

**Board of Governors
Future Calendar of Events**

Revised October 19, 2007

BOG 2007 Meeting Schedule

<u>Committees Meetings at OSB Center 2007</u>	<u>Board Meeting Various Locations</u>	<u>BOG Meeting Locations</u>	<u>Special Events in Conjunction w/Meetings</u>
	<i>November 1-3</i>	<i>Tu Tu' Tun Lodge Gold Beach</i>	<i>BOG Retreat, Bar Social</i>

Tentative - BOG 2008 Meeting Schedule

<u>Committees Meetings at OSB Center 2008</u>	<u>Board Meeting Various Locations</u>	<u>BOG Meeting Locations</u>	<u>Special Events in Conjunction w/Meetings</u>
<i>January 18</i>	<i>February 21-23</i>	<i>Salem</i>	<i>Lunch w/Supreme Court, Local Bar Social</i>
<i>April 4 June 13</i>	<i>May 9-10</i>	<i>Salishan</i>	<i>Joint PLF Mtg. (tentative) Past BOG Dinner</i>
	<i>July 18-19</i>	<i>Klamath Falls</i>	<i>Board Mtg., Regional Bar Social</i>
<i>August 15</i>	<i>August 1 September 11-13</i>	<i>Conference Call Sunriver</i>	<i>Approve HOD Agenda Board meeting, HOD meeting, and Futures Conference</i>
<i>October 17</i>	<i>November 13-15</i>	<i>Cannon Beach</i>	<i>BOG Planning Retreat, Regional Bar Social</i>

Upcoming Events of Interest

<u>Other Events of Interest</u>		<i>Bar Leader Conference</i>	<i>2008</i>	<i>January 17</i>
<i>Awards Dinner</i>	<i>2007</i>	<i>December 7</i>		
<i>Ebony and Ivory</i>	<i>2007</i>	<i>December (TBD)</i>	<i>Legislative Deadline</i>	<i>2008 April 1</i>

<u>Professional Liability Fund Board</u>				
<i>December 14</i>	<i>2007</i>	<i>Lake Oswego</i>	<i>Feb. 8-14</i>	<i>2012</i>
			<i>Midyear Mtg.</i>	<i>NABE/NCBP/ABA</i>
			<i>Aug. 2-7</i>	<i>2012</i>
<u>National/Regional Meetings</u>			<i>Annual Mtg.</i>	<i>NABE/NCBP/ABA</i>
<i>Feb. 5-8</i>	<i>2008</i>	<i>NABE/NCBP/ABA</i>	<i>Feb. 7-12</i>	<i>2013</i>
<i>Midyear Mtg.</i>		<i>Los Angeles, CA</i>	<i>Midyear Mtg.</i>	<i>NABE/NCBP/ABA</i>
<i>Mar. 13-15</i>	<i>2008</i>	<i>BLI</i>	<i>Aug. 8-13</i>	<i>2013</i>
		<i>Chicago</i>	<i>Annual Mtg.</i>	<i>NABE/NCBP/ABA</i>
<i>Mar. 18-23</i>	<i>2008</i>	<i>WSBC</i>	<i>Aug. 7-12</i>	<i>2014</i>
		<i>Tuscan, AZ</i>	<i>Annual Mtg.</i>	<i>NABE/NCBP/ABA</i>
<i>Apr. 16-17</i>	<i>2008</i>	<i>ABA Lobbyist Day</i>	<i>July 30-Aug. 4</i>	<i>2015</i>
		<i>Washington, D.C.</i>	<i>Annual Mtg.</i>	<i>NABE/NCBP/ABA</i>
<i>Aug. 5-12</i>	<i>2008</i>	<i>NABE/NCBP/ABA</i>		<i>Chicago, IL</i>
<i>Annual Mtg.</i>		<i>New York, NY</i>		
<i>Feb. 11-17</i>	<i>2009</i>	<i>NABE/NCBP/ABA</i>		
<i>Midyear Mtg.</i>		<i>Boston, MA</i>		
<i>July 30-Aug. 5</i>	<i>2009</i>	<i>NABE/NCBP/ABA</i>		
<i>Annual Mtg.</i>		<i>Chicago, IL</i>		
<i>Feb. 3-9</i>	<i>2010</i>	<i>NABE/NCBP/ABA</i>		
<i>Midyear Mtg.</i>		<i>Orlando, FL</i>		
<i>Aug. 5-10</i>	<i>2010</i>	<i>NABE/NCBP/ABA</i>		
<i>Annual Mtg.</i>		<i>San Francisco, CA</i>		
<i>Feb. 9-15</i>	<i>2011</i>	<i>NABE/NCBP/ABA</i>		
<i>Midyear Mtg.</i>		<i>Atlanta, GA</i>		
<i>Aug.</i>	<i>2011</i>	<i>NABE/NCBP/ABA</i>		
<i>Annual Mtg.</i>		<i>Toronto, Canada</i>		

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Oregon State Bar
Meeting of the Board of Governors

November 3, 2007

Open Session Agenda

Revised October 29, 2007

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on November 3, 2007, and continue to the morning of November 4, 2007, if necessary to complete business; however, the following agenda is not a definitive indication of the exact order in which items will appear before the board. Any item on the agenda may be presented to the board at any given time during the board meeting.

Saturday, November 3, 2007

1:00 p.m.

1. Report of Officers

A. Report of the President [Mr. Menashe]

1. Meeting with Chief Justice Paul J. De Muniz Inform a-b
October 22, 2007

2. President's Report Inform 1

B. Swearing in of New Officers Action 1.A – 1.D

C. Nominating Committee

1. Nomination of Gerry Gaydos as President-elect Action

D. Report of the President-elect [Mr. Yugler]

1. Miscellaneous Inform

1:15 p.m.

E. Report of the Executive Director [Ms. Garst]

1. Miscellaneous Inform

F. Oregon New Lawyers Division [Mr. Williamson] Inform

1:20 p.m.

G. Board Member Reports Inform

➤ *This section of the BOG agenda is designed for board members to report briefly on news from their regions or contacts with sections, committees, and other bar entities.*

2. Professional Liability Fund [Mr. Zarov]

2:00 p.m.

A. General Update Inform

B. Financial Report

1. Approve PLF Primary, Excess, and Pro Bono Coverage Plans For 2008 Action 3-107

➤ *The BOG is required to approve the PLF coverage plans for the coming year. All changes to the Plans have previously been approved at prior 2007 BOG meetings.*

3. Rules and Ethics Opinions

2:20 p.m.

A. Proposed New Formal Ethics Opinion – Internet Advertising: Payment of Referral Fees Action 109-114

➤ *Consider the recommendation of the Legal Ethics Committee that the opinion concerning internet advertising be issued as a formal ethics opinion of the Oregon State Bar.*

B. Proposed Amendments to Workers' Compensation Administrative Rules Action 115-162

➤ *Consider the Workers' Compensation Board proposals to amend its administrative rules as they pertain to attorney fees.*

4. OSB Committees, Sections, Councils, Divisions and Task Forces

2:30 p.m.

A. UPL Committee [Ms. Wright]

1. UPL Website Inform 163-165

➤ *The UPL Committee has adopted a website to inform the public about what is the unlawful practice of law and what the bar is doing about it.*

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

2:40 p.m.

A. Access to Justice Committee [Ms. Eyerman]

1. Modification of the House Counsel Rule Action 167-181

➤ *Consider a recommendation to the Supreme Court that the Admission Rules be amended to allow attorneys admitted under the House Counsel Rule to provide pro bono services through a pro bono program certified by the Oregon State Bar.*

2:55 p.m.

B. Budget and Finance Committee [Mr. Greene]

- C. 2008 OSB Budget Action 183-203

➤ *The committee will recommend approval of the 2008 budget.*

3:30 p.m.

D. Executive Director Evaluation Committee [Ms. Skerjanec]

Executive Session

1. Executive Session Pursuant to ORS 192.660(1)(i)-
Executive Director Performance Review

Open Session

2. Executive Director Contract and Salary Decision Action

E. Policy and Governance Committee [Mr. Gerking]

4:00 p.m.

1. Recommendation to Repeal Bar Rule 9.5 Action 205-223

➤ *Recent action taken by the Supreme Court on a member's resignation request suggests a need to clarify the membership status of lawyers who have remained suspended for more than five years. Policy & Governance recommends that this clarification be achieved by repealing BR 9.5.*

4:10 p.m.

2. Redistricting of BOG Regions Action 225-230.A

➤ *The committee is recommending that the statute be amended to expand the size of the board to 20 members to accommodate a new redistricting plan.*

4:40 p.m.

3. Elimination of Bias MCLE Rule Action 231-241.E

➤ *The committee recommends a revision to this rule to create a one-time mandatory six hour EOB CLE seminar for all new lawyers to be taken by the end of their first full reporting period.*

6. Consent Agenda Action pink

7. Default Agenda Inform blue

8. Closed Session Agenda

15 minutes

A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet) Discuss/Action lavender agenda

1. Reinstatement Protocol Inform Teresa

B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet) Discuss/Action green agenda

- 9. **Good of the Order (Non-action comments, information and notice of need for possible future board action)**

Oregon State Bar
Meeting of the Board of Governors
November 1-3, 2007
Consent Agenda

6. **Consent Agenda**

A. Approve Minutes of Date

- | | | | |
|----|---|--------|---------|
| 1. | Minutes of Open Session
September 28, 2007 | Action | 243-252 |
| 2. | Minutes of Closed Session
September 27, 2007 | Action | 253 |
| 3. | Minutes of Closed Session
September 28, 2007 | Action | 255-256 |
| 4. | Minutes of Judicial Proceedings
September 28, 2007 | Action | 257-258 |

B. Appointments Committee [Ms. Wright]

- | | | | |
|----|----------------------|--------|-----------------------------------|
| 1. | Various Appointments | Action | 258.A-258.E
Handout |
|----|----------------------|--------|-----------------------------------|

C. Member Services Committee [Mr. Yugler]

- | | | | |
|----|---|--------|---------|
| 1. | 2008 Election Schedule | Action | 259-261 |
| | ➤ <i>Proposed dates for the 2008 BOG and ABA elections.</i> | | |
| 2. | New Bar Center Room Names | Action | 263 |
| | ➤ <i>The new bar center will have six meeting rooms all named after Oregon Rivers.</i> | | |
| 3. | Special Election Dates | Action | 265 |
| | ➤ <i>Robert Newell's resignation from the BOG has created a region 5 vacancy. The dates in the memo will be used in the special election to replace Mr. Newell.</i> | | |

D. Policy and Governance Committee [Mr. Gerking]

- | | | | |
|----|---|--------|-----|
| 1. | Revision of Bar Bylaw 14.4 Regarding
Committee Membership | Action | 267 |
| | ➤ <i>Revises Bar Bylaw 14.4 to clarify the board's role in appointing advisory or public members to committees.</i> | | |

Any new bylaw is subject to the one meeting notice rule (Article 26 of the Bar Bylaws), unless two-thirds of the entire board waive the notice requirement.

2. Katrina Rule to House of Delegates Action 269-282
- *The Policy and Governance Committee recommends that the new rule should go to the House of Delegates for their approval.*
3. Bar Bylaw 3.4 regarding distribution of HOD Action 283-284
Agenda

- *The committee approved the change to allow distribution of the HOD agenda to both active and inactive bar members to conform with the HOD Rule on this subject.*

Any new bylaw is subject to the one meeting notice rule (Article 26 of the Bar Bylaws), unless two-thirds of the entire board waive the notice requirement.

4. Committee Assignment Changes Action 285-289
- *Review recommendations to change the Joint CPA/OSB, Uniform Civil Jury Instructions and Quality of Life Committee assignments.*

E. Client Security Fund

1. CSF Claims Recommended for Payment
- | | | | |
|----|---------------------------------------|--------|-----|
| a. | 07-12 Drews c. Tombleson - \$750.00 | Action | 291 |
| b. | 07-14 Besofkyg v. Wetzal - \$1,000.00 | Action | 292 |
| c. | 07-16 Nagorski v. White - \$7,825.06 | Action | 292 |

Oregon State Bar
Meeting of the Board of Governors
November 1-3, 2007
Default Agenda

7. Default Agenda

A. Executive Director

- | | | | |
|----|--|--------|---------|
| 1. | Operations Report | Inform | 293-298 |
| 2. | Status of Actions from Past Board Meetings | Inform | 299-300 |

B. Contact Information for New BOG Inform 301

C. Access to Justice Committee [Ms. Eyerman]

- | | | | |
|----|------------------------------------|--------|---------|
| 1. | Minutes September 28, 2007 meeting | Inform | 303-305 |
| 2. | Minutes October 12, 2007 meeting | Inform | 307-308 |

D. Budget and Finance Committee [Mr. Greene]

- | | | | |
|----|-------------------------------------|--------|---------|
| 1. | September 30, 2007 Financial Report | Inform | Handout |
| 2. | Minutes September 28, 2007 meeting | Inform | 309-311 |
| 3. | Minutes October 12, 2007 meeting | Inform | 313-314 |

E. Member Services Committee [Mr. Yugler]

- | | | | |
|----|------------------------------------|--------|---------|
| 1. | Minutes September 28, 2007 meeting | Inform | 315-316 |
| 2. | Minutes October 12, 2007 meeting | Inform | 317-318 |

F. Policy and Governance Committee [Mr. Gerking]

- | | | | |
|----|-------------------------------|--------|---------|
| 1. | Minutes of September 28, 2007 | Inform | 319-320 |
| 2. | Minutes of October 12, 2007 | Inform | 321-322 |

G. Public Affairs Committee [Mr. Gaydos]

- | | | | |
|----|------------------------------------|--------|---------|
| 1. | Minutes September 28, 2007 meeting | Inform | 323-324 |
| 2. | Minutes October 12, 2007 meeting | Inform | 325 |

H. CSF Claims Report Inform 327-330

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**Meeting with the Chief Justice
Minutes – October 22, 2007**

Present: Chief Justice Paul De Muniz, Kingsley Click, Albert Menashe, Rick Yugler, and Susan Grabe.

Elimination of Bias

Albert discussed the recent action of the board's Policy and Governance Committee to recommend to the full board a one-time six credit course on diversity for new admittees who would need to complete in their first four and ½ years. This course would only be mandatory for new admittees. The Chief indicated he would discuss this proposal with the court to see if they were inclined to approve it.

Review of 2007 Legislative Session

Court facilities – The House has picked its members for the Interim Committee on Court Facilities: Representatives Krieger, Nathanson, and Barker. At the first meeting, the Chief's task force will make a report to the committee. The chief is having research done on other states' issues with court facilities. When California went from county to state ownership, liability for seismic upgrades to the facilities became an issue that had to be dealt with over an extended period of time.

E-filing/technology – The legislative committee that is looking at technology has not been appointed yet. The Chief had a good meeting about technology with Sen. Schrader. The Supreme Court will go to e-filing in April of 2008. It will take 3-5 years to integrate case management and e-filing in all the courts. Most courts have not tried to integrate their case management. The request at the February legislative session is for the authority for debt financing, i.e. authority to issue COP's. User fees will be used to help pay down the COP's.

Initiatives – The three initiatives opposed by the HOD were discussed: #2 dealing with the title of incumbent is not being circulated yet. The other two, #51 and #53 are being circulated. It appears they have 50,000 of the 80,000 signatures required.

BR 9.5

Albert outlined the concern the bar has with the interpretation of BR 9.5 where the court said a lawyer who was suspended over five years was deemed to have resigned Form A. The Policy and Governance Committee studied the issue and would like to eliminate BR 9.5. In part, this is to inform the public that the person was suspended and didn't seek reinstatement for those who have not chosen to resign. Otherwise, all the suspensions would be turned to Form A's without any action by the lawyer. There are over 800 cases of suspended lawyers who never sought reinstatement. Furthermore, if the person remains suspended, the bar continues to have jurisdiction.

Task Force on Admissions

The Chief suggested that a couple of legislators should be asked to serve on the task force. The next meeting is in November. It was agreed that Albert would invite Rep. Bonamici and Senator Avakian to join the task force. A working paper is expected by mid-2008.

Child Support/SSN

Kingsley Click will coordinate final resolution of this issue with Sylvia Stevens.

Bar cards/courthouse security

Next steps will include a meeting with Evan West from the Statewide Court Security Committee.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 16, 2007
From: Albert Menashe, President
Re: President's Report

In a continuing effort to keep the board informed of the activities of the bar's president, Mr. Menashe includes below a list of activities in which he has participated as a representative of the Oregon State Bar.

September 29	Presentation to the Oregon New Lawyers Division
October 11	Attend the Past Presidents' Council Meeting
October 12	Presentation to the Affirmative Action Committee
October 19	Presentation to the Family Law Section at Salishan
October 22	Meeting with the Chief Justice in Salem

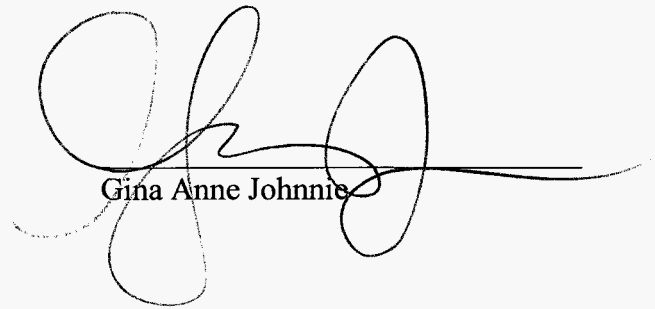
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OREGON STATE BAR

Oath of Office - Members of the Board of Governors


I, Gina Anne Johnnie, depose and say:

I will support the constitution and laws of the United States and of the State of Oregon, and I will fully abide by the policies and bylaws of the Oregon State Bar so long as I shall hold such office, acknowledging that my responsibilities and duties are to all members of the bar equally.



Gina Anne Johnnie

Subscribed and sworn to before me this 3rd day of November, 2007.




Albert A. Menashe, President

OREGON STATE BAR

Oath of Office - Members of the Board of Governors


I, Audrey T. Matsumonji, depose and say:

I will support the constitution and laws of the United States and of the State of Oregon, and I will fully abide by the policies and bylaws of the Oregon State Bar so long as I shall hold such office, acknowledging that my responsibilities and duties are to all members of the bar equally.



Audrey T. Matsumonji

Subscribed and sworn to before me this 3rd day of November, 2007.



Albert A. Menashe, President

OREGON STATE BAR

Oath of Office - Members of the Board of Governors

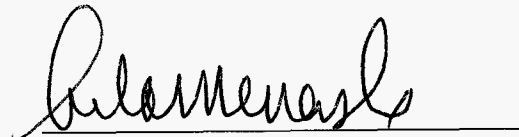
I, Christopher H. Kent, depose and say:

I will support the constitution and laws of the United States and of the State of Oregon, and I will fully abide by the policies and bylaws of the Oregon State Bar so long as I shall hold such office, acknowledging that my responsibilities and duties are to all members of the bar equally.



Christopher H. Kent

Subscribed and sworn to before me this 3rd day of November, 2007.




Albert A. Menashe, President

OREGON STATE BAR

Oath of Office - Members of the Board of Governors

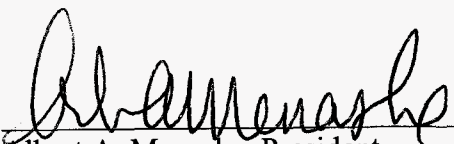
I, Stephen V. Piucci, depose and say:

I will support the constitution and laws of the United States and of the State of Oregon, and I will fully abide by the policies and bylaws of the Oregon State Bar so long as I shall hold such office, acknowledging that my responsibilities and duties are to all members of the bar equally.



Stephen V. Piucci

Subscribed and sworn to before me this 3rd day of November, 2007.



Albert A. Menashe, President

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 1-3, 2007
Memo Date: October 16, 2007
From: Ira Zarov, CEO PLF
Re: Revisions to PLF Claims Made Plan, Excess Plan, and Pro Bono Plan

Action Recommended

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2008 PLF Claims Made Plan, Excess Plan, and Pro Bono Plan.

Background

There are three operative PLF Coverage Plans – the Primary Program Coverage Plan, the Excess Plan, and the Pro Bono Plan. The Excess Plan covers firms and individuals who purchase excess coverage from the PLF. The Pro Bono Plan covers lawyers who volunteer for OSB-approved legal services programs, but who do not have malpractice coverage either from the PLF or another source.

As in other years, specific changes to the Plans have previously been approved by the BOG at earlier meetings. In addition to that approval, however, the BOG approves the PLF Claims Made Plan, the Excess Plan, and Pro Bono Plan in their entireties prior to their effective date of January 1, 2008. (OSB Bylaws Section 23.3)

Exhibits Attached.

OREGON STATE BAR

PROFESSIONAL LIABILITY FUND

2008 CLAIMS MADE PLAN

January 1, 2008

2008 CLAIMS MADE PLAN

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Coverage Guide

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**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

2008 CLAIMS MADE PLAN

NOTICE

This Claims Made Plan ("Plan") contains provisions that reduce the Limits of Coverage by the costs of legal defense. See SECTIONS IV and VI.

Various provisions in this Plan restrict coverage. Read the entire Plan to determine rights, duties, and what is and is not covered.

INTERPRETATION OF THIS PLAN

Preface and Aid to Interpretation. The Professional Liability Fund ("PLF") is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The statute states in part:

The board shall have the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund.

Pursuant to this statute, the Board of Governors of the Oregon State Bar created a professional liability fund (the Professional Liability Fund) not subject to state insurance law. The initial Plan developed to implement the Board of Governors' decision, and all subsequent changes to the Plan are approved by both the Board of Directors of the Professional Liability Fund and the Board of Governors.

The Plan is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the Mission and Goals set forth in Chapter One of the PLF Policies, which includes the Goal, "To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention." The limits, exclusions, and conditions are to be fairly and objectively construed for that purpose. While mandatory malpractice coverage and the existence of the Professional Liability Fund do provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy and is not an adhesion contract.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

Bracketed Titles. The bracketed titles appearing throughout this Plan are not part of the Plan and should not be used as an aid in interpreting the Plan. The bracketed titles are intended simply as a guide to locating pertinent provisions.

Use of Capitals. Capitalized terms are defined in SECTION I. The definition of COVERED PARTY appearing in SECTION II and the definition of COVERED ACTIVITY appearing in SECTION III are particularly crucial to the understanding of the Plan.

Plan Comments. The discussions labeled "*COMMENTS*" following various provisions of the Plan are intended as aids in interpretation. These interpretive provisions add background information and provide additional considerations to be used in the interpretation and construction of the Plan.

The Comments are similar in form to those in the Uniform Commercial Code and Restatements. They are intended to aid in the construction of the Plan language. The Comments are to assist attorneys in interpreting the coverage available to them and to provide a specific basis for interpretation by courts and arbitrators.

Attorneys in Private Practice; Coverage and Exemption. Only Oregon attorneys engaged in the "private practice of law" whose principal office is in Oregon are covered by this Plan. ORS 9.080(2). An attorney not engaged in the private practice of law in Oregon or whose principal office is outside Oregon must file a request for exemption with the PLF indicating the attorney is not subject to PLF coverage requirements. Each year, participating attorneys are issued a certificate entitled "Claims Made Plan Declarations." The participating attorney is listed as the "Named Party" in the Declarations.

SECTION I — DEFINITIONS

Throughout this Plan, when appearing in capital letters:

1. "BUSINESS TRUSTEE" means one who acts in the capacity of or with the title "trustee" and whose activities include the operation, management, or control of any business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder.

COMMENTS

The term "BUSINESS TRUSTEE" is used in SECTION III.3 and in SECTION V.5. This Plan is intended to cover the ordinary range of activities in which attorneys in the private practice of law are typically engaged. The Plan is not intended to cover BUSINESS TRUSTEE activities as defined in this Subsection. Examples of types of BUSINESS TRUSTEE activities for which coverage is excluded under the Plan include, among other things: serving on the board of trustees of a charitable, educational, or religious institution; serving as the trustee for a real estate or other investment syndication; serving as trustee for the liquidation of any business or institution; and serving as trustee for the control of a union or other institution.

Attorneys who engage in BUSINESS TRUSTEE activities as defined in this Subsection are encouraged to obtain appropriate insurance coverage from the commercial market for their activities.

2. "CLAIM" means a demand for DAMAGES or written notice to a COVERED PARTY of an intent to hold a COVERED PARTY liable as a result of a COVERED ACTIVITY, if such notice might

reasonably be expected to result in an assertion of a right to DAMAGES.

3. "CLAIMS EXPENSE" means:
 - a. Fees charged by any attorney designated by the PLF;
 - b. All other fees, costs, and expenses resulting from the investigation, adjustment, defense, repair and appeal of a CLAIM, if incurred by the PLF; or
 - c. Fees charged by any attorney designated by the COVERED PARTY with the PLF's written consent.

However, CLAIMS EXPENSE does not include the PLF's costs for compensation of its regular employees and officials or the PLF's other routine administrative costs.

4. "CLAIMS EXPENSE ALLOWANCE" means the separate allowance for aggregate CLAIMS EXPENSE for all CLAIMS as provided for in SECTION VI.1.b of this Plan.
5. "COVERAGE PERIOD" means the coverage period shown in the Declarations under the heading "COVERAGE PERIOD."
6. "COVERED ACTIVITY" means conduct qualifying as such under SECTION III — WHAT IS A COVERED ACTIVITY.
7. "COVERED PARTY" means any person or organization qualifying as such under SECTION II — WHO IS A COVERED PARTY.
8. "DAMAGES" means money compensation for economic loss. It does not refer to non-economic loss, fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, or accountings.
9. "EXCESS CLAIMS EXPENSE" means any CLAIMS EXPENSE in excess of the CLAIMS EXPENSE ALLOWANCE. EXCESS CLAIMS EXPENSE is included in the Limits of Coverage at SECTION VI.1.a and reduces amounts available to pay DAMAGES under this Plan.
10. "INVESTMENT ADVICE" refers to any of the following activities:
 - a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;
 - b. Managing any investment;
 - c. Buying or selling any investment for another;
 - d. (1) Acting as a broker for a borrower or lender, or
(2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;

- e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;
 - f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or
 - g. Inducing someone to make a particular investment.
11. "LAW ENTITY" refers to a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship engaged in the private practice of law.
12. "PLAN YEAR" means the period January 1 through December 31 of the calendar year for which this Plan was issued.
13. "PLF" means the Professional Liability Fund of the Oregon State Bar.
14. "SAME OR RELATED CLAIMS" means two or more CLAIMS that are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, COVERED ACTIVITIES, damages, liability, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. CLAIMS are related in the following situations:
- a. *Secondary or dependent liability.* CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are related to the CLAIMS on which they are based.
 - b. *Same transactions or occurrences.* Multiple CLAIMS arising out of the same transaction or occurrence or series of transactions or occurrences are related. However, with regard to this Subsection b only, the PLF will not treat the CLAIMS as related if:
 - (1) the participating COVERED PARTIES acted independently of one another;
 - (2) they represented different clients or groups of clients whose interests were adverse; and
 - (3) the claimants do not rely on any common theory of liability or damage.
 - c. *Alleged scheme or plan.* If claimants attempt to tie together different acts as part of an alleged overall scheme or operation, then the CLAIMS are related.
 - d. *Actual pattern or practice.* Even if a scheme or practice is not alleged, CLAIMS that arise from a method, pattern, or practice in fact used or adopted by one or more COVERED PARTIES or LAW ENTITIES in representing multiple clients in similar matters are related.
 - e. *One loss.* When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm or cumulatively enhance their damages or losses, then the CLAIMS are related.
 - f. *Class actions.* All CLAIMS alleged as part of a class action or purported class action are related.

COMMENTS

SAME OR RELATED CLAIMS. Each PLF Plan sets a maximum limit of coverage per year. This limit defines the PLF's total maximum obligation under the terms of each Plan issued by the PLF. However, absent additional Plan provisions, numerous circumstances could arise in which the PLF, as issuer of other PLF Plans, would be liable beyond the limits specified in one individual Plan. For example, Plans issued to the same attorney in different PLAN YEARS might apply. Or, Plans issued to different attorneys might all apply. In some circumstances, the PLF intends to extend a separate limit under each Plan. In other circumstances, when the CLAIMS are related, the PLF does not so intend. Because the concept of "relatedness" is broad and factually based, there is no one definition or rule that will apply to every situation. The PLF has therefore elected to explain its intent by listing certain circumstances in which only one limit is available regardless of the number of Plans that may apply. See Subsections 14.a to 14.f above.

Example No. 1: Attorney A is an associate in a firm and commits malpractice. CLAIMS are made against Attorney A and various partners in the firm. All attorneys share one limit. CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are always related to the CLAIMS on which they are based. See Subsection 14.a above. Even if Attorney A and some of the other lawyers are at different firms at the time of the CLAIM, all attorneys and the firm share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE.

Example No. 2: Attorney A writes a tax opinion for an investment offering, and Attorneys B and C, with a different law firm, assemble the offering circular. Investors 1 and 2 bring CLAIMS in 2007 and Investor 3 brings a CLAIM in 2008 relating to the offering. No CLAIM is asserted prior to 2007. Only one Limit of Coverage applies to all CLAIMS. This is because the CLAIMS arise out of the same transaction or occurrence, or series of transactions or occurrences. See Subsection 14.b above. CLAIMS by investors in the same or similar investments will almost always be related. However, because the CLAIMS in this example are made against COVERED PARTIES in two different firms, up to two CLAIMS EXPENSE ALLOWANCES may potentially apply. See Section VI.2. Note also that, under these facts, all CLAIMS against Attorneys A, B, and C are treated as having been first made in 2007, pursuant to Section IV.1.b(2). This could result in available limits having been exhausted before a CLAIM is eventually made against a particular COVERED PARTY. The timing of making CLAIMS does not increase the available limits.

Example No. 3: Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's CLAIMS are not related. A's and B's CLAIMS would be related, but for the exception in the second sentence of Subsection 14.b above.

Example No. 4: An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel A, its ERISA lawyer B, the owner, his attorney C, and the plans' former attorney D, contending there were improprieties in the due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All CLAIMS are related. They arise out of the same transactions or occurrences and therefore are related under Subsection 14.b. For the exception in Subsection 14.b to apply, all three elements must be satisfied. The exception does not apply because the claimants rely on common

theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Finally, even if the exception in Subsection 14.b did apply, the CLAIMS would still be related under Subsection 14.d because they involve one loss. Although the CLAIMS are related, if all four attorneys' firms are sued, depending on the circumstances, up to four total CLAIMS EXPENSE ALLOWANCES might be available under Section VI.2.

Example No. 5: Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. Although the different acts by different lawyers at different times could legitimately be viewed as separate and unconnected, the claimant in this example attempts to tie them together as part of an alleged overall scheme or operation. The CLAIMS are related because the claimants have made them so. See Subsection 14.c above. This will often be the case in securities CLAIMS. As long as such allegations remain in the case, only one limit will be available, even if alternative CLAIMS are also alleged. In this example, although there is only one Limit of Coverage available for all CLAIMS, depending on the circumstances, multiple CLAIMS EXPENSE ALLOWANCES might be available. See Section VI.2.

Example No. 6: Attorneys A, B, and C in the same firm represent a large number of asbestos clients over ten years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation of their cases' values, although the plaintiffs do not allege a common scheme or plan. Because the firm in fact operated a firm-wide formula for handling the cases, the CLAIMS are related based on the COVERED PARTIES' own pattern or practice. The CLAIMS are related because the COVERED PARTIES' own conduct has made them so. See Subsection 14.d above. Attorneys A, B, and C will share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE. LAW ENTITIES should protect themselves from such CLAIMS brought by multiple clients by purchasing adequate excess insurance.

Example No. 7: Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. The CLAIMS are related and only a single Limit of Coverage applies to all CLAIMS. See Subsection 14.e above. When, as in this example, successive or collective errors each cause single or multiple clients and/or claimants harm or cumulatively enhance their damages or losses, then the CLAIMS are related. In such a situation, a claimant or group of claimants cannot increase the limits potentially available by alleging separate errors by separate attorneys. Attorney E, however, may be entitled to a CLAIMS EXPENSE ALLOWANCE separate from the one shared by C and D.

Example No. 8: Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All CLAIMS are related. No class action or purported class action can ever trigger more than one Limit of Coverage. See Subsection 14.f above.

15. "SUIT" means a civil proceeding in which DAMAGES are alleged. SUIT includes an arbitration or alternative dispute resolution proceeding to which the COVERED PARTY submits with the consent of the PLF.

16. "YOU" and "YOUR" mean the Named Party shown in the Declarations.

SECTION II — WHO IS A COVERED PARTY

1. The following are COVERED PARTIES:

a. YOU.

b. In the event of YOUR death, adjudicated incapacity, or bankruptcy, YOUR conservator, guardian, trustee in bankruptcy, or legal or personal representative, but only when acting in such capacity.

c. Any attorney or LAW ENTITY legally liable for YOUR COVERED ACTIVITIES, but only to the extent such legal liability arises from YOUR COVERED ACTIVITIES.

2. Notwithstanding Subsection 1, no business enterprise (except a LAW ENTITY) or any partner, proprietor, officer, director, stockholder, or employee of such enterprise is a COVERED PARTY.

SECTION III — WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES, if the acts, errors, or omissions occur during the COVERAGE PERIOD; or prior to the COVERAGE PERIOD, if on the effective date of this Plan YOU have no knowledge that any CLAIM has been asserted arising out of such prior act, error, or omission, and there is no prior policy or Plan that provides coverage for such liability or CLAIM resulting from the act, error, or omission, whether or not the available limits of liability of such prior policy or Plan are sufficient to pay any liability or CLAIM:

[YOUR CONDUCT]

1. Any act, error, or omission committed by YOU that satisfies all of the following criteria:

a. YOU committed the act, error, or omission in rendering professional services in YOUR capacity as an attorney in private practice, or in failing to render professional services that should have been rendered in YOUR capacity as an attorney in private practice.

b. At the time YOU rendered or failed to render these professional services:

(1) YOUR principal office was located in the state of Oregon;

(2) YOU were licensed to practice law in the state of Oregon; and

- (3) Such activity occurred after any Retroactive Date shown in the Declarations.

[CONDUCT OF OTHERS]

2. Any act, error, or omission committed by a person for whose conduct YOU are legally liable in YOUR capacity as an attorney, provided at the time of the act, error, or omission each of the following criteria was satisfied:

- a. The act, error, or omission causing YOUR liability:
 - (1) Arose while YOU were licensed to practice law in the state of Oregon;
 - (2) Arose while YOUR principal office was located in the state of Oregon; and
 - (3) Occurred after any Retroactive Date shown in the Declarations.
- b. The act, error, or omission, if committed by YOU, would constitute the rendering of professional services in YOUR capacity as an attorney in private practice.
- c. The act, error, or omission was not committed by an attorney who at the time of the act, error, or omission:
 - (1) Maintained his or her principal office outside the state of Oregon; or
 - (2) Maintained his or her principal office within the state of Oregon and either:
 - (a) Claimed exemption from participation in the Professional Liability Fund, or
 - (b) Was not an active member of the Oregon State Bar.

[YOUR CONDUCT IN A SPECIAL CAPACITY]

3. Any act, error, or omission committed by YOU in YOUR capacity as a personal representative, administrator, conservator, executor, guardian, guardian *ad litem*, special representative pursuant to ORS 128.179, or trustee (except BUSINESS TRUSTEE); provided that the act, error, or omission arose out of a COVERED ACTIVITY as defined in Subsections 1 and 2 above, and the CLAIM is brought by or for the benefit of the beneficiary of the special capacity relationship and arises out of a breach of that relationship.

COMMENTS

To qualify for coverage, a CLAIM must arise out of a COVERED ACTIVITY. The definition of COVERED ACTIVITY imposes a number of restrictions on coverage including the following:

***Principal Office.** To qualify for coverage, a COVERED PARTY'S "principal office" must be located in the state of Oregon at the time specified in the definition. "Principal office" as used in the Plan has the same definition as provided in ORS 9.080(2)(c). For further clarification, see PLF Board of Directors Policy 3.180 (available on the PLF website, www.osbplf.org or telephone the PLF to request a copy).*

Prior CLAIMS. Section III limits the definition of COVERED ACTIVITY with respect to acts, errors, or omissions that happen prior to the COVERAGE PERIOD, so that no coverage is granted when there is prior knowledge or prior insurance. For illustration of the application of this language, see *Chamberlin v. Smith*, 140 Cal Rptr 493 (1977).

To the extent there is prior insurance or other coverage applicable to the CLAIM, it is reasonable to omit the extension of further coverage. Likewise, to the extent YOU have knowledge that particular acts, errors, or omissions have given rise to a CLAIM, it is reasonable that that CLAIM and other CLAIMS arising out of such acts, errors, or omissions would not be covered. Such CLAIMS should instead be covered under the policy or PLF PLAN in force, if any, at the time the first such CLAIM was made.

Types of Activity. COVERED ACTIVITIES have been divided into three categories. Subsection 1 deals with coverage for YOUR conduct as an attorney in private practice. Subsection 2 deals with coverage for YOUR liability for the conduct of others. Subsection 3 deals with coverage for YOUR conduct in a special capacity (e.g., as a personal representative of an estate). The term "BUSINESS TRUSTEE" as used in this section is defined in Section I.

Professional Services. To qualify for coverage under Section III.1 and III.2.b, the act, error or omission causing YOUR liability must be committed "in rendering professional services in YOUR capacity as an attorney, or in failing to render professional services that should have been rendered in YOUR capacity as an attorney." This language limits coverage to those activities commonly regarded as the rendering of professional services as a lawyer. This language, in addition to limiting coverage to YOUR conduct as a lawyer, is expressly intended to limit the definition of COVERED ACTIVITY so that it does not include YOUR conduct in carrying out the commercial aspects of law practice, such as collecting fees or costs, guaranteeing that the client will pay third parties (e.g., court reporters, experts or other vendors) for services provided, or depositing, endorsing or otherwise transferring negotiable instruments. The foregoing list of commercial activities is not exclusive, but rather is illustrative of the kinds of activities that are regarded as part of the commercial aspect of law (not covered), as opposed to the rendering of professional services (covered).

Special Capacity. Subsection 3 provides limited coverage for YOUR acts as a personal representative, administrator, conservator, executor, guardian, or trustee. However, not all acts in a special capacity are covered under this Plan. Attorneys acting in a special capacity, as described in Subsection III.3 may subject themselves to claims from third parties that are beyond the coverage provided by this Plan. For example, in acting as a conservator or personal representative, an attorney may engage in certain business activities, such as terminating an employee or signing a contract. If such actions result in a claim by the terminated employee or the other party to the contract, the estate or corpus should respond to such claims in the first instance, and should protect the attorney in the process. Attorneys engaged in these activities should obtain appropriate commercial general liability, errors and omissions, or other commercial coverage. The claim will not be covered under Subsection III.3.

The Plan purposefully uses the term "special capacity" rather than "fiduciary" in Subsection 3 to avoid any implication that this coverage includes fiduciary obligations other than those specifically identified. There is no coverage for YOUR conduct under Subsection 3 unless YOU were formally named or designated as a personal representative, administrator, conservator, executor, guardian, or trustee (except BUSINESS TRUSTEE) and served in such capacity.

Ancillary Services. Some law firms are now branching out and providing their clients with ancillary services, either through their own lawyers and staff or through affiliates. These ancillary services can include such activities as architectural and engineering consulting, counseling, financial and investment services, lobbying, marketing, advertising, trade services, public relations, real estate development and appraisal, and other services. Only CLAIMS arising out of services falling within the definition of COVERED ACTIVITY will be covered under this Plan. For example, a lawyer-lobbyist engaged in the private practice of law, including conduct such as advising a client on lobbying reporting requirements or drafting or interpreting proposed legislation, would be engaged in a COVERED ACTIVITY and would be covered. Generally, however, ancillary services will not be covered because of this requirement.

Retroactive Date and Prior Acts. Section III introduces the concept of a Retroactive Date. No Retroactive Date will apply to any attorney who has held coverage with the PLF continuously since the inception of the PLF. Attorneys who first obtained coverage with the PLF at a later date and attorneys who have interrupted coverage will find a Retroactive Date in the Declarations. This date will be the date on which YOUR most recent period of continuous coverage commenced. This Plan does not cover CLAIMS arising out of conduct prior to the Retroactive Date.

SECTION IV — GRANT OF COVERAGE

1. Indemnity.

a. The PLF will pay those sums that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Plan applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Subsection 2 - Defense.

b. This Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD.

(1) A CLAIM will be deemed to have been made at the earliest of:

(a) When a SUIT is filed or formally initiated;

(b) When notice of such CLAIM is received by any COVERED PARTY or by the PLF; or

(c) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

(2) Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time the earliest such CLAIM was first made. However, this provision will not apply to YOU if YOU have no other coverage from any source applicable to the CLAIM (or that would have been applicable but for exhaustion of limits under that coverage).

c. This Plan applies only to SUITS brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Plan does not apply to SUITS brought in any other jurisdiction, or to SUITS brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

d. The amount the PLF will pay for damages is limited as described in SECTION VI.

2. Defense.

a. Until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage extended by this Plan are exhausted, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct the defense or repair of any CLAIM.

b. With respect to any CLAIM the PLF defends or repairs, the PLF will pay all CLAIMS EXPENSE the PLF may incur. All payments for EXCESS CLAIMS EXPENSE will reduce the Limits of Coverage.

c. If the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage extended by this Plan are exhausted prior to the conclusion of any CLAIM, the PLF may withdraw from further defense of the CLAIM.

COMMENTS

Claims Made Coverage. As claims made coverage, this Plan applies to CLAIMS first made during the time period shown in the Declarations. CLAIMS first made either prior to or subsequent to that time period are not covered by this Plan, although they may be covered by a prior or subsequent PLF Plan.

Damages. This Plan grants coverage only for CLAIMS seeking DAMAGES. There is no coverage granted for other claims, actions, suits, or proceedings seeking equitable remedies such as restitution of funds or property, disgorgement, accountings or injunctions.

When Claim First Made; SAME OR RELATED CLAIMS. Subsection 1.b(1) of this section is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection 1.b(2) states a special rule applicable when several CLAIMS arise out of the SAME OR RELATED CLAIMS. Under this rule, all such SAME OR RELATED CLAIMS are considered first made at the time the earliest of the several SAME OR RELATED CLAIMS is first made. Thus, regardless of the number of claimants asserting SAME OR RELATED CLAIMS, the number of PLAN YEARS involved, or the number of transactions giving rise to the CLAIMS, all such CLAIMS are treated as first made in the earliest applicable PLAN YEAR and only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE apply. There is an exception to the special rule in Subsection 1.b(2) for COVERED PARTIES who had no coverage (with the PLF or otherwise) at the time the initial CLAIM was made, but this exception does not create any additional Limits of Coverage. Pursuant to Subsection VI.2, only one Limit of Coverage would be available.

Scope of Duty to Defend. Subsection 2 defines the PLF's obligation to defend. The obligation to defend continues only until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage are exhausted. In that event, the PLF will tender control of the defense to the COVERED PARTY or excess

insurance carrier, if any. The PLF's payment of the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage ends all of the PLF's duties.

Control of Defense. Subsection 2.a allocates to the PLF control of the investigation, settlement, and defense of the CLAIM. See SECTION IX—ASSISTANCE, COOPERATION AND DUTIES OF COVERED PARTY.

Costs of Defense. Subsection 2.b obligates the PLF to pay reasonable and necessary costs of defense. Only those expenses incurred by the PLF or with the PLF's authority are covered.

SECTION V — EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

1. This Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
2. This Plan does not apply to any CLAIM based on or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by YOU or at YOUR direction or in which YOU acquiesce or remain passive after having personal knowledge thereof;

COMMENTS

Exclusions 1 and 2 set out the circumstances in which wrongful conduct will eliminate coverage. An intent to harm is not required.

Voluntary Exposure to CLAIMS. *An attorney may sometimes voluntarily expose himself or herself to a CLAIM or known risk through a course of action or inaction when the attorney knows there is a more reasonable alternative means of resolving a problem. For example, an attorney might disburse settlement proceeds to a client even though the attorney knows of valid hospital, insurance company, or PIP liens, or other valid liens or claims to the funds. If the attorney disburses the proceeds to the client and a CLAIM arises from the other claimants, Exclusion 2 will apply and the CLAIM will not be covered.*

Unethical Conduct. *If a CLAIM arises that involves unethical conduct by an attorney, Exclusion 2 may also apply to the conduct and the CLAIM would therefore not be covered. This can occur, for example, if an attorney violates Disciplinary Rule ORPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) or ORPC 5.5(a) (aiding a nonlawyer in the unlawful practice of law) and a CLAIM results.*

Example: Attorney A allows a title company to use his name, letterhead, or forms in connection with a real estate transaction in which Attorney A has no significant involvement. Attorney A's activities violate ORPC 8.4(a)(3) and ORPC 5.5(a). A CLAIM is made against Attorney A in connection with the real estate transaction. Because Attorney A's activities fall within the terms of Exclusion 2, there will be no coverage for the CLAIM. In addition, the CLAIM likely would not even be within the terms of the coverage grant under this Plan because the activities giving rise to the CLAIM do not fall within the definition of a COVERED ACTIVITY. The same analysis would apply if Attorney A allowed an insurance or investment company to use his name, letterhead, or forms in connection with a living trust or investment transaction in which Attorney A has no significant involvement.

3. This Plan does not apply to any CLAIM based on or arising out of a proceeding brought against YOU by the Oregon State Bar or any similar entity.

4. This Plan does not apply to:

a. The part of any CLAIM seeking punitive or exemplary damages; or

b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions on the COVERED PARTY or others imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will provide coverage for the defense of such a CLAIM, but any liability for indemnity arising from such a CLAIM will be excluded.

COMMENTS

A COVERED PARTY may become subject to punitive or exemplary damages, attorney fees, costs, fines, penalties, or other sanctions in two ways. The COVERED PARTY may have these damages assessed directly against the COVERED PARTY or the COVERED PARTY may have a client or other person sue the COVERED PARTY for indemnity for causing the client to be subjected to these damages.

Subsection a of Exclusion 4 applies to direct actions for punitive or exemplary damages. It excludes coverage for that part of any CLAIM asserting such damages. In addition, such CLAIMS do not involve covered DAMAGES as defined in this Plan. If YOU are sued for punitive damages, YOU are not covered for that exposure.

Subsection b of Exclusion 4 applies to both direct actions against a COVERED PARTY and actions for indemnity brought by others. The courts have become increasingly intolerant of attorneys' improper actions in several areas including trial practice, discovery, and conflicts of interest. Statutes, court rules, and common law approaches imposing various monetary sanctions have been developed to deter such inappropriate conduct. The purpose of these sanctions would be threatened if the PLF were to indemnify the guilty attorney and pay the cost of indemnification out of the assessments paid by all attorneys.

Thus, if YOU cause YOUR client to be subjected to a punitive damage award (based upon the client's wrongful conduct toward the claimant) because of a failure, for example, to assert a statute of limitations defense, the PLF will cover YOUR liability for the punitive damages suffered by YOUR client. Subsection a does not apply because the action is not a direct action for punitive damages and Subsection b does not apply because the punitive damages suffered by YOUR client are not the type of damages described in Subsection b.

On the other hand, if YOU cause YOUR client to be subjected to an award of attorney fees, costs, fines, penalties, or other sanctions imposed because of YOUR conduct, or such an award is made against YOU, Subsection b applies and the CLAIM for such damages (or for any related consequential damages) will be excluded.

[BUSINESS ACTIVITY EXCLUSIONS]

5. This Plan does not apply to that part of any CLAIM based on or arising out of YOUR conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

COMMENTS

A COVERED PARTY, in addition to his or her role as an attorney, may clothe himself or herself as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of an entity. This exclusion eliminates coverage for the COVERED PARTY'S liability while acting in these capacities. However, the exclusion does not apply if the liability is based on such status in a LAW ENTITY.

6. This Plan does not apply to any CLAIM by or on behalf of any business enterprise:

- a. In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;
- b. In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or
- c. That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

Ownership interest, for the purpose of this exclusion, does not include an ownership interest now or previously held by YOU solely as a passive investment, as long as YOU, those YOU control, YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, and those with whom YOU are regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.

COMMENTS

Intimacy with a client can increase risk of loss in two ways: (1) The attorney's services may be rendered in a more casual and less thorough manner than if the services were extended at arm's length; and (2) After a loss, the attorney may feel particularly motivated to assure the client's recovery. While the PLF is cognizant of a natural desire of attorneys to serve those with whom they are closely connected, the PLF has determined that coverage for such services should be excluded. Exclusion 6 delineates the level of intimacy required to defeat coverage. See also Exclusion 11.

7. This Plan does not apply to any CLAIM made by:

- a. YOUR present, former, or prospective partner, employer, or employee; or
- b. A present, former, or prospective officer, director, or employee of a professional

corporation in which YOU were a shareholder, unless such CLAIM arises out of YOUR conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.

COMMENTS

The PLF does not always cover YOUR conduct in relation to YOUR past, present, or prospective partners, employers, employees, and fellow shareholders, even if such conduct arises out of a COVERED ACTIVITY. Coverage is limited by this exclusion to YOUR conduct in relation to such persons in situations in which YOU are acting as their attorney and they are YOUR client.

8. This Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) or it's equivalent in which YOU participate with a client unless disclosure in the form of Disclosure Form ORPC 1 (attached as Exhibit A to this Plan) has been properly executed prior to the occurrence giving rise to the CLAIM and either:

a. A copy of the executed disclosure form is forwarded to the PLF within 10 calendar days of execution; or

b. If delivery of a copy of the disclosure form to the PLF within 10 calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client confidences and secrets, YOU may instead send the PLF an alternative letter stating (1) the name of the client with whom YOU are participating in a business transaction; (2) that YOU have provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a); (3) the date of the disclosure letter; and (4) that providing the PLF with a copy of the disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within 10 calendar days of execution of the disclosure letter.

COMMENTS

ORPC 1. *Form ORPC 1, referred to above, is attached to this Plan following SECTION XV. The form includes an explanation of ORPC 1.8(a) which should be provided to the client involved in the business transaction.*

Applicability of Exclusion. *When an attorney engages in a business transaction with a client, the attorney has an ethical duty to make certain disclosures to the client. ORPC 1.0(g) and 1.8(a) provide:*

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

RULE 1.0(g)

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

This exclusion is not intended to be an interpretation of ORPC 1.8(a). Instead, the Plan is invoking the body of law interpreting ORPC 1.8(a) to define when the exclusion is applicable.

Use of the PLF's Form Not Mandated. *Because of the obvious conflict of interest and the high duty placed on attorneys, when the exclusion applies, the attorney is nearly always at risk of being liable when things go wrong. The only effective defense is to show that the attorney has made full disclosure, which includes a sufficient explanation to the client of the potential adverse impact of the differing interests of the parties to make the client's consent meaningful. Form ORPC 1 is the PLF's attempt to set out an effective disclosure which will provide an adequate defense to such CLAIMS. The PLF is sufficiently confident that this disclosure will be effective to agree that the exclusion will not apply if YOU use the PLF's proposed form. YOU are free to use YOUR own form in lieu of the PLF's form, but if YOU do so YOU proceed at YOUR own risk, i.e., if YOUR disclosure is less effective than the PLF's disclosure form, the exclusion will apply. Use of the PLF's form is not intended to assure YOU of compliance with the ethical requirements applicable to YOUR particular circumstances. It is YOUR responsibility to consult ORPC 1.0(g) and 1.8(a) and add any disclosures necessary to satisfy the disciplinary rules.*

Timing of Disclosure. *To be effective, it is important that the PLF can prove the disclosure was made prior to entering into the business transaction. Therefore, the disclosure should be reduced to writing and signed prior to entering into the transaction. There may be limited situations in which reducing the required disclosure to writing prior to entering into the transaction is impractical. In those circumstances, execution of the disclosure letter after entry into the transaction will not render the exclusion effective provided the execution takes place while the client still has an opportunity to withdraw from the transaction and the effectiveness of the disclosure is not compromised. Additional language may be necessary to render the disclosure effective in these circumstances.*

Delivery to the PLF. *Following execution of the disclosure letter, a copy of the letter or an alternative letter must be delivered to the PLF in a timely manner. Failure to do so will result in any subsequent CLAIM against YOU being excluded.*

Other Disclosures. By its terms, ORPC 1.8(a) and this exclusion apply only to business transactions with a client in which the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client. However, lawyers frequently enter into business transactions with others not recognizing that the other expects the lawyer to exercise professional judgment for his or her protection. It can be the "client's" expectation and not the lawyer's recognition that triggers application of ORPC 1.8(a) and this exclusion.

Whenever YOU enter into a business transaction with a client, former client, or any other person, YOU should make it **clear in writing** at the start for YOUR own protection whether or not YOU will also be providing legal services or exercising YOUR professional judgment for the protection of other persons involved in the transaction (or for the business entity itself). Avoiding potential misunderstandings up front can prevent difficult legal malpractice CLAIMS from arising later.

9. This Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by YOU (or by someone for whose conduct YOU are legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by YOU constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10.

COMMENTS

In prior years, the PLF suffered extreme losses as a result of COVERED PARTIES engaging in INVESTMENT ADVICE activity. It was never intended that the Plan cover such activities. An INVESTMENT ADVICE exclusion was added to the Plan in 1984. Nevertheless, losses continued in situations where the COVERED PARTY had rendered both INVESTMENT ADVICE and legal advice. In addition, some CLAIMS resulted where the attorney provided INVESTMENT ADVICE in the guise of legal advice.

Exclusion 9, first introduced in 1987, represented a totally new approach to this problem. Instead of excluding all INVESTMENT ADVICE, the PLF has clearly delineated specific activities which will not be covered whether or not legal as well as INVESTMENT ADVICE is involved. These specific activities are defined in Section I.10 under the definition of INVESTMENT ADVICE. The PLF's choice of delineated activities was guided by specific cases that exposed the PLF in situations never intended to be covered. The PLF is cognizant that COVERED PARTIES doing structured settlements and COVERED PARTIES in business practice and tax practice legitimately engage in the rendering of general INVESTMENT ADVICE as a part of their practices. In delineating the activities to be excluded, the PLF has attempted to retain coverage for these legitimate practices. For example, the last sentence of the exclusion permits coverage for certain activities normally undertaken by conservators and personal representatives (i.e., COVERED ACTIVITIES described in Section III.3) when acting in that capacity even though the same activities would not be covered if performed in any other capacity. See the definition of INVESTMENT ADVICE in Section I.10.

Exclusion 9 applies whether the COVERED PARTY is directly or vicariously liable for the INVESTMENT ADVICE.

Note that Exclusion 9 could defeat coverage for an entire CLAIM even if only part of the CLAIM involved INVESTMENT ADVICE. If INVESTMENT ADVICE is in fact either the sole or a

contributing cause of any resulting damage that is part of the CLAIM, the entire CLAIM is excluded.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Plan does not apply to any CLAIM:

- a. For the return of any fees, costs, or disbursements paid to a COVERED PARTY (or paid to any other attorney or LAW ENTITY with which the COVERED PARTY was associated at the time the fees, costs, or disbursements were incurred or paid), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;
- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or
- c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

COMMENTS

This Plan is intended to cover liability for errors committed in rendering professional services. It is not intended to cover liabilities arising out of the business aspects of the practice of law. Here, the Plan clarifies this distinction by excluding liabilities arising out of fee disputes whether the CLAIM seeks a return of a paid fee, cost, or disbursement. Subsection c, in addition, excludes CLAIMS for damages or the recovery of funds or property that, for whatever reason, have resulted or will result in the accrual of a benefit to any COVERED PARTY.

Attorneys sometimes attempt to correct their own mistakes without notifying the PLF. In some cases, the attorneys charge their clients for the time spent in correcting their prior mistakes, which can lead to a later CLAIM from the client. The better course of action is to notify the PLF of a potential CLAIM as soon as it arises and allow the PLF to hire and pay for repair counsel if appropriate. In the PLF's experience, repair counsel is usually more successful in obtaining relief from a court or an opposing party than the attorney who made the mistake. In addition, under Subsection a of this exclusion, the PLF does not cover CLAIMS from a client for recovery of fees previously paid by the client to a COVERED PARTY (including fees charged by an attorney to correct the attorney's prior mistake).

Example No. 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under Subsection a, there is no coverage for the CLAIM.

Example No. 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under Subsection a there is no coverage for the CLAIM.

Example No. 3: Attorney C writes a demand letter to Client for unpaid fees, then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b, there is no coverage for the CLAIM. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example No. 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b, there is no coverage for the CLAIM.

Example No. 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c, there is no coverage for the CLAIM. The same is true if Attorney E receives the stock as a fee and later is sued for recovery of the stock or damages.

11. This Plan does not apply to any CLAIM asserted by YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest.

COMMENT

Work performed for family members is not covered under this Plan. A CLAIM based upon or arising out of such work, even for example a CLAIM against other lawyers or THE FIRM for failure to supervise will be excluded from coverage. This exclusion does not apply, however, if one attorney performs legal services for another attorney's family member.

12. This Plan does not apply to any CLAIM arising out of a COVERED PARTY'S activity as a fiduciary under any employee retirement, deferred benefit, or other similar plan.

13. This Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of YOUR employee and YOU have no actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCLUSION]

14. This Plan does not apply to any CLAIM arising out of YOUR conduct:

- a. As a public official or an employee of a governmental body, subdivision, or agency; or
- b. In any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or other similar state or federal statute, rule, or case law. If a public body rejects the defense and indemnity of such a CLAIM, the PLF will provide coverage for such COVERED ACTIVITY and will be subrogated to all YOUR rights against the public body.

COMMENTS

Subsection a excludes coverage for all public officials and government employees. The term "public official" as used in this section does not include part-time city attorneys hired on a contract basis. The term "employee" refers to a salaried person. Thus, the exclusion does not apply, for example, to YOU when YOU are hired on an hourly or contingent fee basis so long as the governmental entity does not provide YOU with office facilities, staff, or other indicia of employment.

Subsection a applies whether or not the public official or employee is entitled to defense or indemnity from the governmental entity. Subsection b, in addition, excludes coverage for YOU in other relationships with a governmental entity, but only if statute, rule, or case law entitles YOU to defense or indemnity from the governmental entity.

[HOUSE COUNSEL EXCLUSION]

15. This Plan does not apply to any CLAIM arising out of YOUR conduct as an employee in an employer-employee relationship other than YOUR conduct as an employee for a LAW ENTITY.

COMMENTS

This exclusion applies to conduct as an employee even when the employee represents a third party in an attorney-client relationship as part of the employment. Examples of this application include employment by an insurance company, labor organization, member association, or governmental entity that involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

- 16.** This Plan does not apply to any CLAIM against any COVERED PARTY for:
- a.** Bodily injury, sickness, disease, or death of any person;
 - b.** Injury to, loss of, or destruction of any property or loss of use thereof; or
 - c.** Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and were, therefore, considered inappropriate for coverage under the Plan. YOU are encouraged to seek coverage for these CLAIMS through commercial insurance markets.

Prior to 1991 the Plan expressly excluded "personal injury" and "advertising injury," defining those terms in a manner similar to their definitions in standard commercial general liability policies.

The deletion of these defined terms from this Exclusion is not intended to imply that all personal injury and advertising injury CLAIMS are covered. Instead, the deletion is intended only to permit coverage for personal injury or advertising injury CLAIMS, if any, that fall within the other coverage terms of the Plan.

Subsection b of this exclusion is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event the consequential damages resulting from the loss or damage to property would be covered. For the purposes of this Comment, "consequential damages" means the extent to which the attorney's professional services are adversely affected by the property damage or loss.

Example No. 1: Client gives Attorney A valuable jewelry to hold for safekeeping. The jewelry is stolen or lost. There is no coverage for the value of the stolen or lost jewelry, since the loss of the property did not adversely affect the performance of professional services. Attorney A can obtain appropriate coverage for such losses from commercial insurance sources.

Example No. 2: Client gives Attorney B a defective ladder from which Client fell. The ladder is evidence in the personal injury case Attorney B is handling for Client. Attorney B loses the ladder. Because the ladder is lost, Client loses the personal injury case. The CLAIM for the loss of the personal injury case is covered. The damages are the difference in the outcome of the personal injury case caused by the loss of the ladder. There would be no coverage for the loss of the value of the ladder. Coverage for the value of the ladder can be obtained through commercial insurance sources.

Example No. 3: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C for Client. After the conclusion of handling of the legal matter, the documents are lost or destroyed. Client makes a CLAIM for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this CLAIM, as loss of the documents did not adversely affect any professional services because the professional services had been completed. Again, coverage for loss of the property (documents) itself can be obtained through commercial general liability or other insurance or through a valuable papers endorsement to such coverage.

***Child Abuse Reporting Statute.** This exclusion would ordinarily exclude coverage for the type of damages that might be alleged against an attorney for failure to comply with ORS 419B.010, the child abuse reporting statute. (It is presently uncertain whether civil liability can arise under the statute.) If there is otherwise coverage under this Plan for a CLAIM arising under ORS 419B.010, the PLF will not apply Exclusion 16 to the CLAIM.*

17. This Plan does not apply to any CLAIM based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual preference, disability, pregnancy, national origin, marital status, or any other basis prohibited by law.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and are, therefore, inappropriate for coverage under the Plan.

[PATENT EXCLUSION]

18. This Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error, or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.

[SUA EXCLUSION]

19. This Plan does not apply to any CLAIM for damages consisting of a special underwriting assessment imposed by the PLF.

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Plan does not apply to any CLAIM:

- a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;
- b. Any costs connected to ORS 20.160 or similar statute or rule;
- c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or
- d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.

COMMENTS

In the Plan, the PLF agrees to assume certain tort risks of Oregon attorneys for certain errors or omissions in the private practice of law; it does not assume the risk of making good on attorneys' contractual obligations. So, for example, an agreement to indemnify or guarantee an obligation will generally not be covered, except in the limited circumstances described in Subsection a. That subsection is discussed further below in this Comment.

Subsection b, while involving a statutory rather than contractual obligation, nevertheless expresses a similar concept, since under ORS 20.160 an attorney who represents a nonresident or foreign corporation plaintiff in essence agrees to guarantee payment of litigation costs not paid by his or her client.

Subsection c states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement voluntarily accepts the risk of making good on that contractual obligation. Because a client's attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they are not a risk the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce fees, or the like, a claim based on a breach of that agreement or representation will not be covered under the Plan.

Subsection d involves a specific type of agreement or representation: an alleged promise to obtain a particular outcome or result. One example of this would be an attorney who promises to get a case reinstated or to obtain a particular favorable result at trial or in settlement. In that situation, the attorney can potentially be held liable for breach of contract or misrepresentation regardless of whether his or her conduct met the standard of care. That situation is to be distinguished from an attorney's liability in tort or under the third party beneficiary doctrine for failure to perform a particular task, such as naming a particular beneficiary in a will or filing and serving a complaint within the statute of limitations, where the liability, if any, is not based solely on a breach of the attorney's guarantee, promise or representation.

Attorneys sometimes act in one of the special capacities for which coverage is provided under Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE). If the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20 does not apply.

On the other hand, when an attorney is acting in an ordinary capacity not within the provisions of Section III.3, Exclusion 20 does apply to any CLAIM based on or arising out of any bond or any surety, guaranty, warranty, joint control, indemnification, or similar agreement signed by the attorney or by someone for whom the attorney is legally liable. In these situations, attorneys should not sign such bonds or agreements. For example, if an attorney is acting as counsel to a personal representative and the personal representative is required to post a bond, the attorney should resist any attempt by the bonding company to require the attorney to co-sign as a surety for the personal representative or to enter into a joint control or similar agreement that requires the attorney to review, approve, or control expenditures by the personal representative. If the attorney signs such an agreement and a CLAIM is later made by the bonding company, the estate, or another party, Exclusion 20 applies and there will be no coverage for the CLAIM.

[BANKRUPTCY TRUSTEE EXCLUSION]

21. This Plan does not apply to any CLAIM arising out of YOUR activity (or the activity of someone for whose conduct you are legally liable) as a bankruptcy trustee.

**SECTION VI — LIMITS OF COVERAGE AND
CLAIMS EXPENSE ALLOWANCE**

1. Limits for This Plan

a. Coverage Limits. The PLF's maximum liability under this Plan is \$300,000 DAMAGES and EXCESS CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under Section XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the PLF's Limit of Coverage.

b. Claims Expense Allowance Limits. In addition to the Limit of Coverage stated in Section VI.1.a above, there is a single CLAIMS EXPENSE ALLOWANCE of \$50,000 for CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under Section XIV). The making of

multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the CLAIMS EXPENSE ALLOWANCE. In the event CLAIMS EXPENSE exceeds the CLAIMS EXPENSE ALLOWANCE, the Limit of Coverage will be reduced by the amount of EXCESS CLAIMS EXPENSE incurred. The CLAIMS EXPENSE ALLOWANCE is not available to pay DAMAGES or settlements.

c. **No Consequential Damages.** No person or entity may recover any damages for breach of any provision in this Plan except those specifically provided for in this Plan.

2. Limits Involving Same or Related Claims Under Multiple Plans

If this Plan and one or more other Plans issued by the PLF apply to the SAME OR RELATED CLAIMS, then regardless of the number of claimants, clients, COVERED PARTIES, or LAW ENTITIES involved, only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE will apply. Notwithstanding the preceding sentence, if the SAME OR RELATED CLAIMS are brought against two or more separate LAW ENTITIES, each of which requests and is entitled to separate defense counsel, the PLF will make one CLAIMS EXPENSE ALLOWANCE available to each of the separate LAW ENTITIES requesting a separate allowance. For purposes of this provision, whether LAW ENTITIES are separate is determined as of the time of the COVERED ACTIVITIES that are alleged in the CLAIMS. No LAW ENTITY, or group of LAW ENTITIES practicing together as a single firm, will be entitled to more than one CLAIMS EXPENSE ALLOWANCE under this provision. The CLAIMS EXPENSE ALLOWANCE granted will be available solely for the defense of the LAW ENTITY requesting it.

COMMENTS

This Plan is intended to provide a basic "floor" level of coverage for all Oregon attorneys engaged in the private practice of law whose principal offices are in Oregon. Because of this, there is a general prohibition against the stacking of either Limits of Coverage or CLAIMS EXPENSE ALLOWANCES. Except for the provision involving CLAIMS EXPENSE ALLOWANCES under Subsection 2, only one Limit of Coverage and CLAIMS EXPENSE ALLOWANCE will ever be paid under any one Plan issued to a COVERED PARTY in any one PLAN YEAR, regardless of the circumstances. Limits of Coverage or CLAIMS EXPENSE ALLOWANCES in multiple individual Plans do not stack for any CLAIMS that are "related." As the definition of SAME OR RELATED CLAIMS and its Comments and Examples demonstrate, the term "related" has a broad meaning when determining the number of Limits of Coverage and CLAIMS EXPENSE ALLOWANCES potentially available. This broad definition is designed to ensure the long-term economic viability of the PLF by protecting it from multiple limits exposures, ensuring fairness for all Oregon attorneys who are paying annual assessments, and keeping the overall coverage affordable.

Anti-stacking provisions in the PLF Plan may create hardships for particular COVERED PARTIES who do not purchase excess coverage. COVERED PARTIES who represent clients in situations in which single or multiple CLAIMS could result in exposure beyond one Limit of Coverage should purchase excess professional liability coverage.

Effective January 1, 2005, the PLF has created a limited exception to the one-limit rule for SAME OR RELATED CLAIMS. When such CLAIMS are asserted against more than one

separate LAW ENTITY, and one of the LAW ENTITIES is entitled to and requests a separate defense of the SUIT, then the PLF will allow a separate CLAIMS EXPENSE ALLOWANCE for that LAW ENTITY.

The coverage provisions and limitations provided in this Plan are the absolute maximum amounts that can be recovered under the Plan. Therefore, no person or party is entitled to recover any consequential damages for breach of the Plan.

Example No. 1: Attorney A performed COVERED ACTIVITIES for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 Limit of Coverage and two CLAIMS EXPENSE ALLOWANCES. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate LAW ENTITY from the firm at which she worked. Accordingly, two, not three, CLAIMS EXPENSE ALLOWANCES are potentially available.

Example No. 2: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client and commit errors in handling the case. Two CLAIMS EXPENSE ALLOWANCES are potentially available. There are only two separate firms – the BC partnership and D's firm.

SECTION VII — NOTICE OF CLAIMS

1. The COVERED PARTY must, as a condition precedent to the right of protection afforded by this coverage, give the PLF, at the address shown in the Declarations, as soon as practicable, written notice of any CLAIM made against the COVERED PARTY. In the event a SUIT is brought against the COVERED PARTY, the COVERED PARTY must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.
2. If the COVERED PARTY becomes aware of a specific act, error, or omission for which coverage is provided under this Plan during the COVERAGE PERIOD, the COVERED PARTY must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:
 - a. The specific act, error, or omission;
 - b. DAMAGES and any other injury that has resulted or may result; and
 - c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission;

then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.

3. If, during the COVERAGE PERIOD, a potential claimant requests that the PLF agree to toll or suspend the running of a time limitation applicable to a potential CLAIM against a COVERED PARTY

based on a specific act, error, or omission for which coverage is provided under this Plan, and if the PLF agrees in writing to do so with the consent of the COVERED PARTY, then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.

SECTION VIII — COVERAGE DETERMINATIONS

1. This Plan is governed by the laws of the State of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to the provision of benefits under this Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the state of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.
4. The bankruptcy or insolvency of a COVERED PARTY does not relieve the PLF of its obligations under this Plan.

COMMENTS

Historically, Section VIII provided for resolution of coverage disputes by arbitration. After 25 years of resolving disputes in this manner, the PLF concluded it would be more beneficial to YOU and the PLF to try these matters to a court where appeals are available and precedent can be established.

Until the dispute over coverage is concluded, the PLF is not obligated to pay any amounts in dispute. The PLF recognizes there may occasionally be exceptional circumstances making a coverage determination impracticable prior to a payment by the PLF of a portion or all of the PLF's Limit of Coverage toward resolution of a CLAIM. For example, a claimant may make a settlement demand having a deadline for acceptance that would expire before coverage could be determined, or a court might determine on the facts before it that a binding determination on the relevant coverage issue should not be made while the CLAIM is pending. In some of these exceptional circumstances, the PLF may at its option pay a portion or all of the Limit of Coverage before the dispute concerning the question of whether this Plan is applicable to the CLAIM is decided. If the PLF pays a portion or all of the Limit of Coverage and the court subsequently determines that this Plan is not applicable to the

CLAIM, then the COVERED PARTY or others on whose behalf the payment was made must reimburse the PLF, in order to prevent unjust enrichment and protect the solvency and financial integrity of the PLF. For a COVERED PARTY'S duties in this situation, see Section IX.3.

SECTION IX — ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY

1. As a condition of coverage under this Plan, the COVERED PARTY will, without charge to the PLF, cooperate with the PLF and will:

- a. Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
- b. Attend and testify when requested by the PLF;
- c. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;
- d. Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
- e. Submit to arbitration of any CLAIM when requested by the PLF;
- f. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
- g. Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
- h. Assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person; and
- i. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.

2. The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.

3. In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:

- a. Agrees to the PLF's proposal, or

- b. Objects to the PLF's proposal.

The written response must be made by the COVERED PARTY as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. A response objecting to the settlement relieves the PLF of any duty to settle that might otherwise exist.

COMMENTS

Subsection 3 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.

The obligations of the Covered Party under Section IX as well as the other Sections of the Plan are to be performed without charge to the PLF.

SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

1. No legal action in connection with this Plan will be brought against the PLF unless the COVERED PARTY has fully complied with all terms of this Plan.
2. The PLF may bring legal action in connection with this Plan against a COVERED PARTY if:
 - a. The PLF pays a CLAIM under another Plan issued by the PLF;
 - b. A COVERED PARTY under this Plan is alleged to be liable for all or part of the damages paid by the PLF;
 - c. As between the COVERED PARTY under this Plan and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY under this Plan for contribution, indemnity, or otherwise, for all or part of the damages paid; and
 - d. Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Plan.
3. In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has

paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this Subsection will not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery that would entitle the COVERED PARTY to indemnity under this Plan if the PLF's action were successful.

COMMENTS

Under certain circumstances, a CLAIM against YOU may not be covered because of an exclusion or other applicable provision of the Plan issued to YOU. However, in some cases the PLF may be required to pay the CLAIM nonetheless because of the PLF's obligation to another COVERED PARTY under the terms of his or her Plan. This might occur, for example, when YOU are the attorney responsible for a CLAIM and YOU have no coverage due to YOUR intentional or wrongful conduct, but YOUR partner did not engage in or know of YOUR wrongful conduct but is nevertheless allegedly liable. In these circumstances, if the PLF pays some or all of the CLAIM arising from YOUR conduct it is fair that the PLF has the right to seek recovery back from YOU; otherwise, the PLF would effectively be covering YOUR non-covered CLAIMS simply because other COVERED PARTIES were vicariously liable.

Example No. 1: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the CLAIM under his Plan, but Attorney B has coverage for her liability under her Plan. The PLF pays the CLAIM under Attorney B's Plan. Section X.2 of Attorney A's Plan makes clear the PLF has the right to sue Attorney A for the damages the PLF paid under Attorney B's Plan.

Example No. 2: Same facts as the prior example, except that the PLF loans funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. Section X.2 of Attorney A's Plan makes clear that the PLF has the right pursuant to such arrangement with Attorney B to participate in her action against Attorney A.

SECTION XI — SUPPLEMENTAL ASSESSMENTS

This Claims Made Plan is assessable. Each PLAN YEAR is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for CLAIMS, CLAIMS EXPENSE, or other expenses arising from or incurred during either this PLAN YEAR or a previous PLAN YEAR, YOU agree to pay YOUR supplemental assessment to the PLF within 30 days of request.

The PLF is authorized to make additional assessments against YOU for this PLAN YEAR until all the PLF's liability for this PLAN YEAR is terminated, whether or not YOU are a COVERED PARTY under a Plan issued by the PLF at the time the assessment is imposed.

SECTION XII — RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If the COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify that also applies to any loss or CLAIM covered by this Plan, the PLF will not be liable under the Plan until the limits of the COVERED PARTY'S insurance or other obligation to indemnify, including any

applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage of this Plan.

COMMENTS

As explained in the Preface, this Plan is not an insurance policy. To the extent that insurance or other coverage exists, this Plan may not be invoked. This provision is designed to preclude the application of the other insurance law rules applicable under Lamb-Weston v. Oregon Automobile Ins. Co. 219 Or 110, 341 P2d 110, 346 P2d 643 (1959).

SECTION XIII — WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIV — AUTOMATIC EXTENDED CLAIMS REPORTING PERIOD

1. If YOU:

- a. Terminate YOUR PLF coverage during the PLAN YEAR, or
- b. Do not obtain PLF coverage as of the first day of the next PLAN YEAR,

YOU will automatically be granted an extended reporting period for this Plan at no additional cost. The extended reporting period will commence on the day after YOUR last day of PLF coverage and will continue until the expiration of the time allowed for any CLAIM to be made against YOU or any other COVERED PARTY listed in SECTION II of this Plan, or the date specified in Subsection 2, whichever date is earlier. Any extension granted under this Subsection will not increase the CLAIMS EXPENSE ALLOWANCE or the Limits of Coverage available under this Plan, nor provide coverage for YOUR activities which occur after YOUR last day of PLF coverage.

2. If YOU terminate YOUR PLF coverage during this PLAN YEAR and return to PLF coverage later in this same PLAN YEAR:

- a. The extended reporting period granted to YOU under Subsection 1 will automatically terminate as of the date YOU return to PLF coverage;
- b. The coverage provided under this Plan will be reactivated; and
- c. YOU will not receive a new Limit of Coverage or CLAIMS EXPENSE ALLOWANCE on YOUR return to coverage.

COMMENTS

Subsection 1 sets forth YOUR right to extend the reporting period in which a CLAIM must be made. The granting of YOUR rights hereunder does not establish a new or increased CLAIMS EXPENSE ALLOWANCE or Limits of Coverage, but instead merely extends the reporting period under

this Plan which will apply to all covered CLAIMS made against YOU during the extended reporting period. The terms and conditions of this Plan will continue to apply to all CLAIMS that may be made against YOU during the extended reporting period. This extended CLAIMS reporting period is subject to other limitations and requirements, which are available from the PLF on request.

Attorneys with PLF coverage who leave the private practice of law in Oregon during the PLAN YEAR are permitted to terminate their coverage mid-year and seek a prorated refund of their annual assessment under PLF Policy 3.400. Attorneys who do so will receive extended reporting coverage under this section effective as of the day following their last day of PLF coverage. For attorneys who engage in the private practice of law in Oregon through the end of the current PLAN YEAR but do not obtain PLF coverage at the start of the next PLAN YEAR, their extended reporting coverage begins on the first day after the current PLAN YEAR.

Example No. 1: Attorney A obtains regular PLF coverage in 2008 with a CLAIMS EXPENSE ALLOWANCE of \$50,000 and Limits of Coverage of \$300,000. One CLAIM is asserted in 2008 for which a total of \$200,000 is paid in indemnity and expense (including the entire \$50,000 CLAIMS EXPENSE ALLOWANCE). The remaining Limits of Coverage under the 2008 Plan are \$150,000. Attorney A leaves the private practice of law on December 31, 2008 and obtains extended reporting coverage at no charge. The 2008 Plan will apply to all CLAIMS made in 2009 or later years, and only \$150,000 in Limits of Coverage (the balance left under Attorney A's 2008 Plan) is available for all CLAIMS made in 2009 or later years. There is no remaining CLAIMS EXPENSE ALLOWANCE for any new CLAIMS.

Example No. 2: Attorney B obtains regular PLF coverage in 2008, but leaves private practice on March 31, 2008 and obtains a prorated refund of her 2008 assessment. Attorney B will automatically obtain extended reporting coverage under her 2008 Plan as of April 1, 2008. Attorney B returns to PLF coverage on October 1, 2008. Her extended reporting coverage terminates as of that date, and she will not receive new Limits of Coverage or CLAIMS EXPENSE ALLOWANCE. If a CLAIM is made against her in November 2008, her 2008 Plan will cover the CLAIM whether it arises from an alleged error occurring before April 1, 2008 or on or after October 1, 2008.

SECTION XV — ASSIGNMENT

The interest hereunder of any COVERED PARTY is not assignable.

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

This letter confirms that we have discussed [specify the essential terms of the business transaction that you intend to enter into with your client and your role in the transaction. Be sure to inform the client whether you will be representing the client in the transaction. This is required by ORPC 1.8(a)(3)]. This letter also sets forth the conflict of interest that arises for me as your attorney because of this proposed business transaction.

The Oregon Rules of Professional Conduct prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client unless the client consents. Consequently, I can only act as your lawyer in this matter if you consent after being adequately informed. Rule 1.0(g) provides as follows:

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Although our interests presently appear to be consistent, my interests in this transaction could at some point be different than or adverse to yours. Specifically, [include an explanation which is sufficient to apprise the client of the potential adverse impact on the client of the matter to which the client is asked to consent, and any reasonable alternative courses of action, if applicable].

Please consider this situation carefully and decide whether or not you wish to enter into this transaction with me and to consent to my representation of you in this transaction. Rule 1.8(a)(2) requires me to recommend that you consult with another attorney in deciding whether or not your consent should be given. Another attorney could also identify and advise you further on other potential conflicts in our interests.

I enclose an article "Business Deals Can Cause Problems," which contains additional information. If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

Very truly yours,

[Attorney Name and Signature]

I hereby consent to the legal representation, the terms of the business transaction, and the lawyer's role in transaction as set forth in this letter:

[Client's Signature]

[Date]

Enclosure: "Business Deals Can Cause Problems," by Jeffrey D. Sapiro.

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))

By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

Something that clients often lose sight of is that attorneys are not only legal advisors, but are business people as well. It is no secret that most practitioners wish to build a successful practice, rendering quality legal services to their clients, as a means of providing a comfortable living for themselves and/or their families. Given this objective, it is not surprising that many attorneys are attracted to business opportunities outside their practices that may prove to be financially rewarding. The fact that these business opportunities are often brought to an attorney's attention by a client or through involvement in a client's financial affairs is reason to explore the ethical problems that may arise.

ORPC 1.8(a) and 1.0(g) read as follows:

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ORPC 1.0 Terminology

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

The rationale behind this rule should be obvious. An attorney has a duty to exercise professional judgment solely for the benefit of a client, independent of any conflicting influences or loyalties. If an attorney is motivated by financial interests adverse to that of the client, the undivided loyalty due to the client may very well be compromised. (See also ORPC 1.7 and 1.8(c) and (i)) Full disclosure in writing gives the client the opportunity and necessary information to obtain independent legal advice when the

attorney's judgment may be affected by personal interest. Under ORPC 1.8(a) it is the client and not the attorney who should decide upon the seriousness of the potential conflict and whether or not to seek separate counsel.

A particularly dangerous situation is where the attorney not only engages in the business aspect of a transaction, but also furnishes the legal services necessary to put the deal together. In *In re Brown*, 277 Or 121, 559 P2d 884, rev. den. 277 Or 731, 561 P2d 1030 (1977), an attorney became partners with a friend of many years in a timber business, the attorney providing legal services and the friend providing the capital. The business later incorporated, with the attorney drafting all corporate documents, including a buy-sell agreement permitting the surviving stockholder to purchase the other party's stock. The Oregon Supreme Court found that the interests of the parties were adverse for a number of reasons, including the disparity in capital invested and the difference in the parties' ages, resulting in a potential benefit to the younger attorney under the buy-sell provisions. Despite the fact that the friend was an experienced businessman, the court held that the attorney violated the predecessor to ORPC 1.8(a), DR 5-104(A), because the friend was never advised to seek independent legal advice.

Subsequent to *Brown*, the Supreme Court has disciplined several lawyers for improper business transactions with clients. Among these cases are *In re Drake*, 292 Or 704, 642 P2d 296 (1982), which provides a comprehensive analysis of ORPC 1.8(a)'s predecessor, DR 5-104(A); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982), in which the fact that the client was a more sophisticated business person than the attorney did not affect the court's analysis; *In re Germundson*, 201 Or 656, 724 P2d 793 (1986), in which a close friendship between the attorney and the client was deemed insufficient reason to dispense with conflict disclosures; and *In re Griffith*, 304 Or 575, 748 P2d (1987), in which the court noted that, even if no conflict is present when a transaction is entered into, subsequent events may lead to a conflict requiring disclosures or withdrawal by the attorney.

Even in those situations where the attorney does not furnish legal services, problems may develop. There is a danger that, while the attorney may feel he or she is merely an investor in a business deal, the client may believe the attorney is using his or her legal skills to protect the client's interests in the venture. Indeed, this may be the very reason the client approached the attorney with a business proposition in the first place. When a lawyer borrows money from a client, there may even be a presumption that the client is relying on the lawyer for legal advice in the transaction. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). To clarify for the client the role played by the attorney in a business transaction, ORPC 1.8(a)(3) now provides that a client's consent to the attorney's participation in the transaction is not effective unless the client signs a writing that describes, among other things, the attorney's role and whether the attorney is representing the client in the transaction.

In order to avoid the ethical problems addressed by the conflict of interest rules, the Supreme Court has said that an attorney must at least advise the client to seek independent legal counsel (*In re Bartlett*, 283 Or 487, 584 P2d 296 (1978)). This is now required by ORPC 1.8(a)(2). The attorney should disclose not only that a conflict of interest may exist, but should also explain the nature of the conflict "in such detail so that (the client) can understand the reasons why it may be desirable for each to have independent counsel. . ." (*In re Boivin*, 271 Or 419, 424, 533 P2d 171 (1975)). Risks incident to a transaction with a client must also be disclosed (ORPC 1.0(g); *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984); *In re Whipple*, 296 Or 105, 673 P2d 172 (1983)). Such a disclosure will help insure that there is no misunderstanding over the role the attorney is to play in the transaction and will help prevent the attorney from running afoul of the disciplinary rule discussed above.

PLF Policy 3.500 -- PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

(A) Plan for Special Underwriting Assessment: Lawyers will be subject to a Special Underwriting Assessment (SUA) to be assessed under the following terms and conditions. This Plan for Special Underwriting Assessment may be changed or amended in the future.

(B) Special Underwriting Assessment:

(1) The surcharge assessed on January 1 of each year will be based upon the total of all payments for indemnity and expense (including Claims Expense Allowance) paid on a claim or group of related claims in excess of an aggregate amount of \$75,000 per claim or group of related claims (the "Base Amount") for all claims which are settled or closed by the PLF during the five-year period ending September 30 of the prior year. The surcharge for each claim or group of related claims will be equal to 1% of the Base Amount so calculated. When a claim or group of related claims is made against more than one Covered Party, the SUA will first be calculated for the claim or group of related claims as a whole and then be allocated among the Covered Parties; no more than \$75,000 aggregate defense and indemnity costs (including Claims Expense Allowance) will be excluded from the SUA calculation regardless of the number of Covered Parties or related claims involved.

(2) All present and former Covered Parties will be assessed according to these provisions, but a Covered Party will be required to pay the SUA only if the Covered Party maintains current coverage with the PLF at the time of the SUA assessment.

(C) Reductions to Indemnity and Expense: Net amounts actually received by the PLF (net of collection costs and not including interest or any increase in value) will be treated as reductions to the indemnity and expense paid by the PLF on behalf of a Covered Party and will be deducted in determining the Base Amount. The value of non-cash reductions will be determined by the PLF Board of Directors. Reinsurance payments will not be treated as reductions to indemnity.

(D) Allocation and Vicarious Liability:

(1) The Covered Party causing or responsible for the claim or group of related claims will be assessed. When more than one PLF-covered attorney is involved, SUA will be allocated in proportion to each PLF-covered attorney's degree of responsibility or fault. The SUA allocation will be based on any indemnity payments made and defense costs expended, except that a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses. SUA may be allocated to a Covered Party even though no claim was made against the Covered Party if it appears that a claim would or could have been made but for the final disposition of the claim giving rise to the SUA under consideration. However, the SUA allocated to such Covered Party will be waived if the Covered Party was not informed by the PLF prior to the final disposition of the claim:

(a) of the claim giving rise to the SUA,

(b) of the possibility of a claim from the claimant or another party or of a cross-claim from another Covered Party, and

(c) of the potential of a SUA allocation from the claim.

In such cases, a separate PLF file will be opened in the name of each Covered Party facing a potential SUA allocation.

(2) **Initial Allocation of Responsibility:** The Chief Executive Officer of the PLF will make an initial allocation of responsibility among the PLF-covered attorneys involved upon settlement or closing of the claim or group of related claims. Where responsibility is equal or no reasonable basis is available to determine the appropriate percentage of responsibility, responsibility will be allocated equally among the PLF-covered attorneys.

(3) SUA will not be assessed against a Covered Party if the Covered Party's liability was purely vicarious. However, notwithstanding that the basis of the Covered Party's liability is purely vicarious, a PLF-covered attorney assigned his or her own defense attorney will be deemed responsible for those expenses unless the assignment of a separate defense counsel is legally required (e.g. conflict of interest). For this purpose, pure vicarious liability means liability imposed solely by law, (e.g., partnership liability) on a claim in which the Covered Party had no involvement whatsoever. SUA relief for pure vicarious liability will not be allowed when the Covered Party had some involvement in the legal matter, even if other attorneys in the Covered Party's firm (partners, associates, or employees) or outside the firm were also involved and committed greater potential error. Likewise, SUA relief for pure vicarious liability will not be granted when the alleged error was made by a secretary, paralegal, or other attorney working under the Covered Party's direction or control or who provided research, documents, or other materials to the Covered Party in connection with the claim.

(E) **Billing:** The special underwriting assessment will be added to the regular billing for the basic assessment.

(F) **Petition for Review:**

(1) The Covered Party may petition the Board of Directors in writing for review of the special underwriting assessment only upon the basis that:

- (a) The allocation made under 3.500(D)(1), (2), or (3) was incorrect
or
- (b) The claim was handled by the PLF or its employees and agents (including assigned defense counsel) in a negligent or improper manner which resulted in an increased special underwriting assessment to the Covered Party
or
- (c) The assignment of separate counsel pursuant to 3.500(D)(3) was necessary.

A SUA arising from a claim will not be reassigned to the attorney for the claimant who brought the claim if the reason given for the reassignment by the appealing attorney is that the claimant's attorney should not have asserted the claim, should have asserted the claim in a more economical fashion, should have asserted the claim against someone else, or other similar reason.

(2) The basis for review will be set forth in the petition, and the PLF-covered attorney, or attorneys if more than one, to whom the Covered Party seeks to reassign responsibility for the claim will be requested to participate and submit a response. A SUA appeal must be filed in the first year during which the SUA is assessed and paid. Other details of the review process will be provided to attorneys at the time of SUA assessment. The Board of Directors or its representative will review each petition and response and make such adjustment, if any, as is warranted by the facts. An adjustment may include reallocation of responsibility for a claim to another attorney (whether or not the attorney responds to the request to participate in the SUA review process), that could result in assessment of a SUA against the attorney. In the event a refund is made, it will include statutory interest. A pending Petition for Review will not relieve the Covered Party from compliance with the assessment notice.

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2008 CLAIMS MADE EXCESS PLAN

January 1, 2008

2008 CLAIMS MADE EXCESS PLAN

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OREGON STATE BAR PROFESSIONAL LIABILITY FUND

CLAIMS MADE EXCESS PLAN

Effective January 1, 2008

THIS IS A CLAIMS MADE EXCESS PLAN--PLEASE READ CAREFULLY

NOTICE

THIS EXCESS PLAN IS WRITTEN AS SPECIFIC EXCESS COVERAGE TO THE PLF CLAIMS MADE PLAN AND CONTAINS PROVISIONS MORE RESTRICTIVE THAN THE COVERAGE AFFORDED BY THE PLF CLAIMS MADE PLAN. THIS EXCESS PLAN CONTAINS PROVISIONS THAT REDUCE THE LIMITS OF COVERAGE BY THE COSTS OF LEGAL DEFENSE. THIS EXCESS PLAN IS ASSESSABLE.

Various provisions in this Excess Plan restrict coverage. Read the entire Excess Plan to determine rights, duties and what is and is not covered.

INTERPRETATION OF THIS EXCESS PLAN

Bracketed Titles. The bracketed titles appearing throughout this Excess Plan are not part of the Excess Plan and should not be used as an aid in interpreting the Excess Plan. The bracketed titles are intended simply as a guide to aid the reader in locating pertinent provisions.

Plan Comments. In contrast, the discussions labeled "COMMENTS" following various provisions of this Excess Plan are intended as aids in interpretation. These interpretive provisions add background information and provide additional considerations to be used in the interpretation and construction of this Excess Plan.

Use of Capitals. Capitalized terms are defined in Section I of this Excess Plan and the PLF CLAIMS MADE PLAN. The definition of COVERED PARTY appearing in Section II and the definition of COVERED ACTIVITY appearing in Section III are particularly crucial to the understanding of the coverage grant.

*****COMMENTS*****

History. Through the issuance of separate PLF PLANS to each individual attorney, the PLF provides primary malpractice coverage to all attorneys engaged in the private practice of law in Oregon. This Excess Plan was created pursuant to enabling legislation empowering the Board of Governors of the Oregon State Bar to establish an optional, underwritten program of excess malpractice coverage through the PLF for those attorneys and firms which want higher coverage limits. See ORS 9.080 (2) (a) and its legislative history. The PLF has been empowered to do whatever is necessary and convenient to achieve

this objective. See, e.g., Balderree v. Oregon State Bar, 301 Or 155, 719 P2d 1300 (1986). Pursuant to this authority, the PLF has adopted this Excess Plan.

Claims Made Form. *This Excess Plan is a claims made coverage plan. This Excess Plan is a contractual agreement between the PLF and THE FIRM.*

Interpretation of the Excess Plan. *This Excess Plan is to be interpreted throughout in a manner consistent with the interpretation of the PLF CLAIMS MADE PLAN. Accordingly, Comments to language in the PLF PLAN apply to similar language in this Excess Plan.*

Purpose of Comments. *These Comments are similar in form to the UCC and Restatements. They are intended to aid in the construction of the language of this Excess Plan. By the addition of these Comments, the PLF hopes to avoid the existence of any ambiguities, to assist attorneys in interpreting the coverage available to them, and to provide a specific basis for interpretation.*

SECTION I – DEFINITIONS

1. Throughout this Excess Plan, the following terms, when appearing in capital letters, mean the same as their definitions in the PLF CLAIMS MADE PLAN:

- a. PLF
- b. SUIT
- c. CLAIM
- d. SAME OR RELATED CLAIMS
- e. DAMAGES
- f. BUSINESS TRUSTEE
- g. CLAIMS EXPENSE
- h. COVERAGE PERIOD
- i. INVESTMENT ADVICE
- j. LAW ENTITY

2. Throughout this Excess Plan, when appearing in capital letters:

a. The words “THE FIRM” refer to the law entities designated in Sections 1 and 11 of the Declarations.

b. “COVERED PARTY” means any person or organization qualifying as such under Section II – WHO IS A COVERED PARTY.

c. “COVERED ACTIVITY” means conduct qualifying as such under Section III -- WHAT IS A COVERED ACTIVITY.

d. "PLAN YEAR" means the period January 1 through December 31 of the calendar year for which this Excess Plan was issued.

e. The words "PLF CLAIMS MADE PLAN" or "PLF PLAN" refer to the PLF Claims Made Plan issued by the PLF as primary coverage for the PLAN YEAR.

f. The words "APPLICABLE UNDERLYING LIMIT" mean the aggregate total of (1) the amount of the coverage afforded by the applicable PLF PLANS issued to all persons qualifying as COVERED PARTIES under the terms of this Excess Plan, plus (2) the amount of any other coverage available to any COVERED PARTY with respect to the CLAIM for which coverage is sought.

g. "FIRM ATTORNEY" means an attorney listed in Section 10 of the Declarations.

h. "FORMER ATTORNEY" means an attorney listed in Section 12 of the Declarations.

i. "NON-OREGON ATTORNEY" means an attorney listed in Section 14 or 15 of the Declarations.

j. "EXCLUDED ATTORNEY" means an attorney listed in Section 16 of the Declarations.

k. "EXCLUDED FIRM" means a LAW ENTITY listed in Section 17 of the Declarations.

SECTION II -- WHO IS A COVERED PARTY

The following are COVERED PARTIES:

1. THE FIRM, except that THE FIRM is not a COVERED PARTY with respect to liability arising out of conduct of an attorney who was affiliated in any way with THE FIRM at any time during the five years prior to the beginning of the COVERAGE PERIOD but is not listed as a FIRM ATTORNEY, FORMER ATTORNEY, or NON-OREGON ATTORNEY in the Declarations.

2. Any person listed as a FIRM ATTORNEY, FORMER ATTORNEY, or NON-OREGON ATTORNEY in the Declarations, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY rendered on behalf of THE FIRM.

3. Any former partner, shareholder, member, or attorney employee of THE FIRM, or any person formerly in an "of counsel" relationship to THE FIRM, who ceased to be affiliated in any way with THE FIRM more than five years prior to the beginning of the COVERAGE PERIOD, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY rendered on behalf of THE FIRM and only for COVERED ACTIVITIES that took place while a PLF CLAIMS MADE PLAN issued to that person was in effect.

4. In the event of death, adjudicated incapacity, or bankruptcy, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of any COVERED PARTY listed in Subsections 1 to 3 but only to the extent that such COVERED PARTY would otherwise be provided coverage under this Excess Plan.

5. Any attorney who becomes affiliated with THE FIRM after the beginning of the COVERAGE PERIOD who has been issued a PLF PLAN by the PLF, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY rendered on behalf of THE FIRM. However, newly affiliated attorneys are not automatically COVERED PARTIES under this Subsection if: (a) the number of FIRM ATTORNEYS increases by more than 100 percent; (b) there is a firm merger or split; (c) an attorney joins or leaves a branch office of THE FIRM outside Oregon; (d) a new branch office is established outside Oregon; (e) THE FIRM or a current attorney with THE FIRM enters into an "of counsel" relationship with another firm or with an attorney who was not listed as a current attorney at the start of the COVERAGE PERIOD; or (f) THE FIRM hires an attorney who is not eligible to participate in the PLF's CLAIMS MADE PLAN.

*****COMMENTS*****

Firms are generally not required to notify the PLF if an attorney joins or leaves THE FIRM after the start of the COVERAGE PERIOD, and are neither charged a prorated excess assessment nor receive a prorated refund for such changes. New attorneys who join after the start of the COVERAGE PERIOD are covered for their actions on behalf of THE FIRM during the remainder of the year. All changes after the start of the COVERAGE PERIOD should be reported to the PLF in THE FIRM'S renewal application for the next year.

Firms are required to notify the PLF after the start of the COVERAGE PERIOD, however, if any of the six circumstances listed in Subsection 5 apply. Under these circumstances, THE FIRM'S coverage will be subject again to underwriting, and a prorated adjustment may be made to THE FIRM'S excess assessment.

Please note also that FIRM ATTORNEYS, FORMER ATTORNEYS, and NON-OREGON ATTORNEYS have coverage under this Excess Plan only for CLAIMS which arise out of work performed for THE FIRM. For example, there is no coverage for CLAIMS which arise out of work performed for another firm before an attorney began working for THE FIRM; the attorney will have coverage, if at all, only under any Excess Plan or policy maintained by the other firm.

SECTION III – WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES:

[COVERED PARTY'S CONDUCT]

1. Any act, error, or omission by an attorney COVERED PARTY in the performance of professional services in the COVERED PARTY'S capacity as an attorney in private practice, as long as the act, error, or omission was rendered on behalf of THE FIRM and occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations.

[CONDUCT OF OTHERS]

2. Any act, error, or omission by a person, other than an EXCLUDED ATTORNEY, for whose conduct an attorney COVERED PARTY is legally liable in the COVERED PARTY'S capacity as an attorney for THE FIRM provided each of the following criteria is satisfied:

a. The act, error, or omission causing the attorney COVERED PARTY'S liability occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations;

b. The act, error, or omission, if committed by the attorney COVERED PARTY, would constitute the providing of professional services in the attorney COVERED PARTY'S capacity as an attorney in private practice; and

c. The act, error, or omission was not committed by an attorney who either (1) was affiliated in any way with THE FIRM during the five years prior to the COVERAGE PERIOD but was not listed as a FIRM ATTORNEY, FORMER ATTORNEY, or NON-OREGON ATTORNEY in the Declarations; or (2) ceased to be affiliated with THE FIRM more than five years prior to the beginning of the COVERAGE PERIOD but was not covered by a PLF CLAIMS MADE PLAN at the time of the act, error, or omission.

[COVERED PARTY'S CONDUCT IN A SPECIAL CAPACITY]

3. Any act, error, or omission by an attorney COVERED PARTY in his or her capacity as a personal representative, administrator, conservator, executor, guardian, special representative pursuant to ORS 128.179 or similar statute, or trustee (except BUSINESS TRUSTEE); provided that the act, error, or omission arose out of a COVERED ACTIVITY as defined in Subsections 1 and 2 above; the CLAIM is brought by or for the benefit of the beneficiary of the special capacity relationship and arises out of a breach of that relationship; and such activity occurred after any applicable Retroactive Date and before any applicable Separation Date specified in the Declarations.

*****COMMENTS*****

To qualify for coverage a claim must arise out of a COVERED ACTIVITY. The definition of COVERED ACTIVITY imposes a number of restrictions on coverage. For additional Comments and examples discussing this requirement, see the Comments to Section III in the PLF CLAIMS MADE PLAN.

***Retroactive Date.** This Section introduces the concept of a Retroactive Date. If a Retroactive Date applies to a CLAIM to place it outside the definition of a COVERED ACTIVITY, there will be no coverage for the CLAIM under this Excess Plan as to any COVERED PARTY, even for vicarious liability.*

Example: Attorneys A and B practice as partners and apply for excess coverage from the PLF for Year 1. A has had several recent large claims arising from an inadequate docket control system, but implemented an adequate system on July 1 of the previous year. For underwriting reasons, the PLF decides to offer coverage to the firm under this Excess Plan with a Retroactive Date of July 1 of the previous year. A CLAIM is made against Attorney A, Attorney B, and the firm during Year 1 arising from conduct of Attorney A occurring prior to July 1 of the previous year. Because the conduct in question occurred prior to the firm's Retroactive Date under this Excess Plan, the CLAIM does not fall within the definition of a COVERED ACTIVITY and there is no coverage for the CLAIM for Attorney A, B, or the firm.

SECTION IV – GRANT OF COVERAGE

1. Indemnity.

a. The PLF will pay those sums in excess of any APPLICABLE UNDERLYING LIMITS or applicable Deductible that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Excess Plan applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Subsection 2 – Defense.

b. This Excess Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD, except as provided in this Subsection. A CLAIM will be deemed to have been first made at the time it would be deemed first made under the terms of the PLF PLAN. Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time they are deemed first made under the terms of the applicable PLF PLAN; provided, however, that a CLAIM that is asserted against a COVERED PARTY during the COVERAGE PERIOD will not relate back to a previous SAME OR RELATED CLAIM if prior to the COVERAGE PERIOD (1) none of the SAME OR RELATED CLAIMS were made against any COVERED PARTY in this Excess Plan and (2) no

COVERED PARTY had knowledge of any facts reasonably indicating that any CLAIM could or would be made in the future against any COVERED PARTY.

c. This Excess Plan applies only if the COVERED ACTIVITY giving rise to the CLAIM happens:

(1) during the COVERAGE PERIOD, or

(2) prior to the COVERAGE PERIOD, provided that both of the following conditions are met:

a) Prior to the effective date of this Excess Plan no COVERED PARTY had a basis to believe that the act, error, or omission was a breach of professional duty or may result in a CLAIM; and

b) There is no prior policy or policies or agreements to indemnify which provide coverage for such liability or CLAIM, whether or not the available limits of liability of such prior policy or policies or agreements to indemnify are sufficient to pay any liability or CLAIM or whether or not the underlying limits and amount of such policy or policies or agreements to indemnify are different from this Excess Plan.

Subsection c(2)(a) of this Section will not apply as to any COVERED PARTY who, prior to the effective date of this Excess Plan, did not have a basis to believe that the act, error, or omission was a breach of professional duty or may result in a CLAIM, but only if THE FIRM circulated its Application for coverage among all FIRM ATTORNEYS listed in Section 10 of the Declarations and Current NON-OREGON ATTORNEYS listed in Section 14 of the Declarations before THE FIRM submitted it to the PLF.

d. This Excess Plan applies only to SUITS brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe within the United States. This Excess Plan does not apply to SUITS brought in any other jurisdiction, or to SUITS brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe within the United States.

e. The amount the PLF will pay is limited as described in SECTION VI.

f. Coverage under this Excess Plan is conditioned upon full and timely payment of all assessments.

*****COMMENTS*****

Claims Made Form. This is a claims made Excess Plan. It applies to CLAIMS first made during the COVERAGE PERIOD shown in the Declarations. CLAIMS first made either prior to or subsequent to the COVERAGE PERIOD are not covered by this Excess Plan.

When Claim First Made; Multiple Claims. Except as specifically provided, this Excess Plan does not cover CLAIMS made prior to the COVERAGE PERIOD. The Excess Plan is intended to follow the terms of the PLF CLAIMS MADE PLAN with respect to when a CLAIM is first made and with respect to the treatment of multiple CLAIMS. See Section I.8, IV.1(b)(2), and VI.2, and related Comments and Examples in the PLF PLAN. However, because of the exception in Subsection 1.b. in this Excess Plan, CLAIMS made during the COVERAGE PERIOD will not relate back to previously made CLAIMS that were made against other attorneys or firms, as long as THE FIRM did not reasonably know that a CLAIM would be made under this Excess Plan.

Example: Firm G does not maintain excess coverage. Firm G and one of its members, Attorney A, are sued by Claimant in Year 1. The claim is covered under Attorney A's Year 1 primary PLF PLAN. Claimant amends the complaint in Year 2, and for the first time asserts the same claim also against Firm H and one of its members, Attorney B. Neither Firm H nor Attorney B had previously been aware of the potential claim, and no notice of a potential claim against Attorney B or Firm H had previously been given to the PLF or any other carrier. Firm H carried its Year 1 excess coverage with Carrier X and carries its Year 2 excess coverage with the PLF. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in Year 1 and did not purchase tail coverage from Carrier X. Under the terms of Subsection b.1, in these limited circumstances, Firm H's Year 2 Excess Plan would become excess to the Year 1 PLF CLAIMS MADE PLAN issued by the PLF as primary coverage to Attorney B.

Covered Activity During Coverage Period. To the extent that any COVERED PARTY under this Excess Plan has knowledge prior to the COVERAGE PERIOD that particular acts, errors, or omissions have given rise or could give rise to a CLAIM, it is reasonable that that CLAIM and other CLAIMS arising out of such acts, errors, or omissions would not be covered under this Excess Plan. Such CLAIMS should instead be covered under the policy or plan in force, if any, at the time the first such CLAIM was made or notice of a potential CLAIM could have been given under the terms of the prior policy or plan. Subsection (c) achieves these purposes by limiting the terms of the Coverage Grant with respect to acts, errors, or omissions which happen prior to the COVERAGE PERIOD so that no coverage is granted where there is prior knowledge, prior insurance or other coverage.

Example: Law firm maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year, and could report it as a suspense matter or incident report to Carrier X at that time and obtain coverage under the firm's excess policy. The firm does not report the potential claim to Carrier X in Year 1. The firm obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the

firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 Excess Plan with the PLF. This is true whether or not Carrier X provides coverage for the claim.

Example: Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities, but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm, but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a Covered Party (i.e., Attorney C) prior to the beginning of the Coverage Period, and because the firm did not circulate its application among the FIRM ATTORNEYS and Current NON-OREGON ATTORNEYS before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.

Example: Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Subsection c(2) will not be applied to deny coverage for the CLAIM as to Attorneys A and B and THE FIRM. However, there will be no coverage for Attorney C because the CLAIM falls outside the coverage grant under the terms of Subsection c(2)(b) and because Attorney C made a material misrepresentation to the PLF in the application.

2. Defense

a. After all APPLICABLE UNDERLYING LIMITS have been exhausted and the applicable Deductible has been expended, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies until the Limits of Coverage extended by this Excess Plan are exhausted. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct the defense of any CLAIM.

b. With respect to any SUIT the PLF defends, the PLF will pay all CLAIMS EXPENSES the PLF may incur. All payments will reduce the Limits of Coverage.

c. If the Limits of Coverage stated in the Declarations are exhausted prior to the conclusion of any CLAIM, the PLF will have the right to withdraw from further defense of the CLAIM.

SECTION V – EXCLUSIONS FROM COVERAGE

*****COMMENTS*****

Although many of the Exclusions in this Excess Plan are similar to the Exclusions in the PLF CLAIMS MADE PLAN, the Exclusions have been modified to apply to the Excess Plan and should be read carefully. For example, because the Excess Plan is issued to law firms rather than to individual attorneys, the Exclusions were modified to make clear which ones apply to all firm members and which apply only to certain firm members. Exclusions 22 (office sharing), 23 (excluded attorney), and 24 (excluded firm) are not contained in the PLF CLAIMS MADE PLAN.

[WRONGFUL CONDUCT EXCLUSIONS]

1. This Excess Plan does not apply to any COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
2. This Excess Plan does not apply to any COVERED PARTY for any CLAIM based upon or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by that COVERED PARTY or at the direction of that COVERED PARTY, or in which that COVERED PARTY acquiesces or remains passive after having personal knowledge thereof.
3. This Excess Plan does not apply to any CLAIM based upon or arising out of a proceeding brought by the Oregon State Bar or any similar entity.
4. This Excess Plan does not apply to:
 - a. The part of any CLAIM seeking punitive or exemplary damages; or
 - b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will provide coverage for the defense of such a CLAIM, but any liability for indemnity arising from such a CLAIM will be excluded.

[BUSINESS ACTIVITY EXCLUSIONS]

5. This Excess Plan does not apply to that part of any CLAIM based upon or arising out of any COVERED PARTY'S conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

6. This Excess Plan does not apply to any CLAIM by or on behalf of any business enterprise:
 - a. In which any COVERED PARTY has an ownership interest or had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;
 - b. In which any COVERED PARTY is a general partner, managing member, or employee, or was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions upon which the CLAIM is based; or
 - c. That is controlled, operated, or managed by any COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.

Ownership interest, for purposes of this exclusion, will not include any ownership interest now or previously held solely as a passive investment as long as all COVERED PARTIES, those they control, spouses, parents, step-parents, children, step-children, siblings, or any member of their households, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.

7. This Excess Plan does not apply to any CLAIM made by:
 - a. THE FIRM'S present, former, or prospective partner, employer, or employee, or
 - b. A present, former, or prospective officer, director, or employee of a professional corporation in which any COVERED PARTY was a shareholder,

unless such CLAIM arises out of conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.

8. This Excess Plan does not apply to any CLAIM based upon or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which any COVERED PARTY participated with a client unless disclosure in the form of Disclosure Form ORPC 1, attached as Exhibit A to this Excess Plan, has been properly executed prior to the occurrence giving rise to the CLAIM and either:
 - a. A copy of the executed disclosure form is forwarded to the PLF within ten (10) calendar days of execution, or
 - b. If delivery of a copy of the disclosure form to the PLF within ten (10) calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client confidences and secrets, the COVERED PARTY may instead send the PLF an alternative letter stating: (1) the name of the client with whom the COVERED PARTY is participating in a business transaction; (2) that the COVERED PARTY has provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a) or their equivalents; (3) the date of the disclosure letter; and (4) that providing the PLF with a copy of the

disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within ten (10) calendar days of execution of the disclosure letter.

9. This Excess Plan does not apply to any CLAIM based upon or arising out of any act, error, or omission in the course of providing INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all of the INVESTMENT ADVICE constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10 of the PLF CLAIMS MADE PLAN.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Excess Policy does not apply to any CLAIM:

- a. For the return of any fees, costs, or disbursements, including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;
- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements; or
- c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

11. This Excess Plan does not apply to any CLAIM asserted by an attorney COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest, based upon or arising out of the acts, errors, or omissions of that COVERED PARTY.

*****COMMENT*****

Work performed for family members is not covered under this Excess Plan. A CLAIM based upon or arising out of such work, even for example a CLAIM against other lawyers or THE FIRM for failure to supervise will be excluded from coverage. This exclusion does not apply, however, if one attorney performs legal services for another attorney's family member.

12. This Excess Plan does not apply to any CLAIM arising out of any COVERED PARTY'S activity as a fiduciary under any employee retirement, deferred benefit, or other similar plan.

13. This Excess Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the

physical appearance before such witness or notary public, unless such CLAIM arises from the acts of THE FIRM'S employee and no COVERED PARTY has actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCUSION]

14. This Excess Plan does not apply to any CLAIM arising out of any conduct:
- a. As a public official or an employee of a governmental body, subdivision, or agency; or
 - b. In any other capacity which comes within the defense and indemnity requirements of ORS 30.285 and 30.287 or other similar state or federal statute, rule, or case law. If a public body rejects the defense and indemnity of such a CLAIM, the PLF will provide coverage for such COVERED ACTIVITY and will be subrogated to all rights against the public body.

[HOUSE COUNSEL EXCLUSION]

15. This Excess Plan does not apply to any CLAIM arising out of any conduct as an employee in an employer-employee relationship other than as an employee for a LAW ENTITY.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

16. This Excess Plan does not apply to any CLAIM against any COVERED PARTY for:
- a. bodily injury, sickness, disease, or death of any person;
 - b. injury to, loss of, or destruction of any property or loss of use thereof; or
 - c. mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

17. This Excess Plan does not apply to any CLAIM based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual preference, disability, pregnancy, national origin, marital status, or any other basis prohibited by law.

[PATENT EXCLUSION]

18. This Excess Plan does not apply to any CLAIM based upon or arising out of professional services performed or any act, error, or omission committed in relation to the prosecution of a patent if the COVERED PARTY who performed the services was not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.

[SUA EXCLUSION]

19. This Excess Plan does not apply to any CLAIM arising out of a special underwriting assessment by the PLF.

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Plan does not apply to any CLAIM:

- a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;
- b. Any costs connected to ORS 20.160 or similar statute or rule;
- c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or
- d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.

[BANKRUPTCY TRUSTEE EXCLUSION]

21. This Excess Plan does not apply to any CLAIM arising out of any COVERED PARTY'S activity as a bankruptcy trustee.

[OFFICE SHARING EXCLUSION]

22. This Excess Plan does not apply to any CLAIM alleging the vicarious liability of any COVERED PARTY under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom THE FIRM or attorney COVERED PARTIES shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

[EXCLUDED ATTORNEY EXCLUSION]

23. This Excess Plan does not apply to any CLAIM against any COVERED PARTY:

- a. Arising from or relating to any act, error, or omission of any EXCLUDED ATTORNEY in any capacity or context, whether or not the COVERED PARTY personally participated in any such act, error, or omission or is vicariously liable, or

b. Alleging liability for the failure of a COVERED PARTY or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any EXCLUDED ATTORNEY.

[EXCLUDED FIRM EXCLUSION]

24. This Excess Plan does not apply to any CLAIM made against a COVERED PARTY:

a. Which arises from or is related to any act, error, or omission of:

(1) An EXCLUDED FIRM, or

(2) A past or present partner, shareholder, associate, attorney, or employee (including any COVERED PARTY) of an EXCLUDED FIRM while employed by, a partner or shareholder of, or in any way associated with an EXCLUDED FIRM,

in any capacity or context, and whether or not the COVERED PARTY personally participated in any such act, error, or omission or is vicariously liable therefore, or

b. Alleging liability for the failure of a COVERED PARTY or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any EXCLUDED FIRM or any person described in Subsection a(2) above.

SECTION VI – LIMITS OF COVERAGE AND DEDUCTIBLE

1. Limits of Coverage

a. Regardless of the number of COVERED PARTIES under this Excess Plan, the number of persons or organizations who sustain damage, or the number of CLAIMS made, the PLF's maximum liability for indemnity and CLAIMS EXPENSE under this Excess Plan will be limited to the amount shown as the Limits of Coverage in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of CLAIMS against more than one COVERED PARTY does not increase the PLF's Limit of Coverage.

b. If the SAME OR RELATED CLAIMS are made in the PLAN YEAR of this Excess Plan and the PLAN YEARS of other Excess Plans issued to THE FIRM by the PLF, then only a single Limit of Coverage will apply to all such CLAIMS.

2. Deductible

a. The Deductible for COVERED PARTIES under this Excess Plan who are not also covered under the PLF CLAIMS MADE PLAN is either the maximum Limit of Liability for indemnity and Claims Expense under any insurance policy covering the CLAIM or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.

b. THE FIRM is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or CLAIMS EXPENSE as a result of a CLAIM for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each CLAIM, except for SAME OR RELATED CLAIMS. The Deductible amount must be paid by THE FIRM as CLAIMS EXPENSES are incurred or a payment of indemnity is made. At the PLF's option, it may pay such CLAIMS EXPENSES or indemnity, and THE FIRM will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

*****COMMENTS*****

The making of the SAME OR RELATED CLAIMS against one or more lawyers in THE FIRM will not "stack" or create multiple Limits of Coverage. This is true even if the CLAIMS are made in different Plan Years. In that event, the applicable limit will be available limits from the Excess Plan in effect in the Plan Year in which the SAME OR RELATED CLAIMS are deemed first made. In no event will more than one Limit of Liability be available for all such CLAIMS.

Under the PLF CLAIMS MADE PLAN, the SAME OR RELATED CLAIMS will result in only one Limit of Coverage being available, even if CLAIMS are made against COVERED PARTIES in different LAW ENTITIES. The Excess Plan works differently. The limits of Excess Plans issued to different firms may, where appropriate, "stack"; Excess Plans issued to any one firm do not. If SAME OR RELATED CLAIMS are made against COVERED PARTIES under Excess Plans issued by the PLF to two or more Law Firms, the available Limit of Coverage for THE FIRM under this Excess Plan will not be affected by the Limits of Coverage in other Excess Plans. THE FIRM, however, cannot "stack" limits of multiple Excess Plans issued to it for the SAME OR RELATED CLAIMS.

SECTION VII -- NOTICE OF CLAIMS

1. THE FIRM must, as a condition precedent to the right of protection afforded any COVERED PARTY by this coverage, give the PLF, at the address shown in the Declarations, written notice of any CLAIM that is reasonably likely to involve any of the coverages of this Excess Plan. In the event a SUIT is brought against any COVERED PARTY, which is reasonably likely to involve any of the coverages of this Excess Plan, THE FIRM must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.
2. If during the COVERAGE PERIOD, any COVERED PARTY becomes aware of a specific act, error, or omission for which coverage could reasonably be provided under this Excess Plan during the COVERAGE PERIOD, THE FIRM must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:

- a. The specific act, error, or omission;
- b. The injury or damage that has resulted or may result; and
- c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission;

then any CLAIM that is subsequently made against any COVERED PARTY based upon or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.

4. If, during the COVERAGE PERIOD, a potential claimant requests that the PLF agree to toll or suspend the running of a time limitation applicable to a potential CLAIM against a COVERED PARTY based upon a specific act, error, or omission for which coverage is provided under this Excess Plan, and if the PLF agrees in writing to do so with the consent of THE FIRM, then any CLAIM that is subsequently made against any COVERED PARTY based upon or arising out of such act, error, or omission shall be deemed to have been made during the COVERAGE PERIOD.

SECTION VIII -- COVERAGE DETERMINATIONS

1. This Excess Plan is governed by the laws of the State of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Excess Plan. Any dispute as to the applicability, interpretation, or enforceability of this Excess Plan, or any other issue pertaining to the provision of benefits under this Excess Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the State of Oregon, which will have exclusive jurisdiction and venue of such disputes at the trial level.
2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.
3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Excess Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.

4. The bankruptcy or insolvency of a COVERED PARTY will not relieve the PLF of its obligations under this Excess Plan.

**SECTION IX – ASSISTANCE, COOPERATION,
AND DUTIES OF COVERED PARTY**

As a condition of coverage under this Excess Plan, every COVERED PARTY must satisfy all conditions of the PLF CLAIMS MADE PLAN.

*****COMMENTS*****

Among the conditions of coverage referred to in this section are the conditions of coverage stated at Section IX of the PLF PLAN.

The obligations of the COVERED PARTIES under this section as well as the other sections of the Excess Plan are to be performed without charge to the PLF.

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

1. No legal action in connection with this Excess Plan may be brought against the PLF unless all COVERED PARTIES have fully complied with all terms of this Excess Plan.

2. The PLF may bring an ACTION against a COVERED PARTY if:

a. The PLF pays a CLAIM under this Excess Plan or any other Excess Plan issued by the PLF;

b. The COVERED PARTY under this Excess Plan is alleged to be liable for all or part of the damages paid by the PLF;

c. As between the COVERED PARTY and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY for contribution, indemnity, or otherwise, for all or part of the damages paid; and

d. Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Excess Plan.

3. In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate up to the full amount the PLF has paid. However, this section shall not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery which would entitle the COVERED PARTY to indemnity under this Excess Plan if the PLF's action were successful.

*****COMMENTS*****

Under certain circumstances, a claim against a COVERED PARTY may not be covered because of an exclusion or other applicable provision of the Excess Plan issued to a firm. However, in some cases the PLF may be required to pay the claim nonetheless because of its obligation to another COVERED PARTY under the terms of the firm's Excess Plan or under another Excess Plan issued by the PLF. This might occur, for example, when the attorney responsible for a claim has no coverage due to his or her intentional wrongful conduct, but his or her partner did not engage in or know of the wrongful conduct but is nevertheless allegedly liable. In these circumstances, if the PLF pays some or all of the claim arising from the responsible attorney's conduct, it is only fair that the PLF have the right to seek recovery back from that attorney; otherwise, the PLF would effectively be covering the attorney's non-covered claims under this Excess Plan simply because other COVERED PARTIES were also liable.

Example: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the claim under his applicable PLF PLAN or the firm's Excess Plan, but Attorney B has coverage for her liability under an Excess Plan issued by the PLF. The PLF pays the claim. Section X.2 makes clear the PLF has the right to sue Attorney A for the damages the PLF paid.

Example: Same facts as prior example, except that the PLF loans funds to the person or entity liable under terms which obligate the borrower to repay the loan to the extent the borrower recovers damages from Attorney A in an action for indemnity. Section X.2 makes clear the PLF has the right pursuant to such arrangement to participate in the borrower's indemnity action against Attorney A.

SECTION XI – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each PLAN YEAR is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for CLAIMS, CLAIMS EXPENSE, or other expenses arising from or incurred during either this PLAN YEAR or a previous PLAN YEAR, THE FIRM agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. THE FIRM further agrees that liability for such supplemental assessments shall be joint and several among THE FIRM and the partners, shareholders, and professional corporations listed as FIRM ATTORNEYS in the Declarations.

The PLF is authorized to make additional assessments for this PLAN YEAR until all its liability for this PLAN YEAR is terminated, whether or not any COVERED PARTY maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.

*****COMMENTS*****

This section is limited to a statement of the COVERED PARTIES' contractual obligation to pay supplemental assessments should the assessments originally levied be inadequate to pay all claims, claims expense, and other expenses arising from this PLAN YEAR. It is not intended to cover other assessments levied by the PLF, such as the assessment initially paid to purchase coverage under this Excess Plan or any regular or special underwriting assessment paid by any member of THE FIRM in connection with the primary PLF PLAN.

SECTION XII – RELATION OF THE PLF’S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self insurance, which also applies to any loss or CLAIM covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the COVERED PARTY’S insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the Limits Of Coverage of this Excess Plan.

*****COMMENTS*****

This Excess Plan is not an insurance policy. To the extent that insurance or other coverage exists, this Excess Plan may not be invoked. This provision is designed to preclude the application of the other insurance law rules applicable under Lamb-Weston v. Oregon Automobile Ins. Co. 219 Or 110, 341 P2d 110, 346 P2d 643 (1959).

SECTION XIII – WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF’s representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Excess Plan, nor shall the terms of this Excess Plan be waived or changed except by written endorsement issued and signed by the PLF’s authorized representative.

SECTION XIV – EXTENDED REPORTING COVERAGE

Upon termination or cancellation of this Excess Plan by either THE FIRM or the PLF, THE FIRM has the right to purchase extended reporting coverage for one of the following periods for an additional assessment equal to the percent shown below of the assessment levied against THE FIRM for this Excess Plan (as calculated on an annual basis).

Extended Reporting Coverage Period	Additional Assessment
12 Months	100 percent
24 Months	160 percent
36 Months	200 percent
60 Months	250 percent

THE FIRM must exercise this right and pay the assessment within 30 days after the termination or cancellation. Failure to exercise THE FIRM'S right and make payment within this 30-day period will result in forfeiture of all THE FIRM'S rights under this Section.

If THE FIRM qualifies for extended reporting coverage under this Section and timely exercises its rights and pays the required assessment, it will be issued an endorsement extending the period within which a CLAIM can be first made for the additional reporting period after the date of termination or cancellation which THE FIRM has selected. This endorsement will not otherwise change the terms of this Excess Plan. The right to extended reporting coverage under this Section will not be available if cancellation is by the PLF because of:

- a. The failure to pay when due any assessment or other amounts to the PLF; or
- b. The failure to comply with any other term or condition of this Excess Plan.

*****COMMENTS*****

This section sets forth THE FIRM'S right to extended reporting coverage. Exercise of the rights hereunder does not establish new or increased limits of coverage and does not extend the period during which the COVERED ACTIVITY must occur to be covered by this Excess Plan.

Example: A firm obtains excess coverage from the PLF in Year 1, but discontinues coverage in Year 2. The firm exercises its rights under Section XIV of the Year 1 Excess Plan and purchases an extended reporting coverage period of 36 months during the first 30 days of Year 2. A CLAIM is made against THE FIRM in March of Year 3 based upon a COVERED ACTIVITY of a firm member occurring in October of Year 1. Because the claim was made during the 36-month extended reporting coverage period and arose from a COVERED ACTIVITY occurring during the COVERAGE PERIOD, it is covered under the terms and within the remaining Limits of Coverage of THE FIRM'S Year 1 Excess Plan.

Example: Same facts as prior example, except the claim which is made against THE FIRM in March of Year 3 is based upon an alleged error of a firm member occurring in January of Year 2. Because the alleged error occurred after the end of the COVERAGE PERIOD for the Year 1 Excess Plan, the claim does not fall

within the terms of the extended reporting coverage and so there is no coverage for the claim under THE FIRM'S Year 1 Excess Plan.

SECTION XV – ASSIGNMENT

THE FIRM'S interest hereunder and the interest of any COVERED PARTY is not assignable.

SECTION XVI – OTHER CONDITIONS

1. Application

A copy of the Application which THE FIRM submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide THE FIRM with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- a. Are contained in the Application;
- b. Are material and have been relied upon by the PLF; and
- c. Are either:
 - (1) fraudulent; or
 - (2) material either to the acceptance of the risk or to the hazard assumed by the PLF.

2. Cancellation

a. This Excess Plan may be canceled by THE FIRM by surrender of the Excess Plan to the PLF or by mailing or delivering written notice to the PLF stating when thereafter such cancellation will be effective. If canceled by THE FIRM, the PLF will retain the assessment on a pro rata basis.

b. This Excess Plan may be canceled by the PLF for any of the following reasons:

- (1) IF THE FIRM has failed to pay an assessment when due, the PLF may cancel the Excess Plan by mailing to THE FIRM written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

(2) Other than for nonpayment of assessments as provided for in Subsection b(1) above, coverage under this Excess Plan may be canceled by the PLF prior to the expiration of the COVERAGE PERIOD only for one of the following specific reasons:

- a. Material misrepresentation by any COVERED PARTY;
- b. Substantial breaches of contractual duties, conditions, or warranties by any COVERED PARTY; or
- c. Revocation, suspension, or surrender of any COVERED PARTY'S license or right to practice law.

Such cancellation may be made by mailing or delivering of written notice to THE FIRM stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

The time of surrender of this Excess Plan or the effective date and hour of cancellation stated in the notice shall become the end of the COVERAGE PERIOD. Delivery of a written notice either by THE FIRM or by the PLF will be equivalent to mailing. If the PLF cancels, assessments shall be computed and refunded to THE FIRM pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter.

3. Termination

This Excess Plan is non-renewable. This Excess Plan will automatically terminate on the date and time shown as the end of the COVERAGE PERIOD in the Declarations unless canceled by the PLF or by THE FIRM in accordance with the provisions of this Excess Plan prior to such date and time.

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

This letter confirms that we have discussed [specify the essential terms of the business transaction that you intend to enter into with your client and your role in the transaction. Be sure to inform the client whether you will be representing the client in the transaction. This is required by ORPC 1.8(a)(3)]. This letter also sets forth the conflict of interest that arises for me as your attorney because of this proposed business transaction.

The Oregon Rules of Professional Conduct prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client unless the client consents. Consequently, I can only act as your lawyer in this matter if you consent after being adequately informed. Rule 1.0(g) provides as follows:

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Although our interests presently appear to be consistent, my interests in this transaction could at some point be different than or adverse to yours. Specifically, [include an explanation which is sufficient to apprise the client of the potential adverse impact on the client of the matter to which the client is asked to consent, and any reasonable alternative courses of action, if applicable].

Please consider this situation carefully and decide whether or not you wish to enter into this transaction with me and to consent to my representation of you in this transaction. Rule 1.8(a)(2) requires me to recommend that you consult with another attorney in deciding whether or not your consent should be given. Another attorney could also identify and advise you further on other potential conflicts in our interests.

I enclose an article "Business Deals Can Cause Problems," which contains additional information. If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

Very truly yours,
[Attorney Name and Signature]

I hereby consent to the legal representation, the terms of the business transaction, and the lawyer's role in transaction as set forth in this letter:

[Client's Signature]

[Date]

Enclosure: "Business Deals Can Cause Problems," by Jeffrey D. Sapiro.

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))

By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

Something that clients often lose sight of is that attorneys are not only legal advisors, but are business people as well. It is no secret that most practitioners wish to build a successful practice, rendering quality legal services to their clients, as a means of providing a comfortable living for themselves and/or their families. Given this objective, it is not surprising that many attorneys are attracted to business opportunities outside their practices that may prove to be financially rewarding. The fact that these business opportunities are often brought to an attorney's attention by a client or through involvement in a client's financial affairs is reason to explore the ethical problems that may arise.

ORPC 1.8(a) and 1.0(g) read as follows:

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ORPC 1.0 Terminology

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

The rationale behind this rule should be obvious. An attorney has a duty to exercise professional judgment solely for the benefit of a client, independent of any conflicting influences or loyalties. If an attorney is motivated by financial interests adverse to that of the client, the undivided loyalty due to the client may very well be compromised. (See also ORPC 1.7 and 1.8(c) and (i)) Full disclosure in writing

gives the client the opportunity and necessary information to obtain independent legal advice when the attorney's judgment may be affected by personal interest. Under ORPC 1.8(a) it is the client and not the attorney who should decide upon the seriousness of the potential conflict and whether or not to seek separate counsel.

A particularly dangerous situation is where the attorney not only engages in the business aspect of a transaction, but also furnishes the legal services necessary to put the deal together. In *In re Brown*, 277 Or 121, 559 P2d 884, rev. den. 277 Or 731, 561 P2d 1030 (1977), an attorney became partners with a friend of many years in a timber business, the attorney providing legal services and the friend providing the capital. The business later incorporated, with the attorney drafting all corporate documents, including a buy-sell agreement permitting the surviving stockholder to purchase the other party's stock. The Oregon Supreme Court found that the interests of the parties were adverse for a number of reasons, including the disparity in capital invested and the difference in the parties' ages, resulting in a potential benefit to the younger attorney under the buy-sell provisions. Despite the fact that the friend was an experienced businessman, the court held that the attorney violated the predecessor to ORPC 1.8(a), DR 5-104(A), because the friend was never advised to seek independent legal advice.

Subsequent to *Brown*, the Supreme Court has disciplined several lawyers for improper business transactions with clients. Among these cases are *In re Drake*, 292 Or 704, 642 P2d 296 (1982), which provides a comprehensive analysis of ORPC 1.8(a)'s predecessor, DR 5-104(A); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982), in which the fact that the client was a more sophisticated business person than the attorney did not affect the court's analysis; *In re Germundson*, 201 Or 656, 724 P2d 793 (1986), in which a close friendship between the attorney and the client was deemed insufficient reason to dispense with conflict disclosures; and *In re Griffith*, 304 Or 575, 748 P2d (1987), in which the court noted that, even if no conflict is present when a transaction is entered into, subsequent events may lead to a conflict requiring disclosures or withdrawal by the attorney.

Even in those situations where the attorney does not furnish legal services, problems may develop. There is a danger that, while the attorney may feel he or she is merely an investor in a business deal, the client may believe the attorney is using his or her legal skills to protect the client's interests in the venture. Indeed, this may be the very reason the client approached the attorney with a business proposition in the first place. When a lawyer borrows money from a client, there may even be a presumption that the client is relying on the lawyer for legal advice in the transaction. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). To clarify for the client the role played by the attorney in a business transaction, ORPC 1.8(a)(3) now provides that a client's consent to the attorney's participation in the transaction is not effective unless the client signs a writing that describes, among other things, the attorney's role and whether the attorney is representing the client in the transaction.

In order to avoid the ethical problems addressed by the conflict of interest rules, the Supreme Court has said that an attorney must at least advise the client to seek independent legal counsel (*In re Bartlett*, 283 Or 487, 584 P2d 296 (1978)). This is now required by ORPC 1.8(a)(2). The attorney should disclose not only that a conflict of interest may exist, but should also explain the nature of the conflict "in such detail so that (the client) can understand the reasons why it may be desirable for each to have independent counsel. . ." (*In re Boivin*, 271 Or 419, 424, 533 P2d 171 (1975)). Risks incident to a transaction with a client must also be disclosed (ORPC 1.0(g); *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984); *In re Whipple*, 296 Or 105, 673 P2d 172 (1983)). Such a disclosure will help insure that there is no misunderstanding over the role the attorney is to play in the transaction and will help prevent the attorney from running afoul of the disciplinary rule discussed above.

OREGON STATE BAR

PROFESSIONAL LIABILITY FUND

2008 PRO BONO PROGRAM

CLAIMS MADE MASTER PLAN

January 1, 2008

**2008 PRO BONO PROGRAM
CLAIMS MADE MASTER PLAN**

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**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

**2008 PRO BONO PROGRAM
CLAIMS MADE MASTER PLAN**

NOTICE

This Pro Bono Program Claims Made Master Plan ("Master Plan") contains provisions that reduce the Limits of Coverage by the costs of legal defense. See SECTIONS IV and VI.

Various provisions in this Master Plan restrict coverage. Read the entire Master Plan to determine rights, duties, and what is and is not covered.

INTERPRETATION OF THIS MASTER PLAN

Bracketed Titles. The bracketed titles appearing throughout this Master Plan are not part of the Master Plan and should not be used as an aid in interpreting the Master Plan. The bracketed titles are intended simply as a guide to locating pertinent provisions.

Use of Capitals. Capitalized terms are defined in SECTION I. The definition of COVERED PARTY appearing in SECTION II and the definition of COVERED ACTIVITY appearing in SECTION III are particularly crucial to the understanding of the Master Plan.

Master Plan Comments. The discussions labeled "*COMMENTS*" following various provisions of the Master Plan are intended as aids in interpretation. These interpretive provisions add background information and provide additional considerations to be used in the interpretation and construction of the Master Plan.

The Comments are similar in form to those in the Uniform Commercial Code and Restatements. They are intended to aid in the construction of the Master Plan language. The Comments are to assist attorneys in interpreting the coverage available to them and to provide a specific basis for interpretation by courts and arbitrators.

SECTION I — DEFINITIONS

Throughout this Master Plan, when appearing in capital letters:

1. "BUSINESS TRUSTEE" means one who acts in the capacity of or with the title "trustee" and whose activities include the operation, management, or control of any business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder.

COMMENTS

The term "BUSINESS TRUSTEE" is used in SECTION III.3 and in SECTION V.5. This Master Plan is intended to cover the ordinary range of activities in which attorneys typically engage while providing services through a PRO BONO PROGRAM. The Master Plan is not intended to cover BUSINESS TRUSTEE activities as defined in this Subsection. Examples of types of BUSINESS TRUSTEE activities for which coverage is excluded under the Master Plan include, among other

things: serving on the board of trustees of a charitable, educational, or religious institution; serving as the trustee for a real estate or other investment syndication; serving as trustee for the liquidation of any business or institution; and serving as trustee for the control of a union or other institution.

2. "CLAIM" means a demand for DAMAGES or written notice to a COVERED PARTY of an intent to hold a COVERED PARTY liable as a result of a COVERED ACTIVITY, if such notice might reasonably be expected to result in an assertion of a right to DAMAGES.

3. "CLAIMS EXPENSE" means:

- a. Fees charged by any attorney designated by the PLF;
- b. All other fees, costs, and expenses resulting from the investigation, adjustment, defense, repair, and appeal of a CLAIM, if incurred by the PLF; or
- c. Fees charged by any attorney designated by the COVERED PARTY with the PLF's written consent.

However, CLAIMS EXPENSE does not include the PLF's costs for compensation of its regular employees and officials or the PLF's other routine administrative costs.

4. "CLAIMS EXPENSE ALLOWANCE" means the separate allowance for aggregate CLAIMS EXPENSE for all CLAIMS as provided for in SECTION VI.1.b. of this Master Plan.

5. "COVERAGE PERIOD" means the coverage period shown in the Declarations under the heading "COVERAGE PERIOD."

6. "COVERED ACTIVITY" means conduct qualifying as such under SECTION III — WHAT IS A COVERED ACTIVITY.

7. "COVERED PARTY" means any person or organization qualifying as such under SECTION II — WHO IS A COVERED PARTY.

8. "DAMAGES" means money compensation for economic loss. It does not refer to non-economic loss, fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, or accountings.

9. "EXCESS CLAIMS EXPENSE" means any CLAIMS EXPENSE in excess of the CLAIMS EXPENSE ALLOWANCE. EXCESS CLAIMS EXPENSE is included in the Limits of Coverage at SECTION VI.1.a and reduces amounts available to pay DAMAGES under this Master Plan.

10. "INVESTMENT ADVICE" refers to any of the following activities:

- a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;
- b. Managing any investment;
- c. Buying or selling any investment for another;

- d. (1) Acting as a broker for a borrower or lender, or
 - (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;
 - e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;
 - f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or
 - g. Inducing someone to make a particular investment.
11. "LAW ENTITY" refers to a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship engaged in the private practice of law.
12. "MASTER PLAN YEAR" means the period January 1 through December 31 of the calendar year for which this Master Plan was issued.
13. "PLF" means the Professional Liability Fund of the Oregon State Bar.
14. "SAME OR RELATED CLAIMS" means two or more CLAIMS that are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, COVERED ACTIVITIES, damages, liability, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. CLAIMS are related in the following situations:
- a. *Secondary or dependent liability.* CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are related to the CLAIMS on which they are based.
 - b. *Same transactions or occurrences.* Multiple CLAIMS arising out of the same transaction or occurrence or series of transactions or occurrences are related. However, with regard to this Subsection b only, the PLF will not treat the CLAIMS as related if:
 - (1) the participating COVERED PARTIES acted independently of one another;
 - (2) they represented different clients or groups of clients whose interests were adverse; and
 - (3) the claimants do not rely on any common theory of liability or damage.
 - c. *Alleged scheme or plan.* If claimants attempt to tie together different acts as part of an alleged overall scheme or operation, then the CLAIMS are related.
 - d. *Actual pattern or practice.* Even if a scheme or practice is not alleged, CLAIMS that arise from a method, pattern, or practice in fact used or adopted by one or more COVERED PARTIES or LAW ENTITIES in representing multiple clients in similar matters are related.

- e. *One loss.* When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm or cumulatively enhance their damages or losses, then the CLAIMS are related.
- f. *Class actions.* All CLAIMS alleged as part of a class action or purported class action are related.

COMMENTS

SAME OR RELATED CLAIMS. Each PLF Master Plan and PLF Claims Made Plan sets a maximum limit of coverage per year. This limit defines the PLF's total maximum obligation under the terms of each Plan issued by the PLF. However, absent additional Plan provisions, numerous circumstances could arise in which the PLF, as issuer of other PLF Master Plans and PLF Claims Made Plans, would be liable beyond the limits specified in one individual Plan. For example, Plans issued to the same attorney in different years might apply. Or, Plans issued to different attorneys might all apply. In some circumstances, the PLF intends to extend a separate limit under each Plan. In other circumstances, when the CLAIMS are related, the PLF does not so intend. Because the concept of "relatedness" is broad and factually based, there is no one definition or rule that will apply to every situation. The PLF has therefore elected to explain its intent by listing certain circumstances in which only one limit is available regardless of the number of Plans that may apply. See Subsections 14.a. to 14.f. above.

Example No. 1: Attorney A is an associate in a firm and commits malpractice. CLAIMS are made against Attorney A and various partners in the firm. All attorneys share one limit. CLAIMS such as those based on vicarious liability, failure to supervise, or negligent referral are always related to the CLAIMS on which they are based. See Subsection 14.a. above. Even if Attorney A and some of the other lawyers are at different firms at the time of the CLAIM, all attorneys and the firm share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE.

Example No. 2: Attorney A writes a tax opinion for an investment offering, and Attorneys B and C with a different law firm assemble the offering circular. Investors 1 and 2 bring CLAIMS in 2007 and Investor 3 brings a CLAIM in 2008 relating to the offering. No CLAIM is asserted prior to 2007. Only one Limit of Coverage applies to all CLAIMS. This is because the CLAIMS arise out of the same transaction or occurrence, or series of transactions or occurrences. See Subsection 14.b. above. CLAIMS by investors in the same or similar investments will almost always be related. However, because the CLAIMS in this example are made against COVERED PARTIES in two different firms, up to two CLAIMS EXPENSE ALLOWANCES may potentially apply. See Section VI.2. Note also that, under these facts, all CLAIMS against Attorneys A, B, and C are treated as having been first made in 2007, pursuant to Section IV.1.b.(2). This could result in available limits having been exhausted before a CLAIM is eventually made against a particular COVERED PARTY. The timing of making CLAIMS does not increase the available limits.

Example No. 3: Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's CLAIMS are not related. A's and B's CLAIMS would be related, but for the exception in the second sentence of Subsection 14.b. above.

Example No. 4: An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel A, its ERISA lawyer B, the owner, his attorney C, and the plans' former attorney D, contending there were improprieties in the due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All CLAIMS are related. They arise out of the same transactions or occurrences and therefore are related under Subsection 14.b. For the exception in Subsection 14.b. to apply, all three elements must be satisfied. The exception does not apply because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Finally, even if the exception in Subsection 14.b. did apply, the CLAIMS would still be related under Subsection 14.d. because they involve one loss. Although the CLAIMS are related, if all four attorneys' firms are sued, depending on the circumstances, up to four total CLAIMS EXPENSE ALLOWANCES might be available under Section VI.2.

Example No. 5: Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. Although the different acts by different lawyers at different times could legitimately be viewed as separate and unconnected, the claimant in this example attempts to tie them together as part of an alleged overall scheme or operation. The CLAIMS are related because the claimants have made them so. See Subsection 14.c. above. This will often be the case in securities CLAIMS. As long as such allegations remain in the case, only one limit will be available, even if alternative CLAIMS are also alleged. In this example, although there is only one Limit of Coverage available for all CLAIMS, depending on the circumstances, multiple CLAIMS EXPENSE ALLOWANCES might be available. See Section VI.2.

Example No. 6: Attorneys A, B, and C in the same firm represent a large number of asbestos clients over ten years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation of their cases' values, although the plaintiffs do not allege a common scheme or plan. Because the firm in fact operated a firm-wide formula for handling the cases, the CLAIMS are related based on the COVERED PARTIES' own pattern or practice. The CLAIMS are related because the COVERED PARTIES' own conduct has made them so. See Subsection 14.d. above. Attorneys A, B, and C will share one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE. LAW ENTITIES should protect themselves from such CLAIMS brought by multiple clients by purchasing adequate excess insurance.

Example No. 7: Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. The CLAIMS are related and only a single Limit of Coverage applies to all CLAIMS. See Subsection 14.e. above. When, as in this example, successive or collective errors each cause single or multiple clients and/or claimants harm or cumulatively enhance their damages or losses, then the CLAIMS are related. In such a situation, a claimant or group of claimants cannot increase the limits potentially available by alleging

separate errors by separate attorneys. Attorney E, however, may be entitled to a CLAIMS EXPENSE ALLOWANCE separate from the one shared by C and D.

Example No. 8: Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All CLAIMS are related. No class action or purported class action can ever trigger more than one Limit of Coverage. See Subsection 14.f. above.

15. "SUIT" means a civil proceeding in which DAMAGES are alleged. "SUIT" includes an arbitration or alternative dispute resolution proceeding to which the COVERED PARTY submits with the consent of the PLF.
16. "YOU" and "YOUR" mean the PRO BONO PROGRAM shown in the Declarations.
17. "PRO BONO PROGRAM" means the Pro Bono Program shown in the Declarations under the heading "PRO BONO PROGRAM."
18. "VOLUNTEER ATTORNEY" means an attorney who meets all of the following conditions:
 - a. The attorney has provided volunteer pro bono legal services to clients without compensation through the PRO BONO PROGRAM;
 - b. At the time of providing the legal services referred to in Subsection a. above, the attorney was not employed by the PRO BONO PROGRAM or compensated in any way by the PRO BONO PROGRAM;
 - c. At the time of providing the legal services referred to in Subsection a. above, the attorney was an active member of the Oregon State Bar and had claimed exemption from participation in the Professional Liability Fund or was an emeritus member of the Oregon State Bar.

SECTION II — WHO IS A COVERED PARTY

1. The following are COVERED PARTIES:
 - a. YOU.
 - b. Any current or former VOLUNTEER ATTORNEY, but only with respect to CLAIMS which arise out of a COVERED ACTIVITY.
 - c. In the event of death, adjudicated incapacity, or bankruptcy, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of any COVERED PARTY listed in Subsection b., but only to the extent that such COVERED PARTY would otherwise be provided coverage under this Master Plan.
 - d. Any attorney or LAW ENTITY legally liable for YOUR COVERED ACTIVITIES, but only to the extent such legal liability arises from YOUR COVERED ACTIVITIES.

COMMENTS

Please note that VOLUNTEER ATTORNEYS have coverage under this Master Plan only for CLAIMS which arise out of work performed for YOU. For example, there is no coverage for CLAIMS which arise out of work performed for another organization or program, for a client outside of YOUR program, or for a COVERED PARTY'S private practice, employment, or outside activities.

SECTION III — WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES, if the acts, errors, or omissions occur during the COVERAGE PERIOD; or prior to the COVERAGE PERIOD, if on the effective date of this Master Plan YOU have no knowledge that any CLAIM has been asserted arising out of such prior act, error, or omission, and there is no prior policy, PLF Claims Made Plan or Master Plan that provides coverage for such liability or CLAIM resulting from the act, error, or omission, whether or not the available limits of liability of such prior policy or Master Plan are sufficient to pay any liability or CLAIM:

[VOLUNTEER ATTORNEY'S CONDUCT]

1. Any act, error, or omission committed by a VOLUNTEER ATTORNEY which satisfies all of the following criteria:
 - a. The VOLUNTEER ATTORNEY committed the act, error, or omission in rendering professional services in the VOLUNTEER ATTORNEY'S capacity as an attorney, or in failing to render professional services that should have been rendered in the VOLUNTEER ATTORNEY'S capacity as an attorney.
 - b. At the time the VOLUNTEER ATTORNEY rendered or failed to render these professional services:
 - (1) The VOLUNTEER ATTORNEY was providing services to a client served by YOUR program and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU, and
 - (2) Such activity occurred after any Retroactive Date shown in the Declarations to this Master Plan.

[CONDUCT OF OTHERS]

2. Any act, error or omission committed by a person for whom a VOLUNTEER ATTORNEY is legally liable in the VOLUNTEER ATTORNEY'S capacity as an attorney while providing legal services to clients through YOU; provided each of the following criteria is satisfied:
 - a. The act, error, or omission causing the VOLUNTEER ATTORNEY'S liability:
 - (1) Occurred while the VOLUNTEER ATTORNEY was providing services to a client served by YOU and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU, and

(2) Occurred after any Retroactive Date shown in the Declarations to this Master Plan.

b. The act, error, or omission, if committed by the VOLUNTEER ATTORNEY, would constitute a COVERED ACTIVITY under this Master Plan.

[VOLUNTEER ATTORNEY'S CONDUCT IN A SPECIAL CAPACITY]

3. Any act, error, or omission committed by the VOLUNTEER ATTORNEY in the capacity of personal representative, administrator, conservator, executor, guardian, special representative pursuant to ORS 128.179, or trustee (except BUSINESS TRUSTEE); provided, at the time of the act, error, or omission, each of the following criteria was satisfied:

a. The VOLUNTEER ATTORNEY was providing services to a client served by YOU and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU.

b. Such activity occurred after any Retroactive Date shown in the Declarations to this Master Plan.

COMMENTS

To qualify for coverage, a CLAIM must arise out of a COVERED ACTIVITY. The definition of COVERED ACTIVITY imposes a number of restrictions on coverage including the following:

***Prior CLAIMS.** Section III limits the definition of COVERED ACTIVITY with respect to acts, errors, or omissions that happen prior to the COVERAGE PERIOD, so that no coverage is granted when there is prior knowledge or prior insurance. For illustration of the application of this language, see *Chamberlin v. Smith*, 140 Cal Rptr 493 (1977).*

To the extent there is prior insurance or other coverage applicable to the CLAIM, it is reasonable to omit the extension of further coverage. Likewise, to the extent YOU or the VOLUNTEER ATTORNEY have knowledge that particular acts, errors, or omissions have given rise to a CLAIM, it is reasonable that that CLAIM and other CLAIMS arising out of such acts, errors, or omissions would not be covered. Such CLAIMS should instead be covered under the policy or Master Plan in force, if any, at the time the first such CLAIM was made.

***VOLUNTEER ATTORNEY.** For a VOLUNTEER ATTORNEY'S actions to constitute a COVERED ACTIVITY, the VOLUNTEER ATTORNEY must have been performing work or providing services with the scope of activities assigned to the VOLUNTEER ATTORNEY by YOU.*

***Types of Activity.** COVERED ACTIVITIES have been divided into three categories. Subsection 1 deals with coverage for a VOLUNTEER ATTORNEY'S own conduct as an attorney. Subsection 2 deals with coverage for a VOLUNTEER ATTORNEY'S liability for the conduct of others. Subsection 3 deals with coverage for a VOLUNTEER ATTORNEY'S conduct in a special capacity (e.g. as a personal representative of an estate). The terms "BUSINESS TRUSTEE" and "VOLUNTEER ATTORNEY" as used in this section are defined at SECTION I – DEFINITIONS.*

***Special Capacity.** Subsection 3 provides limited coverage for VOLUNTEER ATTORNEY acts*

as a personal representative, administrator, conservator, executor, guardian, or trustee. However, not all acts in a special capacity are covered under this Master Plan. Attorneys acting in a special capacity described in Subsection 3 of Section III may subject themselves to claims from third parties that are beyond the coverage provided by this Master Plan. For example, in acting as a conservator or personal representative, an attorney may engage in certain business activities, such as terminating an employee or signing a contract. If such actions result in a claim by the terminated employee or the other party to the contract, the estate or corpus should respond to such claims in the first instance, and should protect the attorney in the process. Attorneys engaged in these activities should obtain appropriate commercial general liability, errors and omissions, or other commercial coverage. The claim will not be covered under Subsection 3 of Section III.

The Master Plan purposefully uses the term "special capacity" rather than "fiduciary" in Subsection 3 to avoid any implication that this coverage includes fiduciary obligations other than those specifically identified. There is no coverage for VOLUNTEER ATTORNEY'S conduct under Subsection 3 unless VOLUNTEER ATTORNEY was formally named or designated as a personal representative, administrator, conservator, executor, guardian, or trustee (except BUSINESS TRUSTEE) and served in such capacity.

Retroactive Date. This section introduces the concept of a Retroactive Date. A PRO BONO PROGRAM may have a Retroactive Date in its Master Plan which may place an act, error, or omission outside the definition of a COVERED ACTIVITY, thereby eliminating coverage for any resulting CLAIM under the Master Plan for the PRO BONO PROGRAM and its VOLUNTEER ATTORNEYS. If a Retroactive Date applies to a CLAIM to place it outside the definition of a COVERED ACTIVITY herein, there will be no coverage for the CLAIM under this Master Plan as to any COVERED PARTY, even for vicarious liability.

SECTION IV – GRANT OF COVERAGE

1. Indemnity.

a. The PLF will pay those sums that a COVERED PARTY becomes legally obligated to pay as DAMAGES because of CLAIMS arising out of a COVERED ACTIVITY to which this Master Plan applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Subsection 2 - Defense.

b. This Master Plan applies only to CLAIMS first made against a COVERED PARTY during the COVERAGE PERIOD.

(1) A CLAIM will be deemed to have been made at the earliest of:

(a) When an SUIT is filed or initiated;

(b) When notice of such CLAIM is received by any COVERED PARTY or by the PLF; or

(c) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE

PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

(2) Two or more CLAIMS that are SAME OR RELATED CLAIMS, whenever made, will all be deemed to have been first made at the time the earliest such CLAIM was first made. However, this provision will not apply to YOU if YOU have no other coverage from any source applicable to the CLAIM (or that would have been applicable but for exhaustion of limits under that coverage).

c. This Master Plan applies only to SUITS brought in the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States. This Master Plan does not apply to SUITS brought in any other jurisdiction, or to SUITS brought to enforce a judgment rendered in any jurisdiction other than the United States, its territories or possessions, Canada, or the jurisdiction of any Indian Tribe in the United States.

d. The amount the PLF will pay for damages is limited as described in SECTION VI.

e. Coverage under this Master Plan is conditioned upon compliance with all requirements for Pro Bono Programs under PLF Policy 3.800 and all terms and conditions of this Master Plan.

2. Defense.

a. Until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage extended by this Master Plan are exhausted, the PLF will defend any SUIT against a COVERED PARTY seeking DAMAGES to which this coverage applies. The PLF has the sole right to investigate, repair, settle, designate defense attorneys, and otherwise conduct the defense or repair of any CLAIM.

b. With respect to any CLAIM the PLF defends or repairs, the PLF will pay all CLAIMS EXPENSE the PLF may incur. All payments for EXCESS CLAIMS EXPENSE will reduce the Limits of Coverage.

c. If the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage extended by this Master Plan are exhausted prior to the conclusion of any CLAIM, the PLF may withdraw from further defense of the CLAIM.

COMMENTS

Claims Made Coverage. As claims made coverage, this Master Plan applies to CLAIMS first made during the time period shown in the Declarations. CLAIMS first made either prior to or subsequent to that time period are not covered by this Master Plan, although they may be covered by a prior or subsequent Master Plan.

Damages. This Master Plan grants coverage only for CLAIMS seeking DAMAGES. There is no coverage granted for other claims, actions, suits, or proceedings seeking equitable remedies such as restitution of funds or property, disgorgement, accountings or injunctions.

When Claim First Made; SAME OR RELATED CLAIMS. Subsection 1.b.(1) of this section

is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection 1.b.(2) states a special rule applicable when several CLAIMS arise out of the SAME OR RELATED CLAIMS. Under this rule, all such SAME OR RELATED CLAIMS are considered first made at the time the earliest of the several SAME OR RELATED CLAIMS is first made. Thus, regardless of the number of claimants asserting SAME OR RELATED CLAIMS, the number of Master Plan Years involved, or the number of transactions giving rise to the CLAIMS, all such CLAIMS are treated as first made in the earliest applicable Master Plan Year and only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE apply. There is an exception to the special rule in Subsection 1.b.(2) for COVERED PARTIES who had no coverage (with the PLF or otherwise) at the time the initial CLAIM was made, but this exception does not create any additional Limits of Coverage. Pursuant to Subsection VI.2, only one Limit of Coverage would be available.

Scope of Duty to Defend. Subsection 2 defines the PLF's obligation to defend. The obligation to defend continues only until the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage are exhausted. In that event, the PLF will tender control of the defense to the COVERED PARTY or excess insurance carrier, if any. The PLF's payment of the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage ends all of the PLF's duties.

Control of Defense. Subsection 2.a. allocates to the PLF control of the investigation, settlement, and defense of the CLAIM. See SECTION IX—ASSISTANCE, COOPERATION AND DUTIES OF COVERED PARTY.

Costs of Defense. Subsection 2.b. obligates the PLF to pay reasonable and necessary costs of defense. Only those expenses incurred by the PLF or with the PLF's authority are covered.

SECTION V – EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

1. This Master Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.
2. This Master Plan does not apply to any CLAIM based on or arising out of any intentional, dishonest, fraudulent, criminal, malicious, knowingly wrongful, or knowingly unethical acts, errors, or omissions committed by YOU or at YOUR direction or in which YOU acquiesce or remain passive after having personal knowledge thereof;

COMMENTS

Exclusions 1 and 2 set out the circumstances in which wrongful conduct will eliminate coverage. An intent to harm is not required.

Voluntary Exposure to CLAIMS. An attorney may sometimes voluntarily expose himself or herself to a CLAIM or known risk through a course of action or inaction when the attorney knows there is a more reasonable alternative means of resolving a problem. For example, an attorney might disburse settlement proceeds to a client even though the attorney knows of valid hospital, insurance company, or PIP liens, or other valid liens or claims to the funds. If the attorney disburses the proceeds to the client and a CLAIM arises from the other claimants, Exclusion 2 will apply and the CLAIM will not be covered.

Unethical Conduct. If a CLAIM arises that involves unethical conduct by an attorney, Exclusion 2 may also apply to the conduct and the CLAIM would therefore not be covered. This can occur, for example, if an attorney violates Disciplinary Rule ORPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) or ORPC 5.5(a) (aiding a nonlawyer in the unlawful practice of law) and a CLAIM results.

Example: Attorney A allows a title company to use his name, letterhead, or forms in connection with a real estate transaction in which Attorney A has no significant involvement. Attorney A's activities violate ORPC 8.4(a)(3) and ORPC 5.5(a). A CLAIM is made against Attorney A in connection with the real estate transaction. Because Attorney A's activities fall within the terms of Exclusion 2, there will be no coverage for the CLAIM. In addition, the CLAIM likely would not even be within the terms of the coverage grant under this Plan because the activities giving rise to the CLAIM do not fall within the definition of a COVERED ACTIVITY. The same analysis would apply if Attorney A allowed an insurance or investment company to use his name, letterhead, or forms in connection with a living trust or investment transaction in which Attorney A has no significant involvement.

3. This Master Plan does not apply to any CLAIM based on or arising out of a proceeding brought against a COVERED PARTY by the Oregon State Bar or any similar entity.
4. This Master Plan does not apply to:
 - a. That part of any CLAIM seeking punitive or exemplary damages; or
 - b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions on the COVERED PARTY or others imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will provide coverage for the defense of such a CLAIM, but any liability for indemnity arising from such a CLAIM will be excluded.

COMMENTS

A COVERED PARTY may become subject to punitive or exemplary damages, attorney fees, costs, fines, penalties, or other sanctions in two ways. The COVERED PARTY may have these damages assessed directly against the COVERED PARTY or the COVERED PARTY may have a client or other person sue the COVERED PARTY for indemnity for causing the client to be subjected to these damages.

Subsection a. of Exclusion 4 applies to direct actions for punitive or exemplary damages. It excludes coverage for that part of any CLAIM asserting such damages. In addition, such CLAIMS do not involve covered DAMAGES as defined in this Master Plan. If YOU are sued for punitive damages, YOU are not covered for that exposure.

Subsection b. of Exclusion 4 applies to both direct actions against a COVERED PARTY and actions for indemnity brought by others. The courts have become increasingly intolerant of attorneys' improper actions in several areas including trial practice, discovery, and conflicts of interest. Statutes, court rules, and common law approaches imposing various monetary sanctions have been developed to deter such inappropriate conduct. The purpose of these sanctions would be threatened if the PLF were to indemnify the guilty attorney and pay the cost of indemnification out of the assessments paid by all

attorneys.

Thus, if a COVERED PARTY causes the COVERED PARTY'S client to be subjected to a punitive damage award (based upon the client's wrongful conduct toward the claimant) because of a failure, for example, to assert a statute of limitations defense, the PLF will cover a COVERED PARTY'S liability for the punitive damages suffered by the client. Subsection a does not apply because the action is not a direct action for punitive damages and Subsection b does not apply because the punitive damages suffered by YOUR client are not the type of damages described in Subsection b.

On the other hand, if a COVERED PARTY causes the COVERED PARTY'S client to be subjected to an award of attorney fees, costs, fines, penalties, or other sanctions imposed because of the COVERED PARTY'S conduct, or such an award is made against the COVERED PARTY, Subsection b applies and the CLAIM For such damages (or for any related consequential damages) will be excluded.

[BUSINESS ACTIVITY EXCLUSIONS]

5. This Master Plan does not apply to that part of any CLAIM based on or arising out of a COVERED PARTY'S conduct as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of any entity except a LAW ENTITY.

COMMENTS

A COVERED PARTY, in addition to his or her role as an attorney, may clothe himself or herself as an officer, director, partner, BUSINESS TRUSTEE, employee, shareholder, member, or manager of an entity. This exclusion eliminates coverage for the COVERED PARTY'S liability while acting in these capacities. However, the exclusion does not apply if the liability is based on such status in a LAW ENTITY.

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6. This Master Plan does not apply to any CLAIM by or on behalf of any business enterprise:
- a. In which a COVERED PARTY has an ownership interest, or in which a COVERED PARTY had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;
 - b. In which a COVERED PARTY is a general partner, managing member, or employee, or in which a COVERED PARTY was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or
 - c. That is controlled, operated, or managed by a COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by a COVERED PARTY at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

Ownership interest, for the purpose of this exclusion, does not include an ownership interest now or previously held by a COVERED PARTY solely as a passive investment, as long as a COVERED PARTY, those a COVERED PARTY controls, a COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of a COVERED PARTY'S household, and those with whom a

COVERED PARTY is regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.

COMMENTS

Intimacy with a client can increase risk of loss in two ways: (1) The attorney's services may be rendered in a more casual and less thorough manner than if the services were extended at arm's length; and (2) After a loss, the attorney may feel particularly motivated to assure the client's recovery. While the PLF is cognizant of a natural desire of attorneys to serve those with whom they are closely connected, the PLF has determined that coverage for such services should be excluded. Exclusion 6 delineates the level of intimacy required to defeat coverage. See also Exclusion 11.

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7. This Master Plan does not apply to any CLAIM made by:
- a. A COVERED PARTY'S present, former, or prospective partner, employer, or employee; or
 - b. A present, former, or prospective officer, director, or employee of a professional corporation in which YOU were a shareholder, unless such CLAIM arises out of a COVERED PARTY'S conduct in an attorney-client capacity for one of the parties listed in Subsections a. or b.

COMMENTS

The PLF does not always cover a COVERED PARTY'S conduct in relation to the COVERED PARTY'S past, present, or prospective partners, employers, employees, and fellow shareholders, even if such conduct arises out of a COVERED ACTIVITY. Coverage is limited by this exclusion to a COVERED PARTY'S conduct in relation to such persons in situations in which the COVERED PARTY is acting as their attorney and they are the COVERED PARTY'S client.

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8. This Master Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) in which a COVERED PARTY participates with a client unless disclosure in the form of Disclosure Form ORPC 1 (attached as Exhibit A to this Master Plan) has been properly executed prior to the occurrence giving rise to the CLAIM and either:
- a. A copy of the executed disclosure form is forwarded to the PLF within 10 calendar days of execution, or
 - b. If delivery of a copy of the disclosure form to the PLF within 10 calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client confidences and secrets, the COVERED PARTY may instead send the PLF an alternative letter stating (1) the name of the client with whom the COVERED PARTY is participating in a business transaction, (2) that the COVERED PARTY has provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a), (3) the date of the disclosure letter, and (4) that providing the PLF with a copy of the disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within 10 calendar days of execution of the disclosure letter.

COMMENTS

ORPC 1. Form ORPC 1, referred to above, is attached to this Master Plan following SECTION XV. The form includes an explanation of ORPC 1.8(a) which should be provided to the client involved in the business transaction.

Applicability of Exclusion. When an attorney engages in a business transaction with a client, the attorney has an ethical duty to make certain disclosures to the client. ORPC 1.0(g) and 1.8(a) provide:

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

RULE 1.0(g)

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be give.

This exclusion is not intended to be an interpretation of ORPC 1.8(a). Instead, the Master Plan is invoking the body of law interpreting ORPC 1.8(a) to define when the exclusion is applicable.

Use of the PLF's Form Not Mandated. Because of the obvious conflict of interest and the high duty placed on attorneys, when the exclusion applies, the attorney is nearly always at risk of being liable when things go wrong. The only effective defense is to show that the attorney has made full disclosure, which includes a sufficient explanation to the client of the potential adverse impact of the differing interests of the parties to make the client's consent meaningful. Form ORPC 1 is the PLF's attempt to set out an effective disclosure which will provide an adequate defense to such CLAIMS. The

PLF is sufficiently confident that this disclosure will be effective to agree that the exclusion will not apply if YOU use the PLF's proposed form. YOU are free to use YOUR own form in lieu of the PLF's form, but if YOU do so YOU proceed at YOUR own risk, i.e., if YOUR disclosure is less effective than the PLF's disclosure form, the exclusion will apply. Use of the PLF's form is not intended to assure YOU of compliance with the ethical requirements applicable to YOUR particular circumstances. It is YOUR responsibility to consult ORPC 1.0(g) and 1.8(a) and add any disclosures necessary to satisfy the disciplinary rules.

Timing of Disclosure. To be effective, it is important that the PLF can prove the disclosure was made prior to entering into the business transaction. Therefore, the disclosure should be reduced to writing and signed prior to entering into the transaction. There may be limited situations in which reducing the required disclosure to writing prior to entering into the transaction is impractical. In those circumstances, execution of the disclosure letter after entry into the transaction will not render the exclusion effective provided the execution takes place while the client still has an opportunity to withdraw from the transaction and the effectiveness of the disclosure is not compromised. Additional language may be necessary to render the disclosure effective in these circumstances.

Delivery to the PLF. Following execution of the disclosure letter, a copy of the letter or an alternative letter must be delivered to the PLF in a timely manner. Failure to do so will result in any subsequent CLAIM against YOU being excluded.

Other Disclosures. By its terms, ORPC 1.8(a) and this exclusion apply only to business transactions with a client in which the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client. However, lawyers frequently enter into business transactions with others not recognizing that the other expects the lawyer to exercise professional judgment for his or her protection. It can be the "client's" expectation and not the lawyer's recognition that triggers application of ORPC 1.8(a) and this exclusion.

9. This Master Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by a COVERED PARTY (or by someone for whose conduct a COVERED PARTY is legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by the COVERED PARTY constitutes a COVERED ACTIVITY described in SECTION III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d., e., f., or g. of the definition of INVESTMENT ADVICE in SECTION I.15.

COMMENTS

In prior years, the PLF suffered extreme losses as a result of COVERED PARTIES engaging in INVESTMENT ADVICE activity. It was never intended that the PLF cover such activities. An INVESTMENT ADVICE exclusion was added to the Claims Made Plan in 1984. Nevertheless, losses continued in situations where the COVERED PARTY had rendered both INVESTMENT ADVICE and legal advice. In addition, some CLAIMS resulted where the attorney provided INVESTMENT ADVICE in the guise of legal advice.

Exclusion 9, first introduced to the Claims Made Plan in 1987, represented a totally new approach to this problem. Instead of excluding all INVESTMENT ADVICE, the PLF has clearly

delineated specific activities which will not be covered whether or not legal as well as INVESTMENT ADVICE is involved. These specific activities are defined in Section I under the definition of INVESTMENT ADVICE. The PLF's choice of delineated activities was guided by specific cases that exposed the PLF in situations never intended to be covered. The PLF is cognizant that COVERED PARTIES doing structured settlements and COVERED PARTIES in business practice and tax practice legitimately engage in the rendering of general INVESTMENT ADVICE as a part of their practices. In delineating the activities to be excluded, the PLF has attempted to retain coverage for these legitimate practices. For example, the last sentence of the exclusion permits coverage for certain activities normally undertaken by conservators and personal representatives (i.e., COVERED ACTIVITIES described in Section III.3) when acting in that capacity even though the same activities would not be covered if performed in any other capacity. See the definition of INVESTMENT ADVICE in Section I.

Exclusion 9 applies whether the COVERED PARTY is directly or vicariously liable for the INVESTMENT ADVICE.

Note that Exclusion 9 could defeat coverage for an entire CLAIM even if only part of the CLAIM involved INVESTMENT ADVICE. If INVESTMENT ADVICE is in fact either the sole or a contributing cause of any resulting damage that is part of the CLAIM, the entire CLAIM is excluded.

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Master Plan does not apply to any CLAIM:

a. For the return of any fees, costs, or disbursements paid to a COVERED PARTY (or paid to any other attorney or LAW ENTITY with which the COVERED PARTY was associated at the time the fees, costs, or disbursements were incurred or paid), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred;

b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or

c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY.

COMMENTS

This Master Plan is intended to cover liability for errors committed in rendering professional services. It is not intended to cover liabilities arising out of the business aspects of the practice of law. Here, the Master Plan clarifies this distinction by excluding liabilities arising out of fee disputes whether the CLAIM seeks a return of a paid fee, cost, or disbursement. Subsection c., in addition, excludes CLAIMS for damages or the recovery of funds or property that, for whatever reason, have resulted or will result in the accrual of a benefit to any COVERED PARTY.

Attorneys sometimes attempt to correct their own mistakes without notifying the PLF. In some cases, the attorneys charge their clients for the time spent in correcting their prior mistakes, which can lead to a later CLAIM from the client. The better course of action is to notify the PLF of a potential

CLAIM as soon as it arises and allow the PLF to hire and pay for repair counsel if appropriate. In the PLF's experience, repair counsel is usually more successful in obtaining relief from a court or an opposing party than the attorney who made the mistake. In addition, under Subsection a of this exclusion, the PLF does not cover CLAIMS from a client for recovery of fees previously paid by the client to a COVERED PARTY (including fees charged by an attorney to correct the attorney's prior mistake).

Example No. 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under Subsection a., there is no coverage for the CLAIM.

Example No. 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under Subsection a. there is no coverage for the CLAIM.

Example No. 3: Attorney C writes a demand letter to Client for unpaid fees, then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b., there is no coverage for the CLAIM. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example No. 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b., there is no coverage for the CLAIM.

Example No. 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c., there is no coverage for the CLAIM. The same is true if Attorney E receives the stock as a fee and later is sued for recovery of the stock or damages.

11. This Master Plan does not apply to any CLAIM asserted by a COVERED PARTY'S spouse, parent, step-parent, child, step-child, sibling, or any member of a COVERED PARTY'S household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest.

COMMENT

Work performed for family members is not covered under this Plan. A CLAIM based upon or arising out of such work, even for example a CLAIM against other lawyers or THE FIRM for failure to supervise will be excluded from coverage. This exclusion does not apply, however, if one attorney performs legal services for another attorney's family member.

12. This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S activity as a fiduciary under any employee retirement, deferred benefit, or other similar Master Plan.

13. This Master Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical

appearance before such witness or notary public, unless such CLAIM arises from the acts of a COVERED PARTY'S employee and the COVERED PARTY has no actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCLUSION]

14. This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S conduct:

- a. As a public official or an employee of a governmental body, subdivision, or agency; or
- b. In any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or other similar state or federal statute, rule, or case law. If a public body rejects the defense and indemnity of such a CLAIM, the PLF will provide coverage for such COVERED ACTIVITY and will be subrogated to all of the COVERED PARTY'S rights against the public body.

Subsection a. applies whether or not the public official or employee is entitled to defense or indemnity from the governmental entity. Subsection b., in addition, excludes coverage for COVERED PARTIES in other relationships with a governmental entity, but only if statute, rule, or case law entitles a COVERED PARTY to defense or indemnity from the governmental entity.

[HOUSE COUNSEL EXCLUSION]

15. This Master Plan does not apply to any CLAIM arising out of a COVERED PARTY'S conduct as an employee in an employer-employee relationship.

COMMENTS

This exclusion applies to conduct as an employee even when the employee represents a third party in an attorney-client relationship as part of the employment. Examples of this application include employment by an insurance company, labor organization, member association, or governmental entity that involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself.

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

16. This Master Plan does not apply to any CLAIM against any COVERED PARTY for:

- a. Bodily injury, sickness, disease, or death of any person;
- b. Injury to, loss of, or destruction of any property or loss of use thereof; or
- c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a. or b.

This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and were, therefore, considered inappropriate for coverage under the Master Plan. YOU are encouraged to seek coverage for these CLAIMS through commercial insurance markets.

Prior to 1991 the Claims Made Plan expressly excluded "personal injury" and "advertising injury," defining those terms in a manner similar to their definitions in standard commercial general liability policies. The deletion of these defined terms from this Exclusion is not intended to imply that all personal injury and advertising injury CLAIMS are covered. Instead, the deletion is intended only to permit coverage for personal injury or advertising injury CLAIMS, if any, that fall within the other coverage terms of the Master Plan.

Subsection b. of this exclusion is not intended to apply to the extent the loss or damage of property materially and adversely affects an attorney's performance of professional services, in which event the consequential damages resulting from the loss or damage to property would be covered. For the purposes of this Comment, "consequential damages" means the extent to which the attorney's professional services are adversely affected by the property damage or loss.

Example No. 1: Client gives Attorney A valuable jewelry to hold for safekeeping. The jewelry is stolen or lost. There is no coverage for the value of the stolen or lost jewelry, since the loss of the property did not adversely affect the performance of professional services. Attorney A can obtain appropriate coverage for such losses from commercial insurance sources.

Example No. 2: Client gives Attorney B a defective ladder from which Client fell. The ladder is evidence in the personal injury case Attorney B is handling for Client. Attorney B loses the ladder. Because the ladder is lost, Client loses the personal injury case. The CLAIM for the loss of the personal injury case is covered. The damages are the difference in the outcome of the personal injury case caused by the loss of the ladder. There would be no coverage for the loss of the value of the ladder. Coverage for the value of the ladder can be obtained through commercial insurance sources.

Example No. 3: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C for Client. After conclusion of handling of the legal matter, the documents are lost or destroyed. Client makes a CLAIM for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this CLAIM, as loss of the documents did not adversely affect any professional services because the professional services had been completed. Again, coverage for loss of the property (documents) itself can be obtained through commercial general liability or other insurance or through a valuable papers endorsement to such coverage.

Child Abuse Reporting Statute. This exclusion would ordinarily exclude coverage for the type of damages that might be alleged against an attorney for failure to comply with ORS 419B.010, the child abuse reporting statute. (It is presently uncertain whether civil liability can arise under the statute.) If there is otherwise coverage under this Master Plan for a CLAIM arising under ORS 419B.010, the PLF will not apply Exclusion 16 to the CLAIM.

17. This Master Plan does not apply to any CLAIM based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual preference, disability, pregnancy, national origin, marital status, or any other basis prohibited by law.

COMMENTS

The CLAIMS excluded are not typical errors-and-omissions torts and are, therefore, inappropriate for coverage under the Master Plan.

[PATENT EXCLUSION]

18. This Master Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error, or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.

[SUA EXCLUSION]

19. This Master Plan does not apply to any CLAIM for damages consisting of a special underwriting assessment imposed by the PLF.

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Master Plan does not apply to any CLAIM:

- a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;
- b. Any costs connected to ORS 20.160 or similar statute or rule;
- c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or
- d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.

COMMENTS

In the Plan, the PLF agrees to assume certain tort risks of Oregon attorneys for certain errors or omissions in the private practice of law; it does not assume the risk of making good on attorneys' contractual obligations. So, for example, an agreement to indemnify or guarantee an obligation will generally not be covered, except in the limited circumstances described in Subsection a. That subsection is discussed further below in this Comment.

Subsection b, while involving a statutory rather than contractual obligation, nevertheless expresses a similar concept, since under ORS 20.160 an attorney who represents a nonresident or foreign corporation plaintiff in essence agrees to guarantee payment of litigation costs not paid by his or her client.

Subsection c states the general rule that contractual liabilities are not covered under the PLF Plan. For example, an attorney who places an attorney fee provision in his or her retainer agreement

voluntarily accepts the risk of making good on that contractual obligation. Because a client's attorney fees incurred in litigating a dispute with its attorney are not ordinarily damages recoverable in tort, they are not a risk the PLF agrees to assume. In addition, if a Covered Party agrees or represents that he or she will pay a claim, reduce fees, or the like, a claim based on a breach of that agreement or representation will not be covered under the Plan.

Subsection d involves a specific type of agreement or representation: an alleged promise to obtain a particular outcome or result. One example of this would be an attorney who promises to get a case reinstated or to obtain a particular favorable result at trial or in settlement. In that situation, the attorney can potentially be held liable for breach of contract or misrepresentation regardless of whether his or her conduct met the standard of care. That situation is to be distinguished from an attorney's liability in tort or under the third party beneficiary doctrine for failure to perform a particular task, such as naming a particular beneficiary in a will or filing and serving a complaint within the statute of limitations, where the liability, if any, is not based solely on a breach of the attorney's guarantee, promise or representation.

Attorneys sometimes act in one of the special capacities for which coverage is provided under Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE). If the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20 does not apply.

On the other hand, when an attorney is acting in an ordinary capacity not within the provisions of Section III.3, Exclusion 20 does apply to any CLAIM based on or arising out of any bond or any surety, guaranty, warranty, joint control, indemnification, or similar agreement signed by the attorney or by someone for whom the attorney is legally liable. In these situations, attorneys should not sign such bonds or agreements. For example, if an attorney is acting as counsel to a personal representative and the personal representative is required to post a bond, the attorney should resist any attempt by the bonding company to require the attorney to co-sign as a surety for the personal representative or to enter into a joint control or similar agreement that requires the attorney to review, approve, or control expenditures by the personal representative. If the attorney signs such an agreement and a CLAIM is later made by the bonding company, the estate, or another party, Exclusion 20 applies and there will be no coverage for the CLAIM.

[BANKRUPTCY TRUSTEE EXCLUSION]

21. This Master Plan does not apply to any CLAIM arising out of YOUR activity (or the activity of someone for whose conduct you are legally liable) as a bankruptcy trustee.
22. This Master Plan does not apply to any CLAIM against a COVERED PARTY arising from or related to work or services beyond the scope of activities assigned to the COVERED PARTY by the PRO BONO PROGRAM.

COMMENTS

Activities by a volunteer lawyer which are outside of the scope of activities assigned to the lawyer by the pro bono program for which the lawyer has volunteered do not constitute a COVERED ACTIVITY under this Master Plan and will also be excluded by this exclusion. The term "PRO BONO

PROGRAM” as used in this exclusion is defined at SECTION I – DEFINITIONS.

The various exclusions which follow in this subsection were adopted from the PLF’s standard Coverage Plan. Many of the exclusions are, by their nature, unlikely to apply to a volunteer attorney working for a pro bono program. The fact that a type of activity is mentioned in these exclusions does not imply that such activity will be a COVERED ACTIVITY under this Master Plan.

SECTION VI – LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE

1. Limits for This Master Plan

a. Coverage Limits. The PLF’s maximum liability under this Master Plan is \$300,000 DAMAGES and EXCESS CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the PLF’s Limit of Coverage.

b. Claims Expense Allowance Limits. In addition to the Limit of Coverage stated in SECTION VI.1.a. above, there is a single CLAIMS EXPENSE ALLOWANCE of \$50,000 for CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the CLAIMS EXPENSE ALLOWANCE. In the event CLAIMS EXPENSE exceeds the CLAIMS EXPENSE ALLOWANCE, the Limit of Coverage will be reduced by the amount of EXCESS CLAIMS EXPENSE incurred. The CLAIMS EXPENSE ALLOWANCE is not available to pay DAMAGES or settlements.

c. No Consequential Damages. No person or entity may recover any damages for breach of any provision in this Master Plan except those specifically provided for in this Master Plan.

2. Limits Involving Same or Related Claims Under Multiple PLF Plans

If this Master Plan and one or more other Master Plans or Claims Made Plans issued by the PLF apply to the SAME OR RELATED CLAIMS, then regardless of the number of claimants, clients, COVERED PARTIES, PRO BONO PROGRAMS, or LAW ENTITIES involved, only one Limit of Coverage and one CLAIMS EXPENSE ALLOWANCE will apply. Notwithstanding the preceding sentence, if the SAME OR RELATED CLAIMS are brought against two or more separate LAW ENTITIES or PRO BONO PROGRAMS, each of which requests and is entitled to separate defense counsel, the PLF will make one CLAIMS EXPENSE ALLOWANCE available to each of the separate LAW ENTITIES or PRO BONO PROGRAMS requesting a separate allowance. For purposes of this provision, whether LAW ENTITIES or PRO BONO PROGRAMS are separate is determined as of the time of the COVERED ACTIVITIES that are alleged in the CLAIMS. No LAW ENTITY, PRO BONO PROGRAM, or group of LAW ENTITIES or PRO BONO PROGRAMS practicing together as a single firm, will be entitled to more than one CLAIMS EXPENSE ALLOWANCE under this provision. The CLAIMS

EXPENSE ALLOWANCE granted will be available solely for the defense of the LAW ENTITY or PRO BONO PROGRAM requesting it.

COMMENTS

The PLF Claims Made Plan is intended to provide a basic "floor" level of coverage for all Oregon attorneys engaged in the private practice of law whose principal offices are in Oregon. Likewise, the Pro Bono Master Plan is intended to provide basic limited coverage. Because of this, there is a general prohibition against the stacking of either Limits of Coverage or CLAIMS EXPENSE ALLOWANCES. Except for the provision involving CLAIMS EXPENSE ALLOWANCES under Subsection 2, only one Limit of Coverage and CLAIMS EXPENSE ALLOWANCE will ever be paid under any one Claims Made Plan or Pro Bono Master Plan issued to a COVERED PARTY in any one MASTER PLAN YEAR, regardless of the circumstances. Limits of Coverage or CLAIMS EXPENSE ALLOWANCES in multiple individual Claims Made Plans and Pro Bono Master Plans do not stack for any CLAIMS that are "related." As the definition of SAME OR RELATED CLAIMS and its Comments and Examples demonstrate, the term "related" has a broad meaning when determining the number of Limits of Coverage and CLAIMS EXPENSE ALLOWANCES potentially available. This broad definition is designed to ensure the long-term economic viability of the PLF by protecting it from multiple limits exposures, ensuring fairness for all Oregon attorneys who are paying annual assessments, and keeping the overall coverage affordable.

The Limits of Coverage apply to claims against more than one COVERED PARTY so that naming more than one VOLUNTEER ATTORNEY, the PRO BONO PROGRAM, or other COVERED PARTIES as defendants does not increase the amount available.

Effective January 1, 2005, the PLF has created a limited exception to the one-limit rule for SAME OR RELATED CLAIMS. When such CLAIMS are asserted against more than one separate LAW ENTITY or PRO BONO PROGRAM, and one of the LAW ENTITIES or PRO BONO PROGRAMS is entitled to and requests a separate defense of the SUIT, then the PLF will allow a separate CLAIMS EXPENSE ALLOWANCE for that LAW ENTITY or PRO BONO PROGRAM.

The coverage provisions and limitations provided in this Master Plan are the absolute maximum amounts that can be recovered under the Master Plan. Therefore, no person or party is entitled to recover any consequential damages for breach of the Master Plan.

Example No. 1: Attorney A performed COVERED ACTIVITIES for a client while she was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 Limit of Coverage and two CLAIMS EXPENSE ALLOWANCES. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate LAW ENTITY from the firm at which she worked. Accordingly, two, not three, CLAIMS EXPENSE ALLOWANCES are potentially available.

Example No. 2: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he

concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client, and commit errors in handling the case. Two CLAIMS EXPENSE ALLOWANCES are potentially available. There are only two separate firms – the BC partnership and D's firm.

SECTION VII - NOTICE OF CLAIMS

1. The COVERED PARTY must, as a condition precedent to the right of protection afforded by this coverage, give the PLF, at the address shown in the Declarations, as soon as practicable, written notice of any CLAIM made against the COVERED PARTY. In the event a SUIT is brought against the COVERED PARTY, the COVERED PARTY must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the COVERED PARTY or the COVERED PARTY'S representatives.

2. If the COVERED PARTY becomes aware of a specific act, error, or omission for which coverage is provided under this Master Plan during the COVERAGE PERIOD, the COVERED PARTY must give written notice to the PLF as soon as practicable during the COVERAGE PERIOD of:

- a. The specific act, error, or omission;
- b. DAMAGES and any other injury that has resulted or may result; and
- c. The circumstances by which the COVERED PARTY first became aware of such act, error, or omission;

then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.

3. If, during the COVERAGE PERIOD, a potential claimant requests that the PLF agree to toll or suspend the running of a time limitation applicable to a potential CLAIM against a COVERED PARTY based on a specific act, error, or omission for which coverage is provided under this Master Plan, and if the PLF agrees in writing to do so with the consent of the COVERED PARTY, then any CLAIM that is subsequently made against the COVERED PARTY based on or arising out of such act, error, or omission will be deemed to have been made during the COVERAGE PERIOD.

SECTION VIII – COVERAGE DETERMINATIONS

1. This Master Plan is governed by the laws of the state of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Master Plan. Any disputes as to the applicability, interpretation, or enforceability of this Master Plan, or any other issue pertaining to the provision of benefits under this Master Plan, between any COVERED PARTY (or anyone claiming through a COVERED PARTY) and the PLF will be tried in the Multnomah County Circuit Court of the state of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.

2. The PLF will not be obligated to provide any amounts in settlement, arbitration award, judgment, or indemnity until all applicable coverage issues have been finally determined by agreement or judgment.

3. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all Limits of Coverage toward settlement of a CLAIM before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Master Plan is not applicable to the CLAIM, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the COVERED PARTY (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the CLAIM, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's Limits of Coverage before all applicable coverage issues have been fully determined.

4. The bankruptcy or insolvency of a COVERED PARTY does not relieve the PLF of its obligations under this Master Plan.

COMMENTS

Historically, Section VIII provided for resolution of coverage disputes by arbitration. After 25 years of resolving disputes in this manner, the PLF concluded it would be more beneficial to COVERED PARTIES and the PLF to try these matters to a court where appeals are available and precedent can be established.

Until the dispute over coverage is concluded, the PLF is not obligated to pay any amounts in dispute. The PLF recognizes there may occasionally be exceptional circumstances making a coverage determination impracticable prior to a payment by the PLF of a portion or all of the PLF's Limit of Coverage toward resolution of a CLAIM. For example, a claimant may make a settlement demand having a deadline for acceptance that would expire before coverage could be determined, or a court might determine on the facts before it that a binding determination on the relevant coverage issue should not be made while the CLAIM is pending. In some of these exceptional circumstances, the PLF may at its option pay a portion or all of the Limit of Coverage before the dispute concerning the question of whether this Master Plan is applicable to the CLAIM is decided. If the PLF pays a portion or all of the Limit of Coverage and the court subsequently determines that this Master Plan is not applicable to the CLAIM, then the COVERED PARTY or others on whose behalf the payment was made must reimburse the PLF, in order to prevent unjust enrichment and protect the solvency and financial integrity of the PLF. For a COVERED PARTY'S duties in this situation, see Section IX.3.

SECTION IX - ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY

1. As a condition of coverage under this Master Plan, the COVERED PARTY will, without charge to the PLF, cooperate with the PLF and will:

- a. Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
- b. Attend and testify when requested by the PLF;
- c. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;

- d. Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
 - e. Submit to arbitration of any CLAIM when requested by the PLF;
 - f. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
 - g. Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
 - h. Assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person; and
 - i. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.
2. The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.
3. In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Master Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:
- a. Agrees to the PLF's proposal, or
 - b. Objects to the PLF's proposal.

The written response must be made by the COVERED PARTY as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. A response objecting to the settlement relieves the PLF of any duty to settle that might otherwise exist.

COMMENTS

Subsection 3 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an

unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.

The obligations of the Covered Party under Section IX as well as the other Sections of the Master Plan are to be performed without charge to the PLF.

SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

1. No legal action in connection with this Master Plan will be brought against the PLF unless the COVERED PARTY has fully complied with all terms of this Master Plan.
2. The PLF may bring legal action in connection with this Master Plan against a COVERED PARTY if:
 - a. The PLF pays a CLAIM under another Master Plan issued by the PLF;
 - b. A COVERED PARTY under this Master Plan is alleged to be liable for all or part of the damages paid by the PLF;
 - c. As between the COVERED PARTY under this Master Plan and the person or entity on whose behalf the PLF has paid the CLAIM, the latter has an alleged right to pursue the COVERED PARTY under this Master Plan for contribution, indemnity, or otherwise, for all or part of the damages paid; and
 - d. Such right can be alleged under a theory or theories for which no coverage is provided to the COVERED PARTY under this Master Plan.
3. In the circumstances outlined in Subsection 2, the PLF reserves the right to sue the COVERED PARTY, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Master Plans issued by the PLF. However, this Subsection will not entitle the PLF to sue the COVERED PARTY if the PLF's alleged rights against the COVERED PARTY are premised on a theory of recovery that would entitle the COVERED PARTY to indemnity under this Master Plan if the PLF's action were successful.

COMMENTS

Under certain circumstances, a CLAIM against a COVERED PARTY may not be covered because of an exclusion or other applicable provision. However, in some cases the PLF may be required to pay the CLAIM nonetheless because of the PLF's obligation to another COVERED PARTY under the terms of his or her Claims Made Plan or Pro Bono Master Plan.

Example No. 1: Attorney A misappropriates trust account funds belonging to Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the CLAIM under his Master Plan, but Attorney B has coverage for her liability under her Master Plan. The PLF pays the CLAIM under Attorney B's Master Plan. Section X.2 of Attorney A's Master Plan makes clear the PLF has the

right to sue Attorney A for the damages the PLF paid under Attorney B's Master Plan.

Example No. 2: Same facts as the prior example, except that the PLF loans funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. Section X.2 of Attorney A's Master Plan makes clear that the PLF has the right pursuant to such arrangement with Attorney B to participate in her action against Attorney A.

SECTION XI - RELATION OF PRO BONO MASTER PLAN COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

1. If the COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify that also applies to any loss or CLAIM covered by this Master Plan, the PLF will not be liable under the Master Plan until the limits of the COVERED PARTY'S insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage of this Master Plan.
2. This Master Plan shall not apply to any CLAIM which is covered by any PLF Claims Made Plan which has been issued to any COVERED PARTY, regardless of whether or not the CLAIMS EXPENSE ALLOWANCE and the Limits of Coverage available to defend against or satisfy such CLAIM are sufficient to pay any liability or CLAIM or whether or not the underlying limits or terms of such PLF Claims Made Plan are different from this Master Plan.

COMMENTS

As explained in the Preface, this Master Plan is not an insurance policy. To the extent that insurance or other coverage exists, this Master Plan may not be invoked. This provision is designed to preclude the application of the other insurance law rules applicable under the Lamb-Weston v. Oregon Automobile Ins. Co. 219 Or 110, 341 P2d 110, 346 P2d 643 (1959).

SECTION XII – WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Master Plan nor will the terms of this Master Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIII — ASSIGNMENT

The interest hereunder of any COVERED PARTY is not assignable.

SECTION XIV – TERMINATION

This Master Plan will terminate immediately and automatically in the event YOU are no longer certified as an OSB Pro Bono Program by the Oregon State Bar.

BOD 120/9/05; BOG 02/03/06)

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

This letter confirms that we have discussed [specify the essential terms of the business transaction that you intend to enter into with your client and your role in the transaction. Be sure to inform the client whether you will be representing the client in the transaction. This is required by ORPC 1.8(a)(3)]. This letter also sets forth the conflict of interest that arises for me as your attorney because of this proposed business transaction.

The Oregon Rules of Professional Conduct prohibit an attorney from representing a client when the attorney's personal interests conflict with those of the client unless the client consents. Consequently, I can only act as your lawyer in this matter if you consent after being adequately informed. Rule 1.0(g) provides as follows:

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Although our interests presently appear to be consistent, my interests in this transaction could at some point be different than or adverse to yours. Specifically, [include an explanation which is sufficient to apprise the client of the potential adverse impact on the client of the matter to which the client is asked to consent, and any reasonable alternative courses of action, if applicable].

Please consider this situation carefully and decide whether or not you wish to enter into this transaction with me and to consent to my representation of you in this transaction. Rule 1.8(a)(2) requires me to recommend that you consult with another attorney in deciding whether or not your consent should be given. Another attorney could also identify and advise you further on other potential conflicts in our interests.

I enclose an article "Business Deals Can Cause Problems," which contains additional information. If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

Very truly yours,

[Attorney Name and Signature]

I hereby consent to the legal representation, the terms of the business transaction, and the lawyer's role in transaction as set forth in this letter:

[Client's Signature]

[Date]

Enclosure: "Business Deals Can Cause Problems," by Jeffrey D. Sapiro.

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))

By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

Something that clients often lose sight of is that attorneys are not only legal advisors, but are business people as well. It is no secret that most practitioners wish to build a successful practice, rendering quality legal services to their clients, as a means of providing a comfortable living for themselves and/or their families. Given this objective, it is not surprising that many attorneys are attracted to business opportunities outside their practices that may prove to be financially rewarding. The fact that these business opportunities are often brought to an attorney's attention by a client or through involvement in a client's financial affairs is reason to explore the ethical problems that may arise.

ORPC 1.8(a) and 1.0(g) read as follows:

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ORPC 1.0 Terminology

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

The rationale behind this rule should be obvious. An attorney has a duty to exercise professional judgment solely for the benefit of a client, independent of any conflicting influences or loyalties. If an attorney is motivated by financial interests adverse to that of the client, the undivided loyalty due to the client may very well be compromised. (See also ORPC 1.7 and 1.8(c) and (i)) Full disclosure in writing gives the client the opportunity and necessary information to obtain independent legal advice when the

attorney's judgment may be affected by personal interest. Under ORPC 1.8(a) it is the client and not the attorney who should decide upon the seriousness of the potential conflict and whether or not to seek separate counsel.

A particularly dangerous situation is where the attorney not only engages in the business aspect of a transaction, but also furnishes the legal services necessary to put the deal together. In *In re Brown*, 277 Or 121, 559 P2d 884, rev. den. 277 Or 731, 561 P2d 1030 (1977), an attorney became partners with a friend of many years in a timber business, the attorney providing legal services and the friend providing the capital. The business later incorporated, with the attorney drafting all corporate documents, including a buy-sell agreement permitting the surviving stockholder to purchase the other party's stock. The Oregon Supreme Court found that the interests of the parties were adverse for a number of reasons, including the disparity in capital invested and the difference in the parties' ages, resulting in a potential benefit to the younger attorney under the buy-sell provisions. Despite the fact that the friend was an experienced businessman, the court held that the attorney violated the predecessor to ORPC 1.8(a), DR 5-104(A), because the friend was never advised to seek independent legal advice.

Subsequent to *Brown*, the Supreme Court has disciplined several lawyers for improper business transactions with clients. Among these cases are *In re Drake*, 292 Or 704, 642 P2d 296 (1982), which provides a comprehensive analysis of ORPC 1.8(a)'s predecessor, DR 5-104(A); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982), in which the fact that the client was a more sophisticated business person than the attorney did not affect the court's analysis; *In re Germundson*, 201 Or 656, 724 P2d 793 (1986), in which a close friendship between the attorney and the client was deemed insufficient reason to dispense with conflict disclosures; and *In re Griffith*, 304 Or 575, 748 P2d (1987), in which the court noted that, even if no conflict is present when a transaction is entered into, subsequent events may lead to a conflict requiring disclosures or withdrawal by the attorney.

Even in those situations where the attorney does not furnish legal services, problems may develop. There is a danger that, while the attorney may feel he or she is merely an investor in a business deal, the client may believe the attorney is using his or her legal skills to protect the client's interests in the venture. Indeed, this may be the very reason the client approached the attorney with a business proposition in the first place. When a lawyer borrows money from a client, there may even be a presumption that the client is relying on the lawyer for legal advice in the transaction. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). To clarify for the client the role played by the attorney in a business transaction, ORPC 1.8(a)(3) now provides that a client's consent to the attorney's participation in the transaction is not effective unless the client signs a writing that describes, among other things, the attorney's role and whether the attorney is representing the client in the transaction.

In order to avoid the ethical problems addressed by the conflict of interest rules, the Supreme Court has said that an attorney must at least advise the client to seek independent legal counsel (*In re Bartlett*, 283 Or 487, 584 P2d 296 (1978)). This is now required by ORPC 1.8(a)(2). The attorney should disclose not only that a conflict of interest may exist, but should also explain the nature of the conflict "in such detail so that (the client) can understand the reasons why it may be desirable for each to have independent counsel. . ." (*In re Boivin*, 271 Or 419, 424, 533 P2d 171 (1975)). Risks incident to a transaction with a client must also be disclosed (ORPC 1.0(g); *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984); *In re Whipple*, 296 Or 105, 673 P2d 172 (1983)). Such a disclosure will help insure that there is no misunderstanding over the role the attorney is to play in the transaction and will help prevent the attorney from running afoul of the disciplinary rule discussed above.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: September 26, 2007
From: Sylvia E. Stevens, General Counsel
Re: Proposed New Formal Ethics Opinion

Action Recommended

Consider the recommendation of the Legal Ethics Committee that the attached opinion be issued as a formal ethics opinion of the Oregon State Bar.

Background

This opinion, on internet advertising and referral fees, emanates from two separate requests. The first asked specifically whether a lawyer could participate in a particular referral plan in light of certain restrictions in the US Bankruptcy Code. The second inquiry was more general, and related to the implications of participating in an internet-based referral program. The committee concluded, after reviewing initial drafts of two opinions, that the issues were sufficiently similar to be addressed in one.

OSB Formal Op. Nos. 2005-112 and 2005-168 address some of the points discussed in this proposed opinion, but the new opinion analyzes them in the context of the internet.

The opinion begins by distinguishing advertising from referrals and recommendations and reiterates the basic rule of advertising that statements cannot be false or misleading. This is important in internet advertising because of the reach of the communications and the increased likelihood that a viewer will be misled about the jurisdictional limits on the lawyer's practice.

On the issue of referral fees, the opinion discusses some of the more common payments alternatives for participating in referral programs and identifies what is permissible and what is not.

The opinion concludes with a reminder that substantive law (such as the US Bankruptcy Code) may affect a lawyer's ability to participate in referral programs.

The committee acknowledges that this opinion doesn't really explore any new topics, but believes that application of the existing rules to internet advertising and referrals isn't all that clear to lawyers, so that the opinion should be of value.

(Op. Request Nos. 05-03 & 06-08)

**PROPOSED
FORMAL OPINION NO. 2007-XXX
Internet Advertising: Payment of Referral Fees**

Facts:

Lawyer wants to participate in a nationwide internet-based attorney referral service and has received solicitations from companies offering this service. Customers who utilize the referral service are not charged. Some providers will charge Lawyer through various mechanisms.

The referral service will not be involved in the attorney-client relationship. A referred consumer is under no obligation to work with a lawyer to whom the consumer is referred. The referral service will inform consumers that participating lawyers are active members in good standing with the Oregon State Bar who carry malpractice insurance. Consumers may also be informed that participating lawyers may have paid a fee to be listed in the directory. Further, consumers will be informed that lawyers have written their own directory information and that a consumer should question, investigate and evaluate the lawyer's qualifications before he or she hires a lawyer.

Questions:

1. May Lawyer participate in an internet based referral service?
2. May lawyer ethically pay a fee to be listed in a directory of lawyers?
3. May lawyer ethically pay a fee based on lawyer being retained by a referred client?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.
3. No

Discussion:

Internet based advertising is governed by the same rules as other advertising. The questions presented here raise issues relating to both advertising and recommending a lawyer's services. Advertising and recommendation are distinguished as follows: "When services are advertised, the nonlawyer does not physically assist in linking up lawyer and client once the advertising material has been disseminated. When a lawyer's services are recommended, the nonlawyer intermediary is relied upon to forge the actual attorney and client link." OSB Legal Ethics Op No 2005-112.¹

Lawyers are permitted to communicate information about their services so long as the communication does not misrepresent a material fact and is not otherwise misleading. RPC 7.1(a)(1) and (2). Internet based communication is available to consumers outside the state(s) where Lawyer is licensed. Therefore, Lawyer must insure that nothing in the advertisement implies that Lawyer may represent consumers beyond the scope of Lawyer's license(s). A lawyer who allows her name to be included in a directory must ensure that the organizers of the directory do not promote her by any means that involves false or misleading communications about the lawyer or her firm. RPC 7.2(b). For instance, if the directory lists only one type of practitioner, it may not include any statement that the lawyer is a specialist or limits her practice to that area unless that is in fact the case. RPC 7.1(a)(4). If the advertising creates an impression that Lawyer is the only practitioner in a specific geographic area who offers services for a particular practice area, when that is not the case, that representation would be misleading and therefore prohibited. Lawyer is responsible for content that Lawyer did not create to the extent that Lawyer knows about that content. Lawyer therefore cannot participate in advertising, including the homepage of the advertising site and pages that are directly linked or closely related to the homepage and that are created by the advertising company, if the content on those pages violates the Oregon RPCs. Lawyer is not responsible for the content of other lawyers pages.

RPC 7.1(d) permits a lawyer to pay others to disseminate information about the lawyer's services, subject to the limitations of RPC 7.2. That latter rule, in turn, allows a

¹ See also, *Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977)(upholding a state's right to prohibit false and misleading advertising); *Ohralik v. Ohio State Bar Association*, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed.2d 444 (1978)(upholding a state's right to discipline lawyer personally soliciting client under circumstances creating undue pressure on prospective client).

lawyer to pay the cost of advertisements and to hire others to assist with or advise about marketing the lawyer's services. RPC 7.2(a). RPC 7.2(a) provides that:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

At the same time, RPC 5.4(a) prohibits a lawyer from sharing legal fees with a nonlawyer (except in limited circumstances that are not relevant to the questions presented here).

RPC 5.4(a) provides that:

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

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

This rule "prohibits a lawyer from giving a non-lawyer a share of a legal fee in exchange for services related to the obtaining or performance of legal work". *In re Griffith*, 304 Or. 575, 611 (1987) (interpreting former DR 3-102 which is now RPC 5.4(a)). In the context of advertising, RPC 5.4 thus precludes a lawyer from paying someone, or a related third party, who advertises or otherwise disseminates information about the lawyer's services based upon the number of referrals, retained clients, or revenue generated from the advertisements. By contrast, paying a fixed annual or other set periodic fee not related to any particular work derived from a directory listing violates neither RPC 5.4(a) nor RPC 7.2(a). A charge to Lawyer based on the number of hits or

clicks on Lawyers advertising, and that is not based on actual referrals or retained clients, would also be permissible.

RPC 7.2 (c) permits a lawyer or law firm to be recommended by a referral service or other similar plan, service, or organization so long as: 1) the operation of the plan does not result in the lawyer or the lawyer's firm violating the rules relating to professional independence² or unauthorized practice of law;³ 2) the client is the recipient of the legal services; 3) the plan does not impose any restriction on the lawyer's exercise of professional judgment; and 4) the plan does not engage in direct contact with prospective clients that would be improper if done by the lawyer.⁴ If a third party provider were to collect specific information from a consumer, analyze that information to determine what type of lawyer or which specific lawyer is needed, and refer the consumer based on that analysis, it would constitute the unauthorized practice of law and is prohibited. OSB Legal Ethics Op No 2005-168.

A lawyer can not control where people choose to access the internet, just as a lawyer does not know where a client will use a traditional telephone directory. Solicitation of clients and payment for referrals in personal injury or wrongful death cases is prohibited by ORS 9.500 and 9.505. Lawyers are also prohibited from soliciting "business at factories, mills, hospitals or other places . . . for the purpose of obtaining business on account of personal injuries to any person or for the purpose of bringing damage suits on account of personal injuries." ORS 9.510. This statute must be read in conjunction with constitutional limitations on the restriction of free speech and does not bar all internet-based advertising on these issues. OSB Ethics Op No 2005-127.

Substantive law may also limit Lawyer's ability to pay a referral fee.⁵ Here, the referral fee would be paid to a private third-party rather than a "public service referral

² RPC 5.4

³ RPC 5.5, ORS 9.160, and ORS 9.500 through 9.520.

⁴ RPC 7.3.

⁵ See, e.g., 11 U.S.C. § 503(b)(4), which governs the allowance of attorney fees in bankruptcy cases; § 504(a) and (b), which prohibit an attorney from agreeing to the sharing of compensation or reimbursement with another person; and § 504(c), which creates an exception to the § 504(a) and (b) restrictions for fee sharing "with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals."

program,” and it thus appears that the U.S. Bankruptcy Code’s general prohibition against fee-sharing applies.

Approved by Board of Governors, , 2007

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: October 17, 2007
From: Sylvia E. Stevens, General Counsel
Re: Proposed Amendments to Workers' Compensation Administrative Rules

Action Recommended

Consider the Workers' Compensation Board proposals to amend its administrative rules as they pertain to attorney fees.

Background

By letters dated October 16, 2007, the Workers' Compensation Board referred to the OSB Board of Governors proposed administrative rule changes involving attorney fee awards in workers' compensation cases. ORS 656.388(3) requires the WCB to consult with the OSB Board of Governors on any proposed rulemaking that involves attorney fees. (BOG *approval* is not required, only consultation and an opportunity to comment.)

Notwithstanding the volume of submitted information, only four of the proposed rule changes require the Board's consideration:

OAR 438-015-0022 (Exhibit F to 1-2007 Statement of Need)

This new rule establishes a procedure for creation of an attorney fee lien on a compensation award if the attorney has been "instrumental in obtaining additional compensation or in settling a claim." The rule describes the kind of information the attorney fee lien must contain and requires that notice of a potential lien be given to the claimant and the appropriate litigation forum.

OAR 438-105-0080 (Exhibit F to 1-2007 Statement of Need)

This rule amendment eliminates the cap on attorney fee awards in Own Motion Cases. Currently, the attorney fee is limited to \$1,500. As amended, the rule would allow a fee of 25% of the increased compensation but not more than \$1,500. This change is intended to make the attorney fee provisions consistent with those in regular compensation situations.

OAR 438-015-0050 and OAR 438-15-0052 (Exhibit A to 2-2007 Statement of Need)

These two rules relate to attorney fees in connection with Disputed Claim Settlements and Claim Disposition Agreements, respectively. Currently, attorney fee awards in those situations are limited to 25% of the first \$17,500 of compensation awarded to the claimant, plus 10% of any excess. The proposal would eliminate the caps and allow awards up to 25% of the entire compensation proceeds. A greater fee would be permissible in "extraordinary circumstances. The rationale for the change is that it has been nearly 10 years

since the attorney fee rules were last amended, attorney fee awards have not kept pace with the attorneys' cost of doing business, and the pool of practitioners for injured workers is decreasing.

Any comment by the Board of Governors on these proposed rule changes must be submitted to the Workers' Compensation Board by November 30, 2007.

Attachments: Correspondence and Statement of Need from Workers' Compensation Boards



Oregon

Theodore R. Kulongoski, Governor

Workers' Compensation Board

2601 25th St SE Ste 150

Salem, OR 97302-1280

(503) 378-3308

1-877-311-8061

www.wcb.oregon.gov

October 16, 2007

Karen L. Garst
Executive Director
OSB Board of Governors
PO Box 1689
Lake Oswego, OR 97035

Re: Workers' Compensation Board/Hearings Division/Attorney Fees
Schedule of Attorney Fees (ORS 656.388(3))

Ms. Garst:

On October 10, 2007, the Workers' Compensation Board proposed amendments to its administrative rules. In response to a petition for rule amendments, the Board has initiated rulemaking and proposes to amend OAR 438-015-0050(1) ("Attorney Fees in Connection With Disputed Claim Settlements (DCSs)") and OAR 438-015-0052(1) ("Attorney Fees in Connection With Claim Disposition Agreements (CDAs)"). (See pages 1-2 of the Board's Statement of Need and Fiscal Impact, as well as Exhibit A.)

Pursuant to ORS 656.388(3), the Board's schedule of attorney fees must be established after consultation with the Board of Governors of the Oregon State Bar. In accordance with that statute and in anticipation of the Board's November 30, 2007 rulemaking hearing, the Board refers this proposed rule to the Board of Governors for their consideration.

If further information is required, please advise. Thank you for your cooperation.

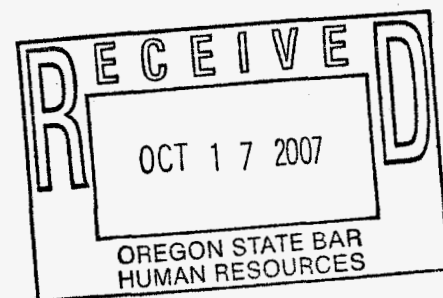
Yours truly,

Debra L. Young
Hearings Officer

RCP:avs

Enclosure

cc: Abigail Herman, Board Chair
Linh T. Vu, Workers' Compensation Section Chair



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Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Dept. of Consumer and Business Services,
Workers' Compensation Board
Agency and Division

OAR Chapter 438
Administrative Rules Chapter Number

Vicky Scott 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280 (503) 378-3308
Rules Coordinator Address Telephone

RULE CAPTION

Amend OAR 438-015-0050(1) & OAR 438-015-0052(1) to Increase Attorney Fee Approvable from a DCS and a CDA.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

November 30, 2007 9:30 am 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280 Debra L. Young
Hearing Date Time Location Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: OAR 438-015-0050; OAR 438-015-0052.

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 183.310 to ORS 183.410; ORS 656.388; ORS 656.726(5).

Other Auth.:

Stats. Implemented: ORS 656.236; ORS 656.289(4); ORS 656.388.

RULE SUMMARY

After considering a September 24, 2007 petition for rulemaking, the Board proposes amending OAR 438-015-0050 and OAR 438-015-0052 to provide for the approval of a 25 percent attorney fee payable from the proceeds from a Disputed Claim Settlement (DCS) and a Claim Disposition Agreement (CDA), respectively.

Request for public comment: The Board requests public comment on the Board's proposal amending OAR 438-015-0050 and OAR 438-015-0052, and whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business. ORS 183.335(2)(b)(G).

Pending the hearing, written comments regarding these rules may be submitted for admission into the record by directing such comments by mail, FAX, or by means of hand-delivery to any permanently staffed Board office. The comments may be addressed to the attention of Debra L. Young, Rulemaking Hearing Officer, Workers' Compensation Board, 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280.

November 30, 2007

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

 Abigail L. Herman 10/15/07
Signature Printed name Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Dept. of Consumer and Business Services,
Workers' Compensation Board
Agency and Division

OAR Chapter 438
Administrative Rules Chapter Number

In the Matter of:

Adoption of Permanent Amendments to the Rules of Practice and Procedure For Contested Cases Under the Workers' Compensation Law, Relating to Attorney Fees in Connection With Disputed Claim Settlements (DCSS) (OAR 438-015-0050) and Attorney Fees in Connection With Claim Disposition Agreements (CDAs) (OAR 438-015-0052).

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Amend OAR 438-015-0050(1) & OAR 438-015-0052(1) to Increase Attorney Fee Approvable from a DCS and a CDA.

Statutory Authority: ORS 183.310 to ORS 183.410; ORS 656.388; ORS 656.726(5).

Other Authority:

Stats. Implemented: ORS 656.236; ORS 656.289(4); ORS 656.388.

Need for the Rule(s):

On September 24, 2007, the Board received a petition to amend OAR 438-015-0050(1) and OAR 438-015-0052(1), which pertain to attorney fees allowable from the proceeds of a Disputed Claim Settlement (DCS) and a Claim Disposition Agreement (CDA). Those rules presently provide that, absent extraordinary circumstances, an attorney fee from a DCS or a CDA may be approved in an amount up to 25 percent of the first \$17,500 of the proceeds, plus 10 percent of any amount of the proceeds in excess of \$17,500.

The petition requests that these rules be amended to remove the "25 percent/10 percent" cap and replace it with a "25 percent" cap without limitation on the proceed amount, subject to the "extraordinary circumstances" exception. In support of this proposal, the petition explains that it has been nearly a decade since the rules were last amended, attorney fees have not kept pace with workers' attorneys' costs of doing business, and that the number of experienced, as well as incoming, practitioners for injured workers is decreasing (which impacts a worker's ability to retain legal representation and his or her access to justice).

In order to consider the petition, the Board scheduled a public meeting for 9 a.m. on October 10, 2007 at its Salem office. In attendance at that meeting were practitioners (who represented workers and SAIF), the Ombudsman for Injured Workers, and Workers' Compensation Board (WCB) staff. At the meeting, the Board received a number of comments that supported the need for the rule amendments. No comments in opposition to the petition were presented.

STATEMENT OF NEED AND FISCAL IMPACT

2-2007 - Page 1 of 4

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After discussing the petition, as well as considering the comments, the Board decided to initiate rulemaking. In doing so, the Members found that the petition, in conjunction with the public comment presented at the meeting, supported the need for the proposed rule amendments. The Members reasoned that, in proposing the amended rules and initiating rulemaking, they would have an additional opportunity to consider comments (both oral and written) regarding these rules and this important matter following the submission of those comments and a rulemaking hearing.

Finally, the Members decided to bring the proposed amendments to the attention of the following organizations and to seek their input: The Management Labor Advisory Committee, The Executive Committee of the Workers' Compensation Section for the Oregon State Bar, and the Oregon State Bar Board of Governors. In addition, the Members encouraged all interested parties to submit their comments to the proposed rule amendments, including, as an example, statistical information regarding the following: (1) other areas of the law (administrative and civil), as well as other jurisdictions; (2) economic changes since 1998 (when the rules were last amended); (3) the impact the proposed amendments would have on a worker's and a worker's attorney's share of proceeds from the average/median DCS and CDA; (4) the percentage of litigated claims where the worker finally prevails (particularly in comparison with such percentages in 1998).

Accordingly, for the reasons previously expressed, the Board proposes to amend the aforementioned rules in the manner described above. Such amendments are presented in Exhibit A, attached and incorporated by this reference.

Rulemaking Hearing:

The accompanying "Notice of Proposed Rulemaking Hearing" provides information regarding the November 30, 2007 hearing scheduled regarding these proposed amended rules. That hearing will be held in conjunction with other rule amendments that the Board has also proposed.

Pending the hearing, written comments regarding these rules may be submitted for admission into the record by directing such comments by mail, FAX, or by means of hand-delivery to any permanently staffed Board office. The comments may be addressed to the attention of Debra L. Young, Rulemaking Hearing Officer, Workers' Compensation Board, 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280.

Documents relied upon, and where they are available:

ORS Chapter 183; ORS Chapter 656.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

Based on information reasonably available to the Board, the impact and cost is presently uncertain. However, the Board invites public comment (written and oral) on these subjects.

Statement of Cost of Compliance on Small Businesses:

Estimated number of small businesses subject to the proposed rule:

Although an estimated number is presently indeterminate, all small businesses subject to the Workers' Compensation Law, as well as workers' compensation practitioners (and their law firms), workers' compensation insurers, self-insured employers, and claim administrators would be subject to the proposed rules.

Identify the types of businesses and industries with small businesses subject to the proposed rule:

All small businesses subject to the Workers' Compensation Law, as well as workers' compensation practitioners (and their law firms), workers' compensation insurers, self-insured employers, and claim administrators would be subject to the proposed rules.

Describe the projected reporting, record-keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services:

The Board projects no significantly adverse impact to small businesses (or large). The proposed changes do not require increased record keeping. At this time, there is no basis to say that the impact would be "significantly adverse" (under ORS 183.540), but the Board invites public testimony on any probable extent of the impact.

Identify equipment, supplies, labor and increased administration required for compliance with the proposed rule:

The Board does not anticipate any increased equipment, supplies, labor, or administration for compliance with the proposed rule amendment.

How were small businesses involved in the development of this rule?

In advance of its October 10, 2007 meeting, the Board notified all interested parties who have requested electronic notification of its meetings that it would be considering a petition to amend OAR 438-015-0050(1) and OAR 438-015-0052(1). The Board also furnished a copy of its meeting notice to the Oregonian, the Associated Press, and the Capital Press, in accordance with its prescribed procedures.

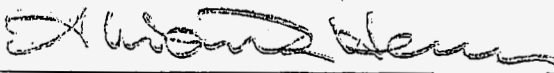

Administrative Rule Advisory Committee consulted? If not, why?:

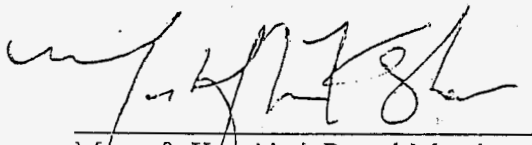
No advisory committee was appointed. Instead, the Board received the petition to amend OAR 438-015-0050(1) and OAR 438-015-0052(1) on September 24, 2007, during a public meeting in which it was considering advisory committee reports regarding other proposed rule changes. Thereafter, the Board scheduled another public meeting for October 10, 2007, to consider the petition and other rulemaking matters. At the October 10th meeting, the Board also considered comments from the public (including practitioners who represent workers and SAIF, as well as the Ombudsman for Injured Workers, and WCB staff). Because the Board had scheduled a rulemaking hearing for November 30, 2007 regarding other proposed amended rules, it concluded that the most efficient way to obtain further public comment on the proposed amendments to the aforementioned rules submitted by petition was to initiate rulemaking on

those proposed amendments and to accept comments regarding all proposed rules at the November 30, 2007 rulemaking hearing. Thereafter, these comments could be considered at a future Board meeting.

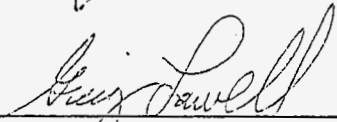
Dated this 15th day of October, 2007.

WORKERS' COMPENSATION BOARD

by:  
Abigail L. Herman, Board Chair Frank Biehl, Board Member


Mustafa Kasubhai, Board Member


Vera Langer, Board Member


Greig Lowell, Board Member

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2005

EXHIBIT A

438-015-0050

Attorney Fees in Connection With Disputed Claim Settlements

(1) When a denied and disputed claim is settled under the Administrative Law Judge provisions of ORS 656.289(4) and OAR 438-009-0010, an attorney fee may be approved by the Administrative Law Judge or the Board in an amount up to 25 percent [*of the first \$17,500*] of the settlement proceeds [*plus ten percent of any amount of the settlement proceeds in excess of \$17,500*]. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.

(2) When the settlement proceeds are to be paid in more than one payment payable within a period of more than one year from the date of approval, for purposes of approving an attorney fee under section (1) of this rule, settlement proceeds shall be calculated based on the "present value" of the total settlement proceeds. "Present value" may be represented by the actual present value of the total settlement proceeds or the purchase price of any annuity designed to fund payment of the total settlement proceeds. The parties shall provide the Board with a written statement of the "present value" of the total settlement proceeds.

Stat. Auth.: ORS 656.388 & ORS 656.726(5)

Stats. Implemented: ORS 656.289(4) & ORS 656.388

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 6-1991(Temp), f. 8-29-91, cert. ef. 9-2-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99

438-015-0052

Attorney Fees in Connection With Claim Disposition Agreements

(1) When a claim disposition agreement is approved under the provisions of ORS 656.236 and OAR 438-009-0020, an attorney fee may be approved by the Board in an amount up to 25 percent [*of the first \$17,500*] of the agreement proceeds [*plus ten percent of any amount of the proceeds in excess of \$17,500*]. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.

(2) When the agreement proceeds are to be paid in more than one payment payable within a period of more than one year from the date of approval, for purposes of approving an attorney fee under section (1) of this rule, agreement proceeds shall be calculated based on the "present value" of the total proceeds. "Present value" may be represented by the actual present value of the total agreement proceeds or the purchase price of any annuity designed to fund payment of the total agreement proceeds. The parties shall provide the Board with a written statement of the "present value" of the total agreement proceeds.

Stat. Auth.: ORS 656.388 & ORS 656.726(5)

Stats. Implemented: ORS 656.236(4) & ORS 656.388

Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 6-1991(Temp), f. 8-29-91, cert. ef. 9-2-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99



Oregon

Theodore R. Kulongoski, Governor

Workers' Compensation Board

2601 25th St SE Ste 150

Salem, OR 97302-1280

(503) 378-3308

1-877-311-8061

www.wcb.oregon.gov

October 16, 2007

Karen L. Garst
Executive Director
OSB Board of Governors
PO Box 1689
Lake Oswego, OR 97035

Re: Workers' Compensation Board/Hearings Division/Attorney Fees
Schedule of Attorney Fees (ORS 656.388(3))

Ms. Garst:

On October 10, 2007, the Workers' Compensation Board proposed amendments to its administrative rules. Among other rules, the Board proposes the adoption of OAR 438-015-0019 ("Cost Bill Procedures") and OAR 438-015-0022 ("Attorney Fee Lien Procedures"), as well as repeal of sections (5) through (8) in OAR 438-015-0080 ("Attorney Fees in Own Motion Cases"). (See pages 8-12 of the Board's Statement of Need and Fiscal Impact, as well as Exhibit F.)

Pursuant to ORS 656.388(3), the Board's schedule of attorney fees must be established after consultation with the Board of Governors of the Oregon State Bar. In accordance with that statute and in anticipation of the Board's November 30, 2007 rulemaking hearing, the Board refers this proposed rule to the Board of Governors for their consideration.

If further information is required, please advise. Thank you for your cooperation.

Yours truly,

Debra L. Young
Hearings Officer

RCP:avs

Enclosure

cc: Abigail Herman, Board Chair
Linh T. Vu, Workers' Compensation Section Chair



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Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Dept. of Consumer and Business Services, Workers' Compensation Board	OAR Chapter 438	
Agency and Division	Administrative Rules Chapter Number	
Vicky Scott	2601 25 th St. SE, Ste. 150, Salem, OR 97302-1280	(503) 378-3308
Rules Coordinator	Address	Telephone

RULE CAPTION

CDA/ALJ-Mediator Approval; Cost Bills/Attorney Fee Liens; Hearing Notice; Own Motion (Attorney Fees and TTD Suspension).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

November 30, 2007	9:30 am	2601 25 th St. SE, Ste. 150, Salem, OR 97302-1280	Debra L. Young
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: OAR 438-015-0019; OAR 438-015-0022

AMEND: OAR 438-005-0046; OAR 438-005-0050; OAR 438-005-0055; OAR 438-006-0020; OAR 438-006-0100; OAR 438-009-0005; OAR 438-009-0010; OAR 438-009-0020; OAR 438-009-0022; OAR 438-009-0025; OAR 438-009-0028; OAR 438-009-0030; OAR 438-009-0035; OAR 438-011-0020; OAR 438-012-0035; OAR 438-015-0005; OAR 438-015-0080; OAR 438-019-0030.

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 183.310 to ORS 183.410; ORS 656.278; ORS 656.283; ORS 656.295; ORS 656.307;
ORS 656.388; ORS 656.593; ORS 656.726(5).

Other Auth.:

Stats. Implemented: SB 253; SB 404; ORS 9.320; ORS 656.236; ORS 656.262(4), (6), (15); ORS 656.267(3);
ORS 656.268; ORS 656.283; ORS 656.289; ORS 656.295; ORS 656.313(4); ORS 656.325; ORS 656.386;
ORS 656.388; ORS 656.726(5).

RULE SUMMARY

After considering reports from Advisory Committees, the Board proposes to adopt and amend rules to implement SB 253 (ALJ-mediator approval of Claim Disposition Agreements (CDAs)) and SB 404 (cost bills and attorney fee liens) and to amend its briefing extension rule (OAR 438-011-0020(3)). In addition, the Board proposes to: (1) amend OAR 438-006-0020 to provide not less than 60 days notice of a hearing in compliance with ORS 656.283(5)(a); (2) amend OAR 438-006-0100(3)(a) to reflect renumbering and title changes in the Supreme Court rules; (3) amend OAR 438-009-0022(3)(f) to delete requirement for the worker's social security number in a CDA in accordance with SB 583; (4) delete the Own Motion suspension rule (OAR 438-012-0035(6)) in compliance

with *Jordan v. SAIF*, 343 Or 208 (August 30, 2007); (5) change the out-of-compensation attorney fee rules for Own Motion cases (OAR 438-015-0080(1), (2)); (6) delete the Own Motion attorney fee rules regarding "post-aggravation rights" new or omitted medical condition claims; and (7) update telephone numbers and addresses.

Request for public comment: The Board requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business. ORS 183.335(2)(b)(G).

Pending the hearing, written comments regarding these rules may be submitted for admission into the record by directing such comments by mail, FAX, or by means of hand-delivery to any permanently staffed Board office. The comments may be addressed to the attention of Debra L. Young, Rulemaking Hearing Officer, Workers' Compensation Board, 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280.

November 30, 2007

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Abigail L. Herman
Printed name

10/15/07
Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Dept. of Consumer and Business Services,
Workers' Compensation Board
Agency and Division

OAR Chapter 438
Administrative Rules Chapter Number

In the Matter of:

Adoption of Permanent Amendments to the Rules of Practice and Procedure For Contested Cases Under the Workers' Compensation Law, Relating to Filing and Service of Documents; Correspondence (OAR 438-005-0046); Notice of Claim Acceptance and Hearing Rights Under ORS 656.262(6)(d) (OAR 438-005-0050); Notice of Claim Denial and Hearing Rights (OAR 438-005-0055); Acknowledgment; Notice of Conference and Hearing in Ordinary Hearing Process (OAR 438-006-0020); Representation by Counsel (OAR 438-006-0100); Settlement Stipulations (OAR 438-009-0005); Disputed Claim Settlements (OAR 438-009-0010); Claim Disposition Agreements; Form (OAR 438-009-0020); Required Information in a CDA (OAR 438-009-0022); Claim Disposition Agreements; Processing (OAR 438-009-0025); Postcard Announcing CDA Approval Order (OAR 438-009-0028); Claim Disposition Agreements; Stay Of Other Proceedings; Payment Of Proceeds (OAR 438-009-0030); Reconsideration Of Claim Disposition Agreements (OAR 438-009-0035); Briefs and Other Documents (OAR 438-011-0020); Temporary Disability Compensation (OAR 438-012-0035); Attorney Fees; Costs Bills; Attorney Fee Liens (Division 015); Attorney Fees/Definitions (OAR 438-015-0005); Cost Bill Procedures (OAR 438-015-0019); Attorney Fee Lien Procedures (OAR 438-015-0022); Attorney Fees in Own Motion Cases (OAR 438-015-0080); Mediation/Confidentiality (OAR 438-019-0030).

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

CDA/ALJ-Mediator Approval; Cost Bills/Attorney Fee Liens; Hearing Notice; Own Motion (Attorney Fees and TTD Suspension).

Statutory Authority:

ORS 183.310 to ORS 183.410; ORS 656.278; ORS 656.283; ORS 656.295; ORS 656.307; ORS 656.388; ORS 656.593; ORS 656.726(5)

Other Authority:

Stats. Implemented:

SB 253; SB 404; ORS 9.320; ORS 656.236; ORS 656.262(4), (6), (15); ORS 656.267(3); ORS 656.268; ORS 656.283; ORS 656.289; ORS 656.295; ORS 656.313(4); ORS 656.325; ORS 656.386; ORS 656.388; ORS 656.726(5)

Need for the Rule(s):

Senate Bill 253 (SB 253) amends ORS 656.236 to extend the authority to approve or disapprove Claim Disposition Agreements (CDAs) from only the Board to also include an Administrative Law Judge (ALJ) who mediated the agreement. The legislation becomes effective January 1, 2008. ~~The Board appointed an advisory committee to consider amendments to its rules resulting~~

STATEMENT OF NEED AND FISCAL IMPACT

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from SB 253.¹ After meeting to review the matter, the committee issued a report on September 17, 2007. On September 24, 2007, at a public meeting, the Board accepted the report and directed its staff to draft proposed amendments to its rules in response to that report. On October 10, 2007, at another public meeting, after reviewing drafts of amended rules addressing the legislation, the Board proposes the adoption of permanent amendments, as explained below.

Senate Bill 404 (SB 404) amends ORS 656.386 to adopt two new provisions. First, ORS 656.386(2)(a) provides that, if a claimant finally prevails against a denial under ORS 656.386(1), the court, the Board, or the ALJ "may order payment of the claimant's reasonable expenses and costs for records, expert opinions and witness fees." The reasonableness of these expenses and costs are determined by the court, the Board, or the ALJ and may not exceed \$1,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount. ORS 656.386(2)(b), (2)(d). Payments for these expenses and costs are to be made by the carrier and are in addition to the compensation payable to the claimant. These amendments regarding expenses and costs apply to workers' compensation claims in which the order on the compensability of the claim denial has not become final on or before January 1, 2008, the effective date of the Act. SB 404, § 2.

Second, ORS 656.386(3) provides that an ALJ or the Board shall grant a lien for attorney fees out of additional compensation awarded or proceeds of a settlement under the following circumstances: (1) after an injured worker signs an attorney fee agreement for representation on a claim made under Chapter 656; (2) additional compensation is awarded to the worker or a settlement agreement is consummated on the claim; and (3) it is shown that the attorney with whom the fee agreement was signed was instrumental in obtaining the additional compensation or settling the claim. Such attorney fee lien shall be made in accordance with rules adopted by the Board governing the payment of attorney fees. These amendments regarding attorney fee liens apply to all claims in which an order that grants attorney fees is issued after January 1, 2008, the effective date of the Act, regardless of the date of injury. SB 404, § 4.

The Board appointed an advisory committee to consider amendments to its rules resulting from SB 404.² The Board also requested that this committee consider the need for any amendment to the briefing schedule extension rule (OAR 438-011-0020(3)). After meeting to review the matter, the committee issued a report on September 11, 2007. On September 24, 2007, at a public meeting, the Board accepted the report and directed its staff to draft proposed amendments to its rules in response to that report. On October 10, 2007, at another public meeting, after reviewing drafts of amended rules addressing the legislation and considering comments expressed by practitioners (representing claimants and the SAIF Corporation) and the Ombudsman for Injured Workers, the Board proposes the adoption of permanent amendments, as explained below.

¹ Ronald Bohy, Claudette McWilliams, and Christopher Moore served on that committee. The Members extend to the committee their grateful appreciation for their valuable participation in this endeavor.

² ~~Martin Alvey, Ron Atwood, Steve Cotton, Randy Elmer, David Lipton, Chuck Mundorff, and Barbara Woodford~~ served on that committee. The Members extend to the committee their grateful appreciation for their valuable participation in this endeavor.

Finally, the Board also proposes to amend several additional rules for various reasons, as explained below.

OAR 438-005-0046

Consistent with the amendments to ORS 656.236, the Board proposes the adoption of amended subsection (1)(d), to provide that, if a settlement stipulation, Disputed Claim Settlement (DCS), or CDA results from a mediation, "filing" also includes the physical delivery of the settlement or agreement and any accompanying documents to the ALJ who mediated the settlement or agreement, regardless of location. This proposed amendment is designed to further expedite the submission, review, and approval process for such agreements. This proposed change results in renumbering current subsections (1)(d), (1)(e) and (1)(f) as subsections (1)(e), (1)(f) and (1)(g), respectively.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit A, attached and incorporated by this reference.

OAR 438-005-0050(2); OAR 438-005-0055(1), (2)

The Workers' Compensation Division has changed its telephone system so that its toll-free telephone number is available from all locations. The Board proposes to amend the claim acceptance appeal rights in OAR 438-005-0050(2) and the claim denial appeal rights in OAR 438-005-0055(1) and (2) to list only the Division's toll-free telephone number, without limitation.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit A, attached and incorporated by this reference.

OAR 438-006-0020

OAR 438-006-0020 states that a "hearing shall be scheduled for a date that is within 90 days of the request for hearing and not less than ten days after mailing of a notice of hearing date." However, the legislature has amended ORS 656.283(5)(a) to increase the "ten-day" prior notice required for a hearing to "at least 60 days." See Or Laws 2005, ch 624, § 1. Consequently, the Board proposes to amend the rule to provide that the hearing shall be scheduled not less than "60" days after mailing of a notice of hearing date.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit B, attached and incorporated by this reference.

OAR 438-006-0100(3)(a)

The Board proposes to change the references in subsection (3)(a) from "Rule 9.05 through 9.30" and "(Law Student Appearance Rules)" to "Rule 13:05 through 13:30"

and "(Law Student Appearance Program)" to reflect renumbering and title changes in the Oregon Supreme Court rules.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit B, attached and incorporated by this reference.

OAR 438-009-0005(5)

The SB 253 advisory committee recommended requiring that every settlement stipulation include a statement whether a CDA had been filed for approval by the ALJ who mediated the agreement or by the Board Members, as well as a statement whether or not the agreement was the result of a mediated agreement and, if so, the name of the mediating ALJ.

The Board expressed several concerns regarding such requirements. First, noncompliance with these requirements would result in supplementation of proposed stipulations, which would delay approval of the parties' agreement. In addition, these requirements would apply to all settlement stipulations, whereas the proposed change is designed to assist the Board's staff in identifying those particular stipulations that are the result of a mediation, so that such stipulations could be routed to a specific ALJ.

After discussing the proposal and its internal procedures, the Board decided that such concerns could be addressed in a less formal manner. Specifically, for those stipulations that result from a mediation and the parties prefer that the ALJ-mediator consider their agreement, the parties may express their preference in a cover letter accompanying the proposed stipulation. This approach would alert the Board's staff of the parties' intentions.

Finally, the Board proposes to amend section (5) of the existing rule to simply state that a stipulation must provide "whether a claim disposition agreement in the claim has been filed." In other words, the Board proposes deleting the phrase "for approval by the Board" from the existing rule. The Board considers this amendment appropriate because, as a result of the amendments to ORS 656.236, the authority to approve a CDA now rests with the ALJ who mediated the agreement, as well as the Board Members.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0010(8)(a); (8)(b)

The SB 253 advisory committee recommended requiring that every DCS include a statement whether a CDA had been filed for approval by the ALJ who mediated the agreement or by the Board Members, as well as a statement whether or not the DCS was the result of a mediated agreement and, if so, the name of the mediating ALJ.

Consistent with the amendments to ORS 656.236 and the reasoning addressed above in OAR 438-009-0005(5), the Board proposes a less formal manner to address the concerns of the advisory committee. Specifically, for those DCSs that result from a mediation and the parties prefer that the ALJ-mediator consider their agreement, the parties may express their wishes in a cover letter accompanying the proposed DCS.

In addition, the Board proposes to amend section (8) of the existing rule to simply state that a DCS must provide "whether a claim disposition agreement in the claim has been filed." In other words, for the reasons explained above in OAR 438-009-0005(5), the Board proposes deleting the phrase "for approval by the Board." In addition, the Board further proposes to renumber that requirement as subsection (8)(a) and to renumber as subsection (8)(b) the existing requirement that the DCS shall be in a separate document from a CDA.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0020. (3), (4), (4)(a)

Consistent with the amendments to ORS 656.236, the Board proposes to amend the rule to provide that a CDA is filed "with the Board" for approval "by the Administrative Law Judge who mediated the agreement or the Board Members." The Board proposes to amend section (3) to modify the "Order" language for the CDA to include "20," and to include a signature line for the "Administrative Law Judge who mediated the agreement." The Board proposes to amend section (4) to extend the authority for sending "addendum letters" (if the CDA submitted for approval lacks any information required by section (1)) to the ALJ who mediated the CDA.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0022

In accordance with SB 583, the Board proposes to amend subsection (3)(f) to no longer require the inclusion of the worker's social security number in a CDA. As a result, the remaining subsections will be renumbered accordingly.

The SB 253 advisory committee recommended requiring that every CDA include a statement whether or not the CDA was the result of a mediated agreement and, if so, the name of the mediating ALJ. Yet, consistent with the amendments to ORS 656.236 and the reasoning addressed above in OAR 438-009-0005(5), the Board proposes a less formal manner to address the concerns of the advisory committee. Specifically, for those CDAs that result from a mediation and the parties prefer that the ALJ-mediator consider their agreement, the parties may express their wishes in a cover letter accompanying the proposed CDA.

The Board also proposes to amend the language in subsection (4)(h) to modify the required "Notice to Claimant" to: (1) include a provision acknowledging that the ALJ who mediated a CDA is also involved in the approval/rejection process; (2) include the Board's toll-free telephone number and update the Board's zip code; and (3) update the Ombudsman's address and toll-free telephone number.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0025(1), (2)

Consistent with the amendments to ORS 656.236, the Board proposes to amend section (1) to provide that a CDA is filed "with the Board" for approval "by the Administrative Law Judge who mediated the agreement or the Board Members." The Board also proposes to amend section (1) to provide that a CDA may be filed in accordance with OAR 438-005-0046(1)(a) and (1)(d), which provide for the "filing" of a CDA (as well as a stipulation and DCS) by means of physical delivery to any permanently staffed office of the Board or the date of mailing (OAR 438-005-0046(1)(a)) or by physical delivery to the ALJ who mediated the agreement, regardless of location. (OAR 438-005-0046(1)(b)).

The Board also proposes amending section (2) to provide that any CDA filed under section (1) is deemed submitted as of the date it is received by the ALJ who mediated the agreement or the Board and that all times are calculated from that date of receipt.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0028(1), (2)(c), (3)

Consistent with the amendments to ORS 656.236, the Board proposes to amend these sections and subsections to clarify that, in addition to the Board, the ALJ who mediated the CDA is authorized to process postcards announcing the approval of a CDA. Section (1) is further amended to provide that the ALJ who mediated the agreement may also physically deliver the postcards to the parties and their attorneys as prescribed in OAR 438-009-0030(6).

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0030(1), (2), (3), (4), (5), (6)(a), (6)(b), (7)

Consistent with the amendments to ORS 656.236, the Board proposes to amend section (1) (which provides that proceedings shall be stayed on receipt of a CDA) to extend to receipt by the ALJ who mediated the CDA, in addition to receipt by the Board. Sections (2), (3), and (4) are proposed to be amended to authorize the ALJ who mediated the CDA, in addition to the Board, to provide notice of the receipt of a CDA to

the Director, the parties, and the court, if a case is pending before that appellate forum. Section (5) is proposed to be amended to authorize (in addition to the Board) the ALJ who mediated the CDA to issue a separate written decision approving or disapproving the CDA, should the ALJ wish to do so, with copies to the parties, their attorneys, and the Director. Section (6) is proposed to be amended to provide that, "except as otherwise provided in section (5) of this rule," in addition to the signature of two Board members, the signature of the ALJ who mediated the CDA on the agreement constitutes a final order. Subsections (6)(a) and (6)(b) are proposed to be amended to provide that notice of the approval may be provided by means of the mailing of postcards by the ALJ who mediated the agreement or the Board or by physical delivery of the postcards to the parties and their attorneys by the ALJ who mediated the agreement. Section (7) is proposed to be amended to clarify that, unless otherwise provided in the agreement, payment of CDA proceeds shall be made no later than 14 days after notice of approval of the CDA has been mailed or provided under Section (5) or (6) to the parties; *i.e.*, by the mailing of an order by the ALJ who mediated the CDA or the Board, by the mailing of a postcard by the ALJ who mediated the CDA or the Board, or by physical delivery by the ALJ who mediated the agreement.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-009-0035(1). (2). (3)

Consistent with the amendments to ORS 656.236, the Board proposes to amend these sections to clarify that, in addition to the Board, the ALJ who mediated the CDA is authorized to reconsider a final CDA order and the procedures to follow when doing so.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit C, attached and incorporated by this reference.

OAR 438-011-0020(3)

The Board requested that the SB 404 advisory committee also consider the need for amendments to its briefing extension rule. The advisory committee recommended that the following sentence be deleted from this rule: "For purposes of this section, 'extraordinary circumstances beyond the control of the party requesting the extension' shall not include the press of business."

The Board discussed the following options regarding the current version of the rule: (1) proposing an amended rule consistent with the advisory committee's recommendation; (2) deferring action on an amendment to the rule to seek further public input and to consider alternative versions of the rule; (3) proposing rule amendments similar to the briefing extension rules followed by Court of Appeals; (4) taking no action because there was no need to amend the rule and because the removal of the sentence could raise questions about the meaning of "extraordinary circumstances beyond the control of the party requesting the extension"; and (5) amending the sentence to provide

that: "For purposes of this section, 'extraordinary circumstances beyond the control of the party requesting the extension' shall not include the ordinary press of business." After conducting their deliberations, the majority of the Board chose the first approach.³ In doing so, the Members encouraged the submission of further public comment regarding the rule and possible alternative versions.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit D, attached and incorporated by this reference.

OAR 438-012-0035(6)

The Supreme Court has ruled that the Board lacks statutory authority to suspend temporary disability under its Own Motion authority in ORS 656.278. *Jordan v. SAIF*, 343 Or 208 (August 30, 2007). Because OAR 438-012-0035(6) addresses suspension of temporary disability in Own Motion claims, the Board proposes deleting section (6) of this rule.⁴

The Board proposes to delete OAR 438-012-0035(6) in the manner described above. This action is presented in Exhibit E, attached and incorporated by this reference.

Division 015

Consistent with the amendments to ORS 656.386, the Board proposes to include new rules in Division 015 regarding "Cost Bills" and "Attorney Fee Liens." These proposed additions result in changing the title of Division 015 from "Attorney Fees" to "Attorney Fees; Cost Bills; Attorney Fee Liens."

³ Member Langer voted against deleting the last sentence of the rule. Alternatively, she proposed adding the word "ordinary" before the phrase "press of business."

⁴ Specifically, the *Jordan* court reasoned that, because the legislature specifically gave the Director authority to suspend benefits "for any period of time" where a claimant fails to participate in a program of physical rehabilitation under ORS 656.325(2) (1999) and did not also give such suspension authority to the Own Motion Board, ORS 656.325(2) (1999) governed suspension of the claimant's Own Motion benefits for his failure to attend physical rehabilitation.

Although the Court addressed a former version of the Own Motion suspension rule, its discussion in footnote 7 of the opinion (regarding *amended* OAR 438-012-0035(6) (2005) (the current version of the rule)) is telling:

"[T]he board subsequently amended the regulation to allow insurers to suspend unilaterally temporary disability payments in certain instances. Because this case concerns only the 1997 version of the board's rule, we are not presented with the question whether the new rule is beyond the board's authority. We note, however, that the new rule continues to govern suspension procedures, although the current version of ORS 656.278 still does not explicitly include authorization to suspend temporary disability benefits." 343 Or at 220 n 7.

Based on the Court's reasoning in *Jordan*, the Board proposes to delete OAR 438-012-0035(6).

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The Board proposes to amend the title of Division 015 in the manner described above. Such amendments are presented in Exhibit F, attached and incorporated by this reference.

OAR 438-015-0005(6). (7). (8)

The majority of the members of the SB 404 advisory committee recommended that the "cost bill" require itemization, a sworn signature, and notarization. However, after fully considering this recommendation, the Board considered that the requirement that "cost bills" be itemized and sworn or affirmed was sufficient, without also requiring notarization.

Consistent with the amendments to ORS 656.386, the Board also proposes the amendment of section (6) to include in the definition of "costs" "expenses incurred by a claimant or, if represented, the claimant's attorney." In addition, the Board proposes the adoption of amended section (7), to define "cost bill" as "a sworn (or affirmed), itemized statement of the amount of expenses and costs for records, expert opinions, and witness fees incurred as a result of the litigation involving a claim denial under ORS 656.386(1)." This proposed change results in renumbering current section (7) as section (8).

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit F, attached and incorporated by this reference.

OAR 438-015-0019(1). (2). (3). (4). (5). (6). (7). (8)

Consistent with the amendments to ORS 656.386, the Board proposes the adoption of this rule to provide "cost bill procedures." As amended, ORS 656.386(2) addresses the potential for payment by the carrier of "the claimant's reasonable expenses and costs for records, expert opinions and witness fees" if a claimant finally prevails against a denial under ORS 656.386(1). Thus, by its terms, ORS 656.386(2) is not limited to a claimant's attorney's reasonable expenses and costs, but may also include an unrepresented claimant's reasonable expenses and costs. Therefore, consistent with the language of ORS 656.386(2), the Board proposes to use the phrase "claimant, or if represented, the claimant's attorney" (or some form of that phrase) when referring to the potential recipient of payment for expenses and costs.

As proposed, section (1) provides that, if a claimant finally prevails against a denial under ORS 656.386(1), the ALJ, the Board, or the court may order payment of the claimant's, or if represented, the claimant's attorney's reasonable expenses and costs for records, expert opinions, and witness fees.

The SB 404 advisory committee recommended that the Board develop a standardized form for a cost bill, which would also be helpful to unrepresented claimants. The Board agreed that a standardized form would be useful, but declined to require the use of a ~~specific form. Instead, the Board will develop a standardized form that a claimant or, if represented, the claimant's attorney is permitted, but not required to use.~~ Thus, as

proposed, section (2) provides that the claimant or, if represented, the claimant's attorney shall file a cost bill, which may be submitted on a form prescribed by the Board.

As proposed, section (3) provides that a cost bill shall be filed when the ALJ closes the hearing record, or at a later date designated by the ALJ. Also, the carrier shall have an opportunity to respond to the cost bill within a reasonable time, as designated by the ALJ.

As proposed, section (4) provides the information that the cost bill must contain, which includes, but is not limited to: (a) an itemized list of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and (b) the claimant's, or if represented, the claimant's attorney's signature swearing or affirming that the claimed expenses and costs are reasonable and were incurred in the litigation of the denied claim(s). The SB 404 advisory committee also recommended that any itemized expense or cost exceeding \$150 be accompanied by a copy of the invoice. The Board chose not to propose such a requirement. In doing so, the Members reasoned that the claimant, or if represented, the claimant's attorney will sign the cost bill, swearing or affirming that the claimed expenses and costs are reasonable and were incurred in the litigation of the denied claim(s). Furthermore, although copies of particular bills or invoices (regardless of the amount) might be submitted with the cost bill (or offered in response to a carrier's challenge to the cost bill), the Board determined that mandating such a requirement was not necessary.

As proposed, section (5) provides that the parties may stipulate, either at hearing or in writing, that the claimed expenses and costs are reasonable. Section (6) is proposed to require that the order finding that a claimant finally prevails against a claim denial under ORS 656.386(1) shall include the resolution of any dispute regarding the reasonableness of the claimed witness fees, expenses, and costs.

Section (7) is proposed to require that payments for such expenses and costs are to be made by the carrier and are in addition to compensation payable to the claimant. As proposed, section (8) provides that payments for such expenses and costs ordered under this rule are not to exceed \$1,500 unless the claimant or, if represented, the claimant's attorney demonstrates extraordinary circumstances justifying a greater amount.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit F, attached and incorporated by this reference.

OAR 438-015-0022(1), (2), (3), (4), (5), (6)

Consistent with the amendments to ORS 656.386, the Board proposes the adoption of OAR 438-015-0022 to provide "attorney fee lien procedures," which include procedures for filing, challenging, and resolving such challenges regarding a "notice of potential attorney fee lien." As amended, ORS 656.386(3) addresses the potential for an attorney fee lien out of additional compensation awarded under Chapter 656 or out of the proceeds of a consummated settlement agreement, provided that specific requirements are satisfied

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by the attorney seeking the lien. ORS 656.386(3) also provides that such a lien shall be granted by the ALJ or the Board "in accordance with rules adopted by the board governing the payment of attorney fees."

Regarding filing a notice of potential attorney fee lien, as proposed, section (1) provides that, if a former attorney alleges that he/she has been instrumental in obtaining additional compensation or in settling a claim, he/she may provide a "notice of potential attorney fee lien" to the carrier. The SB 404 advisory committee recommended that the Board develop a standardized form for a potential attorney fee lien. However, after considering the matter, the Board chose to propose a rule that simply describes the type of information that a potential attorney fee lien must contain. Section (1) also proposes that copies of this notice of potential attorney fee lien must be simultaneously provided to the claimant and, if there is litigation pending, to the appropriate litigation forum (the Hearing Division, the Board, or the court).

As proposed, section (2) provides that the "notice of potential attorney fee lien" must include, but is not limited to, the following information: (a) a description of the former attorney's services that support the allegation that he/she was instrumental in obtaining additional compensation or in settling the claimant's claim; (b) the amount of the potential claim; (c) the amount of the potential attorney fee lien; and (d) a copy of the executed retainer agreement between the claimant and the former attorney.

Regarding processing a "notice of potential attorney fee lien" in the context of a settlement agreement, as proposed, section (3) provides that, if the carrier receives a "notice of potential attorney fee lien," any proposed settlement agreement (settlement stipulation, DCS, or CDA) must include a provision resolving the potential attorney fee lien. Section (3) also provides that any approval of a settlement agreement that does not comply with this provision shall be void.

Finally, the proposed rule provides a method to resolve disputes regarding a notice of potential attorney fee lien. Specifically, as proposed, section (4) provides that, if the notice of potential attorney fee lien is disputed by the claimant or the carrier, the former attorney may file a petition for resolution of that dispute with the forum where litigation is pending regarding the claim or, if no litigation is pending, with the Hearings Division. This petition must include copies of the notice of potential attorney fee lien and any materials submitted to the claimant and the carrier and any other relevant documents. Section (5) is proposed to provide the claimant and the carrier with not less than seven days to respond to the petition for resolution of a potential attorney fee lien dispute and to provide the former attorney with not less than seven days to reply to the responses. Finally, section (6) provides that the resolution of a potential attorney fee lien dispute shall be made by a final, appealable order.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit F, attached and incorporated by this reference.

OAR 438-015-0080(1), (2)

OAR 438-015-0080 provides for attorney fees in Own Motion cases. Sections (1) and (2) concern attorney fees payable out of increased temporary disability compensation for Own Motion cases. The Board proposes to amend the language in sections (1) and (2) to make it consistent with the language regarding attorney fees payable out of increased temporary disability compensation for "regular" cases; *i.e.*, cases are not in Own Motion status. OAR 438-015-0045, OAR 438-015-0055. Specifically, the Board proposes to amend sections (1) and (2) to provide that "out-of-compensation" attorney fee payable from increased temporary disability compensation should be "25 percent of the increased compensation, but not more than \$1,500." Currently, sections (1) and (2) contain the \$1,500 maximum out-of-compensation fee, but they do not include the 25 percent limitation. Although the Board has applied the "regular" and Own Motion rules for out-of-compensation attorney fees regarding increased temporary disability compensation consistently, these proposed changes will make the language consistent, which will avoid potential confusion. *Timothy Ledbetter*, 58 Van Natta 906 (2006).

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit F, attached and incorporated by this reference.

OAR 438-015-0080(5), (6), (7), (8)

The Board proposes to delete subsections (5), (6), (7), (8) because they concern "post-aggravation rights" new or omitted medical condition claims that were previously subject to the Board's Own Motion jurisdiction. As a result of the 2005 statutory amendments, jurisdiction over such claims rests with the Hearings Division in the first instance and, as such, the Board's Hearings Division and Board review attorney fee rules apply to such claims.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit F, attached and incorporated by this reference.

OAR 438-019-0030(4)

The current version of section (4) provides that any mediation agreement that requires approval by the Board pursuant to ORS Chapter 656 and OAR Chapter 438 shall not be confidential. Consistent with the amendments to ORS 656.236, the Board proposes to amend section (4) to clarify that this section also includes approval by the ALJ who mediated the CDA.

The Board proposes to amend the rule in the manner described above. Such amendments are presented in Exhibit G, attached and incorporated by this reference.

Rulemaking Hearing:

The accompanying "Notice of Proposed Rulemaking Hearing" provides information regarding the November 30, 2007 hearing scheduled regarding these proposed rules. Pending the hearing, written comments regarding these rules may be submitted for admission into the record by directing such comments by mail, FAX, or by means of hand-delivery to any permanently staffed Board office. The comments may be addressed to the attention of Debra L. Young, Rulemaking Hearing Officer, Workers' Compensation Board, 2601 25th St. SE, Ste. 150, Salem, OR 97302-1280.

Documents relied upon, and where they are available:

ORS Chapter 183; ORS Chapter 656; SB 253; SB 404.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

There may be an impact to workers' compensation practitioners and law firms from compiling and preparing information for cost bills and potential attorney fee liens (as well as for responding to such documents). Nevertheless, any impact should be minimal and is a result of the statutory amendments to ORS 656.386, which the proposed rules are addressing. The Board invites public comment (written and oral) on these subjects.

Statement of Cost of Compliance on Small Businesses:

Estimated number of small businesses subject to the proposed rule:

Although an estimated number is presently indeterminate, all small businesses subject to the Workers' Compensation Law, as well as workers' compensation practitioners (and their law firms), workers' compensation insurers, self-insured employers, and claim administrators would be subject to the proposed rules.

Identify the types of businesses and industries with small businesses subject to the proposed rule:

All small businesses subject to the Workers' Compensation Law, as well as workers' compensation practitioners (and their law firms), workers' compensation insurers, self-insured employers, and claim administrators would be subject to the proposed rules.

Describe the projected reporting, record-keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services:

At this time, there is no basis to say that the impact would be "significantly adverse" (under ORS 183.540), but the Board invites public testimony on any probable extent of the impact. If attorneys representing workers wish to recover reimbursement for their reasonable expenses and costs incurred during their litigation of a denied claim or if a former attorney wishes to claim a lien for services rendered in obtaining compensation or a settlement for the worker, those attorneys must compile their expenses and costs, or describe their legal services, and prepare a cost bill or a notice of a potential attorney fee lien. Likewise, attorneys representing workers' compensation insurers, self-insured employers, or claim administrators would review the cost bill or lien to determine whether a response was necessary.

Identify equipment, supplies, labor and increased administration required for compliance with the proposed rule:

There may be increased administration for submitting and responding to cost bills and potential attorney fee liens, as discussed above.

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How were small businesses involved in the development of this rule?

Before proposing these amended rules, the Board appointed advisory committees to review the statutory amendments and to recommend changes to the administrative rules. Members of those committees included small businesses impacted by the statutory amendments, as well as the proposed rule amendments recommended by the committee. For example, those members represented workers' compensation practitioners and law firms (representing both workers and carriers), as well as workers' compensation insurers.

Administrative Rule Advisory Committee consulted? If not, why?:

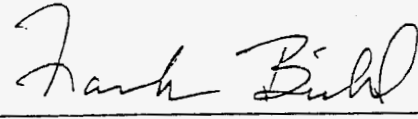
The Board appointed separate advisory committees to consider amendments to its rules resulting from SB 253 and SB 404. The Board also requested that the SB 404 committee consider the need for any amendment to the briefing schedule extension rule (OAR 438-011-0020(3)). These committees submitted written recommendations, which the Board considered, along with public comment at its October 10th meeting, in proposing these relevant rule amendments.

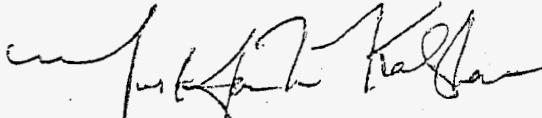
Dated this 15th day of October, 2007.

WORKERS' COMPENSATION BOARD


by:


Abigail L. Herman, Board Chair


Frank Biehl, Board Member


Mustafa Kasubhai, Board Member


Vera Langer, Board Member


Greig Lowell, Board Member

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2005

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EXHIBIT A

438-005-0046

Filing And Service Of Documents; Correspondence

(1) Filing:

(a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;

(b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR 436, Division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;

(c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;

(d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, "filing" also includes the physical delivery of the settlement or agreement and any accompanying documents to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.

(e) Filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute may be accomplished by electronic mail (e-mail). To electronically file a request for hearing or Board review, a party shall:

(A) Send an e-mail to: request.wcb@state.or.us; and

(B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review. These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg).

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). An electronic filing under subsection (d) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

[(e)] (f) Except for the documents specified in subsection (c) or [(d)] (e) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely;

[(f)] (g) "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:

- (A) The document transmitted indicates at the top that it has been delivered by FAX;
- (B) The Board's facsimile transmission number is used; and
- (C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d) is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail regarding requests for hearing or Board review filed under OAR 438-005-0046(1)(d), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, cert. ef. 1-1-88; WCB 7-1990 (Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1991 (Temp), f. 5-24-91, cert. ef. 5-28-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-1999 (Temp), f. 9-24-99, cert. ef. 10-23-99 thru 4-14-00; WCB 1-2000, f. 3-29-00, cert. ef. 4-3-00; WCB 1-2006, f. 1-19-07, cert. ef. 3-1-07.

438-005-0050

Notice of Claim Acceptance and Hearing Rights under ORS 656.262(6)(d)

(1) Every notice of claim acceptance shall include all of the information prescribed by ORS 656.262(6)(b) and OAR 436.

(2) In the event that the insurer or self-insured employer disagrees with all or any portion of a worker's objections to a notice of claim acceptance under ORS 656.262(6)(d), the insurer's or self-insured employer's written response shall specify the reasons for the disagreement, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU DISAGREE WITH THIS DECISION, YOU MAY FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1280. YOUR LETTER SHOULD STATE THAT YOU WANT A HEARING, YOUR ADDRESS, THE DATE OF YOUR INJURY, AND YOUR CLAIM NUMBER.

"IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE [IN OREGON] AT 1-800-452-0288[OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 945-7585]."

Stat. Auth: ORS 656.307, 656.388, 656.593 & 656.726(5)

Stats. Implemented: ORS 656.262(6)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

438-005-0055

Notice of Claim Denial and Hearing Rights

(1) Except for a denial issued under ORS 656.262(14), in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR LETTER MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU MAKE A TIMELY REQUEST FOR HEARING ON A DENIAL OF COMPENSABILITY OF YOUR CLAIM AS REQUIRED BY ORS 656.319(1)(a) THAT IS BASED ON ONE OR MORE REPORTS OF EXAMINATIONS CONDUCTED AT THE REQUEST OF THE INSURER OR SELF-INSURED EMPLOYER UNDER ORS 656.325(1)(a) AND YOUR ATTENDING PHYSICIAN DOES NOT CONCUR WITH THE REPORT OR REPORTS, YOU MAY REQUEST AN EXAMINATION TO BE CONDUCTED BY A PHYSICIAN SELECTED BY THE DIRECTOR. THE COST OF THE EXAMINATION AND THE EXAMINATION REPORT SHALL BE PAID BY THE INSURER OR SELF-INSURED EMPLOYER. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE [IN OREGON] AT 1-800-452-0288[OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 947-7585]."

(2) If an insurer or self-insured employer intends to deny a claim under ORS 656.262(14) because of a worker's failure to cooperate in the investigation of the claim, in addition to the requirements of ORS 656.262, the notice of denial shall specify the factual and legal reasons

~~for denial, and shall contain a notice, in prominent or bold-face type, as follows:~~

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A LETTER WITH THE WORKERS'

COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR LETTER MUST STATE THAT YOU WANT AN EXPEDITED HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE. YOU WILL RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE *[IN OREGON]* AT 1-800-452-0288 *[OR IN SALEM OR FROM OUTSIDE OREGON AT (503) 947-7585]*."

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.262(6), 656.262(15) & 656.325

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

EXHIBIT B

438-006-0020

Acknowledgment; Notice of Conference and Hearing in Ordinary Hearing Process

The Hearings Division shall, by mail, acknowledge receipt of a request for hearing. Such acknowledgment may include notice of date for an informal prehearing conference pursuant to OAR 438-006-0062 or notice of hearing date. The hearing shall be scheduled for a date that is within 90 days of the request for hearing and not less than *[ten]* 60 days after mailing of a notice of hearing date.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.283(4), (5)(a)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 6-1990(Temp), f. 4-24-90, cert. ef. 4-25-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90

438-006-0100

Representation by Counsel

(1) Except as permitted by ORS 656.291 and this rule, corporations and state agencies must be represented by members of the Oregon State Bar. The Board encourages injured workers also to be represented in formal hearings.

(2) Notwithstanding section (1) of this rule, a state agency officer or employee may represent the Director as permitted by rule of the Director.

(3)(a) A law student authorized to appear before courts and administrative tribunals of this state in accordance with Rule *[9.05]* 13.05 through *[9.30]* 13.30 of the Supreme Court Rules for Admission of Attorneys (Law Student Appearance *[Rules]* Program) has the consent of the Board to appear on behalf of a client at a hearing if:

(A) All of the following documents have been filed with the Presiding Administrative Law Judge prior to the hearing:

(i) A true copy of the student's certification to appear under the Law Student Appearance *[Rules]* Program showing approval by the Supreme Court and filing with the State Court Administrator;

(ii) The client's written consent to representation under the Law Student Appearance *[Rules]* Program, which shall be made a part of the official record of each case; and

(iii) The student's supervising attorney has introduced the student to the Presiding Administrative Law Judge in a letter of introduction signed by the supervising attorney; and

(B) The Presiding Administrative Law Judge has approved the law student's appearance prior to the hearing.

(b) The supervising attorney is encouraged, though not required, to personally introduce the law student to the assigned Administrative Law Judge in each case.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 9.320; ORS 656.726(5)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90

EXHIBIT C

438-009-0005

Settlement Stipulations

- (1) Contested matters arising out of a claim closure may be resolved by the parties at any time after the conclusion of the reconsideration proceeding under ORS 656.268, whether or not a hearing has been requested by a party.
- (2) Any contested matters not arising out of a claim closure may be resolved by the parties at any time, whether or not a hearing has been requested by a party.
- (3) All settlement stipulations that provide for an award of compensation for permanent partial disability shall recite the body part(s) for which the award(s) is (are) made and shall recite all awards in both degrees and percent of loss. In the event there is any inconsistency between the stated degrees and percent of loss awarded in a settlement stipulation, the stated percent of loss shall be controlling.
- (4) For purposes of ORS 656.289(1)–(3), an Administrative Law Judge's order approving a settlement stipulation is a determination of all matters included within the terms of the settlement stipulation.
- (5) All settlement stipulations shall recite whether a claim disposition agreement in the claim has been filed [*for approval by the Board*].

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.268; ORS 656.289(1)-(3)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02

438-009-0010

Disputed Claim Settlements

- (1) Any document submitted for approval by the Board or the Hearings Division as a settlement of a denied or disputed claim shall be in the form specified by this rule.
- (2) A disputed claim settlement shall recite, at a minimum:
 - (a) The date and nature of the claim;
 - (b) That the claim has been denied and the date of the denial;
 - (c) That a bona fide dispute as to the compensability of all or part of the claim exists and that the parties have agreed to compromise and settle all or part of the denied and disputed claim under the provisions of ORS 656.289(4);
 - (d) The factual allegations and legal positions in support of the claim;
 - (e) The factual allegations and legal positions in support of the denial of the claim;
 - (f) That each of the parties has substantial evidence to support the factual allegations of that party;
 - (g) A list of medical service providers who shall receive reimbursement in accordance with ORS 656.313(4), including the specific amount each provider shall be reimbursed, and the parties' acknowledgment that this reimbursement allocation complies with the reimbursement formula prescribed in ORS 656.313(4)(d); and
 - (h) The terms of the settlement, including the specific date on which those terms were agreed.
- (3) If an accepted claim is later denied entirely at any time based on fraud, misrepresentation or ~~other illegal activity by the worker, the disputed claim settlement shall further recite the specific~~ factual allegations and legal positions of the parties concerning the fraud, misrepresentation or other illegal activity.

(4) If a claim was previously accepted in good faith but later denied, in whole or in part, based on later obtained evidence that the claim is not compensable or evidence that the paying agent is not responsible for the claim, the disputed claim settlement shall further recite:

(a) If the accepted claim is later denied entirely at any time up to two years from the date of claim acceptance, an allegation that the self-insured employer or insurer has obtained later evidence that the claim is not compensable or that the paying agent is not responsible for the claim; or

(b) If the denial is a denial of aggravation, current need for medical services or a partial denial of a medical condition on the ground that the condition is not related to the accepted injury, that the claimant retains all rights that may later arise under ORS 656.245, 656.273, 656.278 and 656.340, insofar as these rights may be related to the original accepted claim.

(5) If the claimant is unrepresented, the denial of the claim which is being settled by any document described in section (1) of this rule shall not be contained within that document, but rather shall be issued separately. In addition, any document described in section (1) of this rule shall recite that the unrepresented claimant has been orally advised of the following matters:

(a) The right to an attorney of the claimant's choice at no cost to the claimant for attorney fees;

(b) The existence of the office of the Ombudsman pursuant to ORS 656.709;

(c) Except with the consent of the worker, reimbursement made to medical service providers from the proceeds of a disputed claim settlement shall not exceed 40 percent of the total present value of the settlement amount; and

(d) Reimbursement from the proceeds of a disputed claim settlement made to medical service providers shall not prevent a medical service provider or health insurance provider from recovering the balance of amounts owing for such services directly from the worker.

(6) Any document described in section (1) of this rule shall also recite that the claimant has been orally advised that:

(a) The claimant has the right to request a hearing concerning the claim, after which an Administrative Law Judge will determine whether the claimant will receive workers' compensation benefits;

(b) If, following the hearing, the claim is finally determined compensable, the claimant would be entitled to workers' compensation benefits, which could include temporary disability, permanent disability, medical treatment, and vocational rehabilitation;

(c) If, following the hearing, the claim is finally determined not compensable, the claimant would not be entitled to workers' compensation benefits;

(d) As a result of this agreement, the claimant's rights to seek workers' compensation benefits concerning this claim would be extinguished;

(e) Both parties agree that the terms of the agreement are reasonable; and

(f) The agreement shall not be binding upon the parties unless and until the agreement is approved by an Administrative Law Judge or the Board, depending upon which forum is considering the dispute.

(7) No document described in section (1) of this rule shall be approved unless the document submitted by the parties establishes that a bona fide dispute as to compensability exists and the proposed disposition of the dispute is reasonable. If an Administrative Law Judge or the Board is not satisfied that a bona fide dispute exists or that disposition of the dispute is reasonable, the Administrative Law Judge or Board may reject the agreement or specify the manner in which objection(s) can be cured.

(8) All disputed claim settlements shall:

(a) [r] Recite whether a claim disposition agreement in the claim has been filed [for approval by the Board]; and

(b) [*All disputed claim settlements shall*] [b] Be in a separate document from a claim disposition agreement.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236, ORS 656.289(4) & ORS 656.313(4)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 5-1990, f. 4-19-90, cert. ef. 5-21-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1993, f. 10-27-93, cert. ef. 11-4-93; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

438-009-0020

Claim Disposition Agreements; Form

Any document filed with the Board for approval by the Administrative Law Judge who mediated the agreement or the Board Members as a claim disposition agreement shall:

(1) Contain the terms, conditions, and information as prescribed by the Board pursuant to OAR 438-009-0022;

(2) Be in a separate document from a disputed claim settlement; and

(3) Include, in prominent or bold-face type, the following paragraph, which shall be located at the conclusion of the document after the signature lines for the parties:

"THIS AGREEMENT IS IN ACCORDANCE WITH THE TERMS AND CONDITIONS PRESCRIBED BY THE BOARD. SEE ORS 656.236(1). ACCORDINGLY, THIS CLAIM DISPOSITION AGREEMENT IS APPROVED. AN ATTORNEY FEE PAYABLE TO CLAIMANT'S ATTORNEY ACCORDING TO THE TERMS OF THIS AGREEMENT IS ALSO APPROVED.

IT IS SO ORDERED.

DATED THIS _____ DAY OF _____, [19] 20__.

Board Member or Administrative Law Judge Who Mediated the Agreement

Board Member

NOTICE TO ALL PARTIES: THIS ORDER IS FINAL AND IS NOT SUBJECT TO REVIEW. ORS 656.236(2)."

(4) If the document filed for approval lacks any of the information required by section (1) of this rule, the Administrative Law Judge who mediated the agreement or the Board may:

(a) Mail a letter notifying the parties that the deficiency must be corrected and that an addendum signed by one or more of the parties or their representatives must be filed in the manner described [*by the Board*] in the [*its*] letter within 21 days from the date of the letter; and

(b) In the event that the deficiency is not corrected in the manner and within the time described in subsection (a) of this section, disapprove the proposed agreement as unreasonable as a matter of law under ORS 656.236(1)(a).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 7-1990 (Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1991 (Temp), f. & cert. ef. 3-8-91; WCB 5-1991, f. 8-22-91, cert. ef. 9-2-91; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99

438-009-0022

Required Information In A CDA

(1) If a claim disposition agreement involves more than one claim, the disposition shall contain all of the information required by this rule for each claim including a separate first page of the claim disposition agreement as set forth in section (3) of this rule.

(2) The insurer/self-insured employer shall provide the claimant information explaining claim dispositions in a separate enclosure accompanying the proposed claim disposition agreement. The Board shall prescribe by a bulletin the specific form and format for the enclosure. If the claimant does not read or comprehend English, or is otherwise unable to understand written language, the insurer/self-insured employer shall provide this information in a language or other manner which ensures the worker understands the meaning of the disposition.

(3) The first page of the claim disposition agreement shall include, but not be limited to, the following information:

(a) The worker's name;

(b) The case number assigned to the claim by the Board, if any;

(c) The insurer's/self-insured employer's claim number;

(d) The date of the compensable injury or disease;

(e) The file number assigned to the claim by the Workers' Compensation Division, if known;

(f) [The worker's social security number;]

[(g)] The name of the insurer/self-insured employer;

[(h)] (g) Specific identification of all benefits, rights and insurer/self-insured employer obligations under Workers' Compensation Law which are released by the agreement;

[(i)] (h) The total attorney fee, if any, to be paid to claimant's attorney;

[(j)] (i) The total amount (excluding attorney fee) to be paid to the claimant; and

[(k)] (j) A statement indicating whether or not the parties are waiving the "30-day" approval period of ORS 656.236(1)(a)(C) as permitted by ORS 656.236(1)(b).

(4) The claim disposition agreement shall also contain, but not be limited to, the following:

(a) Identification of the accepted conditions that are the subject of the disposition;

(b) The date of the first claim closure, if any;

(c) The amount of any permanent disability award(s), if any;

(d) Whether the worker has ever been able to return to the work force following the industrial injury or occupational disease;

(e) The worker's age, highest education level, and the extent of vocational training (or in the event that the worker is deceased, the age, highest education level, and the extent of vocational training of the worker's beneficiaries);

~~(f) A list of occupations that the worker has performed (or in the event that the worker is deceased, a list of occupations that each of the deceased worker's beneficiaries has performed);~~

(g) That the worker has been provided the informational enclosure prescribed by bulletin pursuant to section (2) of this rule (attachment of the informational enclosure to the parties' claim disposition agreement is not required, unless the enclosure is expressly incorporated into the agreement); and

(h) The following notice in prominent or bold face type, which shall either be included in the claim disposition agreement or incorporated by reference into the agreement:

"NOTICE TO CLAIMANT: UNLESS YOU ARE REPRESENTED BY AN ATTORNEY AND YOUR CLAIM DISPOSITION AGREEMENT INCLUDES A PROVISION WHICH WAIVES THE 30-DAY "COOLING OFF" PERIOD, YOU WILL RECEIVE A NOTICE FROM THE WORKERS' COMPENSATION BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT TELLING YOU THE DATE THIS AGREEMENT WAS RECEIVED BY THEM FOR APPROVAL. YOU HAVE 30 DAYS FROM THE DATE THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT RECEIVES THE AGREEMENT TO REJECT THE AGREEMENT, BY TELLING THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT IN WRITING. DURING THE 30 DAYS ALL OTHER PROCEEDINGS AND PAYMENT OBLIGATIONS OF THE INSURER/SELF-INSURED EMPLOYER, EXCEPT FOR MEDICAL SERVICES, ARE STAYED ON YOUR CLAIM. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY DISCUSS THIS AGREEMENT WITH THE BOARD IN PERSON WITHOUT FEE OR CHARGE. TO CONTACT THE BOARD, WRITE OR CALL: WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1282, TELEPHONE: (503) 378-3308, TOLL-FREE AT 1-877-311-8061, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.

"YOU MAY ALSO DISCUSS THIS AGREEMENT WITH THE WORKERS' COMPENSATION OMBUDSMAN, WITHOUT FEE OR CHARGE. TO CONTACT THE OMBUDSMAN, WRITE OR CALL: WORKERS' COMPENSATION OMBUDSMAN, LABOR & INDUSTRIES BUILDING, 350 WINTER STREET NE, SALEM, OR 97310, TELEPHONE: (503) 378-3351, TOLL-FREE AT 1-800-927-1271, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.

"YOU MAY ALSO CALL THE WORKERS' COMPENSATION DIVISION'S INJURED WORKER HOTLINE, TOLL-FREE IN OREGON, AT 1-800-452-0288."

Stat. Auth: ORS 656.726(5)

Stats Implemented: ORS 656.236

Hist: WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99

438-009-0025

Claim Disposition Agreements; Processing

(1) The parties shall file an original and one legible copy of the claim disposition agreement with the Board for [the Board's] approval by the Administrative Law Judge who mediated the agreement or the Board Members. [Notwithstanding OAR 438-005-0046(1)(d), a] Any claim disposition agreement may be filed in accordance with OAR 438-005-0046(1)(a) and (1)(d) [for approval by the Board shall be mailed or delivered to the Board at 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1282]. The original claim disposition agreement shall be retained in the Board's file and a copy shall be ~~conformed and distributed to the Director.~~

(2) Any claim disposition agreement filed under section (1) of this rule, shall be deemed to have been submitted as of the date the agreement is received by the Administrative Law Judge who

mediated the agreement or the Board. All times to be calculated shall be calculated from the date of [*the Board's*] receipt of the agreement by the Administrative Law Judge who mediated the agreement or the Board.

(3) A request by an unrepresented claimant to meet with the Board must be made to the Board not more than 30 days after the Board's receipt of a claim disposition agreement, but need not be in any particular form; verbal requests will be accepted.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 7-1990 (Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90;

WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99

438-009-0028

Postcard Announcing CDA Approval Order

(1) The parties shall also file self-addressed "Announcement of CDA Approval Order" postcards which shall be mailed by the Administrative Law Judge who mediated the agreement or the Board to all parties and their attorneys if the claim disposition agreement is approved. The Administrative Law Judge who mediated the agreement may also physically deliver the postcards to all parties and their attorneys as provided in OAR 438-009-0030(6).

(2) The postcard, which shall be in a form prescribed by the Board, shall provide the following information:

(a) The claimant's name;

(b) The claim number; and

(c) Blank spaces for the Administrative Law Judge who mediated the agreement or the Board to insert:

(A) The CDA case number; and

(B) The date when the claim disposition agreement was approved.

(3) If an insufficient number of postcards is filed by the parties or if any postcard lacks the information set forth in section (2) of this rule, the Administrative Law Judge who mediated the agreement or the Board may follow the procedures described in OAR 438-009-0020(4).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96

438-009-0030

Claim Disposition Agreements; Stay Of Other Proceedings; Payment Of Proceeds

(1) Notwithstanding OAR 438-006-0081, 438-006-0091, 438-011-0020 and 438-011-0025, the [*Board's*] receipt of a claim disposition agreement by the Administrative Law Judge who mediated the agreement or the Board shall suspend all other proceedings before the Board and the Hearings Division until completion of action upon the agreement, except that the Board shall accept and file requests for hearing and Board review for purposes of establishing jurisdiction.

(2) In those cases where the claimant is unrepresented or the claim disposition agreement does not include a provision in which the parties waive their "30-day" rights to seek [*Board*] disapproval, the Administrative Law Judge who mediated the agreement or the Board shall

~~notify the parties and the Director of [*its*] the receipt of a claim disposition agreement.~~

(3) In all cases, the Administrative Law Judge who mediated the agreement or the Board shall notify the Director of [*its*] the receipt of a claim disposition agreement.

(4) In cases in which a party has requested judicial review of an order of the Board and such judicial review is pending on the date the Board receives the claim disposition agreement, the Administrative Law Judge who mediated the agreement or the Board shall notify the State Court Administrator of [its] the receipt of the agreement.

(5) In the event that the Administrative Law Judge who mediated the agreement or the Board Members issue[s] a separate written decision, copies of [the Board's] that decision approving or disapproving a claim disposition agreement shall be mailed to parties, their attorneys, and the Director.

(6) Except as otherwise provided in section [(4)] (5) of this rule, the signature of the Administrative Law Judge who mediated the agreement or two Board [m]Members on a claim disposition agreement shall constitute a final order approving the disposition under ORS 656.236(1). Notice of this approval shall be accomplished either:

(a) B[b]y the Administrative Law Judge who mediated the agreement or the Board mailing the postcards filed pursuant to OAR 438-009-0028 to the parties and their attorneys; or

(b) By physical delivery of the postcards filed pursuant to OAR 438-009-0028 to the parties and their attorneys by the Administrative Law Judge who mediated the agreement.

(7) Payment of the disposition shall be made no later than the 14th day after [the Board mails] notice of its approval [of the agreement] has been mailed or delivered under Section (5) or (6) of this rule to the parties, unless otherwise stated in the agreement.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 7-1990 (Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90;

WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96

438-009-0035

Reconsideration Of Claim Disposition Agreements

(1) A motion for reconsideration of final orders issued [by the Board] under ORS 656.236 and these rules shall be filed within 10 days of the date of mailing of the order.

(2) The Administrative Law Judge who mediated the agreement or the Board may reconsider final orders under ORS 656.236, provided that the motion for reconsideration:

(a) Is filed in accordance with section (1) of this rule; and

(b) States specifically the reason(s) reconsideration is requested.

(3) Reconsideration of a final order issued [by the Board] under ORS 656.236 and these rules shall be limited to the record before the Administrative Law Judge who mediated the

agreement or the Board at the time [its] the final order was mailed or delivered under

OAR 438-009-0030(5) or (6) and no additional information will be considered, unless the

Administrative Law Judge who mediated the agreement or the Board finds good cause for allowing the additional submission.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 1-1991 (Temp), f. & cert. ef. 3-8-91; WCB 5-1991, f. 8-22-91, cert. ef. 9-2-91

EXHIBIT D

438-011-0020

Briefs and Other Documents

- (1) Filing of briefs is not jurisdictional; however, the Board views briefs as a significant aid to the review process. Briefs submitted for consideration by the Board shall comply with this section.
- (2) The party requesting Board review shall file its appellant's brief to the Board within 21 days after the date of mailing of the transcript of record to the parties. Respondent(s) shall file its (their) brief(s) within 21 days after the date of mailing of the appellant's brief. Any party who has filed a cross-request for review shall include its cross-appellant's opening brief as a part of its respondent's brief. An appellant may file a reply and/or cross-respondent's brief within 14 days after the date of mailing of the respondent's and/or cross-appellant's brief. Any party who has not filed a request for review may file a cross-respondent's brief within 14 days after the date of mailing of the cross-appellant's brief. A cross-appellant may file a cross-reply brief within 14 days of the mailing date of a cross-respondent's brief. Unless otherwise authorized by the Board, no other briefs will be considered.
- (3) Extensions of time for filing of briefs will be allowed only on written request filed no later than the date the brief is due. A statement whether opposing counsel (or a party if the party is not represented by counsel) objects to, concurs in or has no comment regarding the extension of time requested shall be furnished in all cases. Briefing extensions will not be allowed unless the Board finds that extraordinary circumstances beyond the control of the party requesting the extension justify the extension. [*For purposes of this section, "extraordinary circumstances beyond the control of the party requesting the extension" shall not include the press of business.*]

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.295(4) & ORS 656.726(5)

Hist.: WCB 4-1986, f. 10-8-86, ef. 11-1-86; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 4-1990(Temp), f. 4-13-90, cert. ef. 4-30-90; WCB 10-1990(Temp), f. 10-25-90, cert. ef. 10-27-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1993, f. 5-19-93, cert. ef. 6-1-93

EXHIBIT E

438-012-0035

Temporary Disability Compensation

(1) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

- (a) The Own Motion claim for temporary disability compensation is filed after the aggravation rights under ORS 656.273 expired;
- (b) There is a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work; and
- (c) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(2) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

- (a) A new medical condition or an omitted medical condition claim has been determined to be compensable as defined under OAR 438-012-0001(4) and was initiated after the aggravation rights under ORS 656.273 expired; and
- (b) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(3) The claimant is deemed to be in the work force if:

- (a) The claimant is engaged in regular employment;
- (b) The claimant, although not employed, is willing to work and is making reasonable efforts to obtain employment; or
- (c) The claimant is willing to work, but the claimant is not employed, and the claimant is not making reasonable efforts to obtain employment because such efforts would be futile as a result of the effects of the compensable injury.

(4) The insurer shall make the first payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) within 14 days from:

- (a) The date of an order of the Board reopening the claim; or
- (b) The date the insurer voluntarily reopened the claim.

(5) Temporary disability compensation shall be paid until one of the following events first occurs:

- (a) The claimant is medically stationary pursuant to ORS 656.005(17);
- (b) The claim is closed pursuant to OAR 438-012-0055;
- (c) A claim disposition agreement is submitted to the Board pursuant to ORS 656.236(1), unless the claim disposition agreement provides for the continued payment of temporary disability

compensation; or

- (d) Termination of such benefits is authorized by the terms of ORS 656.268(4)(a) through (d).

[(6)(a) An Own Motion insurer may unilaterally suspend compensation under the circumstances provided in ORS 656.262(4)(e), (4)(h), and (4)(i). If the Own Motion insurer believes that temporary disability compensation should be suspended for any reason other than those provided in ORS 656.262(4)(e), (4)(h), and (4)(i), the insurer may make a written request to the Board for such suspension. This request shall:

(A) State the reasons the insurer is requesting that the Board suspend the claimant's temporary disability compensation;

(B) Include copies of supporting documentation; and

(C) Be mailed to the claimant and the claimant's attorney, if any, by certified or registered mail.

(b) Unless an extension is granted by the Board, claimant or claimant's attorney shall have 14 days to respond to the Board in writing to the request.

(c) Unless an extension is granted by the Board, the insurer shall have 14 days to reply in writing to claimant's response.

(d) The insurer shall not suspend compensation under this section without prior written authorization by the Board, except as provided in ORS 656.262(4)(e), (4)(h), and (4)(i).]

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.005(30), 656.262(4), 656.268(4), 656.278(1) & (2) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

EXHIBIT F

DIVISION 015

ATTORNEY FEES; COST BILLS; ATTORNEY FEE LIENS

438-015-0005

Definitions

In addition to the definitions set forth in OAR 438-005-0040:

- (1) "Approved fee" means an attorney fee paid out of a claimant's compensation.
- (2) "Assessed fee" means an attorney fee paid to a claimant's attorney by an insurer or self-insured employer in addition to compensation paid to a claimant.
- (3) "Attorney" means a member of the Oregon State Bar.
- (4) "Attorney fee" means payment for legal services performed by an attorney on behalf and at the request of a claimant under ORS Chapter 656.
- (5) "Compensation" means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.
- (6) "Costs" means [*money expended*] expenses incurred by [an] the claimant or, if represented, the claimant's attorney for things and services reasonably necessary to pursue a matter on behalf of a party, but do not include fees paid to any attorney. Examples of costs referred to include, but are not limited to, costs of independent medical examinations, depositions, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.
- (7) "Cost bill" means a sworn (or affirmed), itemized statement of the amount of expenses and costs for records, expert opinions, and witness fees incurred as a result of the litigation involving a claim denial under ORS 656.386(1).
- [(7)] (8) "Denied claim" means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.388(3) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96

438-015-0019

Cost Bill Procedures

- (1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge, the Board, or the court may order payment of the claimant's or, if represented, the claimant's attorney's reasonable expenses and costs for records, expert opinions, and witness fees.
- (2) To assist an Administrative Law Judge, the Board, or the court in determining the reasonableness of expenses and costs for records, expert opinions, and witness fees incurred as a result of litigation involving a claim denial under ORS 656.386(1), the claimant or, if represented, the claimant's attorney shall file a cost bill, which may be submitted on a form prescribed by the Board.

(3) A cost bill shall be filed when the Administrative Law Judge closes the hearing record or at a later date designated by the Administrative Law Judge. The insurer or self-insured employer shall have an opportunity to respond to the cost bill within a reasonable time, as designated by the Administrative Law Judge.

(4) A cost bill shall contain, but is not limited to, the following information:

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and

(b) The claimant's or, if represented, the claimant's attorney's signature swearing or affirming that the claimed expenses and costs are reasonable and were incurred in the litigation of the denied claim(s).

(5) The parties may stipulate, either at hearing or in writing, that the claimed witness fees, expenses, and costs are reasonable.

(6) The resolution of any dispute regarding the reasonableness of the claimed witness fees, expenses, and costs shall be included in the order finding that a claimant finally prevails against a claim denial under ORS 656.386(1).

(7) Payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer and are in addition to compensation payable to the claimant.

(8) Payments for witness fees, expenses, and costs ordered under this rule may not exceed \$1,500 unless the claimant or, if represented, the claimant's attorney demonstrates extraordinary circumstances justifying payment of a greater amount.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.386(2); ORS 656.726(5)

Hist.:

438-015-0022

Attorney Fee Lien Procedures

(1) If a former attorney of a claimant alleges that the former attorney has been instrumental in obtaining additional compensation or in settling a claim, the former attorney may provide a notice of potential attorney fee lien to the insurer or the self-insured employer. Copies of such a notice shall also be simultaneously provided to the claimant and to the appropriate litigation forum, if there is a pending case before the Hearings Division, the Board, or the court.

(2) The notice of potential attorney fee lien shall include, but is not limited to, the following information:

(a) A description of the former attorney's services that support the allegation that the attorney was instrumental in obtaining additional compensation or in settling the claimant's claim;

(b) The amount of the potential claim;

(c) The amount of the potential attorney fee lien; and

(d) A copy of an executed retainer agreement between the claimant and the former attorney.

(3) If the insurer or self-insured employer has received a notice of a potential attorney fee lien, any proposed disputed claim settlement, settlement stipulation, or claim disposition agreement shall include a provision resolving the potential attorney fee lien. Any approval of a settlement agreement that does not comply with this provision shall be void.

(4) If the notice of potential attorney fee lien is disputed by the claimant, the insurer, or the self-insured employer, the former attorney may file a petition for resolution of the lien

dispute with the forum where litigation involving the claim is pending or, if there is no pending litigation, with the Hearings Division. The petition shall include copies of the notice of potential attorney fee lien and the accompanying materials that were submitted to the claimant and the insurer or the self-insured employer, as well as any other relevant documents.

(5) If a petition for resolution of a potential attorney fee lien dispute is filed, the claimant and the insurer or self-insured employer shall be provided not less than seven days to respond to the petition. The former attorney shall also be provided not less than seven days to reply to the responses.

(6) The resolution of a potential attorney fee lien dispute shall be made by a final, appealable order.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.388(3); ORS 656.726(5)

Hist.:

438-015-0080

Attorney Fees in Own Motion Cases

(1) If an attorney is instrumental in obtaining increased temporary disability compensation, the Board shall approve a [reasonable attorney] fee of 25 percent of the increased compensation, but not more than, [not to exceed] \$1,500, [payable] to be paid out of the increased compensation.

(2) If an attorney is instrumental in obtaining a voluntary reopening of an Own Motion claim that results in increased temporary disability compensation, the Board shall approve a [reasonable attorney] fee of 25 percent of the increased compensation, but not more than, [not to exceed] \$1,500, [payable] to be paid out of [any] the increased temporary disability compensation resulting from the voluntary reopening.

(3) If the Board awards additional compensation for permanent disability, the Board shall approve a reasonable attorney fee in the amounts prescribed in OAR 438-015-0040, payable out of the increased compensation.

(4) The Board may allow a fee in excess of the amounts prescribed in sections (1) through (3) of this rule upon a finding that extraordinary services have been rendered.

[(5) If an Own Motion insurer denies a "post-aggravation rights" new medical condition or omitted medical condition claim pursuant to OAR 438-012-0070 and/or 438-012-0075 and an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, the Administrative Law Judge or the Board shall award a reasonable assessed fee.

(6) If the Administrative Law Judge orders the acceptance of a previously denied "post-aggravation rights" new medical condition or omitted medical condition claim, the Administrative Law Judge shall award a reasonable assessed fee.

(7) If an Own Motion insurer requests or cross-requests review of an Administrative Law Judge's Own Motion Order regarding a denied "post-aggravation rights" new medical condition or omitted medical condition claim and the Board affirms that order, the Board shall award a reasonable assessed fee.

(8) If a claimant requests review or cross-requests review of an Administrative Law Judge's Own Motion Order that upheld a denial of a "post-aggravation rights" new medical condition or omitted medical condition claim and the Board orders the claim accepted, the Board shall award a reasonable assessed fee for the claimant's attorney's services at hearing and on Board review.]

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.267(3), ORS 656.278(1), ORS 656.386(1),(2) & ORS 656.388(3)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03

EXHIBIT G

438-019-0030

Confidentiality

- (1) Unless there is a written agreement otherwise, any communication made in mediation which relates to the controversy being mediated is confidential.
- (2) The mediator shall create and maintain a separate mediation file. All memoranda, work product, and other materials contained in the mediation file are confidential.
- (3) The names and case numbers of cases for which mediation has been requested and the outcomes of those mediations are not confidential.
- (4) Any mediation agreement that requires approval by the Administrative Law Judge who mediated the agreement or the Board pursuant to ORS Chapter 656 and OAR Chapter 438 shall not be confidential.
- (5) Statements, memoranda, materials, and other tangible evidence that are subject to discovery under the Board's Rules of Practice and Procedure are not confidential unless they were prepared specifically for use in mediation.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.012(2)(b); 656.283(1), (9); 656.289(4)

Hist.: WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: October 22, 2007
From: Helen Hierschbiel, Ext. 361
Re: UPL Website

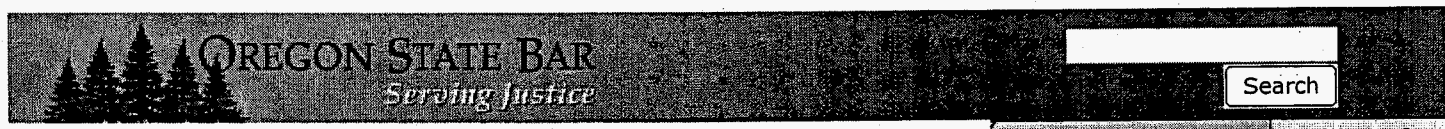
Action Recommended

None.

Background

In order to educate the public about what constitutes the unlawful practice of law in Oregon, the UPL Committee developed a page entitled "Unlawful Practice of Law" for the Oregon State Bar website. Before inclusion of this page, information about UPL was limited and difficult to find on the bar's website. The committee also plans to include links to a list of individuals against whom the bar has obtained injunctions, a list of those with whom the bar has signed cease and desist agreements, and a list of UPL caselaw in Oregon.

Attachments: Printout of UPL webpage



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Sections

Volunteer Opportunities

Client Services

Client Assistance Office

Client Security Fund

Fee Arbitration

Unlawful Practice of Law

The practice of law in Oregon is regulated by the legislature and the courts. With some exceptions, only lawyers who are admitted to the Oregon State Bar (OSB) may practice law in Oregon. The Oregon State Bar Act says that a person may not practice law or hold oneself out as qualified to practice law unless that person is an active member of the Oregon State Bar.

The 'practice of law' is defined in decisions of the Oregon Supreme Court and generally includes, among other things:

- appearing on behalf of others in Oregon courts and administrative proceedings;
- drafting or selecting legal documents for another when informed or trained discretion must be exercised to meet the person's individual needs;
- advising someone of his or her legal rights in a particular situation;
- having a law office in Oregon regardless of where clients are located;
- acting as an immigration consultant unless authorized by federal law to do so; and
- holding oneself out as a lawyer.

It is not necessary that money change hands in order for conduct to be the practice of law.

Although it depends on the specific facts of each situation, some of the commonly occurring activities that generally are *not* considered the practice of law in Oregon include:

- individual litigants who represent only themselves;
- representation of others in justice courts;
- out-of-state lawyers or collection agencies who send demand letters into Oregon, without more;
- properly licensed lawyers who limit their practice exclusively to certain areas of federal law, such as patent law;
- activities of licensed professionals whose actions are within the scope of their licenses; for instance, real estate professionals, title insurance companies, certified public accountants and other licensed tax professionals;
- sale of generic do-it-yourself legal publications without any further personalized assistance in preparation of documents or court papers; and
- internet discussions groups without further personalized assistance in preparation of documents or court papers.

The OSB is responsible for investigating allegations of the unlawful practice of law. Generally, enforcement of prohibitions on the unlawful practice of law is complaint driven, that is, the bar relies on the public to provide information about individuals practicing law without a license. The bar receives complaints from judges, injured consumers, lawyers and other state bar associations.

Complaints are forwarded to the Unlawful Practice of Law (UPL) Committee of the OSB. This committee consists of about sixteen lawyers and four public members, all volunteers appointed by the OSB Board of Governors. Each complaint is assigned to a member of the committee for investigation. The investigator contacts the complaining party and the person being accused of practicing law without a

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the complaining party and the person being accused of practicing law without a license, and makes other investigation as the facts warrant. The investigator then prepares a report, which is considered by the entire committee at its monthly public meetings. Except in the most complicated cases, the time from initial complaint to consideration by the UPL committee is about six months.

The UPL committee has authority to:

- dismiss a complaint;
- send a notice letter, warning that the accused's activities could be considered the unlawful practice of law;
- issue an admonition, finding that the accused was unlawfully practicing law and warning the accused not to do so again;
- enter into a cease and desist agreement with the accused; or,
- recommend to the OSB Board of Governors that the OSB file a lawsuit against the accused to prevent him from continuing to practice law without authorization.

Occasionally, if an investigation suggests that there has been some illegal activity that the UPL committee cannot address, then the UPL committee will forward the results of its investigation to other state bars, to the Oregon Attorney General, or to another appropriate regulatory agency.

If the UPL committee refers a complaint to the OSB Board of Governors, and the Board authorizes a lawsuit, the usual relief sought is an injunction against the continuation of the unlawful practice of law. The OSB can also recover attorney fees and other expenses of litigation. Most cases are resolved before this step.

The Unlawful Practice of Law Committee takes its responsibilities very seriously and investigates every complaint of the unlawful practice of law that it receives. Of course, not every complaint results in a finding of the unlawful practice of law. However, every complaint and every investigation assist the OSB to ensure that consumers are protected from unauthorized practitioners.

If you are concerned that someone you know may be practicing law without a license, please send us a letter describing your concerns, addressed to the:

OSB General Counsel Administrative Assistant
5200 SW Meadows Road
Lake Oswego, OR
97035

If you have any questions about what information you should provide, please call 503-620-0222, ext.334.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 22, 2007
From: Access to Justice Committee
Re: Amendment to Admissions Rule 16.05 Admission of House Counsel

Action Recommended

The Access to Justice Committee recommends that the Board of Governors approve a recommendation to the Supreme Court that the Admission Rules be amended to allow attorneys admitted under the House Counsel Rule to provide pro bono services through a pro bono program certified by the Oregon State Bar.

Background

The OSB Pro Bono Committee forwarded to the Access to Justice Committee an amendment to Admissions Rule 16.05 Admission of House Counsel (House Counsel Rule). The House Counsel Rule allows attorneys who have been admitted to practice law in another state to practice law as house counsel in this state. The attorney admitted under the House Counsel Rule is limited to practicing exclusively for the business entity and is not authorized to appear before a court or offer legal services to the public. The amendment to the House Counsel Rule would allow attorneys admitted as house counsel to provide a full range of legal services to pro bono clients through an OSB Certified Pro Bono Program. The PLF provides malpractice coverage for attorneys representing pro bono clients through an OSB Certified Pro Bono Program.

The OSB Pro Bono Committee was approached earlier in the year by Intel's National Pro Bono Committee Chair, Jeff Hyman to advocate amending Oregon's House Counsel Rule. Intel's corporate office in Hillsboro is involved with two pro bono projects in partnership with Perkins Coie. One project is the Lewis and Clark Small Business Legal Clinic and the other is Legal Aid Services of Oregon's (LASO) Domestic Violence Clinic. Both projects are OSB Certified Pro Bono Programs. In his role as Intel's National Pro Bono Committee Chair Mr. Hyman works to eliminate obstacles to Intel's corporate attorneys providing pro bono. Intel attorneys admitted to practice law under the House Counsel Rule cannot take part in Intel's pro bono projects. Amending the House Counsel Rule would eliminate that obstacle and allow them to participate. Currently, Intel has approximately 11 attorneys admitted under the House Counsel Rule that would be affected by the amendments. The situation is similar at other large corporate employers located in Oregon.

The Access to Justice Committee considered comment regarding the amendment from the bar's General Counsel, Sylvia Stevens, Executive Director of the PLF, Ira Zarov,

Discipline Counsel, Jeff Sapiro and the Board of Bar Examiners. Sylvia Stevens supported the proposed amendments to the House Counsel Rule to allow pro bono practice through an OSB Certified Pro Bono Program. She did not think a statutory change was required to extend PLF coverage to Oregon attorneys admitted under the House Counsel Rule and providing pro bono through an OSB Certified Pro Bono Program. This is because these attorneys are active members of the bar like their exam-admitted colleagues. Given Sylvia Steven's position, Ira Zarov supported PLF coverage for attorneys admitted under the House Counsel Rule and providing pro bono representation through an OSB Certified Pro Bono Program. The Board of Bar Examiners (BBX) considered the proposed amendments to the House Counsel Rule on October 12, 2007 and in a letter dated October 18, 2007, indicated support of the amendments.

Jeff Sapiro expressed two concerns regarding amending the House Counsel Rule. The first was the prohibition on court appearances by house counsel except for when representing pro bono clients. The second concern was that a house counsel could lose his or her job and have to withdraw from pro bono representation.

Attached hereto is a copy of the proposed change to Admissions Rule 16.05(7)(a) and the new language set forth in subsection (f). This language specifically allows attorneys admitted under the House Counsel rule to provide pro bono services, provided that they are working through a pro bono program certified by the Oregon State Bar and that the attorney has professional liability coverage.

Please see the following attached documents:

- Amended Admissions Rule 16.05 Admission of House Counsel
- Pro Bono Program Certification Rules (OSB Bylaw 13.2)
- Letter from the Board of Bar Examiners
- Letter of support from Governor Kulongoski
- Letter of support from Bruce Sewell, General Counsel for Intel Corporation
- E-mail of support from Andrea Bushnell, Executive Committee of the Corporate Counsel Section
- Email comments from Sylvia Stevens, Jeff Sapiro and Ira Zarov

ADMISSION OF HOUSE COUNSEL

16.05 Admission of House Counsel

An attorney employed by a business entity authorized to do business in Oregon, who has been admitted to practice law in another state, federal territory or commonwealth, or the District of Columbia, may be admitted to practice law as house counsel in this state, subject to the provisions, conditions and limitations in this rule, by the following procedure:

- (1) The attorney, if at least 18 years of age, may apply for admission to practice law as house counsel by:
 - (a) Filing an application as prescribed in Rule 4.15; and
 - (b) Presenting satisfactory proof of graduation from an ABA approved law school with a Juris Doctor degree or its equivalent;
 - (c) Presenting satisfactory proof of passage of a bar examination in a jurisdiction in which the applicant is admitted to the practice of law; and
 - (d) Providing verification by affidavit signed by both the applicant and the business entity that the applicant is employed as house counsel and has disclosed to the business entity the limitations on the attorney to practice law as house counsel as provided by this rule.
- (2) The applicant shall pay the application fees prescribed in Rule 4.10.
- (3) The applicant shall be investigated as prescribed in Rule 6.05 to 6.15.
- (4) The applicant shall take and pass the Professional Responsibility Examination prescribed in Rule 7.05.
- (5) If a majority of the non-recused members of the Board of Bar Examiners considers the applicant to be qualified as to the requisite moral character and fitness to practice law, the Board shall recommend the applicant to the Supreme Court for admission to practice law as house counsel in Oregon.
- (6) If the Supreme Court considers the applicant qualified for admission, it shall admit the applicant to practice law as house counsel in Oregon.

The applicant's date of admission as a house counsel member of the Oregon State Bar shall be the date the applicant files the oath of office with the State Court Administrator as provided in Rule 8.10(2).

- (7) In order to qualify for and retain admission to practice law as house counsel, an attorney admitted under this rule must satisfy the following conditions, requirements and limitations:
- (a) The attorney shall be limited to practice exclusively for the business entity identified in the affidavit required by section (1)(b) of this rule, and except as provided in subsection 7(f) below regarding pro bono legal services, is not authorized by this rule to appear before a court or tribunal, or offer legal services to the public; Participating as an attorney in any arbitration or mediation that is court-mandated or is conducted in connection with a pending adjudication shall be considered an appearance before a court or tribunal under this rule.
 - (b) All business cards, letterhead and directory listings, whether in print or electronic form, used in Oregon by the attorney shall clearly identify the attorney's employer and that the attorney is admitted to practice in Oregon only as house counsel or the equivalent;
 - (c) The attorney shall pay the Oregon State Bar all annual and other fees required of active members admitted to practice for two years or more;
 - (d) The attorney shall be subject to ORS Chapter 9, these rules, the Oregon Rules of Professional Conduct, the Oregon State Bar's Rules of Procedure, the Oregon Minimum Continuing Legal Education Rules and Regulations, and to all other laws and rules governing attorneys admitted to active practice of law in this state;
 - (e) The attorney shall promptly report to the Oregon State Bar: a change in employment; a change in membership status, good standing or authorization to practice law in a state, federal territory, commonwealth, or the District of Columbia where the attorney has been admitted to the practice of law; or the commencement of a formal disciplinary proceeding in any such jurisdiction.

- (f) The attorney may provide pro bono legal services through a pro bono program certified by the Oregon State Bar under Oregon State Bar Bylaw 13.2, provided that the attorney has professional liability coverage for such services through the pro bono program or otherwise, which coverage shall be substantially equivalent to the Oregon State Bar Professional Liability Fund coverage plan.
- (8) The attorney shall report immediately to the Oregon State Bar, and the admission granted under this section shall be automatically suspended, when:
- (a) Employment by the business entity is terminated; or
 - (b) The attorney fails to maintain active status or good standing as an attorney in at least one state other than Oregon, federal territory, commonwealth, or the District of Columbia; or
 - (c) The attorney is suspended or disbarred for discipline, or resigns while disciplinary complaints or charges are pending, in any jurisdiction.
- (9) An attorney suspended pursuant to section (8)(a) of this rule shall be reinstated to practice law as house counsel when able to demonstrate to the Oregon State Bar that, within six months from the termination of the attorney's previous employment, the attorney is again employed as house counsel by a qualifying business entity, and upon verification of such employment as provided in section (1)(b) of this rule.
- (10) An attorney suspended pursuant to section (8)(b) of this rule shall be reinstated to practice law as house counsel when able to demonstrate to the Oregon State Bar that, within six months from the attorney's failure to maintain active status or good standing in at least one other jurisdiction, the attorney has been reinstated to active status or good standing in such jurisdiction.
- (11) Except as provided in sections (9) and (10) of this rule, an attorney whose admission as house counsel in Oregon has been suspended pursuant to section (8) of this rule, and who again seeks admission to practice in this state as house counsel, must file a new application with the Board of Bar Examiners under this rule.

- (12) The admission granted under this section shall be terminated automatically when the attorney has been otherwise admitted to the practice of law in Oregon as an active member of the Oregon State Bar.
- (13) For the purposes of this Rule 16.05, the term "business entity" means a corporation, partnership, association or other legal entity, excluding governmental bodies, (together with its parents, subsidiaries, and affiliates) that is not itself engaged in the practice of law or the rendering of legal services, for a fee or otherwise.
- (14) For the purposes of this Rule 16.05, "tribunal" means all courts and all other adjudicatory bodies, including arbitrations and mediations described in Rule 16.05(7)(a), but does not include any body when engaged in the promulgation, amendment or repeal of administrative or other rules.

Oregon State Bar Bylaws

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 one of the following:

- (1) A program incorporated with nonprofit status that has as its primary purpose providing legal services to low-income clients where clients are not charged more than a nominal administrative fee as a condition of receiving services.
- (2) A program incorporated with nonprofit status that has as one of its purposes providing legal services to clients who are served by programs funded under the Older Americans Act.
- (3) A court-sponsored mediation program where the purpose of the program is to improve access to justice.
- (4) An incorporated, nonprofit or governmental organization that provides law-related educational programs to students.
- (5) A non-profit or bar-sponsored program whose purpose is to provide free legal services to an underserved population 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 not charge fees, except nominal administrative fees, to clients as a condition of receiving services. Donations from clients, whether

encouraged or not, are not considered fees. The pro bono program must have a policy that prohibits the handling of and provides for the referral of cases that are clearly fee-generating.

(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.

OREGON STATE BOARD OF BAR EXAMINERS

5200 SW Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889
(503) 620-0222 or inside Oregon 1-800-452-8260, Ext. 310, 311 and 419 • www.osbar.org

October 18, 2007

Judith Baker,
Legal Services Program Administrator
Oregon State Bar
5200 SW Meadows Rd
Lake Oswego, OR 97035

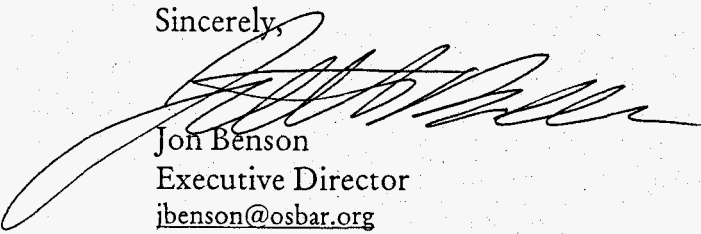
Re: Modification of House Counsel Rule

Dear Judith:

As I mentioned to you last Friday, the Board of Bar Examiners (BBX) considered the proposal from the Access to Justice Committee (ATJ) to expand the House Counsel Rule. Under ATJ's proposal, Rule 16.05 of the Rules for Admission (RFA) would be amended to allow lawyers to provide legal services through certified pro bono programs. I am pleased to report that the BBX is in favor of ATJ's proposal.

Please feel free to contact me with any questions.

Sincerely,



Jon Benson
Executive Director
jbenson@osbar.org
(503) 620-0222, ext. 419

cc: Jeffrey Sapiro, Disciplinary Counsel
Andrew Altschul, BBX Chair



THEODORE R. KULLONGOSKI
Governor

August 6, 2007

Access to Justice Committee of the
Board of Governors of the Oregon State Bar

Dear Members of the Committee:

I request that you do what you can to amend the House Counsel Rule so that more attorneys who live and work in Oregon can provide pro bono legal services.

I am proud of how the members of the Oregon State Bar have been national leaders in efforts to assist the thousands of residents and workers in Oregon who do not have the means to afford attorneys. From the Campaign for Equal Justice, to the hard-working public interest lawyers, to the many, many lawyers who donate their time to provide pro bono representation, Oregon lawyers have shown that they want to make justice available to all.

Allowing attorneys who work for businesses located in Oregon, who are admitted to the Oregon State Bar under the House Counsel Rule, to join in these efforts would be an important addition to these efforts. There are still far too many persons who have the need for a lawyer, but cannot afford to pay one.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore R. Kulongoski".

THEODORE R. KULLONGOSKI
Governor

TRK:cat:krq



September 12, 2007

TO: Access to Justice Committee of the
Board of Governors of the Oregon State Bar

Dear Members of the Committee:

As Senior Vice President and General Counsel of Intel Corporation, I write to respectfully urge you to do what you can to amend the House Counsel Rule so that more attorneys who live and work in Oregon can participate in pro bono legal services programs.

I am proud that Intel's Legal and Corporate Affairs department launched its own Pro Bono program in 2006 – a program that is now running at four major sites located in Oregon, California and Arizona. Through this program, Intel attorneys and staff members are providing valuable pro bono legal services within our local communities. The Intel program is based on partnerships with local law firms and nonprofit legal services agencies. In Oregon, Intel partners with the Perkins Coie law firm, the Lewis and Clark School of Law's small business legal clinic and Legal Aid of Multnomah County to provide legal services to low-income entrepreneurs and victims of domestic violence.

Allowing attorneys who are admitted to practice in Oregon under the House Counsel Rule to join in these efforts would be an important step forward. There are still far too many persons in Oregon who have the need for a lawyer, but cannot afford to pay one. The skill, expertise and passion of Oregon's House Counsel would be a valuable addition to the cause of increasing access to Justice in the State. Not only will a modification to the House Counsel Rule enable attorneys at my company to more readily do pro bono work, it will hopefully encourage attorneys at other Oregon companies to consider doing the same.

Thank you in advance for your support and consideration of this important proposal.

Very Truly Yours,

A handwritten signature in black ink that reads "Bruce Sewell". The signature is written in a cursive, flowing style.

Bruce Sewell
Sr. Vice President
General Counsel

Intel Corporation
2200 Mission College Blvd
Santa Clara, CA 95052
www.intel.com

Judith Baker

Subject: FW:

-----Original Message-----

From: Andrea Bushnell [mailto:ABUSHNELL@oregonrealtors.org]

Sent: Wednesday, September 12, 2007 12:01 PM

To: Rubin, Bruce A.; Judith Baker

Cc: bealisa.sydluk@ojd.state.or.us; Andrea Bushnell

Subject: RE:

Bruce,

The Executive Committee of the Corporate Counsel Section of the Oregon State Bar met this morning. During the meeting, the Executive Committee considered and took action on the request for support for the modification of the "House Counsel Rule."

The Executive Committee voted to support this effort which would allow attorneys who are admitted to practice in Oregon under the House Counsel Rule to engage in pro bono work in Oregon. The Executive Committee further requests that a serious attempt be made to legislatively amend ORS 9.080 to allow attorneys working under the "House Counsel Rule" to be covered by the Professional Liability Fund if they are performing services for one of the pro bono legal services organizations that are "certified."

Please let me know if I can be of further assistance or if you need additional assistance from any member of the Executive Committee of the Corporate Counsel Section.

Very truly yours,

Andrea Bushnell, CEO
Oregon Association of REALTORS
abushnell@oregonrealtors.org
800-252-9115

Judith Baker

Subject: FW: House Counsel Pro Bono Rule

-----Original Message-----

From: Sylvia Stevens

Sent: Friday, September 14, 2007 8:54 AM

To: Judith Baker

Cc: Jeff Sapiro; Jon Benson; Ira Zarov

Subject: House Counsel Pro Bono Rule

Judith, as you know, I fully support the proposed amendments to the House Counsel rule to allow pro bono practice. I am not sure I agree that a statutory change is required to extend PLF coverage to HCs. They are active members of the bar just like their exam-admitted colleagues.

Paragraph (f) is a bit confusing. Here's a suggested alternative:

(f) The attorney may *[engage in]* **provide** pro bono legal services *[to the same extent as an active member of the Oregon State Bar when those legal services are provided]* through *[an]* **a pro bono program certified by the** Oregon State Bar *[Certified Pro Bono Program as described in]* **under** Oregon State Bar Bylaw 13.2, *[that]* provide~~s~~ **that the attorney has** professional liability coverage for **such services through the pro bono program** *[voluntary attorneys who are otherwise exempt from coverage and provided that the attorney maintain malpractice coverage covering the applicant's law practice in Oregon]* **or otherwise**, which coverage shall be substantially equivalent to the Oregon State Bar Professional Liability Fund coverage plan.

Sylvia E. Stevens

General Counsel
Oregon State Bar
5200 SW Meadows Rd.
Lake Oswego, OR 97035
503.431.6359
sstevens@osbar.org

Judith Baker

From: Jeff Sapiro
Sent: Thursday, September 27, 2007 12:43 PM
To: Judith Baker
Cc: Sylvia Stevens; Jon Benson
Subject: Proposed amendment to the House Counsel rule

Judith: You asked for comment or reaction by 9/28/07 to the proposal to amend Rule for Admission 16.05 to permit house counsel lawyers to render pro bono legal services to the public in Oregon. My only comments are these:

1. Sylvia's edits make the amendment better, in my opinion;
2. It strikes me as unusual that a lawyer admitted under the house counsel rule may not appear in court for his or her employer, whose legal matters and business the lawyer presumably is quite familiar with, but may appear in court for a pro bono client on legal matters that are not within the lawyer's expertise. Maybe this is a reason to question the present prohibition on court appearances, rather than an argument against the pro bono exception. It just strikes me as odd. In looking back at the origins of the house counsel rule, the prohibition on court appearances seems to have come from a belief that the house counsel rule should be a narrow exception to the typical bar exam route to admission, and not a broad grant of authority for house counsel to engage in all the activities that other lawyers may. I suspect there also may have been a concern that house counsel may not be familiar with rules of court and other responsibilities associated with litigation. Perhaps this is just a training issue, but if I were a pro bono client with a need to litigate a matter, I'm not sure I'd be comfortable with someone who never has had the opportunity in their "real job" to learn their way around a courthouse.
3. The background material touched on the concern that a house counsel could lose his or her job and have to withdraw from pro bono litigation. The material suggests that this is no different than other situations where a client loses a lawyer, and this is perhaps true. It is worth noting however that in most situations when lawyers withdraw from a matter, there is some notice to the client and an opportunity for the client to get new counsel. In fact, the withdrawing lawyer is ethically required to keep protecting the client's interests until other arrangements can be made. RPC 1.16(d). With a house counsel lawyer, his or her membership in the bar - and the right to practice law of any kind - terminates automatically and immediately when the lawyer loses his or her employment. RFA 16.05(8)(a). If the lawyers' job termination is unexpected, the client will be without counsel instantly and without any notice. This could cause great disruption to a client's legal matter, particularly with a case in litigation. This is not a sufficient reason, by itself, to oppose the amendment. It does suggest, however, that lawyers working under the pro bono exception have some backup plan in place so that a client or a case can be moved quickly to another lawyer if necessary.
4. It would be important to get feedback from the BBX on this proposal before moving forward.

Jeffrey D. Sapiro
Disciplinary Counsel
Oregon State Bar
P.O. Box 1689
Lake Oswego, OR 97035
(503) 620-0222 Ext. 319
jsapiro@osbar.org

Judith Baker

From: Ira Zarov [IraZ@osbplf.org]
Sent: Thursday, September 20, 2007 7:20 AM
To: Judith Baker
Cc: Jeff Crawford
Subject: Corporate Counsel

Hi,

The corporate counsel rule is OK with us as long as in the OSB's opinion the affected corporate counsel are members of the Oregon State Bar. I saw Bruce Rubin yesterday and informed him.

Ira Zarov
Chief Executive Officer
Oregon State Bar Professional Liability Fund
5335 S.W. Meadows., Suite 300
Lake Oswego, Oregon 97035
Direct Phone: 503-684-7420
Phone: 503-639-6911; Oregon Toll Free: 1-800-452-1639
Fax: 503-684-7250
e-mail: iraz@osbplf.org

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: October 22, 2007
From: Ward Greene, chair, Budget & Finance Committee
Re: 2008 OSB Budget

Action Recommended

Approve the 2008 OSB Budget as presented in the report following this memo.

Background

The Budget & Finance Committee met on October 12 to review and approve the report of the 2008 budget. The report includes a Net Expense of \$210,881, assuming the bar takes occupancy of the new building in January 2008 and the rest of the building is 100% occupied by rent paying tenants. The board should understand the contents of section 5 of the report which states that although the bar will have a net expense for several years, the cash flow will remain positive as long as the third-party space in the building is rented.

The committee stated it will reconsider the amount of the grant to the Campaign for Equal Justice for 2008. The amount included in this report is \$45,000 which is the same amount granted in 2007. However, prior to 2006, the bar had granted \$50,000 since it began grants to the CEJ. The committee said it would consider granting the additional \$5,000 pending the strength of the bar's net revenue for 2007. The projection given at the meeting was that the net revenue will be \$200,000 to \$300,000, which could be as much as half of the budgeted net revenue.

After the committee met, the Leadership College Advisory Board asked for an increase in the Leadership College budget from the \$35,000 include in the 2008 budget to \$55,000. The additional funds are to expand the number of the participants in the college from 22 to 35, because of the success and popularity of the college. The committee has not acted on the request as of the date of this memo, and the increased amount is not included in this report.

The line item budget for the Affirmative Action Program was not finalized by the date of this report, but is expected by the board meeting date.

There is no change in the 2008 membership fee, except for the increase in the fee for those members who pay more than one month after the due date. The total fee is \$482.00 consisting of the general membership fee (\$447.00), the Affirmative Action Program assessment (\$30.00), and the Client Security Fund assessment (\$5.00). The payment due date for the 2008 fees is January 31, 2008.

The House of Delegates approved the fee resolution that raised the increase in the active membership fee from \$532 .00 to \$582.00 and the inactive member fee from \$135.00 to \$160.00 if not paid by the end of February 2008.

The department budgets are prepared with the allocation of indirect costs using the formulas for the occupancy of the existing bar center. Upon move to the new building, those cost allocations will adjust to the new space usage by department. There will be no net effect on the aggregate bottom line, although there will be changes department to department.

2008 BUDGET

*Report to the Board of Governors
November 2-3, 2007*

C ONTENTS

1. Purpose of this Report
2. Summary of 2007 Budget
3. General Overview of 2008 Budget
4. Comparison 2007 and 2008 Budgets
5. Tolerating a Net Expense
6. Brief Summary of Revenue and Expense Categories
7. Department Summaries (Exhibit C)
8. Fanno Creek Place
9. Program and Operational Changes in 2008
10. Operating and Capital Reserve
11. Board Designated Funds
12. Recommendations to the Board of Governors

Exhibit A Budget Summary by Program
 One-page summary of all program/departments' 2008 budgets.

Exhibit B Five-year Forecast
 Forecasts for operations, Fanno Creek Place, and reserve requirements
 through 2013.

Exhibit C Department Summaries
 Brief description of each program/departments' 2008 budget.

1 PURPOSE OF THIS REPORT

This is the final stage in the development of the 2008 budget for the Oregon State Bar. The process began with the Executive Summary budget in July, the review on the September 28 BOG agenda, and the latest review by the Budget & Finance Committee on October 12.

The final budget includes the line item budgets prepared by bar staff with budget responsibilities for their respective programs and departments. Those detailed line item budgets are a collection of thick three-ring binders and are not included with this report, but are available on request and will be present at the board meeting.

There are a few matters (finalization of building terms, Affirmative Action Program) that will cause some adjustments to the final 2008 budget, and they are noted in this report.

2 SUMMARY OF 2007 BUDGET

The 2007 budget has a Net Revenue of \$412,035. It is projected that the 2007 actual net revenue will be between \$200,000 and \$300,000.

Here is a list of new or revised financial issues included in the 2007 budget.

1. Economic survey (\$15,000) – approved funding for an all-bar survey.
2. Future trends conference (\$25,000) – approved funding for conference (later rescinded by BOG. See no. 4)
3. Approved cost increases for board meetings - \$24,500)
4. Initially approved the amount of the grants to the Campaign for Equal Justice (\$30,000) and the Classroom Law Project (\$10,000) at the same level as 2006. Later reallocated the funding for the futures conference to an additional \$15,000 for the CEJ and \$10,000 for the CLP once it was apparent the conference would not be held in 2007.
5. Funding for overlap of new and retiring Admissions Administrator - (\$28,400).
6. An operational change recommended by the Public Service Advisory Committee was to increase the base panel rate for lawyer referral registration by \$25.00.

Items 2 through 5 were approved in February 2007 after the bar's CFO reported that the bar's cost of PERS would be \$104,400 less than the amount included in the budget approved in November 2006.

3 GENERAL OVERVIEW OF 2008 BUDGET

The 2008 budget is still a “work in progress” for various reasons – and probably will remain so until the new bar center sale is consummated. Although the budgets

prepared by staff are complete, some evaluation still is needed due to the close proximity of their completion and the committee meeting date. Additionally, the information on the cost of the new building still is preliminary and will be updated as construction is completed and the terms of the agreement with Opus are finalized. Finally, the move to the new building changes numerous indirect costs and processes which impact the operating costs of the new bar center.

The reporting for the 2008 budget is more complex with the purchase of the new bar center. The budget is prepared assuming all bar program and departments operate as one entity (“Operations”) and the facility (“Fanno Creek Place”) as another entity. The Operations budget is charged for the operating costs of Fanno Creek Place as part of each department’s overhead (ICA – indirect cost allocation).

4 COMPARISON 2007 AND 2008 BUDGETS

Comparison of 2008 and 2007 Budgets				
Operations	2008	2007	\$ Change	% Change
Revenue				
Member Fees	\$ 6,396,900	\$6,225,500	\$ 171,400	2.8%
Program Fees	4,312,627	4,177,770	134,857	3.2%
Other Income	345,933	310,580	35,353	11.4%
Total Revenue	11,055,460	10,713,850	341,610	3.2%
Expenses				
Salaries & Benefits	6,796,666	6,410,564	386,102	6.0%
Direct Program/Gen & Admin	3,928,887	3,841,251	87,636	2.3%
Contingency	50,000	50,000	-	-
Total Expenses	10,775,553	10,301,815	\$473,738	4.6%
Net Revenue/(Expense) – Operations	\$ 279,907	\$ 412,035		
Fanno Creek Place				
Revenue	\$ 780,317			
Expenses	1,271,105			
Net Revenue/(Expense) – Fanno Creek Place	(490,788)			
Net Revenue/(Expense) – OSB	\$ (210,881)			

5 TOLERATING A NET EXPENSE

You will note that the total net of Operations and Fanno Creek Place is a \$210,881 Net Expense. Included in that Net Expense is \$577,767 of depreciation expense and 677,339 of interest expense. These two expenses are 10.6% of the 2008 overall budget. In 2007, those two expenses were only 3% of the budget.

Reporting depreciation expense is a necessary accounting principle, but it is a non-cash expenditure. The expense is an amortization over the estimated useful life of the building and the furniture, fixtures, and equipment that have already been purchased with the loan and building sale proceeds. From the schedule below, the 2008 budget actually generates a positive \$226,984.

Net Expense	\$ (210,881)
Deduct expense for non-cash depreciation	577,767
Add loan principal payments	(139,902)
Net cash generated	\$226,984

This positive cash flow continues throughout the five-year forecasts as long as conditions continue as forecast.

The concern identified in the forecast is the net expenses generated from operations in some years. Although a \$50.00 fee increase is projected for 2011, by 2013 a net expense exists. Future committees may need to evaluate the cost and level of services delivered to the bar's membership.

Even though depreciation and interest expenses are considerably more than the amounts in the 2007 budget, and cause the total bar bottom line to be a net expense for several years, the more critical financial concern is maintaining a positive cash flow for 2008 and subsequent years. This means the bar has the cash resources to fund bar operations and facilities and remain at or above the bar's reserve requirements. The forecasts indicate the bar will maintain enough cash resources for the next five years, although they dwindle over time.

To fully understand the impact of the two-entity budget and the cash flow on the 2008 and subsequent budgets, the CFO will prepare a walk-through of the forecasts (Exhibit B) at the board meeting.

6 BRIEF SUMMARY OF REVENUE AND EXPENSE CATEGORIES

Revenue

Member Fees

- ◆ Member Fees revenue is up 2.8%. This rate is greater than the usual 2.25% to 2.5% annual increase because of the higher than historical-average number of candidates that passed the bar exam the past three years.

Program Fees

- ◆ The 3.2% increase is a modest increase from 2007. *Admissions*, the *Bulletin*, *CLE Seminars*, and *MCLE* budget slight income increases and *CLE Publications*, *Production Services (Membership Directory)*, and *Referral & Information Services* budget lower revenue in 2008. See Exhibit B for further details.

Other Income

- ◆ Investment income consists of earnings on the LGIP, the fixed income portfolio (corporate notes and U.S. treasury and agency notes), and the equity mutual funds (Vanguard 500 Index and Lazard International). In 2007, interest income will exceed the budget due an average interest rate of 5.22% on LGIP funds for the first nine months in 2007 and high dividend earnings on the equity portfolio.

For 2008, the LGIP rate is projected to remain between 5.0 and 5.2% and dividends to grow consistently. The LGIP principal also includes the bar retaining approximately \$500,000 from the loan proceeds as a contingency for the new building.

At September 30, the mutual fund portfolio was \$3.163 million (on cash purchases of \$2.340 million). That was the highest end-of-month balance since the bar began the portfolio in late 1999. The net asset value has increased \$295,000 during 2007. The five-year forecasts include NAV gains of \$100,000 to \$150,000 annually.

Admittedly, the 2008 budget for investment income is prepared assuming that interest rates and the stock market remain at the same levels and activity as 2007.

Expenses

Salaries, Taxes & Benefits

- ◆ The executive directors of the bar and the PLF agreed on a salary merit pool of 4%. This is less than the 5% pool in the 2007 budget. The merit pool is a combination of the Consumer Price Index (CPI) and merit performance.
- ◆ There is a net increase of 1.0 FTE. This includes new half-time positions in CLE Seminars and Lawyer Referral.

- ◆ Total taxes and benefits in 2008 is 30.49% of payroll. This rate is 30.42% in 2007. These rates are down from the rates used in 2006 and 2005 when the PERS rate was higher.

Direct Programs and Administrative Expenses

- ◆ Considering that the costs for HOD mileage reimbursement and the futures conference are included in Direct Program expense, the overall direct program and administrative costs increase less than 1% from 2007.

Indirect Costs

- ◆ Indirect costs are the personnel of the accounting and finance, information technology (IT), design division, distribution center, receptionists, human resources, and facilities, and the related administrative costs, and facilities costs. These costs are allocated to each department on an “as used” basis. The total of these expenses is \$127,856, or 6.5% more than 2007. Of that increase over half is attributable to some duplication of expenses in the transition to the new building.

7 DEPARTMENT SUMMARIES

Exhibit C is a narrative of each department’s responsibilities and any changes from 2007, and a summarized budget. The summary compares the revenue, expense, and net revenue/ (expense) of the 2007 and 2008 budgets, and any operational changes within that department. The “Variance” shows the dollar and percent change year over year. Most departments report little change from 2007 operations and activities.

Special Note: The Affirmative Action Program budget reflects a \$10,928 Net Expense in this draft. However, with the current turmoil in the program, the budget still is being developed, and will end 2008 without a net expense.

8 FANNO CREEK PLACE

The 2008 budget for Fanno Creek Place is prepared with these assumptions:

- The bar purchases the building from Opus by January 2008.
- The bar moves into the new bar center in January, so one month of expenditures is included for the old bar center and eleven months for the new bar center.
- PLF moves in February and ten months rent is collected.
- The bar receives twelve months rent from Opus under the master lease.
- The bar establishes a “landlord contingency” of approximately \$500,000 from the loan proceeds and records interest income from the funds deposited in the LGIP.

- f. The operating costs for the space used by the bar are charged back to the bar's operations budget in each respective program/department as part of ICA.
- g. The annual debt service (principal and interest) for the first year is \$891,535 (\$738,915 interest and \$152,620 principal) assuming a loan of approximately \$12.5 million. (The budget includes 11/12's of the annual amounts.)
- h. The eleven-month interest of \$677,339 and the estimated \$366,667 annual depreciation are components of the Fanno Creek Place expense budget.

The most critical condition for the 2008 and future Fanno Creek Place budgets is that the bar receives rental income from Opus if the master lease remains,
or
from third-parties who lease directly from the bar.

9 PROGRAM AND OPERATIONAL CHANGES IN 2008

A. New or Enhanced Programs/Events in the 2008 Budget.

The dollar amount listed is the amount included in the 2008 budget and the department managing the activity.

1. *Futures Conference* - \$25,000 (*Communications*)
2. *Mileage for House of Delegate Members* - \$27,000 (*Governance*)

B. Special Projects

A separate "department" lists all events, grants, or special projects approved by the House of Delegates or Board of Governors. The chart below lists the amount included in the 2007 and 2008 budgets.

Program/Event	Description	2007 Budget	2008 Budget
Futures Conference	Included in Communications budget (\$25,000)	\$	\$
Campaign for Equal Justice	Grant was reduced to \$30,000 in 2006. Original budget in 2007 was \$30,000, but subsequently increased to \$45,000.	\$ 45,000	\$ 45,000

Casemaker library	Annual subscription to the legal research library; new contract in September 2008	\$135,888	\$136,800
Classroom Law Project	Grant was reduced by \$10,000 in 2006. Original budget in 2007 was \$10,000, but subsequently increased to \$20,000	\$ 20,000	\$ 20,000
Council on Court Procedures	Funds designated for operational expenses	\$ 4,000	\$ 4,000
Economic Survey	Survey completed in 2007; report expected in December.	\$ 15,000	\$ 0
Totals		\$219,888	\$205,800

10 OPERATING AND CAPITAL RESERVES

The *Operating Reserve* policy is fixed at \$500,000 since the approval of the Executive Summary Budget in 1999.

The *Capital Reserve* is based on the expected equipment and capital improvement needs of the bar in the future. This reserve in 2008 includes \$260,000 for furniture, equipment, and computer hardware and software and \$350,000 for the new building.

The only capital reserve items to be expended in 2008 are the regular replacement of about one-third of outdated PC's and laptops.

Using the schedule prepared for the 2008 budget, the bar remains above its reserve requirements for the next five years.

11 BOARD DESIGNATED FUNDS

Over the years the Board of Governors has established various contingency funds for specific purposes. Below are the name, purpose, balance at January 1, 2007, and the year established for those contingencies.

Name/Purpose	Year Established	Balance 1/1/2007
<i>Mortgage Prepayment Fund</i>	1995	\$554,871
Intended to pay down the bar center mortgage beginning in 2001 when the "no prepayment" period expired. Due to the high prepayment premium if the principal was prepaid, the funds never were used to pay down the mortgage.		
This fund could be reallocated to establish the "Landlord Contingency" for the new bar center.		

<i>PERS Contingency Fund</i>	2003	\$428,538
<p>The employer's cost of PERS was increasing and becoming more volatile until legislation in 2003 stabilized the rate. Even with the rate stabilization, the employer's cost for PERS is a significant cost, the committee resolved to apply the contingency to the annual costs of PERS. Beginning with the 2006 budget, \$105,000 is allocated each year for five years to offset the cost for the bar. The contingency will be depleted in 2010.</p>		
<i>Legal Fees Contingency</i>	2006	\$ 48,710
<p>This is the difference between the \$100,000 budget line item for contract legal fees and the actual amount expended each year. The contingency was created to offset the large fluctuations that occur when the bar is involved in a complex or prolonged legal action requiring the services of outside legal counsel.</p>		
<i>LRAP Fund Balance</i>	2006	\$ 57,194
<p>Any funds not expended at the end of the fiscal years are rolled over into a fund balance. The balance at the beginning of 2007 is the revenue collected from the \$5.00 fee allocation less the program administrative costs.</p>		

12 RECOMMENDATIONS OF THE BUDGET & FINANCE COMMITTEE TO THE BOARD OF GOVERNORS

The committee approved the 2008 budget report.

(End of report)

OREGON STATE BAR

Budget Summary by Program

2008

<i>Department / Program</i>	<i>Revenues</i>	<i>Sal & Benefits</i>	<i>Direct Program</i>	<i>Gen & Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$621,500	\$285,440	\$200,560	\$64,740	\$550,740	\$105,483	(\$34,723)
Bulletin	\$531,620	\$161,000	\$304,724	\$4,716	\$470,440	\$59,321	\$1,859
CLE Publications	\$1,091,047	\$542,500	\$221,758	\$35,711	\$799,969	\$303,081	(\$12,003)
CLE Seminars	\$1,585,150	\$493,400	\$726,740	\$35,027	\$1,255,167	\$412,950	(\$82,967)
Client Assistance Office	\$0	\$486,500	\$0	\$21,588	\$508,088	\$72,689	(\$580,777)
Communications	\$23,150	\$416,700	\$104,050	\$12,131	\$532,881	\$117,389	(\$627,120)
Disciplinary Counsel	\$81,000	\$1,457,808	\$99,000	\$73,766	\$1,630,574	\$375,561	(\$1,925,135)
General Counsel	\$2,160	\$311,200	\$120,750	\$18,031	\$449,981	\$42,611	(\$490,432)
Governance (BOG)	\$0	\$325,300	\$210,300	\$76,865	\$612,465	\$89,608	(\$702,073)
Loan Repayment Assistance Pro	\$72,800	\$9,000	\$55,000	\$0	\$64,000	\$0	\$8,800
MCLE	\$230,800	\$132,830	\$900	\$13,046	\$146,776	\$46,162	\$37,862
Member Services	\$0	\$277,700	\$67,150	\$42,828	\$387,678	\$119,478	(\$507,156)
New Lawyers Division	\$4,000	\$50,600	\$81,350	\$10,780	\$142,730	\$59,321	(\$198,051)
Production Services	\$188,700	\$71,100	\$138,700	\$4,550	\$214,350	\$29,869	(\$55,519)
Public Affairs	\$0	\$387,200	\$6,500	\$31,560	\$425,260	\$68,094	(\$493,354)
Referral & Information Services	\$123,000	\$280,600	\$26,825	\$20,300	\$327,725	\$97,128	(\$301,853)
Special Projects	\$0	\$0	\$205,800	\$0	\$205,800	\$0	(\$205,800)
TOTAL PROGRAM	\$4,554,927	\$5,688,878	\$2,570,107	\$465,639	\$8,724,624	\$1,998,745	(\$6,168,442)
ALLOCATIONS:							
Finance & Operations	\$6,498,350	\$1,028,288	\$1,322,645	\$86,750	\$2,437,683	(\$1,790,083)	\$5,850,750
Less: Dept Charges/Offsets			(\$647,600)		(\$647,600)		\$647,600
Oregon State Bar Center	\$2,183	\$79,500	\$63,836	\$0	\$143,336	(\$141,153)	\$0
Contingency			\$50,000		\$50,000		(\$50,000)
TOTAL OPERATIONS	\$11,055,460	\$6,796,666	\$3,358,988	\$552,389	\$10,708,042	\$67,510	\$279,908
Fanno Creek Place	\$780,317	\$0	\$1,428,640	\$0	\$1,428,640	(\$157,535)	(\$490,788)
TOTAL GENERAL FUND	\$11,835,777	\$6,796,666	\$4,787,628	\$552,389	\$12,136,682	(\$90,025)	(\$210,880)
DESIGNATED FUNDS:							
Affirmative Action Program	\$471,725	\$214,400	\$194,125	\$16,896	\$425,421	\$57,232	(\$10,928)
Client Security Fund	\$106,800	\$37,800	\$152,650	\$2,108	\$192,558	\$9,399	(\$95,157)
Legal Services	\$4,653,000	\$76,700	\$4,548,900	\$5,128	\$4,630,728	\$23,394	(\$1,122)
TOTAL ALL FUNDS	\$17,067,302	\$7,125,566	\$9,683,303	\$576,521	\$17,385,389	\$0	(\$318,087)

Exhibit A

2008 Budget

Five Year Forecast

November-07

Proposed Fee increase for Year →	\$0	\$0	\$0	\$50	\$0	\$0	
Operations	BUDGET 2007	BUDGET 2008	FORECAST				
			2009	2010	2011	2012	2013
REVENUE							
MEMBER FEES							
General Fund	\$6,225,500	\$6,396,900	\$6,541,000	\$6,705,000	\$7,521,000	\$7,709,000	\$7,882,000
PROGRAM FEES:							
CLE - Seminars	1,521,345	1,585,150	1,616,853	1,641,106	1,673,928	1,699,037	1,733,018
CLE - Publications	1,068,870	1,091,047	1,101,957	1,123,997	1,146,477	1,169,406	1,192,794
All Other Programs	1,587,555	1,636,430	1,660,976	1,694,196	1,728,080	1,771,282	1,806,708
Total Program Fees	4,177,770	4,312,627	4,379,787	4,459,298	4,548,484	4,639,725	4,732,519
OTHER INCOME							
Investment Income	260,700	318,800	284,442	260,121	296,896	319,569	273,660
Rent and Other	49,880	27,133	27,947	29,065	30,227	31,437	32,694
TOTAL REVENUE	10,713,850	11,055,460	11,233,175	11,453,484	12,396,608	12,699,731	12,920,873
EXPENDITURES							
SALARIES & BENEFITS							
Salaries - Regular	4,896,900	5,134,400	5,391,120	5,656,621	5,939,452	6,177,030	6,485,881
Benefits - Regular	1,493,600	1,565,700	1,641,596	1,728,098	1,826,381	1,911,791	2,013,866
Salaries - Temp	18,820	89,630	50,000	30,000	50,000	30,000	50,000
Taxes - Temp	1,244	6,936	4,500	2,700	4,500	2,700	4,500
Total Salaries & Benefits	6,410,564	6,796,666	7,087,216	7,417,418	7,820,333	8,121,520	8,554,247
	59.8%	61.5%	63.1%	64.8%	63.1%	64.0%	66.2%
DIRECT PROGRAM:							
CLE - Programs	726,660	726,740	748,542	770,998	794,128	817,952	842,491
CLE - Publications	230,680	221,758	228,411	235,263	242,321	249,591	257,078
All Other Programs	2,631,570	2,518,025	2,593,566	2,658,405	2,738,157	2,806,611	2,890,809
Total Direct Program	3,588,910	3,466,523	3,570,519	3,664,666	3,774,606	3,874,154	3,990,378
GENERAL & ADMIN	252,341	462,364	476,235	492,903	507,690	525,459	546,478
CONTINGENCY	50,000	50,000	50,000	50,000	50,000	50,000	50,000
TOTAL EXPENSES	10,301,815	10,775,553	11,183,970	11,624,988	12,152,630	12,571,133	13,141,103
NET REVENUE/(EXPENSE) - OPERATIONS	\$412,035	\$279,907	\$49,206	(\$171,503)	\$243,978	\$128,597	(\$220,230)

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2008 Budget

Fanno Creek Place Forecast

Fanno Creek Place	BUDGET 2007	BUDGET 2008	FORECAST				
			2009	2010	2011	2012	2013
REVENUE							
RENTAL INCOME							
PLF		\$382,500	\$459,000	\$465,885	\$472,873	\$479,966	\$487,166
Opus Master Lease		352,000	357,280	362,639	368,079	373,600	0
Third Parties		0	0	0	0	0	189,602
OLF		22,550	25,300	26,100	26,900	27,700	28,500
Meeting Rooms		1,367	2,000	2,000	2,000	2,000	2,000
REIMBURSEMENTS							
TI Payback		0	0	0	0	0	0
Operating Expense Pass-through		0	4,491	4,625	4,764	4,907	5,054
INTEREST		21,900	24,445	24,572	24,579	24,579	13,350
TOTAL REVENUE		780,317	872,516	885,822	899,195	912,752	725,672
EXPENDITURES							
OPERATING EXPENSE							
OSB		146,117	159,400	164,182	169,107	174,181	179,406
Tenants		149,692	163,300	168,199	173,245	178,442	183,796
Opus Management Fee		49,500	54,000	54,810	55,632	56,467	
Warehouse		22,000	24,000	24,000	24,000	24,000	24,000
Depreciation		366,667	400,000	400,000	400,000	400,000	400,000
DEBT SERVICE							
Interest		677,339	729,518	719,542	708,952	697,710	685,776
Principal		0	0	0	0	0	0
OPERATING EXPENSE - OSBC (Jan 2008)		17,325	0	0	0	0	0
ICA to Operations		(157,535)	(159,898)	(163,096)	(162,296)	(166,358)	(164,731)
TOTAL EXPENSES		1,271,105	1,370,320	1,367,637	1,368,640	1,364,442	1,308,247
NET REVENUE/(EXPENSE) - FC Place		(\$490,788)	(\$497,804)	(\$481,815)	(\$469,445)	(\$451,689)	(\$582,575)
ACCRUAL TO CASH ADJUSTMENT							
SOURCES OF FUNDS							
Depreciation Expense		366,667	400,000	400,000	400,000	400,000	400,000
Landlord Contingency							400,000
USES OF FUNDS							
Principal Pmts - Mortgage		(139,902)	(162,017)	(171,993)	(182,583)	(193,825)	(205,759)
NET CASH FLOW - FC Place		(\$264,023)	(\$259,821)	(\$253,808)	(\$252,028)	(\$245,514)	\$11,666

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2008 Budget

Funds Available/Reserve Requirement Forecast

	BUDGET		FORECAST				
	2007	2008	2009	2010	2011	2012	2013
FUNDS AVAILABLE							
Funds Available - Beginning of Year	\$2,028,000	\$2,525,881	\$2,844,415	\$2,890,233	\$2,699,052	\$2,905,177	\$3,040,667
SOURCES OF FUNDS							
Net Revenue/(Expense) from operations	412,035	279,907	49,206	(171,503)	243,978	128,597	(220,230)
Depreciation Expense	301,300	211,100	217,433	226,130	235,176	243,407	250,709
Provision for Bad Debts	18,500	19,500	19,000	19,000	19,000	19,000	19,000
Change in Investment Portfolio MV	150,000	150,000	100,000	50,000	100,000	150,000	150,000
Allocation of PERS Reserve	105,000	105,000	105,000	114,000			
Projected lower Net Revenue	(200,000)						
USES OF FUNDS							
Use of LRAP Fund	(57,000)						
Capital Expenditures	(39,100)	(98,450)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Capital Reserve Expenditures	(99,250)	(34,500)	(85,000)	(75,000)	(40,000)	(60,000)	(60,000)
Capital Expenditures - New Building		(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Capital Reserve Expenditures - New Building							(400,000)
Principal Pmts - Mortgage	(75,604)						
Mortgage Prepayment Fund Interest	(18,000)						
Net Cash Flow - Fanno Creek Place		(264,023)	(259,821)	(253,808)	(252,028)	(245,514)	11,666
CHANGE IN FUNDS AVAILABLE	497,881	318,534	45,818	(191,181)	206,125	135,490	(348,855)
Funds Available - End of Year	\$2,525,881	\$2,844,415	\$2,890,233	\$2,699,052	\$2,905,177	\$3,040,667	\$2,691,812
RESERVE REQUIREMENT							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	1,093,000	610,000	700,000	750,000	800,000	850,000	900,000
Total - Reserve Requirement	\$1,593,000	\$1,110,000	\$1,200,000	\$1,250,000	\$1,300,000	\$1,350,000	\$1,400,000
RESERVE VARIANCE							
Over/(Under) Reserve Requirement	\$932,881	\$1,734,415	\$1,690,233	\$1,449,052	\$1,605,177	\$1,690,667	\$1,291,812
Reconciliation							
Cash to Accrual		BUDGET	FORECAST				
		2008	2009	2010	2011	2012	2013
NET REVENUE/(EXPENSE) - Operations		279,907	49,206	(171,503)	243,978	128,597	(220,230)
NET REVENUE/(EXPENSE) - FC Place		(490,788)	(497,804)	(481,815)	(469,445)	(451,689)	(582,575)
NET REVENUE/(EXPENSE) - OSB		(\$210,881)	(\$448,598)	(\$653,319)	(\$225,467)	(\$323,092)	(\$802,805)

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Department Summaries

2008 Budget

Program/Dept	BUDGET	Revenue	Expense	Net	FTE	
Admissions	2008	\$621,500	\$656,223	(\$34,723)	4.2	
	2007	600,825	651,659	(50,834)	4.2	
	Variance		20,675	4,564	\$16,111	0
			3.4%	0.7%		

Admissions revenue has normalized after a spike in 2006 when 892 applicants sat for the exam. The 2008 budget is based on 825 taking the exam. Although a net expense is budgeted, Admissions has had a Net Revenue since 2000.

Bulletin	2008	\$531,620	\$529,761	\$1,859	2.1	
	2007	500,680	489,979	10,701	2.7	
	Variance		30,940	39,782	(\$8,842)	-0.7
			6.2%	8.1%		

Advertising revenue is expected to increase 7.5% over 2007, but that will not offset the increase in the cost of paper and postage. The *Bulletin* presentation and design changed in 2007 to include more color, which increased the cost of publishing the 10-issues a year magazine.

Client Assistance Office (CAO)	2008	\$0	\$580,777	(\$580,777)	6.0	
	2007	0	552,058	(552,058)	6.0	
	Variance		0	28,719	(\$28,719)	0
			n/a	5.2%		

The CAO budget is very similar to the 2007 budget as the only notable change in any line item is in personnel costs (salary and benefit increases). The office is administered by 6 FTE (three professional staff and three administrative assistants). Eighty-four percent of this budget is personnel expense.

Communications	2008	\$23,150	\$650,270	(\$627,120)	5.2	
	2007	24,500	619,950	(595,450)	5.2	
	Variance		(1,350)	30,320	(\$31,670)	0
			-5.5%	4.9%		

Communications activities and personnel support public, member, and media outreach including the 50-year member and Awards dinners, Tel-Law (print, web, and telephone information), bar/press handbook, and Legal Links. The department budgeted additional revenue for its two annual events in 2008, and a larger appropriation for advertising. The costs of the futures conference are included.

Department Summaries

2008 Budget

Program/Dept	BUDGET	Revenue	Expense	Net	FTE
CLE Publications	2008	\$1,091,047	\$1,103,050	(\$12,003)	7.6
	2007	1,108,870	1,075,276	33,594	7.6
	Variance	(17,823)	27,774	(\$45,597)	0
		-1.6%	2.6%		

BarBooks renewals begin March 2008. Eleven new books, revisions, or supplements are planned for 2008. If *BarBooks* subscriptions and book sales attain their revenue projections, Publications will break-even.

CLE Seminars	2008	\$1,585,150	\$1,668,117	(\$82,967)	7.1
	2007	1,533,645	1,552,592	(18,947)	6.6
	Variance	51,505	115,525	(\$64,020)	0.5
		3.4%	7.4%		

Seminars projects a 3.4% increase in revenue from 39 live program registrations and the related revenue sources. Season ticket revenue increases by \$25,000 to \$350,000. Bar members are drawing their education from various media available from the bar as "live" registration declines \$10,000 but revenue from audio CDs and tapes, video sales and rentals, DVD rental, and online viewing through the bar's agreement with LegalSpan increase. A new .5 FTE is added intending to generate more revenue through web advertising.

Disciplinary Counsel	2008	\$81,000	\$2,006,135	(\$1,925,135)	15.2
	2007	81,000	1,870,534	(1,789,534)	15.6
	Variance	0	135,601	(\$135,601)	-0.4
		0.0%	7.2%		

The Disciplinary Counsel budget is similar to the description in CAO. Ninety percent of this department's expense is personnel. The next largest expense is for Court Reporters for which the manager has contracted with a firm to control these generally fluctuating costs. Direct program expenses in 2008 are the same as those budgeted in 2007.

General Counsel	2008	\$2,160	\$492,592	(\$490,432)	2.7
	2007	2,050	479,574	(477,524)	2.7
	Variance	110	13,018	(\$12,908)	0.0
		5.4%	2.7%		

The contract legal services amount is retained at \$100,000, the amount to which it was increased in the 2006 budget. The expenses for UPL investigations and the Disciplinary Board are administered from this department.

Department Summaries

2008 Budget

Program/Dept	BUDGET	Revenue	Expense	Net	FTE	
Governance	2008	\$0	\$702,073	(\$702,073)	2.5	
	2007	0	650,515	(650,515)	2.5	
	Variance		0	51,558	(\$51,558)	0
			n/a	7.9%		

Governance includes the expenses for the meetings and special events of the Board of Governors, its officers' and members' travel and position-related expenses, the House of Delegates, local bar events, OSB delegates to the ABA conventions, and the administrative expenses for the executive director. The mileage reimbursement for HOD members is projected at \$27,000 which assumes 3/4s of all delegates attend the meeting in Bend and submit for reimbursement.

Loan Repayment Assistance Program (LRAP)	2008	\$72,800	\$64,000	\$8,800	0.1	
	2007	70,800	70,500	300	0.2	
	Variance		2,000	(6,500)	\$8,500	-0.1
			2.8%	-9.2%		

Revenue is \$5.00 of each active members' fee (\$68,100) and interest earned on the fund balance (\$3,200). The 2008 budget assumes that the proceeds of \$55,000 after administrative expenses of \$9,000 will be distributed to selected grantees. 2008 Administrative costs are reduced from 2007 budget which included expenses for initial setup of program.

MCLE	2008	\$230,800	\$192,938	\$37,862	1.8	
	2007	205,400	158,535	46,865	1.5	
	Variance		25,400	34,403	(\$9,003)	0.3
			12.4%	21.7%		

MCLE has had a Net Revenue since 2001 when sponsorship fees and members' late fees were raised. In 2005, its highest Net Revenue of \$68,528 was attained. The revenue numbers have plateaued since then, but a healthy Net Revenue still is budgeted for 2008.

Member Services	2008	\$0	\$507,156	(\$507,156)	3.9	
	2007	0	446,208	(446,208)	3.9	
	Variance		0	60,948	(\$60,948)	0
			n/a	13.7%		

Member Services includes support and the cost of numerous events and services as the Leadership Conference, numerous bar and local bar committees and events (e.g. Law Day), section administration including list serve and staff liaison expenses, new admittee packets, and the Leadership College (budget for 2008 is \$34,900).

Department Summaries

2008 Budget

Program/Dept	BUDGET	Revenue	Expense	Net	FTE	
New Lawyers Division	2008	\$4,000	\$202,051	(\$198,051)	0.8	
	2007	4,000	202,415	(198,415)	0.8	
	Variance		0	(364)	\$364	0
			0.0%	-0.2%		

This budget is similar to the 2007 budget except for a reduction in staff costs from the 2007 budget due to change in staff time reallocation.

Production Services	2008	\$188,700	\$244,219	(\$55,519)	1.4	
	2007	205,200	223,448	(18,248)	1.0	
	Variance		(16,500)	20,771	(\$37,271)	0
			-8.0%	9.3%		

This is the revenue and costs of the *Membership Directory* and print and web services to sections and local bar associations. Sales of the directory continue to taper off, as members actively use the online directory on the web site. Advertising revenue is expected to increase 5% over 2007.

Public Affairs	2008	\$0	\$493,354	(\$493,354)	4.0	
	2007	0	487,942	(487,942)	4.0	
	Variance		0	5,412	(\$5,412)	0
			n/a	1.1%		

2008 is not a legislative year, so every-other-year expenses as office and parking space rent in Salem, travel for staff to and from Salem, and the legal research to track legislation are not in the 2008 budget.

Referral & Info Services	2008	\$123,000	\$424,853	(\$301,853)	4.8	
	2007	135,000	374,762	(239,762)	4.3	
	Variance		(12,000)	50,091	(\$62,091)	0.5
			-8.9%	13.4%		

RIS expenses are budgeted to increase by \$50,000 in part due to the addition of a new .5 FTE position. This position is needed as caller-demand exceeds the current staff capacity causing phone charges while callers are on hold, overtime, staff turn-over, and other demands on the administrator's time. Registration fees continue to fall below budget, but the administrator has plans to develop a marketing campaign.

Department Summaries

2008 Budget

Program/Dept	BUDGET	Revenue	Expense	Net	FTE	
Special Projects	2008	\$0	\$205,800	(\$205,800)	n/a	
	2007	0	219,888	(219,888)	n/a	
	Variance		0	(14,088)	\$14,088	
			n/a	-6.4%		

Special Projects is the collection of those projects or grants authorized by the HOD or Board of Governors. The 2008 budget includes the Council on Court Procedures, Casemaker, Classroom Law Project and Campaign for Equal Justice.

Finance & Operations	2008	\$6,498,350	\$1,766,856	\$4,731,494	14.1	
	2007	6,115,900	1,790,083	4,325,817	14.0	
	Variance		382,450	(23,227)	\$405,677	0.1
			6.3%	-1.3%		

The membership fee revenue and investment income is recorded here. The costs for accounting, information technology, distribution center, design center, human resources, and receptionists and the related functions are allocated to each department on a "by use" basis.

OSBC	2008	\$2,183	\$143,336	(\$141,153)	0.8	
	2007	181,280	406,052	(224,772)	0.8	
	Variance		(179,097)	(262,716)	\$83,619	0
			-98.8%	-64.7%		

The budget for operation of the bar center reflects only anticipated expenses until the move to Fanno Creek Place. For now, all personnel costs for facilities are recorded here.

Fanno Creek Place	2008	\$780,317	\$1,271,105	(\$490,788)	0.0	
	2007	0	0	0	0.0	
	Variance		780,317	1,271,105	(\$490,788)	0
			n/a	n/a		

The budget for Fanno Creek Place includes all rental income, debt service, depreciation expense, and operating expenses using industry averages. Portion of the building costs allocated to other bar departments is limited to the 54% of the total building square footage the bar plans to occupy.

Contingency	2008	\$0	\$50,000	(\$50,000)	n/a	
	2007	0	50,000	(50,000)	n/a	
	Variance			0	\$0	
			n/a	0.0%		

By bylaw, the budget includes a Contingency line item of \$50,000 "for unanticipated expenditures that were not identified in the normal budget process."

Department Summaries

2008 Budget

Program/Dept	BUDGET	Revenue	Expense	Net	FTE
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Restricted Funds

Affirmative Action Program	2008	\$471,725	\$482,653	(\$10,928)	3.0	
	2007	395,500	369,789	25,711	2.5	
	Variance		76,225	112,864	(\$36,639)	0.5
			19.3%	30.5%		

Revenue is the \$30.00 member fee assessment and interest earned on its fund balance. The primary direct costs of AAP are grants for the bar exam, law clerk placements, scholarships, and public honors fellowship awards to six recipients. The costs of OLIO events are offset by grants and sponsorship fees.

This budget has not yet been finalized.

Client Security Fund	2008	\$106,800	\$201,957	(\$95,157)	0.4	
	2007	101,300	200,285	(98,985)	0.4	
	Variance		5,500	1,672	\$3,828	0.0
			5.4%	0.8%		

Revenue is the \$5.00 member assessment and interest earned on its fund balance. Claims Paid are budgeted at \$150,000 - the same level as in the 2007 budget - as presently there are few open or known claims.

The estimated fund balance at the end of 2007 will be approximately \$700,000.

Legal Services	2008	\$4,653,000	\$4,654,122	(\$1,122)	1.0	
	2007	4,405,000	4,428,696	(23,696)	1.0	
	Variance		248,000	225,426	\$22,574	0.0
			5.6%	5.1%		

Legal Services expects to collect \$4.653 million in filing fees and Pro Hac Vice applications. This is 5.6% more than the 2007 budget. All but \$108,000, which is set aside for program administration expenses, will be disbursed to legal service agencies.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 16, 2007
From: Timothy C. Gerking, Chairperson of Policy & Governance Committee
Re: Proposed Repeal of Bar Rule 9.5

Action Recommended

The Policy and Governance Committee recommends that the full board approve a recommendation to the Oregon Supreme Court that Bar Rule 9.5 be repealed, as a means of clarifying the membership status of lawyers who have remained suspended for more than five years.

Background

Recent action taken by the Oregon Supreme Court suggests that there is a need to clarify, through an amendment to the Bar Rules of Procedure (BRs) or otherwise, the membership status of lawyers who have remained suspended for more than five years.

As the board is aware, bar members may be suspended from active bar status for a variety of reasons: disciplinary action, failure to pay bar dues, failure to pay the PLF assessment, or failure to comply with MCLE requirements. In order to become reinstated from any of these suspensions, some form of reinstatement application is required under the BRs. *See*, BR 8.1 through 8.5. If a suspended member does not apply to be reinstated, or does apply but is denied reinstatement, the bar historically has continued to list that member in its membership records as "suspended."

One such bar member is William M. Parker, OSB #742505. In 2000, Parker was suspended by the Oregon Supreme Court for a period of four years for disciplinary reasons. *See, In re Parker*, 330 Or 541, 9 P3d 107 (2000). In 2006, Parker filed an application for reinstatement under BR 8.1. The Board of Governors voted to recommend against Parker's reinstatement in November 2006, and Parker thereafter filed a petition with the Supreme Court to contest the board's adverse recommendation. For reasons not relevant to the present discussion, Parker later moved to dismiss his petition. On May 1, 2007, the court granted the motion and denied Parker's reinstatement application.

While the events described above were going on, Parker submitted for consideration by the court a Form A (voluntary) resignation. In explaining his reason for doing so, Parker said he had served his four year term of disciplinary suspension, objected to being listed on the bar's records as a suspended member in perpetuity, and much preferred that persons inquiring of the bar about Parker's membership status be informed that he had resigned. The Form A resignation was sent to the court in March 2007.

On April 10, 2007, the Supreme Court issued the following order:

“William Parker has submitted a Form A resignation. Under BR 9.5, however, Parker would appear to be deemed to have already resigned under Form A, because Parker apparently remained in a suspended status for more than five years before the date that he applied for reinstatement. We therefore deny Parker’s present Form A resignation as unnecessary.”

This court order was puzzling from the bar’s perspective. The court had never before invoked BR 9.5 for any purpose, and certainly not to reject an attempt by a bar member to resign. Furthermore, bar staff believed the court mistakenly applied BR 9.5 to Parker’s situation. That rule¹ was adopted in 1995 for the purpose of establishing the process under which long-time “suspensees” were required to apply for reinstatement. It was recommended as a companion to another proposed rule, with the intent that the two rules be read together. However, the court ultimately did not adopt the companion rule, leaving BR 9.5 – which the court did adopt – as an unnecessary appendage. Nothing about the history of the rule’s adoption suggested that it would or should be applied to deny a person in Mr. Parker’s situation the opportunity to officially resign. Accordingly, staff filed a motion asking the court to reconsider its order and to accept Parker’s Form A resignation. *See*, motion attached (which sets out the origins of and purpose behind BR 9.5). Parker joined in the bar’s motion. However, on June 19, 2007, the court denied the motion without explanation.

Thereafter, Parker asserted that the court’s order and refusal to reconsider must be taken as a directive from the court for the bar to change its membership records to show Parker as a resigned member, and he made demand on the bar that we do so. After discussing the issue internally (Executive Director, General Counsel, Disciplinary Counsel), staff decided to change the bar’s membership database to show Parker as “resigned” in our records, with the added entry that says “Resignation Form A (BR 9.5).” Parker was notified of this change in July 2007. We have not heard from him since.

Discussion

The question posed by the court’s action in the *Parker* matter is whether there is a need to clarify the status of those members who have remained in a suspended status for an extended period of time. If the court, with its order in *Parker*, intended to send a message that it now considers all lawyers who have been suspended for more than five years to be resigned, that gives BR 9.5 a much broader application than originally was intended. Furthermore, such an interpretation has significant consequence to the bar and the membership as discussed below. The Policy and Governance Committee believes that this

¹ BR 9.5 provides: “Suspension Deemed to be Resignation. An attorney who has been suspended from membership in the Bar for any reason and has remained in that suspended status more than five years prior to the date of an application for reinstatement, shall be deemed to have resigned under Form A of these rules and shall be eligible for reinstatement only as permitted by BR 8.1.”

confusion about suspended members should be resolved and that a repeal of BR 9.5 is the way to do it.

There is some practical significance or consequence for the bar related to this issue of whether members are suspended or deemed resigned. First, as of July 2007, roughly 850 bar members were in a suspended status and had been for more than five years. If the decision in *Parker* can be read to give new effect to BR 9.5 requiring the bar to continually monitor the membership database and transfer any suspended member to a resigned status five years and one day after that member's suspension began, the bar will have a significant and ongoing responsibility.

Second, the court's disciplinary jurisdiction over a member differs depending on whether that member is suspended or resigned. In a series of cases, the court has made clear that a suspended bar member remains under the disciplinary jurisdiction of the court, even for conduct that occurs during the period of suspension. *In re Chandler*, 306 Or 422, 430 n. 2, 760 P2d 243 (1988); *In re Hereford*, 306 Or 69, 72-73, 756 P2d 30 (1988); *In re Coe*, 302 Or 553, 557, 731 P2d 1028 (1986). *See, also, In re Smith*, 318 Or 47, 861 P2d 1013 (1993) (same ruling as to inactive members). On the other hand, once a lawyer has resigned from the bar, the court has no continuing jurisdiction over that lawyer, at least for conduct that occurs after the effective date of the resignation. ORS 9.261(1); BR 9.2. To illustrate this distinction, imagine that Mr. Parker had recently been convicted of some heinous criminal activity (which he was not). Until the court's recent order, the bar could have initiated disciplinary action against him because he still was one of our members, albeit in a suspended status. However, since the court's order by which Mr. Parker is "deemed" to have resigned, no action could be taken against him because he no longer is considered a bar member of any kind.

Staff informs the committee that this very issue presently is before the SPRB in the form of a complaint against a lawyer suspended in 2001, who never sought reinstatement. There is evidence to suggest that this lawyer recently has been rendering legal advice to various persons, even assisting them in "pro se" litigation, and generally making a mess of some real estate matters. With the uncertainty caused by the *Parker* ruling, the SPRB does not know whether it has disciplinary jurisdiction over this suspended lawyer or should instead refer the matter to the UPL Committee for consideration. The SPRB has tabled the matter until this threshold question is given more thought.

An additional reason to clarify the status of bar members like Mr. Parker is to ensure that information we provide to the public is accurate and understandable. It is potentially misleading for our membership records to show lawyers as "resigned," even if BR 9.5 suggests we do so, when those members have in fact never submitted any type of resignation to the bar or the court.

For these reasons, the Policy and Governance Committee recommends that BR 9.5 be repealed, the result of which would be that suspended lawyers would remain "suspended" unless or until they sought and obtained reinstatement or resigned from the bar. This would return us to the status quo prior to the court's order in *Parker*. A recommendation to repeal

a bar rule of procedure requires action by the Supreme Court. It does not require action by the House of Delegates.

Attachments:

- Parker correspondence
- Supreme Court order 4/10/07
- OSB Motion to Reconsider (without exhibits)
- Supreme Court order 6/19/07
- Further correspondence between OSB and Parker

William M. Parker
15423 SW 144th Terrace
Tigard, Oregon 97224

Email: bill-parker@msn.com Tel. 503.250.0234

HAND DELIVERED

February 27, 2007

Ms Karen Garst, Sylvia Stevens, General Counsel
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035

Re: Status of William M. Parker, Bar No. 74250

Dear Ms. Garst:

On February 22, 2007, I received an e-mail from you stating that the Board of Governors decided to electronically publish, on the OSB's Web site, the disciplinary status of all Oregon attorneys. As a result of a subsequent e-mail from Kay Pulju, I learned that this also includes listing the names of suspended attorneys, whose names were not previously part of the OSB's electronic listing. I responded by e-mail to you, objecting to the listing of my name as an Oregon attorney because I am not an Oregon attorney, suspended or in any other form. You replied, stating that the position of the Oregon State Bar is that I am presently a suspended attorney. I understand your position, although I disagree with it. As I stated, I believe my suspension concluded by the unambiguous order of the Oregon State Supreme Court on October 16, 2004:

The accused is suspended from the practice of law for a period of four years, commencing 60 days from the date of filing of this decision.
In re Parker, 330 Or. 541, 552, 9 P.3d 107 (2000).

As my suspension concluded on October 16, 2004, it is my position that I have no present relationship with the Oregon State Bar other than as applicant for reinstatement. I consider any such listing, as the one presently proposed by the OSB, to be defamatory and to cast me in a false light. I also consider such reference to me, after October 16, 2004, to be an invasion of my privacy. By publishing this information, the OSB causes severe damage to my ability to earn a living. Additionally, I believe that the public has little or no interest in the publishing of names of individuals who do not practice law.

Although I do not believe that I have any present relationship with the Oregon State Bar, other than as applicant for reinstatement, the OSB's insistence that a relationship exists causes me to tender my resignation from the Oregon State Bar, effective immediately. A copy of my Form A Resignation is enclosed with this letter. An original has been delivered to Regulatory Services. I have also copied Sylvia

Stevens, with whom I have had correspondence regarding this subject and Jeff Sapiro, who is presently handling my application for reinstatement.

To the extent that further action is required, i.e., execution by you on behalf of the Oregon State Bar and filing with the Oregon State Supreme Court, I ask that these procedures be expedited to the extent possible.

As a result of my resignation, I request there be no listing of my name by the Oregon State Bar or if such listing is made, even though I request no listing be made, that such listing state "Form A resignation".

I want to make one last point very clear, by tendering my resignation, I am in no way withdrawing my application for reinstatement to the status of active member of the Oregon State Bar.

Sincerely,



Bill Parker

cc: Sylvia Stevens, General Counsel
Jeff Sapiro, Disciplinary Counsel

IN THE SUPREME COURT OF THE STATE OF OREGON

In the matter of the application for reinstatement of:

WILLIAM M. PARKER,
Applicant.

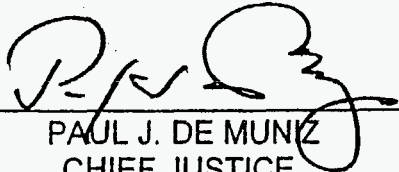
Oregon Supreme Court No. S054312

ORDER DENYING FORM "A" RESIGNATION AS UNNECESSARY

Upon consideration by the court.

William Parker has submitted a Form A resignation. Under BR 9.5, however, Parker would appear to be deemed to have already resigned under Form A, because Parker apparently remained in a suspended status for more than five years before the date that he applied for reinstatement. We therefore deny Parker's present Form A resignation as unnecessary.

April 10, 2007
DATE



PAUL J. DE MUNIZ
CHIEF JUSTICE

c: William M Parker
Jeffrey D Sapiro ✓

jk

ORDER DENYING FORM "A" RESIGNATION AS UNNECESSARY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

William M. Parker
15423 SW 144th Terrace
Tigard, Oregon 97224
Email: bill-parker@msn.com Tel. 503.250.0234

RECEIVED

APR 17 2007

DISCIPLINARY
COUNSEL

HAND DELIVERED

April 17, 2007

Ms Karen Garst, Executive Director
Ms Sylvia Stevens, General Counsel
Mr. Jeff Sapiro, Disciplinary Counsel
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035

Re: Status of William M. Parker, Bar No. 74250

Dear Ms Garst, Ms Stevens and Mr. Sapiro:

Enclosed is a copy of a recent Order, dated April 10, 2007, from the Oregon State Supreme Court, Denying my Form "A" Resignation As Unnecessary, which was previously copied to Mr. Sapiro. This Order was a result of my February 27, 2007 submission of a Form "A" Resignation.

As you are aware from my previous application for reinstatement, correspondence and discussions, I was suspended from the practice of law for a period of four years effective November 18, 2000. I would refer you to my previous letters to Ms Stevens dated December 12, 2006, January 8, 2007 and January 11, 2007, as well as Ms Stevens' responses to those letters dated December 21, 2006 and January 23, 2007. Additionally, please note that I have filed a motion to dismiss the appeal of my petition for review of the Oregon State Bar Board of Governor's December 1, 2006 recommendation to deny my BR 8.1 reinstatement application

It has been the position of the Oregon State Bar that an attorney suspended from the practice of law for a finite period, in my case four years, is in reality suspended for an indefinite period of time, possibly permanently, subject to application for reinstatement after the running of the period of suspension. The effect of the Bar's position is that unless a suspended attorney is either reinstated or resigns, that attorney faces a life sentence of suspension. This permanently and very negatively effects one's job applications, as well as many other facets of one's life. By that statement, I am not complaining about my four year suspension, but I am disagreeing with my potentially lifetime term of suspension.

My belief, which I expressed in the above correspondence, is that pursuant to BR 9.5, my status, as of November 19, 2004, is that of a Form "A" Resignation and not that of suspended. From my reading of the enclosed Order Denying Form "A" Resignation as Unnecessary, it would seem that the Oregon State Supreme Court agrees with my position on this issue.

Personally, I feel in somewhat of a Catch 22, the Oregon State Bar considers my present status to be that of suspended, but the Oregon State Supreme Court seems to consider my status to be that of resigned and as a result has denied my motion to resign.

My questions are the following. Does the recent order from the Oregon State Supreme Court change your opinion as to my present status? And, are you willing, considering this order, to change my present status to that of resigned?

Thank you in advance for your response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Parker', with a long horizontal line extending to the right.

Bill Parker



www.osbar.org

5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889
(503) 620-0222 or toll-free inside Oregon (800) 452-8260, Regulatory Services Fax (503) 968-4457

April 23, 2007

State Court Administrator
Appellate Courts Records Section
1163 State Street NE
Salem, OR 97301-2563

Re: *In re Resignation from the Practice of Law in Oregon of WILIAM M. PARKER,*
SC S054312

Dear State Court Administrator:

Please find enclosed for filing the original and nine copies of the Respondent's Motion—
Reconsider Order in the above-entitled matter.

Mr. Parker has authorized me to inform the court that he joins in this motion.

Thank you for your attention to this matter.

Very truly yours,

Jeffrey D. Sapiro
Disciplinary Counsel
Extension 319

JDS:rlh

Enclosures

cc: William M. Parker
(w/enclosure)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Resignation from the Practice of Law) SC S054312
in Oregon of:)
)
WILLIAM M. PARKER,)
_____)

RESPONDENT’S MOTION—RECONSIDER ORDER

The Oregon State Bar (hereinafter, “bar”) moves the Oregon Supreme Court to reconsider its order of April 10, 2007, denying William M. Parker’s Form A resignation. For reasons set forth below, the bar asks the court to accept Mr. Parker’s resignation and strike his name from the court’s roll of attorneys in Oregon.

Background

Effective October 16, 2000, William M. Parker was suspended from the practice of law in Oregon for four years by the Oregon Supreme Court. *In re Parker*, 330 Or 541, 9 P3d 107 (2000). Pursuant to BR 8.1, Mr. Parker was required to apply for reinstatement after the term of his suspension ran. He filed such an application in April 2006, and that application presently is pending.¹

On February 27, 2007, Mr. Parker filed with the bar a Form A resignation, along with a letter advising that, by tendering his resignation, he was not intending to withdraw his application for reinstatement. The bar submitted Mr. Parker’s resignation to the court on March 14, 2007.

On April 10, 2007, the court issued its Order Denying Form “A” Resignation As Unnecessary. The order refers to BR 9.5 and states that “Parker would appear to be deemed to

¹ The Board of Governors recommended against Mr. Parker’s reinstatement and Mr. Parker contested that adverse recommendation in December 2006. However, on April 4, 2007, Mr. Parker filed a motion to dismiss that appeal. The motion presently is pending before the court.

have already resigned under Form A, because Parker apparently remained in a suspended status for more than five years before the date that he applied for reinstatement. We therefore deny Parker's present Form A resignation as unnecessary." *Order* of April 10, 2007. [Exhibit 1]

Parker is Eligible for Form A Resignation

Resignations from bar membership are governed by ORS 9.261 and Title 9 of the Bar Rules of Procedure (BRs). The statute simply provides that an attorney wishing to resign must follow the BRs. BR 9.1 provides that Form A resignation is available to an attorney "[i]f no charges, allegations or instances of alleged misconduct involving the attorney are under investigation by the Bar, and no disciplinary proceedings are pending against the attorney . . ."

Although the bar's Board of Governors presently is contesting Mr. Parker's application for reinstatement, no disciplinary investigation or proceeding is pending involving Mr. Parker, and he therefore is eligible for a Form A resignation.

Meaning and Effect of BR 9.5

BR 9.5, the rule upon which the court's recent order in this matter was based, provides as follows:

"BR 9.5 - Suspension Deemed to be Resignation. An attorney who has been suspended from membership in the Bar for any reason and has remained in that suspended status more than five years prior to the date of an application for reinstatement, shall be deemed to have resigned under Form A of these rules and shall be eligible for reinstatement only as permitted by BR 8.1."

In determining the meaning and application of this rule of procedure, the key question to ask is: for what purpose or under what circumstances is the attorney deemed to have resigned? A look at this rule's origins sheds light on this question.

BR 9.5 was adopted by the court in December 1995. The rule had been proposed by the bar's Board of Governors along with several other proposed amendments to the BRs, following a bar task force study of various reinstatement and related issues. One of those other proposals

would have revised the reinstatement rules, specifically BR 8.1, 8.2 and BR 9.4, to provide that an attorney who resigned from the bar under Form A would be required to start over with the Board of Bar Examiners (*i.e.*, file a BBX application, pass the bar exam, submit to a character and fitness assessment) in order to regain admission to practice in this state. This “start over” provision was submitted to the court, along with all the other proposed amendments to the BRs, in April 2005. *See*, letter to Supreme Court dated April 3, 1995 [Exhibit 2], and enclosed report of the bar’s Task Force on Reinstatement Issues, at pp. 2-3. [Exhibit 3]

BR 9.5 was a companion amendment to the “start over” proposal, designed to ensure similar treatment between those attorneys who resigned Form A, and those who were suspended and remained in that suspended status for an extended period of time. The thinking was that if, under the “start over” provision, attorneys who resigned Form A were required to go through the bar admission process anew before they could regain admission, then suspended attorneys who could have sought reinstatement but did not do so should also be subject to “start over” treatment under the rules. Hence, BR 9.5 was proposed. It was intended to provide that, for the purposes of seeking readmission to the bar, attorneys in a suspended status for more than five years would be subject to the same readmission rules and procedures as attorneys who resigned Form A. *See*, report of the Task Force on Reinstatement Issues, at pp. 16-17.² There is no indication from the history of BR 9.5 that it was meant to say that, for any and all purposes related to bar membership, lawyers suspended for more than five years have effectively resigned from the bar.³

² In explanation of proposed BR 9.5, the task force report states: “First, proposed BR 9.5 is recommended, the effect of which is to deem members who remain in the suspended status for whatever reason in excess of five years prior to filing a reinstatement application, as resigned for the purposes of reinstatement eligibility. This would eliminate the likelihood of a lawyer using a suspended status to circumvent the proposed finality of a resignation.” Task Force report at p. 17. *Emphasis added.*

³ Note the language of BR 9.5 as approved by the court ties the five-year time period to the act of filing a reinstatement application, further supporting the conclusion that the rule does not have broader application beyond the reinstatement process: “An attorney who has been suspended . . . and has remained in that suspended status more than five years prior to the date of an application for reinstatement . . .” *Emphasis added.*

More specifically to Mr. Parker's matter, nothing about the history of BR 9.5 suggests that a lawyer suspended for more than five years is precluded from formally terminating his or her relationship with the bar by means of a Form A resignation.

Ultimately, the court chose not to approve the proposed "start over" provisions in the proposed amendments to the BRs. *See*, memorandum to the court from Justices Gillette and Graber, and Roy Pulvers, dated August 29, 1995, pp. 2-3. [Exhibit 4] However, the court did approve BR 9.5. *See*, Order No. 95-109, December 14, 1995. [Exhibit 5] The result of the court's action was to incorporate BR 9.5 into the BRs when, without the "start over" provision from which BR 9.5 was born, the rule serves no real purpose and can lead to confusion or debate about its application, as it has in this case.

Why This Matters

The bar submits that the court's apparent interpretation of BR 9.5, as reflected in the order concerning Mr. Parker's Form A resignation, causes problems both for Mr. Parker and for the bar.

Mr. Parker finds himself in a state of perpetual suspension unless he either can obtain reinstatement to active status (as noted above, the bar is contesting Mr. Parker's reinstatement application), or is allowed to resign. Mr. Parker has expressed his concern that the bar's membership records (recently made available online through the bar's website) reflect his suspended status since 2000, even though the term of his suspension imposed by the court was four years. He would prefer to resign his bar membership and have the bar records reflect that status.

From the bar's perspective, it would be administratively burdensome if the court's order denying Mr. Parker's Form A resignation could be read as a directive from the court to apply BR 9.5 in a way that requires the bar to continually monitor our membership records and convert each suspended attorney's status to a resigned status five years and one day after that attorney's

suspension became effective. More importantly, converting those records to show a resigned status would not be an accurate reflection of what actually occurred with regard to those attorneys' bar membership.

Summary

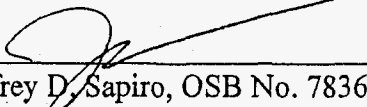
Mr. Parker is eligible for a Form A resignation. The bar respectfully suggests that BR 9.5 does not make his request to resign unnecessary because the rule was intended only to govern the process by which attorneys suspended for an extended duration are required to apply for reinstatement. It was not intended to effectuate a conversion of all long-term suspensions into resignations for the purposes of the bar's membership status records.

The bar asks the court to reconsider its order of April 10, 2007, and accept Mr. Parker's Form A resignation.

Respectfully submitted this 23rd day of April, 2007.

OREGON STATE BAR

By: _____


Jeffrey D. Sapiro, OSB No. 78362
Disciplinary Counsel
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035
503-620-0222 x319

IN THE SUPREME COURT OF THE STATE OF OREGON

In the matter of the application for reinstatement of:

WILLIAM M. PARKER,
Applicant.

RECEIVED

JUN 20 2007

DISCIPLINARY
COUNSEL

Oregon Supreme Court No. S054312

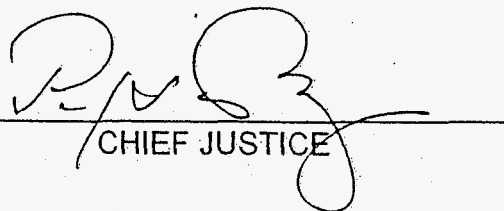
ORDER DENYING MOTION FOR RECONSIDERATION

Upon consideration by the court:

The Oregon State Bar's motion for reconsideration is denied.

June 19, 2007

DATE


CHIEF JUSTICE

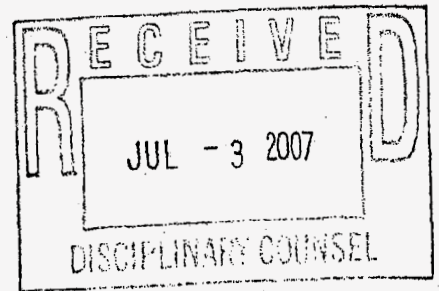
c: William M Parker
Jeffrey D Sapiro ✓

jk

ORDER DENYING MOTION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

William M. Parker
15423 SW 144th Terrace
Tigard, Oregon 97224
Email: bill-parker@msn.com Tel. 503.250.0234



HAND DELIVERED

July 3, 2007

Ms Karen Garst, Executive Director
Ms Sylvia Stevens, General Counsel
Mr. Jeff Sapiro, Disciplinary Counsel
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035

Re: Status of William M. Parker, Bar No. 74250

Dear Ms Garst, Ms Stevens and Mr. Sapiro:

This letter is a follow up to my letter to Sylvia Stevens of January 11, 2007, my letter to Karen Garst and Sylvia Stevens dated February 27, 2007, my letter to all three of you dated April 17, 2007 and the recent ruling by the Oregon State Supreme Court denying my request to resign from the Oregon State Bar, as well as their June 19, 2007 denial of your motion for reconsideration.

Pursuant to BR 9.5¹, as presently interpreted by the Oregon State Supreme Court, I request that my status be changed to that of Form "A" resignations. I also request that in responses to inquiries the Oregon State Bar inform the inquirer of my Form "A" resignation status and that information on Web sites and attorney directories containing my name and status reflect my status as Form "A" resignation.

Thank you for your consideration of this matter.

Sincerely,



Bill Parker

¹ Rule 9.5 Suspension Deemed to be Resignation.

An attorney who has been suspended from membership in the Bar for any reason and has remained in that suspended status more than five years prior to the date of an application for reinstatement, shall be deemed to have resigned under Form A of these rules and shall be eligible for reinstatement only as permitted by BR 8.1.

(Rule 9.5 added by Order dated December 14, 1995.)

BR 9.5.



www.osbar.org

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July 17, 2007

William M. Parker
15423 SW 144th Terrace
Tigard, OR 97224

Re: Status of William M. Parker, Bar No. 74250

Dear Mr. Parker:

This acknowledges your letter of July 3, 2007, addressed to Karen Garst, Sylvia Stevens and me. We have discussed your request that your Oregon State Bar membership status be changed to that of Form A resignation. Please consider this our response to that request.

We are asking our computer staff to make the following changes to our membership database.

1. In the general membership screen, your membership type will be shown as "R" for "Resigned," rather than the current "S" for "Suspended" entry. This screen is commonly used by our staff in answering inquiries about a bar member's status;
2. We also have a status change screen that shows all status changes throughout a bar member's career. Staff uses this screen to answer more detailed questions about a bar member. We will be adding an entry for you in this screen that says: "Resignation Form A (BR 9.5)" with an effective date of June 19, 2007, the date the court denied the bar's recent motion for reconsideration. This entry differs from other Form A resignation entries only to the extent that it adds the reference to BR 9.5. We believe this addition is an appropriate and accurate reflection of your status and how it occurred;
3. Your status in the online OSB Membership Directory will be shown as "Resigned." The generic explanation of this status type, accessed by clicking on the "Status" button, will be revised to update the various ways a member may become resigned. However, your individual listing will simply say "Resigned." Your suspension still will be shown in the Disciplinary History link.

Letter to William M. Parker
Page 2

Finally, be advised that we intend to discuss with the Board of Governors whether the bar should seek to clarify any uncertainty BR 9.5 creates concerning the various membership categories in the bar. Although we cannot predict whether the board will seek that clarification, or whether the Supreme Court would approve any action recommended by the board, one option would be to repeal BR 9.5 altogether. I mention this only to note that future action by the board or the court could have an impact on your listed membership category in the Oregon State Bar.

Feel free to contact me if you have questions.

Very truly yours,



Jeffrey D. Sapiro
Disciplinary Counsel
Ext. 319

cc: Karen Garst
Sylvia Stevens

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2, 2007
Memo Date: October 17, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: BOG/HOD region redistricting

Action Recommended

Approve redistricting plan as presented. Seek legislative change to permit additional four lawyer board members.

Background

For the past several months, the Policy and Governance Committee has been looking at redistricting the regions by which board and HOD members are elected. The regions were last changed for board members who took office right after the fall Annual Meeting in 1997.

The statute requires the following:

ORS 9.025 Board of governors; number; eligibility; term; effect of membership.

(1) The Oregon State Bar shall be governed by a board of governors consisting of 16 members. Twelve of the members shall be active members of the Oregon State Bar, who on appointment, on nomination, on election and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices. Four of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and shall not be active or inactive members of the Oregon State Bar. No person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, may serve on the board of governors. Any other person in the executive or legislative department of state government who is otherwise qualified may serve on the board of governors.

(2) For the purpose of eligibility for nomination and to vote in the election of a member of the board of governors who is an elective member, and for appointment to the board of governors, the State of Oregon shall be divided into regions determined by the board. The board shall establish board regions that are based on the number of attorneys who have their principal offices in the region. To the extent that it is reasonably possible, the regions shall be configured by the board so that the representation of board members to attorney population in each region is equal to the representation provided in other regions. At least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation.

Prior to the last redistricting, there was a significant imbalance in board regions. In 1996, two regions had an over-representation of over 24% and one had an under-representation over 49%. After the redistricting, the numbers were much

better. While there was still one region (Region 1) that was over-represented at 23%, all the other deviations were less than 10% except for one that was 15%. Today, the deviation has expanded with four regions over 10%.

The committee focused on several options and is recommending a proposal to add four lawyer members to the board in order to provide smaller geographic regions that have more in common. The proposed adds one board member for Regions 2, 4, and 5 with the fourth new member coming from a new region 7 that is solely Clackamas County. This option reduces the deviations so that only one region is off by more than 10% (17.7%). This option would also spread board assignments such as section and committee contacts over a larger number of board members.

The committee reviewed data from other states and concluded that there was no definitive pattern in size or anecdotal comments that one could conclude 16 or 20 was better. It was pretty clear that those over 30 were unwieldy. The committee held a session prior to the HOD meeting on September 28 to answer any questions. There were no attendees.

Attached you will find the current and proposed distribution of attorney members by region, the deviation from the standard, and a colored map showing the new regions.

Proposed Restricting

Current	Number of lawyers	Region		Recommended Option	Number of lawyers	Former Region	New Region
(1) Baker	24	1		(1) Baker	24	1	1
(7) Crook	30	1		(7) Crook	30	1	1
(9) Deschutes	343	1		(9) Deschutes	343	1	1
(11) Gilliam	1	1		(11) Gilliam	1	1	1
(12) Grant	7	1		(12) Grant	7	1	1
(13) Harney	6	1		(13) Harney	6	1	1
(14) Hood River	49	1		(14) Hood River	49	1	1
(16) Jefferson	15	3		(16) Jefferson	15	3	1
(18) Klamath	82	1		(19) Lake	8	1	1
(19) Lake	8	1		(23) Malheur	46	1	1
(23) Malheur	46	1		(25) Morrow	2	1	1
(25) Morrow	2	1		(28) Sherman	1	1	1
(28) Sherman	1	1		(30) Umatilla	102	1	1
(30) Umatilla	102	1		(31) Union	31	1	1
(31) Union	31	1		(32) Wallowa	10	1	1
(32) Wallowa	10	1		(33) Wasco	42	1	1
(33) Wasco	42	1		(35) Wheeler	4	1	1
(35) Wheeler	4	1			721		
	803						
(20) Lane	858	2		(2) Benton	115	3	2
				(20) Lane	858	2	2
				(21) Lincoln	104	3	2
(2) Benton	115	3		(22) Linn	101	3	2
(6) Coos	87	3			1,178		
(8) Curry	25	3		Divided by 2	589		
(10) Douglas	99	3					
(15) Jackson	318	3		(18) Klamath	82	1	1
(17) Josephine	76	1		(6) Coos	87	3	3
(21) Lincoln	104	3		(8) Curry	25	3	3
(22) Linn	101	3		(10) Douglas	99	3	3
	925			(15) Jackson	318	3	3
				(17) Josephine	76	3	3
					687		
(4) Clatsop	52	4					
(5) Columbia	52	4					
(29) Tillamook	32	4		(4) Clatsop	52	4	4
(34) Washington	1,040	4		(5) Columbia	52	4	4
	1,176			(29) Tillamook	32	4	4
				(34) Washington	1,040	4	4
					1,176		
				Divided by 2	588		

(26) Multnomah	5,003	5				
Divided by 6	834					
				(26) Multnomah	5,003	5
				Divided by 7	715	
(3) Clackamas	837	6				
(24) Marion	1,225	6				
(27) Polk	63	6				
(36) Yamhill	127	6		(24) Marion	1,225	6
	2,252			(27) Polk	63	6
Divided by 2	1,126			(36) Yamhill	127	6
					1,415	
				Divided by 2	708	
				(3) Clackamas	837	6
					837	7

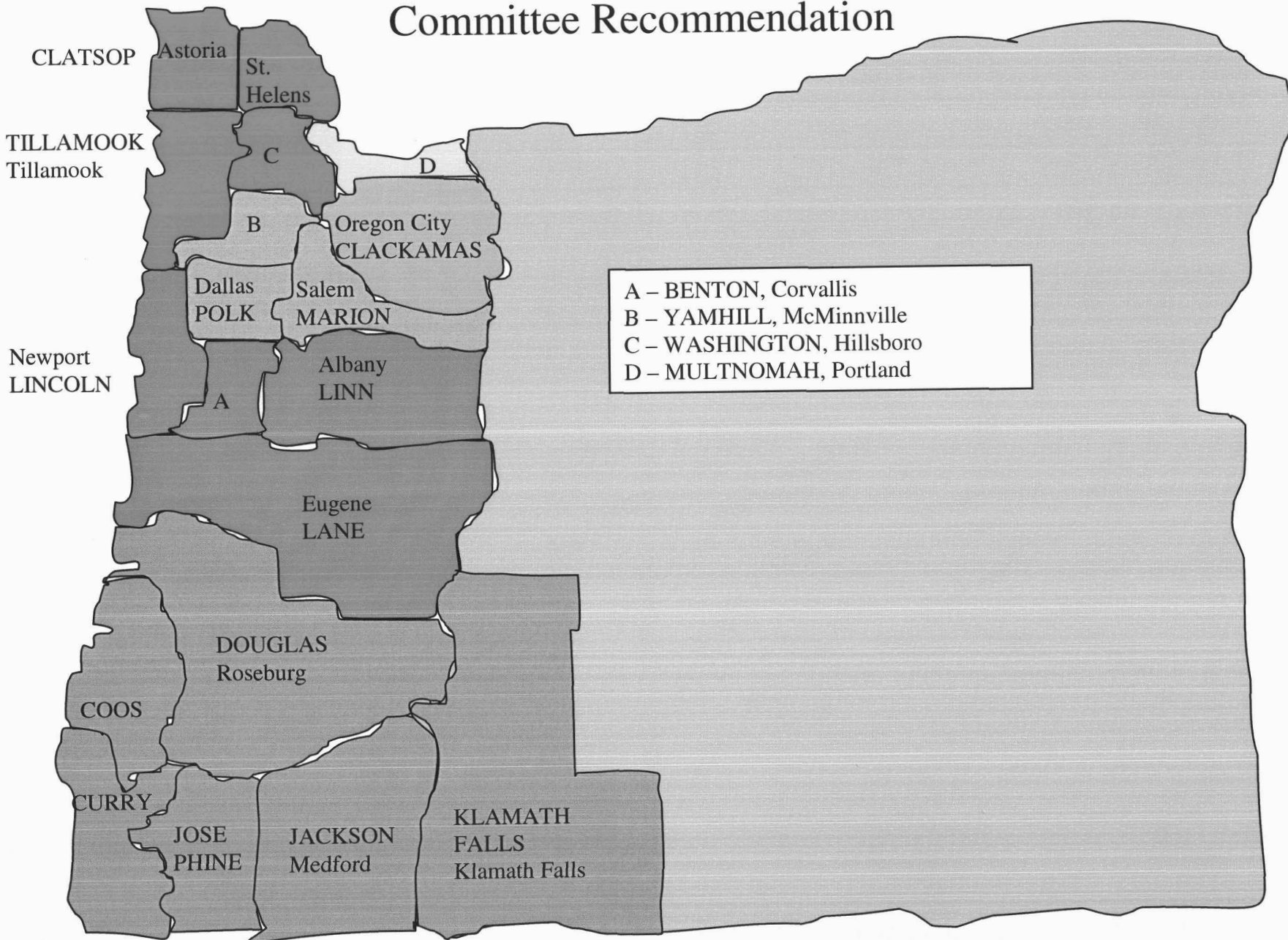
Configuration as of 2/28/07

Region	No. Lawyers	No. of Governors	Lawyers per BOG member	Deviation from 1:918	% Deviation
1	803	1	803	-115	-14.3%
2	858	1	858	-60	-7.0%
3	924	1	924	6	0.6%
4	1173	1	1173	255	21.7%
5	5002	6	834	-506	-10.1%
6	2257	2	1129	421	18.7%
Total	11017	12			

Recommendation

Region	No. Lawyers	No. of lawyer board members	Lawyers per BOG member	Deviation from 1:689	% Deviation
1	721	1	721	32	4.4%
2	1178	2	589	-100	-8.5%
3	687	1	687	-2	-0.3%
4	1176	2	588	-101	-8.6%
5	5003	7	715	26	0.5%
6	1415	2	708	19	1.3%
7	837	1	837	148	17.7%
Total	11017	16			

Policy and Governance Committee Recommendation



230.4

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: November 2, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Elimination of Bias Proposal

Action Recommended

Consider the following proposal for a one-time EOB continuing legal education requirement for submission to the Supreme Court.

Background

In rejecting the Board of Governor's 2006 proposal to the court to address membership concern about the elimination of bias MCLE requirement, the Supreme Court request the BOG to develop a new proposal that would continue the requirement in some form that would be less onerous to objecting members.

Over the past months, the Policy and Governance devoted several hours to gathering opinions from various stakeholder, most notably the Diversity Section, Gary Georgeff (chief petitioner for the membership vote), and Justices Linder and Walters. Reconciling their diverging views has not been easy, but the Committee believes the following proposal achieves the Court's goal of retaining the EOB requirement, while also recognizing the objections raised by the members who voted to eliminate the requirement.

This proposal recognizes that the EOB requirement has been in place for enough time that every Oregon lawyer has met (or will meet by the end of 2007) the current three-hour requirement. The proposed new rule will affect only those lawyers admitted to practice on or after January 1, 2007.

In essence, the proposal amends the MCLE rules to require that all lawyers admitted after January 1, 2007 take a specific six-hour EOB program designed and presented by the Oregon State Bar¹ on or before the end of their first full reporting period.² Accordingly, new admittees will have four years plus a few months (depending on the date of admission) to complete the EOB course. There is no continuing EOB requirement, although programs on elimination of bias can be accredited and taken for general credit.

¹ The curriculum will be developed in consultation with the AAC and the Diversity Section. A discussion sample is attached.

² New admittees have an initial reporting period that encompasses the partial year of admission and concludes at the end of the following calendar year; thereafter, they are on a three-year reporting cycle. See MCLE Rules 3.3 and 3.8(b).

To implement this proposal, the Committee proposes the following changes to the MCLE Rules and Regulations:³

Statement of Purpose

The revised language of this introduction to the MCLE Rules broadens the scope of continuing legal education in an effort to address the argument made by many of the objectors that continuing legal education should be limited to programs directly relating to competence and skill as a lawyer. The new language expresses the policy that continuing legal education also assists lawyer in meeting their broader obligations to the profession.

Rule 3.2 Active Members

Subsection (b) is amended to eliminate the vague category of “Professional Responsibility” and return the focus to Ethics as it was prior to adoption of the EOB requirement. The one-time EOB requirement is a separate subsection (c).

Rule 3.3 Reinstatements and New Admittees

This is the rule that contains the special requirements for newly admitted and reinstated lawyers, and those who return to active practice after retirement. For clarity, new admittees are addressed in a separate subsection (b).

Rule 3.7 Practical Skills

The language in this rule has been moved to Rule 3.3(b) for clarity; the separate rule is no longer necessary.

Regulation 3.400 Practical Skill Requirement

The revision here is a housekeeping change to replace the reference to the MCLE Board (which was eliminated in 2000).

Rule 5.1 Group CLE Activities

Elimination of bias has been added to the subject matter that will be accredited.

Rule 5.5 Ethics and Elimination of Bias

Subsection (b) of this rule sets out the standard for accreditation of an EOB program. A minor change is made to update the reference to the enabling rule.

Regulation 5.500 Elimination of Bias Credit

This regulation should be deleted. The OSB’s six-hour program will address how access to justice is affected by bias based on race, gender, economic status, religion. Other programs that meet that same criteria will be approved for general credit. The expansive nature of Regulation 5.500 was intended to allow for a greater scope of allowable programming; there is no longer a need to explain that EOB credit can be given for programs that deal with substantive law.

³ MCLE Regulations are the province of the BOG and do not require Supreme Court approval.

Attachments: Proposed revisions to MCLE Rules
Proposed curriculum for OSB's Elimination of Bias Course

Oregon State Bar
Minimum Continuing Legal Education

Rules and Regulations
(As amended effective April 26, 2007)

Purpose

It is of primary importance to the members of the bar and to the public that attorneys continue their legal education after admission to the bar. Continuing legal education ~~is necessary to~~ assists Oregon lawyers in maintaining and improving their competence and skills of Oregon lawyers and in meeting their obligations to the profession. These Rules establish the minimum requirements for continuing legal education for members of the Oregon State Bar.

* * *

Rule Three
Minimum Continuing Legal Education Requirement

3.1 Effective Date. These Rules, or any amendments thereto, shall take effect upon their approval by the Supreme Court of the State of Oregon.

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) ~~Professional Responsibility Ethics.~~ At least ~~nine~~ six of the required hours shall be in subjects relating to professional responsibility. ~~Six (of the nine) hours must be in programs accredited for ethics pursuant to Rule 5.5(a). One hour (of the six ethics hours) must be on the subject of a lawyer's statutory duty to report child abuse (see ORS 9.114). In addition to the six legal ethics hours, three hours (of the nine) must be in programs accredited for elimination of bias pursuant to Rule 5.5(b).~~

(c) Elimination of Bias. All active members admitted on or after January 1, 2007 must complete the Oregon State Bar's six hour Elimination of Bias course on or before the end of their first three-year reporting period after admission as an active member.

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

(a) An active member whose reporting period is established in Rule 3.87(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement, ~~admission as an active member,~~ or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics (including one in child abuse reporting) and ~~one shall be devoted to elimination of bias.~~

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member. Two of the 15 credit hours shall be devoted to ethics (including one in child abuse reporting) and ten shall be devoted to practical skills, except that the MCLE Administrator may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's

~~admission in Oregon. must also comply with Rule 3.7.~~ Thereafter the requirement in Rule 3.2(a) shall apply.

3.4 Retired Members. A retired member shall be exempt from compliance with these Rules, provided the member files a compliance report for any reporting period during which the exemption is claimed certifying that the member was or became retired during the reporting period. A retired member shall not resume the practice of law, either on a full or part-time basis, without prior written notice to the MCLE Administrator.

3.5 Out-of-State Compliance.

(a) Reciprocity Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon but is in a jurisdiction with which Oregon has established MCLE reciprocity may comply with these rules by filing a compliance report as required by MCLE Rule 7.1 accompanied by evidence that the member is in compliance with the requirements of the other jurisdiction and has completed the child abuse reporting credit required in ORS 9.114.

(b) Other Jurisdictions. An active member whose principal office for the practice of law is not in the State of Oregon and is not in a jurisdiction with which Oregon has established MCLE reciprocity must file a compliance report as required by MCLE Rule 7.1 showing that the member has completed at least 45 hours of accredited CLE activities as required by Rule 3.2.

3.6 Active Pro Bono and Active Emeritus. Members who are in Active Pro Bono or Active Emeritus status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.

~~**3.7 Practical Skills.** New admittees shall complete at least 10 hours of accredited practical skills activities by the end of their first reporting period. A new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon may be exempt from the practical skills requirement, provided the exemption is approved by the MCLE Administrator.~~

3.8 Reporting Period.

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

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

(c) Reinstatements.

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

(2) Except as provided in Rule 3.8(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive status or a suspension, disbarment or resignation shall start on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(d) Retired Members.

(1) A retired member who resumes the practice of law before the end of the reporting period in effect at the time of the member's retirement shall retain the member's original reporting period and these Rules shall be applied as though the retirement had not occurred.

(2) Except as provided in Rule 3.8(d)(1), the first reporting period for a retired member who resumes the practice of law shall start on the date the member resumes the practice of law and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

Regulations to MCLE Rule 3 Minimum Continuing Legal Education Requirement

3.200 Resumption of Law Practice By a Retired Member. The resumption of the practice of law by a retired member occurs when the member undertakes to perform any activity that would constitute the practice of law including, without limitation the activities described in OSB Bylaws 6.101 and 20.2.

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

3.260 Reciprocity. An active member whose principal office for the practice of law is in Idaho, Utah or Washington may comply with Rule 3.5(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements of the state in which the member's principal office is located, together with evidence that the member has completed the child abuse reporting training required in ORS 9.114. No other information about program attendance is required.

3.300 Application of Credits.

(a) Legal ethics and elimination of bias credits can be applied to the general or practical skills requirement.

(b) Practical skills credits can be applied to the general requirement.

(c) No more than two child abuse credits can be applied to the ethics requirement, and then only for a single two-hour program. Additional child-abuse credits can be applied to the general or practical skills requirement.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the negative aspects of substance abuse to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

(b) A CLE course on any subject matter can contain as part of the curriculum a portion devoted to

practical skills. The sponsor shall designate those portions of any program which it claims is eligible for practical skills credit.

(c) A credit hour cannot be applied to both the practical skills requirement and the ethics requirement.

(d) A new admittee applying for an exemption from the practical skills requirement, pursuant to Rule 3.73(b), shall submit in writing to the MCLE Administrator a request for exemption describing the nature and extent of the admittee's prior practice of law ~~so that the Board can~~ sufficient for the Administrator to determine whether the admittee has current skills equivalent to the practical skills requirements set forth in this regulation.

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.8(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive status, suspension, disbarment or resignation, but no credits obtained during the member's inactive status, suspension, disbarment or resignation shall be carried over into the next reporting period.

* * *

Rule Five Accreditation Standards

5.1 Group CLE Activities. Group CLE activities shall satisfy the following:

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, ~~or~~ legal ethics and professional responsibility, or elimination of bias in the legal system and profession; and

(c) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or by a sponsor that can demonstrate ability to organize and effectively present continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction, and supervision of the activity; and

(d) The activity must be primarily intended for presentation to multiple participants, including but not limited to live programs, video and audio presentations (including original programming and replays of accredited programs), satellite broadcasts and on-line programs; and

(e) The activity must include the use of thorough, high-quality written materials, unless the MCLE Administrator determines that the activity has substantial educational value without written materials.

(f) The activity must have no attendance restrictions based on race, color, gender, sexual orientation, religion, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law, except as may be permitted upon application from a provider or member, where attendance is restricted due to applicable state or federal law.

* * *

5.5 Ethics and Elimination of Bias.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer's statutory duty to report child abuse (see ORS 9.114).

(b) In order to be accredited as an activity pertaining to the elimination of bias under Rule 3.2(b)5.1(b), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

(c) Portions of activities may be accredited for purposes of satisfying the ethics and elimination of bias requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

Regulations to MCLE Rule 5 Accreditation Standards

5.050 Written Materials.

(a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1(5), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.

(b) Factors to be considered by the MCLE Administrator in determining whether a group CLE activity has substantial educational value without written materials include, but are not limited to: the qualifications and experience of the program sponsor; the credentials of the program faculty; information concerning program content provided by program attendees or monitors; whether the subject matter of the program is such that comprehension and retention by members is likely without written materials; and whether accreditation previously was given for the same or substantially similar program.

5.100 Other CLE Activities. The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

(a) When calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter.

5.200 Legal Research and Writing Activities.

(a) For the purposes of accreditation of Legal Research and Writing, all credit hours shall be deemed earned on the date of publication or issuance of the written work.

(b) Legal Research and Writing that supplements an existing CLE publication may be accredited if the applicant provides a statement from the publisher confirming that research on the existing publication revealed no need for supplementing the publication's content.

5.300 Personal Management Assistance. A personal management assistance program is one that includes assistance with alcoholism, drug addiction, burnout, career change and satisfaction, depression, anxiety, gambling addiction, procrastination, relationship issues, stress management, time management or other related issues.

5.400 Business Development and Marketing Activities. Activities devoted to enhancing profits

or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, marketing or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.

~~**5.500 Elimination of Bias Credit.** A program shall not be ineligible for accreditation as an elimination of bias activity solely because it is limited to a discussion of substantive law, provided the substantive law relates to issues involving race, gender, economic status, creed, color, religion, national origin, disability, age, or sexual orientation.~~

5.600 Independent Study. Members may earn credit through independent screening or viewing of audio-or video-tapes of programs originally presented to live group audiences, or through online programs designed for presentation to a wide audience. A lawyer who is licensed in a jurisdiction that allows credit for reading and successfully completing an examination about specific material may use such credits to meet the Oregon requirement. No credit will be allowed for independent reading of material selected by a member except as part of an organized and accredited group program.

Memorandum

To: Karen Garst
From: Karen Lee
Date: July 26, 2007
Re: Elimination of Bias Curriculum

Under MCLE Rule 3.2 (b), active members of the Oregon State Bar are required to complete three (3) hours of continuing legal education (CLE) relating to the elimination of bias. MCLE Rule 5.5 (b) defines elimination of bias CLE activities as those "directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation." Rule 3.2 was promulgated in response to the 1994 report of the Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System and the subsequent findings and recommendations from the Oregon Judicial Department Access to Justice for All Committee and a subcommittee of the Oregon State Bar Board of Governors' Policy and Governance Committee.

The following curriculum was developed to facilitate a better understanding by Oregon attorneys of the legal and judicial problems faced by individuals who encounter bias within the legal system due to their race, ethnicity, physical or mental disability, or economic status.

- 9:00 a.m. An Historical Overview of MCLE Rule 3.2
Suggested presenter: The Honorable Richard Baldwin, Multnomah County Circuit Court, Portland
- 9:45 a.m. Access to Justice Barriers for Non-Majority Oregonians
Suggested presenter: Angel Lopez, Squires & Lopez
- 10:45 a.m. Break
- 11:00 a.m. Access to Justice Barriers Resulting from Language and Cultural Differences
Suggested presenter: TBD
- Noon Lunch
- 1:00 p.m. Access to Justice Barriers for Oregonians with Physical Disabilities
Suggested presenter: Dennis Steinman, Kell Alterman & Runstein LLP
- 2:00 p.m. Access to Justice Barriers for Oregonians with Mental Disabilities
Suggested presenter: an attorney from the Oregon Advocacy Center

- 3:00 p.m. Break
- 3:15 p.m. Access to Justice Barriers for Low-Income Oregonians
 Suggested presenter: Tom Matsuda, Director, Legal Aid Services of Oregon
- 4:15 p.m. Adjourn

This schedule would provide 6.25 MCLE credits.

The most cost-effective delivery method would be video streaming. The seminar could be captured on video media at the bar conference center and uploaded to a website that would allow individual access and viewing. Once the course was viewed in its entirety, the viewer would receive a certificate of completion. Course materials could be posted on the website as a PDF for viewers to download and print. Print copies would be available upon request.

You asked that the curriculum include a three-hour experiential component. While an experiential component has merit, based upon my initial research the actual structure, implementation, and administration of such a program is more involved than can be covered within this memo. Issues such as client confidentiality and client conflicts would need to be addressed if an attorney were to volunteer at a legal aid clinic such as St. Andrew or at a LASO office; there is also the question of ensuring that the participation benefits both the participating attorney and the client, rather than simply satisfying an MCLE requirement.

Giving additional research time, I would be able to prepare a separate memo addressing the feasibility of an accompanying experiential component.

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November 2, 2007

Albert Menashe,
President
Oregon State Bar Board of Governors
5200 SW Meadows Road
Lake Oswego, Oregon 97035

Re: Policy and Governance Meeting on Elimination Of Bias CLE

President Menashe,

As President of Oregon Women Lawyers (OWLS), I write on behalf of OWLS to join our allies, The Oregon State Bar Diversity Section and The Oregon Minority Lawyers Association, in support of the continued mandatory requirement that all regular active members of the Oregon State Bar complete three hours of Elimination of Bias Continuing Legal Education Credit (EOB) each reporting period.

OWLS' mission is to transform the practice of law and ensure justice and equality by advancing women and minorities in the legal profession. Given our mission, it is imperative that OWLS encourages the Oregon State Bar and its members to work actively to eliminate bias and prejudice wherever it may exist in our profession.

OWLS agrees with the findings reached by the Task Force on Racial/Ethnic Issues in the Judicial System established by Justice Peterson in 1992: "[I]nstitutionalized bias [is]... a residue of beliefs that continue to linger in the subconscious of our society, perpetuate negative stereotypes and accordingly affect people's actions without their knowledge." OWLS believes that, to overcome the lingering effects of institutionalized bias, institutions including the Oregon State Bar must seek out solutions to reform the negative stereotypes that plague our society.

The EOB mandatory credit plays a pivotal role in the education, preparation and implementation of equality reform in the legal profession. When the Oregon Supreme Court established the elimination of bias requirement in 2004, the objective was to create quality legal education that would specifically address "racial and ethnic issues, gender fairness, disability issues and access to justice."

In the three short years since its implementation, the greatest dissatisfaction in the bar with the mandatory EOB credit seems to be the lack of quality programs. Janine Robben, author of "Membership to Consider MCLE Rule Change on EOB Credit Enforcement," quotes a Bar member in her *Bulletin* article who explained, "[I]n the 22 hours I've spent at these CLE's, it would be a big stretch to say that the audience received one hour's legal education." *Oregon State Bar Bulletin*, February/March 2006.

241. A

Although creating quality CLE programming on any topic can be challenging, discontent with the material is not a legitimate basis to circumvent the original intent of a long-studied and well-prepared resolution developed by the Task Force to remedy the lingering effects of institutionalized bias. We acknowledge that improvement of the courses may satisfy some of the opposition, but others may remain dissatisfied regardless of the improvements, particularly if they are resistant to subjects that address bias and prejudice. We caution the leadership and members of the Bar not to throw the proverbial baby out with the bath water.

OWLS is committed to sponsoring high-quality CLEs and will continue to diligently and creatively develop programs that are responsive to the needs of our membership. We welcome the opportunity to assist the Oregon State Bar in developing high-quality EOB CLEs. Given that the strongest objection to the mandatory EOB requirement pertains to the quality of the courses offered, the solution should focus on improved programming rather than elimination of the EOB requirement altogether. We believe that there is value in courses addressing historical oppression of marginalized groups. Requiring courses that challenge the beliefs of individual CLE participants by exposing them to such material is key to building bridges between diverse populations.

In closing, Oregon Women Lawyers is unreserved in its support of the mandatory EOB credit. While equality/bias reform is a difficult and sometimes adversarial process, it is essential that the Oregon Supreme Court continue to hold the Oregon State Bar and its members to a high standard. We urge the Bar to maintain the mandatory EOB credit and to improve the quality of CLE programs to make them relevant and productive to our members' practices. We also hope that the Bar will continue to keep its membership abreast of the discussion as it progresses. To that end, we encourage transparency of the process, and we seek collaboration in efforts to sustain this vital endeavor.

Respectfully,

/s/

Kellie F. Johnson, President
Oregon Women Lawyers 2007-2008

CC:

Honorable Paul J. De Muniz, Chief Justice, Oregon Supreme Court
Honorable Virginia L. Linder, Oregon Supreme Court
Honorable Martha L. Walters, Oregon Supreme Court
Richard S. Yugler, OSB President Elect
Theresa L. Wright, OSB Board of Governors
Robert C. Joondeph, Chair, Diversity Section
Anastasia Meisner, Oregon Minority Lawyers Association

November 1, 2007

Oregon State Bar Board of Governors

Albert A. Menashe, President

Linda K. Eyerman, Vice President

Marva Fabien, Vice President

Richard S. Yugler, President-Elect

Carol D. Skerjanec

Gerry Gaydos

Timothy C. Gerking

Ann L. Fisher

S. Ward Greene

Robert D. Newell

Theresa L. Wright

Kathleen A. Evans

Robert M. Lehner

Jonathan P. Hill

Robert Vieira

Bette L. Worcester

Karen L. Garst, OSB Executive Director

Margaret Robinson, Manager, Member Services

Re: OSB Affirmative Action Program

Dear BOG Members, Karen and Margaret

We write you as former members of the BOG concerned about the future of the Oregon State Bar's Affirmative Action Program (AAP).

As you know, the manner in which the AAP was recently restructured left minority lawyers and law students seriously questioning the bar's commitment to AAP. The comments you heard from lawyers and students at your recent Salishan meeting were not isolated viewpoints; they reflect the deep concern of hundreds of Oregon lawyers about our current crisis. Indeed, some practicing lawyers of color are reconsidering whether to remain in Oregon. Many students of color are trying to decide whether they should stay in Oregon. If the BOG does not take decisive action, no qualified candidate for the position of AAP Manager will apply for the job.

241.C

In our legal careers, we have not seen such a crisis in confidence and trust in the Oregon State Bar by attorneys and law students of color. In our judgment, unless the Board takes positive and visible steps to address the issues raised by the minority legal community, thirty-five years of affirmative action efforts by the Bar will be seriously damaged for years to come.

We strongly urge you to avoid a business-as-usual approach to this crisis. Respectfully, we see no effective substitute for the BOG devoting its own serious time and attention to this matter. Under the circumstances, this responsibility cannot effectively be delegated to management and staff. Specifically, we make the following recommendations:

1. As a board, immediately engage in cultural sensitivity training to better understand why so many attorneys and students of color perceived they were marginalized when AAP was restructured. Invite some of those attorneys and students to participate in your training. A half day training would get you off to a good start.
2. As a board, promptly follow up with a more extensive Understanding Racism Course (12 hours total over a period of weeks that work for you) to increase your awareness of these issues (We all need it!).
3. As a board, promptly follow up with planning meetings to discuss the future of AAP and how the AAP can be made an institutional priority. Develop and implement an action plan to continue building and expanding AAP and the minority legal community.
4. Require OSB management and staff to participate in similar diversity trainings.

Please understand we submit these recommendations out of concern and not as criticism. We know that Uniting to Understand Racism (UUR) is ready to assist you in this matter. Former Chief Justice Ed Peterson may be available to help facilitate your sessions. Recently, UUR has had excellent success facilitating such trainings for the City of Portland and the Hillsboro School District. Other professional facilitators are also available. We would, of course, be happy to assist in any way we can to help in this regard.

As former BOG members, we know how many issues and tasks compete for your time. However, at this juncture, the Bar's commitment to diversity will be demonstrated by your action (or inaction). That is why it is so important that your decisions about how to best resolve the present crisis be informed, sensitive and caring. We are confident that by taking a no-fault approach to moving AAP forward in a constructive manner, the BOG will be able to successfully resolve these issues of critical importance to the bar.

Board of Governors, Garst and Robinson
November 1, 2007
Page 3

Thank you for your consideration of these recommendations.

Sincerely,

/s/
HON. RICHARD C. BALDWIN

/s/
TOBY GRAFF

/s/
ANGEL LOPEZ

/s/
HON. EDWARD J. JONES

c: Amanda L. Mahyew
Chair, Affirmative Action Committee

241.E

Oregon State Bar
Meeting of the Board of Governors
September 28-29, 2007
Open Session Minutes

The meeting was called to order by President Albert Menashe, Friday, September 28, 2007, at 11:00 a.m. at Salishan Resort in Gleneden Beach. The meeting adjourned at 5:17 p.m. Those present from the Board of Governors were Kathy Evans, Linda Eyerman, Marva Fabien, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, Jon Hill, Robert Lehner, Albert Menashe, Carol Skerjanec, Robert Vieira, Bette Worcester, Terry Wright, and Rick Yugler. Staff members present were Karen Garst, Sylvia Stevens, Susan Grabe, Rod Wegener, Jeff Sapiro, David Johnson, Helen Hierschbiel, Danielle Edwards, and Teresa Wenzel. PLF members present were Jeff Crawford, Ron Bryant, and Tom Cave. Others present were Mary Crawford, Lauren Paulson, Heather Van Meter (via phone), Willard Chi, Dennis Karnopp, Ross Shepard, Tom Kranovich, Lisa Umscheid, William Elsinger, J.B. Kim, Manasi Kumar, Kellie Johnson, Akira Haishiki, Larry Seno, and Susan Alba.

Friday, September 28, 2007

1. Report of Officers

A. Report of the President

Mr. Menashe provided the board with a memo reflecting the events he attended and reports concerning the visits with the Chief Justice. He informed the board he met with all of the local county bars in 2007 except Lake County, which Mr. Gerking covered for him.

B. Report of the President-elect

Mr. Yugler brought the board's final 2008 meeting schedule to the board's attention. He met recently with the Court of Appeals and the Supreme Court and relayed their thanks for the BOG's support of the judiciary. He reported on his attendance at the National Conference of Bar Presidents and expressed kudos for the Cooley Law School and its focus on professionalism. The preparations for the first Past President's Council are underway.

C. Report of the Executive Director

Ms. Garst expressed her thanks for the board's support. She called the board's attention to the Judicial Proceedings Protocol, indicating it should be followed at future board meetings. A copy will be included in future board meeting packets.

D. Board Member Reports

Mr. Lehner reported that the Environmental and Natural Resource Section is interested in web casting various bar meetings. It discussed future "greenness" and would like information concerning the "greenness" of the new bar building. Ms. Garst

indicated that the new bar building will be wired to accommodate webcasting, but we do not yet have all the equipment or staff expertise that is required for web casting.

Mr. Greene informed the board that Dick Roy sent him an article from the National Law Journal highlighting the Oregon State Bar as a national leader in sustainability.

Ms. Wright taped a program for Legal Links dealing with dispelling myths of the law. She encouraged other board members also to film segments. Ms. Garst indicated that the Legal Links programs are available for viewing on the bar's website.

Ms. Evans thanked Ms. Grabe for her assistance in resolving an issue without legislative action.

E. Oregon New Lawyers Division

Willard Chi presented the ONLD's report. He advised the board of events in which the group had participated including Constitution Day and Super Saturday CLE. The slate of new officers is ready for 2008. Julie Tripp interviewed Mr. Chi for an article in *The Oregonian* and he thanked the bar staff for directing Ms. Tripp to him and giving him the opportunity for the interview.

2. Professional Liability Fund

A. General Update

1. Financial Report

Mr. Cave presented the PLF's financial report. The PLF is well within budget and claims are down. Mr. Bryant presented a report on claims analysis. The PLF has hired some new staff and is looking at its current and future staff needs in light of the number of staff who will be retiring in the next five years.

2. Moving Update

The PLF will move February 2008.

3. 2008 NABRICO

The PLF will host the 2008 National Association of Bar Related Insurance Companies.

B. Approve 2008 PLF Budget

Mr. Cave explained that the proposed increase to the 2008 PLF budget is largely salaries and benefits, which will increase by 4%.

Motion: Ms. Fabien moved, Ms. Worcester seconded, and the board unanimously passed the motion to approve the 2008 PLF budget.

C. Approve 2008 PLF Primary Program Assessment

Mr. Bryant presented information concerning the PLF primary program assessment. It wants to be conservative and is working to get the reserve up to the nine million dollar level. There is a concern because claim severity is going up and next year the frequency may be higher. It would like to have a cushion and therefore would like to leave the assessment at \$3,200.

Motion: Mr. Yugler moved, Ms. Wright seconded, and the board unanimously approved the motion to retain the PLF primary program assessment at \$3,200.

D. Amend PLF Exclusion 5 Relating to the Business Covered Parties

Mr. Bryant presented information concerning the proposed amendment to PLF exclusion 5, clarifying the scope of the business activity exclusions.

Motion: Mr. Hill moved, Mr. Gerking seconded, and the board unanimously approved the motion to amend PLF exclusion 5.

E. Amend PLF Exclusion 10 Relating to Attorney Fees

Mr. Bryant presented information concerning the proposed amendment to PLF exclusion 10 to allow claims for certain attorney fee losses.

Motion: Mr. Hill moved, Mr. Gaydos seconded, and the board unanimously approved the motion to amend PLF exclusion 10.

F. Amend PLF Exclusions 2 and 4 Relating to Wrongful Conduct

Mr. Bryant presented information concerning the proposed amendment to PLF exclusions 2 and 4, which removed redundant language relating to the exclusion for wrongful conduct claims.

Motion: Mr. Vieira moved, Ms. Wright seconded, and the board unanimously approved the motion to amend PLF exclusion 2 and 4.

G. Amend PLF Exclusion 20 Relating to Contractual Obligation Exclusion

Mr. Bryant presented information concerning the amendment to PLF exclusion 20.

Motion: Mr. Hill moved, Mr. Gerking seconded, and the board unanimously approved the motion to amend PLF exclusion 20 relating to the contractual obligation exclusion.

3. Special Appearances

A. Diversity Section

1. Proposed EOB Resolution

Mary Crawford, chair of the Diversity Section, addressed the board regarding the section's resolution to retain the elimination of bias MCLE requirement. The section feels education is important and should be mandatory and ongoing. It wants the membership to understand that EOB is more than just sitting through a class. It is part of the privilege of practicing law in Oregon. Ms. Crawford expressed the section's concern and wanted the board to know how important this matter is to it. Ms. Crawford suggested that EOB be incorporated into the current courses by weaving it into the current curriculum. The board may want to consider new ways of presenting the issue and requirement to the membership.

Mr. Yugler reminded the board of the history and membership perception of the EOB. The BOG has never been against it, though the perception is it opposes the issue. The BOG fought to maintain the EOB, though the membership voted to eliminate it. The Supreme Court opposes the elimination of the EOB requirement. The requirement will be retained in some fashion, though it may not look exactly as it does today.

The board thanked Ms. Crawford for her candid input.

Ms. Stevens introduced Helen Hirschbiel, Deputy General Counsel, who will be Acting General Counsel while Ms. Stevens is on sabbatical.

4. Rules and Ethics Opinions

A. Ethics Committee

1. Proposed Formal Ethics Opinion on Trial Publicity

Ms. Stevens presented information and answered questions regarding the proposed formal ethics opinion on trial publicity.

Motion: Mr. Yugler moved, Mr. Gaydos seconded, and the board unanimously approved the motion to adopt the formal ethics opinion on trial publicity.

2. Proposed Formal Ethics Opinion on Indigent Defense Caseloads

Ms. Stevens presented information and answered questions regarding proposed formal ethics opinion on indigent defense caseloads. The committee revisited the issue in April and made no changes. She directed the board's attention to a

memo from Paul Levy, which addresses the board's concerns and national criminal defense attorneys' caseloads.

Motion: Ms. Eyerman moved, Mr. Gaydos seconded, and the board approved the motion to adopt the formal ethics opinion on indigent defense caseloads (yes, 13; no, 2 [Fisher, Wright]).

B. State Professional Responsibility Board

1. Proposal for Rule Limiting the Activities Disciplined Lawyers May Perform in a Law Firm

Mr. Gerking presented the SPRB's memo requesting the BOG's guidance on whether to proceed with developing rules regulating the activities of suspended or disbarred attorneys. The board concurred with Mr. Gerking's view that the committee had additional work to do on the proposed rule before it was ready for the board's consideration. There was, however, agreement that the concept appears worth pursuing.

Motion: Ms. Wright moved, Mr. Greene seconded, and the board voted unanimously to inform the SPRB that the board invites a revised proposal on this issue.

5. OSB Committees, Sections, Councils, Divisions and Task Forces

A. MCLE Committee

1. OWLS Request for Review of MCLE Committee's

Ms. Skerjanec explained the MCLE Committee's denial of EOB credits for an OWLS CLE session entitled "Community and Volunteer Involvement." OWLS requested BOG review of the Committee's decision. Heather Van Meter appeared on behalf of OWLS. The board discussed the matter and felt it did not qualify as an EOB credit, but it might qualify for general or ethics credits.

Motion: Mr. Yugler moved, Ms. Fisher seconded, and the board passed the motion approving the CLE for 1.25 ethic credits (yes, 10; no, 5 [Eyerman, Gaydos, Menashe, Skerjanec, Wright]).

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

A. **Access to Justice Committee**

1. **Legal Services Program Committee Recommendation to Increase Administrative Filing Fee**

Ms. Eyerman presented the committee's motion to increase the filing fee administrative allocation from \$90,000, which it has been for the last ten years, to \$108,000.

Motion: The board unanimously passed the committee motion to increase administrative allocation from \$90,000 to \$108,000.

2. **LSPC Recommendation to Increase General Fund Appropriation for Legal Aid for 2007-2009**

Ms. Eyerman presented the committee's motion that the 2007-09 General Fund appropriation to the OSB be held in the Legal Services Program to be distributed in accordance with existing policies; that all interest on the funds be accumulated for the LSP pending a further recommendation; and that a small portion of the funds be used over the next six months to increase the funding to Jackson and Lane County programs.

Motion: The board unanimously passed the committee's motion.

B. **Budget and Finance Committee**

1. **New Bar Center**

Mr. Greene reported on developments regarding the new bar center. Though much progress has been made, there are no tenants yet for the master lease space. Although the final cost of the new building is more than the contracted price, it is within the bar's anticipated expenditure and is very manageable. Mr. Greene will keep the board informed of construction progress as additional information comes available. Mr. Wegener reviewed the costs and loan estimates and answered questions from the board.

C. **Policy and Governance Committee**

1. **Change in Alcohol Policy**

Motion: Mr. Gerking moved, Mr. Greene seconded, and the board unanimously passed the motion to table the committee motion.

2. Reciprocity with Alaska

Mr. Gerking presented the committee's motion to ask the BBX to study possible reciprocity with Alaska, notwithstanding the slight differences in the two state's rules. The Alaska Bar has indicated it is willing to work out the differences if that would bring about reciprocity.

Motion: The board unanimously passed the committee motion to forward a request to the BBX to study the possibility of expanding the bar's admission's reciprocity to include Alaska.

D. Public Affairs Committee

1. Political Update

Ms. Grabe updated the board on issues concerning the legislature. The new election cycle will bring many changes. There are three lawyers running for office and they are familiar with the bar and its legislative process. Ms. Grabe reiterated the importance of having lawyers in the legislature supporting the bar and its policies. At this time, PAC does not anticipate introducing anything to the special February session. At the same time, it may be involved in issues being introduced.

2. Pending Initiatives

Mr. Yugler presented information concerning a proposed BOG resolution for the HOD agenda establishing that the bar will oppose legislative initiatives 2, 51, and 53 should they be included on the Oregon state ballot.

Motion: The board unanimously passed the committee motion to approve the HOD resolution in opposition to ballot measures 2, 51, and 53.

E. Public Member Selection Committee

1. Board of Governors Public Member Recommendation

Ms. Worcester informed the board of the committee's recommendation to select Audrey Matsumonji as the new public member for the board. She was one of three finalists and the committee's first choice.

Motion: The board unanimously passed the committee motion to ask Ms. Matsumonji to accept appointment as the new public member to the Board of Governors.

7. HOD Agenda

The board reviewed the HOD agenda and decided which resolutions to support and who would present information to the HOD.

1. 2008 Membership Fee

Mr. Greene to present the BOG resolution concerning the 2008 membership fees to the HOD.

2. Mileage Reimbursement for HOD Members

Mr. Yugler will present the BOG resolution concerning mileage reimbursement for HOD members to the HOD.

3. Amend ORS 12.020(1)

Motion: The Public Affairs Committee moved to oppose the resolution based on the of lack of research and on concerns that the matter is procedural and not an issue for the HOD. The committee motion passed unanimously.

4. In Memoriam

Ms. Fabien will read the names of lawyers who died since the last meeting of the HOD.

5. Record of Proceedings

Mr. Gerking will present the BOG resolution concerning video recording of the HOD proceedings. The board discussed the value of visual historical record and the concerns of the court reporters that there will no longer be a written transcript. Ms. Garst pointed out that the 2007 HOD meeting would be video recorded and stenographically reported.

6. Support Adequate Funding for Legal Services.

Motion: Ms. Eyerman moved, Mr. Greene seconded, and the board voted unanimously to support adequate funding for legal services of low-income Oregonians. Ms. Eyerman agreed to present the board's support to the HOD.

7. Continue the Current Policy Prohibiting the Use of Bar Funds for the Purchase of Alcoholic Beverages

Although the Policy and Governance Committee recommends a change in the current policy, Mr. Gerking reported that the committee would defer bringing the recommendation to the BOG until after the HOD meeting.

Motion: Mr. Wright moved, Ms. Skerjanec seconded, and the board passed the motion to take no position on the issue of the purchase of alcoholic beverages with bar funds (yes, 12; no, 3 [Fisher, Menashe, Yugler]).

8. Restore Decision to Ban Military Advertisement in OSB Publications

The board discussed concerns about returning this excluded resolution to the HOD agenda. The board agrees with General Counsel's view that the vote of the membership supersedes the vote of the HOD. It reviewed the procedure of adding the resolution to the HOD agenda; Ms. Stevens agreed to present the legal aspects of the resolution if the HOD voted to suspend the rules.

Motion: Ms. Fisher moved, Ms. Wright seconded, and the board unanimously passed a motion to hear from Mary Crawford, Chair of the Diversity Section.

Mary Crawford, Chair of the Diversity Section, presented the section's concerns regarding the proposed HOD resolution concerning military ads in OSB publications. The section does not support the current bar policy, nor does it support the proposed resolution that appears in the HOD agenda. Rather, it would support an alternate resolution drafted by Robert Joondeph, which would require a disclaimer on pages soliciting employment that "The Oregon State Bar does not discriminate on the basis of race, religion, color, gender, sexual orientation, geographic location, age, disability, marital, parental or military status and does not endorse or condone such discrimination by any advertiser."

Motion: Ms. Wright moved, Mr. Gaydos seconded, and the board unanimously passed a motion to support the Joondeph resolution should it get to the HOD agenda.

8. Consent Agenda

Motion: Ms. Wright moved, Mr. Lehner seconded, and the board unanimously approved the motion to approve the Consent Agenda as presented.

9. Special Appearance

A. Oregon Minority Lawyers Association

Mr. Menashe opened the session by assuring everyone of the board's continuing and unwavering commitment to the Affirmative Action Program. He also pointed out the BOG's responsibility to members to assure that all OSB programs are properly accountable and administratively sound.

The following individuals spoke to the board: Dennis Karnopp, Lisa Umscheid, Tom Kranovich, William Elsinger, J.B. Kim, Manasi Kumar, Kellie Johnson, Akira Haishiki, Larry Seno, Susan Alba.

The various speakers acknowledged their respect for the Executive Director and her commitment to the Affirmative Action Program. Nevertheless, there is concern that AAP changes were made without consultation with the Affirmative Action Committee (AAC) or other stakeholders. There is also concern about how the AAP will function as part of the Member Services Department. One speaker explained that the reaction to AAP changes was exacerbated by three recent issues which have given the minority community reason to be concerned about the level of support for diversity in the bar as a whole – fighting for reauthorization of the AAP, the decision to allow military ads in bar publications, and the effort to get rid of EOB education.

Mr. Yugler closed the session by acknowledging that the AAP has touched many students and lawyers, that the bar's support of the AAP is unwavering and it wants students to thrive. The BOG's objective is to ensure success of the AAP and it is focused on doing just that. Ms. Fabien informed the group that Ms. Garst had spoken to her about the changes before they occurred. She asked the group if it had specific requests for the board to prove its commitment to the program and if so, to let board members know.

10. Closed Session Agenda

- A. Reinstatements (Judicial proceeding pursuant o ORS 192.690(1) – separate packet)
- B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet)

11. Good of the Order (Non-action comments, information and notice of need for possible future board action)

- A. Renewal of RPC 5.5

Ms. Stevens reported that the Supreme Court voted on September 25 to permanently renew RPC 5.5 (temporary practice by out of state lawyers), which was set to expire on December 31, 2007.

- B. Advertising Task Force

Ms. Stevens relayed the Supreme Court's recommendation that the BOG create a task force to study Oregon's advertising rules to ensure they are consistent with state and federal constitutional standards. There being no disagreement from the board, Mr. Menashe instructed Ms. Stevens to work with him to designate individuals to participate. Mr. Greene volunteered to be the BOG representative on the Advertising Task Force.

Motion: Ms. Wright moved, Mr. Lehner seconded, and the board unanimously passed a motion to create an advertising task force.

**Oregon State Bar
Board of Governors Meeting
September 27, 2007
Executive (Closed) Session Minutes**

Discussion of items on this agenda is in executive (closed) 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.

I. Resignation of AAP Administrator

The board met in Executive Session to discuss the personnel issues that led to the change in the reporting relationship of the AAP Administrator and her subsequent resignation. No action was taken.

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**Oregon State Bar
Board of Governors Meeting
September 28, 2007
Executive (Closed) Session Minutes**

Discussion of items on this agenda is in executive (closed) 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.

I. **Unlawful Practice of Law [Ms. Wright]**

A. Recommendation of UPL Committee

1. *Lori Warnick/Able Document Center*, UPL No. 05-38

Ms. Wright presented information concerning Ms. Warnick and Able Document Center.

Action: Ms. Wright moved, Mr. Greene seconded, and the board unanimously passed the motion to rescind its approval for prosecution and to authorize a cease and desist agreement against Ms. Warnick.

1. *Oscar Nealy*, UPL No. 07-31

Ms. Wright presented information concerning Mr. Nealy.

Action: Ms. Wright moved, Mr. Vieira seconded, and the board unanimously passed the motion to authorize prosecution of Nealy for the unlawful practice of law.

2. *Layne Barlow*, UPL Nos. 06-15 and 06-29

Ms. Wright presented information concerning Mr. Barlow.

Action: Ms. Wright moved, Mr. Gerking seconded, and the board unanimously passed the motion to deny the committee recommendation of prosecution.

B. Pending UPL Litigation

Ms. Stevens updated the board on pending UPL litigation.

II. General Counsel's Report

A. Pending or Threatened Non-Disciplinary Litigation

Ms. Stevens updated the board on pending the threatened non-disciplinary litigation.

Action: Mr. Greene moved, Ms. Worcester seconded, and the board unanimously passed the motion to pay a stipend of \$100 per hour for attorney fees in *Albrecht v. DeMuniz*.

**Oregon State Bar
Board of Governors Meeting
September 28, 2007
Judicial Proceedings Minutes**

Reinstatements and disciplinary proceedings are judicial proceedings and are not public meetings (ORS 192.690). This portion of the BOG meeting is open only to board members, staff, and any other person the board may wish to include. This portion is closed to the media. The report of the final actions taken in judicial proceedings is a public record.

A. Reinstatements

1. Michael S. Balavage – 925646

Action: Mr. Hill presented information concerning the BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Mr. Balavage be unconditionally reinstated as an active member of the Oregon State Bar.

2. Craig C. Coyner, III – 740689

Action: Ms. Worcester presented information concerning the BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

3. Jane Hall Doyon – 761384

Action: Mr. Gerking presented information concerning the BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

4. Steven D. Marsh – 010749

Action: Mr. Gaydos presented information concerning the BR 8.1. The board agreed on motion to postpone action on this reinstatement and consider it at a later meeting.

5. Maureen J. Michael – 920966

Action: Mr. Vieira presented information concerning the BR 8.1 application. The board passed a motion to recommend to the Supreme Court that Ms. Michael be reinstated as an active member of the Oregon State Bar, conditional upon her obtaining 45 CLE credits before reinstatement becomes effective.

6. Robert D. Noggle – 803286

Action: Mr. Lehner presented information concerning the BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

7. Shana Pavithran – 951070

Action: Ms. Evans presented information concerning the BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

8. Roger W. Perry – 915190

Action: Ms. Fisher presented information concerning the BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Mr. Perry be unconditionally reinstated as an active member of the Oregon State Bar.

9. Heidi O. Strauch – 924170

Action: Ms. Skerjanec presented information concerning the BR 8.1 reinstatement application to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting

10. Barry T. Woods – 951332

Action: Mr. Yugler presented information concerning the BR 8.1 reinstatement application. The board passed a motion to recommend to the Supreme Court that Mr. Woods be unconditionally reinstated as an active member of the Oregon State Bar.

B. Disciplinary Counsel's Report

Mr. Sapiro answered questions the board had concerning the reinstatement process.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: November 3, 2007
From: Appointments Committee, Terry Wright
Re: Appointments Committee Items for the Consent Agenda

Action Recommended

Approve the following recommendations from the Appointments Committee.

Affirmative Action Committee

Chair: Tu, Trung
Secretary: Kranovich, Tom
Members with terms expiring 12/31/2010:
Nair, Joylynn
Rice, Martha L
Watkins, Ulanda Lynette
Williams, James D

Bar Press Broadcasters Council

Chair: Wilker, Steven
Members with terms expiring 12/31/2009:
Graser Laura
Members with terms expiring 12/31/2010:
Barnett, Russell S
Doughman, David F
Gillette, W Michael
Olsen, Danny R

Certified Public Accountants Joint Committee

Members with terms expiring 12/31/2009:
Tompkins, Robin
Members with terms expiring 12/31/2010:
Calo, Robert R
Cyr, Steven M
Mallon, Leah M
McGlasson, Jeana M
Shawcross, David L
Skinner, Ginger S
Walch, John D

Client Security Fund Committee

Chair: Asphaug, Scott
Secretary: Alterman, Susan
Members with terms expiring 12/31/2008:
Barrack, Marty
Members with terms expiring 12/31/2010:
Marshall, Linda
Foster, Eric R
Michelsen, Joan-Marie
Quintero, Robert E

Federal Practice and Procedure Committee

Chair: Sullivan, Dana
Secretary: Hunsaker, Danielle
Members with terms expiring 12/31/2008:
Burrows, Michelle R
Members with terms expiring 12/31/2009:
Dugan, Marianne G
Members with terms expiring 12/31/2010:
Hellman, Kristina
Manning, Stephen William
O'Kasey, Karen
Semler, Elizabeth A
Sullivan, Dana L

Judicial Administration Committee

Chair: Bray, Douglas
Secretary: Christian, Ann
Members with terms expiring 12/31/2008:
Svoboda, John L
Members with terms expiring 12/31/2009:
Taylor Jaye
Christian, Ann
Haas, Harl H
Members with terms expiring 12/31/2010:
Gates, Jennifer L
Lysne, Matthew J
Maurer, Jean
Paternoster, Charles J
Snowden, Kristen

Legal Ethics Committee

Chair: Auerbach, Harry
Secretary: Knight, Ethan
Members with terms expiring 12/31/2010:
Brown, Stuart M
Calzaretta, Victor
Hansen, Kurt F
Harris, Ginger Lee
Houston, Holli K

Legal Heritage Committee

Chair: Kreft, Janet
Secretary: Hall, Maiya
Members with terms expiring 12/31/2010:
Crofott Betty
Fuson, Sandijean
Kennedy Jack
Kester, Randall B
Kreft, Janet D
Kuzma, Samuel J

Legal Services Committee

Chair: Turner, Bob
Secretary: Pearman, Beverly
Members with terms expiring 12/31/2010:
Fabien, Marva
Tucker, Samuel

Loan Repayment Assistance Program Advisory Committee

Wright, Terry (bar president designee)
Members with terms expiring 12/31/2009
Merv Loya (Law School Representative)
Members with terms expiring 12/31/2010:
Crawford, Maya
Eyerman, Linda K.

MCLE Committee

Chair: Palmer, Pamela
Secretary: McNichols, Mike
Members with terms expiring 12/31/2010:
Fine, J David
Hunt, Cindy

Pro Bono Committee

Chair: Crawford, Maya
Secretary: Petersen, David
Members with terms expiring 12/31/2008:
Rutter, Candice Ann
Members with terms expiring 12/31/2010:
Andrews, Dawn
Bunn, Shenandoah M
Rizzo, Matthew J

Procedure and Practice Committee

Chair: Schwimmer, John
Secretary: Kasubhai, Mustafa
Members with terms expiring 12/31/2008:
McCandlish, James
Members with terms expiring 12/31/2010:
Bovarnick, Paul
Colton, Britney Ann
Dippel, Courtney C
Albertazzi, Anthony
Cowley, Craig M
Swaim, Michael E
Sweitzer, Graham M

Public Service & Information Committee

Chair: You, Youlee
Secretary: Cousineau, Jessica
Members with terms expiring 12/31/2010:
Chung, Wendy
Jeresek, Jinnifer S
Johnson, Dexter A
Stylos, Melya

Quality of Life Committee

Chair: Curtis, James
Secretary: Jones, Ellen
Members with terms expiring 12/31/2009:
Trant, Deborah
Members with terms expiring 12/31/2010:
Cauble, Walter L
Glaser, Erica
SkinnerLopata, Cassandra C
Public Member- Nelson, Kris J.

State Lawyers Assistance Committee

Chair: Hon. Ted Grove
Secretary: Laura Rufolo
Members with terms expiring 12/31/2011:
Cordes, Tracey
Grover, Diane L
Greithaupt, Henry
Hazarabedian, Gregory

Uniform Civil Jury Instructions Committee

Chair: Melville, Thomas
Secretary: Heekin, Katherine
Members with terms expiring 12/31/2009:
Hanifin, Michael B
Members with terms expiring 12/31/2010:
Goehler, Barry J
Hansa Rastetter, Kathleen
McGovern, Tracy M
Montgomery, Laura TZ
Newton, Cynthia Furrer
Norby, Susie L

Uniform Criminal Jury Instructions Committee

Chair: Bachart, Sheryl
Secretary: Sylwester, Timothy
Members with terms expiring 12/31/2010:
Beloof, Linda G
Johnson, Kellie F
Marshall, Rachel N
Silver, Gregory F

Unlawful Practice of Law Committee

Chair: Brickley, Alan
Chair-Elect: Gumusoglu, J O'Shea
Secretary: Cann, Fred
Members with terms expiring 12/31/2011:
Oscar Garcia
Members with terms expiring 12/31/2011:

258.B

Bartelt alic
Borg C. Lane

Whang, Simon Chongmin
Public Member- Holloman, Dean

Professional Liability Fund Board of Directors

Terms expiring 12/31/2012
William Carter
Tim Martinez- Public Member

Disciplinary Board

State Chair and Chair-Elect terms expire 12/31/2008.
State Chair: Susan Bischoff
State Chair-Elect: Gregory Skillman

Unless otherwise noted all regional chair positions have terms expiring 12/31/2008; all members have terms expiring 12/31/2010.

Region 1

Chair: Carl W. Hopp Jr.
Members: John A. Berge, John G. McBee (public), William Olsen (public)

Region 2

Chair: Gregory Skillman
Members: Audun Sorensen (public)

Region 3

Chair: R. Paul Frasier
Members: John Barlow, James Dole

Region 4

Chair: Arnold S. Polk

Region 5

Chair: Bill Crow
Members: Ronald W. Atwood, Howard I Freedman (public), Nancy Cooper, John L. Langslet, Michael R. Levine, Charles Martin (public)

Region 6

Chair: Gil Feibleman
Members: James Edmonds, Llewellyn Fischer, Martin Johnson (public), W. Bradford Jonasson, Joan LeBarron, Richard Miller (public)

Bar Counsel

Terms expire 12/31/2010

Region 1

New Appointmetns:
W. Euguene Hallman

Region 2

Re-appointments:
Stephen R. Blixseth
Louis L. Kurtz
Michael H. Long
David B. Mills
Wilson B. Muhlheim

Ilisa Rooke-Ley
Tina Stupasky

New Appointmetns:
Wendy J. Baker

Region 3

New Appointmetns:
Michael Jewett

Region 5

Re-appointments:

Robert E. L. Bonaparte
Timothy M. Bowman
Kim T. Buckley
Peter R. Chamberlain
John M. Junkin
Sonia A. Montalbano
Andrew T. Reilly
Alyssa Tormala
New Appointmetns:
Barry J. Goehler
Region 6
Re-appointments:
William Brickey
Michael F. Conroyd
Susan K. Hohbach
J. Philip Parks
New Appointmetns:
Susan R. Gerber
Simon Chongmin Whang

Local Professional Responsibility Committee

Terms expire 12/31/2009

BAKER/GRANT

Damien Yervasi- CHAIR (Reappoint)
Pamela C. Van Duyn (Reappoint)
Kenneth A. Bardizian (Reappoint)
Robert Whitnah (New appointment)

BENTON/LINCOLN/POLK

Guy B. Greco - CHAIR (Reappoint)
Mark Allen Heslinga (New Appointment)
Kathryn Anne Benfield (New Appointment)

CLACKAMAS/LINN/MARION

Michelle Teed - CHAIR (Reappoint)
John H. Beckfield (Reappoint)
Theodore P. Heus (Reappoint)
Jennifer L. Niegel (Reappoint)
Dana C. Heinzelman (Reappoint)
Philip J. Edwards (New Appointment)
Carol A. Parks (New appointment)
Jennifer S. Hisey (New appointment)

CLATSOP/COLUMBIA/TILLAMOOK

Brian L. Erickson - CHAIR (Reappoint)
Dawn H. Blaser (Reappoint)
Sarah E. Hanson (Reappoint)
Deborah A. Dyson (New appointment)

COOS/CURRY

Daniel M. Hinrichs - CHAIR (Reappoint)
Alexandria C. Streich (Reappoint)
Sharon K. Mitchell (Reappoint)
Megan L. Jacquot (Reappoint)

CROOK/DESCHUTES/JEFFERSON/WHEELER

Jacques DeKalb - CHAIR (Reappoint)
John E. Laherty (Reappoint)
Steven D. Bryant (New Appointment)
Lisa N. Bertalan (New Appointment)

DOUGLAS

Bruce R. Coalwell - CHAIR (Reappoint)
Samuel Hornreich (Reappoint)
Donald A. Dole (Reappoint)

GILLIAM/HOOD RIVER/SHERMAN/WASCO

William H. Sumerfield - CHAIR (Reappoint)
Jeffrey J. Baker (Reappoint)
Deborah M. Phillips (New Appointment)

HARNEY/MALHEUR

R. David Butler II - CHAIR (Reappoint)
Timothy J. Colahan (Reappoint)
Brian T. Zanutelli (New appointment)

JACKSON/JOSEPHINE

Gerald M. Shean - CHAIR (Reappoint)
Michael G. Fetrow (Reappoint)

Gary C. Peterson (Reappoint)
Det. Colin Fagan – Public Member (Reappoint)
Allen G. Drescher (New Appointment)

KLAMATH/LAKE

Andrew C. Brandsness – CHAIR (Reappoint)
David P. Groff (Reappoint)
Marcus M. Henderson (Reappoint)

LANE

Laura TZ Montgomery - CHAIR (Reappoint)
Liane I. Richardson (Reappoint)
Jane M. Yates (Reappoint)
Holli K. Houston (New appointment)
Martha L. Rice (New appointment)
Melya Stylos (New appointment)

MORROW/UMATILLA

Kittee Custer – CHAIR (Reappoint)
Douglas R. Olsen (Reappoint)
Michele Grable (Reappoint)

MULTNOMAH

David W. Hercher – CHAIR (Reappoint)
Adina Matasaru (Reappoint)
Ellen Voss (Reappoint)
Margaret F. Weddell (Reappoint)
Brian R. Talcott (Reappoint)
Jeffrey P. Chicoine (Reappoint)
Saville W. Easley (Reappoint)
Dain Paulson (Reappoint)
Glenn W. Robles (Reappoint)
Daniel L. Steinberg (Reappoint)
Grant Robinson – Public Member (Reappoint)
Kelly Lemarr (New appointment)
Shelly Matthys (New appointment)
Sharon L. Toncray (New appointment)

UNION/WALLOWA

Mona K. Williams – CHAIR (Reappoint)
Alyssa D. Slater (Reappoint)
Paige Louise Sully (Reappoint)
Mark Tipperman (Reappoint)

WASHINGTON/YAMHILL

Kelly Ford – CHAIR (Reappoint)
Douglas F. Angell (Reappoint)
Catherine A. Wright (Reappoint)
Clayton Huntley Morrison (Reappoint)
Melissa Bobadilla (Reappoint)
J. Russell Rain (Reappoint)

State Professional Responsibility Committee

Jana Toran, term expires 12/31/2011

John (Jack) Folliard, Jr.- Chair term expires 12/31/2008

Leadership College Advisory Board

Terms expire 12/31/2008

Kellie F. Johnson
Hon. Virginia L. Linder
Hon. Daniel L. Harris
Liane I Richardson

Post Conviction Relief Task Force

Balske, Dennis N.
Bornstein, Tony
Grefenson, Noel
Larsen, Lynn D.
Levy, Paul E.
MacFarlane, Ingrid A.
Olive, Mark
Radostitz, Rita J.
Rubenstein, Matt M
Sussman, Marc
You, Youlee Y.

Oregon Law Foundation Board

Howard Arnett, term expires 12/31/2011

Commission on Judicial Fitness and Disability

Gene Hallman, term expires 1/28/2012

Oregon Law Commission

Gregory Mowe, term Expires 8/31/2009

Ninth Circuit Judicial Conference

The BOG makes recommendations to Chief Judge Ancer Haggerty who will make the actual appointments to this group. The Appointments Committee recommends Bryan Gruetter.
If appointed by Judge Haggerty, terms will expire 1/1/2011.

Legal Aid Services of Oregon Board of Directors

Terms expire 12/31/2010:

Wayne Belmont
Michael Mason
Lou Savage

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 12, 2007
Memo Date: October 4, 2007
From: Rick Yugler, Member Services Committee Chair
Re: Establish Dates for 2008 BOG and OSB/ABA HOD Elections

Action Recommended

1. Establish election schedule for the 2008 BOG election as set forth in ORS 9.040.
2. Establish election schedule for the 2008 OSB and ABA HOD election as set forth in ORS 9.152.

Background

1. BOG Election

Proposed BOG Election Schedule for 2008

Nominating petitions due	Tuesday, May 13, 2008 (<i>160 days before election</i>)
Challenges due	Thursday, June 12, 2008 (<i>30 days from 5/13</i>)
BOG decision on challenges	Thursday, June 26, 2008 (<i>14 days from 6/12</i>)
Petition for SC review	Friday, July 11, 2008 (<i>15 days from 6/26</i>)
Final SC decision	Friday, September 26, 2008 (<i>10 days before ballots are sent</i>)
Ballots sent	October 6, 2008 (<i>1st Monday in October</i>)
Election	October 20, 2008 (<i>3rd Monday in October</i>)
Board Member Assumes Office	January 1, 2009

Relevant authorities are:

ORS 9.040 Election of governors; rules; vacancies.

(1) The election of governors shall be held annually on a date set by the board of governors. Nomination shall be by petition signed by at least 10 members entitled to vote for such nominee. Election shall be by ballot. Nominating petitions must be filed with the executive director of the bar. The board shall establish a deadline for filing nominating petitions.

ORS 9.042 Determination of eligibility of candidate for board; procedure; review by Supreme Court.

(1) Upon the written request of any member of the bar, or upon the board's own motion, the board of governors shall determine the eligibility of a candidate for the board. A request under this section must be filed with the executive director within 30 days after the final day on which nominating petitions for the board are required to be filed. The board shall give written notice of the request to the candidate whose eligibility will be determined. The

board shall provide an opportunity to the candidate to respond on the issue of the candidate's eligibility.

(2) The board shall give written notice to the candidate, and to any member of the bar who has requested a determination on the eligibility of the candidate under the provisions of this section, of the board's determination on the candidate's eligibility. The notice must be given not later than 75 days after the final day on which nominating petitions for the board are required to be filed. The notice shall state the specific grounds for the board's determination.

(3) A candidate, or a member of the bar who has requested a determination on the eligibility of a candidate under the provisions of this section, may file a petition for review of the board's determination with the Supreme Court. The petition for review must be filed within 15 days only after notice is given to a candidate or member under subsection (2) of this section.

(4) Upon the timely filing of a petition for review under subsection (3) of this section, the Supreme Court has jurisdiction to resolve all issues arising under the Oregon Constitution, state statutes, rules of the court and rules of the board that are related to the eligibility of candidates for the board.

(5) The board of governors shall establish procedures for the implementation of subsections (1) and (2) of this section. The procedures shall be designed to insure that there will be a final determination on the eligibility of a candidate for the board no later than 10 days before the mailing of the ballots to members of the bar in the election that is affected by the determination.

(6) This section provides the exclusive procedure for challenging the eligibility of a candidate for the board. No other administrative or judicial proceeding may be brought to challenge the eligibility of a candidate for the board. [1993 c.307 §3]

OSB Bylaw 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 nominating petition signed by at least 10 members entitled to vote for the nominee to the executive director of the Bar at least 160 days before the election.

2. OSB and ABA HOD Election

Proposed OSB and ABA HOD Schedule for 2008

Nominating petitions due	Monday, March 24, 2008
Ballots sent	Thursday, April 3, 2008
Election (ballots due)	Monday, April 21, 2008 (3 rd Monday in April)
Delegates assume office	Tuesday, April 22, 2008

Relevant authorities are:

ORS 9.152 Election of delegates; rules.

(1) The election of delegates to the house of delegates shall be held annually on a date set by the board of governors. Except as provided in subsection (2) of this section, nominations shall be made by petition signed by at least 10 members of the Oregon State Bar entitled to vote for a delegate in the election. The election shall be by ballot. Nominating petitions must be filed with the executive director of the state bar at least 30 days before the election.

OSB Bylaw Section 9.1 Date of Elections

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 a nominating petition signed by at least 10 members entitled to vote for the nominee to the executive director of the Bar at least 30 days before the election. The nominating petition for a delegate from the region composed of all areas not located in this state need only be signed by the candidate for the position.

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 nominating petition signed by at least 10 members entitled to vote for the nominee to the executive director of the Bar at least 30 days before the election.

OSB Bylaw Section 5.1 ABA Delegates

Nominations for the House of Delegates of the American Bar Association ("ABA") must be in writing. The Executive Director will prepare forms for these nominations and supply the forms to applicants. The applicants must file the forms with the 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.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 15, 2007
From: Rick Yugler, Member Services Committee Chair
Re: New Bar Center Meeting Room Names

Action Recommended

Information Only.

Background

During their October meeting, the Member Services Committee considered names for the six meeting rooms in the new bar center. Each room will be named after an Oregon River located within each of the six bar regions. The names are as follows:

Columbia
Deschutes
McKenzie
Nehalem
Rogue
Santiam

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 15, 2007
From: Danielle Edwards, Ext. 426
Re: BOG Special Election Dates

Action Recommended

Information only.

Background

Due to the resignation of Robert Newell, the bar must hold a special election to fill the vacant region 5 seat. ORS 9.040 indicates that special elections shall be held as soon as possible after the vacancy occurs. Therefore, the following schedule outlines different election dates based on whether or not we receive challenges of the BOG candidates.

November 20 Candidate Statements and Nominating Petitions due

December 20 Challenges due (*30 days from November 20*)

If no challenges are received:

December 26 Ballots and voters pamphlets sent to members by mail and e-mail.

January 9 Ballots due by 5:00 p.m. at the OSB
Ballots canvassed and results are announced

If challenges are received:

January 3 BOG decision on challenges due

January 18 Petition for Supreme Court review

February 1 Final Supreme Court review

February 11 Ballots and voters pamphlets sent to members by mail and e-mail

February 25 Ballots due by 5:00 p.m. at the OSB. Ballots canvassed and results are announced.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2, 2007
Memo Date: October 17, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Revise OSB Bylaw 14.4 Committee Membership

Action Recommended

Revise OSB bylaw 14.4 to more accurately describe the BOG's role in appointing advisory and public committee members.

Background

OSB bylaw 14.4 provides "...Each committee may appoint such advisory members or associates, as it deems necessary subject to annual approval and confirmation by the Board." Over the past several years, the process of appointing advisory members has changed from the board approving appointments made by the committee, to the board appointing advisory members based on the recommendations of the committee. Three committees utilize advisory members. The bylaw is silent on the subject of public members, although nine committees currently have one or more public member positions. The following recommendation is a "housekeeping" revision in order to better align the bylaws with current bar practices.

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. ~~Each committee~~ The board may appoint ~~such advisory members or associates~~ public members as it deems ~~necessary~~ appropriate. ~~subject to annual approval and confirmation by the Board.~~

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: October 17, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Proposed Rule for Provision of Legal Services After a Major Disaster

Action Recommended

Approve the Policy and Governance Committee recommendation to submit to the HOD a proposal for a Supreme Court rule to address the provision of legal services in Oregon by out-of-state lawyers in the event of a major disaster.

Background

Hurricanes Katrina and Rita in 2005 showed clearly how a major disaster can cause not only catastrophic physical damage but can also cripple the legal system of the affected area. In Oregon, an earthquake, a public health emergency or a terrorist attack could interfere with the ability of Oregon lawyers to represent clients for a sustained period.

In response to the disruption in legal services caused by Hurricanes Katrina and Rita, the highest courts in several states took immediate steps to address the problems either by (1) suspending UPL restrictions on volunteer lawyers who came to the disaster areas to provide *pro bono* legal services or by (2) adopting rules allowing temporary practice by displaced lawyers from the disaster areas.

Following that lead, the ABA also moved quickly to form a Task Force, which developed the ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster (copy attached). The Model Rule was adopted by the ABA House of Delegates in February 2007, with a recommendation that it be adopted in every jurisdiction. Several jurisdictions have either done so or are in the process (including Washington). Some might question whether this is a solution in search of a problem; however, this is precisely the kind of rule that needs to be in place *before* it is needed.

The Model Court Rule covers two circumstances. First, it allows out-of-state lawyers to provide *pro bono* legal services in the jurisdiction in which the disaster occurred, or to which displaced survivors have relocated. Second, it allows temporary practice by out-of-state lawyers who have been displaced because of a disaster in their home jurisdiction. It is possible that these issues are already covered by Oregon RPC 5.5(c), which authorizes temporary practice in Oregon by lawyers licensed in other jurisdictions. Seemingly, this would allow a displaced lawyer to practice in Oregon during a temporary period of dislocation from the lawyer's home state. However, there is no definition of what

constitutes “temporary” practice and Oregon RPC 5.5(b)(1) prohibits an out-of-state lawyer from “establishing an office or other systematic and continuous presence” in Oregon for the practice of law, which a displaced lawyer who is in Oregon for an extended period would likely need to do. It is similarly not clear that an out-of-state lawyer coming to Oregon to provide *pro bono* services after a disaster would fall within the permission in RPC 5.5(c)(4) for services “that arise out of or are reasonably related to the lawyer’s practice” in the lawyer’s home jurisdiction.¹ The drafters of the ABA Model Court Rule obviously concluded that existing regulation was insufficient;² in addition, the adoption of Model RPC 5.5 is not yet universal.

A proposed Oregon rule is attached. It is based on the ABA Model, but revised for clarity. The proposed Oregon rule authorizes the court to declare an emergency if a natural or other disaster disrupts the justice system in Oregon or if another state determines that a major disaster has disrupted its justice system, the result of which is (1) increased demand for legal services by Oregonians or displaced persons from another jurisdiction or (2) displaced lawyers from the affected jurisdiction need a place to practice law temporarily.

Lawyers coming into Oregon to help with disaster-related legal needs would be permitted to do so only on a *pro bono* basis and under the auspices of a recognized *pro bono* program. Their authority would end when the court determines that the emergency conditions no longer exist (although they would be permitted to complete any pending legal matters). Dislocated lawyers would be allowed to represent any client provided the legal services “arise out of or are reasonably related to the lawyer’s practice of law in the other jurisdiction.” The authority of displaced lawyers to practice in Oregon would terminate 60 days after the court announces the end of the emergency conditions, thus allowing them time to close down their offices here and return to their “home” jurisdiction.

Lawyer who come to Oregon under this rule would either have to obtain *pro hac vice* admission to appear in Oregon court, unless the court in declaring the emergency grants blanket permission for court appearances. Lawyers who practice under the rule would also have to register with the Clerk of the Court and would be subject to the court’s disciplinary authority. Finally, the rule requires the visiting lawyers to inform clients of the limits of their practice authority and their special permission to practice in Oregon.

ORS 9.241(2) authorizes the Supreme Court, notwithstanding ORS 9.160,³ to “adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have

¹ Temporary practice is otherwise limited to services undertaken in association with local counsel, are related to a pending or potential proceeding where the lawyer anticipates being admitted *pro hac vice*, or are related to a pending or potential alternative dispute resolution proceeding.

² In addition to adopting the Model Court Rule, the ABA amended ABA Model Rule of Professional Conduct 5.5 by adding the following to the comment: “Lawyers desiring to provide *pro bono* legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law should consult the Model Court Rule of Provision of Legal Services Following Determination of Major Disaster.”

³ Prohibits persons other than members of the Oregon State Bar from practicing law.

not been admitted to practice law in this state to practice law in Oregon on a temporary basis....” Thus, although the proposed “disaster” rule would not be an addition to the Oregon Rules of Professional Conduct, it must nevertheless go through the process established in ORS 9.490(1):

The board of governors, with the approval of the house of delegates given at any regular or special meeting, shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, shall have power to enforce the same. Such rules shall be binding upon all members of the bar.

If the BOG approves this rule, it would be submitted to the HOD in 2008. In the interim, the BOG may wish to send the proposed rule to the Legal Ethics Committee for its review and comment, if any.

Attachments: Report of the ABA Standing Committee on Client Protection
ABA Rule as adopted February 2007
Proposed Oregon Rule (redline from ABA Model)
Proposed Oregon Rule (clean)

REPORT

BACKGROUND

In the summer of 2005, Alabama, Louisiana and Mississippi were devastated by Hurricanes Katrina and Rita. The physical damage done in those jurisdictions was catastrophic but the storms also damaged and crippled their legal systems. In response, then American Bar Association President Michael S. Greco formed the ABA Task Force on Hurricane Katrina (the "Task Force"). One of the most significant early efforts of the Task Force was advocating the suspension of unlicensed practice of law rules by various states impacted by the hurricane so that lawyers from other jurisdictions could volunteer to provide pro bono legal services in the affected jurisdictions.¹

The Task Force soon recognized the need for a model rule that would allow out-of-state lawyers to provide pro bono legal services in an affected jurisdiction and lawyers in the affected jurisdiction whose legal practices had been disrupted by a major disaster to practice law on a temporary basis in an unaffected jurisdiction. Both the highest court of a jurisdiction affected by the major disaster and the highest courts of jurisdictions not affected by the disaster could implement the Rule on an emergency basis. In February 2006, the Task Force approached the ABA Coordinating Council for the Center for Professional Responsibility and requested assistance in drafting such a model rule. In light of its jurisdictional statement that includes the multijurisdictional practice of law and the unlicensed practice of law, the Standing Committee on Client Protection (the "Committee") agreed to undertake the project.

With the assistance of Professor Stephen Gillers, Chair of the ABA Joint Committee on Lawyer Regulation and former member of the Commission on Multijurisdictional Practice, the Committee spent the next several months researching the issues and the law and preparing drafts of model rules. On September 6, 2006, the Committee circulated for comment to all ABA entities and other interested parties a proposed new Model Rule of Professional Conduct 5.8 (Provision of Legal Services Following Determination of Catastrophic Event) and a Model Court Rule with the same title. The ABA entities and other interested parties were requested to comment on the substance of the Model Rule/Model Court Rule and whether the topic should be addressed in a Model Rule of Professional Conduct or in a Model Court Rule.²

It was the consensus of the responding entities, including the Standing Committee on Ethics and Professional Responsibility, that the issues to be addressed were administrative matters involving the temporary practice of law and that they should be addressed in a Model Court Rule. The Standing Committee on Ethics and Professional Responsibility believes that the proposed Model Court Rule, if adopted, would effectively facilitate the provision of legal services in urgent

¹ *In the Wake of the Storm: The ABA Responds to Hurricane Katrina*. Report of the ABA Task Force on Hurricane Katrina. www.abanet.org/katrina

² The Committee received comments from numerous ABA entities including: the Standing Committees on Ethics and Professional Responsibility, Professional Discipline, Professionalism, Pro Bono and Public Service, Legal Aid and Indigent Defendants, Delivery of Legal Services, the Commissions on Interest on Lawyers' Trust Accounts and Law and Aging, the Task Force on GATS Legal Services Negotiations, the National Organization of Bar Counsel and the Association of Corporate Counsel.

situations, such as the occurrence of natural disasters. The Ethics Committee also believes that because the creation of a mechanism for making legal services available is not an ethical, but essentially an administrative and operational concern of each state's highest court, it is appropriate that the subject be addressed by a Model Court Rule, rather than a Rule of Professional Conduct, and supports its adoption by the House of Delegates. The Ethics Committee agrees that proposed amended Comment [14] to Model Rule of Professional Conduct 5.5, which serves as an important cross-reference to any such rule of court, is a necessary and helpful addition to the Model Rules, and supports its adoption by the House of Delegates as well.

MODEL COURT RULE ON PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

An emergency affecting the justice system, as a result of a natural or other major disaster, may for a sustained period of time interfere with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. A natural or other major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or whose legal needs temporarily are unmet because of disruption to the practices of local lawyers.

Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit legal services organization or such other organizations specifically designated by the highest court of the affected jurisdiction.

Under the Model Court Rule, the highest court in the affected jurisdiction shall determine whether an emergency affecting the justice system as a result of a natural or other major disaster has occurred in the jurisdiction, or in a part of the jurisdiction, for purposes of triggering paragraph (b) of the Model Court Rule. The regulation of the practice of law by the judicial branch of government, which includes jurisdictional limits on legal practice, is a fundamental principle recently re-affirmed as policy by the American Bar Association.³ The court in making a determination whether an emergency affecting the justice system has occurred can take judicial notice of any Presidential proclamations or declarations by the governor or executive officer of an affected jurisdiction.

Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency affecting the justice system and the provision of legal services. Lawyers permitted to provide legal services pursuant to this Model

³ Report 201A, *Regulation of the Practice of Law by the Judiciary*, adopted August 12, 2002.

Court Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. The rules governing the not-for-profit organization will determine who should be considered an eligible client in light of the circumstances caused by the disaster.

Alternatively, the Court may instead designate other specific organizations through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United State jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized under paragraph (b) of this Rule to provide legal services on a temporary basis in an affected jurisdiction, or to provide legal services on a pro bono basis to the citizens of an affected jurisdiction who have been displaced to and are temporarily residing in an unaffected jurisdiction.

Lawyers authorized to practice law in an affected jurisdiction, as determined by the highest court of the affected jurisdiction, and whose practices are disrupted by a major disaster there, are authorized under paragraph (c) to provide legal services on a temporary basis in the jurisdiction adopting the Model Court Rule. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. The Court in the affected jurisdiction shall determine when a major disaster has occurred in another jurisdiction but only after such a determination and the geographical scope of the disaster have been made by the highest court of that other jurisdiction. The authority to engage in the temporary practice of law in an unaffected jurisdiction pursuant to paragraph (c) shall extend only to those lawyers who principally practice in the area of a jurisdiction determined to have suffered an emergency affecting the justice system and the provision of legal services.

Emergency conditions created by major disasters end, and when they do, the authority created by the Model Court Rule also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), the highest court in the affected jurisdiction determines when those conditions end only for purposes of the Model Court Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of the affected jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days, or as otherwise enacted in the Rule, after the highest court in an unaffected jurisdiction makes such a determination with regard to an affected jurisdiction. The parameters created by the Model Court Rule are intended to be flexible and the highest court in a jurisdiction has the discretion to extend the time period during which out-of-state lawyers may provide pro bono legal services in an affected jurisdiction or during which lawyers displaced by a disaster may practice law on a temporary basis in an unaffected jurisdiction.

Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of the affected jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular court. The highest court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in the jurisdiction under paragraph (b) to

appear in all or designated courts of the jurisdiction without need for such *pro hac vice* admission. If such an authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has appeared in the courts of an affected jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by the major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

AMENDMENT TO COMMENTARY OF RULE 5.5 OF THE *RULES OF PROFESSIONAL CONDUCT*

Following the occurrence of a major disaster, lawyers practicing law outside the affected jurisdiction will begin to research what legal services they may provide on a temporary basis to the citizens of the affected jurisdiction. In addition, not-for-profit legal organizations within the affected jurisdiction will begin to research what legal services out-of-state lawyers may provide in their jurisdiction on a temporary basis. At some point, the lawyers and not-for-profit organizations will consult the *Rules of Professional Conduct*. While Rule 5.5 of the *Rules of Professional Conduct* is titled "Unauthorized Practice of Law: Multijurisdictional Practice of Law," Rule 5.5 does not directly address the provision of pro bono legal services by out-of-state lawyers in a jurisdiction affected by a major disaster nor does it address the temporary practice of law in an unaffected jurisdiction by displaced lawyers principally practicing in the affected jurisdiction. The *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* does address these issues. Upon the suggestion of the Standing Committee on Ethics and Professional Responsibility, whose jurisdictional statement includes recommending to the ABA House of Delegates amendments to the *Rules of Professional Conduct*, the Committee recommends that Comment [14] to Rule 5.5 of the *Rules of Professional Conduct* be amended to include a cross-references to the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*.

CONCLUSION

Following Hurricanes Katrina and Rita, thousands of lawyers from across the United States were inspired to offer their legal expertise on a pro bono basis to the citizens of the affected jurisdictions. Unfortunately, in some instances, the delivery of those pro bono legal services was hampered by the existence of unlicensed practice of law statutes and rules. The Committee believes that the adoption of the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster* will allow lawyers to provide temporary pro bono legal services and that it will allow lawyers whose legal practices have been disrupted by major disasters to continue to practice law on a temporary basis in an unaffected jurisdiction. The Model Court Rule will facilitate the delivery of pro bono legal services while at the same time insuring the proper regulation of the lawyers providing those legal services in an affected jurisdiction and those displaced lawyers practicing law on a temporary basis in an unaffected jurisdiction

Janet Green Marbley, Chair
Standing Committee on Client Protection
February 2007

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

February 12, 2007

RECOMMENDATION

RESOLVED, That the American Bar Association adopts the *Model Court Rule on Provision of Legal Services Following Determination of Major Disaster*, dated February 2007.

FURTHER RESOLVED, That the American Bar Association amends Comment [14] to Rule 5.5 of the *Model Rules of Professional Conduct*.

Model Court Rule on Provision of Legal Services Following Determination of Major Disaster
(February 2007)

Rule ____. Provision of Legal Services Following Determination of Major Disaster

(a) Determination of existence of major disaster. Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

- (1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or
- (2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) Temporary practice in this jurisdiction following major disaster. Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.

(c) Temporary practice in this jurisdiction following major disaster in another jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of authority for temporary practice. The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end [60] days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court appearances. The authority granted by this Rule does not include appearances in court except:

- (1) pursuant to that court's pro hac vice admission rule and, if such authority is granted, any fees for such admission shall be waived; or
- (2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any pro hac vice admission fees shall be waived.

(f) Disciplinary authority and registration requirement. Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) Notification to clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

Comment

PROPOSED

Court Rule on Provision of Legal Services Following Determination of Major Disaster

(a) ~~Determination of Existence of Major Disaster~~ Declaration of Emergency. Solely for purposes of this Rule, this Court shall ~~determine~~ declare when an emergency when a natural or other major disaster affecting substantially disrupts the justice system in Oregon or in another jurisdiction (after the highest court of that jurisdiction has made such a determination), as a result of which; ~~as a result of a natural or other major disaster, has occurred in:~~

(1) ~~this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction;~~ Oregon residents or displaced persons from another jurisdiction residing in Oregon are in need of legal services that cannot be provided by Oregon lawyers alone; or

(2) ~~in another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services. lawyer licensed in the other jurisdiction are displaced and unable to practice law in the other jurisdiction.~~

(b) Temporary Pro Bono Practice in this Jurisdiction Oregon Following Major Disaster. Following the ~~determination~~ declaration of an emergency affecting this justice system in this jurisdiction pursuant to under paragraph (a) (1) of this Rule, or a ~~determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance;~~ a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction Oregon on a temporary basis:

Such legal services to persons in need of legal services as a result of the disaster, provided such services are must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer, and performed under the auspices of. ~~Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through organization(s) specifically designated by this Court.~~

(c) Temporary Practice in ~~this Jurisdiction~~ Oregon by Displaced Lawyers from Following Major Disaster in Another Jurisdiction. Following the determination of a major disaster in another United States jurisdiction declaration of emergency under paragraph (a)(2) of this Rule, a lawyer who is authorized to practice law and whose principally practices office is in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in ~~this jurisdiction~~ Oregon on a temporary basis: to any client provided the legal services Those legal services ~~must arise out of and be or~~ are reasonably related to the lawyer's practice of law in ~~the the other jurisdiction, or area of the other jurisdiction, where the major disaster occurred.~~

(d) Duration of Authority for Temporary Practice. The authority to practice law in ~~this jurisdiction~~ Oregon granted by paragraph (b) of this Rule shall end when this Court determines that the disruption of the justice system conditions caused by the major disaster in this Oregon or the other jurisdiction have has ended, and lawyers practicing under such authority shall not accept any new clients or matters. Notwithstanding the termination of authority, except that a lawyer then representing a clients with a legal matter pending in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in ~~this jurisdiction~~ Oregon granted by paragraph (c) of this Rule shall end sixty [60] days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court Appearances. The authority granted by this Rule does not include appearances in court except:

- (1) pursuant to ~~that court's pro hac vice admission rule~~ UTCRC 3.170 and, if such authority is granted, ~~any the fees for such admission shall be waived; or~~
- (2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, ~~any the pro hac vice admission fees shall be waived.~~

(f) Disciplinary Authority and Registration Requirement. Lawyers providing legal services in ~~this jurisdiction~~ Oregon pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Oregon Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct thereof. Lawyers providing legal services in ~~this jurisdiction~~ Oregon under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. ~~The registration statement shall be in a form prescribed by this court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction Oregon.~~

(g) Notification to Clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to his Rule shall inform clients in this

~~jurisdiction Oregon of the jurisdictional limits of their practice authority, including in which they are authorized to practice law, any limits on that authorization, and that they are not authorized to practice law in this jurisdiction Oregon except as permitted by this Rule, and -~~
The shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction Oregon.

PROPOSED

Court Rule on Provision of Legal Services Following Determination of Major Disaster

(a) Declaration of Emergency. Solely for purposes of this Rule, this Court shall declare an emergency when a natural or other major disaster substantially disrupts the justice system in Oregon or in another jurisdiction (after the highest court of that jurisdiction has made such a determination), as a result of which:

- (1) Oregon residents or displaced persons from another jurisdiction residing in Oregon are in need of legal services that cannot be provided by Oregon lawyers alone; or
- (2) lawyers licensed in the other jurisdiction are displaced and unable to practice law in the other jurisdiction.

(b) Temporary Pro Bono Practice in Oregon Following Major Disaster. Following the declaration of an emergency under paragraph (a)(1) of this Rule, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Oregon on a temporary basis to persons in need of legal services as a result of the disaster, on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer, and performed under the auspices of an established not-for-profit bar association, pro bono program or legal services program or through organization(s) specifically designated by this Court.

(c) Temporary Practice in Oregon by Displaced Lawyers from Another Jurisdiction. Following the declaration of emergency under paragraph (a)(2) of this Rule, a lawyer who is authorized to practice law and whose principal office is in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Oregon on a temporary basis to any client provided the legal services arise out of or are reasonably related to the lawyer's practice of law in the other jurisdiction.

(d) Duration of Authority for Temporary Practice. The authority to practice law in Oregon granted by paragraph (b) of this Rule shall end when this Court determines that the disruption of the justice system in this or the other jurisdiction has ended, after which lawyers practicing under such authority shall not accept any new clients or matters. Notwithstanding the termination of authority, a lawyer then representing a client with a legal matter pending in Oregon is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. The authority to practice law in Oregon granted by paragraph (c) of this Rule shall end sixty [60] days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) Court Appearances. The authority granted by this Rule does not include appearances in court except:

(1) pursuant to UTCR 3.170 and, if such authority is granted, the fees for admission shall be waived; or

(2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of Oregon to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, the pro hac vice admission fees shall be waived.

(f) Disciplinary Authority and Registration Requirement. Lawyers providing legal services in Oregon pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Oregon Rules of Professional Conduct as provided in Rule 8.5 thereof. Lawyers providing legal services in Oregon under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court in a form prescribed by this court. A lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in Oregon.

(g) Notification to Clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Oregon of the jurisdictional limits of their practice authority, including that they are not authorized to practice law in Oregon except as permitted by this Rule, and shall not state or imply to any person that they are otherwise authorized to practice law in Oregon.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 17, 2007, 2007
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Bylaw proposal for HOD mailings

Action Recommended

Recommend that the BOG amend Bar Bylaw 3.4.

Background

ORS Chapter 9, which governs the Oregon State Bar, is silent on the distribution of the House of Delegates agenda. The House of Delegates Rules state the following:

5.5 In advance of any meeting of the House of Delegates, the Board of Governors of the Oregon State Bar shall review proposed agenda items for conformity with applicable law and bar policy and propose a preliminary agenda for the meeting. The preliminary agenda, along with notice of the questions or measures the Board determined should not be placed on the agenda, shall be distributed to the membership of the Oregon State Bar at least twenty (20) days prior to the meeting. (Bold face added.)

The Bar Bylaws state the following:

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 Board must distribute the House agenda to **all active bar members**, including any resolutions that the Board has excluded, at least 20 days in advance of the House meeting. (Bold face added.)

Because the HOD Rule is not limited to the active members of the bar, the past practice has been to send the agenda to all active and inactive bar members. The agenda is not sent to those who are "suspended" as they are not entitled to the benefits of membership during the suspension of their license to practice law.¹

The committee decided that we should either bring our practice into conformity with the Bar Bylaws and request a change in the HOD rules or we should amend the Bar Bylaws to read "all active and inactive bar members."

¹ They are still members and subject to discipline for conduct during their period of suspension.

There are pros and cons to whether the agenda should be mailed to inactive members. The statute allows only active members (by petition) to submit resolutions to the HOD. Only active members may participate in the discussions of the HOD. All elected delegates to the HOD, as well as section chairs and local bar presidents, must be active members of the bar:

9.148 Participation by nondelegates; referral of question for mail vote; petition for consideration or mail vote. (1) Active members of the Oregon State Bar may participate in the discussion of matters before the house of delegates, but only delegates may vote. The house of delegates may by rule impose restrictions on participation by members of the state bar who are not delegates.

(2) The board of governors or the house of delegates, acting on its own motion, may refer to the members of the bar by mail ballot any question or measure considered by the board or house to be appropriate for submission to a vote of the members. Referral may be made under this subsection at any time.

(3) Active members of the state bar, by written petition signed by at least two percent of all active members, may have placed on the agenda of a meeting of the house of delegates any question or measure appropriate for a vote of the house. The petition shall contain the full text of the question or measure proposed. The petition must be filed with the executive director at least 45 days before the annual or special meeting of the house specified in the petition at the meeting when the petitioners seek to have the question or measure considered.

(4) Active members of the state bar, by written petition signed by no fewer than five percent of all active members, may request that the board of governors submit to a vote of the members any question or measure. The board of governors shall submit the question or measure to a vote of the members of the bar if the question or measure is appropriate for a vote of the members. The initiative petition must contain the full text of the question or measure proposed. [1995 c.302 §11]

However, many lawyers go back and forth between active and inactive status, some for medical leaves, some to care for young children, some because a current position does not require active membership, just to name a few examples. These people may want to keep abreast of the HOD's activities while they are in active status. For that reason, the committee decided to recommend amending Bylaw 3.4 to require distribution of "the House agenda to all active and inactive bar members,...."

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 2, 2007
From: Danielle Edwards, Ext. 426
Re: Consider Changes to the Joint CPA/OSB Committee, Uniform Civil Jury Instructions and Quality of Life Committee assignments

Action Recommended

The Policy and Governance Committee is meeting on November 3 to consider changes to the Joint CPA/OSB Uniform Civil Jury Instructions and Quality of Life Committee assignments (also referred to as a committee charge). At the November 3 meeting, it will take its recommendations to the full board.

Background

The Joint CPA/OSB Committee would like to revise its current assignment. The first change, removing the promotion of low/no cost legal accounting services, is based on the lack of available pro bono and low cost services available and a lack of committee member's support of this assignment. This change affects both the general and specific charge sections. Second, deletion of planning a CLE program is based on a lack of financial resources. In the past, the committee received funding from the CPA side and held a CLE program along with the Multnomah County Bar Association. Funding is no longer available through the CPA side and the MCBA now hosts their own CLE seminar on the same topic. Finally, at the request of BOG member Terry Wright, the Joint Committee is interested in creating guidelines to help the UPL Committee in determining when accountants and other non-lawyer professionals are engaging in the practice of law. Such guidelines would help streamline the UPL process by determining activities that a) are agreed to be practicing law, b) are agreed not to be practicing law, and c) depend on the circumstances. Attached is the revised assignment proposed by the Joint Committee.

The Uniform Civil Jury Instructions Committee would like to update one assignment to clarify their current practice. Several years ago, the committee added an assignment to update the UCJI Redbook, after completing this task in 2005 the committee has created annual supplements to the Redbook. The committee would like to clarify that revisions will be done as needed but they will continue to publish supplements to the Redbook annually. This change is outlined on the attached committee assignment.

The Quality of Life Committee would like to make three changes. The first, deleting the study of law school loan repayment assistance programs, is due to the creation of the LRAP Committee which directly oversees said program. Second, adding law students to the current assignment regarding outreach and awareness pertaining to work/life balance. Finally, adding an assignment to study sustainability practices as they relate to the practice

of law. The committee would then make recommendations to the BOG regarding whether and how sustainability might be addressed for the bar generally, and the QOL Committee specifically. These changes are noted on the attached revised assignment.

CERTIFIED PUBLIC ACCOUNTANTS (JOINT) COMMITTEE ASSIGNMENT

General:

Serve as formal liaison between the members of the legal and accounting professions.
Coordinate the planning and implementation of educational publications and programs.
~~Provide information about free or low-cost legal and accounting services that are available for small start-up businesses in Oregon.~~

Specific:

1. Promote discussion groups between lawyers and CPA's on topics of interest, through roundtable events, business fairs, retreats and social events.
2. Continue drafting and editing articles for publication in the "Professional Insight" and Oregon State Bar "Bulletin".
3. Prepare guidelines to help the unauthorized practice of law committee determine when accountants and other professionals are engaged in the unauthorized practice of law.
4. ~~Plan a CLE program for both lawyers and CPA's in 2007.~~
5. ~~Increase promotion of low/no cost legal accounting services; suggest reaching out to other committees like Pro Bono to create awareness.~~
6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

UNIFORM CIVIL JURY INSTRUCTIONS COMMITTEE ASSIGNMENT

General:

Develop uniform jury instructions for use in civil trials. Promote better coordination of activities with the Uniform Criminal Jury Instructions Committee to insure a uniform approach to judicial instructions to juries. Continually update existing jury instructions to comply with case law, legislation and useful suggestions from sections and the legal community. Draft instructions in plain language maintaining the goals of clarity and accuracy.

Specific:

1. Promote new jury instructions.
2. Review punitive damages and product liability instructions.
3. Annually supplement and periodically revise and re-organize the UCJI Redbook.
4. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

QUALITY OF LIFE COMMITTEE ASSIGNMENT

General:

Educate and motivate lawyers to make professional choices that will enhance their quality of life and advance the legal profession.

Specific:

1. Encourage awareness and discussion of the diverse standards by which lawyers evaluate their lives.
2. Educate lawyers and law firms about the benefits of reducing tension between personal and professional life, and methods for doing so.
3. Provide information and support for lawyers who chose non-traditional career paths.
4. Continue publication of articles on enhancing the quality of life in the *Bulletin* and other OSB publications.
5. Form relationships with other Bar sections and committees to promote discussion of these issues within their constituencies. Enhance involvement with groups outside of the OSB, including OAAP, OWLs and Oregon law schools in promoting the goals of the committee.
6. Continue to maintain web site.
- ~~7. Study law school loan repayment assistance program (LRAP) for public service practice.~~
7. Track national and local developments in applying the concepts of sustainability to the practice of law and make recommendations for the Board of Governors.
8. Pursue greater speaker outreach to talk to members and law students about balancing home and work life.
9. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 2-3, 2007
Memo Date: October 15, 2007
From: Sylvia E. Stevens, General Counsel
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the Client Security Fund Committee's recommendation that the following claim be reimbursed:

07-12 Drews v. Tombleson	\$750.00
07-14 Bessflug v. Wetsel	\$1,000.00
07-16 Nagorski v. White	\$7,825.06
TOTAL	\$9,575.06

Background

07-12 Drews v. Tombleson (\$750.00)

Drews hired Tombleson to pursue a claim against an investment broker and his company. Tombleson agreed to research the claim and made a demand for a flat fee of \$250, which Drews paid. The demand was sent on April 10, 2006, but there was no response, and Drews and Tombleson then discussed proceeding with legal action. Tombleson requested and received a \$750 retainer against his hourly rate of \$150. Tombleson drafted and filed a complaint on September 8, 2006 and the defendants were served on September 13, 2006.

Thereafter, Drews had difficulty contacting Tombleson. He emailed her in November and told her he believed the broker had filed a petition in bankruptcy and was checking into the matter further. That was Drews' last communication with Tombleson. In April 2007, she wrote him demanding that he return her original documents, but he didn't respond. She later learned that her complaint had been dismissed for lack of prosecution in January 2007.

Drews (and several other individuals) have filed disciplinary complaints against Tombleson, which are pending. He was suspended in July 2007 for failing to pay his bar dues.

The committee acknowledged that Tombleson performed some services for Drews in exchange for the \$750 she paid. However, given that the complaint was ultimately dismissed it was of no value to her, and the committee recommends paying this claim in full. The committee also recommends waiving the requirement that Drews have a judgment since it is likely that Tombleson will be disciplined in connection with his representation of her.

(Note: Drews died sometime after filing her claim for reimbursement. The Committee is not sure whether a probate has been established or who would be the proper recipient of any award. If the claim is approved, staff will need to determine who can execute the assignment of Drews' claim and who should receive the award.)

07-14 Bespflug v. Wetsel (\$1,000)

Todd Wetsel represented Joni Bespflug in her 2002 divorce and in several related matters thereafter. In January 2007, she contacted him because her ex-husband was trying to get a reduction in his child support. After two weeks without a return call, Bespflug called again and Wetsel assured her he would take immediate action. On February 8, 2007, Bespflug's delivered to Wetsel's office a check from Bespflug's mother for \$1,000 as a retainer for Wetsel's fees in the matter. Thereafter, Bespflug heard nothing more from Wetsel despite leaving many telephone messages. Eventually his voice mailbox was full. Bespflug contacted the bar and was told that Wetsel had numerous complaints pending but had not been responding to the bar and that the bar had no current contact information for him.

Wetsel was suspended in June 2007 in connection with two complaints that had been filed in 2005. There are eight complaints authorized for prosecution that are pending, including one filed by Bespflug.

The committee concluded that Wetsel either took Bespflug's money with no intention of providing legal services or failed to refund an unearned fee. Either way, he has misappropriated the retainer deposit. The committee recommends reimbursement of the entire \$1,000 and waiving the requirement that Bespflug have a judgment, since it is likely that Wetsel will be disciplined in connection with this matter.

(Note: if the claim is approved, staff will obtain Bespflug's authorization to pay the award to her mother.)

07-16 Nagorski v. White (\$7,825.06)

Attorney Betty Jo White was the personal representative of the estate of John Nagorski. She was removed as PR in April 2005 after failing to respond to a show cause order. The successor PR subsequently obtained a judgment in the probate court surcharging Ms. White in the principal amount of \$9,825.06 for estate funds she had misappropriated to her own use between 2000 and 2005. Shortly thereafter, the successor PR received from White's surety the full amount of her \$2,000 bond.

White resigned Form B in December 2005 with three complaints pending, all involving unaccounted-for funds that White had been handling as a fiduciary or for clients. She filed for bankruptcy protection and it was a no-asset case. The successor PR in the Nagorski matter also made a claim with the PLF but the PLF has responded that the claim isn't covered. Ms. White's current whereabouts are unknown.

The committee recommends payment of this claim to the estate of Nagorski in the amount of \$7,825.06, which represents the principal amount of the probate judgment less the surety payment.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 18, 2007
From: Karen L. Garst, Ext. 312
Re: Operations Report

Action Recommended

None.

Background

In order to fully inform the Board of key administrative activities, I have developed the following format for my reports. Please let me know if this is useful to you and covers the issues that you would like to be informed of prior to each BOG meeting.

Board of Governors

Policy and Governance Committee: The committee made a recommendation regarding two long standing issues: MCLE EOB requirement (one-time only - on this agenda) and redistricting (adding four board members – on this agenda).

PLF: The OAAP/SLAC task force has had its first meeting. It is being chair by former board member Jack Enbom and is staffed by Jon Benson (new BBX administrator).

Building: Much of my time has been devoted to working with Rod and other staff, the architects, and OPUS to finish the Tenant Improvements for the bar space and decide a myriad of other issues. It looks as if January 11 will be our move-in date.

Member Contacts

Brown Baggers:

Brownstein, Rask; Garvey Schubert; and Perkins Coie will have been completed by the board meeting.

County Bar Associations: We are starting our annual visits with Lane County on November 8.

Commission on Professionalism: The Commission is awarding the Peterson professionalism award to Edwin Harnden, former bar president.

Campaign for Equal Justice: The campaign season is off and running with a Marion County event that netted over \$40,000. Go Marion County!

Legislative Update

Legislation Highlights. The 2007 Legislative Highlights Review CLE was a success with 86 attendees. The Legislation Highlights publication is still available for purchase on the OSB website and is also available on CD ROM. The dinner with the board, Past Presidents' Council and Joint Interim Judiciary Committee was held at Pazzo's Ristorante with approximately 40 and was well-received by those in attendance. CLE Publications and Public Affairs staff will meet with editors on the Legislative Highlights Review publication to discuss how to improve the process and the usefulness of the publication.

Legislative Activities. The Interim Judiciary Committees for the House and Senate met on October 11th in conjunction with the bar's legislative review session. The primary focus for the committee was the impact of Measure 40 relating to mandatory minimums for property offenders. Earlier in the week, OSB General Counsel, Sylvia Stevens, attended the House Healthcare Committee meeting to provide an overview of the OSB discipline process.

April 1 Deadline. Public Affairs staff is meeting with bar groups to offer assistance and prepare them for the April 1 deadline for legislative proposals originating with bar groups.

Elections and Initiatives. Public Affairs is developing a strategy to implement the HOD recommendation opposing ballot measure #2, which eliminates designation of incumbency for judges in the next election cycle, #51 which caps attorney contingency fees, and #53 which provides sanctions for frivolous litigation.

OSB Operations

Bar Programs and Services: I asked each department to provide me with updated information on their activities since the last board meeting.

Accounting Department: Since our last report we've processed the budget for 2008 which is now in the revision and approval stage. At the same time, we've initiated the section budgeting process, sending out budget packets to all sections electronically. The economic survey work is finished on our end and rests with the statistician to collect the data and produce the report. New auditors have been selected for the 2006-2007 audit: Moss Adams LLP. We continue to scan and purge paper files, currently working on our fixed asset purchase records.

Admissions (Board of Bar Examiners): On September 13th staff traveled to the Supreme Court to certify the July exam results. The Admissions Ceremony was held September 28th in Salem. The Chief Justice thanked Marlyce Gholston for serving the Board for over 50 years. The BBX begins the year with its first meeting on October 12th. The BBX will take up numerous policy proposals in addition to the usual work of drafting questions and screening applicants for character and fitness issues. Among the issues are: a proposal from the BOG for reciprocity with Alaska; a proposal from the Access to Justice Committee to modify the House Counsel rule to permit *pro bono* representation; and the ongoing work of a task force examining the state of admissions and the bar exam and alternate models for Oregon.

Additionally, the department is recruiting for two open staff positions and is close to completing a contract with a grading statistician following the retirement of the former long-term statistician.

Affirmative Action Program: The Affirmative Action Committee reviewed the draft AAP budget for 2008 that will fund OLIO for 85 students and have 2.5 FTE in staff. The committee also reviewed the grant request to the Oregon Law Foundation for the OLIO Orientation for \$40,000. In addition to the grant request and some AAP funds, the program will need to raise about \$12,000 in other funds to round out the OLIO Orientation budget. See Member Services report for hiring of new AAP Administrator.

Client Assistance Office: First, the bad news: Cynthia Easterday has given notice that she is resigning her position with the bar effective November 26, 2007. She has accepted a position as an associate with the McMinnville firm of Haugeberg, Reuter et al in order to be closer to her family who reside in McMinnville. Advertisements for the position have been posted. We have already received a number of promising resumes and the interview process is underway. Since the last report, Chris Mullmann spoke at the Elder Law, Litigation Law, and Domestic Relations Law CLE seminars. In late September, Scott Morrill spoke to the Oregon Community Foundation and has three speaking engagements in the next 60 days. Scott and our two intake coordinators attended the Oregon Judges conference on October 15, 2007 to provide information about CAO operations. Jennifer Mount joined the CAO staff as the administrative assistant on September 10, 2007 and is quickly learning the duties of that position.

Client Security Fund: The CSF Committee continues to review claims for reimbursement. Claims activity is up quite a bit over 2006 and several claims raise complex issues for the committee. The committee is also focusing this year on enhancing the CSF's web presence and is working closely with IDT.

Communications/RIS: The most recent issue of the Bulletin featured "Postcards from Afghanistan," with first-person accounts from three Oregon lawyers. Upcoming features will cover networking, and electronic privacy. Community relations work has centered on a few high-profile disciplinary matters as well as member and public outreach regarding the Affirmative Action Program. Department staff are also preparing for the Annual Awards Dinner, our biennial review of all Tel-Law scripts and brochures, and working with bar sections on hourly rate surveys to supplement the economic survey. Dustin Dopps (formerly with IKON) joined the communications team as a marketing specialist.

In RIS, new and renewal registrations have brought in \$118,825 in earned revenue as of September 30, 2007 (as compared to \$94,890 as at September 30, 2006). The 25% bump in revenue is largely the result of a new fee schedule implemented in the 2007-2008 program year. RIS budgeted \$135,000 for the year, leaving 3 months to generate \$16,175 in additional revenue from late renewals, new admittees, and new recruits. Historically, RIS only earns

4.7% of its revenue in the fourth quarter, meaning that earned revenue will probably only approach \$125,000 by year-end. Cost-savings measures and staff shortages, however, are expected to compensate for any revenue shortfall.

CLE Publications: *2007 Oregon Legislation Highlights* was released on October 10 and has generated revenue to date of \$16,374. *Advising Oregon Businesses* Vol. 1&2 supplement was released on October 11 and has generated revenue to date of \$8,983. The revision of *Juvenile Law* is scheduled to be released in mid-November. The revisions of *Documentation of Real Estate Transactions* and *Fee Agreement Compendium*, as well as the 2007 supplement to *Uniform Civil Jury Instructions*, are scheduled to be released in December. The department is also working on a supplement to *Family Law*, which is going slower than expected due to the incorporation of significant 2007 legislation. To date, the 2007 revenue for BarBooks™ is \$211,673 and the 2008 deferred revenue for BarBooks™ is \$61,537. At this time, seven county law libraries have subscribed to BarBooks™ and the publications manager is scheduled to make a BarBooks™ presentation to the Oregon Council of County Law Libraries on October 27.

CLE Seminars: The Seminars Department is at its busiest time of the year. Eight seminars (including one two-day event) are scheduled for October and seven seminars will be held in November. Sections have increased their use of event planning services for their CLE programs and department staff are assisting with on-site registration for those events. Notices in the seminar brochures are emphasizing online CLE and the convenience of earning credit from a computer. Sales and rentals of DVDs are twice as much as budgeted, while audiocassettes are still maintaining a presence, with almost \$33,000 in sales.

Discipline: The SPRB continues to meet monthly to review disciplinary complaints and oversee prosecutions. The next meeting is set for October 19, 2007. Fifty-five disciplinary proceedings have been resolved in 2007, as of October 11. The Supreme Court has issued five contested case opinions (all suspensions); accepted eight Form B resignations; approved one stipulation for discipline; issued final orders in two reciprocal discipline matters; and issued three interim suspension orders. The Disciplinary Board approved 25 stipulations for discipline (13 suspensions and 12 reprimands); and also issued 12 contested case opinions (one disbarment, ten suspensions and one reprimand) which became final when neither party appealed. Two cases were approved for diversion by the SPRB.

Disciplinary counsel's office continues to investigate a steady stream of reinstatement applications, several from bar members who wish to be reinstated after a disciplinary sanction or other prior conduct that is problematic for character and fitness purposes. Former Assistant Disciplinary Counsel Lia Sarayon, who retired from the bar in 2006, has come back on a temporary part-time basis to assist with these matters.

Staff continues its efforts to implement the new records retention policy for past disciplinary complaints. Under the policy, complaints dismissed for no probable cause are

retained for ten years, rather than permanently as before. We have completed the process of locating, verifying and deleting 20,000 complaints (hard copy and computer entries) from our records. With the recent installation of new software, staff now has begun to scan all retained, closed files so that the paper files may be destroyed before the bar's move to the new building.

Facilities: The owner of the bar center asked to install a "for lease" sign near the roof top of the bar center in addition to the one near the street. He also is competing for tenants for the building space not yet leased. Surveyors have been on site as he prepares for the planned conversion of meeting rooms 1 and 2 into his financing center.

Fee Arbitration: The program continues to run smoothly. Requests for arbitration remain at the same level as in recent years.

General Counsel: General Counsel's review of complaints dismissed by the Client Assistance Office continues to be a significant area of responsibility. We also devote a large chunk of time to providing informal ethics advice, principally by telephone and email. Telephone requests for ethics advice average 15 calls/day and requests for written assistance (e-mail and otherwise) average 5/week. Deputy General Counsel continues to work with the UPL Committee to clarifying the mission and scope of the bar's UPL function, including revising the UPL bylaw. She also monitors outside counsel who are assisting with UPL prosecutions. Two of the legal matters involving the bar have been disposed of on motions to dismiss; the others are in the hands of capable outside counsel. We are nearly finished with our document destruction/scanning in anticipation of moving to the new building. Both GC and DGC continue outreach to the legal community through speaking engagements.

Human Resources: Positions filled - Administrative Bookkeeper for the OLF, Marketing Specialist, and Pro Bono and Loan Repayment Assistance Program Coordinator. Open positions - two Admissions Assistants, Affirmative Action Program Administrator, CAO Attorney, and RIS Assistant. A survey was distributed to all staff seeking feedback for the Executive Director's performance evaluation.

Information Technology Department: Work on the new disciplinary program has progressed and the CAO module is being readied for use. This initial module establishes a base for the new discipline matters module which is complete and ready for launch after CAO has been tested in use. Programming to consolidate all fee payment history into a single system (versus separate yearly accounts) is ready for testing and implementation in time for the 2008 dues cycle. The new system will streamline both online and offline payments and reconciliation. The new online address and profile change will be put into full use with the 2008 directory confirmations that are being e-mailed/mailed this week. The new electronic voting system was introduced with success at the annual HOD meeting and the 2007 Economic Survey was distributed to a random group of members. Projects connected with the new bar center include review of the upcoming proposal for signage.

Legal Services Program: The Legal Services Program Committee (LSPC) will meet on October 19. The purpose of the meeting is to review and make a recommendation regarding Columbia County Legal Aid's (CCLA) report on the progress CCLA has made implementing the LSPC directives of January 22, 2007 and those of the 2003 peer review. The LSP Manager is involved with the legal aid provider's strategic planning process to evaluate client needs and to make recommendations to distribute or redistribute existing and new funding. This process is scheduled to be completed before the start of 2008. Cathy Petrecca was hired as the bar's Pro Bono and Loan Repayment Assistance Program Coordinator. One of her first tasks is to assess how the newly enacted federal loan repayment program for public interest lawyers will affect the bar's recently developed LRAP.

Member Services: The ONLD Law School Outreach Subcommittee sponsored a panel presentation at Willamette Law School covering subjects such as surviving law school and the bar exam. Similar presentations are scheduled for the University of Oregon Law School and Lewis and Clark Law School. A tab has been added to the OSB website for law students with information on the lawyer resource list and about becoming a law school associate member of the OSB. The ONLD also sponsored events on Constitution Day. 49 lawyers volunteered to speak, with 8 schools interested in having speakers. Ten presentations were given and the plan is to schedule more presentations in the spring. SuperSaturday CLE will be at the bar center on October 13. The BOG elections were conducted with the following results: Region 5 Stephen Piucci, Christopher Kent and Region 6 Gina Johnnie. The process to be used in hiring an AAP Administrator is being developed. The Affirmative Action Committee created a subcommittee to assist in the interviewing of the final candidates.

MCLE: Over 4,100 accreditation applications have been processed so far this year. Compliance reports will be sent to approximately 4,650 members by the end of October. Compliance reports are accessible via our website so we have already received 46 reports for the 12/31/2007 reporting period. Staff continues to process accreditation applications, post attendance information, clean out files in accordance with the new retention policy and prepare for the move. Jenni Abalan began working as the MCLE Program Assistant on September 10. The MCLE Committee met on September 7 and reviewed two requests for CLE credit (one was granted and the other denied). Committee members also recommended increasing the size of the committee to seven members, including six attorneys and one public member. For the last several years, the MCLE Committee has consisted of five attorneys and one public member for a total of six.

Professional/Community Development

I met with a team from the Northwest Commission on Colleges and Universities on an interim review of the Art Institute of Portland of which I am board chair. It is interesting serving on a board while serving a board.

Status of Actions
Board of Governors Meetings
Updated – October 17, 2007

Date	Action	Assg. to	Completion
April 20-21, 2007	Forward Supreme Court proposal to adopt ORPC 5.5 permanently	Sylvia	Court approved
April 20-21, 2007	Create Post-Conviction Relief Task Force	Susan/Danielle - appointments	Working with PDSC
June 22-23, 2007	Create Past President's Council – letter from Albert, set meeting prior to retreat	Karen – letter from Albert, meeting – Margaret	Great event
June 22-23, 2007	Alcohol Policy – revise at P and G, represent next board meeting, consider HOD resolution	Karen	TABLED
June 22-23, 2007	Quorum issue – survey sections, committees, back to P and G	Karen	DONE
September 28, 2007	Approved PLF Budget		DONE
September 28, 2007	Approved no increase in PLF assessment	Ira	DONE
September 28, 2007	Approved various changes to PLF exclusions	Ira	DONE
September 28, 2007	Adopted ethics opinions on trial publicity and indigent defense caseloads	Sylvia	DONE
September 28, 2007	Ask SPRB to study issue of activities of suspended or disbarred lawyers	Jeff	SPRB Notified
September 28, 2007	Approve OWLS CLE Seminar for 1.25 ethics credit	Denise	DONE
September 28, 2007	Approve distribution of \$700,000 in General Funds for LSP	Judith	DONE
September 28, 2007	Increase admin fee from \$90,000 to \$108,000 in LSP	Judith	DONE
September 28, 2007	Ask BBX to consider Alaska reciprocity	Jon	BBX has approved and will send to Court.
September 28, 2007	Adopt HOD resolution to oppose ballot measures 2, 51 and 53.	Susan	HOD passed
September 28, 2007	Appoint Audrey Matsumonji to BOG as public member	Teresa	DONE
September 28, 2007	Positions taken on various HOD resolutions		DONE

September 28, 2007	Created a task force on advertising	Sylvia	In process
September 28, 2007	Approved board minutes	Teresa	DONE
September 28, 2007	Approved various appointments	Danielle	DONE
September 28, 2007	Approved two CSF claims	Sylvia	DONE
September 28, 2007	Changes in Bar Bylaws for committee quorum; amicus briefs; references to Judiciary Committee;	Sylvia	DONE
September 28, 2007	Created Animal Law Section	Sarah	Section officers notified
September 28, 2007	Selected various OSB Award recipients	Kay	Annual Award Dinner scheduled for December 7 at the Benson Hotel in Portland

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 3, 2007
Memo Date: October 16, 2007
From: Teresa Wenzel, Ext. 386
Re: New BOG Members

Action Recommended

None.

Background

Audrey T. Matsumonji (Public Member)
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Minutes
Access to Justice Committee
OSB Board of Governors
September 28, 2007
Salishan, Oregon

Committee Members Present: Linda Eyerman (Chair), Carol Skerjanec, Bob Vieira, Ann Fisher, Tim Gerking, Terry Wright, Marva Fabien **Staff:** Judith Baker

1. Minutes of the July 20, 2007 Meeting.

The minutes were approved as submitted.

2. Legislative Increase in Funding to Legal Aid

Linda Eyerman explained that the Oregon State Bar had received a one-time grant of \$700,000 from the Oregon Judicial Department that had been appropriated during the 2007 Legislative Session. The Legal Services Program Committee was making recommendations regarding the \$700,000. First the LSP Committee asked that the \$700,000 be sent to the OSB Legal Services Program to be distributed pursuant to the existing LSP Standards and Guidelines. Although the one-time grant was issued to the bar it was not directed to go the OSB LSP for oversight and distribution.

Secondly the LSP Committee recommended that the funds be held and invested by the OSB, with earnings going back into the Legal Services Program until the legal service providers complete a strategic planning process. This recommendation was pursuant to a letter received from David Thornburgh, Executive Director of the Oregon Law Center. It was explained that the legal service providers are participating in a strategic planning process to evaluate client needs and to make recommendations to distribute or redistribute existing and new funding to provide relatively equal access to legal services for low-income clients regardless of where they live. This process is scheduled to be completed before the start of 2008. When the strategic planning process is complete the legal service providers will return and make a new recommendation to the LSP Committee.

Lastly it was explained that the LSP Committee was recommending that a small portion of the one-time grant be distributed to the Center for Nonprofit Legal Services (Jackson County) and Lane County Law and Advocacy Center. The low salaries paid by these entities create an emergency situation related to recruitment and retention of employees. The legal aid providers asked that the distribution be completed by dividing the \$700,000 by 24 then further divide the amount by the percentage of the total that the Lane and Jackson County programs historically have received. LSP staff calculated the increase and determined that Lane County would receive a monthly increase of \$2,390 and Jackson County would receive a monthly increase of \$1,730.

ACTION: The committee approved the following recommendation to the BOG:

1. That the \$700,000 in general fund money be sent to the OSB Legal Services Program to be distributed over the biennium pursuant to the existing LSP Standards and Guidelines;
2. That the funds be held and invested by the OSB, with earnings going back into the Legal Services Program, until the five legal aid service providers complete a strategic planning process and return to make a new recommendation.
3. That a small portion of the funds be distributed over the next six months resulting in a \$2,390 monthly increase to the Center for Nonprofit Legal Services (Jackson County) and \$1,730 monthly increase to Lane County Law and Advocacy Center;

3. Increase in Filing Fee Administrative Funds

It was explained that in 1997 the Oregon Legislature appropriated the filing fee revenues for legal services to the poor to the Oregon State Bar and required that it create a Legal Services Program. At that time an administrative fee was established at \$90,000 to pay for the bar's overhead to coordinate the Legal Services Program. Because of increased costs in overhead including staffing and indirect cost allocations, the LSP Committee is requesting an increase in the annual administrative fee from \$90,000 to \$108,000. The committee reviewed a budget prepared by staff for 2007 through 2012. Pursuant to the budget the increase in administrative fee should sustain the Legal Services Program overhead through 2012.

It was asked why staff salaries were budgeted at a lower level in 2008 than 2007. Staff explained that less FTE is budgeted to the LS Program for 2008 because the Pro Bono Program staff person is being hired at a lower FTE than previously allocated.

ACTION: The committee approved a recommendation to the BOG to increase the filing fee administrative fee from \$90,000 to \$108,000 pursuant to the attached 5 year projected budget. This increase will start in 2008.

4. HOD Resolution to Recommend the Availability of Optional Form Pleadings

Linda explained this agenda item was informational only. She said that a letter had been sent to the Council on Court Procedures and UTCR from Albert Menashe and herself. The letter informed them that the OSB HOD had passed a resolution encouraging the availability of optional form pleadings. The UTCR responded with a letter explaining that the UTCR would not take the lead in developing optional form pleadings and stated that there are various forms currently available in Oregon. One source is the Oregon Judicial Department. It was suggested that the person who put the optional form pleadings

resolution on the HOD agenda should be informed about the BOG efforts regarding this issue. Linda said for now she will follow-up with the Council on Court Procedures for a response to the bar's letter.

5. Next Meeting

The next meeting will be at the OSB Center in Lake Oswego on October 12, 2007.

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Minutes
Access to Justice Committee
OSB Board of Governors
October 12, 2007
Lake Oswego, Oregon

Committee Members Present: Linda Eyerman (Chair), Carol Skerjanec, Ann Fisher, Tim Gerking, Terry Wright, Marva Fabien, **Other BOG Members Present:** Rick Yugler **Guests:** Bruce Rubin, Jeff Hyman, Leslie Kay, **Staff:** Judith Baker, Cathy Petrecca, Helen Hierschbiel

1. Minutes of the September 28, 2007 Meeting.

The minutes were approved as submitted.

2. Amending the House Counsel Rule

The OSB Pro Bono Committee forwarded an amendment to Admissions Rule 16.05 Admission of House Counsel (House Counsel Rule). The House Counsel Rule allows attorneys who have been admitted to practice law in another state to practice law as house counsel in this state. The amendment would allow attorneys admitted as house counsel to provide pro bono legal services through an OSB Certified Pro Bono Program. Jeff Hyman, who is Intel's Chair of National Pro Bono Committee, was present at the meeting to explain why he contacted the OSB Pro Bono Committee earlier in the year to advocate amending Oregon's Admission of House Counsel Rule. Intel's corporate office in Hillsboro is involved with two pro bono projects in partnership with Perkins Coie. One project is the Lewis and Clark Small Business Legal Clinic and the other is LASO's Domestic Violence Clinic. In his role as Intel's Chair of National Pro Bono Committee he works to eliminate obstacles to Intel's corporate attorneys providing pro bono. Amending the Admission of House Counsel Rule would eliminate the obstacle of not being licensed to practice law in the state and would allow qualified motivated practitioners to participate in the pro bono program.

Leslie Kay, LASO's Regional Director of Multnomah County, gave an overview of the training LASO provides to pro bono lawyers. She explained that LASO provides a variety of training depending on the preference of the volunteer attorney. Training consists of shadowing another attorney, reviewing training material on LASO's website and formal classroom training. Leslie also explained that the demand for need is greater than the volunteers available to provide representation.

The committee discussed their concern regarding Respondeat Superior. Jeff Hyman stated that Intel has never had a malpractice claim against it for the pro bono representation provided by its house counsel. Leslie Kay also said to her knowledge LASO's pro bono

attorneys have never had a malpractice claim brought against them. Staff explained that Sylvia Stevens supported the proposed amendments to the House Counsel Rule to allow pro bono practice and that she did not think a statutory change was required to extend PLF coverage to house counsels. This is because house counsels are active members of the bar like their exam-admitted colleagues.

Staff reported that the Board of Bar Examiners were meeting that day were considering the amendment to the House Counsel Rule.

ACTION: The committee unanimously approved forwarding to the BOG, subject to no opposition by the Board of Bar Examiners, a recommendation that the House Counsel Rule be amended to allow attorneys, admitted under the House Counsel Rule, to provide pro bono legal services through an OSB Certified Pro Bono Program.

3. Item for Strategic Planning

Rick Yugler asked the committee to be prepared at the next BOG meeting to present on an emerging issue and whether it should be made a BOG priority for 2008. The committee discussed the following alternatives:

- There should be a concerted effort to get law schools to highlight to students the issue of access to justice.
- Washington has a limited practice rule which allows paralegals to represent clients in a limited legal capacity. Perhaps Oregon should look at similar rules.
- Linda Eyerman was approached to have the BOG look at short term loan programs for new lawyers.

The overriding issue and one that will be forwarded to the BOG retreat is that because of legal aid's limited resources less than 20% of eligible Oregonians are served. There should be a leadership role on the part of the committee and BOG to assist CEJ in fund raising efforts and education of the bar on this pressing issue. There should also be efforts to explore and implement strategies to increase pro bono services to low-income clients.

4. Next Meeting

The next meeting will be at Gold Beach on November 3, 2007.

Minutes
Budget & Finance Committee
September 28, 2007
Salishan Resort
Gleneden Beach, Oregon

Committee Members Present: Ward Greene, chair; Gerry Gaydos, vice-chair; Carol Skerjanec; Jon Hill; Bob Lehner; Bette Worcester. **Staff:** Karen Garst; Sylvia Stevens; Susan Grabe; Rod Wegener.

1. Minutes – July 20, 2007 Committee Meeting

The minutes of the July 20, 2007 meeting were approved.

2. Financial Report – August 31, 2007

Mr. Wegener indicated the Net Revenue after eight months is still a favorable \$555,541, and expects the end of year Net Revenue to be \$200,000 to \$300,000. The drop in net revenue is due to CLE Seminars and Publications probably not reaching its budgeted net revenue, even though there are several CLE books scheduled to be released before year end. BarBooks subscription revenue will not reach its budget even though the number of subscriptions approaches the budget. The revenue from any subscription is prorated by year and no subscription created a full-year of revenue in 2007. The subscription renewals in 2008 and the related first full-year of revenue will be the test of the product's success. When Mr. Wegener reported that solo and small firm subscriptions were disappointing, a committee member indicated part of that is due to not offering a reduced subscription to solos practicing as a group.

In light of the meeting with representatives of the Affirmative Action Program later in the day, Mr. Wegener reported that the Affirmative Action Program began 2007 with a fund balance of about \$12,000 and the 2007 budget included a Net Revenue of about \$25,000.

3. Selection of Auditing Firm for 2006-2007 Audit of the OSB Financial Statements

Mr. Wegener and Michelle Peterson, the bar's accounting supervisor, evaluated the three responses to the bar's RFP for auditing services and recommended Merina & Company for the 2006-2007 and 2008-2009 audits. This recommendation was made as Merina & Company proposed the lowest fee and has performed the PLF audit for several years and received a positive evaluation from the PLF.

Mr. Wegener also reported that although the Moss Adams fee was the highest bid, the proposal indicated a more in depth review of the bar's statements and financial processes. The committee agreed a more thorough review of the bar's statements may be warranted as the most recent audits have not appeared as in depth as the Moss Adams proposal and with the significant financial transactions as the bar center sale and the purchase of the new building. The committee discussed having Moss Adams perform the audit for only one two-

year period and then evaluate the value of that audit. Mr. Wegener reported that all responses included bids for two audits and a one-audit commitment may change the fee bid.

Action: The committee recommended engaging Moss Adams to perform the audit of the bar's financial statements for 2006 and 2007 only. After the receipt and review of that audit report, the committee will decide on the selection of a firm for the 2008 and 2009 audit.

The committee granted some latitude to Mr. Wegener in negotiating the fee should Moss Adams state the fee is different for a one-time commitment only.

4. Update on 2008 Budget

Mr. Wegener directed the committee to pages 363 and 364 in the BOG agenda and asked for direction for inclusion of the items listed in the next draft of the 2008 budget. The items listed were the Campaign for Equal Justice and Classroom Law Project grants, the futures conference, and others. The committee agreed that at this stage all items should be included in the draft of the budget to be considered at its next meeting.

5. New Bar Center

Ms. Garst reported that due to various delays the completion of the building most likely will be in mid January instead of the December 20 target.

The committee discussed the memos from the real estate and loan brokers on the impact of any delay on the purchase of the bar center. Mr. Greene indicated the bar will work with Opus to assure the bar will be able to purchase the building.

Mr. Wegener distributed two pages of the latest building cost and loan estimates. He reported these schedules will approximate the final costs and borrowing needed to purchase the building.

Mr. Gaydos reported on the status of the lease with PLF. He indicated that previous arrangements with PLF indicated a ten-year lease with the beginning rent at \$25.00 per square foot and a bump in rent of 1-1/2% per year after three years and the PLF to pay its share of any increase in operating costs.

Mr. Wegener stated that the PLF's deposit for the excess TI cost was sent to Opus upon consultation with Mr. Greene. The committee agreed the bar will sign a note with the PLF and the funds are to be repaid at the interest rate the bar is earning on its LGIP account. Mr. Greene and Mr. Wegener will draft the note to be executed with the PLF.

6. Other Financial Implications Items on September 28, 2007 BOG Open Agenda

No report.

7. Letter from District Court regarding Inactive Member Fees

The committee discussed the letter from U.S. District Court Judge Dennis Hubel and by consensus agreed that a letter under the president's signature be sent indicating the bar will make no changes in the membership status for judges. Mr. Wegener estimated that the change in fees for judges could range from \$110,000 to \$150,000 in lost fee revenue annually. The committee believed the bar already has provided considerations for judges with free CLE's and acknowledged there are other membership groups that also could make a viable argument for a reduced membership fee for that group.

8. Next committee meeting

The committee will meet next on October 12 at the bar center in Lake Oswego.

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Minutes
Budget & Finance Committee
October 12, 2007
Oregon State Bar Center
Lake Oswego, Oregon

Committee Members Present: Ward Greene, chair; Gerry Gaydos, vice-chair; Carol Skerjanec; Bette Worcester; Jon Hill (via phone). **Staff:** Rod Wegener.

1. Minutes – September 28, 2007 Committee Meeting

The minutes of the September 28, 2007 meeting were approved.

2. Financial Report – September 30, 2007

Mr. Wegener indicated the Net Revenue at September 30 is \$432,000 after a large net expense of \$123,000 for the month of September. He stated September typically is a poor month financially and net expense for September a year ago was almost as large. He stated he still expects the end of year Net Revenue to be \$200,000 to \$300,000. September CLE publications sales were very low, but several books are coming to market this year yet, including Advising Oregon Business which typically is a strong seller.

3. 2008 Budget

Mr. Wegener explained the 2008 budget and future-year's budgets will include separate budgets for programs and operations and for the new bar center. He directed the committee to the three pages of Exhibit B of the budget report. The exhibit is a summary of the 2008 budget and five-year forecast. As stated in the budget narrative, the 2008 budget has a \$210,881 Net Expense consisting of a \$279,907 Net Revenue for program operations and a \$490,788 Net Expense for the new bar center. Even though there is a cumulative net expense, the cash flow for all operations remains positive since over \$500,000 depreciation expense is included in the operations and facilities budget.

Mr. Wegener distributed four charts, which graphed the cash flow for bar operations and facilities for the next five years. The one graph showed that an extended vacancy in the third-party space will have a negative impact on the bar's cash flow. Mr. Wegener will present at the next meeting a different graph showing the impact of the growth of income and expense in the next five years.

Mr. Wegener pointed out the only new funds added to the 2008 budget are \$25,000 for the futures conference and \$27,000 for reimbursement of HOD members travel. The committee left the grants to the Classroom Law Project and the Campaign for Equal Justice at \$20,000 and \$45,000 respectively (the same amounts granted in 2007), but agreed to wait and see if the CEJ grant can be raised to \$50,000 as the 2007 net activity becomes clearer.

Action: The committee recommended the 2008 budget as presented.

4. New Bar Center

Mr. Greene shared with the committee the email he had received from Opus' attorney stating Opus' terms for amending the master lease. Mr. Greene stated the bar wants the master lease amended to provide the bar with 24 months of rental income, but Opus has offered 12 months. The committee affirmed the position that the bar wants 24 months of rental income under the master lease, or it will terminate the master lease.

The committee asked Mr. Wegener to arrange a tour of the new building for the local BOG members to have a better idea of the construction status prior to the next board meeting, and to provide pictures for the rest of the board members. The committee also directed Mr. Wegener to notify the owner of the bar center that the bar's intention to move from the bar center in 60 days or shortly thereafter. The committee also discussed the sale of bricks with the donor's name to be installed at the entrance to the bar center. The committee took no action on the idea.

5. Letter from District Court regarding Inactive Member Fees

In a response to another communication from the district court judge and the bar president, the committee reaffirmed its position and statements from its last meeting that there be no changes in the membership status or fee for judges.

6. Next committee meeting

The committee will meet next on November 2 or 3 during the BOG planning session and meeting at Tu Tu Tun resort.

Member Services Committee

Board of Governors

September 28, 2007

Present: Rick Yugler, Chair, Terry Wright, Vice Chair, Ann Fisher, Kathleen Evans, Linda Eyerman, Marva Fabien, Albert Menashe

Staff: Margaret Robinson, Danielle Edwards, Kay Pulju (by phone)

Minutes of July 20, 2007

The minutes of the July 20 meeting were approved.

Bar Center Open House Series

Staff was asked to develop a schedule and agenda for open houses. The committee liked the idea of having bar department booths set up during the reception/social to allow members to circulate and learn about different aspects of bar work. One topic suggestion for a possible CLE seminar included history of the bar- touching on discrimination in Oregon history. In an effort to include those members located outside of the tri-county area, the committee suggested sending out invitation letters early and posting a virtual tour of the bar on the website.

New Bar Center Room Names

A few members have requested that meeting rooms in the new bar center be named after specific OSB members. The committee discussed this option as well as naming rooms after groups or features of Oregon in each of the six regions. Staff will request ideas from other bar staff and solicit feedback from local bar associations. The results of these findings will be presented at the November meeting.

Bulletin Article Discussion

Revised internal Bulletin editorial and advertising policies were reviewed by the committee due to recent first right of publication problems and a discussion of disclosure policies of article authors. The committee discussed and approved of the three additions relating to author disclosure, first right of publication and changes related to complying with OSB bylaw 10 (diversity). Further discussion will continue in October regarding the deletion of the existing ban on advertisements for alcohol, tobacco and firearms. It was also noted that editorial staff have the discretion in relation to Bulletin author discipline records and the publication of their articles in the bar publication.

OSB Awards

The award slate was approved with the additions of President Menashe's selections for the President's Award. Douglas Houser and Eric C. Larson will be receiving the 2008 President's Awards.

Past Presidents' Council

Invitations to the Past Presidents' Council initial meeting were sent out. The first council meeting will focus on the nature of the group and selection of areas for involvement. It was suggested that they possibly play an advisory role in the Affirmative Action Program

departmental reporting changes or possibly assisting with creation of a tent show like event.

2008 Elections

The 2008 election schedule memo was approved as submitted.

Ballot Envelopes

One bar member requested the BOG consider eliminating the inner envelope in bar elections. The committee considered this request but decided to keep the dual-envelope ballot return process the same in order to ensure each voter's privacy.

Credit Card Payment Services

A member requested the BOG consider offering credit card payment services on the bar's website. The service would allow attorney's clients to pay fees online by credit card. Several issues were raised regarding service fees charged by the credit card company, where the funds would go, how this would affect IOLTA, ect. The committee decided this service would open the bar to several legal issues and we are not interested in pursuing this service at this time.

Member Services Committee
Board of Governors
October 12, 2007

Present: Rick Yugler, Chair, Ann Fisher, Kathleen Evans, Linda Eyerman, Marva Fabien

Staff: Danielle Edwards, Kay Pulju

Absent: Terry Wright, Vice Chair

Minutes of September 28, 2007

The minutes of the September 28 meeting were approved.

2008 Strategic Issues

The committee identified the following issues to present at the November board retreat and focus on during 2008.

- Senior Lawyers Project. Create a benefit for seasoned lawyers to volunteer and get involved in bar activities.
- Encourage connections between groups of the bar including local bars, sections, specialty bars, ect. As the bar has grown, members have begun to disconnect partially due to the loss of the annual meeting and also due to lawyers becoming more specialized in specific practice areas. It is important to encourage groups to intermingle.
- Connect minority lawyers to other members of the bar. The committee would like to monitor the integration of the Affirmative Action Program into the Member Services Department and assist in integrating the ONLD, Leadership College and AAP during this transition.

During 2008 the committee also plans to monitor the development of the 2008 futures conference.

Volunteer Statistics

Various statistics were presented regarding 2007 volunteers. We received 50 applications this year in comparison to last year's recruitment most likely due to the committees recommendation to send volunteer forms to all active members. More than half of all volunteers indicated they have never applied to serve on an OSB board, committee or council before.

The committee also suggested sending a letter to all non-appointed volunteers to let them know of the opportunities later in the year for appointment.

Past Presidents' Council

In addition to Rick and Albert, nine past OSB presidents attended the initial Past Presidents' Council meeting. All attendees are interested in assisting the bar and the BOG by serving on the council. Areas of interest include the affirmative action program changes, reviewing bar governance and leadership, and creating a more congenial atmosphere for bar members by possibly offering an annual social gathering or by tying the leadership college and other bar programs to one another. The council will meet at least twice per year in order to work on issues such as these.

New Bar Center Room Names

Due to a members request that meeting rooms in the new bar center be named after specific OSB members the committee took on the task of considering various room names. The committee felt that selecting Oregon features from each bar region was a less controversial way of naming rooms. All six rooms will be named after Oregon Rivers in various bar regions; the following names were chosen: Columbia, Deschutes, McKenzie, Nehalem, Rogue and Santiam.

Member Communications

"My Bar" will be launching with the annual membership directory updates normally beginning in late October or early November. There may be an opportunity for members to decline receiving a paper copy of the membership directory but this area will need to be explored by bar staff first. A demonstration of "my bar" will be available at the November retreat for all board members.

Section Membership

The committee discussed the benefits of changing the timing of section enrolment to not coincide with annual dues. Some members felt it would increase section enrolment because members would not be struggling to make such a large payment all at one time.

Policy and Governance Committee Minutes – September 28, 2007

Committee members: Tim Gerking (chair), Marva Fabien (vice-chair), Kathy Evans Ward Greene, Bob Lehner, and Bette Worcester. **Other Board members:** Albert Menashe. **Staff:** Sylvia Stevens and Karen Garst.

1. Minutes

Minutes from the July 20, 2007 meeting were approved as drafted.

2. MCLE EOB requirement

Tim updated the committee regarding the recent meeting of the OSB Diversity Section. The section took a position to urge the board to keep the mandatory program and also to encourage sections and other CLE providers to include these issues in their CLE seminars. Tim spoke with Justice Walters who would like to see another proposal from the BOG. The Diversity Section's resolution is on this board's agenda with a recommendation that it be referred to this committee on October 12. The committee should discuss its proposal with the Chief Justice on October 22.

ACTION: Put on October 12 P and G agenda.

3. Disaster rule

The committee reviewed this proposed rule that would allow out of state lawyers to provide legal services in Oregon on a pro bono basis to help Oregonians if there a disaster in Oregon. Conversely, it would allow lawyers from a state where there was a disaster to come to Oregon and continue their law practice with their existing clients; it would also allow out of state lawyers to provide pro bono legal services in Oregon if large numbers of people relocated after a disaster elsewhere overwhelms Oregon's legal aid abilities. This will be a stand alone court rule. It doesn't replace ORPC 5.5 nor the pro hac vice process. The committee voted to approve the rule as drafted and send it to the BOG and then to the HOD.

ACTION: Place on BOG's November open agenda. Discuss on October 12 the issue of whether this court rule process needs to or should go to the HOD before going to the court.

4. Redistricting

Tim will lead the discussion at the pre-HOD 9:00 AM meeting on Saturday. An e-mail to the HOD listserv did not elicit many opinions. This will be on the committee's agenda on October 12 for further discussion.

5. Bar Bylaw 3.4 regarding distribution of HOD agenda

The committee approved the change to allow distribution of the HOD agenda to both active and inactive bar members to conform with the HOD Rule on this subject.

ACTION: Place on board's November agenda on consent.

10. Next Meeting

The next meeting of the committee will be October 12 at the bar center.

Policy and Governance Committee Minutes – October 12, 2007

Committee members: Tim Gerking (chair), Kathy Evans Ward Greene (phone), Bob Lehner (phone), and Bette Worcester. **Staff:** Sylvia Stevens and Karen Garst. **Guests:** EOB discussion – Melvin Oden-Orr (Diversity Section) and Gary Georgeff.

1. Minutes

Minutes from the September 28, 2007 meeting were approved as drafted.

2. Revision to Bar Bylaw 14.4

The committee discussed approved this change to clarify the board's role in appointing advisory or public members to committees.

ACTION: Recommend to full board. Place on consent agenda.

3. Katrina disaster rule

The committee discussed this proposed Supreme Court rule that would allow lawyers from states where disasters occur to practice in Oregon temporarily and serve their existing clients. It would also allow out-of-state lawyers to come to Oregon were there a disaster here and work pro bono to help victims of the disaster. It was decided this rule needed to go to the House of Delegates.

ACTION: Recommend passage to full board to place as BOG resolution at 2008 HOD meeting.

4. MCLE EOB requirement

Melvin Oden-Orr outlined the Diversity Section's position on keeping the requirement mandatory for all active Oregon lawyers. He referred to the resolution submitted previously to the BOG. The section would also like an advisory committee to help the bar address quality issues in EOB programs and to integrate these concepts into all seminars where appropriate. Gary Georgeff stated he was disappointed the Supreme Court consulted only with the Diversity Section, and he expected the court to follow the dictate of the membership vote. He said he would urge signers of the petition to support the proposal on the table to create a six hour, one-time only requirement for new admittees. He also stated that incorporating EOB into seminars would be a fine idea. Committee members voiced support for closure on this issue and decided to propose the one-time, six hour course with no experiential component, to be completed by all new admittees by the end of their first full reporting period. The Diversity Section and the Affirmative Action Committee will be asked for their input in development of the six-hour program. It was noted that issues of age and sexual orientation were not on the draft program outline.

ACTION: Recommend to full board to forward to the Court one-time only, six-hour credit EOB course for new admittees. Staff will draft MCLE Rule and committee can review prior to BOG meeting.

5. Redistricting

The committee discussed the pros and cons of Proposal A and Proposal B and decided to recommend Proposal B. This will add four new lawyer members to the board. A statutory change will be necessary.

ACTION: Place on BOG's November open agenda.

6. Bar member suspended for more than five years; BR 9.5

Recent action taken by the Oregon Supreme Court suggests that there may be a need to clarify, through an amendment to the Bar Rules of Procedure (BRs) or otherwise, the membership status of lawyers who have remained suspended for more than five years. The Supreme Court would not accept a Form A Resignation from someone who had remained in suspended status over five years and had never sought reinstatement. Options discussed were repealing BR 9.5; creating a statutory procedural rule to cede jurisdiction of anyone suspended more than 5 years; or assume court meant to create another name for lawyers who remained suspended for more than 5 years. A concern was expressed about the need not to mislead the public.

ACTION: Repeal BR 9.5 and recommend to board. Notify the Chief this is coming his way.

10. Next Meeting

The next meeting of the committee will be November 3 in conjunction with the board meeting in Tu' Tu Tun.

**Public Affairs Committee
OSB Board of Governors
September 28, 2007 Minutes
Oregon State Bar**

Committee Members Present: Gerry Gaydos, Linda Eyerman, Ann Fisher, Jon Hill, BobVieira and Rick Yugler. **Staff:** Susan Grabe.

1. **Minutes.** The minutes from the July 20, 2007 meeting were approved.
2. **Political update.**
 - a. Staff provided the committee with an update on the current election cycle and lawyer legislator candidates considering whether to run including Mark Kramer for Rep. Rosenbaum's seat in SE Portland, Chris Garrett for Rep. Macpherson's seat in Lake Oswego and Cliff Bentz for Rep. Butler's seat in Ontario.
 - b. The Supplemental Session in February will be limited to larger public policy issues and the bar will not be affirmatively introducing any law improvement proposals. However, the House Revenue Committee has requested the Estate Planning and Tax Sections develop a list of policy issues and options to resolve issues related to exemptions, particularly a \$7.5 million dollar tax exemption for natural resources, included in section 68 of HB 3201 from the 2007 session.

3. **Pending Initiatives.**

Rick Yugler introduced the combined resolution to oppose initiative petition #2 re elimination of designation of incumbency for judges, #51 re caps on contingency fees, and #53 re sanctions for frivolous litigation. The committee discussed the merits of opposing each initiative petition individually versus opposing all three in a combined resolution because all three negatively affect the justice system. PAC ultimately decided that it would be more effective to oppose all three in one Board resolution which would be sent to the House of Delegates for consideration at its meeting. Rick Yugler volunteered to address the issue at the board and House of Delegates meetings.

ACTION: PAC moved and unanimously recommended that the board support the combined resolution opposing initiative petition #2 re elimination of designation of incumbency for judges, #51 re caps on contingency fees, and #53 re sanctions for frivolous litigation and to forward

the resolution to the House of Delegates for consideration at its September 29 meeting.

4. **HOD Resolution No.1 to amend ORS 12.020(1)** PAC also discussed HOD Resolution No. 1 to amend ORS 12.020(1) to extend the time by which summons and complaint must be served from 60 to 120 days. While various positions were expressed by committee members, ultimately PAC agreed that, from a process perspective, this issue should be forwarded to a bar committee for study and development of a recommendation.

ACTION: PAC moved and unanimously recommended that the board inform the HOD that this issue should be forwarded to Procedure and Practice Committee to analyze and develop a recommendation for the board to consider with respect to any law improvement proposal that may be included in the bar's package of proposed legislation for the 2009 legislative session.

5. **Legislative Notebook and CLE.** The committee reviewed the schedule for the October 11 Legislative CLE to be held at the Governor Hotel in conjunction with an afternoon hearing of the Interim Judiciary Committee. These events will be followed by a board dinner with the OSB Past Presidents' Council and Interim Judiciary Committee members at Pazzo Ristorante in the Vintage Plaza Hotel. All board members are encouraged to attend.

Public Affairs Committee
OSB Board of Governors
October 12, 2007 Minutes
Oregon State Bar

Committee Members Present: Gerry Gaydos, Linda Eyerman, Ann Fisher, Jon Hill (by phone), BobVieira and Rick Yugler. **Staff:** Susan Grabe.

1. **Minutes.** The minutes from the September 28, 2007 meeting were approved.
2. **Political update.** Gerry Gaydos reported on the Legislative Highlights CLE which he moderated and the joint dinner with the board, joint interim judiciary committee members and past president's council members. Everyone involved thought both events were a success with approximately 85 people at the CLE and 40 at the dinner. Linda Eyerman gave the committee an update on the interim judiciary hearing held in conjunction with the CLE Seminar. The main subject of discussion was the fiscal impact of Measure 40, regarding mandatory minimums for property offenses, on the State of Oregon, specifically the prison system. PAC members discussed who is involved in Measure 40, who the bar's coalition partners might be and whether the bar should take a position or get involved in Measure 40.
3. **Ballot Measure Strategy.** The committee reviewed the discussed potential ballot measure strategies available and determined that the bar should have a seat at the table with the campaign and other coalition groups and develop a consistent message. Whether board members may conduct fundraising activities needs to be clarified to avoid any potential conflicts in the future. The committee would like to continue this discussion at the next few meetings.
4. **Strategic Issues for BOG Retreat.** The committee determined that two issues should be discussed by the board in more depth at the November retreat:
 - a. Whether the judiciary committee should be reinstated as a stand alone committee, and
 - b. How best to implement BOG/HOD directives regarding legislative and public policy issues.

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Client Security Fund Pending Cases

<u>Case</u>	<u>Committee Member</u>	<u>Assigned</u>	<u>Claimant</u>	<u>Attorney</u>	<u>Amount</u>
07-04	Rhonda Antell	3/28/2007	Casey, Kimberly and Christine	Tripp, Dennis	\$101,454.91
07-05	Rnonda Antell	4/17/2007	Olshove, James Michael	Tripp, Dennis	\$2,700.00
07-08	Constantin Severe	5/7/2007	Markuson, Elizabeth	U'Ren, Matthew	\$3,750.00
07-09	J. Russell Rain	5/17/2007	Torres-Rio, Cirenio	Chadwick, Cheryl	\$3,000.00
07-10	Susan Alterman	5/24/2007	Rothenfluch, Gerald	Knapp, Thomas E	\$423,123.00
07-15	Michelle Teed	8/14/2007	Jones, Kenneth Byron	Dunn, Timothy	\$1,800.00
07-16	Marty Barrack	8/22/2007	Nagorski, John Jr.	White, Betty Jo	\$12,260.96
07-17	Scott Asphaug	9/5/2007	Cone, Ellis A	Kent, William N	\$365.00
07-18	Mitzi Naucier	9/6/2007	Bailey, Pamela Anne	Cumfer, Eric	\$719.77
07-19	Michelle Teed	9/25/2007	Kaa, Eva	Dunn, Timothy	\$1,000.00
				TOTAL	\$550,173.64

OREGON STATE BAR
Client Security - 113
For the Nine Months Ending September 30, 2007

Description	September 2007	YTD 2007	Budget 2007	% of Budget	September Pr Yr	YTD Pr Yr
REVENUE						
Interest	\$3,322	\$30,014	\$28,200	106.4%	\$3,107	\$26,532
Judgments	670	23,188	5,500	421.6%	250	4,387
Membership Fees	20	65,265	67,600	96.5%	95	63,485
Miscellaneous Income	0	0	0	0.0%	0	50
TOTAL REVENUE	4,012	118,467	101,300	116.9%	3,452	94,454
EXPENSES						
SALARIES & BENEFITS						
Employee Salaries - Regular	2,143	20,375	28,200	72.3%	2,050	23,637
Employee Taxes & Benefits - Reg	672	6,250	8,600	72.7%	922	7,954
TOTAL SALARIES & BENEFITS	2,815	26,625	36,800	72.4%	2,972	31,591
DIRECT PROGRAM						
Claims	0	69,671	150,000	46.4%	0	46,332
Collection Fees	0	190	1,000	19.0%	0	736
Committees	0	0	250	0.0%	0	0
Pamphlet Production	0	0	300	0.0%	0	0
Travel & Expense	0	0	1,000	0.0%	0	0
TOTAL DIRECT PROGRAM EXPEN	0	69,861	152,550	45.8%	0	47,068
GENERAL & ADMINISTRATIVE						
Messenger & Delivery Services	0	0	50	0.0%	0	0
Office Supplies	0	0	100	0.0%	0	0
Photocopying	0	30	300	10.0%	0	0
Postage	10	97	275	35.3%	15	135
Professional Dues	0	72	200	36.0%	95	95
Telephone	16	65	100	65.0%	0	1
Training & Education	0	0	325	0.0%	0	0
Staff Travel & Expense	0	570	762	74.8%	0	840
TOTAL G & A	26	834	2,112	39.5%	110	1,071
TOTAL EXPENSE	2,841	97,320	191,462	50.8%	3,082	79,730
NET REVENUE (EXPENSE)	1,171	21,147	(90,162)		370	14,724
Indirect Cost Allocation	735	6,617	8,823		710	6,390
NET REV (EXP) AFTER ICA	436	14,530	(98,985)		(340)	8,334
Fund Balance beginning of year		733,736				
Ending Fund Balance		748,266				

CLIENT SECURITY FUND FORMS REQUESTED

**APPROXIMATE
DATE OF
INFORMATION**

CLAIMANT

ATTORNEY

**CLAIM
AMOUNT**

APPROXIMATE DATE OF INFORMATION	CLAIMANT	ATTORNEY	CLAIM AMOUNT
6/20/2006	James Zehner	Harris, David	500.00
6/22/2006	Chuck McCown	Carroll, Stephen P.	unknown
7/17/2006	Michael McNasser	Dunn, Tim	800.00
7/18/2006	Helen Douglas	Dunn, Tim	8,300.00
7/21/2006	Sam George (for Paul George)	Church, Keith D.	unknown
9/8/2006	M. Nelsi Sanchez-Delgado	Church, James D	2,100.00
9/28/2006	Lisa Roehrich	Clark, Richard W	1,250.00
10/12/2006	John Gibbon (for clients)	Dutson, Michela Rene	10,000.00
10/16/2006	Mike Mahoney	Okai, Thomas	unknown
11/21/2006	Terri Cline	Sushida, Jonathan	500.00
1/11/2007	Chris Covert (for Calderwood clients)	Tripp, Dennis	2,956.59
1/18/2007	Rotish Virash Singh	Lyons, Timothy	unknown
1/31/2007	Ellis Cone	Kent, William	unknown
2/6/2007	Stephen Hendricks	Eames, Todd	unknown
2/12/2007	Sharon Taylor	Stafford, Robert P	unknown
2/26/2007	Darin Andrews	Skagen, Christopher	3,000.00
3/6/2007	Helen Douglas	Dunn, Tim	2,000.00
3/15/2007	James Sutherland	Knapp, Thomas E	100,000.00
3/15/2007	John Jones	Kent, William	1,000.00
3/21/2007	Joe and Virginia Miller	Knappenberger, Allan F	unknown
3/21/2007	James Olshove	Tripp, Dennis	2,700.00
3/26/2007	Shelli Raymond	Handy, Paul	12,000.00
4/2/2007	Elizabeth Markuson	U'Ren, Matthew	3,750.00
4/3/2007	John Fischkorn	Anderson, Dawna (Scott)	2,500.00
4/24/2007	Lisa Baisley	Brown, L Ross	35,000.00
4/24/2007	Laurie Sayago	Strange, Cecil	15,000.00
5/16/2007	Ken Lambert	Wetzel, Todd	1,000.00
5/23/2007	Sharon Jones	Dunn, Tim	1,800.00
6/1/2007	Joel Meyers	Kent, William	800.00
6/4/2007	David Regennitter	Wetzel, Todd	12,000.00
6/4/2007	Lori Drews	Tomlinson, David	900.00
6/6/2007	Misty White	Wetzel, Todd	1,500.00
6/12/2007	Theresa Tucker	Doyle, Steven	3,500.00
7/17/2007	Denise Uhde	Folkestad, Jon	5,000.00
7/27/2007	Judy Taylor	Fruedenberg, Ben	3,000.00
7/31/2007	Dan Clayton	Childs, Will	1,200.00
8/13/2007	Tad Engman		unknown
8/24/2007	Melody Borthwick	Dunn, Tim	\$400.00
8/24/2007	Eva Kaa	Dunn, Tim	\$2,200.00
9/5/2007	Frank Ross		unknown
9/19/2007	Lloyd Keimig	Childs, Will	\$2,500.00
	TOTAL POTENTIAL CLAIMS		\$239,156.59