of the committee members, is required for the transaction of committee business. No recommendation of a committee to the Board of Governors is valid if made without a quorum present, but the absence of a quorum does not preclude a committee from studying or discussing any issue within the committee's charge. Action of the committee will be by majority vote of those voting.

Article 15 Sections

Section 15.1 Purpose

Sections are an integral and important part of the Bar. Sections are intended to provide bar members who share particular interests an opportunity to develop and improve skills and to provide a forum for communication and action in matters of common interest.

Section 15.2 Formation

Any 100 members of the Bar who wish to form a section in a particular area of law may submit a petition to the Board to create a section. The petition must state that the signators are committed to becoming members of the section, if the Board approves forming the section. The Board must consider creating a section when it receives the petition and determines that the proposed section does not duplicate another section's activities or area of legal interest. The Board may merge, reorganize or abolish sections at the request of affected sections or as the Board deems appropriate. Factors that the Board must consider include, but are not limited to, the section's membership falling below 100 members, failure to conduct Continuing Legal Education activities or failure to hold regular meetings.

Section 15.3 Bylaws

Sections are governed by the Standard Section Bylaws adopted by the Board. Sections may propose and the Board may approve, modified bylaws commensurate with the section's needs.

Section 15.4 Finances

Subsection 15.400 Dues

The Bar will assess and collect section dues at the same time that bar membership dues are collected. Section dues will be assessed and collected together with bar dues by the Bar. The Board must approve the dues for each section. Each section should set dues at an appropriate level to pay for programs and activities. The Bar charges each section a per capita fee equal to 50 percent of the cost of providing services to the sections. This fee is recalculated periodically as determined by the **Chief Executive Officer** ~~Executive Director~~. No section may maintain a separate bank account. Each section's receipts and expenditures are handled by the Bar and accounted for in the section's monthly financial statement provided by the Bar. Interest on section accounts accrues to the Bar's General Fund and is used to offset the calculation of the per capita fee.

Subsection 15.401 Donations

Sections may make donations to charitable causes or organizations only with prior approval of the **Chief Executive Officer** ~~Executive Director~~. The **Chief Executive Officer** ~~Executive Director~~ will allow such donations on a showing by the section that the donation is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The **Chief Executive Officer** ~~Executive Director~~ will maintain a list of approved recipients.

Section 15.5 Administrative Services

Special services of the Bar that are not included in the calculation of the per capita assessment may be made available at cost to the sections upon adequate notification to and negotiation with the Bar. Sections must give the Bar the first opportunity to provide the necessary publications production support services before contracting with outside organizations or individuals. Sections seeking to contract for any goods or services with outside organizations or individuals must contact the General Counsel's office of the Bar for preparation of appropriate contract documents and must obtain the **Chief Executive Officer's** ~~Executive Director's~~ prior approval of all such contracts.

Section 15.6 Continuing Legal Education Activities

Subsection 15.600 CLE Publications and Seminars Scheduling

The Bar, is the informational clearinghouse for the CLE activities of each section. Each section should advise the Bar's CLE Publications and Seminars Departments of any proposed CLE activities at the earliest possible date and in accordance with timelines established by the CLE Committee.

Subsection 15.601 CLE Event Co-sponsorship with Bar

If a section decides to seek co-sponsorship for a CLE event, it is encouraged to first contact Bar's CLE Seminars Department. If the CLE Seminars Department is unavailable to co-sponsor the seminar event, the section then may seek co-sponsorship with other organizations. The CLE Seminars Department will establish policies for bar co-sponsorship of section CLE events. These policies will address issues such as event revenues and expenses, topic, speakers, date and location.

Subsection 15.602 Oregon State Bar Logo

A section that plans a seminar or a publication without the Bar's co-sponsorship must indicate clearly on all publicity, printed seminar materials and publications that the seminar or publication is a section endeavor and the sponsoring section. The section must not use the Oregon State Bar logo or the phrase Oregon State Bar CLE. A section that plans a seminar without the Bar's co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar.

Section 15.7 Grants

Sections may apply for grants only with prior approval of the Board of Governors. The board will allow grant applications only upon a showing that the grant activity is consistent with the section's purposes and the mission of the bar. The board may disallow any application that the board does not believe is in the best interests of the bar. The grant application must be reviewed and approved by OSB General Counsel before submission to the grant-making organization. Any grant funds received by a section shall be deposited with the bar and will be distributed only upon request of the section treasurer and in accordance with the grant specifications. The section must periodically report to OSB General Counsel regarding the status of the grant project and any reports to the granting organization must be reviewed and approved by OSB General Counsel in advance of submission.

Article 16 Continuing Legal Education

Section 16.1 Purpose

The mission of the Bar's CLE Seminars and Legal Publications programs is to produce high quality, practical CLE Seminars, books, and resources on Oregon law in a timely manner, with a goal of ensuring a competent bar by enhancing the knowledge and skills of Oregon lawyers.

Except as otherwise provided herein, participating members of the Bar will not receive compensation for services on behalf of CLE Seminars or Legal Publications, beyond a modest memento or other recognition and payment of expenses within board guidelines.

Section 16.2 OSB Continuing Legal Education Seminars Program

Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts

(a) Complimentary registration for CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary registration does not include the cost of lunch, materials in hard copy for which a separate fee is charged, any fee-based activities held in conjunction with a CLE seminar, or any other item not included in the registration fee.

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available for the following lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(d) For purposes this policy, "judges" means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(e) Complimentary registration for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(f) Reduced registration, tuition assistance and complimentary copies of programs may be available to certain other attendees, at the sole discretion of the CLE Seminars Director.

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

Subsection 16.201 Expenses of Speakers and Planners

CLE seminar speakers and planners will be admitted free to the seminar and receive seminar materials without charge. CLE seminar speakers and planners are eligible for reimbursement for necessary travel expenses subject to the Bar's travel reimbursement policies.

Section 16.3 OSB Legal Publications Program

Subsection 16.300 Benefit of Membership

The BarBooks™ online library comprises all Legal Publications products as well as other materials as the Bar deems appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive members, non-members, and libraries.

Subsection 16.301 Discounts on Print Books

Discounts on the purchase of OSB print legal publications, when available, will be allowed to the following: Law school bookstores, law professors when teaching a course using the particular publication, libraries, and members of the Bar within one year following their admission.

Subsection 16.302 Volunteer Copyright Agreement

Each volunteer author of a legal publication will sign a Volunteer Copyright Agreement under which the author retains the copyright in his or her chapter, and grants to the Oregon State Bar a nonexclusive right to include the chapter within the Publication as a collective work; to use, distribute, or sell the collective work in any manner the OSB deems appropriate; to revise the collective work, including his or her chapter, for use, distribution or sale as a subsequent edition of the collective work, a revision of the collective work, or as an entirely new publication; with the Oregon State Bar and its licensees having similar rights to use, distribute, or sell the collective work in any manner they deem appropriate.

Article 17 Member Services

Section 17.1 Administrative Services

Administrative services, such as mailing services, mailing lists and labels and photocopying will be provided to member and nonmember groups at the cost of providing the service or product. Priority is given to official bar business.

Section 17.2 Bar-sponsored Tours

The Bar may not enter into any agreement concerning, nor may it sponsor or co-sponsor, any travel or tour arrangement, by charter or otherwise, without the prior approval of the Board.

Article 18 Discipline

Section 18.1 State Professional Responsibility Board

Subsection 18.100 Duties

The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of six members is present at any meeting and act by a vote of a majority of those present.

Subsection 18.101 Composition

The SPRB will consist of eight resident active members of the Bar and two at large public members ~~appointed~~ **nominated** by the Board of Governors **and appointed by the Supreme Court**. The Board of Governors annually will ~~appoint~~ **nominate and request the Supreme Court to appoint** one **attorney** member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions **located within the state of Oregon**. The two public members are appointed for terms of not more than four years. No member may serve more than four years **consecutively**. **Members are eligible for reappointment to a nonconsecutive term not to exceed four years**. The Board of Governors may **nominate and request the Supreme Court to appoint** **replacement** members of the SPRB as the need arises.

Subsection 18.102 Expenses

All members of the SPRB will receive the same reimbursement of expenses as is accorded the members of the Board of Governors.

Subsection 18.103 Notice to the ~~Aecused~~ Respondent

Disciplinary Counsel will notify the ~~accused~~ **respondent** as soon as possible after the SPRB has directed the institution of a formal disciplinary proceeding against the ~~accused~~ **respondent**. The notice will contain a statement that all communications on

the merits of the matter must be restricted to the lawyers in Disciplinary Counsel's office and with appointed counsel for the Bar and that an accused must not contact a member of the Board of Governors, the SPRB, ~~any Local Professional Responsibility Committee~~ or any other employee, agent or representative of the Bar regarding the matter.

Subsection 18.104 Disclosure of Contacts

If a complainant, an accused **respondent** or their representatives contact a SPRB member concerning the merits of a disciplinary complaint, the SPRB member contacted must make a full disclosure of the nature of the contact before the SPRB takes action on the complaint.

Section 18.2 Letters of Admonition

(A) A disciplinary investigation, whether in response to a complaint filed with the Bar or otherwise instituted as authorized by law, may be terminated after investigation by the SPRB's issuing a letter of admonition.

(B) An admonition does not constitute the imposition of formal discipline. An admonition is, however, a public statement that the lawyer's conduct, in the opinion of the SPRB, violated the Rules of Professional Conduct of the Bar.

(C) An admonition may be issued, at the discretion of the SPRB, only when a Rule of Professional Conduct has been violated and if in light of all circumstances, the violation was not aggravated, but was of sufficient concern that dismissal would be inappropriate.

(D) The procedure for issuing letters of admonition is provided in the Rules of Procedure. If accepted, a letter of admonition will be placed in the lawyer's personal file maintained by the Bar.

Section 18.3 Recovery of Costs/Collection of Judgments

The bar will pursue, as feasible, collection of those costs and disbursements for which a judgment was awarded to the Bar in a disciplinary or reinstatement proceeding.

Section 18.4 Disciplinary Correspondence

Members of the Board of Governors or other bar officials may receive occasional correspondence related to disciplinary matters. All such correspondence, including letters from complainants or accused lawyers, must be forwarded to Disciplinary Counsel for response. Disciplinary Counsel need not send a copy of any response to the board member or bar official to whom the initial correspondence was addressed. Any correspondence alleging an ethics complaint about Disciplinary Counsel or General Counsel must be sent directly to the chairperson of the SPRB pursuant to BR 2.6(~~g~~**f**), with a copy to the staff member named in the complaint.

Section 18.5 Removing Lawyers from the Lawyer Referral Service Panel of Lawyers

Members of the Bar against whom charges of misconduct have been approved for filing will be removed from the Lawyer Referral Service panel of lawyers until those charges have been resolved. If a member is suspended as a result thereof, the

member may not be reinstated to the panel until the member is authorized to practice law again. Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

Section 18.6 Suspension of Service

Subsection 18.600 Applicability to BOG, LPRC and SPRB

The service of members of the Board of Governors, ~~local professional responsibility committees,~~ and the State Professional Responsibility Board against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board is suspended until the charges filed against them have been resolved. If a member is suspended as a result thereof, the member may not resume service on the board or committee until the member is once again authorized to practice law or as otherwise provided by ORS 9.025(5)(a). Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

Section 18.601 LPRC and SPRB Replacements

In the case of a ~~local professional responsibility committee or the State Professional Responsibility Board,~~ the Board of Governors may **nominate and request the Supreme Court to** appoint a temporary replacement to serve until the member suspended under this bylaw is again able to serve. The temporary replacement will have the same rights and responsibilities as any other member of the entity.

Section 18.602 Board of Governors Replacement

Upon the suspension of a member of the Board of Governors pursuant to Bar Bylaw 18.6, the board will promptly notify all members from the affected region. Sixty days after the date of suspension, the board will seek the advice of the members of the House of Delegates from the region whether to appoint a temporary replacement for the suspended member, and if so, the name of a suggested temporary replacement who is qualified. If a name is suggested, the board will appoint the suggested candidate as the temporary replacement effective at the next regularly scheduled board meeting. The temporary replacement will serve under the same terms and conditions as the suspended member until the suspension is lifted or the term of the board member ends.

Section 18.7 Adjudicator

The Adjudicator is the Disciplinary Board statewide adjudicator, who is authorized to exercise his or her powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The Adjudicator is appointed by and serves at the pleasure of the Oregon Supreme Court, and is an employee of the Oregon State Bar.

Article 19 Legal Ethics Questions and Opinions

Section 19.1 General Counsel's Office

Subsection 19.100 Submission and Questions

All legal ethics questions from members or the public regarding the propriety of a course or act of professional conduct or the intent or interpretation of a rule or

statute regulating the professional conduct of members of the Bar must be submitted or referred to General Counsel's office. Legal ethics questions may be submitted in writing by mail, e-mail, fax or by telephone.

Subsection 19.101 Determination by General Counsel

General Counsel's office will determine whether the matter appears to present or involve a question of ethics or professional conduct and whether it states facts sufficient to permit the formulation of an opinion based on the facts stated. General Counsel's office may ask the inquirer to submit necessary additional facts or may advise the inquirer that no question of ethics or professional conduct is presented or involved.

Subsection 19.102 Ethics Advice to Bar Members

General Counsel's office will endeavor to assist bar members in analyzing the ethics of the inquirer's prospective conduct and may provide reactions to the questions presented. Ethics questions and responses thereto are not confidential and communications with General Counsel's office are not privileged. No attorney-client relationship is intended or created by such communications with the Bar. Members submitting ethics questions must specify a deadline by which they need a response from the Bar. General Counsel's office will endeavor to meet the member's deadline, but General Counsel's office always has at least three business days after receiving a member's question to provide a written response to the member.

Subsection 19.103 Application of Oregon RPC 8.6

For Oregon RPC 8.5 to apply to a request for ethics assistance, a member must put his or her ethics question in writing. "In writing" includes letters, faxes or e-mails. General Counsel's office will respond in writing, by fax, e-mail or regular mail, as time allows. The Bar will retain all written ethics assistance requests and General Counsel's office responses for at least five years and those requests are public records. General Counsel's office has the discretion to decline to provide a written response, if it determines that the question should be considered by the Legal Ethics Committee due to the difficulty, complexity or novelty that the question raises or the difficulty or complexity of an appropriate response. Members must provide General Counsel's office and the Legal Ethics Committee with accurate, and as complete as possible, explanations of the facts underlying their ethics questions. General Counsel's office may ask the inquirer to submit additional or clarifying information and the timeframe for response as set forth in Subsection 19.102 of the Bar's Bylaws does not begin until General Counsel's office receives the requested information.

Section 19.2 Limitation of Advice

Responses and opinions provided by General Counsel's office, the Legal Ethics Committee and the Board of Governors are limited to and deemed to address only the facts as submitted by the inquirer.

Section 19.3 Legal Ethics Committee

Subsection 19.300 Response to Inquiries

A bar member may request that a question be submitted to the Legal Ethics Committee. The chair of the Committee will assign those requests and questions

submitted directly to the Committee to one or more committee members to prepare a response. Inquiries submitted to the Committee should be anonymous, insofar as possible. To preserve anonymity, if the facts are inadequate to permit the formulation of an opinion or a direct answer, General Counsel's office may ask for submission of necessary additional facts. On receipt of those additional facts, General Counsel's office will promptly submit them to the assigned member of the Committee. The Committee may, in its discretion, write opinions on subjects that the Committee believes would be helpful to the membership, whether or not the Committee receives a specific inquiry on the subject. Such opinions will be handled in the same fashion as opinions based on specific questions.

Subsection 19.301 Formal Opinion Process

The Committee will review and discuss all responses prepared by individual members and will, by majority vote, determine whether the response should be referred to the Board of Governors to be issued as a formal opinion or whether it should be issued by the Committee as a letter of direct advice to the inquirer. The Committee will establish and will periodically review guidelines for determining the appropriate form of response. Members may use formal opinions and letters of direct advice issued by the Committee in the same manner and to the same effect under Oregon RPC 8.6 as written responses from General Counsel's office. When the Committee approves an opinion and recommends formal publication, General Counsel's office will place a copy of the opinion on the Board's next meeting agenda. All dissents, comments of substance or minority opinions will also be placed on the Board's agenda. The Board will review the proposed opinion and either approve it for formal publication, refer it back to the Committee for further study or revision or direct that no opinion be issued in the matter. The Board may also distribute the opinion to the membership for comment before making a final decision. All opinions that the Board designates to be issued as formal opinions will be published in Oregon Formal Ethics Opinions (OSB 2005) and on the Bar's website.

Article 20 Unlawful Practice of Law

Section 20.1 Definitions

For the purpose of this Article, the following definitions apply:

- (A) "Administrator" means the Bar employee assigned to provide administrative support to the Committee and Bar Counsel.
- (B) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.
- (C) "Unlawful practice of law" means (1) the practice of law, as defined by the Oregon Supreme Court, in Oregon, by a person who is not an active member of the Oregon State Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.
- (D) "Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.
- (E) "Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of conduct related to the unlawful practice of law.

(F) "Accused" means the person or persons who are the subject of a complaint to the committee.

(G) "Complaint" means the matter or occurrence that causes the Committee to open a file for the investigation of the accused's alleged unlawful practice of law.

Section 20.2 Unlawful Practice of Law Committee

The Board may **nominate and request the Supreme Court to** appoint as many members as it deems necessary to carry out the Committee's functions, **pursuant to BR 12.1**. At least two members of the Committee must be members of the general public and no more than one-quarter of Committee members may be lawyers engaged in the private practice of law.

Section 20.3 Investigative Authority

Pursuant to ORS 9.164 **and BR 12.2**, the Committee shall investigate complaints of the unlawful practice of law. The Committee may decline to investigate allegations of unlawful practice of law when: the allegations are not made to the Committee in writing; the administrator determines the allegations do not involve the unlawful practice of law, or; the allegations consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

Section 20.4 Other Investigators

The Administrator may hire a person who is not a member of the Committee to perform further investigation when the Committee determines it is necessary in order to complete the investigation.

Section 20.5 Processing Unlawful Practice of Law Complaints

Subsection 20.500 Investigation

On receiving a complaint of unlawful practice of law, the Administrator will give the complaint a case number and assign it to a committee member for investigation. The committee member may only employ methods in his or her investigation that comply with the Rules of Professional Conduct. Upon completion of the investigation, the investigator will submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition.

Subsection 20.501 Dispositions

Upon receipt and review of the investigator's report, the Committee may either continue the matter for further investigation and revisions to the report or make one of the following dispositions:

(a) Closure.

This disposition is appropriate when the Committee has insufficient evidence to prove that the accused engaged in the unlawful practice of law. The Committee may reopen a closed matter if it receives additional information or evidence of the unlawful practice of law by the accused.

(b) Informational Letter.

This disposition is appropriate when the Committee has insufficient facts evidence to prove that the accused has engaged in the unlawful practice of law, and believes that that the accused would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter will notify the accused that the investigation is concluded, and state that the accused may wish to seek legal advice about whether any specific practice constitutes the unlawful practice of law.

(c) Referral to Board of Governors for initiation of proceedings under ORS 9.166.

(1) Filing suit for injunctive relief is appropriate when (i) the Committee has clear and convincing evidence to establish that the accused engaged in the unlawful practice of law, (ii) the practice is ongoing or likely to recur, and (c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(2) Filing suit for contempt relief is appropriate when a) a court has entered an injunction against the accused b) the Committee has clear and convincing evidence to establish that the accused continues to engage in the unlawful practice of law and c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(3) The Committee may decline to request authorization from the Board to initiate proceedings allowed under to ORS 9.166 in favor of other resolutions provided in these rules.

(d) Referral to or Cooperation with Other Agency or Bar Department.

This disposition is appropriate when the Committee determines that another agency or department is better positioned to investigate or address the complaint, including but not limited to when:

(1) The allegations involve activity prohibited by law, ordinance or statute within the jurisdiction of a federal, state or local agency;

(2) The accused is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;

(3) An agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation;

(4) The agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused, or;

(5) The complaint concerns conduct by a lawyer or bar applicant, or implicates the rules of professional conduct.

Section 20.6 Bar Counsel

Subsection 20.600 Role of Bar Counsel

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may retain counsel to represent the Bar in the action and will report periodically to the Committee and Board on the status of the litigation. To the extent necessary, the Committee and Administrator will assist bar counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection 20.601 Settlement Authority

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may negotiate a settlement of the unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Committee.

Subsection 20.602 Referral to Bar Counsel

When a new complaint of unlawful practice of law involves an accused against whom the Board has already authorized suit, the administrator refer the matter directly to bar counsel without obtaining prior authorization from the Committee or the Board. The administrator and Bar counsel may ask the Committee to conduct an investigation into the new complaint and have discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Section 20.7 Public Outreach and Education

Subsection 20.700 Public Outreach

The Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law, **pursuant to BR 12.3(a)**. The Committee may cooperate in its education efforts with federal, state and local agencies tasked with preventing consumer fraud

Subsection 7.701 Informal Advisory Opinions

The Committee may write informal advisory opinions on questions relating to what activities may constitute the practice of law, **pursuant to BR 12.3(b)**. Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Oregon Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

Section 20.8 Records

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar. Records will be kept in accordance with the Bar's records retention policy.

Article 21 Client Security Fund

The **Chief Executive Officer** ~~Executive Director~~ or General Counsel of the Bar will continue, as feasible, collection efforts in each instance in which Client Security Fund ("CSF") money is paid out. In each of these cases, the Bar will obtain an assignment of judgment in the amount paid out. The status of any such outstanding judgments shall be reviewed at least annually by the CSF Committee and the Board.

Article 22 Fee Arbitration

(A) The Bar may provide for a fee arbitration procedure whereby fee disputes between attorneys maintaining offices in Oregon and their clients or other attorneys

are submitted to arbitration panels for resolution. Such a procedure shall be administered through General Counsel, pursuant to rules approved by the Board.

(B) The Bar's fee arbitration procedure is a private, contract dispute resolution mechanism and not the transaction of public business.

(C) Except as provided in (E) below, or unless all parties to an arbitration agree otherwise: all records, documents, papers, correspondence and other material submitted by the parties to General Counsel or to an arbitration panel during the course of an arbitration proceeding and any award rendered by an arbitration panel is not subject to public disclosure.

(D) Arbitration hearings conducted pursuant to the Bar's fee arbitration procedure will be closed to the public unless all parties to an arbitration agree otherwise. Witnesses who will offer testimony on behalf of a party may, however, attend the arbitration hearing.

(E) Notwithstanding subsection (B), (C) and (D), arbitrators must disclose to Disciplinary Counsel any knowledge obtained during the course of an arbitration proceeding of an apparent violation of the Rules of Professional Conduct or ORS Chapter 9 committed by an attorney and all records, documents, papers, correspondence and other material submitted to General Counsel or to the arbitration panel during the course of the proceeding and any award rendered by the panel must be made available to Disciplinary Counsel for the purpose of investigating alleged ethical violations.

Article 23 Professional Liability Fund

Section 23.1 Board of Directors

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

Section 23.2 Authority

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors

appropriate requirements for PLF coverage and amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

Section 23.3 Operation

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

Section 23.4 Reports

The PLF must present an annual report to the bar membership.

Section 23.5 Relationship with the Board of Governors

Subsection 23.500 Liaisons

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints two lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors.

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) The PLF CEO or the CEO's designee must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

(e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

Subsection 23.501 Reports

The PLF must regularly provide to the BOG the following:

- (a) All financial statements when completed;
- (b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;
- (c) All reports of investment performance and changes in investments;
- (d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;
- (e) On or before October 1 of each year, the proposed assessment for primary coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;
- (f) A report generally describing the previous year's excess enrollment, including total firms enrolled, total lawyers and gross premiums from the excess program;
- (g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;
- (h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

Subsection 23.502 Release of Information

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President of the Board of Governors to the Chair of the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

Subsection 23.503 BOG Members Participating in PLF Claims

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

Subsection 23.504 Annual Meeting

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and discuss matters of common interest to the Board of Governors and the PLF. This

meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by May 1st of each year, whichever is earlier.

Subsection 23.505 Audit

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

Subsection 23.506 Location of Office

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

Subsection 23.507 Staff Responsibility

The **Chief Executive Officer** Executive Director of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the **Chief Executive Officer** Executive Director and bar staff will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its **Chief Executive Officer** Executive Director and staff in all areas of the Bar's business and activities. The **Chief Executive Officer** Executive Director of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

Section 23.6 Assessment

Subsection 23.600 Principles

The Board of Governors recognizes that the assessment for coverage is derived by the prudent application of actuarial principles, responsible evaluation of past and present operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit to the Board of Governors its recommended assessment for the subsequent year (or any mid-year special assessment) supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt an assessment that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

Article 24 Attorney Assistance

Section 24.1 Creation and Purpose

There is hereby created, pursuant to ORS 9.568, the State Lawyers Assistance Committee ("SLAC") and the Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC"). The purpose of the SLAC is to supervise and assist lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The purpose of the PLF-PPMAC is to provide voluntary personal and practice management assistance to lawyers.

Section 24.2 Authority

Subsection 24.200 State Lawyers Assistance Committee

The SLAC has authority:

- (a) To receive, review, investigate, process and resolve all complaints and referrals to SLAC regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence.
- (b) To require lawyers within SLAC's jurisdiction to submit to a professional assessment and diagnosis and to comply with any remedial program that SLAC has established. A remedial program may include conditions on the law practice and other law-related activities of any lawyer found to be within SLAC's jurisdiction. Conditions may include, but are not limited to, requiring a lawyer to obtain medical or psychological treatment at his or her expense and to discontinue the practice of law and/or law-related activities pending completion of such treatment.
- (c) To monitor a lawyer's compliance with the recommended measures of a remedial program.
- (d) To maintain records regarding a lawyer's assistance referrals.
- (e) To prepare an annual report to the Board of Governors.
- (f) To recommend, for approval by the Board of Governors, such rules as may be necessary to properly operate SLAC.
- (g) To appoint local bar members as it may deem appropriate for carrying out the work and purpose of SLAC.

Subsection 24.201 Professional Liability Fund Personal and Practice Management Assistance Committee

The Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC ") has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training in law practice management. The PLF-PPMAC may provide this assistance through the PLF's Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

Section 24.3 Composition

Subsection 24.300 State Lawyers Assistance Committee

The board may appoint members and public members as it deems appropriate.

Subsection 24.301 Professional Liability Fund Personal and Practice Management Assistance Committee

The PLF-PPMAC consists of the members of the PLF's Board of Directors. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.

Section 24.4 State Lawyers Assistance Committee Review and Intake

Subsection 24.400 Complaints and Referrals

(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer's professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

"We appreciate your interest in bringing this matter to our attention. Our Committee will respond by contacting the lawyer to discuss the problem. It is important for you to understand, however, that the purpose of this Committee is to provide confidential assistance to lawyers who are impaired in the practice of law for reasons such as drug or alcohol problems, emotional problems or lack of competence. For that reason, we focus our work on determining the specific assistance that the lawyer needs and making sure that the lawyer follows a treatment or assistance program. This Committee does not deal with lawyer discipline issues. All information we receive from you will be kept confidential and will not be reported to the bar disciplinary authorities. If you believe that this lawyer has acted improperly and you wish to make a complaint to the bar, you should write to Client Assistance Office, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281."

(b) If a referral is received from a member of the Bar, the letter required in paragraph (A) must also contain the following statement:

"If you are a member of the Bar, please review Oregon RPC 8.3(a) to determine whether you may have an independent obligation to contact the Bar."

(c) The OSB Client Assistance Office and the OSB Disciplinary Counsel may refer to SLAC the name of any lawyer whose performance or conduct appears to be impairing the lawyer's ability to practice law or professional competence. The referral will include a description of the circumstances and copies of any relevant documents. The State Professional Responsibility Board may refer to SLAC any lawyer whose performance or conduct may be impairing the lawyer's ability to practice or

professional competence whether or not the SPRB authorizes prosecution for misconduct. The chairperson will confirm in writing referrals from the Client Assistance Office, Disciplinary Counsel's Office, or the SPRB.

Subsection 24.401 Designees

SLAC members, lawyers and other persons assisting SLAC and employees thereof working on a matter related to the Lawyers Assistance Program authorized by ORS 9.568 are designees of SLAC. Designees are subject to SLAC rules, including the confidentiality requirements set forth in Section 24.701. Appointment of a designee who is not a SLAC member will be at the discretion of the chairperson. Considerations for appointment of such a designee include, but are not limited to, the designee's qualifications, the designee's previous experience with the referred person or with a situation similar to that of the referred person and the location of the referred person and designee. The chairperson will confirm the appointment of a designee. The chairperson will advise the designee of his or her authority and obligations and will include a copy of the SLAC's rules and other pertinent SLAC information. The designee will be notified of SLAC meetings while the referral is pending and must give regular progress reports to SLAC. Those reports may be given in person, in writing, by telephone or through the chairperson. The appointment of a designee will remain in effect until the case is concluded or SLAC otherwise provides.

Subsection 24.402 Preliminary Assessment and Intake

Upon receipt of a referral, the chairperson will assign the matter to one or more designees to conduct a preliminary assessment and make a recommendation to the committee. The Intake designee will gather relevant information regarding the referral including, but not limited to, interviewing the referred lawyers and the person who made the referral, and any other person who may have knowledge about the lawyer's ability to practice law or professional competence.

Prior to making initial contact with the referred lawyer, the SLAC designee will notify the Oregon Attorney Assistance Program (OAAP) of the referred lawyer's name. If the OAAP informs the SLAC designee that the referred lawyer poses a substantial and imminent risk of harm to the referred lawyer or others, the SLAC designee will wait a reasonable amount of time before contacting the referred lawyer and will coordinate and communicate with OAAP about how to make contact with the referred lawyer.

If, based on the preliminary assessment, the committee determines that the lawyer's professional competence or ability to practice law may be impaired, SLAC will have jurisdiction over the matter. Otherwise, the matter will be dismissed without further action.

Subsection 24.403 Notice to Referred Lawyer

Prior to assuming jurisdiction, SLAC will notify the referred lawyer and provide an opportunity to respond. If jurisdiction is assumed, the chairperson will assign the matter to a designee for case development, notify the referred lawyer of the matter and direct the lawyer to meet with the designee. Notices to the referred lawyer will include a reminder that failure to respond to or cooperate with SLAC is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority. If a

case is not opened, the chairperson will notify the source of the referral that the matter is being dismissed without further SLAC action.

Section 24.5 State Lawyers Assistance Committee Investigations

Subsection 24.500 Meeting with Referred Lawyer

Within 30 days after notice has been given as provided in Subsection 24.403 of the Bar's Bylaws, the designee, either individually or with another designee, will meet with the referred lawyer to discuss the nature of the referral, SLAC's function, the general steps that will be taken, any questions that the referred lawyer may have about the process and the lawyer's explanation, opinion or questions about the referral.

Subsection 24.501 Release of Information

The designee may require the referred lawyer to authorize the release of relevant medical or other background information regarding the referred lawyer to SLAC or to a professional selected to evaluate the referred lawyer. Medical or background information is relevant, if it relates to the referred lawyer's professional competence or ability to practice law. The referred lawyer may voluntarily provide additional information.

Subsection 24.502 Professional Evaluation

The designee may require the referred lawyer to obtain a medical or other diagnostic evaluation from a professional or a panel of professionals selected by SLAC. The scope of the medical or other diagnostic evaluation will be limited to issues related to the referred lawyer's professional competence or ability to practice law. The designee may inform the medical or other professional of the general nature of SLAC's concerns but will not disclose to the professional the identity of the referral source or any other confidential information. The lawyer must bear the expenses of the medical or other diagnostic evaluation, except that SLAC may advance the costs in cases of demonstrated financial hardship.

Subsection 24.503 Remedial Action Plan

(a) Based on all the information gathered by the designee, SLAC will consider and determine whether the referred lawyer's performance or conduct may be impairing the lawyer's professional competence or ability to practice law. If SLAC finds that the lawyer's performance or conduct may not impair the lawyer's professional competence or ability to practice law, the matter will be dismissed and the lawyer notified of the disposition of the matter. If SLAC finds that the lawyer's professional competence or ability to practice law is impaired, SLAC will so advise the referred lawyer in writing and require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.

(b) The referred lawyer will have the opportunity to participate in determining the nature and extent of the remedial program to be undertaken, but SLAC's decision regarding the program is final.

(c) SLAC will set forth the remedial measures to be undertaken in a written agreement to be signed by the lawyer. The agreement will contain the referred lawyer's acknowledgement that failure or refusal to cooperate in the remedial

program is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority.

(d) SLAC may require the lawyer to submit periodic reports from persons responsible for implementing the remedial program or who have information about the lawyer's compliance.

(e) The referred lawyer must pay the costs of the remedial program that SLAC requires.

(f) The designee will monitor the referred lawyer's participation in the remedial program and will report regularly to SLAC.

(g) The remedial program may be revised from time to time, as SLAC deems appropriate, and may include an extended period of monitoring.

(h) When SLAC determines that the referred lawyer has successfully completed the remedial program and that the lawyer's ability to practice law and professional competence is no longer impaired, the case will be closed.

Section 24.6 State Lawyers Assistance Committee Records

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened, will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee's possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar's Bylaws. Closed files will be maintained for ten years in locked storage at the Bar's offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

Section 24.7 Other State Lawyers Assistance Committee Policies

Subsection 24.700 Non-cooperation

The failure or refusal of the referred lawyer to respond to SLAC's initial inquiry; to participate in interviews with designees during the course of SLAC's investigation; to respond to SLAC requests for information or for a professional evaluation; or to participate in and comply with a remedial program, may result in the lawyer being referred to Disciplinary Counsel for possible action under Oregon RPC 8.1(c).

Subsection 24.701 Confidentiality

SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential. Those records and information are not subject to public disclosure and are inadmissible as evidence in any disciplinary or civil proceeding. Pursuant to ORS 9.568(4), the confidentiality does not apply to information relating to a lawyer's non-cooperation with SLAC or its designees or to information obtained by the Bar from any other source not connected

with the referral to SLAC. Pursuant to Subsection 24.402 of the Bar's Bylaws, the SLAC chairperson or designee may release the name of the referred lawyer to the OAAP. SLAC may also release statistical data, pursuant to Subsection 24.703 of the Bar's Bylaws.

Subsection 24.702 Duty to Report Unethical Conduct

SLAC and its designee are exempt from the reporting requirements of Oregon RPC 8.3(a) pursuant to Oregon RPC 8.3(c)(1).

Subsection 24.703 Statistical Data

SLAC will prepare a written annual report of its activities. The report will include statistical data such as: the total number of referrals received by SLAC, the number of direct referrals, the number of referrals received from the State Professional Responsibility Board, the number of referrals to the Client Assistance Office as a result of non-cooperation with SLAC, the number and types of cases in which assistance was provided through SLAC, the number of cases completed during the reporting period and other information that will assist the Bar in evaluating the workload and effectiveness of the SLAC program. The report will not include any information that could jeopardize the confidentiality of persons participating in SLAC's programs. The report will be delivered to the Bar annually as an attachment to SLAC's annual report.

Subsection 24.704 Public Meetings

SLAC meetings are exempt from the provisions of ORS 192.610 to 192.690, pursuant to ORS 9.568(3)(b). OAAP staff may be invited to attend SLAC meetings, including case review of referred lawyers, if appropriate releases have been signed by the referred lawyers.

Article 25 Law Student Associates

Any student currently enrolled in an Oregon law school may become a Law Student Associate of the Bar. Law Student Associates are not members of the Bar and, except as provided in this article, do not have any of the rights and responsibilities of members. Law Student Associates must pay an annual fee established by the **Chief Executive Officer** Executive Director in an amount sufficient to cover the cost of providing information and services to Law Student Associates. Services and information provided to Law Student Associates will be determined by the **Chief Executive Officer** Executive Director

Article 26 Sustainability

The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the **Chief Executive Officer** Executive Director will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in

addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

Article 27 Unclaimed Lawyer Trust Account Funds

Section 27.100 Purpose

This policy is established to provide direction and limits for the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar. For the purposes of this section, "unclaimed lawyer trust account funds" are defined to mean all funds allocated to the bar pursuant to ORS 98.386(2).

Section 27.101 Administration

(a) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund in the manner authorized by Section 7.1.

(b) All unclaimed lawyer trust account funds shall be invested in the manner described at Section 7.4. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

Subsection 27.102 Disbursement

(a) The **Chief Executive Officer** ~~Executive Director~~ and the Chief Financial Officer are authorized and empowered to make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:

(1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection 27.103; and

(2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the **Chief Executive Officer** ~~Executive Director~~ determines such disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

(b) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to the Legal Services Program established under ORS 9.572 for the funding of legal services. The Board may authorize such disbursements only if the Board determines the disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

Subsection 27.103 Claim Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, the Bar shall review the claim and approve or deny the claim within 120 days after the completed claim form and all necessary information to process the claim is received. If a claimant is requested to provide additional information and fails to do so within 90 days after the request is

made, the Bar may close the file without further action. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The **Chief Executive Officer** ~~Executive Director~~ or the **Chief Executive Officer's** ~~Executive Director's~~ designee shall decide whether to approve or deny all claims for amounts under \$5000. Claims for amounts of \$5000 or more must be reviewed and approved or denied by the Board.

(c) The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Subsection 27.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(d) If a claim is approved pursuant to this Subsection, the **Chief Executive Officer** ~~Executive Director~~ or designee shall notify the claimant.

(e) If a claim is denied, the **Chief Executive Officer** ~~Executive Director~~ or the **Chief Executive Officer's** ~~Executive Director's~~ designee shall notify the claimant. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(f) A claimant may appeal the denial of a claim by making a request in writing to the **Chief Executive Officer** ~~Executive Director~~ within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request.

(g) Additional evidence shall not be admissible on appeal to the Board, except by mutual consent of the Board, the claimant, and any other parties to the proceeding. If such additional evidence is not admitted, the Board shall allow the claimant to resubmit the claim to the **Chief Executive Officer** ~~Executive Director~~ with the new evidence.

(h) The **Chief Executive Officer** ~~Executive Director~~ or designee shall notify the claimant of the Board's decision on appeal.

(i) A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

(j) On a quarterly basis, the **Chief Executive Officer** ~~Executive Director~~ or designee shall provide a listing of the claims resolved to the Department of State Lands. The **Chief Executive Officer** ~~Executive Director~~ shall also provide an annual report of the claims resolved to the Board.

Article 28 Admissions

Section 28.1 Board of Bar Examiners

Pursuant to ORS 9.210, the Supreme Court appoints a Board of Bar Examiners (BBX) to carry out the admissions function of the Oregon State Bar. The BBX recommends to the Supreme Court for admission to practice those who fulfill the requirements prescribed by law and the rules of the Court. The BBX's responsibilities include: investigating applicants' character and fitness, developing a bar examination, determining the manner of examination, determining appropriate accommodations for applicants, grading the bar examinations and setting standards for bar examination passage. The BBX may appoint co-graders to assist with the grading of examinations. The BBX may also recommend to the Court rules governing the qualifications, requirements and procedures for admission to the bar, by examination or otherwise, for law student appearance, and other subjects relevant to the responsibilities of the BBX.

Section 28.2 Nominations

The bar and the BBX will recruit candidates for appointment to the BBX and for appointment as co-graders. The BBX will solicit input from the Board of Governors before selecting co-graders and nominating candidates for appointment to the BBX.

Section 28.3 Liaisons

The Board of Governors shall appoint one of its members as a liaison to the BBX. The BBX may appoint one of its members as a liaison to the Board of Governors. The liaisons shall be entitled to attend all portions of the BBX and Board of Governor meetings, including executive and judicial sessions.

Section 28.4 Admissions Director

The Admissions Director shall report to and be supervised by the Director of Regulatory Services, under the overall authority of the **Chief Executive Officer** ~~Executive Director~~. The **Chief Executive Officer** ~~Executive Director~~ and Director of Regulatory Services will make the hiring, discipline and termination decisions regarding the Admissions Director. The **Chief Executive Officer** ~~Executive Director~~ and Director of Regulatory Services will solicit BBX's input into these decisions and give due consideration to the recommendations and input of the BBX. If the BBX objects to the final hiring decision for the Admission Director, recruitment will be reopened.

Section 28.5 Budget

With the approval of the Oregon Supreme Court, the BBX may fix and collect fees to be paid by applicants for admission. A preliminary annual budget for admissions will be prepared by the Admissions Director and Director of Regulatory Services in consultation with the BBX. Upon approval by the BBX, the budget will be submitted to the Board of Governors. The final budget presented to the Board of Governors will be provided to the BBX. Upon adoption by the Board of Governors, the budget will be submitted to the Supreme Court in accordance with Bylaw 7.202, and the BBX may make a recommendation to the Supreme Court regarding adoption of the budget.

The budget will align with bar policy generally after consideration of the policy goals and objectives of the BBX.

Section 28.6 Amendments

Any proposed amendment to Article 28 shall be submitted to the BBX and Supreme Court for consideration and the BBX shall make its recommendation to the Supreme Court regarding adoption of the proposed amendment. Upon Supreme Court approval, the Board of Governors may adopt such amendments in accordance with Article 29.

Article 29 Amendment of Bylaws

Any amendment of the Bar's Bylaws requires notice at a prior Board meeting unless two-thirds of the entire Board waives the notice requirement. The Bar's Bylaws may be amended by affirmative vote of a majority of the entire Board at any regular meeting or at any special meeting of the Board called for that purpose.

DRAFT

Subject Index

ABA HOUSE OF DELEGATES

Campaign advertisements, 11.4
Expense reimbursements, 5.3
Selection of delegates for, 5.1, 9.1
Voting by, 5.2

ACTIVE PRO BONO MEMBERSHIP

Application form, 6.101(d)
Eligibility for, 6.101(b), 6.101(d)
Fees, 6.101(c)
Purpose of, 6.101(a)
Reporting duties, 6.101(e)
Transfer of status, 6.101(f)

ADMISSION TO PRACTICE

Admissions Director, 28.4
Budget, 28.5
Generally, Article 28
Amicus curiae briefs, 2.105
Witnesses, Board members as, 2.603

ADMONITION

Letters of, 18.2

ADVERTISEMENTS

Bar-sponsored insurance, 17.2
Election campaigns, 11.4

AFFIRMATIVE ACTION PROGRAM

State Bar funds, 7.300

AMENDMENT OF BYLAWS

Overview of, Article 29

AMICUS CURIAE BRIEFS

Committees, 2.105
Sections, 2.105

ANNUAL BUDGET

See BUDGET

ARBITRATION OF DISPUTES

Bar dues, use of, 12.602
Fee arbitration, Article 22

ATTORNEY ASSISTANCE

See PROFESSIONAL LIABILITY FUND
PERSONAL AND PRACTICE
MANAGEMENT ASSISTANCE
COMMITTEE (PLF-PPMAC); STATE
LAWYERS ASSISTANCE
COMMITTEE (SLAC)

ATTORNEY FEES

Arbitration of disputes, Article 22
Defense of Bar's agents, employees,
officers in disciplinary proceedings,
2.107(f)
Pro bono services, 13.201(b)

AUDITS

Professional Liability Fund, 23.506
State Bar funds, 7.101

AWARD OF MERIT

Overview of, 4.6

AWARDS

Award of Merit, 4.6
President's Affirmative Action Award,
4.4
President's Membership Service
Award, 4.2
President's Public Leadership Award,
4.8
President's Public Service Award, 4.3
President's Special Award of
Appreciation, 4.5
President's Sustainability Award, 4.9
Selection of recipients, 4.1
Wallace P. Carson, Jr. Award for
Judicial Excellence, 4.7

BALLOTS

Election ballots, 9.2

BAR

See STATE BAR

BAR ACT

Definition of, 1.1

BARBOOKS™ ONLINE LIBRARY

Continuing legal education, 16.300

BAR COUNSEL PANELS

Conflicts of interest. *See* CONFLICTS OF INTEREST (BAR OFFICIALS)

BAR DUES

Annual, 6.4
Hardship exemptions, 6.5
Ideological/political causes, use for, 12.601–12.603
Waiver of, 6.6

BOARD OF BAR EXAMINERS

Composition and duties, 28.1
Indemnification, 2.106
Liaisons, 28.3
Meetings as judicial proceedings, 8.201(d)
Nominations, 38.3

BOARD OF GOVERNORS

Annual Bar membership fees, 6.4
Annual budget, approval of, 7.200
Appointments/nominations
 Executive departments, for, 2.104
 Legislative departments, for, 2.104
Awards. *See* AWARDS
Candidate statements, 2.101(b)
Committees. *See* COMMITTEES
Conflicts of interest. *See* CONFLICTS OF INTEREST (BAR OFFICIALS)
Definition of, 1.1
Disciplinary correspondence, 18.4
Duties of, 2.100
Election of members. *See also* ELECTIONS
 Campaign advertisements, 11.4
 Date for, 9.1
 Overview of, 2.101, 9.1
Emergency meetings, 2.403
Expense reimbursements. *See also* EXPENSE REIMBURSEMENTS
 Disciplinary proceedings against agents, employees, officers, 2.107
 Generally, 2.500, 7.500
 Gifts to retiring members, 2.502
 Out-of-state conferences, 2.501
Functions of, 2.100
Initiative petitions, 3.6

Legislation/public policy

 Initiation of legislation, 12.201
 Priority setting, 12.3

Meetings of

 Attendance, 2.100(f)
 Emergency meetings, 2.403
 Minutes, 2.404
 Public Meetings Law, 8.2, 8.202(c)
 Regular meetings, 2.401
 Robert's Rules of Order, 2.400
 Special meetings, 2.402
 Telephone participation, 2.100(f)

Members

 Challenging candidacies, 2.104
 Committee-assignment preferences, 2.102
 Duties and responsibilities, 2.100(c)–2.100(e)
 Election of members, *above*
 Indemnification of, 2.106
 Judicial appointments/campaigns, involvement in, 2.103
 Public members, *below*
 Replacement of, 18.602
 Minutes of meetings, 2.404

Officers. *See also* PRESIDENT; PRESIDENT-ELECT; VICE PRESIDENT(S)

 Disciplinary complaints against, defense of, 2.107
 Duties of, 2.200
 Indemnification of, 2.106

Oregon New Lawyers Division liaison, 2.405

Professional Liability Fund

 Annual meeting of board, 23.504
 Appointment of PLF directors, 23.1
 Assessments for charges, 23.600, 23.601(b)
 Audits, 23.506
 Mediation of disputes, 23.503
 PLF liaisons, 23.500
 Prosecution of claims, 23.503
 Release of information to board, 23.502
 Removal of PLF directors, 23.1
 Reports to board, 23.501

Public members

 Appointment of, 2.300
 Duties of, 2.301
 Generally, 2.3

Powers of, 2.301
Removal of, 2.302
Vacancies, filling of, 2.303
Referenda, 3.6
Replacement of members, 18.602
Responsibilities of, 2.100
Sections. See SECTIONS
Separation of powers, 2.104
Special meetings, 2.402
Suspension from service, 18.600
Sustainability of Bar operations,
reports, Article 26
Tour agreements, 17.3
Unlawful practice of law
Prosecution of actions by, 20.703
Referral to board, 20.701(e),
20.702

BORROWING

State Bar funds, against, 7.102

BUDGET

Annual budget
Board of Governors' approval, 7.200
Budget and Financial Committee's
recommendation, 7.2
Contingency fund, 7.201
Development of, 7.2
Supreme Court's approval, 7.202
Approval by Board, 2.100

BUDGET AND FINANCIAL COMMITTEE

Annual budget recommendation, 7.2
Bar funds policy, 7.100
Investment of Bar funds, 7.401
Unclaimed lawyer trust accounts,
disbursements from, 27.102(b)

BYLAWS AMENDMENTS

Overview of, Article 28

CAMPAIGN FOR EQUAL JUSTICE (CEJ)

Financial support for, 7.203

CAPITAL RESERVE FUND

Overview of, 7.302(b)

CHIEF FINANCIAL OFFICER

Borrowing against funds, 7.102
Check signatures, 7.103
Deposit of funds, 7.100
Disbursement of funds, 7.100
Investment of funds, 7.401
Receipt of funds, 7.100
Unclaimed lawyer trust accounts,
disbursements from, 27.102(a)

CIRCUIT COURT JUDGES

Appointments, 2.700, 2.702
Elections, 2.701

CLASSROOM LAW PROJECT (CLP)

Financial support for, 7.203

CLIENT ASSISTANCE OFFICE

Records, disclosure of, 8.102
SLAC referrals, 24.400(c)

CLIENT SECURITY FUND

Overview of, 7.300; Article 21

COMMISSION OF JUDICIAL FITNESS AND DISABILITY

Separation of powers, 2.104

COMMITTEES

Administrative services, 14.7
Amicus curiae appearances by, 2.105
Assignments
Development of, 2.102
Preferences for, 2.102
Contact persons, 14.7
Financial issues, 14.5
Joint committees, 14.2
Lawyer assistance. See
PROFESSIONAL LIABILITY FUND
PERSONAL AND PRACTICE
MANAGEMENT ASSISTANCE
COMMITTEE (PLF-PPMAC); STATE
LAWYERS ASSISTANCE
COMMITTEE (SLAC)
Legal Ethics Committee. See LEGAL
ETHICS COMMITTEE
Legislative information/involvement,
12.4, 14.6
Local Professional Responsibility
Committees. See LOCAL
PROFESSIONAL RESPONSIBILITY
BOARDS/COMMITTEES

Meetings of
 Generally, 8.202
 Notices, 14.7
 Quorum, 14.9
Quorum for meetings, 14.9
Reports of, 14.8
Responsibilities of, 14.3
Special committees, 14.1
Standing committees
 Conflicts of interest. *See*
 CONFLICTS OF INTEREST (BAR
 OFFICIALS)
 Generally, 14.1
 Membership on, 14.4
Unlawful Practice of Law Committee,
 20.702. *See also* UNLAWFUL
 PRACTICE OF LAW

COMMUNICATIONS OF THE BAR

Campaign advertisements, 11.4
Editorial policy, 11.2
General policy, 11.1
Media relations, 11.3
Member surveys/questionnaires, 11.5

CONFERENCES

Expense reimbursements, 2.501

CONFIDENTIALITY OF INFORMATION

State Lawyers Assistance Committee,
 24.6, 24.701

CONFLICTS OF INTEREST (BAR OFFICIALS)

Actual conflicts
 Definition of, 2.600
 Disclosure of, 2.602(c)
Definitions, 2.600
Disclosure of, 2.602
 Chief Executive Officer Executive
 Director Conflicts of Chief
 Executive Officer, 2.602(b)
 Notice to Chief Executive Officer,
 2.602(a)
Financial detriment, avoidance of,
 2.601(a)
Financial gain, 2.601(a)
Future employment, 2.601(d)
Gifts

Board retiring members, gifts to,
 2.502
Receipt or solicitation of gift,
 2.601(c)
Government Standards and Practices
 Act, application of, 2.6
Personal gain, 2.601(b)
Potential conflicts
 Definition of, 2.600
 Disclosure of, 2.602(c)
Prohibited actions, 2.601
Witnesses in bar proceedings, 2.603

CONTINGENCY FUND

Annual budget, 7.201

CONTINUING LEGAL EDUCATION (CLE)

BarBooks™ online library, 16.300
Bar sections
 Co-sponsorships with State Bar,
 15.601
 Publications, 15.600
 Seminars, 15.600
 State Bar logo, use of, 15.602
Compensation for services, 16.1
Minimum Continuing Legal Education
 Board, 2.104
Minimum Continuing Legal Education
 budget, 7.202
Publications program
 BarBooks™ online library, 16.300
 Bar sections, 15.600, 15.602
 Print publications discounts, 16.301
 Voluntary Copyright Agreement,
 16.302
Purpose of, 16.1
Seminar programs
 Bar sections, 15.600, 15.602
 Complimentary registration, 16.200
 Expense reimbursements, 16.201
 Planners' expenses, 16.201
 Product discounts, 16.200
 Reduced registration, 16.200
 Speakers' expenses, 16.201

COPYRIGHT AGREEMENT

Publications program, 16.302

CREDIT POLICY

State Bar funds, 7.104

CRIMINAL PROSECUTIONS

Unlawful practice of law, 20.4, 20.50

DEPUTY GENERAL COUNSEL

Check signatures, 7.103

DISCIPLINARY BOARD

Clerk's records, disclosure of, 8.102
Deliberations of trial panels, 8.202(b)
Media coverage of, 8.202(a)
Meetings of, 8.202(b)
Separation of powers, 2.104

DISCIPLINARY COUNSEL'S OFFICE

Disciplinary correspondence, 18.4
Notice to accused, 18.103
Records, disclosure of, 8.102
SLAC referrals, 24.400(c)
State Professional Responsibility Board
Reporting activities of, 18.100
Representation of, 18.100

DISCIPLINE OF MEMBERS

Amicus curiae briefs, 2.105
Annual budget for, 7.202
Bar's agents, employees, officers,
defense of, 2.107
Collection of judgments, 18.3
Correspondence related to, 18.4
Costs, recovery of, 18.3
Disclosure of contacts with SPRB,
18.104
Judicial proceedings, 8.202
Lawyer Referral Service panel,
removal from, 18.5
Letters of admonition, 18.2
Notice to accused, 18.103
Reinstatement proceedings. See
REINSTATEMENT PROCEEDINGS
Witnesses, Board members as, 2.603

DISCRIMINATION

Members of the Bar, Article 10

DONATIONS

Sections, 15.401

DUES

Bar dues. See BAR DUES

Section dues, 15.400

EDITORIAL POLICY

Communications of the Bar, 11.2

ELECTIONS

Ballots, 9.2
Board members. See BOARD OF
GOVERNORS
Campaign advertisements, 11.4
Date of, 9.1
Judicial. See JUDICIAL SELECTIONS
President, for, 2.201(a), 2.201(c)
President-elect, for, 2.201(a)–2.201(c)
Vice-President(s), for, 2.201(a),
2.201(c)
Voting
Overview of, 9.3
President, for, 2.201(c)
President-elect, for, 2.201(c)
Vice-President(s), for, 2.201(c)

ETHICAL ISSUES

Bar officials. See CONFLICTS OF
INTEREST (BAR OFFICIALS)
General Counsel's Office
Ethical advice to Bar members,
19.2, 19.102
Ethical determinations, 19.101
Ethics assistance requests, 19.103
Legal Ethics Committee, 19.300,
19.301
Limitation on ethical advice, 19.2
Submission of ethical questions to,
19.100
Legal Ethics Committee. See LEGAL
ETHICS COMMITTEE
SLAC's reporting of unethical conduct,
24.702

EXECUTIVE COMMITTEE CONFLICTS OF INTEREST

See CONFLICTS OF INTEREST (BAR
OFFICIALS)

EXECUTIVE DIRECTOR

Active Pro Bono eligibility
determinations, 6.101(d)
Bar funds
Borrowing against funds, 7.102

- Deposit of funds, 7.100
- Disbursement of funds, 7.100
- Receipt of funds, 7.100
- Bar funds, against, 7.102
- Bar membership fees, 6.4–6.6
- Board member requests, 2.803
- Candidate statements for Governor, 2.101(b)
- Check signatures, 7.103
- Committees
 - Assignments, development of, 2.102
 - Expenses, approval of, 14.6
- Conference expenses, reimbursement of, 2.501
- Conflicts of interest (Bar officials)
 - Conflicts of director, 2.602(b)
 - Notice to director, 2.602(a)
- Definition of, 1.1
- Duties and responsibilities, 2.100, 2.800
- Editorial policy, 11.2
- Election duties, 9.2
- Evaluation by Board, 2.801
- Investment of Bar funds, 7.401
- Lawyer-groups, plan to visit, 2.100(e)
- Local associations, plan to visit, 2.100(e)
- Notice(s)
 - Agent for receipt of, 2.802
 - Regular Board meetings, 2.401
 - Special Board meetings, 2.402
- Professional Liability Fund responsibilities, 23.507
- Public records requests, 8.101(a), 8.101(b)
- Register of Bar members, 6.2
- Sustainability coordinator of Bar operations, designation of, Article 26
- Unclaimed lawyer trust accounts
 - Claims against, approval or denial of, 27.103
 - Disbursements from, 27.102(a)
- Write-offs, 7.105

EXPENSE REIMBURSEMENTS

- ABA House of Delegates, State Bar delegates of, 5.3
- Board of Governors

- Disciplinary proceedings against agents, employees, officers, 2.107
- Generally, 2.500
- Gifts to retiring members, 2.502
- Out-of-state conferences, 2.501
- Documentation supporting, 7.500
- Eligible expenses, 7.501
- Gifts to retiring members, 2.502
- Guests, for, 7.500
- House of Delegates, 7.502
- Late requests for, 7.500
- Lodging, 7.501(c)
- Meals, 7.501(d)
- Overview of, 7.500
- Requests for, 7.500
- Seminar programs, 16.201
- Spouses, for, 2.501, 7.500
- State Professional Responsibility Board, 7.500, 18.102
- Transportation/travel costs, 7.501(a), 7.501(b)

FOOD COSTS

- Expense reimbursements, 7.501(d)

FORMAL ETHICS OPINIONS

- Overview of, 19.301

FUNDS (STATE BAR)

- Affirmative Action Program, 7.300
- Audits, 7.101
- Borrowing against, 7.102
- Budget. See BUDGET
- Budget and Financial Committee policy, 7.100
- Check signatures, 7.103
- Chief Financial Officer
 - Borrowing against funds, 7.102
 - Check signatures, 7.103
 - Disbursement of funds, 7.100
 - Investment of funds, 7.401
 - Receipt of funds, 7.100
- Client Security Fund, 7.300; Article 21
- Credit policy, 7.104
- Deposit of, 7.100
- Disbursement of, 7.100, 7.103

Chief Executive Officer Executive

- Director Borrowing against funds, 7.102

- Deposit of funds, 7.100
- Disbursement of funds, 7.100
- Receipt of funds, 7.100
- Investment of
 - Approved investments, 7.402
 - Federal agency obligations, in, 7.403
 - Guidelines/policies, annual review of, 7.401
 - Investment Committee, 7.401
 - Limitations, 7.403
 - Local Government Investment Pool, in, 7.403
 - Long-Term Investment policy, 7.400
 - Management of investments, 7.401
 - Performance standards, 7.401
 - Policy behind, 7.400
 - Prudent person standard, 7.404
 - Short-Term Investment policy, 7.400
 - U.S. Treasury obligations, in, 7.403
- Management of, 7.1
- Receipt of, 7.100
- Reserve funds
 - Capital Reserve Fund, 7.302(b)
 - General Fund, 7.300, 7.301
 - General Operating Reserve Fund, 7.302(a)
 - Separate funds, 7.300, 7.302
- Write-offs, 7.105
- GENERAL COUNSEL'S OFFICE**
- Check signatures, 7.103
- Disciplinary proceedings
 - Correspondence relating to, 18.4
 - Defense of Bar's agents, employees, officers, 2.107(c)
- Ethical issues
 - Advice to Bar members, 19.2, 19.102
 - Assistance requests, 19.103
 - Determination of, 19.101
 - Legal Ethics Committee, 19.300, 19.301
 - Limitation on advice, 19.2
 - Submission of questions to counsel, 19.100
- Legal Ethics Committee, relationship to, 19.300, 19.301

GENERAL FUND

Overview of, 7.300, 7.301

GENERAL OPERATING RESERVE FUND

Overview of, 7.302(a)

GIFTS

- Board retiring members, 2.502
- Conflicts of interest (Bar officials)
 - Board retiring members, gifts to, 2.502
 - Receipt or solicitation of gift, 2.601(c)

GOVERNOR

See also BOARD OF GOVERNORS
 Candidate statements, 2.101(b)
 Definition of, 1.1

GRANTS

- Charitable organizations, for, 7.203
- Non-profit organizations, for, 7.203
- Sections, 15.7

HOTEL COSTS

- Expense reimbursements, 7.501(c)

HOUSE OF DELEGATES

- ABA House of Delegates
 - Campaign advertisements, 11.4
 - Expense reimbursements, 5.3
 - Selection of delegates for, 5.1, 9.1
 - Voting by, 5.2
- Definition of, 1.1
- Duties of, 3.1
- Election of members
 - Campaign advertisements, 11.4
 - Generally, 9.1
- Expense reimbursements, 7.502
- Functions of, 3.1
- Initiative petitions, 3.6
- Meetings of
 - Agendas, 3.4
 - Expense reimbursements, 7.502
 - Parliamentarian(s) for, 3.5
- Number of delegates, 3.2
- Powers of, 3.1
- Recall of delegates, 3.2
- Referenda, 3.6

Removal of public member delegates, 3.2
Resolutions, 3.3, 3.4
Terms of office, 3.2
Vacancies, 3.2

IMMEDIATE PAST PRESIDENT,
2.200(c)

INDEMNIFICATION

Bar members, officers, etc., 2.106

INITIATIVE PETITIONS

Board of Governors, 3.6
House of Delegates, 3.6

INSURANCE

Bar-sponsored, 17.2

INVESTMENT OF BAR FUNDS

Approved investments, 7.402
Federal agency obligations, in, 7.403
Guidelines/policies, annual review of, 7.401
Investment Committee, 7.401
Limitations on, 7.403
Local Government Investment Pool, in, 7.403
Long-Term Investment policy, 7.400
Management of investments, 7.401
Performance standards, 7.401
Policy behind, 7.400
Prudent person standard, 7.404
Short-Term Investment policy, 7.400
U.S. Treasury obligations, in, 7.403

JUDICIAL SELECTIONS

Appointments
Board members' involvement in, 2.103
Statewide appointments, 2.703
Campaigns
Advertisements, 11.4
Board members' involvement in, 2.103
Overview of, 2.700
Preference polls
Circuit court appointments, 2.700, 2.702
Circuit court elections, 2.701
Contested elections, 2.700

Statewide appointments, 2.703
Statewide elections, 2.701
Statewide appointments, 2.703

LAW STUDENT ASSOCIATES

State Bar, Article 25

LAWYER ASSISTANCE

See PROFESSIONAL LIABILITY FUND
PERSONAL AND PRACTICE
MANAGEMENT ASSISTANCE
COMMITTEE (PLF-PPMAC); STATE
LAWYERS ASSISTANCE
COMMITTEE (SLAC)

**LAWYER REFERRAL SERVICE
PANEL**

Removal from, 18.5

LEGAL ETHICAL ISSUES

See ETHICAL ISSUES

LEGAL ETHICS COMMITTEE

Formal opinion process, 19.301
Response to inquiries, 19.300
Submission of questions to, 19.300

LEGAL PUBLICATIONS PROGRAM

See PUBLICATIONS PROGRAM

LEGAL SERVICES PROGRAM

State Bar funds, 7.300
Unclaimed lawyer trust account funds, 27.102(b)

LEGISLATION/PUBLIC POLICY

Bar dues, use of
Arbitration of disputes, 12.602
Objections, 12.600, 12.602
Refund of dues, 12.601
Board of Governors
Initiation of legislation, 12.201
Priority setting, 12.3
Eligible subjects of, 12.1
Guidelines, 12.1
Initiation of legislation
Bar committees/sections, by, 12.4, 14.6
Board of Governors, by, 12.201
House of Delegates, by, 12.200

Legislative Assembly initiatives, by, 12.200
Legislative process, 12.3
Professional Liability Fund, 12.5

LETTERS OF ADMONITION

Discipline of members, 18.2

LOCAL GOVERNMENT INVESTMENT POOL

Bar funds, 7.403

LOCAL PROFESSIONAL RESPONSIBILITY BOARDS/COMMITTEES

Conflicts of interest. *See* CONFLICTS OF INTEREST (BAR OFFICIALS)
Meetings of, 8.202(b)
Replacement of members, 18.601
Suspension from service, 18.600

LODGING

Expense reimbursements, 7.501(c)

LOGO OF STATE BAR

Bar-sponsored insurance, 17.2
CLE programs, 15.602

MEALS

Expense reimbursements, 7.501(d)

MEDIA COVERAGE

Disciplinary Board proceedings, 8.202(a)

MEDIA RELATIONS

State Bar, 11.3

MEDIATION OF DISPUTES

Professional Liability Fund, 23.503

MEMBERS OF THE BAR

Active members
Definition of, 6.100
Pro bono. *See* PRO BONO SERVICES
Rights of, 6.3
Transfer to inactive status, 6.102
Administrative services for, 17.1
Anti-discrimination policy, Article 10

Assessments. Fees and assessments, *below*

Classification of, 6.100

Definition of, 1.1

Discipline of. *See* DISCIPLINE OF MEMBERS

Diversity of, Article 10

Ethical issues. *See* ETHICAL ISSUES

Fees and assessments

Annual, 6.4

Hardship exemptions, 6.5

Ideological/political causes, use of dues for, 12.601–12.603

Waiver of, 6.6

Inactive members

Definition of, 6.100

Fees and assessments, 6.4

Transfer to active status, 6.102

Practice of law

Amicus curiae briefs, 2.105

Unlawful practice. *See* UNLAWFUL PRACTICE OF LAW

Pro bono services. *See* PRO BONO SERVICES

Register of, 6.2

Reinstatement of. *See*

REINSTATEMENT PROCEEDINGS

Rights of, 6.3

State bar services, 17.1

Surveys/questionnaires, 11.5

Suspended members' rights, 6.3

MILITARY PERSONNEL

Bar dues. waiver of, 6.6

MINIMUM CONTINUING LEGAL EDUCATION BOARD

Separation of powers, 2.104

MISSION OF STATE BAR

Overview of, 1.2

MOTEL COSTS

Expense reimbursements, 7.501(c)

OFFICERS

See also specific officer

Election of, 2.201

Removal of, 2.202

OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP)

Notice of SLAC referrals, 24.402

OREGON NEW LAWYERS DIVISION (ONLD)

Board expenses, reimbursement of, 7.500. *See also* EXPENSE REIMBURSEMENTS

Board of Governors liaison, 2.405

OREGON STATE BAR

See STATE BAR

OREGON SUPREME COURT

Annual budget, approval of, 7.202

PEACE CORPS VOLUNTEERS

Bar dues. waiver of, 6.6

PRACTICE OF LAW

Amicus curiae briefs, 2.105

Unlawful practice. *See* UNLAWFUL PRACTICE OF LAW

PRESIDENT

Awards. *See specific award*

Bar funds, borrowing against, 7.102

Defense of Bar's agents', employees', officers' misconduct, 2.107(c)

Definition of, 1.1

Duties of, 2.200(a)

Election of, 2.201(a), 2.201(c)

Lawyer-groups, plan to visit, 2.100(e)

Local associations, plan to visit, 2.100(e)

Out-of-state conference expenses, reimbursement of, 2.501

PRESIDENT-ELECT

Committee-assignments, development of, 2.103

Definition of, 1.1

Duties of, 2.200(b)

Election of

Candidates, 2.201(b)

Overview, 2.201(a)

Voting, 2.201(c)

Out-of-state conference expenses, reimbursement of, 2.501

Voting for, 2.201(c)

PRESIDENT'S AFFIRMATIVE ACTION AWARD

Criteria for, 4.4

PRESIDENT'S MEMBERSHIP SERVICE AWARD

Criteria for, 4.2

PRESIDENT'S PUBLIC LEADERSHIP AWARD

Criteria for, 4.8

PRESIDENT'S PUBLIC SERVICE AWARD

Criteria for, 4.3

PRESIDENT'S SPECIAL AWARD OF APPRECIATION

Overview of, 4.5

PRESIDENT'S SUSTAINABILITY AWARD

Criteria for, 4.9

PRO BONO SERVICES

Active Pro Bono members

Application form, 6.101(d)

Eligibility for, 6.101(b), 6.101(d)

Fees, 6.101(c)

Purpose of, 6.101(a)

Reporting duties, 6.101(e)

Transfer of status, 6.101(f)

Aspirational standard for, 13.1

Attorney fees, 13.201(b)

Definition of, 13.1

Program

Certification of, 13.2

Compensation of lawyers, 13.201(b)

Diversity, 13.201(e)

Fees, 13.201(c)

Professional liability coverage, 13.201(f)

Purpose of, 13.201(a)

Quality control, 13.201(d)

Recognition of volunteers, 13.202

Recognition of volunteers, 13.202

PROFESSIONAL LIABILITY FUND PERSONAL AND PRACTICE

**MANAGEMENT ASSISTANCE
COMMITTEE (PLF-PPMAC)**

Authority of, 24.201
Composition of, 24.301
Creation of, 24.1
Purpose of, 24.1

**PROFESSIONAL LIABILITY FUND
(PLF)**

Assessments for charges
Board of Directors, 23.601(a)
Board of Governors, 23.600,
23.601(b)
Audits, 23.506
Board of Directors
Assessments for charges, 23.601(a)
Authority of, 23.2
Members of, 23.1
Operation of, 23.3
Overview of, 23.1
Reappointments, 23.1
Terms of office, 23.1
Board of Governors
Annual meeting of, 23.504
Appointment of PLF directors, 23.1
Assessments for charges, 23.600,
23.601(b)
Audits, 23.506
Mediation of disputes, 23.503
PLF liaisons, 23.500
Prosecution of claims, 23.503
Release of information to board,
23.502
Removal of PLF directors, 23.1
Reports to board, 23.501
Chief Executive Officer^{Executive}
Director's and Bar staff's
responsibilities, 23.507
Legislation/public policy, 12.5
Mediation of disputes, 23.503
Office location, 23.506
Reports
Annual report, 23.4
Board of Governors, to, 23.501

PUBLICATIONS PROGRAM

BarBooks™ online library, 16.300
Bar sections, 15.600, 15.602
Print publications discounts, 16.301
Voluntary Copyright Agreement,
16.302

PUBLIC POLICY

See LEGISLATION/PUBLIC POLICY

PUBLIC RECORDS

Alternative formats for, 8.101(f)
Copies of, 8.101(e)
Disclosure of
Client Assistance Office's records,
8.102
Disciplinary Board Clerk's records,
8.102
Disciplinary Counsel Office's
records, 8.102
Disputes, 8.101(a)
Fees for, 8.101(b)–8.101(e)
Inspection policy, 8.100
Requests for, 8.101

PURPOSES OF STATE BAR

Overview of, 1.2

RECOGNITION AWARDS

See AWARDS

REFERENDA

Board of Governors, 3.6
House of Delegates, 3.6

REINSTATEMENT PROCEEDINGS

Collection of judgments, 18.3
Costs, recovery of, 18.3
Judicial proceedings, 8.202
Overview of, 6.103
Witnesses, Board members as, 2.603

RESERVE FUNDS

Capital Reserve Fund, 7.302(b)
General Fund, 7.300, 7.301
General Operating Reserve Fund,
7.302(a)
Separate funds, 7.300, 7.302

RESOLUTIONS

House of Delegates, 3.3, 3.4

SECTIONS

Administrative services, 15.5
Amicus curiae briefs, 2.105

Bylaws, 15.3
CLE activities, 15.6. *See also*
CONTINUING LEGAL EDUCATION
(CLE)
Donations, 15.401
Dues, 15.400
Formation of, 15.2
Grants, 15.7
Legislation, initiation of, 12.4
Meetings of, 8.202
Officers' conflicts of interest. *See*
CONFLICTS OF INTEREST (BAR
OFFICIALS)
Procurements by, 15.5
Publications production support
services, 15.5
Purpose of, 15.1
State Bar funds, 7.300

SEMINAR PROGRAMS

Bar sections, 15.600, 15.602
Complimentary registration, 16.200
Expense reimbursements, 16.201
Planners' expenses, 16.201
Product discounts, 16.200
Reduced registration, 16.200
Speakers' expenses, 16.201

SPECIAL COMMISSIONS/TASK FORCES

Expense reimbursements, 7.500. *See*
also EXPENSE REIMBURSEMENTS

SPECIAL COMMITTEES

Generally, 14.1

STATE BAR

Amendment of Bylaws, Article 28
Board of Governors. *See* BOARD OF
GOVERNORS
Communications of. *See*
COMMUNICATIONS OF THE BAR
Defense of agents, employees, officers
in disciplinary proceedings, 2.107
Definition of, 1.1
Dues used for ideological/political
causes, 12.601–12.603
Funds. *See* FUNDS (STATE BAR)
Indemnification of members, officers,
etc., 2.106
Law Student Associates, Article 25

Legislation/public policy. *See*
LEGISLATION/PUBLIC POLICY

Logo

Bar-sponsored insurance, 17.2

CLE programs, 15.602

Media relations, 11.3

Members. *See* MEMBERS OF THE BAR

Mission of, 1.2

Office location, 7.6

Officials' conflicts of interest. *See*
CONFLICTS OF INTEREST (BAR
OFFICIALS)

Records of. *See* PUBLIC RECORDS

Staff

Conflicts of interest. *See*
CONFLICTS OF INTEREST (BAR
OFFICIALS)

Professional Liability Fund
responsibilities, 23.507

Sustainability of operations, Article 26

Tour agreements, 17.3

STATE BAR ACT

Definition of, 1.1

STATE LAWYERS ASSISTANCE COMMITTEE (SLAC)

Annual report of activities, 24.703

Authority of, 24.200

Complaints, 24.400

Composition of, 24.300

Confidentiality of information, 24.6,
24.701

Creation of, 24.1

Designees of

Confidentiality of information, 24.6,
24.701

Duty to report unethical conduct,
24.702

Intake designees, 24.402

Overview, 24.401

Intake designees, 24.402

Intake log, 24.6

Investigations, 24.5

Public meetings, 24.704

Purpose of, 24.1

Records of, 24.6

Referrals to, 24.400

Referred lawyer(s)

Meeting with, 24.404

Non-cooperation of, 24.700

Notice to, 24.403

Preliminary assessment of, 24.402
Professional evaluation of, 24.502
Release of information by, 24.501
Remedial action plan for, 24.503

**STATE PROFESSIONAL
RESPONSIBILITY BOARD
(SPRB)**

Composition of, 18.101
Contacts with board, disclosure of,
18.104
Disciplinary Counsel Office
Reporting board activities, 18.100
Representation of board, 18.100
Discipline of Bar members. See
DISCIPLINE OF MEMBERS
Duties of, 18.100
Expense reimbursements, 7.500,
18.102. See *also* EXPENSE
REIMBURSEMENTS
Meetings of, 8.202(b)
Replacement of members, 18.601
Separation of powers, 2.104
Suspension from service on, 18.600

SUPREME COURT

Annual budget, approval of, 7.202

SURVEYS/QUESTIONNAIRES

Members of the Bar, 11.5

SUSTAINABILITY AWARD

President's Sustainability Award, 4.9

SUSTAINABILITY OF OPERATIONS

State Bar, Article 26

TOUR AGREEMENTS

Board of Governors, 17.3

TRANSPORTATION/TRAVEL COSTS

Expense reimbursements, 7.501(a),
7.501(b)

TREASURY OBLIGATIONS (U.S.)

Bar funds, investment of, 7.403

**UNCLAIMED LAWYER TRUST
ACCOUNTS**

Adjudication of claims, 27.103
Administration of, 27.101

Disbursements from, 27.102
Purpose of, 27.100

UNLAWFUL PRACTICE OF LAW

Board of Governors
Prosecution of actions by,
20.701(c)(1)
Referral to board, 20.701(c)
Complaints
Board of Governors' actions, 20.701
Committee actions, 20.701
Disposition of, 20.701
Investigation of, 20.500
Processing of, 20.5
Records of, 20.8
Referral to other agencies,
20.701(d)
Resolution by agreement, 20.601
Definitions, 20.1
Education of public, 20.700
Informal Advisory Opinions, 20.701
Information letters, 20.501(b)
Investigations, 20.3

U.S. TREASURY OBLIGATIONS

Bar funds, investment of, 7.403

VICE PRESIDENT(S)

Definition of, 1.1
Duties of, 2.200(a)
Election of, 2.201(a), 2.201(c)

VISTA VOLUNTEERS

Bar dues. waiver of, 6.6

**VOLUNTARY COPYRIGHT
AGREEMENT**

Publications program, 16.302

VOTING

Overview of, 9.3
President, for, 2.201(c)
President-elect, for, 2.201(c)
Vice-President(s), for, 2.201(c)

**WALLACE P. CARSON, JR. AWARD
FOR JUDICIAL EXCELLENCE**

Overview of, 4.7

WRITE-OFFS

DRAFT

FORMAL OPINION 2017:xxxx

Conflicts of Interest, Current Clients: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share

Facts:

Married Couple approaches Lawyer jointly and asks Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years and both have children from their previous marriages. They have no children from their current marriage.

Married Couple own their house as tenants by the entirety, but have kept the majority of their assets separate. Spouse A has substantially more assets than Spouse B. They inform Lawyer that it is their individual intent that they would prefer that their estate plans provide that their separate assets be distributed to their children by their previous marriages and their jointly owned assets pass to the surviving spouse by right of survivorship.

Because of the value of Spouse A's separate property, it is clear to Lawyer that Spouse B would have an elective share claim if Spouse A were to die first. An elective share claim would defeat Married Couple's current intentions for their estate plan.

Married Couple does not have a prenuptial agreement.

Questions:

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?
2. May Lawyer advise both Spouse A and Spouse B as to their respective elective share rights as provided in ORS 114.620(1)?
3. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?
4. After Spouse A and Spouse B have agreed to waive the elective share, may Lawyer advise Married Couple concerning their estate plan?

Conclusions:

1. Yes.
2. No, qualified.
3. No, qualified.
4. Yes.

Discussion:

Oregon RPC 1.7 provides:

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

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.”

1. Lawyer May Provide Information About The Elective Share And Its Potential Waiver To Both Spouses.

Under Oregon’s elective share statute, a surviving spouse may elect to receive a percentage share of the decedent’s estate according to a formula based on the length of the marriage. ORS 114.605. Absent a waiver of that right, the elective share will override a contrary provision in the decedent’s will. *Id.* However, that legal right can be waived. Under ORS 114.620, a spouse may enter into a written agreement, before or after the marriage, to waive his or her elective share. Such agreement to waive the elective share is a type of pre-nuptial or post-nuptial agreement. *In re Estate of Richard B. Wilber*, 75 A3d 1096, 1099 (2013).

Providing general information about the elective share does not create a significant risk that Lawyer’s responsibility to one client will be materially impaired by his responsibilities to the other. Each spouse has a fiduciary obligation to the other requiring full disclosure and fairness. *Day v. Vitus*, 102 Or App 97, 792 P2d 1240 (1990); *Matter of Marriage of Eltzroth*, 67 Or App 520, 526, 679 P2d 1369 (1984); *Bauer v. Bauer*, 1 Or App 504, 464 P2d 710 (1970). Providing information about the elective share and its waiver to both spouses is consistent with each spouse’s duty to each other. Therefore, it does not create a significant risk of impairing Lawyer’s obligation to either spouse for Lawyer to provide such information to both spouses.

2. Advice to Waive Elective Share Presents A Current Client Conflict Of Interest.

Spouses often seek joint representation in estate planning. Typically, the interests of the spouses will be aligned for such purposes. However, there are exceptions in which simultaneous representation would be prohibited. OSB Formal Opinion No. 2005-86. “For example, spouses with children by prior marriages may have very different opinions concerning how their estates should be divided.” *Id.* Thus, an attorney was reprimanded for representing both spouses in revising their estate plans in *In re Plinski*, 16 DB Rptr 114 (2002). In that case, the spouses’ interests were adverse because they had children from prior marriages, their respective estates were of different values, they had ongoing financial disagreements, and one spouse was, for reasons of health and disposition, likely susceptible to pressure from the other. *Id.*

An agreement to waive the elective share presents such conflicting interests. As with any pre-nuptial or post-nuptial agreement, it requires one or both spouses to give up potentially valuable legal rights. Such agreement may be particularly fraught with issues that could impair a lawyer’s ability to provide competent and diligent representation to both spouses. By definition, it contemplates that the spouses might leave the majority of their estates to others. One or both spouses may wish to provide for children from another marriage. There may be a potential imbalance between the spouses’ respective estates, such that the right to an elective share could be more important to one spouse than the other. One spouse may be more sophisticated than the other; one may be in better health and more likely to benefit from the elective share. Waiver elective shares might even require renegotiation of the terms of a prenuptial agreement. Any of those factors creates “a significant risk

that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." RPC 1.7(a)(2).

Some conflicts may be waivable with informed consent confirmed in writing. RPC 1.7(b)(1) allows such waiver if "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." Comment 15 to the ABA Model Rule 1.7 notes that "[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest." The *Restatement of Law Governing Lawyers* § 122, comment g.iv, explains:

"The general standard . . . assesses the likelihood that the lawyer will, following consent, be able to provide adequate representation to the clients. The standard includes the requirements both that the consented-to conflict not adversely affect the lawyer's relationship with either client and that it not adversely affect the representation of either client. In general, if a reasonable and disinterested lawyer would conclude that one or more of the affected clients could not consent to the conflicted representation because the representation would likely fall short in either respect, the conflict is nonconsentable."

Were Lawyer to represent both spouses with respect to an agreement to waive the elective share, Lawyer would be literally representing both sides of an agreement likely to benefit one client more than the other. Such conflict may be waivable in limited circumstances, but it is perilous. The Oregon Supreme Court observed, in a case where an attorney drafted an employment contract while representing both the employer and the employee, that "[i]t is never proper for a lawyer to represent clients with conflicting interests no matter how carefully and thoroughly the lawyer discloses the possible effect and obtains consent." *In re Jans*, 295 Or 289, 295, 666 P2d 830 (1983). It explained:

"It is of the utmost importance that the attorney representing both parties to a transaction reflect upon the rationales behind conflict of interest proscriptions. It is not sufficient that the attorney believes himself able adequately to represent potentially differing interests, or even that all parties have consented. The possibility of subconsciously favoring the interests of either party, the appearance of impropriety that may arise from even the slightest dissatisfaction, the likelihood of receiving confidential information from one party that is damaging or helpful to the other, and the possibility that a court will subsequently disagree with the attorney's decision that he was able adequately to represent both interests—all dictate extreme caution in these situations.

The temptation to represent potentially conflicting interests is particularly difficult to resist in family disputes. Often the attorney is the ‘family lawyer’ and has represented husband, wife, and even the children on previous occasions. . . . If the parties have not clearly understood the lawyer's ethical responsibilities *ab initio*, the ensuing rancor may be directed toward him.”

Id. at 295 n 7 (quoting Aronson, *Conflict of Interest*, 52 Wash L Rev 807, 826–27 (1977)); see also *In re Robertson*, 290 Or 639, 648, 624 P2d 603 (1981) (lawyer is disciplined for representing both buyer and seller of real property).

Comment 30 to ABA Model Rule 1.7 notes that “[a] particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality.” Attorney-client privilege is typically waived among clients who are jointly represented. OEC 503(4)(e). Such lack of confidentiality may make it difficult for Lawyer to explore whether one spouse has concerns about waiving the elective share, since that spouse may be reluctant to fully share those concerns with the other spouse. That, in turn, impairs Lawyer’s ability to fully advise each spouse.

In addition to potentially impairing the lawyer’s ability to represent the spouse who might object to waiving the elective share, the conflict also creates risk for the other spouse. A spouse may make certain estate planning decisions based on what he or she believes to be other spouse’s waiver of the elective share. A later finding that the waiver was invalid, due to the attorney’s conflictive representation, would likely frustrate the decedent’s estate plan that counted on that waiver of elective share.

Under the facts as presented here, the conflict is very likely to be nonconsentable. The facts listed are likely to impair Lawyer’s ability to give complete, competent and diligent advice to both spouses as to waiver of the elective share. In particular, the existence of children from previous marriages and the imbalance between the spouses’ separate estates heightens their need for thorough and independent advice. One may reasonably expect Lawyer’s ability to render such advice to be impaired by Lawyer’s duties to the other spouse.

There may be other circumstances in which a lawyer could reasonably believe that he or she could provide competent and diligent representations to both parties to an agreement to waive the elective share. That is more likely if the elective share appears unlikely to substantially affect the estate plan,¹ the spouses do not have children from prior marriages, their separate assets are similar in value, they are both highly sophisticated and unlikely to be susceptible to pressure, and they are similarly positioned with respect to life expectancy. See *In re Plinski*, 16 DB Rptr 114 (2002). Additionally, Formal Opinion No. 2005-86 set forth a list of factors that, in rare circumstances, might

¹ It is not always clear, at the time an estate plan is created, whether a devise is likely to be more or less than the elective share. The value of the estate and the devise may be changed by fluctuating values of joint and separate assets, unforeseen expenses, and other inheritances or gifts. Additionally, the statutory percentage of the elective share changes with the length of the marriage.

allow for joint representation during a divorce. Although that opinion addressed different circumstances, some of the listed factors may be applicable here, including:

- “(3)The marital estate must not contain substantial assets or liabilities;
- (4) The parties must have fully agreed on the disposition of all assets and liabilities [or, here, waiver of the elective share] before consulting the lawyer;
- (5) The lawyer must be in a position to conclude that each party has provided full disclosure of all assets . . .”

To sum up, the more important the elective share appears to be to either spouse, the less likely the conflict is to be waivable, and vice versa.

A lawyer weighing the totality of these factors might reasonably believe that he or she could competently and diligently represent both spouses with respect to an agreement to waive of the elective share. Even in a case where the conflict is waivable, the lawyer would still be required to obtain both clients’ informed consent pursuant to RPC 1.7(b).

3. Preparation of Agreement Waiving Elective Share.

The same analysis applies with respect to preparing the agreement to waive the elective share. Once Lawyer has undertaken to represent both spouses with respect to estate planning, there is a conflict if he represents either spouse with respect to drafting an agreement to waive the elective share. For example, an attorney drafted a property settlement on behalf of divorcing spouses in *Matter of Marriage of Eltzroth*, 67 Or App 520, 679 P2d 1369 (1984). The lawyer “acted only as a scrivener” and “did not provide independent advice to either party.” *Id.*, 67 Or App at 526. Nonetheless, the Court of Appeals noted that it did “not condone the conduct of the attorney in continuing to represent both parties” to the agreement. *Id.* at n 7.

This conflict may be avoided if Lawyer has not yet undertaken representation of one of the spouses with respect to estate planning. As attorney for only one of the spouses, Lawyer may prepare an agreement mutually waiving the elective share on behalf of the spouse that Lawyer represents. It is not mandatory that both parties to a prenuptial or postnuptial agreement be represented by counsel, although that is a factor in determining whether such agreement is enforceable. *Matter of Marriage of Leathers*, 98 Or App 152, 779 P2d 619 (1989).

4. Advice Concerning Estate Plan after Execution of Agreement to Waive Elective Share.

Once the issue of waiver of the elective share has been eliminated by execution of an agreement, Lawyer may represent Spouse A and Spouse B in preparation of their estate planning, absent other circumstances that would create a conflict of interest under RPC 1.7.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 16, 2017
Memo Date: November 1, 2017
From: MCLE Committee
Re: Category II credit for service on certain committees

Action Recommended

Approve the MCLE Committee's recommendation to amend the MCLE Rules and Regulations to allow members to claim Category II credit for service on certain committees and councils that are responsible for drafting court legal rules or jury instructions.

Background

At its April 2017 meeting, Board of Governors reviewed and approved the following MCLE rule and regulation amendments, which allow members to claim Category II MCLE credit for service on the Oregon Council on Court Procedures:

MCLE Rule 5.12 Oregon Council on Court Procedures. Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.

MCLE Regulation 5.200

- (i) Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.

This proposed rule amendment was approved by the Oregon Supreme Court on June 14, 2017.

1. Board's Interest in Uniform Approach

While the Board approved the recommendation to allow Category II Credit for service on the Oregon Council on Court Procedures, some members expressed concern about adding committee service to Category II on a piecemeal basis. Board members voiced a belief many members serve on similar rulemaking committees, such as the Uniform Trial Court Rules

Committee¹ and the Federal Bar Association's Local Rules Advisory Committee², which may be equally deserving of Category II credit.

Currently, members who serve on most committees that require them to provide legal advice or rely on their legal expertise will only qualify for Category III credit, which is capped at six credits per three-year reporting period. Category II credit is capped at twenty credits per three-year reporting period, and is therefore seen as more valuable to members.

Based on the Board's input, the MCLE Committee reexamined MCLE 5.11, 5.12 and related regulations and discussed whether it would be possible to take a more uniform approach to granting Category II credit.

2. MCLE Committee Proposal

After discussion, the MCLE Committee determined that a more uniform approach to committee service MCLE credit is possible. The Committee recommends that rules on committee service be amended to focus on the utility of a committee's service to the judicial system and judicial process. The MCLE Committee concluded that committees with a focus on rulemaking or drafting jury instructions are likely to require rigorous service and demand in-depth legal analysis from their membership. Further, the bar has a general interest in encouraging lawyers to engage in and support the work of the judicial branch. On either basis, a case can be made that such activities should be entitled to Category II credit.

Accordingly, the MCLE Committee recommends amending Rule 5.11 as follows and deleting Rule 5.12, rather than separately enacting a rule for each committee:

~~**Rule 5.11 Jury Instructions Committee Service.** Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.~~ **Credit for Committee and Council Service.** Credit may be claimed for serving on committees that are responsible for drafting court legal rules or jury instructions that are designed to

¹ Uniform Trial Court Rules Committee – Members are appointed by the Chief Justice of the Oregon Supreme Court to review proposed changes to the rules each year. The rules must be consistent with state law and with the Oregon Rules of Civil Procedure. This committee also reviews all of the Supplementary Local Rules of the Oregon Trial Courts.

² FBA's Local Rules Advisory Committee – Members are appointed by the Chief Judge to review proposed changes to the FBA's Local Rules of Civil Procedure. This committee is currently being restructured in respect to defining member terms, meeting schedule and refining the committee's charge.

aid the judicial system and improve the judicial process. Examples include service on the Oregon State Bar Uniform Civil Jury Instructions Committee, Uniform Criminal Jury Instructions Committee, Oregon Council on Court Procedures, Uniform Trial Court Rules Committee, and the Federal Bar Association's Local Rules Advisory Committee.

~~**Rule 5.12 Oregon Council on Court Procedures.** Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.~~

If the above-proposed amendments are approved, the MCLE Committee recommends that the following regulations also be amended:

Regulation 5.300

~~(f) Credit for Committee and Council Service: Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.11, a member must attend at least 9 hours of regularly scheduled committee or council meetings during the year. Jury Instructions Committee Service. Members may claim two general credits for each 12 months of service. To be eligible for credit under MCLE Rule 5.10, a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.~~

(g) Service as a Bar Examiner. Three (3) credits may be claimed for writing a question and three (3) credits may be claimed for grading a question.

(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule 5.9.

~~(i) Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.~~

Oregon State Bar
Special Open Session of the Board of Governors
January 5, 2018
Minutes

President Vanessa Nordyke called the meeting to order at 11:10 a.m. on January 5, 2018. The meeting adjourned at 11:55 a.m. Members present from the Board of Governors were John Bachofner, Whitney Boise, Chris Costantino, Eric Foster, John Grant, Rob Gratchner, Guy Greco, Michael Levelle, Eddie Medina, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Michael Rondeau, Traci Rossi, Kerry Sharp, and David Wade. Not present were Colin Andries, Liani Reeves, and Julia Rice. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Jonathan Puente, Dani Edwards, Catherine Petrecca, and Camille Greene. Also present was Jennifer Nicholls, ONLD Chair.

1. Call to Order

2. Swearing In

Ms. Nordyke swore in new board members Whitney Boise, John Grant, Michael Rondeau, and David Wade. Colin Andries was not present.

3. Adopt BOG Areas of Focus for 2018

Ms. Nordyke presented the 2018 areas of focus for board approval and thanked past-president, Mr. Levelle for his work. **[Exhibit A]**

Motion: Mr. Peachey moved, Mr. Gratchner seconded, and the board voted unanimously in favor of adopting the areas of focus for 2018.

4. Final Diversity Action Plan

Mr. Puente presented the final Diversity Action Plan for board approval. Ms. Nordyke asked Mr. Puente to outline the goals that would affect the BOG's future actions. Mr. Puente pointed out Goal 2 Strategy 2 Actions 2.2.1 and 2.2.2. Ms. Nordyke pointed out Action 2.3.1 and asked Ms. Nicholls how the Diversity Action Plan would affect the ONLD. Ms. Nicholls stated that the ONLD retreat this weekend will include a review of the plan. **[Exhibit B]**

Motion: Mr. Bachofner moved, Mr. Rondeau seconded, and the board voted unanimously in favor of approving the final Diversity Action Plan.

5. Other

Ms. Rastetter emphasized the importance of the short legislative session and the consumer protection package and encouraged the board to use their talking points when engaging with members. She also said the bar was asked to take a position on an ABA proposal to not allow non-unanimous verdicts. Oregon and Louisiana are the only two states that currently allow non-unanimous verdicts in criminal cases. The Public Affairs Committee recommends that the the board give it authority to look into the proposal further and take a position consistent with

the bar's mission and Keller and present that position to the board for ratification at its next meeting.

Motion: Mr. Wade moved, Mr. Peachey seconded, to allow the committee to look at it further, take action, and come back to the board for ratification. Mr. Grant suggested the committee consult with the Criminal Law Section. Mr. Levelle stated that the African-American community is affected by the non-unanimous vote and described it as institutional racism. Ms. Grabe stated it is a higher-level justice system issue. Mr. Peachey asked if there was proposed resolution in the Oregon Legislature now. Ms. Rastetter answered "no." Mr. Peachey recommended the possibility of bringing this to the House of Delegates in the future. The motion passed unanimously.

6. Statement on White Nationalism and Normalization of Violence

Ms. Hirschbiel pointed out the Washington State Bar Association's statement and the draft statement from the Oregon State Bar. The Advisory Committee on Diversity and Inclusion will look at this draft statement and advise the board. She encouraged the board to submit feedback to her or Mr. Puente on this draft statement. **[Exhibit C]**

7. Closed Sessions – see CLOSED Minutes

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

Motion: Mr. Ramfjord moved, Mr. Bachofner seconded, and the board voted unanimously to approve the Unlawful Practice of Law's recommendation to initiate an action to seek a civil injunction against Lara Dubuque and A-1 Quality Paralegal (UPL Case No. 2016-27).

8. Good of the Order (Non-action comments, information and notice of need for possible future board action)

Mr. Bachofner encouraged board members to reach out to members in their region for HOD delegate and BOG member positions.

**Oregon State Bar
Board of Governors Meeting
January 5, 2018
Special Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law Litigation

Ms. Hollister informed the board that the Unlawful Practice of Law committee is an entity now appointed by the Oregon Supreme Court. She then asked the board to decide whether to approve the initiation of a lawsuit as recommended by the Unlawful Practice of Law committee in UPL Case No UPL Case No. 2016-27.

DRAFT

OSB Board of Governors

STATUTORY CHARGE

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

MISSION

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

STRATEGIC FUNCTIONS

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

FUNCTION #1 – REGULATORY BODY

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

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

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

FUNCTION #3 – PROFESSIONAL ORGANIZATION

GOAL: Promote professional excellence of bar members.

FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

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

FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

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

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

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

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

FIDUCIARY ROLE

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

AREAS OF FOCUS FOR 2018

1. Follow-up on Futures Task Force items
 - a. Develop charge and plan for RPC 5.4 Committee.
 - b. Consider recommendations of Paraprofessionals Implementation Committee
 - c. Receive reports on progress of other items and identify action items as appropriate.
 - d. Consider recommendations of Committee on Alternative Pathways to Becoming a Lawyer.
2. Continue review of new lawyer programs and adopt changes as appropriate.
 - a. Consider recommendations for changes to the New Lawyer Mentoring Program.
 - b. Seek feedback from ONLD regarding survey results and alternative governance models.
 - c. Consider adding ex-officio member to section executive committees
3. Evaluate potential forms of revenue and cost-savings for 2019 budget and beyond.
4. Implement Diversity Action Plan items identified for 2018.

Oregon State Bar

2018-2020 Diversity Action Plan



TABLE OF CONTENTS

MESSAGE FROM THE CEO	3
MESSAGE FROM THE BOARD OF GOVERNORS	4
OVERVIEW	
OSB Diversity and Inclusion Definition	5
Diversity Advisory Council (DAC)	5
DAC Mission	5
DAC Charge	5
DAC Responsibilities	6
Auxiliary Committee	6
Plan Imperatives	6
Plan Structure	6
Implementation	7
DAC Members	7
DAC Supporting Members	7
Auxiliary Committee Members	7
OSB D&I Department	8
DIVERSITY ACTION PLAN	
Mission Statement	9
Outline	10
Membership Sphere	13
Public Outreach Sphere	22
Bar Operations Sphere	29
GLOSSARY	
Acronyms	35
Terms and Concepts	35



Helen Hierschbiel
Chief Executive Officer

MESSAGE FROM THE CEO

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. Oregon State Bar leadership has long understood that this mission cannot be accomplished without a diverse bench and bar that is fully committed to a fair, inclusive, and equitable justice system. The challenge remains, as always, how to realize this mission.

My goal is to bring an equity and inclusion lens to all that we do at the Oregon State Bar—in our operations, for the public, and for the members. Our efforts to that end began with the development of this plan and will continue as we implement the plan over the next three years. We expect this work to be challenging, and we know we will need to continue to refine our approach, seek feedback, and embrace new lessons as we go. But I am confident that this plan is an important step forward.

I want to thank Jonathan Puente and Lucy Taylor for their excellent leadership throughout this strategic planning process. And I want to commend and thank the many bar staff leaders, specialty bar leaders, members of the Board of Governors and Advisory Committee on Diversity and Inclusion, all of whom have demonstrated their commitment to the bar's diversity, equity, and inclusion work by spending many hours thinking deeply and discussing openly how we can bring about the type of systemic change in the Oregon State Bar that will allow us to fully achieve the OSB mission.



Vanessa Nordyke
2018 President



Michael Levelle
Immediate Past-President

MESSAGE FROM THE BOARD OF GOVERNORS

The Oregon State Bar plays many roles, but first and foremost it exists to protect and serve the public by creating an effective, fair, and accessible justice system.

In 1973, the members of the OSB, in their collective wisdom, recognized a vital truth: that Oregon's justice system could never fully realize that vision of full equity unless the system itself reflected the cultural richness and diversity of all those touched by it, and until all lawyers and all clients trusted that it was fair and free of barriers.

After nearly five decades of progress since the creation of what is now the Diversity & Inclusion Department, that vital truth seems ever more relevant today, even as we still strive toward the ideal system it envisioned.

This Diversity Action Plan continues that progress, providing a framework for the next three years. It reflects nearly a year of work incorporating input by bar leaders throughout the OSB and its many community partners.

Most importantly, it reaffirms that the OSB as an institution remains fully focused on creating a justice system that serves every Oregonian, including those from traditionally underserved or marginalized communities.

We offer our thanks and congratulations to those whose commitment to inclusion, equity, and access to justice has moved us consistently forward for decades. We also invite every bar member to join in this work, which remains as vital today as it was when the OSB first committed to it.

Finally, we look forward to our continued progress toward that ideal vision of a justice system that is accessible to all, welcoming of all, and trusted by all.

OVERVIEW

OSB DIVERSITY AND INCLUSION DEFINITION

Diversity and inclusion means acknowledging, embracing, and valuing the unique contributions our individual backgrounds make to strengthen our legal community, increase access to justice, and promote laws and creative solutions that better serve clients and communities. Diversity includes, but is not limited to, age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, and socioeconomic status. A diverse and inclusive bar is necessary to attract and retain talented employees and leaders; effectively serve diverse clients with diverse needs; understand and adapt to increasingly diverse local and global markets; devise creative solutions to complex problems; and improve access to justice, respect for the rule of law, and credibility of the legal profession.

DIVERSITY ADVISORY COUNCIL (DAC)

The Diversity Advisory Council (DAC) was formed in 2012 by the Oregon State Bar (OSB) Board of Governors (BOG) and was charged with developing a Diversity Action Plan (DAP) by the end of 2013. The DAC, made up of OSB directors and BOG representatives, developed a three-year DAP that was adopted by the BOG in November 2013. Implementation of the DAP commenced in January 2014 and continued until the end of 2016. The DAC reported on the DAP's implementation progress annually; these implementation reports are available online:

2014 report: www.osbar.org/docs/diversity/DAC2014Implementation.pdf

2015 report: www.osbar.org/docs/diversity/DAC2015Implementation.pdf

2016 report: www.osbar.org/docs/diversity/DAC2016Implementation.pdf

The work of the DAC continued in 2017, when development of the OSB's second three-year DAP began.

DAC MISSION

To fully achieve the OSB's mission, we must ensure our programs, services, and activities are delivered in an inclusive and culturally responsive manner to our diverse bar and community. The DAC works to promote a systemic, collaborative, and strategic approach to achieve set goals and objectives to enhance the OSB's interest in advancing diversity and inclusion in the bar.

DAC CHARGE

Promoting access to justice, encouraging respect for the rule of law, increasing the quality of legal services, and developing a diverse and inclusive bar are key components of the OSB's mission and values. The DAC serves in an advisory capacity to the OSB's Chief Executive Officer (CEO). As stewards and agents of the OSB, the DAC is charged with developing a DAP to ensure that the OSB's programs, services, and activities are delivered in an inclusive, culturally competent, and responsive manner to our diverse bar and community. Upon approval of the DAP by the CEO and adoption by the BOG, the DAC is charged with implementation and ongoing monitoring of the DAP, including measuring progress toward achieving goals

and objectives. The DAC also advises the CEO generally on matters related to diversity and inclusion in all aspects of the OSB’s mission.

DAC RESPONSIBILITIES

The DAC’s responsibilities include developing a recommended DAP for the OSB that addresses all of the OSB’s departments and mission areas.

AUXILIARY COMMITTEE

An ad hoc Auxiliary Committee—made up of specialty bar leaders, community stakeholders, and members of the OSB’s Advisory Committee on Diversity and Inclusion (ACDI)—was created during the 2017 planning process, to provide input and feedback as the DAP developed. The work of the Auxiliary Committee will continue during the DAP implementation process, to facilitate ongoing communication between the OSB and its community stakeholders throughout the three-year implementation process.

PLAN IMPERATIVES

Throughout the DAP implementation process, the effectiveness of the strategies and action items for each goal will be reviewed and adjusted as necessary.

The process and criteria for appointment to the DAC will be submitted to the BOG for review.

PLAN STRUCTURE

SPHERE OF THE PLAN (Membership, Public Outreach, Bar Operations)

GOAL 1 Each sphere contains goals, designed to help achieve the mission.

STRATEGY 1 Each goal has a number of strategies – approaches designed to achieve the goal.

ACTION 1.1.1 Each strategy has been broken down into specific steps (actions) labeled according to the goal and strategy they sit under. (E.g. Action 1.1.1 = Goal 1, Strategy 1, Action 1)

- 2018 (Implementation date)| The target measures for each action are listed here, along with a date for implementation of each target measure. Implementation of certain target measures will be ongoing, as indicated by date ranges. **THE DEPARTMENT RESPONSIBLE FOR CARRYING OUT THE TARGET MEASURE IS LISTED HERE**

IMPLEMENTATION

All target measures within the DAP have been assigned to a particular department, denoting responsibility for target measure implementation. Ongoing reporting on plan implementation will take place, and formal annual reports will be released. Departments with target measure responsibility:

Accounting	General Counsel
Admissions	Human Resources
CEO	Legal Publications
Continuing Legal Education (CLE) Seminars	Legal Services Program (LSP)
Communications	Member Services
Diversity & Inclusion (D&I)	Oregon Law Foundation (OLF)
Executive Services	Public Affairs
Finance and Operations	

View depts at www.osbar.org/osbcenter/staff.html

DAC MEMBERS

Judith Baker – Director of Legal Services Programs / OLF Executive Director

Danielle Edwards – Director of Member Services; DAC Membership Subcommittee Chair

Dawn Evans – Disciplinary Counsel / Director of Regulatory Services

Susan Grabe – Director of Public Affairs

Helen Hierschbiel – Chief Executive Officer

Amber Hollister – General Counsel

Christine Ford – Director of Human Resources; DAC Bar Operations Subcommittee Chair

Linda Kruschke – Director of Legal Publications

Karen Lee – Director of CLE Seminars

Michael Levelle – OSB President (2017)

Kay Pulju – Director of Communications & Public Services; DAC Public Outreach Subcommittee Chair

Jonathan Puente – Director of D&I; DAC Chair

Liani Reeves – Board of Governors

Traci Rossi – Board of Governors

Kateri Walsh – Public Relations Manager

Rod Wegener – Chief Financial Officer

DAC SUPPORTING MEMBERS

Ralph Gzik – Oregon New Lawyers Division Member

Eric McClendon – Referral and Information Services Manager

Lucy Taylor – D&I Internal Coordinator; DAC Co-Chair

Troy Wood – Admissions Manager

AUXILIARY COMMITTEE MEMBERS

Jacqueline Alarcon – ACDI member

Derily Bechthold – President, Oregon Asian Pacific American Bar Association

Bryson Davis – ACDI member

Angela Franco Lucero – President, Oregon Women Lawyers

Claudia Groberg – ACDI member

Andrea Montag – ACDI member

Jonathan Patterson – ACDI Secretary; OSB Diversity Section Chair

Iván Resendiz Gutierrez – President-Elect, Oregon Hispanic Bar Association; Oregon Minority Lawyers Association board member

Natasha Richmond – Assistant Director of Admissions, Lewis & Clark Law School

Dan Simon – ACDI Chair

Yazmin Wadia – ACDI member

OSB D&I DEPARTMENT



Jonathan Puente

Director of D&I

phone: (503) 431-6337

fax: (503) 684-1366

jpuente@osbar.org

www.linkedin.com/in/jonathan-puente-5429616/



Lucy Taylor

D&I Internal Coordinator

phone: (503) 431-6338

fax: (503) 598-6938

ltaylor@osbar.org

www.linkedin.com/in/lucy-taylor-01699a117/



Sarra Yamin

D&I External Coordinator

phone: (503) 431-6335

fax: (503) 598-6999

syamin@osbar.org

www.linkedin.com/in/sarra-yamin-341682143/

DIVERSITY ACTION PLAN

MISSION STATEMENT

The Oregon State Bar practices and reflects the values of diversity, inclusion, and equity in its service to the public and its members, as well as in its internal operations.

Membership

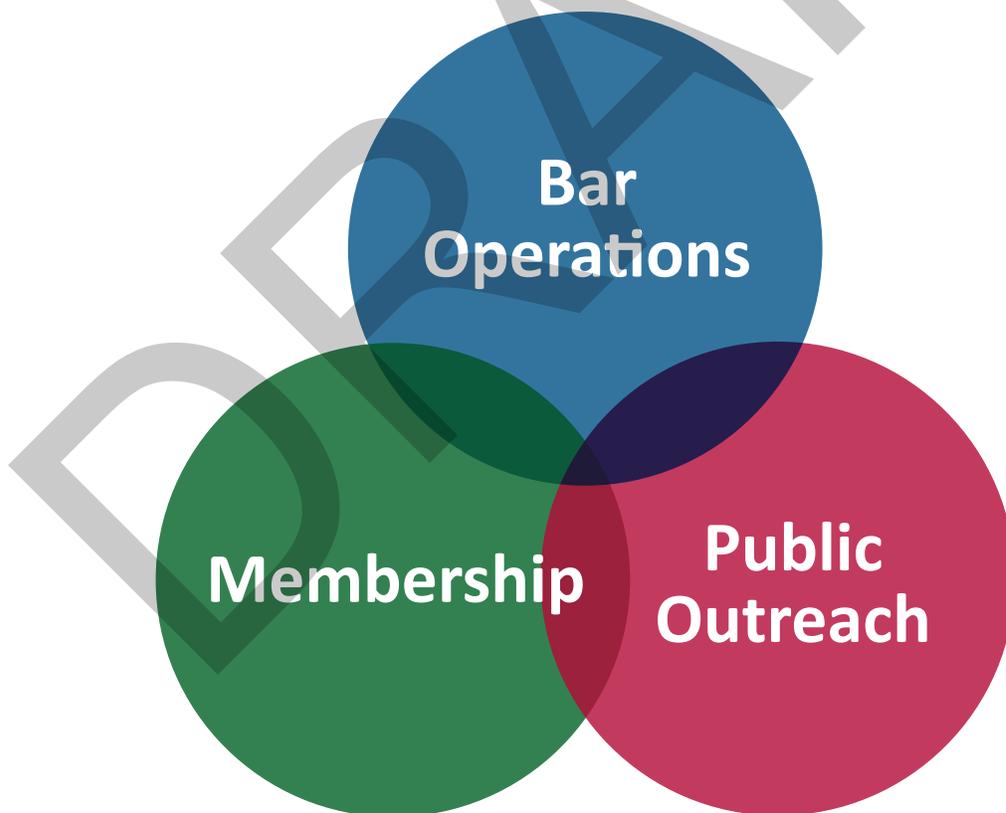
We strive to build and retain a diverse and inclusive bench and bar. We support members reaching their full professional potential by eliminating barriers and creating opportunities in the law.

Public Outreach

We strive to achieve equitable access to legal services and to generate public awareness about the legal system and bar services among all Oregon communities.

Bar Operations

We strive to create a welcoming environment where staff feel a sense of community and are fully engaged to achieve the bar's mission.



OUTLINE

MEMBERSHIP SPHERE	
GOAL 1	Increase and sustain a diverse OSB and bench.
Strategy 1	Identify and gather information on experiences of lawyers from nondominant cultures.
Strategy 2	Ensure the effective retention of diverse bar members, including members from nondominant cultures.
Strategy 3	Encourage, support, and promote diverse bar members, including members from nondominant cultures, in seeking judicial positions.
Strategy 4	Collaborate with and support specialty bars and other organizations to advance diversity, equity, and inclusion in the Oregon legal community.
Strategy 5	Support an effective pipeline of diverse law students, including those from nondominant cultures, who feel sustained, welcomed, and encouraged to practice law in Oregon.
Strategy 6	Increase lawyer engagement in community organizations that encourage individuals from nondominant cultures to pursue legal education.
GOAL 2	Identify and work to eliminate barriers in the legal profession for members from nondominant cultures.
Strategy 1	Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.
Strategy 2	The BOG functions in a way that is open and inclusive of different perspectives and experiences.
Strategy 3	Support an open and inclusive award selection process for all OSB groups.
Strategy 4	Review the admissions process to determine whether all applicants are treated equitably under the admission rules and procedures.
GOAL 3	Enrich the OSB by increasing the diversity of member representation in volunteer and leadership roles.
Strategy 1	Educate OSB member groups on the value of diversity, equity, and inclusion.
Strategy 2	Increase diversity on all OSB self-electing boards and in membership elected positions.
Strategy 3	Encourage diversity of volunteer speakers and planners for CLE events.
Strategy 4	Collaborate with the BOG and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the BOG.
Strategy 5	Develop a leadership institute for Oregon lawyers who support the mission of the D&I Department, including lawyers from nondominant cultures.
Strategy 6	Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.
Strategy 7	Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to lawyers from nondominant cultures.

PUBLIC OUTREACH SPHERE	
GOAL 1	Increase representation and legal services to underserved and hard-to-reach communities in Oregon.
Strategy 1	Assess the civil legal needs of low-income Oregonians statewide, including hard-to-reach populations.
Strategy 2	Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard-to-reach and diverse populations, including nondominant cultures, in accordance with the OSB LSP Standards and Guidelines.
Strategy 3	Increase pro bono representation of low-income Oregonians and hard-to-reach populations.
Strategy 4	Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low-income Oregonians, including underserved and hard-to-reach communities in Oregon.
GOAL 2	Ensure all Oregonians are able to access the bar's public protection programs.
Strategy 1	Engage in outreach to marginalized communities regarding the availability and purpose of the bar's public protection programs.
Strategy 2	Develop a comprehensive approach for providing English-language learners access to the bar's public protection programs.
Strategy 3	Ensure that the operation of the bar's public protection programs is fair, safe, and welcoming to all.
GOAL 3	Expand availability of public education, outreach, and self-navigation materials for underserved Oregon communities.
Strategy 1	Develop public legal information materials that are accessible to all Oregonians.
Strategy 2	Enhance outreach to underserved communities regarding the Modest Means Program and Lawyer Referral Service.
Strategy 3	Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.
GOAL 4	Improve the administration of justice to better serve under-represented and marginalized communities.
Strategy 1	Support OSB justice system funding priorities.
Strategy 2	Collaborate with the courts and support the Procedural Fairness in Courts Initiative.
Strategy 3	Support access to justice in the legislative arena.

BAR OPERATIONS SPHERE	
GOAL 1	Bar employees have a high level of diversity and inclusion competence and ownership.
Strategy 1	Provide educational opportunities for OSB employees.
Strategy 2	Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity, and cultural competence.
Strategy 3	Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.
Strategy 4	Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.
GOAL 2	Foster a welcoming and inclusive workplace and accessible programs, services, and Bar Center.
Strategy 1	Acquire an understanding of the bar's workplace culture.
Strategy 2	Use the results of data collection to identify areas for improvement.
Strategy 3	Identify and resolve barriers to the OSB being a welcoming environment for all.
Strategy 4	Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services, and Bar Center.
GOAL 3	Build a workforce that is diverse and inclusive at every level.
Strategy 1	Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.
Strategy 2	Ensure that the OSB recruitment process is inclusive and equitable.
Strategy 3	Increase the diversity of applicants for vacant positions at the OSB.
Strategy 4	Explore and use bias interrupters in the hiring process.
GOAL 4	Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.
Strategy 1	Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

MEMBERSHIP SPHERE

GOAL 1 Increase and sustain a diverse OSB and bench.

STRATEGY 1 Identify and gather information on experiences of lawyers from nondominant cultures.

ACTION 1.1.1 Conduct climate surveys.

- 2018 | Create climate surveys to identify the barriers and opportunities faced by lawyers from nondominant cultures in Oregon. COMMUNICATIONS
- 2018 | Conduct climate surveys. COMMUNICATIONS
- 2018 | Conduct exit surveys for lawyers from nondominant cultures who leave the state or withdraw from active practice. COMMUNICATIONS

ACTION 1.1.2 Facilitate focus groups to gather feedback on member experiences.

- 2019 | Create and conduct focus groups using the information gleaned from the climate surveys. COMMUNICATIONS
- 2020 | Report to bar leadership on the focus group findings. COMMUNICATIONS

ACTION 1.1.3 Analyze lawyer fee rates and economic survey data to identify disparities for lawyers from nondominant cultures.

- 2018-2019 | Correlate information gleaned from Action 1.1.1 and Action 1.1.2. COMMUNICATIONS
- 2019-2020 | Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

STRATEGY 2 Ensure the effective retention of diverse bar members, including members from nondominant cultures.

ACTION 1.2.1 Develop D&I programs and other bar resources to support diverse lawyers who are new to Oregon (“lateral hires”), including lawyers from nondominant cultures.

- 2019 | Use the results from the Goal 1, Strategy 1 surveys and focus groups to identify new program needs. D&I
- 2020 | Expand D&I programming to address lateral hire retention. D&I
- 2020 | Expand D&I programming to address new member retention. D&I

ACTION 1.2.2 Conduct outreach with legal employers to determine best practices for retaining lawyer employees from nondominant cultures.

- 2018 | Collect information from legal employers. D&I

- 2019 | Provide revised best practices toolkit to legal employers. D&I
- 2020 | Evaluate toolkit and outreach efforts. D&I

ACTION 1.2.3 Develop resources to assist legal employers in creating a diverse workforce.

- 2018 | Create a business case identifying the benefits of employing lawyers from nondominant cultures. D&I
- 2019 | Create resources to assist employers with lateral hire retention programs for lawyers from nondominant cultures. D&I
- 2020 | Begin to assess impact and reach of resources. D&I

STRATEGY 3 Encourage, support, and promote diverse bar members, including members from nondominant cultures, in seeking judicial positions.

ACTION 1.3.1 Review the bar’s process for obtaining feedback on judicial candidates to ensure it is qualitative in nature and supports the DAC’s mission.

- 2018 | Modify bar bylaws to eliminate bar polls for judicial selection process. PUBLIC AFFAIRS
- 2018 | Survey specialty bars regarding judicial screening process. PUBLIC AFFAIRS

ACTION 1.3.2 Increase outreach to bar members, including members from nondominant cultures, regarding judicial positions.

- 2018 | Assess notice-of-judicial-vacancy recipient list and webpage placement of notices. PUBLIC AFFAIRS
- 2018 | Assess placement of judicial vacancy notice to specialty bars and publications. PUBLIC AFFAIRS
- 2018 | Modify judicial appointment recommendations process to assess cultural competency. PUBLIC AFFAIRS

STRATEGY 4 Collaborate with and support specialty bars and other organizations to advance diversity, equity, and inclusion in the Oregon legal community.

ACTION 1.4.1 Participate in meetings between specialty bars and OSB leadership to learn about specialty bars’ experiences and perceptions of the OSB as an institution, and of the OSB leadership.

- 2018 | Work with specialty bars as requested to choose a facilitator and develop agendas. EXECUTIVE SERVICES
- 2018 | Provide OSB financial support for facilitating dialogue. D&I
- 2018 | Attend the meetings and ensure OSB leadership participation, and follow up as appropriate. EXECUTIVE SERVICES

ACTION 1.4.2 Increase BOG awareness and support of the work engaged in by specialty bars.

- 2018 | Organize a reception in conjunction with a BOG meeting, and invite specialty bars to attend and network with the BOG. EXECUTIVE SERVICES
- 2018–2020 | Invite specialty bars to attend and/or submit reports to BOG meetings, to report on their activities and events. EXECUTIVE SERVICES
- 2018–2020 | Ensure BOG representation at specialty bar events. EXECUTIVE SERVICES
- 2019 | Implement changes to the BOG’s participation in specialty bar work, as agreed on during the facilitated joint leadership meetings. CEO

ACTION 1.4.3 Assist specialty bars in promoting their activities and events to OSB leadership and to OSB membership.

- 2018 | Conduct outreach with specialty bars on the services OSB can provide. MEMBER SERVICES
- 2018 | Improve placement and accessibility of specialty bar information on the OSB website. MEMBER SERVICES
- 2018–2020 | Invite specialty bars to have a table and to include promotional materials at OSB events to showcase their organizations and recruit members. MEMBER SERVICES
- 2019–2020 | Include specialty bar events on the OSB website calendar in accordance with OSB communication guidelines. MEMBER SERVICES

ACTION 1.4.4 Increase OSB technical support of specialty bars.

- 2018 | Explore possibilities for adding information about joining specialty bars to membership fee statement at dues payment/renewal. ACCOUNTING
- 2018 | Enhance administrative support provided to specialty bars, such as managing event RSVPs, maintaining membership lists, and distributing event notices. MEMBER SERVICES
- 2018 | Update and enhance resource list of OSB services to support specialty bars. MEMBER SERVICES
- 2018–2020 | Provide specialty bars free access to OSB membership lists through the public records process. MEMBER SERVICES

STRATEGY 5 Support an effective pipeline of diverse law students, including those from nondominant cultures, who feel sustained, welcomed, and encouraged to practice law in Oregon.

ACTION 1.5.1 Increase D&I program effectiveness.

- 2018 | Analyze current effectiveness based on data, current trends, and known issues. D&I
- 2019 | Implement changes to D&I programming based on findings of analysis, to provide opportunities for law and pre-law students, including professional connections, legal experience, and financial support. D&I

- 2019 | Formalize D&I program applicant criteria and review the application process to ensure fairness, transparency, and applicant pool reach. **D&I**
- 2020 | Review progress based on implemented changes. **D&I**

ACTION 1.5.2 Support diverse law students in Oregon, including students from nondominant cultures, through mentorship and community building, to encourage them to practice in Oregon upon graduation.

- 2018 | Collaborate with Oregon law schools and other partners to create a robust and effective Opportunities for Law in Oregon (OLIO) orientation program. **D&I**
- 2019 | Implement Oregon Council on Legal Education and Admissions to the Bar (OCLEAB) agenda item asking Oregon law schools to report on their diversity trends. **ADMISSIONS**
- 2020 | Review progress based on implemented changes. **D&I**

STRATEGY 6 Increase lawyer engagement in community organizations that encourage individuals from nondominant cultures to pursue legal education.

ACTION 1.6.1 Create awareness in the legal community about existing programs, to encourage individuals from nondominant cultures to pursue legal education.

- 2018 | Create a list of schools with pre-law programs, high schools with mock trial programs, and other educational organizations with school engagement initiatives. **D&I**
- 2019 | Work with specialty bars, sections, committees, and other bar members to encourage member participation in the programs. **D&I**
- 2020 | Obtain program feedback to evaluate effectiveness and reach. **D&I**

GOAL 2 Identify and work to eliminate barriers in the legal profession for members from nondominant cultures.

STRATEGY 1 Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.

ACTION 2.1.1 Review the applicable minimum continuing legal education (MCLE) rules and regulations to determine whether programs approved for access-to-justice credit support the DAC’s mission.

- 2018 | Identify and develop any changes needed to the MCLE rules and regulations. **D&I**
- 2019 | Secure MCLE Committee and Supreme Court approval of changes to MCLE rules and regulations. **GENERAL COUNSEL**

ACTION 2.1.2 Sponsor, promote, and encourage elimination-of-bias CLE programming, including implicit bias, equity, systemic racism, institutional racism, etc.

- 2018 | Deliver programming regarding Oregon Rule of Professional Conduct 8.4. CLE SEMINARS

ACTION 2.1.3 Promote Legal Employers Toolkit to legal employers.

- 2018 | Work with the OSB Diversity Section to complete the toolkit. D&I
- 2019 | Distribute the toolkit. D&I
- 2020 | Obtain feedback from toolkit recipients. D&I

ACTION 2.1.4 Publish articles in the Bulletin related to diversity, equity, and inclusion.

- 2018 | Develop a pool of potential authors and a publication schedule. COMMUNICATIONS
- 2018 | Develop a process for inviting specialty bars to submit article ideas or written submissions for publication in the Bulletin. COMMUNICATIONS
- 2018 | Consider developing a regular column on diversity, equity, and inclusion. COMMUNICATIONS
- 2019-2020 | Publish articles using the pool and according to the schedule. COMMUNICATIONS

STRATEGY 2 The BOG functions in a way that is open and inclusive of different perspectives and experiences.

ACTION 2.2.1 Task the Board Development Committee with assessing needs and with using the assessment to provide programming for the BOG on diversity, equity, and inclusion.

- 2018–2020 | BOG members conduct a self-assessment on bias (e.g., implicit bias test from the Harvard Project Implicit [<https://implicit.harvard.edu/implicit/takeatest.html>]). CEO
- 2018–2020 | Include at least one session on implicit bias, institutional racism, or equity principles for BOG members each year. CEO

ACTION 2.2.2 Adopt a BOG policy to review all bar programs, services, and activities with impact on lawyers from nondominant cultures as a factor for evaluation.

- 2018 | Policy is reviewed by BOG Policy & Governance Committee and BOG. CEO
- 2018 | Implement the policy and incorporate into BOG orientation materials and online resources. CEO

STRATEGY 3 Support an open and inclusive award selection process for all OSB groups.

ACTION 2.3.1 Encourage transparency in the award nomination and selection processes.

- 2018 | Develop a policy and nomination form template for section awards. MEMBER SERVICES
- 2019–2020 | Encourage and assist sections and the Oregon New Lawyers Division (ONLD) with promoting their award nomination process to specialty bars. MEMBER SERVICES

STRATEGY 4 Review the admissions process to determine whether all applicants are treated equitably under the admission rules and procedures.

ACTION 2.4.1 Create policies and procedures establishing the appropriate collection and use of demographic data from applicants.

- 2018 | Review current rules, policies, and procedures to determine best practices for collecting and using demographic data. **ADMISSIONS**
- 2019 | Make changes to policies and procedures as needed, to safeguard data collected from being used or made available for an admission decision related to any particular applicant. **ADMISSIONS**
- 2020 | Make changes to policies and procedures, where necessary, to appropriately collect and use demographic data for statistical analysis. **ADMISSIONS**

ACTION 2.4.2 Collect data from the OSB Admissions Department, Oregon law schools, and applicants, to identify admissions trends of demographic groups.

- 2020 | Ask OSB applicants to self-identify as part of the application process. **ADMISSIONS**
- 2020 | Begin to review data in respect to identifying admissions trends by demographic. **ADMISSIONS**

GOAL 3 Enrich the OSB by increasing the diversity of member representation in volunteer and leadership roles.

STRATEGY 1 Educate OSB member groups on the value of diversity, equity, and inclusion.

ACTION 3.1.1 Create a benefit statement supporting the value of diversity.

- 2018 | Seek input from specialty bars and other stakeholders in creating the benefit statement. **MEMBER SERVICES**
- 2018 | Gather baseline data to determine current member involvement in OSB volunteer and leadership roles. **MEMBER SERVICES**
- 2019 | Distribute the benefit statement to bar groups. **MEMBER SERVICES**
- 2020 | Evaluate the effectiveness of these education efforts, based on changes identified in overall volunteer participation. **MEMBER SERVICES**

STRATEGY 2 Increase diversity on all OSB self-electing boards and in membership elected positions.

ACTION 3.2.1 Encourage a diverse pool of candidates for BOG and House of Delegates (HOD) elections.

- 2018–2020 | BOG members actively encourage diverse members, including members from nondominant cultures, to run for vacant positions on the BOG and HOD (annually). **MEMBER SERVICES**

- 2018–2020 | Encourage specialty and local bars to inform their members of BOG and HOD vacancies, including list serve and website postings. **MEMBER SERVICES**
- 2018–2020 | Encourage specialty and local bars to promote the importance of voting in HOD and BOG elections to their membership. **MEMBER SERVICES**

ACTION 3.2.2 Increase diversity of member representation on self-electing boards to reflect the diversity of the OSB membership.

- 2018 | BOG review of ONLD and section bylaws and policies to ensure the election process is transparent and supports equity and inclusion. **CEO**
- 2018 | Meet with sections during the annual meeting process to share the benefit statement (Action 3.1.1) **MEMBER SERVICES**
- 2019–2020 | Include demographic data on membership lists and rosters. **MEMBER SERVICES**

STRATEGY 3 Encourage diversity of volunteer speakers and planners for CLE events.

ACTION 3.3.1 Provide a resource list of specialty bar associations to bar groups planning CLE events.

- 2018 | Develop a list of specialty bars and include a description of the specialty bars’ mission statements. **CLE SEMINARS**
- 2019 | Incorporate the DAC’s mission and specialty bars list in CLE co-sponsorship guidelines. **CLE SEMINARS**

ACTION 3.3.2 Look for opportunities to collaborate with specialty bars for CLE events.

- 2018 | Conduct an inventory of existing bar CLE events that would be suitable for collaboration with specialty bars; evaluate available bar resources that could be used by specialty bars for their events. **CLE SEMINARS**
- 2019 | Create a bar CLE resource guide for specialty bars. **CLE SEMINARS**
- 2020 | Distribute the guide and begin CLE event collaboration with specialty bars. **CLE SEMINARS**

ACTION 3.3.3 Look for opportunities to diversify the pool of CLE speakers.

- 2018–2020 | Distribute the Leadership and Volunteer Opportunities CLE Speaker reports to section executive committees annually, with a reminder that the CLE planning committees have this resource and should consider diversity when selecting CLE subject-matter experts. **MEMBER SERVICES**

STRATEGY 4 Collaborate with the BOG and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the BOG.

ACTION 3.4.1 Increase outreach to a diverse group of lawyers and nonlawyers, including individuals from nondominant cultures, for OSB volunteer positions.

- 2018 | Organize an event co-sponsored by the OSB's D&I Department, the BOG, and specialty bars, to explain OSB leadership opportunities, selection processes for OSB volunteer appointments, and application processes for the BOG and HOD. **D&I**
- 2018 | Request that specialty and local bars include a link to the OSB Volunteer Survey on their websites. **MEMBER SERVICES**
- 2018–2020 | Provide notices of volunteer and leadership opportunities to specialty and local bar organizations for distribution to their members and through their respective newsletters, including to community organizations that support individuals from nondominant cultures. **MEMBER SERVICES**

ACTION 3.4.2 Educate the Board Development Committee members on the need to review appointment recommendations and decisions through an equity lens.

- 2018–2020 | Conduct an annual review of appointments with focus on demographic and geographic factors. **MEMBER SERVICES**

ACTION 3.4.3 Ensure the appointment process is efficient and effective and that the BOG has enough member information.

- 2018 | Board Development Committee reviews and refines internal processes. **MEMBER SERVICES**

STRATEGY 5 Develop a leadership institute for Oregon lawyers who support the mission of the D&I Department, including lawyers from nondominant cultures.

ACTION 3.5.1 Address gaps and barriers to leadership positions within the BOG and specialty bars for underrepresented members of the bar.

- 2018 | Identify gaps and barriers. **D&I**
- 2019 | Craft a proposed course curriculum. **D&I**
- 2020 | Implement the course. **D&I**

STRATEGY 6 Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.

ACTION 3.6.1 Increase representation of diverse members, including members from nondominant cultures, on Legal Publications editorial review boards and as authors.

- 2018 | Contact local and specialty bars when recruiting new editorial board members and authors. **LEGAL PUBLICATIONS**

- 2019 | Revise Editorial Review Board Guidelines to strongly encourage editorial review boards to consider diversity in identifying potential authors. **LEGAL PUBLICATIONS**
- 2020 | Evaluate effectiveness of efforts to increase diversity of editorial boards and author pool. **LEGAL PUBLICATIONS**

ACTION 3.6.2 Include more detailed biographical information and pictures of authors in front matter of books, to showcase diversity involvement.

- 2018 | Select two publications to include more detailed biographical information. **LEGAL PUBLICATIONS**
- 2019 | Increase the number of publications that include detailed biographical information. **LEGAL PUBLICATIONS**

STRATEGY 7 Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to lawyers from nondominant cultures.

ACTION 3.7.1 Survey new lawyer participants to determine their level of satisfaction with the NLMP.

- 2018 | Review the existing new lawyer survey and determine whether additional information needs to be gathered. **MEMBER SERVICES**
- 2018 | Modify the survey as necessary and implement for all new lawyers upon program completion. **MEMBER SERVICES**
- 2019 | Use the information gathered to identify issues that warrant addressing. **MEMBER SERVICES**

ACTION 3.7.2 Increase the pool of diverse mentors participating in the NLMP, including mentors from nondominant cultures.

- 2018–2020 | Evaluate mentor availability and areas of underrepresentation. **MEMBER SERVICES**
- 2018–2020 | Conduct targeted outreach to ensure adequate availability of mentors from diverse member groups, including nondominant cultures. **MEMBER SERVICES**

ACTION 3.7.3 Review NLMP database fields to ensure adequate information is available when matches are made.

- 2018 | Revise NLMP forms as needed. **MEMBER SERVICES**

PUBLIC OUTREACH SPHERE

GOAL 1 Increase representation and legal services to underserved and hard-to-reach communities in Oregon.

STRATEGY 1 Assess the civil legal needs of low-income Oregonians statewide, including hard-to-reach populations.

ACTION 1.1.1 Conduct planned Civil Legal Needs Study (CLNS) that provides comprehensive information about the legal needs of low-income Oregonians, including hard-to-reach populations.

- 2018 | Gather and analyze CLNS data. OLF
- 2018 | Publish and share CLNS data with a wide range of stakeholders. OLF
- 2018 | Conduct a media campaign to share the results of the CLNS. COMMUNICATIONS

ACTION 1.1.2 Use the results of the CLNS to inform the legal services provided by the integrated statewide legal aid programs in accordance with the OSB Legal Services Program (LSP) Standards and Guidelines.

- 2019 | Legal aid providers review the results and use these results on an ongoing basis as a factor when setting priorities for legal services and developing access strategies for low-income Oregonians, including hard-to-reach populations. LSP

ACTION 1.1.3 Use the results of the CLNS to inform the access strategies for low-income and hard-to-reach populations by the Oregon State Bar.

- 2019 | Review the results of the CLNS for possible OSB program changes. LSP
- 2020 | Develop a plan for implementing access strategies. LSP

STRATEGY 2 Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard-to-reach and diverse populations, including nondominant cultures, in accordance with the OSB LSP Standards and Guidelines.

ACTION 1.2.1 LSP staff conduct the accountability process outlined in the Standards and Guidelines.

- 2018 | Staff, legal aid providers, and the LSP Committee review the current accountability process and make changes as necessary, including incorporating review of effective technology. LSP
- 2018 | Complete the accountability process, and submit a report to the BOG. LSP
- 2019 | Legal aid providers implement recommendations from the 2018 review process. LSP

STRATEGY 3 Increase pro bono representation of low-income Oregonians and hard-to-reach populations.

ACTION 1.3.1 Establish a baseline of current pro bono hours.

- 2018 | Using the American Bar Association (ABA) survey results and hours reported by OSB Certified Pro Bono Programs, establish a baseline of pro bono hours. LSP

ACTION 1.3.2 Use the results of the ABA pro bono survey to develop strategies that are focused on nondominant cultures and hard-to-reach populations.

- 2018 | Identify barriers to lawyers doing pro bono work and develop a plan for addressing them. LSP
- 2019 | Implement the plan to address barriers to lawyers doing pro bono work. LSP
- 2020 | Survey OSB membership on pro bono work. LSP

ACTION 1.3.3 Continue to monitor the use of the ABA Free Legal Answers resource.

- 2018 | Determine whether ABA Free Legal Answers will work as a resource for the OSB. LSP
- 2019 | Implement, if identified as an appropriate resource. LSP

STRATEGY 4 Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low-income Oregonians, including underserved and hard-to-reach communities in Oregon.

ACTION 1.4.1 Use the CLNS to inform banks about the scope of the unmet legal needs of low-income Oregonians to support increased legal aid funding in Oregon.

- 2018 | Increase Leadership Bank Program interest rate tiers to coincide with Federal Reserve Bank increases. OLF
- 2018 | Incorporate CLNS results into talking points to work with the Oregon Bankers Association and the banking community, to increase interest rates on Interest on Lawyer Trust Accounts (IOLTA) held in Oregon. OLF
- 2019 | Continue to monitor interest rate increases and adjust Leadership Bank Program interest rates as needed. OLF

ACTION 1.4.2 Use the CLNS to inform the legislature about the scope of the unmet legal needs of low-income Oregonians to support increased legal aid funding in Oregon.

- 2018 | Establish a diverse network of leaders to support relevant issues and trends. PUBLIC AFFAIRS
- 2018 | Meet with justice system partners during the interim period to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS
- 2019 | Present information on access to justice to lawyer-legislators and bar members, to ensure message consistency. PUBLIC AFFAIRS

ACTION 1.4.3 Conduct media outreach campaign to support funding efforts.

- 2018 | Develop and execute a CLNS media outreach campaign. COMMUNICATIONS

ACTION 1.4.4 Explore partnering with the philanthropic community on the importance of funding legal aid to alleviate poverty.

- 2018 | Work with The Lawyers' Campaign for Equal Justice (CEJ) and legal aid providers to develop a plan to partner with the philanthropic community. OLF
- 2019 | Implement the plan. OLF

GOAL 2 Ensure all Oregonians are able to access the bar's public protection programs.

STRATEGY 1 Engage in outreach to marginalized communities regarding the availability and purpose of the bar's public protection programs.

ACTION 2.1.1 Develop relationships with community organizations working in the public protection arena.

- 2018 | Identify and create a list of potential community partners. GENERAL COUNSEL
- 2019 | Have a discussion with a representative from each identified group. GENERAL COUNSEL

ACTION 2.1.2 Design and utilize a toolkit for member and public outreach on public protection programs.

- 2018 | Create program descriptions for public protection programs and collect related application and complaint forms to form a public protection programs toolkit. GENERAL COUNSEL
- 2019 | Discuss and review the toolkit with representatives from community organizations and member representatives. GENERAL COUNSEL
- 2020 | Share the toolkit with targeted audiences. GENERAL COUNSEL

STRATEGY 2 Develop a comprehensive approach for providing English-language learners access to the bar's public protection programs.

ACTION 2.2.1 Develop policy to enable access to programs for persons who speak, read, or write languages other than English.

- 2018 | Evaluate staffing and other resources in relation to language needs. GENERAL COUNSEL
- 2019 | Write and adopt a policy providing that individuals who file complaints in languages other than English have full access to programs. GENERAL COUNSEL
- 2020 | Develop multilingual complaint/application forms and informational materials for public protection programs. COMMUNICATIONS

STRATEGY 3 Ensure that the operation of the bar’s public protection programs is fair, safe, and welcoming to all.

ACTION 2.3.1 Collect demographic data and feedback from users who access the bar’s public protection programs.

- 2018 | Explore methods to collect data. COMMUNICATIONS
- 2019 | Collect user demographic data and seek feedback on user experience. COMMUNICATIONS

ACTION 2.3.2 Analyze demographic data and feedback from users who access the bar’s public protection programs.

- 2018 | Analyze the data collected. GENERAL COUNSEL
- 2019–2020 | Meet with members, stakeholders, and possible community partners identified in Action 2.1.1, to discuss data and seek additional feedback. CEO
- 2020 | Identify approaches for creating a safer and more welcoming public protection program process. GENERAL COUNSEL
- 2020 | Develop a plan to implement approaches. GENERAL COUNSEL

ACTION 2.3.3 Coordinate with the work of the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF).

- 2018–2020 | Participate in and support the work of the OSCCIF. CEO

GOAL 3 Expand availability of public education, outreach, and self-navigation materials for underserved Oregon communities.

STRATEGY 1 Develop public legal information materials that are accessible to all Oregonians.

ACTION 3.1.1 Improve the readability of all OSB public legal information materials.

- 2018 | Determine the readability/grade level of existing content, and set a target standard (e.g., “Plain English” 8th grade reading level). COMMUNICATIONS
- 2019 | Edit the 30 most accessed topics to meet the new standard. COMMUNICATIONS
- 2020 | Edit the next 30 most accessed topics to meet the new standard. COMMUNICATIONS

ACTION 3.1.2 Improve access to legal information materials for English-language-learners.

- 2018 | Present all public information materials online in formats that are compatible with the Google Translate app; post professionally translated materials available to the OSB online. COMMUNICATIONS

- 2019 | Produce professional translation of the 20 most accessed topics in high-demand languages. COMMUNICATIONS
- 2020 | Produce professional translation of the next 20 most accessed topics in high-demand languages. COMMUNICATIONS

ACTION 3.1.3 Increase availability of legal information provided in video and other nontext formats, featuring diverse presenters, including presenters from nondominant cultures.

- 2018 | Continue the production of Legal Q&A videos in English, Spanish, and other high-demand languages; produce video introductions for OSB public protection programs in English and Spanish. COMMUNICATIONS
- 2019 | Produce and promote an instructional video for new statewide dissolution forms (petitioner) in English and Spanish, in collaboration with justice system partners. COMMUNICATIONS
- 2020 | Produce and promote instructional videos for other statewide family law forms. COMMUNICATIONS

ACTION 3.1.4 Increase the availability of legal information materials to people with disabilities and special needs.

- 2018 | Review online materials for compatibility with screen readers; add captioning for public information videos. COMMUNICATIONS
- 2019-2020 | Continue updating and monitoring of materials. COMMUNICATIONS

STRATEGY 2 Enhance outreach to underserved communities regarding the Modest Means Program and Lawyer Referral Service.

ACTION 3.2.1 Assess current service levels and legal needs of underserved communities.

- 2018 | Compile internal statistics on the Lawyer Referral Service and Modest Means Program, including calls from English-language learners, languages offered by panelists, and website translations. COMMUNICATIONS
- 2019 | Compare services provided with results of the CLNS to identify underserved communities, and prioritize how the Lawyer Referral Service is meeting their legal needs. LSP

ACTION 3.2.2 Implement outreach plan to underserved communities, including marketing and coordination with community partners.

- 2018 | Begin outreach to already identified underserved communities. COMMUNICATIONS
- 2019-2020 | Continue outreach methods and monitor effectiveness. COMMUNICATIONS

STRATEGY 3 Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.

ACTION 3.3.1 Establish a diverse network of lawyers and bar groups who are leaders in relevant areas of practice.

- 2018 | Work with select committees, sections, and specialty bars to support justice system issues. PUBLIC AFFAIRS
- 2019 | Develop a framework to continue the discussion and coordinate ongoing efforts. PUBLIC AFFAIRS

ACTION 3.3.2 Adopt a plan for responding to breaking legal news when it offers an opportunity to educate and enhance awareness of issues affecting underserved communities.

- 2018 | Work with bar leaders on a media response policy. COMMUNICATIONS
- 2019 | Develop and implement the policy. COMMUNICATIONS

GOAL 4 Improve the administration of justice to better serve under-represented and marginalized communities.

STRATEGY 1 Support OSB justice system funding priorities.

ACTION 4.1.1 Develop coalitions and collaborate with justice system partners and bar members to achieve OSB legislative priorities.

- 2018 | Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS
- 2019 | Host a Day at the Capitol to motivate members and educate legislative leadership. PUBLIC AFFAIRS
- 2019 | Present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

STRATEGY 2 Collaborate with the courts and support the Procedural Fairness in Courts Initiative.

ACTION 4.2.1 Develop lunchtime CLE series (Lunch and Learn) at the Capitol for staff and public on implicit bias and procedural justice.

- 2018 | Conduct a lunchtime CLE on procedural justice. PUBLIC AFFAIRS
- 2019 | Conduct a lunchtime CLE on procedural justice. PUBLIC AFFAIRS
- 2020 | Conduct a lunchtime CLE on procedural justice. PUBLIC AFFAIRS

ACTION 4.2.2 Determine goals of the OSCCIF regarding data identification and collection.

- 2018 | Develop a plan on how to best assist. PUBLIC AFFAIRS

STRATEGY 3 Support access to justice in the legislative arena.

ACTION 4.3.1 Collaborate with other organizations to support procedural fairness and justice system reinvestment.

- 2019 | Host a Day at the Capitol; invite representatives from legal aid, indigent defense services, and coalition partners to participate in events. PUBLIC AFFAIRS

ACTION 4.3.2 Develop coalitions to support access-to-justice initiatives.

- 2018 | Meet with coalition partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS

ACTION 4.3.3 Educate lawyer-legislators, bar members, and coalition partners about the need for legal aid services and indigent defense.

- 2018 | Host an access-to-justice event with coalition partners. PUBLIC AFFAIRS
- 2019 | Host an access-to-justice event with coalition partners. PUBLIC AFFAIRS
- 2020 | Host an access-to-justice event with coalition partners. PUBLIC AFFAIRS

ACTION 4.3.4 Pursue consumer protection initiatives

- 2018 | Pursue consumer protection initiatives related to the Futures Task Force Report (www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Summary.pdf) PUBLIC AFFAIRS
- 2019 | Achieve progress in consumer protection initiatives in 2019 legislative session. PUBLIC AFFAIRS

ACTION 4.3.5 Improve resources for self-navigators.

- 2018–2019 | Support court initiatives of the Futures Task Force. GENERAL COUNSEL
- 2019 | Hold a successful legislative session. PUBLIC AFFAIRS

ACTION 4.3.6 Use the CLNS to update legislators about the unmet legal needs of low-income Oregonians to support increased legal aid funding.

- 2018 | Establish a diverse network of leaders, including leaders from nondominant cultures, to support relevant issues and trends. PUBLIC AFFAIRS
- 2019 | Hold a successful legislative session. PUBLIC AFFAIRS

BAR OPERATIONS SPHERE

GOAL 1 Bar employees have a high level of diversity and inclusion competence and ownership.

STRATEGY 1 Provide educational opportunities for OSB employees.

ACTION 1.1.1 Provide one annual mandatory session focused on inclusion, equity, or cultural competence for all staff.

- 2018 | Identify topic and schedule presenter. HUMAN RESOURCES
- 2019 | Identify topic and schedule presenter. HUMAN RESOURCES
- 2020 | Identify topic and schedule presenter. HUMAN RESOURCES

ACTION 1.1.2 Provide one annual mandatory session focused on diversity, inclusion, equity, or cultural competence for managers and directors (in addition to the annual all-staff training).

- 2018 | Identify topic and schedule presenter. HUMAN RESOURCES
- 2019 | Identify topic and schedule presenter. HUMAN RESOURCES
- 2020 | Identify topic and schedule presenter. HUMAN RESOURCES

ACTION 1.1.3 Provide at least one annual cultural awareness day for all employees.

- 2018 | Identify culture to highlight; hold activity. D&I
- 2019 | Identify culture to highlight; hold activity. D&I
- 2020 | Identify culture to highlight; hold activity. D&I

ACTION 1.1.4 Develop a “tip of the month” feature on the intranet that focuses on information and topics relating to diversity, inclusion, equity, or cultural competence.

- 2018 | Source information and post monthly on intranet. D&I
- 2019 | Source information and post monthly on intranet. D&I
- 2020 | Source information and post monthly on intranet. D&I

STRATEGY 2 Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity, and cultural competence.

ACTION 1.2.1 Update managers' and directors' performance evaluation templates to ensure that diversity and inclusion ownership and competence are included as leadership attributes to be evaluated.

- 2018 | Review templates, change as necessary, and implement for year. HUMAN RESOURCES
- 2019 | Review templates, change as necessary, and implement for year. HUMAN RESOURCES
- 2020 | Review templates, change as necessary, and implement for year. HUMAN RESOURCES

ACTION 1.2.2 Encourage managers and directors to identify and participate in external educational opportunities that focus on professional development around diversity and inclusion.

- 2018 | Discuss diversity and inclusion professional development during performance evaluation. CEO
- 2019 | Discuss diversity and inclusion professional development during performance evaluation. CEO
- 2020 | Discuss diversity and inclusion professional development during performance evaluation. CEO

STRATEGY 3 Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.

ACTION 1.3.1 Research best practices around diversity and inclusion language.

- 2018 | Collate findings into a best-practices report. D&I

ACTION 1.3.2 Conduct an assessment of OSB language, including pronouns, used on all internal and external materials.

- 2018 | Identify language and all language locations for updating, using the best-practices report. D&I
- 2019 | Develop a language update implementation plan. D&I
- 2019 | Implement consistent language updates per the implementation plan. D&I

ACTION 1.3.3 Update OSB staff regarding changes to best-practices terminology and language.

- 2019 | Include best-practices language updates within the annual staff education session. HUMAN RESOURCES

STRATEGY 4 Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.

ACTION 1.4.1 Review bylaws and identify bylaws that need to be amended.

- 2019 | Identify bylaws. GENERAL COUNSEL
- 2020 | Draft and present amendments to the BOG for approval. GENERAL COUNSEL

GOAL 2 Foster a welcoming and inclusive workplace and accessible programs, services, and Bar Center.

STRATEGY 1 Acquire an understanding of the bar's workplace culture.

ACTION 2.1.1 Devise and conduct a workplace culture assessment.

- 2018 | Conduct a workplace culture assessment and analyze data. HUMAN RESOURCES

ACTION 2.1.2 Evaluate employees' reasons for leaving the organization.

- 2018 | Review exit interview process and implement changes. HUMAN RESOURCES
- 2019 | Develop a method for reviewing and analyzing data. HUMAN RESOURCES
- 2020 | Analyze and evaluate current and historic data. HUMAN RESOURCES

ACTION 2.1.3 Conduct an internal salary equity assessment.

- 2019 | Conduct an assessment by a third-party contractor and analyze data. HUMAN RESOURCES

STRATEGY 2 Use the results of data collection to identify areas for improvement.

ACTION 2.2.1 Develop a plan to address areas that need improvement.

- 2020 | Develop and implement the plan. HUMAN RESOURCES

STRATEGY 3 Identify and resolve barriers to the OSB being a welcoming environment for all.

ACTION 2.3.1 Develop and implement a plan to ensure inclusive restroom access for all employees and visitors.

- 2018 | Develop the plan and identify needed resources. DBI
- 2019 | Implement the plan. FINANCE AND OPERATIONS

ACTION 2.3.2 Develop and implement a policy and procedure to create an inclusive environment for gender neutral and transitioning transgender employees.

- 2019 | Develop a plan and identify needed resources. HUMAN RESOURCES
- 2020 | Implement the plan. HUMAN RESOURCES

STRATEGY 4 Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services, and Bar Center.

ACTION 2.4.1 Develop and implement a plan to identify and resolve barriers to OSB Center facility.

- 2018 | Review building user feedback to identify ways to improve building accessibility. GENERAL COUNSEL
- 2019 | Create a plan and identify needed resources to improve building accessibility. GENERAL COUNSEL
- 2020 | Implement the accessibility plan. GENERAL COUNSEL

ACTION 2.4.2 Ensure OSB websites are compatible with screen readers.

- 2018 | Create a plan to continue identifying and updating portions of the website that are not accessible to persons utilizing screen readers. GENERAL COUNSEL
- 2019 | Implement the website accessibility plan. GENERAL COUNSEL

ACTION 2.4.3 Continue to educate bar staff and bar leaders about accessibility.

- 2018 | Gather feedback and identify areas where bar staff and bar leaders may require additional assistance or education on accessibility issues. GENERAL COUNSEL
- 2019 | Hold bar staff training on accessibility. GENERAL COUNSEL
- 2019 | Develop accessibility guides and recommendations that respond to bar staff and bar leaders' needs. GENERAL COUNSEL
- 2020 | Distribute accessibility guidelines and recommendations to bar staff and bar leaders. GENERAL COUNSEL

GOAL 3 Build a workforce that is diverse and inclusive at every level.

STRATEGY 1 Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.

ACTION 3.1.1 Evaluate the categories currently used by the OSB for measuring staff diversity.

- 2018 | Assess categories and expand as necessary. HUMAN RESOURCES
- 2019 | Implement revised data collection. HUMAN RESOURCES
- 2020 | Develop and implement system for ongoing review and analysis of data. HUMAN RESOURCES

ACTION 3.1.2 Investigate options for assessing the diversity of applicants.

- 2019 | Evaluate electronic application systems. HUMAN RESOURCES

- 2020 | Update application process. HUMAN RESOURCES

STRATEGY 2 Ensure that the OSB recruitment process is inclusive and equitable.

ACTION 3.2.1 Assess the current OSB recruitment process.

- 2018 | Develop a method for assessment. D&I
- 2019 | Conduct the assessment and analyze data. D&I

ACTION 3.2.2 Identify areas for improvement and develop a plan for improvement.

- 2019 | Develop a plan. HUMAN RESOURCES
- 2020 | Implement the plan. HUMAN RESOURCES

STRATEGY 3 Increase the diversity of applicants for vacant positions at the OSB.

ACTION 3.3.1 Build relationships with external groups and organizations that are focused on diversity.

- 2018 | Identify external groups and organizations. D&I
- 2018 | Develop a plan for building relationships with identified organizations that is appropriate to each organization. D&I
- 2019 | Implement the plan. D&I

ACTION 3.3.2 Expand outreach to a more diverse pool of potential applicants.

- 2018 | Evaluate current outreach for job openings to identify gaps. HUMAN RESOURCES
- 2019 | Identify potential resources for additional outreach and their job posting requirements and needs. HUMAN RESOURCES
- 2019 | Incorporate new resources into current advertising plans. HUMAN RESOURCES

STRATEGY 4 Explore and use bias interrupters in the hiring process.

ACTION 3.4.1 Incorporate hiring committees into the hiring process.

- 2018 | Identify opportunities for use of hiring committees. HUMAN RESOURCES
- 2018 | Investigate and experiment with alternative hiring models that incorporate hiring committees. HUMAN RESOURCES
- 2019 | Develop training for hiring committee participants. HUMAN RESOURCES
- 2019 | Identify staff interested in participating on hiring committees and provide training. HUMAN RESOURCES

ACTION 3.4.2 Create accountability for hiring process decisions.

- 2018 | Implement a step within the hiring process that requires decision makers to state a reason why they did not choose to take applicants to the next stage. HUMAN RESOURCES
- 2018 | Provide training for managers and directors on bias interrupters. HUMAN RESOURCES

GOAL 4 Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.

STRATEGY 1 Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

ACTION 4.1.1 Review the current processes used organization-wide for selecting contractors, suppliers, vendors, and consultants.

- 2018 | Review and document the process. FINANCE AND OPERATIONS

ACTION 4.1.2 Create and implement a policy or policies for contracting with third-party vendors that account for the various needs of the organization and consider a diverse vendor pool.

- 2018 | Develop a diverse list of third-party vendors. FINANCE AND OPERATIONS
- 2019 | Develop a policy. FINANCE AND OPERATIONS
- 2020 | Implement the policy. FINANCE AND OPERATIONS

GLOSSARY

ACRONYMS

ABA	American Bar Association
ACDI	Advisory Committee on Diversity and Inclusion, Oregon State Bar
BOG	Board of Governors, Oregon State Bar
CEO	Chief Executive Officer, Oregon State Bar
CEJ	The Lawyers' Campaign for Equal Justice
CLE	Continuing Legal Education
CLNS	Civil Legal Needs Study
DAC	Diversity Advisory Council
DAP	Diversity Action Plan
D&I	Diversity & Inclusion Department, Oregon State Bar
HOD	House of Delegates, Oregon State Bar
IOLTA	Interest on Lawyers Trust Accounts
LSP	Legal Services Program
MCLE	Minimum Continuing Legal Education
NLMP	New Lawyer Mentoring Program
OCLEAB	Oregon Council on Legal Education and Admissions to the Bar
OLF	Oregon Law Foundation
OLIO	Opportunities for Law in Oregon
ONLD	Oregon New Lawyers Division
OSB	Oregon State Bar
OSCCIF	Oregon Supreme Court Council on Inclusion and Fairness

TERMS AND CONCEPTS

There may be multiple definitions of the words or terms below; the following definitions characterize how the DAC has defined them for the purposes of this plan.

Benefit statement

A statement summarizing and demonstrating the advantages and values of a particular approach or initiative.

Bias interrupters

Tactics and approaches for disrupting personal biases, including implicit biases.

Culture

The system of shared beliefs, values, customs, behaviors, and artifacts that are held by specific social or other groups and that are transmitted from generation to generation.

Cultural awareness

Knowledge, understanding, and appreciation of different cultures.

Consumer protection initiatives

Measures currently under development that will be implemented to help protect the public in light of the changing legal services market.

Cultural competence

The ability to interact effectively with people of different cultures. Cultural competence comprises four components: (a) awareness of one's own cultural worldview, (b) attitude toward cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) cross-cultural skills. Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures. Cultural competence is a developmental process that evolves over an extended period.¹

Diversity

The differences between us that make us individual and unique. Diversity includes, but is not limited to, age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, and socioeconomic status.

Dominant culture

The dominant culture is the group or groups within society that possess power, influence, authority, and control over other groups, cultures, or factions of society on a systemic and institutional level, to the detriment and suppression of nondominant cultures.

Equity

Ensuring that all individuals and groups have fair access to the same opportunities and resources by identifying and eliminating barriers that face underrepresented groups, by acknowledging ingrained and systemic structural biases in society and striving to address these disparities.

English-language learners

People who speak, read, or write in languages other than English, people who are not fluent in English, or both.

Equity lens

Analyzing processes and systems to identify causes of disparate impact and inequity.

Hard-to-reach communities

Includes those with limited English-language skills, homeless people, farmworkers, immigrant workers, communities with a distrust and fear of government agencies, and senior citizens.

¹ Source: Diversity, Equity and Inclusion Terms, University of Houston Center for Diversity and Inclusion, https://www.uh.edu/cdi/diversity_education/resources/pdf/terms.pdf

High-demand languages

Languages most frequently spoken or requested by members of the public who contact the OSB for public services, as determined through ongoing tracking of these inquiries and requests.

Implicit bias

Unconscious stereotyping or unconscious attitudes toward specific groups of people that impact our behavior, actions, perceptions, or understanding.

Inclusion

Creating an environment that is welcoming, safe, and supportive for any individual or group by acknowledging, embracing, and valuing the unique contributions our individual backgrounds offer.

Lateral hires

Lawyers who have joined the OSB from states or locations other than Oregon. In the context of this DAP, the term "lateral hire" is not specific to sideways career movement.

Low-income Oregonians

For the purpose of statewide legal aid services, households with incomes at or lower than 125% of the federal poverty level. This would be \$30,750 for a household of four in 2017. Another way to look at it is that people in single-person households who makes minimum wage in Oregon would be ineligible for legal aid because they are over income.

Marginalized communities

Communities subjected to social exclusion and thus disadvantaged or prevented from participating in or benefiting from societal systems and processes.

Nondominant cultures

Groups that are historically underrepresented, politically, socially, and/or economically.

OSB public protection programs

OSB programs including the lawyer disciplinary process, the unlawful-practice-of-law complaint process, the fee-dispute resolution program, the client security fund, and malpractice coverage.

Specialty bars

Professional organizations of lawyers whose missions are generally focused on advancing diversity, equity, and inclusion in the legal profession (also known as "affinity bars"). www.osbar.org/diversity/index.html#specialtybarssections

Underserved communities

Low-income and other communities that lack access to or the ability to afford legal services.

DRAFT



Statement on White Nationalism and Normalization of Violence

As the United States continues to grapple with a resurgence of white nationalism and the normalization of violence and racism, the Oregon State Bar remains steadfastly committed to the vision of a justice system that operates without discrimination and is fully accessible to all Oregonians. As we pursue that vision during times of upheaval, it is particularly important to understand current events through the lens of our complex and often troubled history. The legacy of that history was seen this year in the streets of Charlottesville, and in the attacks on Portland's MAX train. We unequivocally condemn these acts of violence.

We equally condemn the proliferation of speech that incites such violence. Even as we celebrate the great beneficial power of our First Amendment, as lawyers we also know it is not limitless. A systemic failure to address speech that incites violence emboldens those who seek to do harm, and continues to hold historically oppressed communities in fear and marginalization.

As a unified bar, we are mindful of the breadth of perspectives encompassed in our membership. As such, our work will continue to focus specifically on those issues that are directly within our mission, including the promotion of access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone. The current climate of violence, extremism and exclusion gravely threatens all of the above. As lawyers, we administer the keys to the courtroom, and assist our clients in opening doors to justice. As stewards of the justice system, it is up to us to safeguard the rule of law and to ensure its fair and equitable administration. We simply cannot lay claim to a healthy justice system if whole segments of our society are fearful of the very laws and institutions that exist to protect them.

In today's troubling climate, the Oregon State Bar remains committed to equity and justice for all, and to vigorously promoting the law as the foundation of a just democracy. The courageous work done by specialty bars throughout the state is vital to our efforts and we continue to be both inspired and strengthened by those partnerships. We not only refuse to become accustomed to this climate, we are intent on standing in support of and solidarity with those historically marginalized, underrepresented and vulnerable communities who feel voiceless within the Oregon legal system.

To: National Center for State Courts

From: GBA Strategies

Date: November 15, 2017

2017 State of the State Courts – Survey Analysis

The latest edition of the State of the State Courts research, an annual national survey conducted on behalf of the National Center for State Courts, reveals consistency across several years now on core measures of job performance and public trust in state courts. As has been the case throughout the course of this research program, the courts remain the most trusted branch of government, even in this period of extreme partisanship and deep distrust of many public institutions. But there are also well-established areas of concern, as Americans continue to express doubts about political bias in the court system and judges who are seen as out of touch with the communities they serve.

Access to justice in rural and under-populated areas is another area of concern that we explored in this year's research, with nearly 3-in-4 Americans identifying it as a problem and nearly 1-in-3 saying it is a major problem. While they are divided on the best solution to this problem, there is broad agreement that the status quo is unacceptable.

As caseload burdens and the strain they put on the court system continue to grow, there is an increasing focus on self-representation and what steps state courts can take to make it easier for individuals who wish to represent themselves. This survey shows that most Americans still view the court system as too complicated to allow for self-representation, but it also identifies a number of specific customer service challenges and relatively simple solutions that courts can take to make customers more comfortable navigating the system. Public concerns about complexity in the court system can't be solved overnight, but it is clear there are steps that states can take in the short term to catalyze long-term gains.

As public outcry over the growing opioid epidemic in our country increases and courts across the country wrestle with how to address this growing crisis, we asked some preliminary questions to establish how Americans view the issue and the role of the courts in addressing it. We found that, while broad majorities of Americans view the issue as a problem, there are significant differences in opinion on its severity along demographic lines. There is, however, broad agreement that the proper role of the courts in addressing this issue is in support of the health providers, counselors, and other support groups on the front lines of this epidemic.

The following are key findings and recommendations based on a survey of 1,000 registered voters conducted October 28 – November 1, 2017. The poll is subject to a margin of error of +/- 3.1 percentage points at the 95 percent confidence level.

- **Courts remain the most trusted branch of government.** Voters continue to express more confidence in the judicial branch than in the executive and legislative branches in their respective states. Ratings of the legislative branch are at their lowest point in the five years of this research program, but confidence in the courts is holding steady even in this difficult political environment.
- **Little change in views of court performance, attributes.** The number of Americans rating the performance of their state courts as excellent or good stands at 44 percent in this survey, a very slight 2-point decline from a year ago. Ratings of the state courts on a range of attributes show similar consistency – up or down a couple points but no dramatic movement that either raises concerns or signals a rapid improvement in public perceptions. The good news is that majorities still say each of the positive attributes tested – *hard-working* (64 percent), *fair and impartial* (58 percent), *provide equal justice to all* (54 percent), *provide good customer service to people in the court system* (52 percent), and *a good investment of taxpayer dollars* (51 percent) – describes the courts in their state well, except for one exception – *innovative* (42 percent, but up 3 points from a year ago).

Similarly, when asked whether they agreed or disagreed with a series of statements about whether the courts in their state live up to fundamental duties of the court system that our research has identified as central to public perceptions of the role of the judiciary, majorities agree with each, ranging from 68 percent on *committed to protecting individual and civil rights* to 55 percent on *unbiased in their case decisions*. All responses in this battery fall within the narrow range we have seen in previous years.

The overall sense of stability in perceptions of the courts is reinforced by a new directional question we added this year. When asked whether, based on their own experiences or what they have heard from others, the customer service provided by courts in their state has gotten better, gotten worse, or stayed about the same in recent years, more than 2-in-3 (69 percent) say it has stayed about the same, with the rest evenly divided between getting better (12 percent) or worse (10 percent). This question also reveals no significant differences based on key demographic variables.

- **Concerns about influence of politics on judges and the broader court system stand out as a persistent concern.** In 2014 and again in 2015, we explored attitudes about political bias in the court system and particularly in how individual judges are selected and how their decisions are impacted by personal biases. Given the current political climate, we thought this year was a good time to revisit these important measures. Neither has moved significantly from previous marks, indicating the political environment has not exacerbated the problem, but the lack of movement underscores the enduring doubts expressed in these measures.

Political Bias and the Judiciary			
	% Agree		
	2014	2015	2017
Judges in (STATE) courts make decisions based on an objective review of facts and the law.	48	48	50
Judges in (STATE) courts make decisions based more on their own beliefs and political pressure.	46	47	47
In general, those chosen to serve as judges in (STATE) courts are selected based on their qualifications and experience.	43	43	43
Too many judges in (STATE) courts are there because of personal connections or political influence rather than their qualifications for the job.	51	53	53

- Judges perceived as out of touch with communities they serve, public calls for greater engagement and empathy.** An extension of doubts about bias in the judiciary is a sense that judges do not understand the people who appear before them in their courtrooms and need to learn more about the challenges facing ‘everyday people.’ There are also critical differences on this measure based on race and age.

Judges Seen as Out of Touch					
	% Agree More				
	Total	White	Afr. Amer.	<50	50+
In general, judges in (STATE) courts reflect the values of our communities and understand the challenges facing the people who appear in their courtrooms.	36	38	19	33	38
Too many judges in (STATE) courts don't understand the challenges facing people who appear in their courtrooms and need to do a better job of getting out into the community and listening to people.	60	58	78	64	56

There is also a significant gap in intensity on these two measures, with 45 percent strongly siding with the statement saying judges don’t understand the people they serve and only 20 percent strongly saying judges reflect the values of their communities.

When asked in an open-ended format what they believe judges need to hear and to learn about their communities, responses were primarily focused on empathy at a community and individual level – treating all people equally, understanding the economic challenges facing so many families and the cultural diversity of their communities – more than specific issues. And virtually no respondents volunteered responses that had to do with the court system itself or processes and procedures; these are certainly concerns, as we see elsewhere in this

research, but they pale in comparison to the more visceral disconnect too many Americans feel between themselves and the judges who serve their communities. In many ways, these feelings reflect broader public frustrations with government in general.

- **Most Americans recognize the challenge of delivering justice to rural and under-populated areas as a problem but mixed on solutions.** Nearly 3-in-4 respondents identified this issue as a problem in their state; 30 percent identified it as a major problem, while 43 percent see it as a minor problem and 22 percent as not a problem in their state. While there are differences on this measure based on population density – 29 percent major problem among urban residents and 28 percent among suburban residents versus 34 percent among rural residents – the differences are not stark. Instead, it is region of the country that stands out as the most important variable on this question. Just 16 percent in New England and 24 percent in the Mid Atlantic rate this as a major problem, compared to 43 percent in the Southwest and 37 percent in the Deep South.

Looking at potential means of addressing this solution, the first takeaway is that the status quo is not a viable option, as only 13 percent say we should continue to require residents of these areas to travel to the nearest courthouse to access court services. However, only another 13 percent view building and staffing more courthouses to serve these areas as a viable option. The rest are divided between two solutions:

- *Give residents of these areas the choice of traveling to the nearest existing courthouse or waiting for a traveling judge and court staff to visit their area every few months (36 percent)*
- *Allow residents of these areas to conduct all court business online or via videoconference (32 percent)*

However, we actually split sampled the second choice, with half hearing this proposal to include actual trials and half hearing it to except actual trials, and there was a noticeable difference. Among those who heard it to include actual trials, this choice trailed the traveling judge option by 13 points (39 to 26 percent), but among those with trials excepted, the online option was preferred by 5 points (38 to 33 percent).

- **Despite cost, most Americans express preference for lawyer over self-representation.** By a margin of nearly 2-to-1, Americans say they would prefer to retain a lawyer when dealing with the court system, despite the cost, rather than represent themselves, even if more self-help resources were made available.

Lawyer vs. Self-Representation		
	Strong	Total
Despite the cost, I would want to be represented by a lawyer anytime I was dealing with the court system.	53	63
If the courts made more self-help resources available, I would prefer to handle a problem myself rather than have a lawyer represent me.	24	34

The disparity in intensity between these two choices is striking and demonstrates how strongly the preference for a lawyer is held among a majority. But looked at another way, it shows that 1-in-3 would prefer self-representation, and this is a significant number that would make a meaningful impact if courts can provide them with the tools they need to confidently represent themselves in the court system. At the present time, it is clear that most feel the courts are not doing enough to provide those tools.

Court Support for Self-Representation		
	Strong	Total
(STATE) courts are effectively providing information and assistance so that individuals can navigate the court system without hiring an attorney.	15	30
(STATE) courts are not doing enough to empower regular people to navigate the court system without an attorney.	42	62

When asked to identify the customer service concerns that make it harder for them to navigate the court system, two primary concerns jump out – *not knowing where to turn for help with forms and procedures* (37 percent) and *rude, unhelpful, or intimidating court staff* (35 percent). Forms and procedures are a particularly significant concern for older voters, especially older women, while younger and non-white voters express the greatest concerns about court staff. Those two primary concerns were followed by three other concerns that also garnered significant support – not knowing where you need to go in the courthouse or how to get there (29 percent), the amount of time spent at the courthouse (27 percent), and not being able to complete forms or pay fees online (24 percent).

- **Relatively simple steps emerge as most impactful policy prescriptions.** Asked to identify policies that would have the greatest impact in improving the customer experience for those dealing with the courts, respondents prioritized common-sense solutions that reflected the top concerns they had previously established.

CUSTOMER SERVICE POLICY PRESCRIPTIONS		
	Significant Impact	Total Impact
Plain-language legal forms with basic language and instructions so that non-lawyers can understand and complete them	59	84
The ability to connect with court staff online or by phone to answer your questions rather than traveling to the courthouse	55	85
Online self-help services that allow users to file a form, pay a fine, or take other actions online instead of coming to the courthouse	52	82
An easy-to-navigate court website	46	80
A resource desk in the courthouse dedicated to answering customers' questions about the court system	43	79
Self-help kiosks to guide visitors through the steps they need to take to file a form, pay a fine, or take other actions within the court system	36	79

- **Clear majority see opioid problem as a significant challenge in their community.** More than 1-in-4 (26 percent) identifies this issue as a crisis, while another 35 percent view it as a major problem. Just 17 percent see it as a minor problem, while another 17 percent say it is not really a problem in their community. Critical differences on this question emerge along lines of race, gender, and population density, with whites, women, and those living in rural communities much more likely to express concern about the impact of opioids on their local community.

We also asked respondents how large of a role they felt a number of key groups should play in dealing with this issue. Not surprisingly, Americans want all groups tested to play some role, but they also display a clear sense of who should play a larger role.

Role in Addressing the Opioid Issue	
	% Major Role
Tier 1	
Health providers	79
Addiction counselors and non-profit support groups	75
Tier 2	
State and local governments	68
The police and other law enforcement	67
The drug companies	67
Tier 3	
The court system	52
The federal government	48

These results suggest that most Americans see the health providers, counselors, and other support groups on the front lines of this epidemic playing the greatest role, with the court system and federal government still expected to play a role, but more in support than leading the charge. The tiers defined above largely hold true across demographic lines, although African Americans and Hispanics are slightly more likely to see a major role for the court system.

The limited license legal technician is the way of the future of law

BY MARY JUETTEN

POSTED DECEMBER 8, 2017, 8:30 AM CST ABA JOURNAL



Mary Juetten

The first time I heard about the Washington State Bar Association’s Limited License Legal Technician program was when I hosted an Evolve Law event in Seattle in November 2015. I had just moved to the state and I was immediately intrigued by what I heard about the program.

The LLLT program is currently the only paraprofessional program of its kind, fully operational, within the United States. Many states offer court facilitators, but their offerings do not rise to the same level of independence as LLLTs. Unlike paralegals, the WSBA technicians operate on their own, without a supervising lawyer. At this time, LLLTs can help clients on family law matters only. However, the LLLT cannot represent people in court or negotiate—all communications must go through the client. With states consistently reporting that 80 percent of their citizens cannot afford an attorney for civil matters, plus the education gap [as outlined here](#), the United States clearly has an access to justice problem. It’s a national crisis, and the LLLT approach is an important piece of the solution.

Over the past two years, whenever I’ve moderated various panels, the LLLT program has been hailed as an example of alternative legal services and access to justice. The reaction wasn’t all positive, however. I was surprised to hear dozens of lawyers, mainly from outside of Washington, criticize the program. When I probed deeper, the complaints did not appear to be well-founded, and my curiosity was piqued.

I started my research by connecting directly with LLLTs and lawyers, which led to discussions with WSBA personnel and several of the original proponents of the program. As issues of adoption and acceptance were discussed during these interviews, I also spoke with others involved with law education reform and paraprofessional programs in other jurisdictions. A huge thank-you to all those who shared their time and expertise. The result is this multipart monthly series. Hopefully, as we delve into the history, the program itself, and the impact on the profession within and outside Washington, I will confirm my initial thought that the LLLT is the way of the future of law.

THE CONNECTION TO ACCESS TO JUSTICE

At a recent Evolve Law event, an attorney scoffed at the LLLT program (and paraprofessionals in general), saying that there is no point to it if the technicians charge \$100 to \$150 per hour. I was surprised to hear a level of protectionism when 80 percent of their citizens cannot afford an attorney for civil matters—including family law. Problems associated with the legal profession, including being out of touch with clients and their needs, leapt to mind at that moment and inspired me to dig even deeper into this topic.

First, access to justice is not limited to low-income Americans. The 80 percent unmet need figure is based on the entire population. Therefore, many families cannot qualify for help and cannot afford an attorney.

Second, most middle-income citizens carry debt loads commensurate to their earnings, and any unplanned expenses are difficult to cover.

Third, many family law attorneys charge anywhere from \$250 to \$400 per hour, which is still more than double that of a LLLT. For example, using a 10-hour matter, a LLLT could charge up to \$1,500 but an attorney would be \$4,000. That \$2,500 is a substantial savings to almost everyone.

In addition, the idea that only attorneys can handle all aspects of family law matters is difficult to comprehend. Necessary tasks include filling in forms and—considering that courts are overrun with self-represented parties lacking legal experience—having a trained paraprofessional to assist must be an improvement. Other professions, like accounting and medicine, improve access by offering various tiers of service. For example, a bookkeeper can prepare your financial statements but is likely not qualified to complete your taxes. Therefore, if you pay a tax professional to do those same financials, you are likely paying too much. To that end, over the past several months, I have interviewed people who are directly involved with Washington's program to explore how the LLLT can help close the access-to-justice gap by offering legal service to a specific segment of the state's population. Please note that the program was created to solve access for only

Finally, consider that an attorney can start serving clients after the bar exam without an hour of actual practice experience. In comparison, the LLLT program requirements are rigorous, including 3,000 hours of practical experience under a lawyer's supervision plus professional responsibility and practice area examinations.

As of this month, there are only 26 LLLTs licensed in Washington, mainly concentrated in the Seattle-Tacoma area. The program appears to suffer from barriers to entry including the cost of the classes and the duration of the practical experience requirement. In addition, the classes are not eligible for student aid, so it is also expensive. Other states are moving towards similar paraprofessional programs but are taking heed from these low numbers. Additionally, Washington is revisiting some of its LLLT requirements.

From a business point of view, this should be an opportunity for family law attorneys to broaden their practice by employing a LLLT to provide the intended population—families with incomes between \$50,000 to \$100,000—with legal services at a reduced rate. Of course, LLLTs can and have set up their own practices. Attorneys can work with these independent technicians to assist when matters need to go to court or negotiations are required. Instead, attorneys complain that LLLTs are taking their business. With 80 percent of Americans unrepresented in civil matters, this does not seem to make sense and will be explored later in this series. It should be noted that LLLT is just one piece of an overall solution to access to justice, which seems to be misunderstood by lawyers and used against the program.

The LLLT is almost three years old. Many attorneys say that the program is a failure because of the low numbers, but I believe that the slow start is because of the high barrier to entry, lack of support from lawyers, and a need for more paraprofessional awareness. Washington state has

approximately 35,000 lawyers in comparison to the handful of LLLTs, so the marketing of this relatively new service is a challenge.

Former WBSA Bar President Patrick Palace of [Palace Law](#) added this: “A popular concern among small and solo practitioners is that the LLLT would directly compete and take away business. However, that was never likely to happen and has not happened because the citizens that are using LLLTs cannot afford a lawyer and would not hire a lawyer. Therefore, practicing lawyers are not losing clients to LLLTs. Instead the latent market or those in the justice gap are simply provided access.”

I spoke with two technicians who have their own firms, including one of the first LLLTs, Priscilla Selden of [Columbia Valley Legal Technician Services](#), plus one paralegal who is working on her 3,000 hours. In a nutshell, they report that adoption by the profession is slow, but clients are responsive to these services. In fact, most clients are grateful to have affordable help, as Selden’s client explained:

“It was very positive and cost efficient for me to use Priscilla ... I was very grateful to have this option! She provided me excellent support during the divorce process and was responsive to all my questions. Priscilla completed all paperwork completely and within the time frame that I requested.”

Clients are demanding alternatives to attorneys because they cannot afford lawyers and the forms and process are too difficult. We will explore the chill from the profession further next time, along with successes and other challenges for the LLLTs.

Mary E. Juetten, CA, CPA, JD is founder and CEO of [Traklight](#). In 2015, Mary co-founded [Evolve Law](#), an organization for change and technology adoption in the law. She was named to the ABA’s Legal Technology Resource Center 2016 Women in Legal Tech list and the Fastcase 50 Class of 2016. She is the author of [Small Law Firm KPIs: How to Measure Your Way to Greater Profits](#). She is always looking for success stories where technology has been used to bridge the justice gap, from pro-bono through low-bono to non-traditional legal services delivery. Reach out to her on Twitter [@maryjuetten](#).

What are lawyers worth? Self-regulation perpetuated 'bespoke myth,' op-ed says

BY DEBRA CASSENS WEISS

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Mark Cohen. ABA Journal file photo by Arnold Adler.

Lawyers are so expensive because, until recently, law operated as a guild rather than a competitive market, according to an op-ed by a fellow at Northwestern University Pritzker School of Law.

The system of lawyer licensing had fostered a “bespoke myth” that maintained all legal matters were unique, inherently complex and worthy of premium rates, according to the [Forbes](#) article by [Mark Cohen](#).

“Lawyers believed they were exceptional by dint of licensure; only lawyers were qualified—or so they believed—to perform the work they did,” he said.

Law is both a profession and a business, and the distinction could be recognized by separating regulation of the practice of law from the business of law, Cohen says. He points to the United Kingdom, where the Law Society governs practice issues and the Solicitors Regulatory Authority determines permissible business structures for legal services.

Law practice is changing, partly because of technology and the oversupply of lawyers, according to Cohen. Now there is a “digital legal marketplace” where lawyers work alongside other professionals and machines, he says.

In the new marketplace, consumers will pay a premium for differentiated legal expertise and skills, but not for legal delivery, Cohen writes.

“Most lawyers have an ethos and reward system that values all tasks and client matters equally,” Cohen says. “That’s different than the client perspective that assigns different values to legal assistance. This helps explain law’s resistance to technology and process. It also accounts for the high cost of legal services and why legal consumers and the millions of unserved in need of legal services believe that lawyers are not worth what they charge.”

In the changing world, many lawyers will no longer be working in a traditional law firm structure, Cohen asserts. Instead, many will soon be working in corporate environments where they will have to shorten delivery cycles, streamline processes, work within budgets, identify products to replace services, and automate. “They will be rewarded by achievement of these metrics, not by hours billed,” he says.

And the result will be affordable legal services, he says.

Cohen was a founder of Clearspire Law, a [now-shuttered](#) law firm where lawyers worked remotely, and Clearspire Service Co., which supported the firm’s business operations. He conducts professional activities under the LegalMosaic brand.

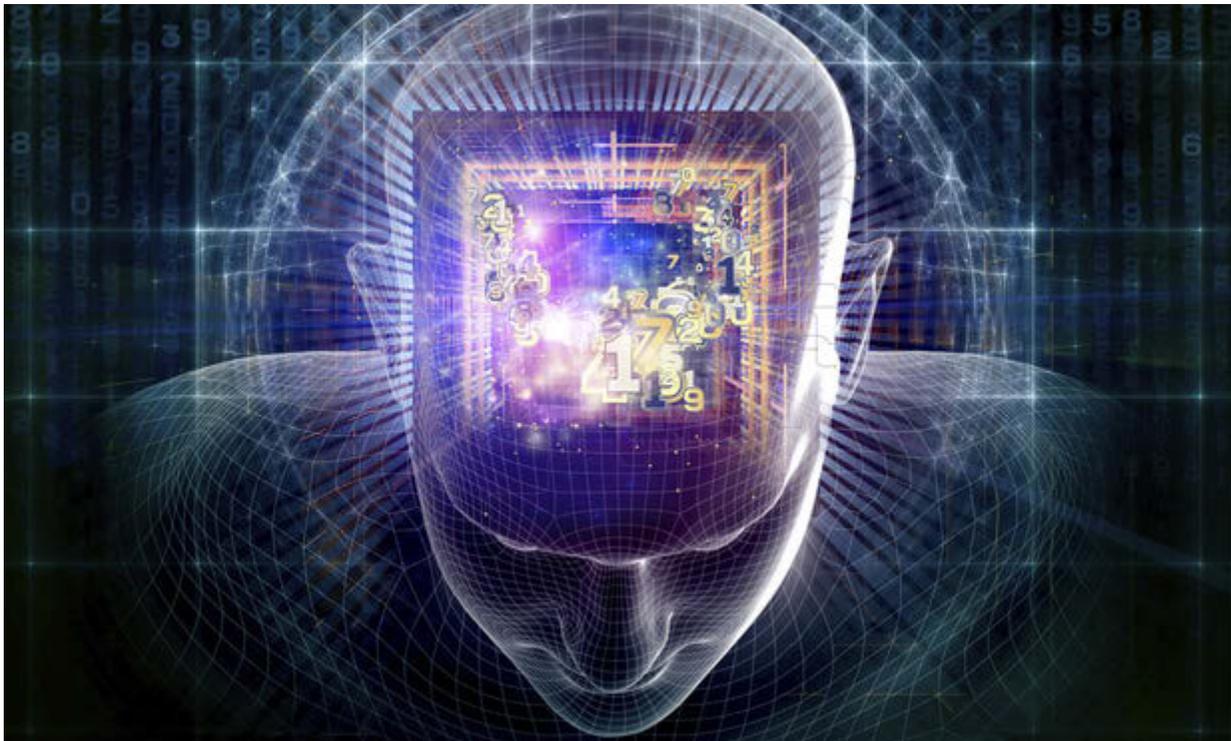
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To Adopt Legal Tech, Lawyers Need to Start Thinking Like Entrepreneurs

Making a mental switch away from the past involves thinking differently about essential lawyer traits, in many cases, turning them on their head.

By Noory Bechor, LawGeex | December 11, 2017



Huge technological advancements are taking place in agriculture, aviation, engineering, energy, information technology, neuroscience, robotics, transportation, space exploration, and the list goes on. In this disruptive age, it is no surprise that the legal profession is itself facing up to its own unprecedented innovation challenge.

As professor Richard Susskind puts it in the book [Tomorrow's Lawyers](https://global.oup.com/academic/product/tomorrows-lawyers-9780198796633?cc=fr&lang=en&) ([, the legal profession faces more disruption in the next two decades than it has seen in the past two centuries.](https://global.oup.com/academic/product/tomorrows-lawyers-9780198796633?cc=fr&lang=en&)

This new reality requires lawyers to increasingly act more like disruptive entrepreneurs, shifting away from our traditional mindset. This is not easy even for the most millennial-minded lawyer. Legal training and practice traditionally rests on looking at the past, like precedents and case law, rather than forward to the future.

The transition from a lawyer to a more entrepreneurial mindset is one I have confronted when I co-founded LawGeex, an AI contract review automation platform, in 2014. Formerly a commercial lawyer at a large firm, I realized that the old attributes drilled into me—perfection, risk averseness, confidentiality, and being in control—were costly, inefficient and sometimes destructive. Making a mental switch away from the past involves thinking differently about essential lawyer traits, in many cases, turning them on their head.

Based on my experience, there are a number of changes in mindset that lawyers need to focus on—all enabled and enhanced by adoption of technology.

1. Focus on the big picture

Lawyers traditionally focus on details. In particular, one of the main goals of lawyers is to flush out risk.

The problem is, lawyers sometimes become so risk averse that they alarm their clients regarding every minor risk. I have found that the best lawyers, in fact, put risk in perspective for their clients, addressing the chances of these risks actually materializing. By embracing technology, lawyers can now more than ever make this risk calculation and act like-data driven entrepreneurs, bringing the bigger picture into focus.

This has created a shift as a new breed of lawyers act as value-driven entrepreneurs. IP lawyers for instance, are increasingly using big data sets to more effectively analyze brands they are protecting. Pat Gelsinger, chief executive of cloud computing and visualization company, VMware (<https://www.ft.com/content/8ce9a590-b23b-11e6-9c37-5787335499a0?mhq5j=e1>), makes it clear he can be proud of his legal department's entrepreneurial reputation for value-creation: "While any legal department has to guarantee that risk is minimized, ours also creates value. There are metrics associated with everything they do."

In other cases, better capturing of legal data will help ensure the legal department become the most reliable source for forecasting the next three months of sales in an organization.

2. Be optimistic

The entrepreneur-lawyer mindset involves having to be constantly, almost pathologically, optimistic, even in the face of short term setbacks.

In contrast, lawyers analyzing risks all day can suffer from Eeyore-like tendencies. Being cautiously optimistic about the future and finding ways to use technology to provide a better service is definitely a sign of an innovative lawyer. Interestingly, each lawyer I speak to that has carried out major change management agrees that there has never been a better time to be a lawyer when you are optimistic about the opportunities (despite many challenges along the way).

3. Collaborate

To survive, all entrepreneurs must by necessity collaborate. Each day as an entrepreneur I share sensitive information—from financials to intimate details on strategy and successes (and failures).

In contrast, though being discrete can be highly justified in law, it makes lawyers unnecessarily resist giving away hard-won information. However, the use of technology naturally promotes more and more collaboration. This includes codifying knowledge and legal processes, simplifying opaque legal processes (and language), and creating more equal sharing of information. Innovative lawyers actually enjoy this aspect of knowledge-sharing and decentralizing

processes. This has a knock-on effect beyond their own businesses or clients. To take only one example, lawyers meeting and sharing their experiences during pilots of new technology acts as a major boost to the growth of more sophisticated legal technology, helping us receive the most engaged feedback to constantly enhance and improve our services.

4. Cede control

Lawyers tend to like control and centralization. This means tending to do more things on our own at our desk (this often manifests itself as “only I can do this”). As lawyers, we often believe we can do a task better and faster than anyone or anything else (including against proven technology). But, as entrepreneurs, we must by necessity cede control. I must find people better than myself to do the day-to-day running of parts of the business.

5. Hire diversely

The legal profession is used to working with people typically composed of people like themselves, with a similar education. But as an entrepreneur we need to have knowledge beyond our narrow training and pick up (and fast) “good enough” skills, from marketing to R&D to operations, while also working on our management style and emotional intelligence. The Corporate Legal Operations Consortium (CLOC), for instance, sets out 12 core competencies underpinning the breadth and diversity required from a successful legal function in this disruptive age. As part of this move to diversity and depth, the term “non-lawyer” is thankfully falling into disuse by those pioneering change, symbolizing breadth and depth winning out over homogeneity.

6. Challenge assumptions

Central to most definitions of entrepreneurship is an inherent trait of looking at the world differently, and challenging assumptions. When I was a lawyer, I saw the painful and inefficient process of reviewing and approving standards contracts (reinventing wheels with every contract). I realized much of this drudge work could, and should, be automated. This led to me becoming an entrepreneur to solve this problem for forward-thinking clients.

But generally, lawyers remain wedded to tradition. We tend to be against experimentation, despite the status quo often being the hardest option.

Unsurprisingly, the curious and questioning entrepreneurial lawyer is the best customer for any legal technology company. These customers ask questions, use data, are more comfortable with change, and are more likely to become engaged and lasting advocates.

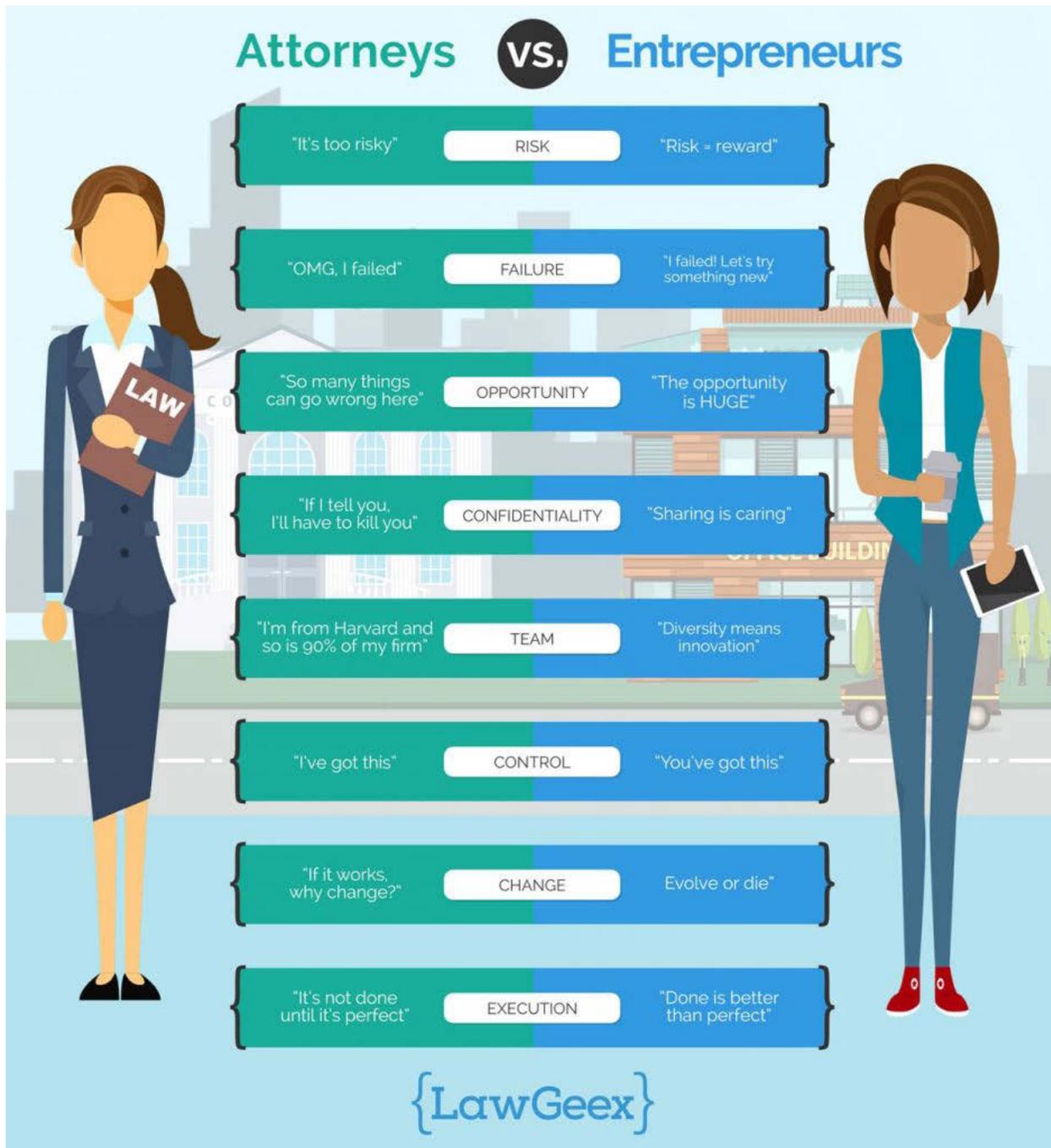
7. Be proud to be a lawyer; but prouder to be an entrepreneur

There is much to be proud of as a lawyer. Our skills are in demand in any age (take your pick from traits, such as working hard, problem-solving, and finding details others miss). But in this new innovative age, it is worth thinking about technology that will hone our habits towards a more entrepreneurial mindset.

The default of fast-emerging legal technologies is an appeal to the inner innovator. Whether it is software automating contract review and approval (LawGeex) to IP to legal research technology, these technologies exist to satisfy core innovation principles. This may include ensuring a more strategic overview, better use of data, more collaboration, and faster and more precise customer experience.

With optimized processes and adoption of technology, lawyers are finding an initial and powerful way to move away from the old school attorney mindset, instead harnessing the essential entrepreneurial qualities now shaping the profession.

Noory Bechor is CEO and co-founder of AI contract review and approval solution LawGeex.



Infographic via

LawGeex

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