



10:00 a.m. – 11:00 a.m.      **Appointments Committee** (Evans, Gerking, Fisher, Johnnie, Piucci, Vieira, Wright) \*  
Pine Room  
**Call in Number:**      888-737-5834  
**Conference ID:**      934254

11:00 a.m. – 11:30 a.m.      **Access to Justice Committee** (Wright, Vieira, Gerking, Kent, Lehner, Matsumonji)  
Pine Room  
**Call in Number:**      888-737-5834  
**Conference ID:**      934254

Please remove all materials from the morning meeting rooms so resort staff can reset the rooms for the afternoon joint meeting with the PLF.

12:00 p.m. – 1:00 p.m.      **Lunch – PLF/BOG Joint Lunch**  
Dining Room

1:00 p.m. – 1:30 p.m.      **Board Meeting – PLF/BOG Joint Meeting**  
Lincoln/Pine Rooms

1:30 p.m. – 5:00 p.m.      **Board Meeting**  
Lincoln/Pine Rooms  
**Call in Number:**      888-737-5834  
**Conference ID:**      934254

5:30 p.m. – 8:00 p.m.      **BOG Dinner with Local Bar, PLF, ONLD**  
Cedar Tree





Saturday, May 10, 2008

Saturday, May 10, the ONLD is conducting a beach clean up from 3:00 to 5:00 p.m. at the Lincoln City 11th Street beach access (near the Tanger Outlet Mall). All necessary supplies will be provided for volunteers. If you are interested in participating, please RSVP to Shelley Dobson, 503-431-6404 or [sdobson@osbar.org](mailto:sdobson@osbar.org).



Breakfast – Lincoln/Pine Rooms

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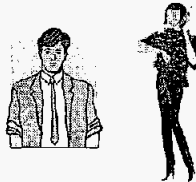
\* and \*\* indicate committees which have no overlap and can meet at the same time.

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Business Attire



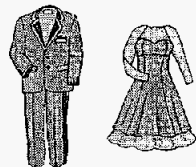
Business Casual



Casual Attire



Let's Dress Up



NO MEETING

Appellate Screening Committee (Evans, Gerking, Johnson, Greene, Matsumonji)

NO MEETING

Executive Director Search Committee (Skerjanec, Fisher, Gaydos, Johnnie)

NO MEETING

Public Member Selection Committee (Worcester, Lehner, Greene, Johnnie, Vieira)

**Oregon State Bar  
Meeting of the Board of Governors  
May 9-10, 2008  
Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:30 p.m. on May 9, 2008, and continue to the morning of May 10, 2008, 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.*

**Friday, May 9, 2008**

12:30 p.m.

- |    |  |        |  |
|----|--|--------|--|
| 1. | Call to Order/Finalization of the Agenda       | Action |  |
| 2. | Joint Meeting with Professional Liability Fund |        |  |
| A. | Update   | Inform |  |

1:00 p.m.

- |    |  |  |  |
|----|--|--|--|
| 3. | Work Session - Communications Department |  |  |
| 4. | Report of Officers                       |  |  |

1:20p.m.

- |    |  |        |                           |
|----|--|--------|---------------------------|
| A. | Report of the President [Mr. Yugler]                       |        |                           |
| 1. | Meeting with Chief Justice Paul J. De Muniz<br>May 1, 2008 | Inform | 1-2<br><del>Handout</del> |
| 2. | ABA Lobby Day  | Inform |                           |
| 3. | President's Report   | Inform | 3-4                       |
| B. | Report of the President-elect [Mr. Gaydos]                 |        |                           |
| 1. | Report on Meetings and Events Attended                     | Inform |                           |
| 2. | Northwest State Bars Meeting                               | Inform | 5-10                      |

C Report of the Executive Director [Ms. Garst]

1:35 p.m.

1. 2007 Program Measures Inform Handout

5. Board Members' Reports Inform

1:55 p.m.

➤ *Board members will report briefly on news from their region or contacts with sections, committees, or/and other bar entities.*

6. Special Appearances

2:15 p.m.

A. SLAC/OAAP Task Force Report [Dr. John Enbom] Action 11-38.F

B. Limited Admission of Foreign Lawyers as House Counsel Action 39-52

➤ *The BOG is asked to consider a request that the House Counsel Rule be amended to allow admission of foreign-trained lawyers, and to recommend that the BBX support the amendment.*

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

2:30 p.m.

A. Access to Justice Committee [Wright]

1. Distribution of General Fund Appropriation Action 53-55

➤ *The committee will ask the BOG to approve the recommendation put forth by the Association of Legal Services regarding the disbursement of the general fund appropriation being held by the OSB.*

2:40 p.m.

B. Budget and Finance Committee [Greene]

1. Ratification for the Second Amendment to the Lease Agreement Action 56.a – 56.d

2. Audit Report for OSB for 2006 and 2007                      Action              Handout
  - *A copy of the audit report for 2006 and 2007 from Moss Adams is included with the agenda. Representatives from Moss Adams will meet with the Budget & Finance Committee to discuss the report and any findings. The board should acknowledge acceptance of the report.*
3. Update on New Bar Center    Inform
  - *The committee will give an oral report on any new actions regarding the new building..*

2:50 p.m.

- C. Executive Director Search Committee [Skerjanec]
  1. Status Report    Inform
- D. Member Services Committee [Gaydos]
  1. Update on Committee Activities                                      Inform
- E. Policy and Governance Committee [Gerking]

3:00 p.m.

1. Redistricting of BOG Regions                                      Action              57-61
  - *The committee recommends an implementation plan for the two new lawyer seats proposed for the board.*

3:10 p.m.

2. House of Delegates – Alternates                                      Action              63-65
  - *The committee recommends a revision to the HOD Rules allowing alternate delegates for section chairs and local bar association presidents.*

3:20 p.m.

3. Board's Borrowing Authority    Action              67-69
  - *The committee recommends a change to Bar Bylaw 7.102 to clarify the board's borrowing authority. 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.*

3:25 p.m.

4. Judicial Endorsements Action 71-72. A

➤ *The committee recommends a change to Bar Bylaw 2.700 to clarify the authority of certain groups to endorse judicial candidates. 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.*

F. Public Affairs Committee [Fisher]

3:30 p.m.

1. Political Update Inform 72.B - 72.E

➤ *Update on the election cycle and lawyer legislator candidates.*

3:35 p.m.

2. e-Court™ Implementation Task Force Action 73- 76

➤ *Appoint a task force to assist with implementation of the OJD e-Court initiative.*

3:45 p.m.

3. 2009 Law Improvement Package Action 77-79

➤ *Consider PAC request to approve 2009 OSB package of Law Improvement proposals.*

G. Public Member Selection [Worcester]

3:50 p.m.

1. Review of the Public Member Recruitment and Selection Process Inform 81- 81. D

8. Special Appearances

3:55 p.m.

- A. Oregon New Lawyers Division [Mr. Chi] Inform 82. A - 82. C

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

4:05 p.m.

A. Client Security Fund [Ms. Evans]

1. Review Denial of CSF Claims 83-142

- a. 07-10 *Rothenfluch v. Knapp* \$73,381.00 Action
- b. 07-03 *Jones v. Judy* \$40,000.00 Action
- c. 07-07 *Douglas v. Dunn* \$7,731.00 Action
- d. 07-22 *Scharn v. Mason* \$45,428.20 Action

- 10. Consent Agenda Action pink
- 11. Default Agenda Inform blue
- 12. Closed Session Agenda Inform/Action green/lavender

4:30 p.m.

- A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet) Discuss/Action lavender agenda
- B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet) Discuss/Action green agenda

13. 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  
May 9-10, 2008  
Consent Agenda

10. Consent Agenda

A. CSF Claims Recommended for Payment

1.	08-05 <i>Fowler v. Tripp</i>	\$2,400.00	Action	143
2.	07-05 <i>Olshove v. Tripp</i>	\$2,700.00	Action	144
3.	08-09 <i>Moore v. Miller</i>	\$1,000.00	Action	144

B. Approve Minutes

1.	Minutes of Open Session Feb. 22-23, 2008	Action	145-155
2.	Minutes of Open Session April 4, 2008	Action	157-158
3.	Minutes of Executive Session Feb. 22, 2008	Action	159
4.	Minutes of Judicial Proceedings Feb. 22, 2008	Action	161-164

C. Appointments Committee

1. Various Appointments

*Action*  
~~Handout~~

*164.A - 164.B*

Oregon State Bar  
 Meeting of the Board of Governors  
 May 9-10, 2008  
 Default Agenda

11. Default Agenda

A. President

1. Correspondence

- |   |        |     |
|---|--------|-----|
| a. Letter to Paul Duden Regarding<br><i>In re Samwick</i> | Inform | 165 |
|---|--------|-----|

B. Executive Director

- |   |        |         |
|---|--------|---------|
| 1. Operations Report                          | Inform | 167-173 |
| 2. Status of Actions from Past Board Meetings | Inform | 175     |

C. ABA Summary of 2008 Mid-year Meeting	Inform	177-189
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D. Disciplinary Counsel's 2007 Annual Report	Inform	191-213
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E. Access to Justice Committee

- |                            |        |         |
|----------------------------|--------|---------|
| 1. Minutes – April 4, 2008 | Inform | 215-217 |
|----------------------------|--------|---------|

F. Budget and Finance Committee

- |                                |        |         |
|--------------------------------|--------|---------|
| 1. Minutes – February 22, 2008 | Inform | 219-220 |
| 2. Minutes – April 4, 2008     | Inform | 221-222 |

3. <i>Financial Stmts. Summary - March 31, 2008</i>	Inform	<i>222.A - 222.B</i>
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G. Member Services Committee	1. 2007 Committee and Section Annual Reports	Inform	Handout
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➤ *The 2007 Committee and Section Annual Reports summarizing each group's activities from the prior year and anticipated activities for the current year.*

- |                                |        |         |
|--------------------------------|--------|---------|
| 2. Minutes – February 22, 2008 | Inform | 223-224 |
|--------------------------------|--------|---------|

- |                            |        |         |
|----------------------------|--------|---------|
| 3. Minutes – April 4, 2008 | Inform | 225-226 |
|----------------------------|--------|---------|



H.	Policy and Governance Committee		
1.	Minutes – February 22, 2008	Inform	227
2.	Minutes – April 4, 2008	Inform	229-230
I.	Public Affairs Committee		
1.	Minutes – February 22, 2008	Inform	231-232
2.	Minutes – April 4, 2008	Inform	233
J.	CSF Claims Report	Inform	235-237

**Meeting with the Chief Justice  
Minutes – May 1, 2008**

**Present:** Chief Justice Paul De Muniz, Kingsley Click, Rick Yugler, Gerry Gaydos, Susan Grabe and Karen Garst.

**Motion Fees**

Rick thanked the Chief Justice for allowing the Bar to provide input and for the changes made.

**Elimination of Bias**

Rick thanked the Chief Justice for the Court's approval of the compromise resulting in the new rules for the Access to Justice MCLE requirement (formerly Elimination of Bias).

**Court Security**

BOG members Steve Pucci and Tim Gerking serve on the task force. Judge Lipscomb agreed that Multnomah and Marion counties would serve as a pilot project. The sheriffs will need to be involved. There will probably still be a fee for some kind of background check of each member requesting access. Karen will go to the next meeting. The Chief offered to have the Supreme Court building be a pilot project for a new system.

**Admissions Task Force**

At the last meeting, a statistician from the national organization informed the task force regarding the reliability and the validity of the various components of the bar exam. It appears the task force is now limiting itself to the weight of various elements. They may also ask the BBX to look at the number used to produce the passing rate which appears lower than in other states. There was some discussion about an alternative route to licensure involving an apprentice program. The task force looked at whether passing one component could alleviate the need to retake that particular component. The idea was floated for the bar to host a meeting with the chief justices, chairs of the examiner board, and bar presidents of the NW states with whom the bar has reciprocity to see if something might be done regionally. Karen will pursue this.

**Foreign Practice Rule**

Intel approached the bar regarding the ability to have foreign lawyers as house counsel. The BOG will likely approve a recommendation to do so to the BBX which will need Court approval.

**Compensation Commission**

Not all the appointments have yet been made. Strategies to get this group going were discussed.

**Court Facilities**

The legislative committee group has met and hired a firm that has started its initial assessments. Bringing the Columbia County Courthouse up to current standards alone is estimated at \$13 million. The result of this study will be an inventory of each courthouse with a similar type of cost estimate. The group discussed strategies to bring key legislators together to discuss possible funding ideas and any statutory changes that would be required. Susan and Gerry will work on a list of names and on how best to interface/bring this followup group to the legislative committee chairs' attention so it remains connected to that effort underway.

#### **Oregon eCourt**

A company has the trademark pending for eCourt™ products but has given its permission for OJD to use the term Oregon eCourt which should not appear with a TM sign. The BOG will consider the charge and bar members for a task force to bring bar members together to provide input to the process with OJD and to educate bar members regarding the venture. The Attorney General's Office and the Public Defender Office will be the first filers for the Supreme Court e-filing project. There also will be a beta group of appellate lawyers selected in the near future.

#### **OJD Budget**

The final list of budget policy packages from the courts and OJD are due to the chief the first part of June. The Oregon eCourt will be the biggest decision package. There were no new judgeships received in 2007 and the new judgeship committee will make its request again.

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 28, 2008  
From: Richard S. Yugler, President  
Re: President's Report

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

- 05/02/08 Rule of Law Conference – Bar Center
- 05/01/08 Admission Ceremony New OSB Admittees and Reception – Salem
- 05/01/08 Meeting with Chief Justice and Supreme Court – Salem
- 04/29/08 Classroom Law Project Legal Citizen of the Year Awards Dinner
- 04/24/08 Region 5 Governor Meeting – Portland
- 04/23/08 Yamhill County Bar Association, McMinnville
- 04/21/08 Initiative 51 lunch – Portland
- 04/17/08- ABA Lobby Day – Washington, D.C. – Senators Wyden and Smith
- 04/16/08 ABA Lobby Day – Washington, D.C.  
Representatives Wu, DeFazio, Hooley, Blumenauer, Walden (staffer)
- 04/10/08 Northwest Regional Bar Meeting – Seattle
- 04/08/08 University of Oregon Professionalism Presentation – Eugene
- 04/08/08 OSB Staff Meeting – Presentation – Bar Center
- 04/04/08 BOG Meeting and BOG Committee Meetings – Bar Center  
and 50-Year Member Lunch – Tualatin
- 04/02/08 Joyce Harpole Awards – Portland

04/01/08 Multnomah Bar Association – Board of Directors Meeting – Portland

03/26/08- Western States Bar Conference - Tucson, Arizona  
03/28/08

03/21/08 Courthouse Access Card Subcommittee – Salem

03/21/08 Investiture U.S. Magistrate John Acosta

03/20/08 Sheriff's Association and Oregon Counties Meeting Re: Courthouse  
Access, with Chief Justice – Salem

03/19/08 Grand Ronde Tribal Court – Grand Ronde

03/15/08 Judge Finals of State Mock Trial Championship – Portland

03/14/08 Professionalism Commission – Bar Center

03/14/08 Affirmative Action Committee – Bar Center

03/14/08 OWLS Dinner and Roberts/Diez Award with BOG Members

03/13/08 OSB Online Publications Task Force – Bar Center

03/10/08 Douglas County Bar Association – Roseburg

03/06/08 Meeting with Intel Counsel and Sylvia Stevens Re: Foreign Attorney  
Admission – Tigard

03/06/08 Meeting with AAA Chair Trung Tru Re: ED Search Committee

03/04/08 Campaign for Equal Justice Awards lunch with BOG – Portland

03/04/08 Meeting with Governor's Affirmative Action Director Peggy Ross –  
Portland

02/29/08 OSB Building Open House – Bar Center

02/27/08 Futures Conference Meeting – Bar Center

02/28/08 Investiture Judge Stephen Bushong – Portland

02/22/08 BOG Committee Meetings – Bar Center

# Northwest State Bar Meeting

## April 10, 2008

### ATTENDANCE

See attached list.

### UPDATE FROM STATES

#### Utah

New Lawyer Mentoring Program – This new program is in the formative stages and will take 12-18 months to fully implement. It is mandatory and is an extension of the admissions program. A bar applicant passes the bar, is sworn-in, and then has the next 12 months tied to a mentor which must be approved by the Supreme Court. There are a number of requirements including the practice of law; substance abuse; introduction to the courts and community; professionalism issues; law practice management including trust accounts; and client relations. The person receives 12 credits of CLE. It is modeled on Georgia's program. The funds for the program and how to staff it have not been finalized.

Fees – The state bar has gone 18 years without a fee increase. The commissioners are in the process of doing an operations review.

Lawyer Referral – This program will be coming online. Website has also been enhanced to allow bar members to update their status and other information.

Facility – They have determined that in 3-6 years they will outgrow their current facility. They will need to invest in technology and add more staff in the admissions and Office of Professional Conduct. Also in terms of a 6-12 year horizon, they are discussing the ongoing relevance of the bar with an emphasis on the value to lawyers and the public. They have been interested in new websites such as [www.legalzoom.com](http://www.legalzoom.com) that offer much reduced prices for certain legal services.

#### Montana

Annual retreat – Last June they featured a panel of lawyers of different ages: new lawyers, those who have left law practice; those who have retired, etc and asked them what is important? The bar decided it needed more connection with the law school in the state and developed a memo of understanding with the law student bar association. There will be a series of monthly meetings and the topics will include the history of the state bar, its services, pro bono activities and community involvement; and clerkships. They want to listen to the new lawyers early-on and maintain the relevance of the bar to them.

Annual Meeting – Chief Justice John Roberts spoke at the law school so this event was combined with his appearance there. In addition, Michael Greco, past ABA president attended their meeting.

Justice Foundation – They have just formed this foundation and hired its first executive director – Amy Sings in the Water.

Technology – A dinner was held at the home of the president and Albert Borhman who wrote in article on “Ethics and Technology” was featured.

Lawyer Assistance Program – The bar is concerned because of a number of lawyer suicides. The bar hired a LAP coordinator r to deal with this and other issues. The program has initially been funded from reserves.

Dues – The bar must report to the Supreme Court every three years regarding its budget and the resources it has available. The bar is asking the court to approve a \$75 fee increases except for new lawyers. Their total dues including discipline and the Client Security Fund would go from \$335 to \$410.

Law School – It is in the midst of a building expansion. \$3 to \$4 million for improvements came from lawyers.

Road show – They do this annually and offer a free CLE on ethics and lawyer impairments.

Election – The Chief Justice is leaving the court in November. The Attorney General and a private sector lawyer are vying for the position. The Chief was opposed to reciprocity with other state bars. Thus, the change may position the bar to once again discuss reciprocity. The bar intends to meet with both candidates.

Court – The court adopted new rules relating to the water court. Non-lawyers can participate in water proceedings until litigation begins. Usually the non-lawyers are water engineers. There will be legislation on other areas such as real estate law and family law in the future. There is a concern that the issue of access to legal services may create a caste system for those who can't afford the services of an attorney. There will be a subsurface system with a reduced level of service. There was one independent legal technician doing divorces for \$800 to \$1,000 making a six figure income. He was enjoined from doing it.

## **Nevada**

Facilities – Their current location in Las Vegas is in an older house and is woefully inadequate. They have a reserve fund and are looking at options, build, lease, own, etc.

Judicial elections – They have not yet experienced out of state money in judicial races. There are contributions influencing the courts however and allegations of judicial corruption. 80% of the public believe that judges favor those who gave them campaign money. They are supporting a modified Missouri plan. The plan will be before the legislature in 2009. It has failed twice in the past, but by a close margin. Las Vegas has

grown from 250,000 to a current one million people and no one knows anyone anymore. The lawyers don't know the judges. Elizabeth Halvorson hired her own security and was suspended from the bench.

Emeritus Pro Bono Program – Before the Supreme Court is a program to allow inactive attorneys to take pro bono cases without paying full bar dues.

Access to Justice – The Supreme Court and the Access to Justice Commission are discussing how to deliver legal services. Along with conducting a civil legal needs assessment ideas abound; such as the idea of a \$500 assessment -- which would not be popular among the members.

IOLTA – Their program just became mandatory.

Urban/rural – To bridge this divide, they looking at using lawyer referral funds to build a teleconferencing network through the court houses throughout the state.

Unbundled legal services – In 80% of domestic relations cases, someone is pro se. The idea was raised that there should be a non-legal system to deal with many of these cases – the “Termination of Marriage Department.”

Aging volunteers – The bar in trying to bring in younger lawyers. They recently conducted a one day leadership program and are looking at other bar leadership programs in efforts to expand the one day program.

CLE – They are looking at using videoconferencing CLEs to rural areas.

Indigent defense – The Supreme Court is reviewing matters that relate to this issue. The issue has a significant budget impact which is an issue in a state dealing with a huge state budget shortfall.

## **Oregon**

Ballot Measures – Two ballot measures affecting access to legal services may be on the November, 2008 ballot. One relates to capping attorneys fees in contingency cases. The other one deals with frivolous lawsuits. The Oregon Trial Lawyers Association is taking the lead and the OSB is partnering with them with money, time, and effort. There is a lot of anger in the public against lawyers.

Legislature – Because of the state's tax structure (limited to income and a capped property tax), the state budget is starving the judiciary. The court houses are in terrible shape but the Legislature did establish a Court Facilities Commission to survey their status. Judicial salaries finally saw an increase after several years of none. The 19.4% increase over the biennium is welcome, but a new motion fee went into effect to help pay for it. The court has an ambitious e-court project to include docketing, filing, payment, and case management. It is at least a five year project.



House of Delegates – There appears to be apathy in running for the OSB House of Delegates as there were vacancies left after the last election cycle. 20% will end up being appointed.

Task forces – The bar is working with an admissions tax force and a task force to provide court access through a universal bar card.

Operations – Both the CLE programs (seminars and publications) are losing money (there is a substantial overhead charge assessed each program). Some rules are more lax than other states. Montana requires that 15 credits must be live and Washington requires sections to co-sponsor with the state bar. Oregon has neither of these rules. The bar has succeeded in getting a reasonable fee increase passed about every 5 years. The bar's executive director, Karen Garst, is retiring at the end of 2008 and a search committee has been formed to find a replacement. There was a public relations issue with the bar's Affirmative Action Program when the director quit after a reorganization had been made. The minority lawyer community was very angry as they liked the director a great deal.

Futures Conference – The bar is holding a conference on September 12 to address what the profession will look like in the next five to ten years.

Facilities – The bar recently moved into a new \$21 million building built by OPUS Northwest that will house the bar's operations, the Professional Liability Fund (the bar's malpractice arm) and tenants in space reserved for future growth. This was done without a fee increase as the bar sold its previous building.

## **Washington**

Diversity – They are currently in a search for a new diversity program manager. The person will be chosen through an internal process, but input was gathered from the 13 minority bar associations on the job description prior to posting the position.

Justice in Jeopardy – This effort seeks to secure funding for the trial courts as well as legal services. One goal of the effort is to secure funding from the state to offset 50% of trial court operation costs. A concern has been raised by judges that some cities and counties are taking money allocated by the legislature for trial court operations and are not using it for the courts.

Discipline System – In 2006 the ABA came in and recommended more separation between the discipline system and the bar association. The ABA felt discipline should be run by the Supreme Court. They expect a task force report in May or June.

Dues – They have a regular increase of about 2% per year. They are looking at a larger increase in 2010, perhaps 10%. Their fees are about \$400 currently. The court approves the increase.

Strategic Review – The board is looking at everything the bar does and one of the first recommendations is to sunset five standing committees.

Legal Technicians – The state's Practice of Law Board, which is semiautonomous, sent to the Supreme Court a rule to license legal technicians. The WSBA was bypassed, yet the court asked the bar for its comments. They are devoting two issues of their magazine to the issue and are soliciting comments from bar entities. Their recommendation probably will be no. The proposal is to offer limited services in family law, but the technician could not appear in court. They could fill out paperwork; discuss the facts, but not deal with child custody issues. They could help draft pleadings and explain pleadings. The bar would have to administer the program. Washington currently has limited practice officers who handle real estate closings.

Bar exam – The board offers it twice a year in Seattle and in July 2010 will offer it in Spokane as well.

Client Security Fund – Claims totaling over \$2 million based on one attorney's misconduct has the potential to bankrupt the fund..

## **Idaho**

Structure – They have five commissioners and are in charge of admissions, discipline, sections, and CLE's.

Bar exam – The National Conference of Bar Examiners met recently in New Orleans. They are discussing national bar exam that would be similar to reciprocity. Idaho has a "if you let us in, we'll let you in" reciprocity rule. Their exam consists of the MBE, the multi-state essay exam, the MPE, the Professional Responsibility exam, and four questions about Idaho law. They are thinking about dropping the four Idaho questions to get the exam down to two days.

CLE – They borrowed Oregon's concept of Ethics in 18 holes and even had a private citizen join in the discussions.

Health insurance – This is a big issue as lawyers can't afford it. They are working with ALPS on a Multiple Employer Welfare Arrangement (WEWA) that would set up an insurance company and contract for claims handling. It would be a self-funded insurance trust. They need 500 people to make a go of it. Montana has a Health Benefit Trust with 1,000 members. They had a third party administrator and now have \$1 million in reserve. They have BC/BS as providers. The firms like that they don't have to negotiate with insurance companies. Montana has seen only single digit increases in the last five years.

Judicial selection – The problem they have is with the quality of judges on the bench. Because they have elections, each candidate needs to have a platform – conservative

or liberal – which has nothing to do with being a good judge. The salaries are also low. Utah has an independent commission to handle retention issues. The Governor appoints the members, there is an attorney evaluation of the bench and the voters see the results of the survey. In addition to attorney data, they also survey litigants, jurors, and witnesses. The voters will soon have a recommendation up or down. This concept comes from a center in Denver as is the idea of Justice Kourlis. Utah is the first state to implement this process.

Client Security Fund – They are seeing bigger claims. ALPS has discussed assisting states to set up insurance or a bond to cover large claims. There is a \$15,000 cap.

Senior lawyer license – They are exploring the issue of senior lawyers who can't let go of their practice, yet aren't fully capable of continuing to practice.

Diversity – They just had a section formed. One of the judges is concerned about the high school dropout rate.

REPORT OF THE  
JOINT OSB/PLF TASK FORCE ON STATE LAWYERS ASSISTANCE  
COMMITTEE/OREGON ATTORNEY ASSISTANCE PROGRAM

TO

THE OREGON STATE BAR BOARD OF GOVERNORS  
AND  
THE PLF BOARD OF DIRECTORS

MAY 2008

**DR. JACK ENBOM, CHAIR**, Task Force Chair, former OSB Board of Governor public member  
**ANN FISHER**, OSB Board of Governors  
**THERESA WRIGHT**, OSB Board of Governors member  
**ROD LEWIS**, Professional Liability Fund Board of Directors  
**JIM RICE**, Professional Liability Fund Board of Directors  
**LISA MILLER**, Professional Liability Fund Board of Directors

## OVERVIEW

The general charge of the SLAC/OAAP Task Force was to examine the system wide changes that have occurred over the last 25 years and to suggest revisions to the system which would utilize the strengths of each program. The primary areas examined by the Task Force included: (1) establishing a procedure for reaching out to impaired lawyers that draws on the strengths of each program and fulfills their respective missions, (2) establishing a mechanism for communication of appropriate case information, (3) communication of program mission, confidentiality, and procedures to bar members, and (4) future collaborative efforts.

The SLAC/OAAP Task Force consisted of former Board of Governor public member, Jack Enbom; 2 current Board of Governor members; and 3 Professional Liability Fund Board of Director members. The Task Force met four times. The Task Force meetings were attended by interested group members including Greg Hazarabedian, SLAC committee member and former SLAC Chair; Judge Ted E. Grove, SLAC current chair; Shane Hayden, SLAC public member; Jon Benson, OSB SLAC Liaison; Sylvia Stevens, OSB General Counsel and former SLAC OSB Liaison; Don Muccigrosso, SLAC public member; Shari Gregory, OAAP Assistant Director; Mike Long, OAAP Attorney Counselor; Meloney Crawford Chadwick, OAAP Attorney Counselor; Doug Querin, OAAP Attorney Counselor; Barbara Fishleder, OAAP Executive Director; and Ira Zarov, PLF Chief Executive Officer. These interested participants provided background to the Task Force members, submitted information, and answered questions of the Task Force members.

Recommendations outlined in the Task Force report are the result of the meetings. It is the belief of the Task Force that adoption of the recommendations will substantially enhance the ability of the OAAP and SLAC to fulfill respective roles with respect to impaired lawyers in the Oregon State Bar. The recommendations do not require statutory changes and are consistent with OSB general counsel's opinion on confidentiality.

Attached to this report are:

- 1) Letter from Judge Grove dated April 22, 2008 (Attachment 1);
- 2) OSB General Counsel memo dated February 19, 2008 (Attachment 2);
- 3) OAAP/SLAC memo dated September 26, 2007 (Attachment 3), and;

## SLAC/OAAP Task Force Recommendations

### I. Reaching Out to Impaired Lawyers

#### a. Background

The Oregon State Bar has a variety of systems in place to protect the public from harm caused by impaired lawyers. These include the State Lawyers Assistance Committee, Client Assistance Office, (CAO), the Oregon Rules of Professional Conduct, and the Client Security Fund. In addition, The Professional Liability Fund has systems in place that help reduce the damage caused by impaired lawyers. These systems include the practice management advisor program (which helps to return or reassign client files), the Oregon Attorney Assistance Program (which helps the impaired lawyer get help), and the repair work of the PLF claims department.

SLAC receives referrals from judges, clients, members of the general public, and members of the legal community about lawyers whose ability to practice law appears impaired. Oregon State Bar Bylaw Article 24.200, 24.300 and 24.400-24.704 specifies the process through which SLAC investigates complaints and requires the lawyer to submit to a professional assessment in order to develop a remedial program for an impaired lawyer. Regulations also grant SLAC the right to refer the lawyer to disciplinary counsel for action under Oregon RPC 8.1(c), if the lawyer fails or refuses to respond to SLAC's initial inquiry; fails to participate in SLAC's investigation; fails to respond to request for information, or fails to participate and comply with the outlined remedial program.

OAAP also receives referrals from judges, lawyers, and members of the legal community about lawyers and judges who appear to need assistance. The OAAP is also contacted by lawyers, judges, and members of the legal community who want assistance. ORS 9.568, Oregon State Bar Bylaw Article 24.201, and PLF policies 6.200-6.400 govern the confidentiality and process used by the OAAP. No information goes outside of the OAAP, unless the lawyer accessing the program consents to it.

Many lawyers referred to SLAC are also referred to OAAP and to the CAO. Historically shared communication and shared resources are often lacking. At the Task Force meetings the OAAP staff raised concerns about potential harm that might occur when an extremely fragile lawyer is reported to SLAC without appropriate counseling, a concern that this situation creates a potential danger to an impaired lawyer. Specific clinical scenarios were presented. Based on their experience, SLAC members did not share the same degree of concern and emphasized their statutory duty to protect the public and integrity of the legal system and courts by evaluating complaints in a timely manner.

There are three stages of potential interactions with a referred lawyer that may involve both SLAC and OAAP. These stages are: (1) the initial intake, (2) the development of a remedial plan, and (3) the determination of whether the lawyer is complying with the plan. The interaction of SLAC and OAAP during these stages varies, depending on the consents given by the referred lawyer. The OAAP and SLAC agree that it is important to work together cooperatively and in good faith to address the referred lawyer's needs.

b. Recommendation

i. Initial contact.

1. Immediately upon receiving a referral, SLAC will contact the OAAP with the name of the referred lawyer. The OAAP will contact the lawyer, determine the lawyer's present condition, and an appropriate course of action. OAAP will inform the lawyer that he or she can provide the OAAP with a release so that the OAAP can speak with the SLAC volunteer and advise the volunteer of any action the lawyer is taking to address his or her impairment. OAAP will also offer the lawyer the help of the practice management advisors and other PLF resources.
2. Some impaired lawyers who are reported to SLAC are extremely fragile. These situations could pose a potential danger to the fragile lawyers, to the SLAC volunteers and to the public. If the OAAP is aware that the situation is volatile or dangerous, the OAAP will confer with the SLAC volunteer as to the best approach.
3. If the lawyer referred to SLAC does not sign a release authorizing OAAP to speak with SLAC, SLAC will proceed to investigate the complaint against the lawyer unless the lawyer is in a high risk category as described in section 2 above.
4. If a lawyer who is referred to SLAC does not give the OAAP a release to speak with SLAC within a reasonable amount of time, SLAC will contact the referred lawyer through telephone call, e-mail or letter. SLAC should refrain from on-site visits or in-person contact unless accompanied by or in consultation with a health care provider or appropriate mental health care professional/counselor or if SLAC has received written or verbal consent from the referred lawyer for a personal visit. If the impaired lawyer does not respond to SLAC's phone call, e-mail or letter, SLAC may notify discipline that the lawyer has failed to respond.

ii. Development of Remedial Plan and Monitoring Agreement.

1. If the pertinent release is signed, the SLAC volunteer and the OAAP counselor will work together to develop an appropriate remedial plan and monitoring agreement, that is, a stipulated agreement between the referred lawyer and SLAC listing the elements of compliance required during their supervision by SLAC. SLAC will consult with OAAP about resources, services, and providers that could assist the impaired lawyer. OAAP will assist with the development of the remedial plan and provide services as appropriate.
2. If the referred lawyer does not give the OAAP a release authorizing OAAP to provide information to SLAC, the OAAP nevertheless will provide SLAC with applicable general resource and referral information and will make OAAP services available to the referred lawyer.



iii. Determination of Compliance with Plan.

If pertinent releases are signed, SLAC and OAAP will work together cooperatively and in good faith to verify compliance or noncompliance with the referred lawyer's monitoring agreement and remedial plan. If possible, SLAC will verify the referred lawyers' compliance with his or her monitoring agreement and remedial plan through sources other than the OAAP.

II. Communicating Appropriate Case Information

a. Background

SLAC holds monthly meetings which have generally been divided into two parts: (1) The portion of the meeting that is the general meeting and (2) the portion of the meeting that involves referred lawyers. This portion includes discussions about lawyers who have been referred to SLAC, review of recommended remedial plans and monitoring agreements, review of the lawyer's compliance or lack of compliance with such plans and agreements, and determination of how the SLAC committee will proceed with the referred case. OAAP attorney counselors are included in the general portion of these meetings; they have at times been included and at times excluded from the case handling portion of the meeting.

OAAP attorney counselors have extensive professional training in impairment, including addiction and mental health issues. They also have extensive resource information, including information about treatment facilities, counselors, and addictionologists. This training and resource information is of value to the SLAC committee, especially when the committee members are reviewing an impaired lawyer's case.

b. Recommendations

- i. When a lawyer is referred to SLAC, the SLAC volunteer will ask the referred lawyer for a release so that the SLAC volunteer can discuss the particulars of the lawyer's case with the OAAP.
- ii. OAAP may attend SLAC meetings, including case review of referred lawyers if appropriate releases have been signed by the referred lawyers.

III. Communication to Bar Members

a. The OAAP and SLAC each reach out to judges and lawyers with information about the services they provide. The State Lawyers Assistance Committee and the Oregon Attorney Assistance Program have similar names and, to some extent, similar functions. The overlapping nature of the two groups causes a degree of unnecessary confusion.

b. Recommendations

- i. The different roles, operation, procedures, and consequences of accessing services should be articulated by each group when they do outreach. SLAC outreach should make it clear that a lawyer referred to SLAC may be reported to discipline if he or she fails to reply or respond and if he or she fails to comply with the designated remedial plan.
- ii. OAAP outreach should make it clear that no information goes outside of the OAAP, unless the lawyer accessing the program consents to it.



- iii. OAAP and SLAC shall cooperate to provide accurate and appropriate outreach.
- iv. OAAP and SLAC shall cooperate to develop a name that avoids further confusion of lawyers or the general public.

#### IV. Future Collaborative Efforts

##### a. Background

###### i. Diversion

The OAAP and SLAC share the concern that the Oregon Rules of Professional Conduct preclude a lawyer from entering a diversion program if a lawyer is guilty of misrepresentation. Misrepresentation is almost always an element of addiction and can be an element of many major mental health issues. The current BR on diversion precludes many impaired lawyers from utilizing the diversion program. Treatment of the impairment successfully can control the risk of misrepresentation. The Task Force members and interested parties agree it is timely to raise this issue.

###### ii. Suspended Lawyers

Suspension from the practice of law creates a situation where the suspended lawyer has a lot of time on his or her hands, and frequently the lawyer does not use that time in a productive or healthful manner.

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Suspended lawyers currently are not monitored to determine whether they are practicing law without a license. Suspended lawyers also need additional reminders of the various support services that are available to them for assistance.

##### b. Recommendations

- i. The OAAP and SLAC should work with discipline and the Supreme Court to explore the possibilities for making diversion available to impaired lawyers and the possibility of SLAC serving as monitors to suspended lawyers. Should these changes occur, the OAAP could provide services to the impaired lawyers and SLAC could serve as diversion program monitors and suspended lawyer monitors.

Attachment

Attachment 1  
Letter from Judge Grove  
April 22, 2008

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Columbia County Courthouse  
230 Strand St.  
St. Helens, OR 97051-2041  
(503) 897-2327 FAX (503) 397-3226



Ted E. Grove, Circuit Court Judge  
Steven B. Reed, Circuit Court Judge  
Jenefer S. Grant, Circuit Court Judge

**CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF COLUMBIA**

April 22, 2008

John A. Enbom, M.D.  
2625 SW Brooklane Drive  
Corvallis OR 97333

Re: Task Force Report

Dear Dr. Enbom:

Under separate cover you will be receiving the changes the SLAC Committee is asking be made to the OSB/PLF Task Force Report. It is hoped that you will give consideration to these changes that were reached after sometimes passionate debate. It is my belief that these changes would maintain the spirit of cooperation between SLAC and OAAP that was emerging toward the end of the Task Force process and at the same time maintain the integrity of each organization recognizing the difference in our respective missions.

Proposed Changes to Section 1 Reaching Out to Impaired Lawyers

- 1) Our first request simply notes that some referrals have historically come from clients and those other than judges or the legal community.
- 2) While *not intending* to diminish the appropriate concern for the fragile condition of certain impaired lawyers, the proposed change in paragraph 4 was determined by our committee to better describe the discussion which occurred at task force meetings.
- 3) Our intention under the recommendation section Initial Contact was to suggest that communication between the entities was a better approach to cooperation than the step-by-step approach that might unduly interfere with SLAC's statutory requirement of investigating complaints.
- 4) No changes were proposed to the remaining two sections. Development of Remedial Plan or Determination of Compliance with Plan, except the addition of the term monitoring plan to conform to SLAC's terminology.

Proposed Changes to Section 2 Communicating Appropriate Case Information

- 5) Under the Background section the term monitoring plan was also added.
- 6) Under the Recommendations section the need for releases was noted for OAAP representatives to attend the staffing portion of the meeting.

Proposed Changes to Section 3 Communication to Bar Members

- 7) Our recommendation is that instead of a specific limitation on SLAC outreach that there instead be cooperation between SLAC and OAAP as to both outreach and a name change for SLAC.

John A. Enbom, M.D.  
Page 2  
April 22, 2008

It is our hope that these suggestions be incorporated in your final draft. It is understood that the final product is yours to submit. SLAC would, however, request that if these changes are not made that our recommendations be made known to the Board of Bar Governors for their consideration.

I thank you very much for your thoughtful leadership in addressing the needed clarification and coordination of SLAC and OAAP responsibilities.

Sincerely,



Ted E. Grove  
Circuit Court Judge

TEG:cf

REPORT OF THE  
JOINT OSB/PLF TASK FORCE ON STATE LAWYERS ASSISTANCE  
COMMITTEE/OREGON ATTORNEY ASSISTANCE PROGRAM

WITH PROPOSED CHANGES FROM SLAC

TO

THE OREGON STATE BAR BOARD OF GOVERNORS  
AND  
THE PLF BOARD OF DIRECTORS

MAY 2008

**DR. JACK ENBOM, CHAIR**, Task Force Chair, former OSB Board of Governor public member  
**ANN FISHER**, OSB Board of Governors  
**THERESA WRIGHT**, OSB Board of Governors member  
**ROD LEWIS**, Professional Liability Fund Board of Directors  
**JIM RICE**, Professional Liability Fund Board of Directors  
**LISA MILLER**, Professional Liability Fund Board of Directors

## OVERVIEW

The general charge of the SLAC/OAAP Task Force was to examine the system wide changes that have occurred over the last 25 years and to suggest revisions to the system which would utilize the strengths of each program. The primary areas examined by the Task Force included: (1) establishing a procedure for reaching out to impaired lawyers that draws on the strengths of each program and fulfills their respective missions, (2) establishing a mechanism for communication of appropriate case information, (3) communication of program mission, confidentiality, and procedures to bar members, and (4) future collaborative efforts.

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Attached to this report are the memos submitted to the Task Force: (1) OAAP/SLAC memo dated September 26, 2007 (Attachment 1), (2) OAAP memo of November 30, 2007 (Attachment 2 with Appendix 1 – 7), and (3) OSB general counsel memo dated February 19, 2008 (Attachment 3).

## SLAC/OAAP Task Force Recommendations

### I. Reaching Out to Impaired Lawyers a. Background

The Oregon State Bar has a variety of systems in place to protect the public from harm caused by impaired lawyers. These include the State Lawyers Assistance Committee, Client Assistance Office, (CAO), the Oregon Rules of Professional Conduct, and the Client Security Fund. In addition, The Professional Liability Fund has systems in place that help reduce the damage caused by impaired lawyers. These systems include the practice management advisor program (which helps to return or reassign client files), the Oregon Attorney Assistance Program (which helps the impaired lawyer get help), and the repair work of the PLF claims department.

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Many of the lawyers who are referred to SLAC are also referred to the OAAP and to the CAO. In the past this has resulted in both SLAC and the OAAP reaching out to the same lawyer at the same time, a situation which did not always produce the best results. SLAC is a volunteer committee with limited resources. The Task Force members and participants expressed a great deal of concern was raised by some OAAP staff about the potential harm that might occur when an extremely fragile lawyer is reported to SLAC. The concern is that this situation creates a potential danger to the SLAC volunteer, who might be placed in the middle of a situation that is highly volatile or potentially dangerous to the fragile lawyer. Based on their experience, SLAC members do not share this concern.

There are three stages of potential interactions with a referred lawyer that may involve both SLAC and OAAP. These stages are: (1) the initial intake, (2) the development of a remedial plan, and (3) the determination of whether the lawyer is complying with the



plan. The interaction of SLAC and OAAP during these stages varies, depending on the consents given by the referred lawyer. The OAAP and SLAC agree that it is important to work together cooperatively and in good faith to address the referred lawyer's needs.

b. Recommendation

i. Initial contact.

1. ~~Before SLAC contacts a referred lawyer~~ Immediately upon receiving a referral, SLAC will contact the OAAP with the name of the referred lawyer. The OAAP will contact the lawyer, determine the lawyer's present condition, and an appropriate course of action. ~~OAAP will also inform the lawyer that SLAC has received a call about him or her and that SLAC will be investigating the complaint independent of the OAAP.~~ OAAP will inform the lawyer that he or she can provide the OAAP with a release so that the OAAP can speak with the SLAC volunteer and advise the volunteer of any action that the lawyer is taking to address his or her impairment. -OAAP will also offer the lawyer the help of the practice management advisors and other PLF resources.
2. -Some impaired lawyers who are reported to SLAC are extremely fragile. These situations could pose a potential danger to ~~both the fragile lawyers, to and to the SLAC volunteers and to the public.~~ If the OAAP is aware that the situation is volatile or dangerous, the OAAP will ~~alert~~ confer with the SLAC volunteer as to the best approach. ~~The SLAC volunteer will then wait to contact the referred lawyer for a reasonable amount of time, to allow the situation to become less volatile or dangerous.~~
3. ~~If the lawyer referred to SLAC does not sign a release authorizing OAAP to speak with SLAC, SLAC will proceed to investigate the complaint against the lawyer unless the lawyer is in a high risk category as described in section 2. above.~~
4. ~~If a lawyer who is referred to SLAC does not give the OAAP a release to speak with SLAC within a reasonable amount of time, SLAC will contact the referred lawyer through telephone call or letter. SLAC will not make on-site visits or have in person contact. If the impaired lawyer does not respond to SLAC's phone call or letter, SLAC may notify discipline that the lawyer has failed to respond.~~

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b. Recommendations

- i. The different roles, operation, procedures, and consequences of accessing services should be articulated by each group when they do outreach. SLAC outreach should make it clear that a lawyer referred to SLAC may be reported to discipline

if he or she fails to reply or respond and if he or she fails to comply with the designated remedial plan.

- ii. OAAP outreach should make it clear that no information goes outside of the OAAP, unless the lawyer accessing the program consents to it.
- iii. OAAP and SLAC shall cooperate to provide accurate and appropriate outreach. ~~SLAC outreach should be limited to OSB publication and CLE programs.~~
- iv. OAAP and SLAC shall cooperate to develop a name that avoids further confusion of lawyers or the general public. ~~The State Lawyers Assistance Committee name should be changed to reduce confusion and to focus on its monitoring function. The terms "assistance," "program," and "attorney" should be avoided, if possible. Suggestions for names to be considered included OSB Monitoring Committee and OSB Monitoring Service.~~

#### IV. Future Collaborative Efforts

##### a. Background

###### i. Diversion

The OAAP and SLAC share the concern that the Oregon Rules of Professional Conduct preclude a lawyer from entering a diversion program if a lawyer is guilty of misrepresentation. Misrepresentation is almost always an element of addiction and can be an element of many major mental health issues. The current ORPC on diversion precludes many impaired lawyers from utilizing the diversion program. Treatment of the impairment successfully can control the risk of misrepresentation. The Task Force members and interested parties agree it is timely to raise this issue.

###### ii. Suspended Lawyers

Suspension from the practice of law creates a situation where the suspended lawyer has a lot of time on his or her hands, and frequently the lawyer does not use that time in a productive or healthful manner.

Suspended lawyers currently are not monitored to determine whether they are practicing law without a license. Suspended lawyers also need additional reminders of the various support services that are available to them for assistance.

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Attachment

Attachment 2  
OSB General Counsel Memo  
February 19, 2008

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## Memorandum

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Date: February 19, 2008  
To: Jack Enbom, M.D., Chair, SLAC/OAAP Task Force  
From: Sylvia E. Stevens, OSB General Counsel  
Re: Information Sharing Between SLAC and OAAP

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At the last meeting of the Task Force, concern was expressed by the OAAP that SLAC's initiation of its involvement with a lawyer who is already working with OAAP can sometimes complicate the situation, such as by increasing the lawyer's stress level and willingness to address his or her problems. I suggested that the statutory confidentiality might not prohibit SLAC from alerting OAAP when it receives a new referral. Following the meeting, you asked me to prepare a legal analysis on that point.

I haven't looked into this exhaustively, but am reasonably confident that sharing limited initial referral information doesn't create any substantial legal risk.

Confidentiality is often spoken of as if it were co-extensive with privilege, but the two are not the same. Confidentiality is defined essentially as "privacy" or "secrecy" and is a long-standing ethical standard for professionals. Confidentiality can be distinguished from privilege the same that a "duty" is distinguished from a "right." Confidentiality is a legal duty owed to another, to which that other person has a legal right. Physicians, for example, owe a duty of confidentiality to their patients and their patients have a legal right to the doctor's duty of confidentiality. A physician who fails to maintain confidentiality is subject to tort liability for breach of the duty. See, e.g., *Humphers v. First Interstate Bank of Oregon*, 298 Or 706, 696 P2d 527 (1985) (physician revealed information about a former patient to the daughter she had released for adoption).

A privilege, as the term is most often used, is a statutorily-created legal right to withhold information that was originally communicated in confidence. It refers to a person's freedom from compulsion to give evidence or produce documents during or with a view to litigation. It is, in essence, an exemption from the duty to provide information in a legal proceeding.

The contours of a duty of confidentiality are determined by its source and terms. If based on statute, a breach will be found only if the statute applies validly to the facts in question. *Humphers, supra* at 719. Just as the nature of a duty of confidentiality is defined by its source, so too are defenses of justification or privilege (used not in the sense of a statutory privilege). Some professionals have a statutory obligation to disclose certain information that they would otherwise be required to keep confidential (reporting child abuse or the incidence of certain contagious diseases, for example). Even in the absence of a statutory obligation, there may be a privilege to disclose information for the safety of individuals or important to the public in matters of public interest. *Humphers, supra* at 720.

The extent to which SLAC might be able to share information about a referral with the

OAAP will thus be determined by examination of relevant statutes.

There is no dispute that the PLF is part of the Oregon State Bar. While the PLF is sometimes described as a “wholly-owned subsidiary” of the OSB, that analogy doesn’t accurately capture the fact that the PLF has no independent legal status. The plain language of ORS 9.080 makes it clear that the ultimate authority over the PLF lies with the OSB Board of Governors:

(2)(a) 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. ... The *board* shall have the authority to assess each active member...

The subordinate nature of the PLF is also reflected in the OSB bylaws:

The Professional Liability Fund (“PLF”) will conduct its business through a Board of Directors *appointed by the Board of Governors... The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF...* (Bylaw 23.1)

*The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. ....* (Bylaw 23.2)

*Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF.* (Bylaw 23.3)

The authority of the OSB over the OAAP programs is reflected in ORS 9.568(2):

“(a) In addition to the state lawyers assistance committee created under subsection (1) of this section, the *board* may create personal and practice management assistance committees to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct. Personal and practice management assistance committees may also provide advice and training to lawyers in practice management.

(b) The *board* may adopt rules governing the provision of assistance to lawyers by personal and practice management assistance committees.

\* \* \*

As a general proposition, records of OSB (and PLF) operations are subject to disclosure as mandated by the Public Records Law. PLF claim records are exempt from the Public Records Law by virtue of the final sentence in ORS 9.080(1). The confidentiality of SLAC and OAAP information is established ORS 9.568, which also exempts the information from the Public Records Law and prevents its discovery in litigation and disciplinary proceedings:

(3) Any information provided to or obtained by the state lawyers assistance committee or any personal and practice management assistance committee, or provided to or obtained by any agent of those committees, is:

- (a) Confidential;
- (b) Exempt from the provisions of ORS 192.410 to 192.505;
- (c) Not discoverable or admissible in any civil proceeding without the written consent of the lawyer to whom the information pertains; and
- (d) Not discoverable or admissible in any disciplinary proceeding except to the extent provided by rules of procedure adopted pursuant to ORS 9.542.

Exemptions to the Public Records Law permit the OSB from having to disclose certain information to members of the public. They do not limit or forbid disclosure within the organization.<sup>1</sup> Because the PLF is part of the OSB, sharing between the two of information that is exempt from public disclosure carries no legal consequence. Such limitations as there are exist by virtue of policy, not legal mandate.

There are, of course, legitimate reasons for the policy of not sharing information between the PLF and the OSB and between the OAAP and SLAC. Any change in that policy should be undertaken only after careful consideration. A case may be made for SLAC sharing information about new referrals so the OAAP can give a "heads up" to a lawyer with whom it has been working. At the same time, arguments for sharing information by the OAAP can also be made and justified by the OSB's duty to protect the public from lawyers who cannot conform their conduct to their professional responsibilities. At the very least, a compelling argument can be made that OAAP should share information with SLAC that is pertinent to a lawyer's fulfillment of the terms of a remedial program. It could also be argued that the OAAP should inform SLAC when it has information that a lawyer's conduct would justify a referral to SLAC. Opening the door to information sharing in one direction might lead to demands for information sharing in the other or on a broader scale.

No discussion of this topic is complete without a reminder of the statutory immunity enjoyed by SLAC and OAAP and their representatives. ORS 9.568(8) provides:

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<sup>1</sup> For the most part, the exemptions in the Public Records Law do not prohibit disclosure to the public either; they merely exempt the public body from the mandate to disclose.



With respect to their acts in connection with the state lawyers assistance committee or any *personal and practice management assistance committee*, the same privileges and immunities from civil and criminal proceedings that apply to prosecuting and judicial officers of the state shall apply to the board, all officers and employees of the bar, and the members of the committees and their agents.

The analogy to prosecuting and judicial officers in the original statutory language is recognition that the work of SLAC had a regulatory component. While that doesn't apply to the work of a "*practice management assistance committee*," that anomaly was not identified when the statute was amended a few years ago to include the PPMACs. It is doubtful, however, that a court would conclude that the PPMACs shouldn't have the benefit of the statute, at least in part because the purpose and mission of the PLF is also protection of the public. At the same time, it should be noted that the precise scope of the Oregon Supreme Court's decision in *Clarke v. OHSU* remains unclear and it has been suggested in one pending case that it abrogates any absolute statutory immunity because it leaves an injured party with no remedy at law.

Attachment

Attachment 3  
SLAC/OAAP Joint Task Force Memo  
September 26, 2007

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# OREGON STATE BAR

## SLAC-OAAP Joint Task Force

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To: Task Force members  
Memo Date: September 26, 2007  
From: SLAC & OAAP  
Re: Information for the Task Force

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### Issues for Consideration by Task Force

This memo is being submitted jointly by both SLAC and OAAP to the Task Force. It is intended to briefly outline the areas of agreement between the two groups in an effort to help narrow the issues for the Task Force.

### Agreed Upon Information for Task Force Consideration

OAAP. The OAAP was established in 1982 as a component of the Loss Prevention Program of the Professional Liability Fund (PLF). OAAP came into existence largely through the efforts of Don Muccigrosso and Lester Rawls, who was the director of the PLF at the time. The PLF noticed that there was a strong correlation between lawyers with alcohol and drug problems and claims made against the PLF. Some studies show that the incidence of alcohol abuse among lawyers is nearly double that of the general population. 31Creighton L. Rev. 265, 266 (1997); OAAP Handbook for Lawyers, p.2.

- OAAP's mission is:
  1. To provide assistance to Oregon lawyers who experience alcoholism, drug addiction, burnout, career transition, depression, anxiety, compulsive disorders (including gambling addiction), time management issues, relationship issues, stress, or other distress that impairs a lawyer's ability to function;
  2. To aid in the curtailment of malpractice claims and disciplinary complaints;
  3. To educate the legal community about the diseases of alcoholism, chemical dependency, depression, and other distress that impact a lawyer's ability to practice law effectively; and
  4. To educate the legal community and the families of Oregon lawyers about the scope of services offered by the OAAP.
- OAAP has six staff: an executive director; four professional attorney counselors who are both lawyers and counselors - including certification in substance abuse counseling, social work, and related fields; and a support staff person.
- OAAP is funded by the Professional Liability Fund, with a budget of approximately \$1,000,000.
- OAAP is completely confidential. Referrals are made from the legal community and their families as well as members of the legal community accessing the OAAP for themselves. No information provided to the OAAP goes outside the OAAP. The exceptions to this strict confidentiality are those necessary to avert a serious, imminent

threat to the health or safety of the lawyer or another person; to comply with legal obligations such as elder or child abuse reporting; or if the lawyer requests that the information be disclosed.

- The services of the OAAP are offered to lawyers on a voluntary basis. No reporting or other action is taken if the lawyer chooses not to participate in the OAAP programs.
- The OAAP does general outreach to the legal community to let them know about the services offered by OAAP and the confidential nature of the program. The OAAP also educates the legal community about signs and symptoms of alcoholism, mental health issues, and other areas for which the attorney counselors provide assistance.
- OAAP markets its services to lawyers, judges, members of the legal community and their families, and encourages them to access the OAAP to help themselves and/or impaired lawyers they know. The marketing takes the form generally of ads in the Bar Bulletin and other legal publications; CLEs and other presentations; word of mouth; and brochures.
- OAAP will not provide monitoring services.
- The OAAP is governed by ORS 9.568; ORPC 8.3(c)(3); OSB Bylaws Article 24; and PLF Policies 6.150, 6.200, 6.300, and 6.400 (attached appendices).
- OAAP currently is accessed by approximately 750 lawyers a year. Services include assistance with impairments of all kinds (alcoholism, addiction, gambling, eating disorders, mental health issues) and career satisfaction of all kinds (transition, retirement, burnout). Approximately 350 (40% of the 750 lawyers) accessed OAAP for addiction or mental health related issues in 2006.

SLAC. SLAC is a committee of the Oregon State Bar that was established 1983 to reduce damages to clients. The members of SLAC are volunteer lawyers and public members. Generally, the SLAC committee members have a interest in committee service because of their own life experiences. In the late 80's, the Oregon State Bar Drug and Alcohol Education Committee was folded into SLAC, giving SLAC the authority to educate the legal community about alcoholism and chemical dependency.

- SLAC's mission per ORS 9.568 is:

The purpose of the state lawyers assistance committee is the provision of supervision and assistance to those lawyers whose performance or conduct may impair their ability to practice law or their professional competence.

Oregon State Bar Bylaws, Article 24 (attached) describe the process used by SLAC to carry out its purpose.

- SLAC is composed of up to 12 committee members. The members are active members of the bar and two public members.
- SLAC has an OSB liaison and no other paid staff.
- SLAC has a very limited budget.

- SLAC generally receives referrals from members of the legal community. SLAC reviews referrals for lawyers whose impairment may be affecting their ability to practice. SLAC will interview the referred lawyer and investigate the facts surrounding an allegedly impaired lawyer before taking any action. When appropriate, SLAC will “take jurisdiction” over a lawyer when there is evidence of impairment.
- SLAC markets to lawyers and judges and members of the legal community to encourage them to refer impaired lawyers. The marketing take the form of ads in the Bar Bulletin and other legal publications; CLEs and other presentations; word of mouth; and brochures.
- SLAC is also authorized by statute to monitor lawyers who come through diversion from the office of Disciplinary Counsel and lawyers who have been conditionally admitted to the bar. SLAC has the authority to compel lawyers to cooperate with evaluation and treatment when there is evidence of impairment.
- SLAC is governed by ORS 9.568 and OSB Bylaws Article 24 (attached appendices).
- SLAC is able to document an average of 7 – 8 cases per year; there have been approximately 117 closed files from the period 1990 – 2006. Over the years, 8 people have been referred by SLAC to discipline for failure to cooperate.
- SLAC has worked diligently over the last 25 years to inform the lawyer/judge population that it is available to help with impaired lawyers. Efforts over the years have included personal contacts, phone calls, presentations, ads, and brochures. Despite its best efforts, SLAC has seen no appreciable increase in either its referred clients or the general awareness among Oregon lawyers about SLAC’s function and purpose.
- SLAC’s general mission has been largely frustrated by the lack of client referrals, lack of caseload, and lack of resources.
- One of the primary obstacles to effective outreach and broad acceptance of SLAC among the OSB membership is the fact that most lawyers and judges are reluctant to refer lawyers to SLAC because of the possible disciplinary consequences; many lawyers do not want to be responsible for a lawyer potentially losing his or her license.
- The vast majority of SLAC clients are lawyers who are already in the disciplinary system; they are already in the process of being suspended or disbarred.

SLAC and OAAP agree upon that the following areas are amongst those that provide an opportunity for SLAC and OAAP to both serve the impaired lawyer:

- Conditional admissions
- Diversion programs
- Working with suspended lawyers

In these situations, SLAC can serve as a much needed monitor; OAAP can provide supportive services (such as 12 step groups), can be a referral resource, and can at times provide assessments or recommendations for a plan of action.

#### APPENDICES

1. Oregon Statute on Attorney Assistance
2. Oregon State Bar Bylaws, Article 24
3. Oregon Rule of Professional Conduct 8.3
4. Professional Liability Fund Policies Chapter 6 - Personal And Practice Management Assistance

#### NOTE:

These appendices are not attached to this copy of this memo because they appear elsewhere in the material submitted by OAAP. Please see the appendix of the OAAP memo for the rules referred to above.

REPORT OF THE  
JOINT OSB/PLF TASK FORCE ON STATE LAWYERS ASSISTANCE  
COMMITTEE/OREGON ATTORNEY ASSISTANCE PROGRAM

TO

THE OREGON STATE BAR BOARD OF GOVERNORS  
AND  
THE PLF BOARD OF DIRECTORS

ROD LEWIS DRAFT April 30, 2008

MAY 2008

**DR. JACK ENBOM, CHAIR**, Task Force Chair, former OSB Board of Governor public member  
**ANN FISHER**, OSB Board of Governors  
**THERESA WRIGHT**, OSB Board of Governors member  
**ROD LEWIS**, Professional Liability Fund Board of Directors  
**JIM RICE**, Professional Liability Fund Board of Directors  
**LISA MILLER**, Professional Liability Fund Board of Directors



## OVERVIEW

The general charge of the SLAC/OAAP Task Force was to examine the system wide changes that have occurred over the last 25 years and to suggest revisions to the system which would utilize the strengths of each program. The primary areas examined by the Task Force included: (1) establishing a procedure for reaching out to impaired lawyers that draws on the strengths of each program and fulfills their respective missions, (2) establishing a mechanism for communication of appropriate case information, (3) communication of program mission, confidentiality, and procedures to bar members, and (4) future collaborative efforts.

The SLAC/OAAP Task Force consisted of former Board of Governor public member, Jack Enbom; 2 current Board of Governor members; and 3 Professional Liability Fund Board of Director members. The Task Force met four times. The Task Force meetings were attended by interested group members including Greg Hazarabedian, SLAC committee member and former SLAC Chair; Judge Ted E. Grove, SLAC current chair; Shane Hayden, SLAC public member; Jon Benson, OSB SLAC Liaison; Sylvia Stevens, OSB General Counsel and former SLAC OSB Liaison; Don Muccigrosso, SLAC public member; Shari Gregory, OAAP Assistant Director; Mike Long, OAAP Attorney Counselor; Meloney Crawford Chadwick, OAAP Attorney Counselor; Doug Querin, OAAP Attorney Counselor; Barbara Fishleder, OAAP Executive Director; and Ira Zarov, PLF Chief Executive Officer. These interested participants provided background to the Task Force members, submitted information, and answered questions of the Task Force members.

Recommendations outlined in the Task Force report are the result of the meetings. It is the belief of the Task Force that adoption of the recommendations will substantially enhance the ability of the OAAP and SLAC to fulfill respective roles with respect to impaired lawyers in the Oregon State Bar. The recommendations do not require statutory changes and are consistent with OSB general counsel's opinion on confidentiality.

Attached to this report are:

- 1) Letter from Judge Grove dated April 22, 2008 (Attachment 1);
- 2) OSB General Counsel memo dated February 19, 2008 (Attachment 2);
- 3) OAAP/SLAC memo dated September 26, 2007 (Attachment 3), and;

## SLAC/OAAP Task Force Recommendations

### I. Reaching Out to Impaired Lawyers

#### a. Background

The Oregon State Bar has a variety of systems in place to protect the public from harm caused by impaired lawyers. These include the State Lawyers Assistance Committee, Client Assistance Office, (CAO), the Oregon Rules of Professional Conduct, and the Client Security Fund. In addition, The Professional Liability Fund has systems in place that help reduce the damage caused by impaired lawyers. These systems include the practice management advisor program (which helps to return or reassign client files), the Oregon Attorney Assistance Program (which helps the impaired lawyer get help), and the repair work of the PLF claims department.

SLAC receives referrals from judges, clients, members of the general public, and members of the legal community about lawyers whose ability to practice law appears impaired. Oregon State Bar Bylaw Article 24.200, 24.300 and 24.400-24.704 specifies the process through which SLAC investigates complaints and requires the lawyer to submit to a professional assessment in order to develop a remedial program for an impaired lawyer. Regulations also grant SLAC the right to refer the lawyer to disciplinary counsel for action under Oregon RPC 8.1(c), if the lawyer fails or refuses to respond to SLAC's initial inquiry; fails to participate in SLAC's investigation; fails to respond to request for information, or fails to participate and comply with the outlined remedial program.

OAAP also receives referrals from judges, lawyers, and members of the legal community about lawyers and judges who appear to need assistance. The OAAP is also contacted by lawyers, judges, and members of the legal community who want assistance. ORS 9.568, Oregon State Bar Bylaw Article 24.201, and PLF policies 6.200-6.400 govern the confidentiality and process used by the OAAP. No information goes outside of the OAAP, unless the lawyer accessing the program consents to it.

Many lawyers referred to SLAC are also referred to OAAP and to the CAO. ~~Historically shared communication and shared resources are often lacking.~~ At the Task Force meetings the OAAP staff raised concerns about potential harm that might occur when an extremely fragile lawyer is reported to SLAC. ~~without appropriate counseling,~~ a The OAAP was concerned that this situation creates a potential danger to an impaired lawyer. Specific clinical scenarios were presented. Based on their experience, SLAC members did not share the same degree of concern and emphasized their statutory duty to protect the public and integrity of the legal system and courts by evaluating complaints in a timely manner.

There are three stages of potential interactions with a referred lawyer that may involve both SLAC and OAAP. These stages are: (1) the initial intake, (2) the development of a remedial plan, and (3) the determination of whether the lawyer is complying with the plan. The interaction of SLAC and OAAP during these stages varies, depending on the

consents given by the referred lawyer. The OAAP and SLAC agree that it is important to work together cooperatively and in good faith to address the referred lawyer's needs.

b. Recommendation

i. Initial contact.

1. Immediately upon receiving a referral and before SLAC contacts the referred lawyer, SLAC will contact the OAAP with the name of the referred lawyer. The OAAP will contact the lawyer, determine the lawyer's present condition, and an appropriate course of action. OAAP will inform the lawyer that he or she can provide the OAAP with a release so that the OAAP can speak with the SLAC volunteer and advise the volunteer of any action the lawyer is taking to address his or her impairment. OAAP will also offer the lawyer the help of the practice management advisors and other PLF resources.
2. Some impaired lawyers who are reported to SLAC are extremely fragile. These situations could pose a potential danger to the fragile lawyers, to the SLAC volunteers and to the public. If the OAAP is aware that the situation is volatile or dangerous, the OAAP will ~~confer with~~ alert the SLAC volunteer. ~~as to the best approach.~~ The SLAC volunteer will then wait to contact the referred lawyer for a reasonable amount of time, to allow the situation to become less volatile or dangerous and the OAAP and SLAC will communicate about how to proceed.
3. If the lawyer referred to SLAC does not sign a release authorizing OAAP to speak with SLAC, SLAC will proceed to investigate the complaint against the lawyer unless the lawyer is in a high risk category as described in section 2 above.
4. If a lawyer who is referred to SLAC does not give the OAAP a release to speak with SLAC within a reasonable amount of time, SLAC will contact the referred lawyer through telephone call, e-mail or letter. SLAC should refrain from on-site visits or in-person contact unless accompanied by or in consultation with a health care provider or appropriate mental health care professional/counselor or if SLAC has received written or verbal consent from the referred lawyer for a personal visit. If the impaired lawyer does not respond to SLAC's phone call, e-mail or letter, SLAC may notify discipline that the lawyer has failed to respond.

ii. Development of Remedial Plan and Monitoring Agreement.

1. If the pertinent release is signed, the SLAC volunteer and the OAAP counselor will work together to develop an appropriate remedial plan and monitoring agreement, that is, a stipulated agreement between the referred lawyer and SLAC listing the elements of compliance required during their supervision by SLAC. SLAC will consult with OAAP about resources, services, and providers that could assist the impaired lawyer. OAAP will assist with the development of the remedial plan and provide services as appropriate.

2. If the referred lawyer does not give the OAAP a release authorizing OAAP to provide information to SLAC, the OAAP nevertheless will provide SLAC with applicable general resource and referral information and will make OAAP services available to the referred lawyer.

iii. Determination of Compliance with Plan.

If pertinent releases are signed, SLAC and OAAP will work together cooperatively and in good faith to verify compliance or noncompliance with the referred lawyer's monitoring agreement and remedial plan. If possible, SLAC will verify the referred lawyers' compliance with his or her monitoring agreement and remedial plan through sources other than the OAAP.

II. Communicating Appropriate Case Information

a. Background

SLAC holds monthly meetings which have generally been divided into two parts: (1) The portion of the meeting that is the general meeting and (2) the portion of the meeting that involves referred lawyers. This portion includes discussions about lawyers who have been referred to SLAC, review of recommended remedial plans and monitoring agreements, review of the lawyer's compliance or lack of compliance with such plans and agreements, and determination of how the SLAC committee will proceed with the referred case. OAAP attorney counselors are included in the general portion of these meetings; they have at times been included and at times excluded from the case handling portion of the meeting.

OAAP attorney counselors have extensive professional training in impairment, including addiction and mental health issues. They also have extensive resource information, including information about treatment facilities, counselors, and addictionologists. This training and resource information is of value to the SLAC committee, especially when the committee members are reviewing an impaired lawyer's case.

b. Recommendations

- i. When a lawyer is referred to SLAC, the SLAC volunteer will ask the referred lawyer for a release so that the SLAC volunteer can discuss the particulars of the lawyer's case with the OAAP.
- ii. OAAP may attend SLAC meetings, including case review of referred lawyers if appropriate releases have been signed by the referred lawyers.

III. Communication to Bar Members

- a. The OAAP and SLAC each reach out to judges and lawyers with information about the services they provide. The State Lawyers Assistance Committee and the Oregon Attorney Assistance Program have similar names and, to some extent, similar functions. The overlapping nature of the two groups causes a degree of unnecessary confusion.

b. Recommendations

- i. The different roles, operation, procedures, and consequences of accessing services should be articulated by each group when they do outreach. SLAC outreach should make it clear that a lawyer referred to SLAC may be reported to discipline if he or she fails to reply or respond and if he or she fails to comply with the designated remedial plan.
- ii. OAAP outreach should make it clear that no information goes outside of the OAAP, unless the lawyer accessing the program consents to it.
- iii. OAAP and SLAC shall cooperate to provide accurate and appropriate outreach.
- iv. OAAP and SLAC shall cooperate to develop a name that avoids further confusion of lawyers or the general public.

#### IV. Future Collaborative Efforts

##### a. Background

###### i. Diversion

The OAAP and SLAC share the concern that the Oregon Rules of Professional Conduct preclude a lawyer from entering a diversion program if a lawyer is guilty of misrepresentation. Misrepresentation is almost always an element of addiction and can be an element of many major mental health issues. The current BR on diversion precludes many impaired lawyers from utilizing the diversion program. Treatment of the impairment successfully can control the risk of misrepresentation. The Task Force members and interested parties agree it is timely to raise this issue.

###### ii. Suspended Lawyers

Suspension from the practice of law creates a situation where the suspended lawyer has a lot of time on his or her hands, and frequently the lawyer does not use that time in a productive or healthful manner.

Suspended lawyers currently are not monitored to determine whether they are practicing law without a license. Suspended lawyers also need additional reminders of the various support services that are available to them for assistance.

##### b. Recommendations

- i. The OAAP and SLAC should work with discipline and the Supreme Court to explore the possibilities for making diversion available to impaired lawyers and the possibility of SLAC serving as monitors to suspended lawyers. Should these changes occur, the OAAP could provide services to the impaired lawyers and SLAC could serve as diversion program monitors and suspended lawyer monitors.

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 23, 2008  
From: Sylvia E. Stevens, General Counsel  
Re: Request to Extend House Counsel Admission to Foreign Lawyers

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### Action Recommended

Consider the request from Intel to recommend to the BBX that the House Counsel admission rule be amended to include foreign-trained lawyers.

### Background

David Law, legal counsel at Intel, seeks the BOG's support of an amendment to the House Counsel admission rule to extend it to foreign-trained lawyers. He has provided an explanatory letter and suggested language. As indicated, Mr. Law's proposal is based on the rule adopted recently in Washington state.

In the interest of bringing the BBX into the conversation early, I gave a copy of Mr. Law's proposal to and discussed it with the Executive Director of the BBX. In turn, Jon Benson provided me with a copy of the BBX's recent letter to the Supreme Court requesting amendments to the several admission rules, including the House Counsel rule. If approved, these changes will allow foreign-trained lawyers to be admitted under the House Counsel rule if they can meet the requirements of Rule 3.05(3). That rule requires a foreign-trained lawyer to establish that the requirements for admission in the foreign jurisdiction are essentially equivalent to those of Oregon and that the applicant graduated from a law school equivalent to an ABA approved law school. The other requirement is that the foreign lawyer be admitted in a country "where the common law of England exists as the basis of its jurisprudence."

It thus appears that the BBX is already in favor of house counsel admission for some foreign lawyers. The issue for the BOG is whether to recommend to the BBX that it consider further easing the requirements to allow house counsel admission even for lawyers trained in countries whose system of laws is not based on English common law or whose law school is not equivalent to an ABA accredited institution. In Mr. Law's proposal (and Washington's adopted rule), the only requirement is that the applicant have met the admission requirements of the foreign jurisdiction and be in good standing.

Attachments: Letter from David Law w/proposed rule change  
Letter from BBX to Supreme Court with proposed amendments to the Rules for Admission

April 16, 2008

Mr. James W. Nass, Esq.  
Oregon Supreme Court  
Supreme Court Building  
1163 State St  
Salem, OR 97301

Dear Mr. Nass:

The Oregon State Board of Bar Examiners' (board) rules sub-committee recently drafted some proposed revisions to the Rules for Admission of Attorneys (RFA). The full board considered the proposal and has asked me to forward the proposed revised rules with a recommendation that they be adopted.

Enclosed you will find the drafts of the following proposed rules:

1. RFA 3.05 - Qualification of Applicants (for the bar exam)
2. RFA 15.05 – Admission of Lawyers through Reciprocity
3. RFA 16.05 - Admission of House Counsel
4. RFA 6.05 – Investigation of Applicants Moral Character and Fitness to Practice Law

The enclosed drafts include both the old and new language shown in the “legislative” strike-through format.

RFA 3.05, 15.05 and 16.05 have been modified so that there is symmetry between the rules. The proposed rules would incorporate the same language in each rule providing for graduation from an ABA-approved law school with either a J.D. or LL.B. degree. Additionally, the rules as proposed, would allow graduates from law schools outside the United States to be treated equally regardless of whether they were applying to sit for the exam, or to be admitted via Reciprocity or as House Counsel.

The current rule allows foreign law graduates who are admitted to practice in another country (in which the common law of England is the basis for their jurisprudence), to sit for the bar exam provided an “Equivalency Panel” determines that their legal education is substantially similar to that provided by an ABA-approved law school. RFA 3.05(3). However, foreign law graduates are not eligible to seek admission under the rules for Reciprocity or House Counsel. The board felt that foreign law graduates should receive the

Mr. James Nass, Esq.  
April 16, 2008  
Page 2 of 2

same treatment under all of the admission rules and that the lack of symmetry was likely an oversight attributable to the fact that the rules were developed at separate times under separate circumstances.

The proposed change to RFA 6.05 adds a paragraph explicitly authorizing the board to conduct applicant interviews (aka "small group interviews") prior to the initiation of formal evidentiary hearings. This change would simply codify the long-standing practice of the board which has been acknowledged in numerous Supreme Court opinions concerning contested admission cases. See *In re Covington*, 334 Or 599, P3d 233 (2002); *In re Beers*, 339 Or 215, 118 P3d 784 (2005).

For your convenience, I have included eight (8) copies of the proposed rules and eight (8) copies of this letter. Should the Court grant the board's request, I can send the proposed rules to you electronically as well.

Thank you for your consideration of this matter.

Respectfully Submitted,

Jon Benson  
Executive Director

Encl.

cc: Mr. Richard Yugler, President, Oregon State Bar  
Mr. Andrew Altschul, Chair, Board of Bar Examiners  
Ms. Karen Garst, Executive Director, Oregon State Bar  
Mr. Jeffrey Sapiro, Disciplinary Counsel, Oregon State Bar  
Ms. Donna Berg, Oregon Supreme Court  
Ms. Sylvia Stevens, General Counsel, Oregon State Bar  
Ms. Helen M. Hirschbiel, Deputy General Counsel, Oregon State Bar



## 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 either a (1) *Juris Doctor (J.D.)* or (2) *Bachelor of Law (LL.B.)* degree; or satisfaction of the requirements of rule 3.05(3); 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.

## QUALIFICATIONS OF APPLICANTS

### 3.05 Qualifications of Applicants

Prior to taking the examination the applicant must show that the applicant will be at least 18 years of age at the time of admission to the practice of law and meet the requirements of either section (1), (2) or (3):

(1) The applicant is a graduate of a law school approved by the American Bar Association, earning a Juris Doctor ~~Ð~~ degree or Bachelor of Law (LL.B.) degree.

(2) The applicant is a graduate of a law school in the United States, earning a Juris Doctor ~~Ð~~ degree or Bachelor of Law (LL.B.) degree, and

(a) has been admitted to practice before the highest tribunal of another state, the District of Columbia, or federal territory, where the requirements for admission are substantially equivalent to those of this state; and

(b) has been actively, substantially and continuously engaged in the practice of law for at least three of the five years immediately preceding the taking of the examination.

(3) The applicant is admitted to practice ~~before the highest tribunal of law in~~ a foreign country where the common law of England exists as the basis of its jurisprudence. In such case, the applicant shall have the burden of proving:

(a) that the requirements for admission to practice are substantially equivalent to those of this state; and

(b) that the applicant is a graduate of a law school equivalent to a law school approved by the American Bar Association. The Board of Bar Examiners, after reviewing the recommendation of an equivalency panel composed of representatives of Oregon ABA-approved law schools, shall determine whether the law school is equivalent to an ABA-approved law school for the purposes of this rule. The academic dean of each participating law school shall designate a member of its faculty to sit on the equivalency panel. An evaluation fee may be set by the Board of Bar Examiners and charged to each applicant seeking an equivalency determination. The fee shall accompany the applicant's request for admission.

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April 22, 2008

Richard Yugler  
Landye Bennett Blumstein LLP  
1300 S.W. 5th Ave., Suite 3500  
Portland, OR 97201

Sylvia E Stevens  
General Counsel, Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
PO Box 231935  
Tigard, OR 97281

**Re: Limited Admission of Foreign Lawyers as House Counsel**

Dear Richard and Sylvia,

As we've discussed previously, Intel and several other Oregon companies believe that a change to the current rules regarding limited admission of "house counsel" to the Oregon State Bar to permit foreign licensed attorneys to practice "in-house" in Oregon, would be beneficial to Oregon companies and Oregon's overall business environment.

**Rationale for Proposed Rule.**

For Oregon companies, like Intel, with increasingly international sales, marketing, and development operations, it is highly desirable to bring international lawyers employed by the company to Oregon to practice in-house for varying periods of time. This is more effective than outsourcing the foreign legal work or trying to work across difficult time zones, and allows for more effective teaming across the legal department. This is especially true for industries founded on intellectual property, such as the apparel, electronics, information technology, and biotech industries, where effective in-house teams are essential to success.

A number of Oregon-based companies, law firms, and industry associations, with whom we have discussed our proposal, have indicated their support for an amended admissions rule permitting foreign licensed attorneys to qualify under the "House Counsel" rule. The organizations indicating support thus far for the proposed rule include:

- Tektronix
- Columbia Sportswear
- Digimarc

- Mentor Graphics
- Hewlett Packard
- Lane Powell
- Klarquist Sparkman

### **Washington Rule 8(f).**

As you are aware, Washington has adopted a bar admission rule very similar to the one we are proposing, as set forth in Rule 8(f) of the Washington Admission to Practice Rules: (<http://www.wsba.org/lawyers/licensing/rule8f.htm>). Washington's rule was adopted in 2004 and our discussions with Microsoft and others indicate that it has provided an excellent opportunity for their worldwide legal teams to more effectively collaborate from their Washington headquarters on a variety of global legal issues.

### **Proposed Rule Change.**

Oregon's current in-house counsel rule (Rule 16.05) applies to attorneys licensed in other U.S. jurisdictions, and foreign attorneys have a limited exemption to advise only with respect to foreign laws pursuant to the "foreign law consultants" rule (Rule 12.05). Our proposal would essentially extend the current in-house counsel rule to foreign licensed attorneys, who would have to comply with the same rules. This amendment would allow those foreign licensed attorneys who work for Intel or other companies with operations or facilities in Oregon to provide legal advice to Oregon companies as other in-house attorneys would, for varying periods of time.

The suggested amendment, a draft of which is enclosed with this letter, would amend the current Rule 16.05 to permit attorneys licensed by foreign jurisdictions to qualify for limited admission to allow them to practice as house counsel in Oregon. They would be required to meet the same licensing criteria as set forth in the current Rule 16.05, except that the educational background and admission requirements would be described more generally to account for varying requirements for admission to the practice of law in foreign jurisdictions.

The suggested rule would require a formal application process by the attorney, and the Oregon Supreme Court and the Oregon State Bar would maintain control over the admission, regulation, and ability to discipline such foreign house counsel, as provided by the existing Rule 16.05 as applied to in-house attorneys licensed in other U.S. jurisdictions.

### **Business Environment Benefits.**

Intel and the other proponents of this amendment believe this change would be very beneficial to Oregon business and position Oregon and the OSB as leaders in supporting international businesses. Oregon's economy is increasingly linked to international trade, research, and development. The ability of global businesses to operate effectively from Oregon is important in attracting new businesses to Oregon and

in maintaining an environment conducive to helping the existing Oregon business grow here. Denying Oregon businesses the opportunity to bring in attorneys from other countries inhibits their ability to grow and conduct business.

It is our hope that you will present our proposal to the full OSB Board of Governors for review and consideration at the next meeting of the BOG, followed by review and comment by the Board of Bar Examiners and other interested committees of the Bar, including the Corporate Counsel Section.

Best Regards,

David Law  
Director, Software and Solutions Group Legal  
Intel Corporation



## 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 a jurisdiction other than a United States jurisdiction or in another U.S. 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. For applicants admitted in another United States jurisdiction:
    - (i) Presenting satisfactory proof of graduation from an ABA approved law school with a Juris Doctor degree or its equivalent; and
    - (ii) Presenting satisfactory proof of passage of a bar examination in a jurisdiction in which the applicant is admitted to the practice of law; and
  - c. For applicants admitted in a jurisdiction other than a United States jurisdiction
    - (i) Presenting satisfactory proof of having met the educational requirements of the admitting jurisdiction,
    - (ii) Presenting satisfactory proof of admission by examination to the practice of law and current good standing 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 by the business entity 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.
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 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 Code of Professional Responsibility, 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.
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

## Board of Governors Agenda

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**Meeting Date:** May 9, 2008  
**Memo Date:** April 25, 2008  
**From:** Access to Justice Committee  
**Re:** General Fund Disbursement

---

### Action Recommended

Approve the recommendation put forth by the Association of Legal Services Programs and approved by the Legal Services Program (LSP) Committee regarding disbursing the general fund appropriation being held by the OSB.

### Background

On August 9, 2007 the Legal Services Program (LSP) Committee met and made the following recommendation to the Board of Governors (BOG) regarding the one-time \$700,000 general fund appropriation given to the OSB to fund increased costs for legal aid during the 2007-09 Biennium. This recommendation was approved by the BOG on September 28, 2007.

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;

In March, 2008 Tom Matsuda forwarded on behalf of the Association of Legal Services Programs (Association) a recommendation to the LSP Committee for the distribution of the general fund appropriation being held by the OSB. The Association is comprised of four legal aid entities, Legal Aid Services of Oregon (LASO), Oregon Law Center (OLC), Center for Nonprofit Legal Services (CNPLAS) and Lane County Law and Advocacy Center (LCLAS).

In their recommendation the Association explained that a fundamental operating principle is that low-income Oregonians, regardless of location or status, should have relatively equal access to a legal aid attorney. In light of that principle the executive directors in their recommendation considered updated poverty population based on census data in addition to current distribution of offices and staff and resources around the state. They

agreed that the highest current statewide priority is to keeping the new Klamath Falls Regional Office open. The funding for that office is sufficient for LASO's 2008 operating budget but uncertain for 2009, depending on success at obtaining new federal, in-state, or private funding. Therefore, the recommendation from the Association seeks a distribution of half of the available funding in 2008, according to existing poverty population percentages, and a deferred decision on distribution of the remainder until revenue projections for 2009 are clearer, hopefully by the end of this calendar year. From the perspective of statewide delivery of civil legal services and the OSB Legal Services Program Standards and Guidelines, this recommendation will best serve the interests of low-income clients.

**The specific recommendations are:**

1. Distribute half of the appropriated funds in 2008, plus interest earned up to the date of distribution. The distribution percentages will be updated to the most recent figures obtained in the programs' 2007 strategic planning process. Any general fund amounts previously distributed to Association programs under the interim agreement should be credited against the 2008 allocation amounts.
2. If the allocation amounts between LASO and OLC need to be adjusted, both programs will submit a joint recommendation as they have in the past. The allocation amount for Lane County will go to Lane County Legal Aid and Advocacy Center.
3. The OSB would hold the remaining half of the general funds in an interest-bearing account until the Association submits a recommendation for distribution of the remainder in 2009.

The LSP Committee approved the Association's recommendation and forwarded it to the BOG's Access to Justice (ATJ) Committee. The ATJ committee approved the method of distribution for the general fund appropriation on April 4, 2008 and is recommending BOG approval. This recommendation is contingent on the BOG reviewing the documents reflecting the poverty populations percentages used to calculate the disbursement and the actual disbursement to each program. Attached are two worksheets. Attachment A outlines the general fund disbursement to each program. Attachment B lists the updated poverty population percentages used to calculate the disbursement.

53A

**GENERAL FUND DISBURSEMENT**

Region	Poverty Population	% of Pov Pop
Statewide	627,337	
Columbia	6,133	0.98%
Lane	63,095	10.06%
Jackson	37,227	5.93%
Marion/Polk (M/P)	69,529	11.08%

Funds due at 12/31/07	\$700,000.00
Interest accrued thru 12/31/07	\$9,830.00
<b>Funds to be disbursed 2008</b>	<b>\$359,830.00</b>

Disbursements to Providers by Pov. Pop.		Less Previous Distributions	Total due 2008 Distributions
Columbia County Legal Aid	\$3,526.33		\$3,526.33
Lane County Law and Advocacy	\$36,198.90	\$5,190.00	\$31,008.90
Center for Nonprofit Legal Services (Jackson)	\$21,337.92	\$7,170.00	\$14,167.92
M/P (20% to Oregon Law Center)	\$7,973.83		\$7,973.83
M/P (80% to Legal Aid Services of Oregon)	\$31,895.33		\$31,895.33
<b>SUBTOTAL</b>	<b>\$100,932.32</b>	<b>\$12,360.00</b>	<b>\$88,572.32</b>
*Legal Aid Services of Oregon (LASO)	\$90,096.39		\$90,096.39
*Oregon Law Center (OLC)	\$168,801.29		\$168,801.29
<b>TOTAL</b>	<b>\$359,830.00</b>	<b>\$12,360.00</b>	<b>\$347,470.00</b>

\* LASO and OLC divide the remaining statewide funds pursuant to the filing fee distribution percentages with OLC receiving 65% and LASO 35% of the remaining funds.

## Association of Legal Services Programs

Data from 2007 Strategic Planning

OFFICE NAME	POVERTY POPULATION IN SERVICE AREA (125%FPIG)	2000 Census (125% FPIG)	% INCREASE SINCE 2000	% OF TOTAL STATE POV. POP. (Census only)	OFFICE SERVICE AREA IN SQUARE MILES
<b>Regional Offices</b>					
Albany - LASO	33,101	27,854	18.8%	5%	2,976
Bend - LASO	29,241	19,360	51.0%	5%	7,757
Coos Bay - OLC	18,384	17,264	6.5%	3%	3,819
Grants Pass - OLC	18,657	13,991	33.4%	3%	1,641
Hillsboro - LASO	96,556	63,955	51.0%	15%	4,100
Hillsboro - OLC/PDX	"	"	"	"	"
CCLA	6,133	4,888	25.5%	1%	1,939
Klamath Falls - LASO	16,191	14,624	10.7%	3%	14,494
Lane County - LASO	63,095	56,779	11.1%	10%	4,620
Lane Advocacy Cntr	"	"	"	"	"
Marion-Polk LASO	69,529	55,059	26.3%	11%	1,939
Marion-Polk OLC	"	"	"	"	"
Multnomah - LASO	123,910	102,138	21.3%	20%	465
Multnomah OLC/PDX	"	"	"	"	"
Newport - LASO	9,671	7,605	27.2%	2%	922
Ontario - OLC	14,181	12,020	18.0%	2%	27,770
Oregon City - LASO	53,421	35,146	52.0%	9%	5,639
Oregon City OLC/PDX	"	"	"	"	"
Pendleton - LASO	22,826	18,545	23.1%	4%	14,011
Roseburg - LASO	21,347	16,249	31.4%	3%	4,521
CNPLS (Jackson)	37,227	27,836	33.7%	6%	2,801
<b>SUBTOTALS</b>	<b>627,337</b>	<b>488,425</b>	<b>28.4%</b>	<b>100%</b>	<b>97,475</b>

**FPIG** = Federal Poverty Income Guidelines (income eligibility is based on 125% FPIG)

**LASO** = Legal Aid Services of Oregon

**OLC** = Oregon Law Center

**CNPLS** = Center for Non-profit Legal Services (Jackson County)

**Lane Advocacy Cntr** = Lane County Legal Aid and Advocacy Center

**CCLA** = Columbia County Legal Aid

Poverty population figures are derived from Census information collected in 2004 and published in 2007. This is the most recent information available for all 36 Oregon counties.

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9, 2008  
Memo Date: April 29, 2008  
From: Ward Greene, chair, Budget & Finance Committee  
Re: Ratification for the Second Amendment to the Lease Agreement

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### Action Recommended

Ratify the second amendment to the master lease with Opus executed by the OSB president.

### Background

President Yugler signed a "Second Amendment to Lease Agreement" (a copy follows this memo) on April 28. The primary purpose of the amendment was to incorporate language into the bar's lease with Opus, so the bar can obtain a property tax exemption from Washington County. Per the county, the paragraph in section 4 should suffice.

Additionally the amendment recites the final rentable square feet (RSF) in the building and the rent that corresponds to the final size. The final RSF occupied by the bar and PLF is 55,904, a slight increase of 55,426 RSF in the original agreement. The increase is due to the PLF occupying 701 more RSF than the original lease. The bar occupies 223 less RSF and the final RSF available for third-party tenants is 12,621 - 750 less than the original plan. The annual rent for the bar and PLF space is \$100,161.33 per month, and the bar will pass on the corresponding increase to the PLF for its additional space.

SECOND AMENDMENT TO LEASE AGREEMENT

DATED: April 25, 2008

BETWEEN: OPUS NORTHWEST, L.L.C. ("Landlord")

AND: THE OREGON STATE BAR ("Tenant")

Recitals:

A. Landlord and Tenant are parties to a Multitenant Office Lease Agreement with an Effective Date of August 9, 2006 (the "Lease Agreement"), as amended by an Amendment to Lease Agreement dated December 29, 2006 (the "First Amendment"). The Lease Agreement and the First Amendment are collectively referred to as the "Lease" in this Second Amendment to Lease Agreement (the "Second Amendment").

B. Landlord and Tenant desire to clarify the rentable area in the Premises, the Rent, and certain other matters pertaining to the Lease.

C. Capitalized terms used in this Second Amendment shall have the meanings given to them in the Lease, except as expressly modified by this Second Amendment.

Agreements:

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Second Amendment, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Rentable Area. The rentable area in the Premises is approximately 55,904 rentable square feet. The rentable area in the Building is approximately 68,525 rentable square feet.

2. PLF Lease. The following phrase in the first sentence of Section 1.4 of the Lease Agreement is deleted: "Beginning on the Commencement Date" and is replaced with "Beginning on February 15, 2008."

3. Basic Rent. Following is the corrected schedule for Basic Rent. Within fifteen (15) days after this Second Amendment is executed, Tenant shall pay Landlord the difference between the Rent due under the corrected schedule to date and the amounts paid by Tenant under the Lease to date. The corrected schedule of Basic Rent is:

<u>Months</u>	<u>Annual Basic Rent per rentable square foot of the Premises</u>	<u>Monthly Installments</u>
January 26, 2008-January 31, 2009	\$21.50	\$100,161.33
February 1, 2009-January 31, 2010	\$22.15	\$103,189.47
February 1, 2010-January 31, 2011	\$22.81	\$106,264.19
February 1, 2011-January 31, 2012	\$23.49	\$109,432.08
February 1, 2012-January 31, 2013	\$24.20	\$112,739.73
February 1, 2013-January 31, 2014	\$24.92	\$116,093.97
February 1, 2014-January 31, 2015	\$25.67	\$119,587.97
February 1, 2015-January 31, 2016	\$26.44	\$123,175.15
February 1, 2016-January 31, 2017	\$27.24	\$126,902.08
February 1, 2017-January 31, 2018	\$28.05	\$130,675.60

4. Tax Exemption; Statement for ORS 307.112. Tenant has applied for an exemption for the Premises from Property Taxes. Landlord and Tenant acknowledge that the Rent payable by Tenant has been established to reflect the savings below market rent resulting from exemption from taxation under ORS 317.112. Any savings in Property Taxes resulting from this exemption actually received by Landlord shall inure to the benefit of Tenant.

5. Tenant's Share of Expenses. Tenant's Share of Expense Percentage is 81.58%.

6. Improvement Allowance. The Improvement Allowance is: \$2,051,900.00.

7. Counterparts; Delivery. This Second Amendment may be executed in counterparts. Delivery of this executed Second Amendment by facsimile or electronic transmission shall be sufficient to form a binding agreement.

8. Effect of Second Amendment. The Lease is modified only in the specific respects set forth in this Second Amendment. Except as expressly modified, the Lease remains unmodified and in full force and effect.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first set forth above.

LANDLORD: OPUS NORTHWEST, L.L.C., a Delaware limited liability company

By: Brian M. Owendoff BPS  
Name: Brian M. Owendoff  
Title: Vice President - General Manager

TENANT: THE OREGON STATE BAR, a public corporation

By: Richard Healy  
Name: Richard Healy  
Title: President, OSB

ASG W



Oregon State Bar

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2006-2007

**OREGON STATE BAR FUND  
AUDITED FINANCIAL REPORT**

**For the two years ended  
December 31, 2007**

Oregon  
State  
Bar

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**OREGON STATE BAR**

**OREGON STATE BAR FUND**

**AUDITED FINANCIAL REPORT**

**For the two years ended  
December 31, 2007**

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**INDEPENDENT AUDITOR'S REPORT**

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

We have audited the accompanying statement of net assets of the Oregon State Bar Fund (the Bar), a fund of the Oregon State Bar, as of December 31, 2007, and the related statement of revenues, expenses and changes in net assets, and cash flows for the two-years then ended. These financial statements are the responsibility of the Bar's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to the financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Oregon State Bar Fund as of December 31, 2007, and the changes in its net assets and its cash flows for the two-years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1, the financial statements present only the Oregon State Bar Fund and do not purport to, and do not, present fairly the financial position of the Oregon State Bar as of December 31, 2007, and the changes in its financial position, or, where applicable, its cash flows for the two-year period ended in conformity with accounting principles generally accepted in the United States of America.

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

The accompanying managements' discussion and analysis on pages 10 through 13 are not a required part of the basic financial statements but are supplementary information required by accounting principles generally accepted in the United States of America. This supplementary information is the responsibility of the Bar's management. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

In accordance with Government Auditing Standards, we have also issued our report dated May 5, 2008, on our consideration of the Bar's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be considered in assessing the results of our audit.

*Moss Adams, LLP*

Portland, Oregon  
May 5, 2008

## **MANAGEMENT'S DISCUSSION AND ANALYSIS**

As management of the Oregon State Bar we offer readers of Oregon State Bar's financial statements this narrative overview and analysis of the financial activities of the Bar for the two-year period ended December 31, 2007.

The Oregon State Bar is comprised of the Oregon State Bar Fund and the Professional Liability Fund (PLF). The financial statements and accompanying notes are presented for the Oregon State Bar Fund only (the Bar) and do not contain the accounts of the PLF. Financial information and statements for the PLF are presented in its annual report available from the PLF, 16037 SW Upper Boones Ferry Road, Tigard, Suite 300, P.O. Box 231600, Oregon 97281.

We encourage readers to consider the information presented here in conjunction with additional information that we have furnished in our notes to the financial statements.

### **Financial Highlights**

- At December 31, 2007, the Bar's assets exceeded its liabilities by \$13,083,885.
- The Bar has \$3,452,832 invested in capital assets, net of accumulated depreciation.
- The increase in net assets for the two-year period was \$6,788,550.

The overall financial condition of the Bar remains stable. The active attorney membership of the Bar increases steadily as the ability to practice law in Oregon is mandatory membership in the Bar. As a result, membership fee revenue is a consistent increase in operating revenue for the Bar. A substantial portion of program fee revenue is subject to commercial competition and changing attorney practices, and a matter under management assessment.

### **Overview of the Financial Statements**

The Bar is a self-supporting entity and follows enterprise fund reporting. Accordingly, the financial statements are presented using the economic resources measurement focus and the accrual basis of accounting. The Bar's bi-annual report consists of the Statement of Net Assets, the Statement of Revenue, Expenses and Changes in Net Assets and the Statement of Cash Flows. The Statement of Net Assets presents the full accrual assets and liabilities and over time may provide a useful indicator of whether the financial position of the Bar is improving or deteriorating. The Statement of Revenues, Expenses and Changes in Net Assets presents information showing how the Bar's assets changed as a result of two years' operations. Regardless of when cash is affected, all changes in net assets are reported when the underlying transactions occur. As a result, there are transactions included that do not affect cash until future fiscal periods. The Statement of Cash Flows presents information showing how the Bar's cash changed as a result of two years' operations. The Statement of Cash Flows is prepared using the direct method and includes the reconciliation of operating income to net cash provided by operating activities (indirect method) as required by GASB 34.

The notes to the financial statements provide additional information that is essential to a complete understanding of the data provided in the financial statements.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)

### Financial Summary

The following schedule presents a summary of revenues, expenses and increase in net assets for the Bar for the two years ended December 31, 2007 and the percentage change from the previous two-year period.

	<u>2006-2007</u>	<u>2004-2005</u>	<u>CHANGE</u>
<b>REVENUES:</b>			
<b>Operating:</b>			
Membership fees	\$ 13,795,743	\$ 11,954,834	15%
Program fees	18,990,542	16,678,446	14%
Other operating revenues	16,853	75,082	-78%
<b>Total Operating Revenues</b>	<u>32,803,138</u>	<u>28,708,363</u>	
<b>Non-operating:</b>			
Investment income	1,121,100	498,935	125%
Rental revenue	49,561	51,491	-4%
Gain on sale of building & land	5,473,625		100%
Interest expense	(52,237)	(110,600)	-53%
<b>Total Non-operating Revenues</b>	<u>6,592,049</u>	<u>439,826</u>	
<b>TOTAL REVENUES</b>	<u>39,395,187</u>	<u>29,148,188</u>	35%
<b>EXPENSES:</b>			
Administrative expense:			
Salaries and benefits	13,188,776	11,829,000	11%
Services and Supplies	3,260,696	2,506,568	30%
Depreciation	621,933	833,096	-25%
<b>Total administrative expense</b>	<u>17,071,405</u>	<u>15,168,664</u>	13%
Program expenses	15,535,232	14,033,136	11%
<b>TOTAL EXPENSES</b>	<u>32,606,637</u>	<u>29,201,800</u>	12%
<b>CHANGE IN NET ASSETS</b>	6,788,550	(53,611)	12763%
<b>NET ASSETS</b> , January 1, 2006	<u>6,295,335</u>	<u>6,348,946</u>	-1%
<b>NET ASSETS</b> , December 31, 2007	<u>\$ 13,083,885</u>	<u>\$ 6,295,335</u>	108%

In June 2007, the Bar sold its office building at 5200 SW Meadows Road, Lake Oswego, Oregon for \$8,000,000. The sale was in anticipation of the Bar moving to a new office building at 16037 SW Upper Boones Ferry Road, Tigard Oregon in early 2008. For the remainder of the year, the Bar rented and occupied the building it just sold. The net proceeds from the sale were deposited into an interest-bearing account to be used when the Bar is in position to purchase the new office building. The result of this transaction caused investment income, interest expense, rent expense (included in administrative expense), and depreciation to report significant dollar and percentage changes from the previous two-year period.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)

Total assets, liabilities and net assets were as follows:

	<u>2006-2007</u>	<u>2004-2005</u>	<u>CHANGE</u>
<b>ASSETS</b>			
Current Assets	\$ 17,920,386	\$ 8,014,708	124%
Capital Assets	<u>3,452,832</u>	<u>2,976,974</u>	16%
<b>Total Assets</b>	<u>21,373,218</u>	<u>10,991,682</u>	
<b>LIABILITIES</b>			
Current Liabilities	8,289,333	4,441,814	87%
Long Term Liabilities	<u>-</u>	<u>254,533</u>	-100%
<b>Total Liabilities</b>	<u>8,289,333</u>	<u>4,696,347</u>	
<b>NET ASSETS</b>			
Invested in Capital Assets	3,452,832	2,407,857	43%
Restricted	1,425,595	759,381	88%
Unrestricted	<u>8,205,458</u>	<u>3,128,097</u>	162%
<b>Total Net Assets</b>	\$ <u>13,083,885</u>	\$ <u>6,295,335</u>	108%

The increase in current assets and capital assets is primarily due to the sale of the building and the deposit of the sale proceeds into an interest-bearing account. Additionally, prepaid expense increased by \$387,906 for rent and deposits. Construction in process of \$2,764,938 was created for payments and commitments for the eventual purchase of the new office building occupied in 2008. Furnishings and equipment for the new building totaling \$221,489 were purchased but not yet put into service. See "Note 14 - Subsequent Events" for more information regarding the new building.

With the building sale, the Bar paid off its mortgage on the building, resulting in the elimination of long-term liabilities.

The increase in current liabilities is due to the increase in deferred revenues for membership fees for 2008 billed in 2007.

The increase in restricted net assets is from an Oregon legislative appropriation granted to the Legal Services program in 2007. The original appropriation of \$700,000 was designated for disbursement to the various legal aid providers in the state and will be fully disbursed during 2008.

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)**

### **Capital Assets**

At December 31, 2007, the Bar had \$3,452,832 invested in furniture, equipment, software, construction in process and assets purchased not yet in use. See the Statement of Net Assets for additional information on capital assets.

Major capital events during the last two years included:

- Sale of land and building in June 2007, resulting in the removal of \$3,427,970 in building and \$242,017 in land from capital assets.
- Disposal of \$196,883 of furniture and equipment in anticipation of moving to a new building in 2008. Of this amount, \$136,029 was computer equipment that was replaced with purchases of \$76,267 in computer equipment.
- Construction in process of \$2,764,938 was created for costs related to the new building anticipated to be purchased in 2008 or 2009.
- Furnishings for new building resulted in Assets Purchased Not in Use in the amount of \$221,489.

Please refer to Note 6 – Capital Assets for additional information.

### **Debt Administration**

The Bar paid in full the \$332,858 balance of its mortgage on the building at the closing of the building sale in June 2007. Please refer to Note 7 – Mortgage Payable, for additional information.

### **Requests for information**

This financial report is designed to provide a general overview of the Oregon State Bar's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Chief Financial Officer, PO Box 231935, Tigard, OR 97281-1935

**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**STATEMENT OF NET ASSETS**

**December 31, 2007**

**ASSETS**

Current Assets:	
Cash and cash equivalents	\$10,662,281
Investments	1,511,256
Accounts and other receivables, net of allowance for doubtful accounts of \$ 306,470	4,926,643
Publications inventory	319,237
Prepaid expenses and deposits	<u>500,969</u>
Total Current Assets	<u>17,920,386</u>
Capital Assets:	
Furniture and equipment, depreciable	2,967,191
Construction in process, non-depreciable	2,764,938
Assets purchased not in use, non-depreciable	<u>221,489</u>
	5,953,618
Less accumulated depreciation	<u>(2,500,786)</u>
Total Capital Assets, net	<u>3,452,832</u>
<b>TOTAL ASSETS</b>	<b><u>\$21,373,218</u></b>

**LIABILITIES AND NET ASSETS**

**LIABILITIES:**

Current Liabilities:	
Accounts payable and accrued liabilities	\$374,496
Compensated absences payable	421,261
Deferred revenue	<u>7,493,576</u>
Total Current Liabilities	<u>8,289,333</u>
<b>TOTAL LIABILITIES</b>	<b><u>8,289,333</u></b>

**NET ASSETS:**

Invested in capital assets	3,452,832
Restricted	1,425,595
Unrestricted	<u>8,205,458</u>
<b>TOTAL NET ASSETS</b>	<b><u>13,083,885</u></b>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b><u>\$21,373,218</u></b>

**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**

**TWO YEARS ENDED December 31, 2007**

<b>REVENUES:</b>	
Membership fees	\$13,795,743
Program fees	18,990,542
Other operating revenues	<u>16,853</u>
<b>TOTAL OPERATING REVENUES</b>	<b>32,803,138</b>
<b>EXPENSES:</b>	
Administrative expense:	
Salaries and benefits	13,188,776
Services and supplies	3,260,696
Depreciation	<u>621,933</u>
Total administrative expense	17,071,405
Program expenses	<u>15,535,232</u>
<b>TOTAL EXPENSES</b>	<b><u>32,606,637</u></b>
<b>OPERATING INCOME</b>	<b>196,501</b>
<b>NON-OPERATING REVENUES (EXPENSES):</b>	
Investment income	1,121,100
Rental revenue	49,561
Gain on sale of building & land	5,473,625
Interest expense	<u>(52,237)</u>
<b>TOTAL NON-OPERATING REVENUES (EXPENSES)</b>	<b><u>6,592,049</u></b>
<b>CHANGE IN NET ASSETS</b>	<b>6,788,550</b>
<b>NET ASSETS, January 1, 2006</b>	<b><u>6,295,335</u></b>
<b>NET ASSETS, December 31, 2007</b>	<b><u>\$13,083,885</u></b>



**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**STATEMENT OF CASH FLOWS**

**TWO YEARS ENDED DECEMBER 31, 2007**

<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>	
Cash received from customers	\$ 32,912,988
Cash paid to suppliers	(19,096,711)
Cash paid to employees	(13,254,581)
<b>NET CASH USED BY OPERATING ACTIVITIES</b>	<b>561,696</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>	
Investments converted to cash equivalents	2,490,746
Sale of investments	1,072,174
Purchase of investments	(1,000,000)
Interest received from cash and investments	1,121,101
<b>NET CASH PROVIDED BY INVESTING ACTIVITIES</b>	<b>3,684,021</b>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>	
Cash paid for construction in process	(2,764,938)
Assets purchased not yet in use	(221,489)
Purchases of fixed assets	(332,822)
Proceeds from sale of building, furniture and equipment	7,695,082
Principal paid on mortgage payable	(551,318)
Principal paid on capital lease payable	(17,799)
Interest expense	(52,237)
<b>NET CASH PROVIDED BY CAPITAL FINANCING ACTIVITIES</b>	<b>3,754,479</b>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>	
Rental income	49,561
<b>NET CASH PROVIDED BY NONCAPITAL FINANCING ACTIVITIES</b>	<b>49,561</b>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>8,049,757</b>
<b>CASH AND CASH EQUIVALENTS, January 1, 2006</b>	<b>2,612,524</b>
<b>CASH AND CASH EQUIVALENTS, December 31, 2007</b>	<b>\$ 10,662,281</b>
<b>RECONCILIATION OF OPERATING INCOME</b>	
<b>TO NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	
Operating Income	\$ 196,501
Adjustments to reconcile operating income to cash provided by operations:	
Depreciation	621,933
Changes in operating assets and liabilities:	
Increase in accounts receivable, net of doubtful accounts	(4,356,646)
Decrease in publications inventory	325,711
Increase in prepaid expenses and deposits	(387,906)
Decrease in accounts payable and accrued liabilities	(238,588)
Decrease in compensated absences payable	(65,804)
Increase in deferred revenue	4,466,495
<b>NET CASH USED BY OPERATING ACTIVITIES</b>	<b>\$ 561,696</b>

See notes to financial statements.

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**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**NOTES TO FINANCIAL STATEMENTS**

**TWO YEARS ENDED DECEMBER 31, 2007**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Organization**

The Oregon State Bar was created in 1935 and charged with the duty of licensing and disciplining attorneys and the administration of examining applicants for admission to the practice of law. The Bar is a public corporation and an instrumentality of the Judicial Department of the State of Oregon and is governed by and authorized to carry out the provisions of ORS 9. The Bar is not subject to any statute applicable to a state agency, department, board or commission or public body unless the statute expressly states it is applicable to the Bar. The funds of the Bar are independent of the State of Oregon, except for the Bar's responsibility to report annually its financial condition to the Chief Justice of the Supreme Court of the State of Oregon. All persons actively engaged in the practice of law in Oregon are required to be members of the Bar.

The Bar is governed by a 16-member Board of Governors and is comprised of twelve active member attorneys representing six geographic regions and four public members. Attorney members of the Board are elected by the Bar membership for four-year terms. The Board appoints public members.

The Bar is comprised of the Oregon State Bar Fund and the Professional Liability Fund (PLF). The financial statements and accompanying notes are presented for the Oregon State Bar Fund only (the Bar) and do not contain the accounts of the PLF. Financial information and statements for the PLF are presented in its annual report available from the PLF, 16037 SW Upper Boones Ferry Road, Tigard, Suite 300, P.O. Box 231600, Oregon 97281.

**Basis of Presentation**

The Bar's financial statements are prepared in accordance with government accounting principles generally accepted in the United States of America applicable to enterprise funds. Enterprise funds are used to account for operations that are financed and managed in a manner similar to private business enterprises or where the governing body has decided that periodic determination of net income is appropriate.

**Basis of Accounting**

These financial statements apply GASB Statement Number 34, *Basic Financial Statements - and Management's Discussion and Analysis for State and Local Governments* and related standards. This standard provides for significant changes in terminology, recognition of contributions in Statement of Revenues, Expenses and Changes in Net Assets, inclusion of a management discussion and analysis as required supplementary information and other changes.

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

The Bar's financial statements are prepared on the accrual basis of accounting. Under this method of accounting, revenues are recognized in the period when earned and expenses are recorded at the time liabilities are incurred.

As permitted by Government Accounting Standards Board (GASB) No. 20, the Bar has elected not to apply Financial Accounting Standards Board (FASB) pronouncements issued after November 30, 1989, unless GASB amends its pronouncements to specifically adopt FASB pronouncements after that date.

When both restricted and unrestricted resources are available to use for the same purpose, it is the Bar's policy to use restricted resources first, then unrestricted resources as they are needed.

**Use of estimates**

The preparation of the financial statements, in conformity with generally accepted accounting principles, requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

**Cash and Cash Equivalents**

For financial reporting purposes, cash and cash equivalents include cash on hand, cash in bank checking and savings accounts, and other short-term investments, which are readily convertible to cash. Investments in mutual funds or investments with maturity dates within 90 days of year end are considered cash equivalents. Cash equivalents also include deposits in the Oregon State Treasurer's Local Government Investment Pool (LGIP) and are reported at fair value. The LGIP is subject to regulatory oversight by the Oregon Short Term Fund Board and the Oregon Investment Council.

The LGIP is administered by the Oregon State Treasury. The LGIP is an open-ended no-load diversified portfolio offered to any agency, political subdivision or public corporation of the State who by law is made the custodian of, or has control of, any fund. The LGIP is commingled with other state funds in the Oregon Short-term Fund (OSTF). In seeking to best serve local governments of Oregon, the Oregon Legislature established the Oregon Short-Term Fund Board, whose purpose is to advise the Oregon State Treasury in the management and investment of the LGIP.

**Investments**

Investments, consisting primarily of U.S. corporate bonds, notes and commercial paper, are stated at fair value determined by quoted market prices.

**Accounts receivable**

Collectibility of receivables is routinely assessed by management. Receivables are written off when they are determined to be uncollectible. The allowance for doubtful accounts is estimated based on the Bar's historical losses, and a review of specific current and prior member accounts. This assessment provides the basis for the allowance for doubtful accounts. The allowance for doubtful accounts at December 31, 2007 was \$306,470.

## **NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

### **Capital Assets and Depreciation**

The Bar classifies purchases of durable goods or computer software, with a cost of \$500 or more as a capital asset. Capital assets (building, office and computer equipment, furniture and computer software) are recorded at cost and depreciated over their estimated useful lives using the straight-line method of depreciation. The building was depreciated over 50 years, improvements over 15 years and furniture, equipment and software from three to ten years.

### **Publications Inventory**

The Bar's Legal Publications department creates and sells legal books to the Bar's membership and other interested parties. An inventory of publications for sale is maintained and is valued at cost. The Bar uses the average cost method of inventory valuation.

### **Deferred Revenue**

Bar membership fees received prior to the beginning of the membership year (January 1) are reflected as deferred revenue.

### **Compensated Absences**

Employees earn vacation leave at rates from 8 to 20 hours per month depending, in part, upon their length of service. Unused vacation leave is paid to employees upon termination of employment. Earned but unpaid vacation leave is reflected as compensated absences payable.

### **Operating and non-operating revenues**

The Bar distinguishes operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services in connection with the Bar's ongoing principal operations. The principal operating revenues of the Bar are membership fees and program fees. Operating expenses include the cost of providing the services for membership and program related activities, as well as administrative expenses. Revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

### **Net Assets**

Net assets comprise the various net earnings from operations, non-operating revenues, expenses and contributions of capital. Net assets are classified in the following three categories.

**Invested in capital assets** – consists of all capital assets, net of accumulated depreciation.

**Restricted** – consists of external constraints placed on net asset use by creditors, grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

**Unrestricted net assets** – consists of all other net assets that are not included in the other categories previously mentioned.

## **NOTE 2 - CASH AND INVESTMENTS**

Investments are made in accordance with policy guidelines adopted by the Board of Governors. The policy guidelines adopted by the Board require that funds be invested in a manner which ensures the protection of the cash assets and emphasizes safety, liquidity and rate of return. The Bar's investment policy authorizes the Bar to invest in:

- Oregon State Treasurer's Local Government Investment Pool, no percentage limit for this issuer.
- U.S. Treasury Obligations, no percentage limitation for this issuer.
- Federal Agency Obligations, each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- U.S. Corporate Bonds or Notes, Moody "A" or Standard & Poor's "A" or better, each issuer limited to \$100,000.
- Commercial Paper, Moody "P-1" or Standard & Poor "A-1" or better, each issuer limited to \$100,000.
- Mutual Funds that commingle one or more of the approved types of investments.
- Mutual funds of U.S. and foreign equities and not including individual stock ownership.

In addition to the percentage limitation to a single issue, no more than 45 percent of the total investment portfolio will be invested in a combination of U.S. Corporate Bonds or Notes, Commercial Paper or non-equity mutual funds. The entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months. No more than 45 percent of the total long-term investments may be in equities. Up to five percent of the total long-term investments may be in international equities. "Total long-term investments" excludes investments intended to be held for one year or less. Mutual fund equity funds will be chosen for long-term growth, reserve fund appreciation, stability and portfolio diversification and not for the short-term appreciation or trading profits. The Bar was in compliance with all of the investment guidelines for the year ended December 31, 2007.

The State Treasurer is the investment officer and is responsible for all funds in the State Treasury and the Local Government Investment Pool. These funds must be invested, and the investments managed, as a prudent investor would, exercising reasonable care, skill and caution. Investments in the pool are further governed by portfolio guidelines, issued by the Oregon Short-Term Fund Board, which establish diversification percentages and specify the types and maturities of investments. The portfolio guidelines permit securities lending transactions as well as investments in repurchase agreements and reverse repurchase agreements. The pool was in compliance with all portfolio guidelines at December 31, 2007.

Amounts in the State Treasurer's Local Government Investment Pool are not required to be collateralized. There is no material difference between the fair value of the Bar's position in the State Treasurer's Local Government Investment Pool and the value of the pool shares at December 31, 2007. There were no known violations of legal or contractual provisions for deposits and investments during the fiscal year.

**NOTE 2 - CASH AND INVESTMENTS (Continued)**

Cash and investments at December 31, 2007 (recorded at fair value) consisted of:

Cash on hand	\$	603
Demand deposits with financial institutions		317,778
Local Government Investment Pool		7,167,136
Vanguard 500 Index Fund – mutual fund shares		2,713,625
Lazard Int'l Equity Portfolio – mutual fund shares		363,139
Federal Home Loan note – Wells Fargo Investments		<u>100,000</u>
Subtotal cash and equivalents:	\$	<u>10,662,281</u>
Corporate bonds and notes – Wells Fargo Investments		1,511,256
Total cash and investments:	\$	<u>12,173,537</u>

Funds on deposit with LGIP include \$7,360,058 cash proceeds from the June 2007 sale of the former Oregon State Bar Center. These funds will be used towards the future purchase of the new Oregon State Bar Center building. See "Note 14 - Subsequent Events" for details of this future transaction.

**Interest Rate Risk**

As a means of limiting its exposure to fair value losses resulting from rising interest rate risks, the Bar avoids the purchase of investments unless it will be held to maturity. The Bar investment policy requires investments not to exceed a maturity of 84 months. The Federal Home Loan note and corporate bonds and notes at December 31, 2007 had an average maturity of 40 months.

**Credit Risk**

The Bar's investment policy does not limit investments as to credit rating for securities purchased from the U.S. Government Agencies. Corporate Bonds or Notes were rated "A" by Standard & Poor's and "A" by Moody. The Vanguard and Lazard mutual funds were rated three stars and two stars, respectively, by Morningstar. The Local Government Investment Pool is unrated.

**Custodial Credit Risk**

Deposits with financial institutions include bank demand deposits. The balance per the December 31, 2007, bank statement is \$1,174,718. Of these deposits, \$115,320 is covered by federal depository insurance, and \$1,059,398 is uninsured. These balances are uncollateralized.

**NOTE 3 – RELATED PARTY TRANSACTIONS**

During the two-years ended December 31, 2007, the Bar generated rental revenue from a related party, the Oregon Law Foundation, in the amount of \$49,561. In addition, at December 31, 2007, the Bar was owed a combined \$542,428 from the PLF and the Oregon Law Foundation for payments made on their behalf.

#### **NOTE 4 – PREPAID EXPENSES**

The balance in the Bar's prepaid expense accounts increased significantly in 2007 due to the prepaid rent and deposits related to the move to a new office building and the subsequent purchase of the building. The building lease/purchase is described later in "Note 14-Subsequent Events."

#### **NOTE 5 - OPERATING LEASES**

Future minimum operating lease payments for office equipment are \$39,305. This lease expires June 30, 2008. Lease expense for the two years ended December 31, 2007 amounted to \$157,219.

After the Bar sold its building in 2007, it leased back the building from the new owner in a lease that terminated January 31, 2008. Lease expense related to this arrangement amounted to \$307,500 for the two years ending December 31, 2007. Future minimum lease payments for the building are \$45,000.

#### **NOTE 6 – CAPITAL ASSETS**

Capital assets are recorded at cost and depreciated over their estimated useful lives using the straight-line method of depreciation. The building was depreciated over 50 years, improvements over 15 years and equipment and furniture from three to ten years.

	<u>Balance 12/31/2005</u>	<u>Purchases/ Additions</u>	<u>Sales/ Disposals</u>	<u>Balance 12/31/2007</u>	<u>Accumulated Depreciation 12/31/2007</u>	<u>Net Book Value</u>
Land	\$ 242,017		\$ (242,017)	-		-
Building	3,427,970		(3,427,970)	-		-
Furniture & Equipment	2,646,356	332,822	(197,749)	2,781,429	(2,315,024)	466,405
Leased	185,762			185,762	(185,762)	-
Construction in process	-	2,764,938	-	2,764,938	-	2,764,938
Assets purchased not in use	-	221,489	-	221,489	-	221,489
	<u>\$ 6,502,105</u>	<u>\$ 3,319,249</u>	<u>\$ (3,867,736)</u>	<u>\$ 5,953,618</u>	<u>\$ (2,500,786)</u>	<u>\$ 3,452,832</u>

On June 6, 2007, the Bar sold the land and building located at 5200 SW Meadows Road, Lake Oswego. The selling price was \$ 8,000,000. This transaction resulted in a gain to the Bar of \$5,473,625 which is included in non-operating revenues in the accompanying Statement of Revenues, Expenses and Changes in Net Assets. The proceeds of this sale will be used to purchase a new building in a future transaction described in "Note 14 - Subsequent Events."

At the end of 2007, the new building was not ready for occupancy by the Bar. Therefore, significant payments that were made for tenant improvements and other building related costs are contained in Construction in Process. New furnishings and equipment were also purchased and are reflected in the Assets Purchased Not In Use account on the Statement of Net Assets.



**NOTE 7 - MORTGAGE PAYABLE**

The mortgage note payable, on the former bar building, had a balance at 12/31/2005 of \$551,318 with an interest rate of 7.25%, amortized over 15 years. It was due and payable on or before June 1, 2009. The mortgage was paid off at the sale of the building in June 2007.

Balance 01/01/2006	\$ 551,318
Regular principal payments	(218,460)
Remaining principal paid at sale of building	<u>(332,858)</u>
Balance 12/31/2007	<u>\$ -</u>

**NOTE 8 - NET ASSETS**

**Restricted**

Oregon Revised Statutes Section 9.625 - 9.665 established a Client Security Fund within the Oregon State Bar Fund to mitigate monetary losses to clients caused by dishonest conduct of active members of the Bar in the practice of law. It is funded by assessments to members and used to reimburse losses incurred by Bar member clients up to a maximum of \$50,000 per client per claim. At December 31, 2007 the Fund has restricted \$712,886 of net assets for future payments.

Oregon Revised Statutes 9.572 - 9.574 established the Legal Services program to provide legal services to indigent residents of the State. The program is funded by a portion of fees collected by the State Court Administrator and remitted to the Bar for distribution to the various legal service providers within the State.

For the two years ended December 31, 2007, proceeds amounted to \$9,200,279 of which \$160,509 was retained for administrative purposes and \$9,039,770 distributed to the legal services providers. In 2007, Legal Services received a special legal aid legislative appropriation \$700,000. Of this amount, \$12,360 has been disbursed. The balance of \$697,470, with accrued interest earned, is scheduled to be disbursed during 2008 to the various legal service providers within the State.

**Unrestricted**

Unrestricted net assets are comprised of the following components:

Bar Section Activities	\$ 567,043
Affirmative Action Program	(30,614)
Board Designated Funds	987,031
Loan Repayment Assistance Program	81,022
Unallocated	<u>6,600,976</u>
Total Unrestricted Net Assets	<u>\$ 8,205,458</u>

**NOTE 9 - MEMBERSHIP FEES**

Membership fees for the two years ended December 31, 2007 are comprised of the following:

General membership fees	\$ 12,220,781
Section fees	699,387
Client Security Fund fees	133,244
Affirmative Action Fund fees	742,331
	<hr/>
Total Membership Fees	\$ 13,795,743

**NOTE 10 - RENTAL INCOME**

The Oregon Law Foundation occupied space in the Oregon State Bar Center building. Rental income, along with nominal amounts received for meeting room rentals, amounted to approximately \$49,561 for the period January 1, 2006-December 31, 2007.

**NOTE 11 - DEFINED BENEFIT RETIREMENT PLAN**

Employees may participate in the Oregon Public Employees Retirement System (PERS), a cost sharing, multiple-employer defined benefit plan. All employees are eligible to participate after completing six months of service. The PERS retirement plan offers a number of different retirement options. These options include annuities, survivorship benefits and lump sum payments. PERS also provides death and disability benefits. PERS is administered under Oregon Revised Statute (ORS) Chapter 238. The authority to establish and amend the benefit provisions of the plan rests with the Oregon Legislature. PERS issues a publicly available financial report that may be obtained by writing to PERS, P.O. Box 23700, Tigard, Oregon, 97281-3700 or by calling 1-503-598-7377.

Participating employees are required by statute to contribute 6% of their salaries to the Individual Account Program portion, a defined contribution plan, under either plan. The Bar is required to contribute actuarially computed amounts determined by PERS. As of December 31, 2007, the rate is 5.45% of covered employees' salaries for PERS participants and 8.03% of covered salaries for OPSRP participants. The Bar is contributing 100% of the required employer contribution amount.

Employee contributions totaled approximately \$300,194 \$282,291, \$243,311 and \$228,125 for the years ended December 31, 2007, 2006, 2005 and 2004, respectively. The Bar's contribution for these four years totaled approximately \$281,423, \$258,884, \$280,166 and \$186,555 respectively.

**NOTE 12 - RISK MANAGEMENT**

The Bar is exposed to various risks of loss related to torts, theft or damage to and destruction of assets, and natural disasters for which the Bar carries commercial insurance. The Bar does not engage in risk financing activities where the risk is retained (self-insurance) by the Bar. For the past three years insurance coverage has been sufficient to cover any losses.

**NOTE 13 - COMMITMENTS AND CONTINGENCIES**

The Bar is a defendant in various lawsuits. The outcome of these lawsuits is not determinable at this time; however it is the opinion of management, based on the advice of in-house counsel, that the ultimate disposition of these lawsuits will not have a materially adverse effect on the financial statements.

**NOTE 14 - SUBSEQUENT EVENTS**

In December 2007, the Bar exercised an option to purchase the newly constructed Bar building for approximately \$17.5 million. The builder/owner responded to exercise its right to extend the closing date on the sale of the building to no later than January 26, 2009.

In February 2008, the Bar received \$13 million in loan proceeds for the eventual purchase of the new building. The loan is secured by the lender's first lien on interim securities, which were deposited by the Bar into a money market mutual fund invested exclusively in short-term money market instruments that consist of U.S. government obligations and repurchase agreements collateralized by U.S. government obligations. Once the bar purchases the building, the interim securities will be liquidated and applied to the purchase of the building. The new building becomes the security for the new loan agreement.

The loan payments are \$77,859 beginning March 15, 2008. The loan term is fifteen years with the payments amortized over thirty years at an interest rate of 5.99%.

In January 2008, the Bar entered into a lease agreement with the builder/owner with a monthly base rate of \$99,305. The Bar also entered an agreement with the PLF to sub-lease approximately 18,000 r.s.f. The lease term is fifteen years and the monthly base rent is \$38,248. PLF occupied the space on February 15, 2008.

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

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

We have audited the financial statements of the Oregon State Bar Fund (the Bar), a fund of the Oregon State Bar, as of and for the two-years ended December 31, 2007, and have issued our report thereon dated May 5, 2008. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

***Internal control over financial reporting***

In planning and performing our audit, we considered the Bar's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Bar's internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control over financial reporting that we consider to be significant deficiencies.

A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Bar's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Bar's financial statements that is more than inconsequential will not be prevented or detected by the Bar's internal control. We consider the deficiency described in the accompanying schedule of findings and responses as item 2007-1 to be a significant deficiency in internal control over financial reporting.

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS – (continued)**

A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Bar's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. However, we believe that none of the significant deficiencies described above is a material weakness.

**Compliance and other matters**

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

We noted certain matters that we reported to management of the Oregon State Bar in a separate letter dated May 5, 2008.

The Bar's response to the finding identified in our audit is described in the accompanying schedule of findings and responses. We did not audit the Bar's response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the Board of Governors, and management, and is not intended to be and should not be used by anyone other than these specified parties.

*Moss Adams, LLP*

Portland, Oregon  
May 5, 2008

Item 2007-1: Controls over payroll processing could be improved

*Criteria:* Procedures should be in place to monitor payroll processing and ensure adequate preventive and detective controls are in place that identify and correct errors (unintentional or otherwise) as close to the point of origination as possible. One such control is to have adequate segregation of duties that limits the ability of an individual from having significant control over any one process.

*Condition:* During the audit we found that controls over payroll processing could be improved. Specifically, we found that the payroll clerk creates a document from employee timesheets which they use to enter data into the system, including their own time. This document is not independently reviewed nor is the final payroll register before processing. Once payroll is processed, the payroll clerk prepares the journal entry which is also not reviewed. The payroll clerk also has access to update the payroll processing system master file. Finally, we found one payroll monthly reconciliation that was either missing or not performed.

*Cause:* Management has not implemented adequate preventative and detective internal controls over the payroll process.

*Effect:* Improper internal controls increase the risk of inaccurate payroll expenses and the risk of payroll misappropriation.

*Recommendation:* We recommend that management implement procedures to increase the control framework over payroll processing. Specifically, management should consistently review the payroll clerk's time entered, the payroll register and employee change report; limit access to the payroll processing system master file to human resources; and review the journal entry to record payroll expense prior to posting.

*Management's Response:*

*Management agrees. In January 2008, management implemented a set of payroll review procedures to strengthen internal controls in payroll processing.*

**Communications with Those Charged with Governance under SAS No. 114**

To the Board of Governors  
Oregon State Bar

We have audited the financial statements of the Oregon State Bar, Oregon State Bar Fund (the "Bar") as of and for the two-years ended December 31, 2007, and have issued our report thereon dated May 5, 2008. Professional standards require that we provide you with the following information related to our audit.

**OUR RESPONSIBILITY UNDER AUDITING STANDARDS GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA**

As stated in our engagement letter dated November 27, 2007, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Our responsibility is to plan and perform the audit in accordance with generally accepted auditing standards and to design the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control over financial reporting. Accordingly, we considered Bar's internal control solely for the purposes of determining our audit procedures and not to provide assurance concerning such internal control.

We are also responsible for communicating significant matters related to the financial statement audit that, in our professional judgment, are relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

**PLANNED SCOPE AND TIMING OF THE AUDIT**

We performed the audit according to the planned scope and timing previously communicated to you in the engagement letter dated November 27, 2007.

**SIGNIFICANT AUDIT FINDINGS****Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Oregon State Bar are described in Note 1 to the financial statements. No new accounting policies were adopted and there were no changes in the application of existing policies during 2006 or 2007. We noted no transactions entered into by the Bar during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.



**Significant Accounting Estimates**

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were.

Management's estimate of the allowance for doubtful accounts is based on management's estimate of historical losses and specific prior and current member dues. We evaluated the key factors and assumptions used to develop the allowance for doubtful accounts in determining that it is reasonable in relation to the financial statements taken as a whole.

Management's estimate of the fixed asset lives and depreciation methods is based on approximating cost of the asset over its useful life. We evaluated the key factors and assumptions used to develop the fixed asset lives and depreciation methods in determining that it is reasonable in relation to the financial statements taken as a whole.

**Financial Statement Disclosures**

The disclosures in the financial statements are consistent, clear and understandable. Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosure affecting the financial statements was:

Disclosure of Subsequent Events in Note 12 to the financial statements describing the loan commitment and election to purchase the new Oregon State Bar Center

**Significant Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We did not have any adjusting or passed journal entries.

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated May 5, 2008.

**Management Consultation with Other Independent Accountants**

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a “second opinion” on certain situations. If a consultation involves application of an accounting principle to the Bar’s financial statements or a determination of the type of auditor’s opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

**Other Significant Audit Findings or Issues**

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Bar’s auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

During the course of our audit we identified other best practices that we discussed with management during the course of our audit and are communicated below.

**Other Communications & Best Practices**

***Monthly reconciliations***

ISSUE

Reconciliations of general ledger account activity should be completed and reviewed during the monthly financial close and reporting process.

FINDING

During our audit, we found that reconciliations for accounts payable, investment accounts, and the payroll bank account were prepared but not reviewed by an individual independent of the preparation process. Additionally, the investment reconciliation was not prepared monthly.

RECOMMENDATION

To function as a detective control, we recommend management ensure all reconciliations are completed monthly and independently reviewed to ensure errors are identified and corrected timely that could have a significant impact on the financial statements.

***Disbursement controls***

ISSUE

The individual who reviews changes to approved vendor master files should not have access to modify vendors in the system. In addition, according to the Oregon State Bar's policy, all disbursements should be reviewed by the accounting supervisor and the chief financial officer.

FINDING

During our review of controls over the financial system, we found that the same individual who has access to add or change vendors in the vendor master file, also reviews the activity log of changes to the vendor master file each month. During our control testing of disbursements, we found two of eighteen disbursements that, while reviewed by the accounting supervisor, were not reviewed by the chief financial officer.

RECOMMENDATION

We recommend management ensure the activity log of changes to the vendor master file is reviewed by someone without access to modify vendors and ensure all disbursements are reviewed by the CFO.

***Fixed asset policies***

ISSUE

Policies and procedures provide for the standardization of accounting principles and maintain consistency for management decisions and controls.

FINDING

The Oregon State Bar has not formally documented its policy regarding fixed asset capitalization and fixed asset useful lives.

RECOMMENDATION

We recommend management document the capitalization and useful life policy of fixed assets to ensure the policy is consistently followed.

***Cash Receipt Controls***

ISSUE

Incoming checks should be restrictively endorsed immediately upon opening.

FINDING

During our audit we found that incoming mail is distributed to the various departments before the checks are restrictively endorsed, increasing the risk that checks may be misappropriated.

RECOMMENDATION

We recommend management ensure checks are restrictively endorsed immediately upon opening the mail.

We have reviewed all matters discussed herein with the appropriate Oregon State Bar personnel. We would be pleased to meet and discuss the recommendations and comments and offer further assistance as appropriate. We would, of course, be pleased to assist in the implementation or resolution of any of these matters.

We were pleased to serve and be associated with the Oregon State Bar as its independent auditors for 2007. We provide the above information to assist you in performing your oversight responsibilities. This information is intended solely for the use of the Board of Governors and management of the Oregon State Bar and is not intended to be and should not be used by anyone other than these specified parties.

*Moss Adams, LLP*

Portland, Oregon  
May 5, 2008

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 7, 2008  
From: Tim Gerking, Chair, Policy and Governance Committee  
Re: Implementation of 18-Member Board of Governors

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### Action Recommended

Approve the proposed implementation plan for adding two new board members to the Board of Governors.

### Background

In February, the BOG approved the Committee's redistricting recommendation which included adding two new lawyer members to the board. The legislation to accomplish that by amending ORS 9.025 has been submitted to Legislative Counsel's Office. It includes language that allows the BOG to assign a shorter term to some board members "as it deems appropriate" when implementing changes in the board's composition. The Policy and Governance Committee has developed a proposal (see chart on next page) for adding the two new board members with staggered terms so that the number of board members elected each year remains as constant as possible.

The chart contemplates that the bar's bill amending ORS 9.025 will be approved without controversy and with an emergency clause that will make it effective upon signature by the Governor. If that happens by early May, the new board members can be elected in the 2009 election cycle for terms that will begin in January 2010.<sup>1</sup> Otherwise, the implementation will be moved forward until 2011.

The proposal has the new Region 4 member being elected initially for a 2-year term, and the new Region 7 member being elected for a full 4-year term. If both new members are elected to four year terms beginning in 2010, there would be six positions open at the end of 2013. Staggering the terms as proposed will result in the number of open positions alternating each year between 4 and 5. This is as close to the current 4/year turn-over as possible with 18 members.

The Committee discussed the possibility of giving a 2-year term to one of the two Region 5 positions that will be open for 2010. However, in the event the legislation doesn't become effective in time for the May 2009 election cycle, the BOG's authority to assign shorter terms won't be effective and all open positions will need to be 4-year terms.

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<sup>1</sup> Nominating petitions for the 2009 election will be due May 12, 2009 in order to allow time for the statutory challenge procedure before the ballots can be mailed in October. The ballots would be due October 19, 2009. We can inform the membership and solicit candidates for the new positions, subject to the passage of the amendments.

Region/Seat	Terms Ending												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
1 (CS)													
2 (GG)													
3 (TG)													
4/1 (AF)													
4/2	-----n/a---												
5/1 (RY)													
5/2 (WG)													
5/3 (TW)													
5/4 (KJ)													
5/5 (CK)													
5/6 (SP)													
6/1 (KE)													
6/2 (GJ)													
7	-----n/a---												
PM 1 (BW)													
PM 2 (RV)													
PM 3 (RL)													
PM 4 (AM)													
Open Seats	4	4	4	5	4	5	4	5	4	5	4	5	4

**OREGON STATE BAR**  
**Legislative Proposal**  
**Part I – Legislative Summary**

**RE:**                   **Increasing the size of the OSB Board of Governors**

**Submitted by:**       **Oregon State Bar**

**Legislative Contact(s):**   **Susan Grabe**  
  **Phone : (503) 431-6380**  
  **E-mail: sgrabe@osbar.org**

**This bill would amend ORS Statute(s):**   **ORS 9.025**

**1. PROBLEM PRESENTED (including level of severity):**

Since 1996, ORS 9.025(2) has required the OSB Board of Governors to divide the state into regions for the purpose of electing members of the board (the same regions are used for electing delegates to the House of Delegates pursuant to ORS 9.136). The statute also requires that “to the extent that it is reasonably possible,” the regions shall be configured so that “the representation of board members to attorney population in each region is equal to the representation provided in other regions.”

The Board undertook its first review of the regions under revised ORS 9.025 in 1997 and made only minor changes in the configuration of the six regions that had existed since 1972. In addition to achieving a “one person/one vote” representation as nearly as possible, the board was influenced by members’ desire that regions include only contiguous counties with common interests. The deviation from equal representation in the six regions ranged from -4.5% to +15.2%. By 2007, due to changing demographics in the bar, the deviation spread was from -14.3% to +21.7%.

**2. SOLUTION:**

The Board studied several options and ultimately concluded that the most equal representation could be accomplished by re configuring some regions and adding two lawyer members to the Board of Governors. The proposal alters existing regions by moving Lincoln County from Region 3 to Region 4; moving Yamhill County from Region 6 to Region 4; moving Benton and Linn Counties from Region 3 to Region 6; moving Klamath County into Region 3; and creating a seventh region out of Clackamas County. One of the new board members will represent the enlarged Region 4 and the other will represent the new Region 7. Under this plan, the deviation from equal representation ranges from -0.3% to +17.7%. The proposed plan also retains regions comprised of contiguous counties.

The alteration and addition of regions is contemplated by existing language ORS 9.025. The proposed statutory amendment would enlarge the board by the two new lawyer members. It would also allow the board to assign a shorter term to one or more board members as necessary to implement changes in the regional configuration so as to assure staggered terms and relatively even size of the “classes” of the board.

3. PUBLIC POLICY IMPLICATION of this proposed legislative change:

a. Has this been introduced in a prior session?

i. Year \_\_\_\_\_

ii. Bill # \_\_\_\_\_

b. Does this amend current law or program?

i. Yes  Specify ORS 9.025

ii. No \_\_\_\_\_

4. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education?

No

5. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?

No

6. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

Bar members in nearly every region will be impacted by the proposed change. The proposal has been distributed to the membership for the past several months and there have been no negative reactions.

OREGON STATE BAR  
Legislative Proposal  
Part II – Legislative Language

**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~~] **18** members. [~~Twelve~~] **Fourteen** 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.

(3) Members of the board of governors may be elected only by the active members of the Oregon State Bar who maintain their principal offices in the regions established by the board. The term of a member of the board is four years, **except that the board may assign a member a shorter term as it deems appropriate in implementing changes in the configuration of board regions pursuant to subsection (1).**

(4) No judge of a municipal, state or federal court or any other full-time judicial officer, shall be eligible for appointment or election to the board of governors.

(5) The term of any member of the board of governors shall terminate on the date of the death or resignation of the member, or if the member is required to be a member of the Oregon State Bar, the term terminates on the date:

(a) Of the termination of active membership in the Oregon State Bar by the member for any reason;

(b) When the member discontinues to maintain the principal office of practice in the region in which it was maintained at the time of the appointment or election of the member; or

(c) When the member assumes office as a judge of a municipal, state or federal court, or fills a full-time judicial office.

(6) No member of the board of governors shall be eligible, during the term of office, for service pro tempore as a judge of any municipal, state or federal court. [1973 c.114 §1; 1981 c.193 §3; 1993 c.307 §1; 1995 c.302 §1]

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: April 4, 2008  
Memo Date: May 9-10, 2008  
From: Tim Gerking, Chair, Policy and Governance Committee  
Re: Alternate Delegates for Sections and Local Bars at HOD Meetings

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### Action Recommended

Approve a proposal to amend the HOD Rules to allow for alternate delegates when the Section chair or local bar president is unable to attend.

### Background

At several recent occasions, the Board has discussed declining attendance at House of Delegates meetings, particularly among the section and local bar delegates. During some of those discussions, it was suggested that attendance might be improved if sections and local bars could designate an alternate delegate.

The composition of the OSB House of Delegates is established by ORS 9.136:

**9.136 House of delegates created; membership; terms.** (1) The house of delegates of the Oregon State Bar is created. The house consists of elected and ex officio voting delegates. All delegates must be active members of the state bar except for the public members of the board of governors and the public members appointed by the board pursuant to ORS 9.145.

(2) The members of the board of governors of the Oregon State Bar are ex officio voting delegates.

(3) The *chairperson of each Oregon State Bar section* is an ex officio voting delegate.

(4) The *elected president of each county bar association* is an ex officio voting delegate. Not more than one county bar association from each county may be represented by a delegate under this subsection.

\* \* \*

The rules for conduct of business by the HOD are established by the Board of Governors and adopted by the house:

**9.142 Rules for conduct of business; meetings.** (1) The board of governors shall formulate rules for the conduct of the business of the house of delegates. Rules adopted by the board become effective upon the adoption of the rules by the house of delegates. The president of the Oregon State Bar may call special meetings of the house. The president shall call a special meeting of the house if 25 or more delegates make a written request for a special meeting. A majority of the total number of delegates constitutes a quorum for any regular or special meeting of the house.

\* \* \*

The HOD Rules provide that the conduct of meetings, to the extent not addressed elsewhere, shall be in accordance with Robert's Rules of Order:

2.3. Proceedings of the House of Delegates shall be governed by the Bar Act, the bylaws and policies of the State Bar, these rules and the current edition of Robert's Rules of Order Newly Revised.

At the time the HOD was created, there was discussion about various aspects of the body, including whether to allow for voting by alternates in the absence of an elected or ex officio delegate. The ultimate decision to prohibit voting by alternates is reflected in the HOD Rules that were adopted at the first HOD meeting 1996:

3.1. Delegates shall be selected as provided in the Bar Act and the bylaws and policies of the State Bar. *There shall be no alternate delegates.*

Allowing for alternate delegates should be distinguished from "proxy voting." A proxy is technically a power of attorney given by one person to another to vote in his stead. The term also refers to the person who is given the power of attorney. Proxy voting is generally not allowed in ordinary deliberative assemblies unless the laws of the state or the charter or bylaws of the organization provide for it. Proxy voting is considered incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal and nontransferable. By contrast, in a stock corporation, ownership is transferable and the voice and vote of the member is also transferable by use of a proxy.<sup>1</sup>

Unlike the OSB House, many assemblies specifically provide for the election or appointment of alternate delegates. In fact, this is a recommended practice to ensure as complete representation at the convention as possible.<sup>2</sup> Alternates are generally elected with a designated order in which they will be called to serve as vacancies arise in the delegation of their constituent unit.

It is also common practice, where the president or chief officer of each constituent local unit is a delegate, that if the president of a constituent unit cannot be present at a meeting of the body, his place is taken by the vice-president or next ranking officer, just as for any other duty in which the vice-president acts in the president's place.<sup>3</sup>

This was the approach adopted by General Counsel the first time a local bar president was unable to attend a HOD meeting. Because the bylaws of the local bar authorized the vice-president to act in the president's absence, we concluded that the vice-president could stand-in for the president at the HOD meeting without violating the prohibition against alternate delegates.<sup>4</sup> It is believed that we have also allowed the chair-elect of a section to substitute the elected section chair as HOD delegate, because the Standard Section Bylaws clearly contemplate the chair-elect as a stand-in for the chair on all official duties.<sup>5</sup>

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<sup>1</sup> §45, Robert's Rules of Order, 10<sup>th</sup> Edition, p. 414.

<sup>2</sup> §58, Robert's Rules of Order, 10<sup>th</sup> Edition, p. 585.

<sup>3</sup> Id at p. 584-585

<sup>4</sup> We have never demanded proof that a local bar's bylaws so provide.

<sup>5</sup> The Standard Section Bylaws provide, in pertinent part: "Section 1. The officers of the Section shall be the Chair, Chair-Elect, Immediate Past Chair, Secretary, Treasurer and such other officers as may be determined to

Continuing to allow the officially-designated substitutes to attend the HOD meeting in the place of the section chairs and local bar presidents would not necessarily require a change in HOD Rules because they are not “alternate delegates” as that term is commonly used in connection with delegate assemblies. On the other hand, the distinctions between alternates and proxies are not clear to many people and amending the HOD Rules will aid in understanding. An additional benefit of amending the HOD Rules would be the opportunity to identify who could serve in the stead of an ex officio delegate where the bylaws of the groups don’t expressly designate who can act for the elected president or chair. While some sections and local bars might appreciate an even broader permission to send any member as a delegate, allowing alternates who are not in the chain-of-command of the section or local bar (even informally) would likely stray too far from the statutory designation.

Based on the foregoing, the Policy and Governance Committee recommends that the BOG propose the following amendment to HOD Rule 3.1. This proposal allows for alternate delegates for sections and local bars, but retains the prohibition for the other ex officio and for the elected delegates:

3.1. Delegates shall be selected as provided in the Bar Act and the bylaws and policies of the State Bar. There shall be no alternate delegates, except that a section or local bar association may designate an alternate delegate, provided the alternate delegate is a person duly authorized in the organization’s bylaws or otherwise to act in the section chair’s or bar president’s stead.

Amendments to HOD Rules must be approved by the HOD; if the Board approves this recommendation, it will be included in the agenda for the HOD meeting in September 2008.

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be necessary by the membership....**Section 2.** The Chair, or the Chair-Elect in the absence of the Chair, shall preside at all meetings of the Section and of the Section Executive Committee....**Section 3.** ...The Chair-Elect shall aid the Chair in the performance of the Chair’s responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair’s term or disability.

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 8, 2008  
From: Tim Gerking, Chair, Policy and Governance Committee  
Re: Proposed Amendment of OSB Bylaw 7.102 (Borrowing)

---

### Action Recommended

Approve the following amendment to OSB Bylaw 7.102 to clarify the BOG's borrowing authority.

### Background

ORS 9.010(2) gives the bar broad power "for the purpose of carrying into effect and promoting its objectives" to "lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property." The authority to acquire property must implicitly include the authority to borrow for that purpose. The Bar did so in 1986 to acquire the Meadows Road building (and, presumably, in earlier years to acquire the Madison Street building).

ORS 9.080(1) provides that the board "is charged with the executive functions of the state bar...." Because the bar is authorized to acquire real property, the board's administrative and managerial powers must include borrowing authority to accomplish the acquisition.

Interestingly, however, the only specific guidance on borrowing is in OSB Bylaw 7.102:<sup>1</sup>

#### **Subsection 7.102 Borrowing**

The President and either the Executive Director or the Chief Financial Officer acting for and on behalf of the Bar, are authorized and empowered:

(a) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender, a sum not exceeding the aggregate amount on deposit with the lender in savings accounts, certificates of deposit or other evidence of assets on deposit.

(b) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.

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<sup>1</sup> The genesis of this bylaw is not clear. It comes verbatim from the *former* BOG Policies that were superseded by amended bylaws in 2003 and virtually identical language has been in place at least since 1993 (the oldest of the *former* BOG Policies that could be located). The apparent purpose of the borrowing limitations is to prevent the named individuals from engaging in imprudent financial transactions.

(c) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.

(d) To execute and deliver to any lender any financing statements, security agreements or other instruments in writing, of any kind or nature, that may be necessary to complete a financial transaction.

(e) To draw on or endorse to any lender the savings on deposit or to dispose of the proceeds there from as may be deemed advisable.

(f) To perform other acts and to execute and deliver to any lender other documents as may be deemed reasonable, necessary or proper.

Paragraph (a) permits borrowing only of “a sum not exceeding the aggregate amount on deposit with the lender.” Paragraph (b) authorizes the execution of “the note.” Paragraph (c) allows pledge of savings on deposit with the lender as security for a loan. All three paragraphs contemplate borrowing only from an institution in which the Bar has savings and in an amount not to exceed the funds on deposit, which can then be pledged to secure the loan.

Paragraph (d) may give broader borrowing authority because it appears to authorize the execution of “instruments...of any kind” necessary to complete a financial transaction. Arguably, this would allow the execution of a note that memorializes borrowing other than of the kind described in paragraphs (a)-(c).

Paragraph (e) might arguably be read to authorize the transfer of savings on deposit to “any lender” for any purpose deemed “advisable.” More logically, however, it appears to limit the transfer of savings only to the lender at the institution where the savings are held (pursuant to paragraph (a)) and only for the purpose of satisfying the loan. Either way, it is not authorization to borrow. Paragraph (f) might be read as broad authority because the performance of “other acts” and the execution and delivery of documents to a lender “as may be deemed reasonable, necessary or proper” could certainly include borrowing to acquire property and documenting the transaction. However, such a broad reading of (f) seems inconsistent with the spirit of the other provisions of the bylaw.

It is also significant that Bylaw 7.102 authorizes the President and the ED, or the President and the CFO, to engage in the enumerated transaction “acting for and on behalf of the bar,” without needing prior consent of or subsequent ratification by the entire BOG. Finally, even if Bylaw 7.102 is read in its narrowest sense, it cannot logically be read to prohibit the BOG from authorizing other transactions not enumerated, provided they are within the power granted by ORS 9.010.

In the interest of eliminating any confusion, the Policy and Governance Committee recommends amending Bylaw 7.102 to add expressly authorize borrowing not limited to the amount of funds on deposit with the lender:

***Subsection 7.102 Borrowing***

(a) The President and either the Executive Director or the Chief Financial Officer acting for and on behalf of the Bar, are authorized and empowered:



(a1) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender and approved by the Board, a sum not exceeding the aggregate amount on deposit with the lender in savings accounts, certificates of deposit or other evidence of assets on deposit deemed prudent and necessary to effectuate the mission of the Bar.

(b2) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.

(e3) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.

(d4) To execute and deliver to any lender any financing statements, security agreements or other instruments in writing, of any kind or nature, that may be necessary to complete a financial transaction.

(e5) To draw on or endorse to any lender the savings on deposit or to dispose of the proceeds there from as may be deemed advisable.

(f6) To perform other acts and to execute and deliver to any lender other documents as may be deemed reasonable, necessary or proper.

(b) The President and either the Executive Director or the Chief Financial Officer acting for and on behalf of the Bar, are also authorized and empowered to execute and deliver documents to any lender to memorialize or otherwise complete any borrowing or other financial transaction that has been previously authorized by the Board of Governors.

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 8, 2008  
From: Tim Gerking, Chair, Policy and Governance Committee  
Re: Endorsement of Judicial Candidates by the BOG and Sections

---

### Action Recommended

Approve amendments to the OSB Bylaws and Standard Section Bylaws to clarify the authority of the respective groups to endorse judicial candidates.

### Background

Recently the Debtor-Creditor Section sent a letter to the Office of the Circuit Executive (Ninth Circuit Court of Appeals) endorsing the reappointment of US Bankruptcy Judge Frank Alley. President Yugler, who was provided with a copy of the letter, questioned whether the Section's action was authorized.

Standard Section Bylaw Article I, Section 3 would appear to expressly prohibit the Debtor-Creditor's recommendation, assuming that a "campaign" encompasses the reappointment process:

**Section 3.** The Section shall not participate in or intervene in any political campaign on behalf of any candidate for public office (including the publishing or distribution of statements supporting any candidate.)

Judicial endorsements by the board are addressed in the OSB Bylaws in two places. Bylaw 2.103 prohibits individual BOG members from public involvement in judicial campaigns or appointments:

The members of the Board must refrain from public involvement in judicial campaigns and appointments that in any way identifies them as members of the Board, officers of the Bar, or otherwise representing the Oregon State Bar.

The bylaw does not prohibit individual board members from *private* involvement in judicial campaigns and appointments nor does it prohibit the BOG as a group from participating in judicial campaigns or endorsements. The latter practice is addressed in Bylaw 2.7, which provides generally:

#### ***Subsection 2.700 General***

If requested by the appropriate appointing authority, the Board will participate in a state or federal judicial selection process. Any poll conducted by the Bar or the recommendation of the Board will be for informational purposes only and will not constitute the official position of the Bar. Certified election results will be made available as promptly as possible to the press, to the candidates, to the appointing authority and otherwise as the Board may direct.

The remaining provisions of Bylaw 2.7 lay out the process by which the Bar will participate in circuit court or statewide judicial elections and appointments. Other than in the introductory provision above, no mention is made of federal judicial selection.<sup>1</sup>

OSB Bylaw Subsection 2.700 by its terms applies only to situations in which the Board is “requested by the appropriate appointing authority.” Nothing in the plain language of the bylaw prohibits the BOG from volunteering a recommendation or endorsement of any candidate for state or federal judicial office, and a statement of support by the BOG (or a Section) for a candidate will serve the public interest in many cases. There may also be important policy reasons not to do so in other cases.

Clarification as to the authority of Sections as well as the Board of Governors to recommend or endorse judicial candidates would be helpful. The Policy and Governance Committee recommends the following amendment to the Standard Section Bylaws:<sup>2</sup>

**Section 3.** The Section shall not participate in or intervene in any political campaign on behalf of any candidate for public office (including the publishing or distribution of statements supporting any candidate-) except that the Section may recommend or endorse candidates for state or federal judicial office with prior approval of the Board of Governors.

and the following amendment of the OSB Bylaws:

**Subsection 2.700 General**

If requested by the appropriate appointing authority, the Board will participate in a state or federal judicial selection process. Any poll conducted by the Bar ~~or the recommendation of the Board~~ will be for informational purposes only and will not constitute the official position of the Bar. Certified election results will be made available as promptly as possible to the press, to the candidates, to the appointing authority and otherwise as the Board may direct. In addition, the Board may, in its discretion, recommend or endorse any candidate for a state or federal judicial position. Any such recommendation will constitute only the position of the Board and not of the membership as a whole.

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<sup>1</sup> The second sentence in the bylaw is somewhat confusing because while a recommendation of the board might not constitute “the official position of the Bar,” it clearly constitutes the official position of the Board of Governors.

<sup>2</sup> The Standard Section Bylaws are the bylaws of all sections unless the section affirmatively seeks authority of the BOG to adopt different bylaws.

**Addendum to  
Policy and Governance Committee Memorandum  
Endorsement of Judicial Candidates**

Following discussion this morning, the Policy and Governance Committee withdraws its recommendation to amend the Standard Section Bylaws to allow sections to endorse judicial candidates with prior approval of the Board of Governors. Instead, the Committee recommends the following amendment to the Standard Section Bylaws to prohibit such endorsements altogether:

**Section 3.** The Section shall not participate in or take a position with respect to the election or appointment of a candidate for any public office.

The Committee recommends amending OSB Bylaw 2.700 as proposed in the original memo but without the addition of the new language at the end.

## Top 10 Myths About Oregon's New Government Ethics Laws

1. Lots more public officials will be required to report information with the ethics commission.

(Truth: A few counties and cities that previously were exempt from the SEI reporting were added, but otherwise there are not new categories of people who must report. A hodge-podge of cities and counties were previously exempt because they were not incorporated in 1974 or the voters didn't approve the ethics measure back in 1974. Now all cities and counties will be treated the same.)

2. All gifts, even small gifts, received by public officials must be reported to the ethics commission.

(Truth: Gifts received will not be reported by the public official to the commission at all. There is a new yearly gift limit of \$50. Because of the low gift limit, best practices would be to keep personal records of gifts received from each source so as not to go over the limit. Note: Registered lobbyists and persons employing lobbyists, however, must report expenditures. In addition, certain items defined as "not gifts" must be reported by SEI filers.)

3. Every time a public official violates an ethics law (and even if due to ignorance of the new law), the official will be slapped with a big \$5,000 fine.

(Truth: The maximum fine that the ethics commission may impose did increase from \$1,000 to \$5,000. The maximum had not been changed since 1974. However, the commission has had and will continue to have, discretion in imposing fines. Most cases settle for much lower fines. To help standardize fines, the new law also requires the commission to adopt by rule criteria for determining the amount of civil penalties that the commission may impose. In addition, the commission now will have statutory authority to issue letters of reprimand, explanation, or education in lieu of imposing a civil penalty.)

4. If a public official approved, worked on, researched, or assisted in any way with a public contract, that public official can not later benefit from that contract.

(Truth: Conflict of interest ethics rules will continue to govern this area of law. That is, a public official will have had a conflict of interest if they knew they would benefit from a contract they authorized and the class exception did not apply. The new law does add a more specific objective prohibition, providing that a public official may not, for "two years after the person ceases to hold a position as a public official, have a direct beneficial financial interest in a public contract that was authorized" by the public official. Pending administrative rules likely will define what "authorized" means.)

5. Fire victims in a neighborhood can no longer bring down pizzas to the local firehouse to thank the firefighters.

(Truth: Firefighters, including volunteer firefighters are public officials. However, most neighbors won't have a "legislative or administrative interest" with the firefighters or fire district. There are no longer any gift dollar limits for persons without a "legislative or administrative interest." The class exception must also be kept in mind when determining whether a person has a legislative or administrative interest. Only if the giver has an administrative or legislative interest, and there is no class exception, would the pizza value need to be kept to the new \$50 per year limits.)

\*\* Prepared by Wendy J. Johnson, Deputy Director and General Counsel, Oregon Law Commission

Disclaimer: This information is not intended to constitute legal advice and should not be relied upon in lieu of consultation with the Ethics Commission or your legal counsel.

November 15, 2007

6. Public officials can no longer attend charity dinners if someone else pays for their ticket.

(Truth: Maybe not a myth. Unless one of the special exceptions applies, charity dinners will be treated as gifts subject to the \$50 per person per year limit (unless the giver does not have a legislative or administrative interest). However, pending administrative rules may provide that the benefit/value to the official is the value of the meal itself, and not the contribution to the charity (i.e. ticket price minus cost of food).)

7. The new ethics laws substantially broaden the relatives/household members to which the gift limits apply.

(Truth: The ethics laws have always applied to relatives of public officials as well as members of the household. The definition of relative for most ethics law purposes was broadened to include 1) domestic partners; 2) spouses of siblings (old law had covered siblings, but not their spouses); 3) any individual for whom the public official has a legal support obligation; 4) and any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment. The definition of member of the household now means any person who resides with the public official. Note: The definition of "relative" for purposes of the nepotism law is much broader.)

8. Public officials can no longer work in the same public body as any of their relatives.

(Truth: A public official generally may not appoint, employ, or promote a relative (new broader definition). However, the public body or another individual in the public body may appoint, employ, or promote a public official's relative. This was covered under general conflict of interest rules before, but people found those rules difficult to understand in the employment context. Thus, a specific nepotism rule was codified to largely reflect practice and ethics opinions.)

9. All persons who lobby "legislative officials" or "executive officials" at any level of government will be subject to the lobbying registration and new reporting requirements of the lobbying laws found in ORS Chapter 171.

(Truth: The definition of "lobbying" continues to focus only on those who influence or attempt to influence "legislative action." "Legislative action" is narrowly defined to cover matters that are the subject or may be subject to action by either house of the Legislative Assembly, committee of the Assembly, or the approval or veto of the Governor. Note: ORS Chapter 244 regulates public officials at all levels of government, but the laws regulating lobbyists are focused only on state legislative action.)

10. The new ethics laws had an emergency clause and thus all these new ethics laws took effect upon the Governor's signature on July 31, 2007—and we don't know what the new rules require!

(Truth: The two large ethics reform bills, SB 10 and HB 2595, passed during the 2007 Legislative Session did have Emergency Clauses-- making them effective on signing. However, the bills also had extensive operative date provisions. Nearly all sections of the bills do not become operative until January 1, 2008. Thus, the emergency clauses were really there only to allow the commission to start producing forms, rules, etc. to prepare for the operative date of January 1, 2008.)

\*\* Prepared by Wendy J. Johnson, Deputy Director and General Counsel, Oregon Law Commission

*Disclaimer:* This information is not intended to constitute legal advice and should not be relied upon in lieu of consultation with the Ethics Commission or your legal counsel.

November 15, 2007

# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community

May 2008 Volume 54, Number 5



## "May it Please the Court" and Measure 51

By Thom Brown, MBA President.

I was asked to write a column about my principal practice area - appeals - and our appellate courts. I decided to also include some thoughts on Ballot Measure 51, which has qualified for the November ballot.

Roughly 150 times over the last 27 years, I've stood before three or seven appellate court judges and said "May it please the court." I never tire of the phrase. In fact, to be honest, even today I get a chill down my spine because I know that, for the next 20 or 30 minutes, I'll have a conversation with judges, who I must often know well and who are seeking my help in discharging their responsibility of determining whether a trial court erred and very often, in doing that, develop the law. And I never tire of writing briefs, a creative and challenging process that forces me to write clearly, simply and persuasively. All in all, I just really enjoy being a small part of a process that helps develop (and properly apply) the law. What can I say - I'm a true "appellate geek."

I never planned (at least consciously) on being a lawyer, let alone an appellate lawyer. I decided to go to law school because I didn't know what else to do at 24 after concluding that I didn't want to stay in Minneapolis and go into my father's business. I settled on Lewis & Clark because of its night program and because I fell in love with Portland on my very first visit. I settled in on being an appellate lawyer because: (1) I really enjoyed writing my first appellate brief in law school; (2) I had a great experience being a clerk at the Court of Appeals after law school; and (3) my firm needed an appellate lawyer. It may sound corny, but, a lot like what happened on my first visit to Portland, I fell in love with appellate work after handling my very first appeal. Twenty-seven years later, I still feel the same way.

During my career, I've been fortunate to have been involved in a lot of appellate-related activities - the Oregon Rules of Appellate Procedure Committee and the OSB Appellate Practice Section Executive Committee, to name a couple. Most meaningfully, I was appointed in 2003 to a committee tasked with looking at both how our legislature interacts with our appellate courts and impacts their work and how our appellate courts did their jobs. Appellate lawyers, former appellate judges and legal counsel for both courts met over a year, eventually preparing a report of almost 100 pages. The report, which included a number of meaningful and thoughtful recommendations, was given to both appellate courts. If, for some reason, you want to read the report, let me know and I'll get you an electronic copy.

Unfortunately, there has not been (at least not yet) any formal follow-up to the appellate process committee's 2004 report. I particularly hope that there is future follow-up on the committee's recommendations regarding the relationship between the judicial

branch and the legislative branch, judicial branch funding, and the process the legislature should go through when adding to the burdens of our appellate courts by passing new laws or requiring certain kinds of appeals be handled directly by the Supreme Court or by one or both appellate courts in an expedited way. To me, all of these issues are vitally important to the existence of healthy, well-functioning appellate courts. When (not if) there is follow-up, I hope I have a chance to be involved.

Recently, I had lunch with Oregon Supreme Court Chief Justice Paul J. De Muniz and Oregon Court of Appeals Chief Judge David V. Brewer to talk about the committee's report, the responses by each court, and the future of our appellate courts generally. While I can't "do justice" to what we discussed in the limited space of this column, I did want to, at least, provide some highlights.

Both Chief Justice De Muniz and Chief Judge Brewer took the appellate process committee's work very seriously. Both judges are also deeply committed to doing all they can to make sure that Oregon's appellate courts process their important work in a timely, highly professional and highly competent way. And both judges have led their courts in making real, meaningful changes to help achieve that goal.

The Court of Appeals has, since 2005, published annual reports detailing initiatives taken by that court and the progress it has made on those initiatives. I encourage you to read the reports, which are available on the appellate courts Web page. They reflect that court's deep dedication to its work and to serving well those who come to it for that work. While they cover a number of subjects, one addressed in the 2007 report is particularly noteworthy. In response to both the committee's perception and its internal view that motions work (something like 20,000 are filed a year) needed to be done more efficiently and timely, with the support of the Chief Justice, the Court of Appeals added another staff attorney to assist with motions and restructured Appellate Legal Counsel's office to adopt, in part, the Washington Motions Commissioner model.

Continued on page 9

## MBACLE

To register for a CLE, please see the inserts in this issue or go to [www.mbabar.org](http://www.mbabar.org).

### May

**Thursday, May 1**  
Settlement Conference and  
Mediation Advocacy  
Judge Kristena LaMar  
Sam Imperati

**Thursday, May 15**  
Annual Multnomah County  
Judges Trial Practices  
Judge Janice Wilson

**Tuesday, May 20**  
Civil Rights Litigation  
Michelle Burrows  
Elden Rosenthal

**Wednesday, May 28**  
Enforcing Family Law  
Judgments  
Mark Kramer  
Jeffrey Kershaw

**Thursday, May 29**  
Criminal Law for the Civil  
Practitioner  
Lane Burg

### June

**Monday, June 2**  
Nonprofit Entities  
Scott Howard  
Penny Setzer

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### MULTNOMAH BAR ASSOCIATION Annual Meeting, Dinner and Judges Reception

wednesday, may 21, 5 p.m.  
MARRIOTT PORTLAND DOWNTOWN  
waterfront  
1401 SW NAITO PARKWAY

Celebrating the profession and recognizing our colleagues

Professionalism Award Recipient  
Jeffrey M. Gatchelor

MBA Award of Merit  
Linda Meng

MBA YLS Award of Merit  
Denise N. Correll  
Yumi M. O'Neill  
Jayasha Smith

Pro Bono Award  
J. Chris Edwardsen  
Eric M. Kearney  
Joshua L. Ross  
Eric J. Waxler

RSVP by May 9.  
Invitations have been mailed separately.

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## Profile - The Honorable Timothy J. Sercombe Oregon Court of Appeals Judge

By Scott Shorr, Stoll Berne, and edited by Stephen Madkour, Multnomah County Attorney's office and Court Liaison Committee member. Edited and reprinted with permission from the OSB Appellate Practice Section.

Judge Timothy Sercombe began life in the middle of the country and has lived on both coasts. Born in Columbia, Missouri, his family moved to Connecticut where he attended junior high and high school. He graduated from Evanston's Northwestern University in 1971, concentrating on political science and history.

He was always drawn to law, but initially was discouraged from a legal profession by his college professors. One professor was concerned that the future judge was already a "linear" thinker and that law would only make him more so. To dip his toes in the water, Sercombe worked as a paralegal at the Sidley Austin firm in Chicago. Rather than stifle or dissuade him, the experience confirmed his ambition, as he enjoyed the experience of working in the legal field.

Befitting his Midwest roots, Judge Sercombe is straightforward and polite. His plainspoken style, however, does not hide his curious mind. It was that curiosity which first brought him to Oregon in the mid-seventies. He saw Oregon as a place for progressive and new ideas

that would challenge his thinking. He enrolled in the U of O Law School, where he graduated first in his class in 1976.

Judge Sercombe began his legal career as a clerk for the Oregon Supreme Court, initially with Justice Kenneth J. O'Connell. He fondly recalls Justice O'Connell as an academic-type, constantly interested in discussing current ideas. Justice O'Connell, who wanted written opinions to be more gender neutral, was more likely to talk with Sercombe about current issues of feminism than to discuss the latest draft of an opinion. Justice O'Connell retired mid-way through Judge Sercombe's clerkship and Sercombe went to work for Justice Berkeley "Bud" Lent. Judge Sercombe finished his clerkship helping Justice Hans A. Linde with a few opinions as well and has sought out Justice Linde for both legal advice and mentoring many times since then.

Following his clerkship, Judge Sercombe started at the Harrang Long firm in Eugene where he developed a practice representing local governments. He was the lead attorney for the City of Eugene

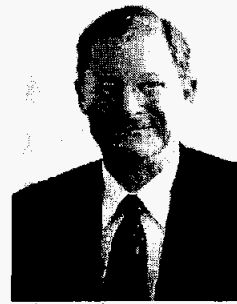
for years and also represented other cities and counties, where he developed skills in municipal law and appellate work. In 1991, Judge Sercombe moved to the Preston Gates firm where he further developed his municipal, land use and appellate practice. He remained in private practice until March 2007, when he was appointed to the Court of Appeals by Governor Ted Kulongoski.

As a judge, Sercombe has found the court to be far less "isolating" and "ivory tower" than he initially feared. He enjoys the intellectual camaraderie of the court, which he describes as "very collegial" with "no rancor." Judge Sercombe still feels as if he is settling into the job, which he sees as a two-year process before he feels he can reach a comfort level. While he draws upon his past experience in land-use and municipal law on occasion, he is new to many of the substantive areas of the court, such as criminal law, workers compensation and juvenile law. In addition to the new substantive areas, Judge Sercombe believes the transition

is difficult because of the different time demands on a judge as compared to private practice.

For advice, Judge Sercombe suggests attorneys focus their briefs as much as possible. While he readily admits that as an attorney he would repeat an argument many times to ensure his point was made, he finds those briefs more fatiguing as a judge, who has to read countless briefs. He urges attorneys to make their points concisely in a shorter argument section rather than many times over. He is very impressed with his fellow judges and is confident that they will spot an argument made well once. He is also impressed (and perhaps surprised, based on his pre-court notions) by the amount of vetting that an opinion gets from the clerks, staff attorneys, support staff and the judges themselves.

For oral argument, Judge Sercombe suggests that attorneys focus more on preparing to address the one or two core issues that the court is likely to address. There is no time for a long, prepared speech at argument. Attorneys should know the record and the law and strive



Judge Timothy J. Sercombe

to communicate the core points of the appeal. He also suggests acknowledging weakness, but directly addressing it when an issue is not conceded.

Judge Sercombe has twin boys who are currently seniors in high school, a daughter in college, and an adult daughter who is a lawyer at a large firm in New York. Sercombe's wife, Jane Van Boskirk, is a longtime actor/producer and founder of the Oregon Repertory Theater in Eugene. Outside of work, Judge Sercombe and his wife enjoy theater, music and current events/politics. Judge Sercombe is also active in his Portland church, where he is a member of the choir.

Judge Sercombe's judicial style sounds much like his personal style: polite, direct and intellectually curious.

## Jeffrey M. Batchelor to Receive 2008 MBA Professionalism Award

The MBA is pleased to announce that Jeffrey M. Batchelor is the recipient of the 2008 MBA Professionalism Award.

Batchelor is a partner at Markowitz, Herbold, Glade and Mehlhaf, where he focuses his practice on appellate work.

His peers have praised his professionalism and integrity and, as one colleague wrote, his "commitment to fairness and respect for every participant in a legal dispute. He serves as a mentor to young lawyers and was noted for being a role model to practicing lawyers of all ages." Oregon Supreme Court Justice Paul J. De Muniz commented that he "has earned universal respect from the Oregon bench for his competence, professionalism and unmatched integrity."

One peer and supporter of Batchelor's nomination said: "I believe the exemplary trait of character that has motivated and governed Jeff's conduct in the practice of law has been his compassion for others. Time and again, over the years... Jeff has acted, or refused to act, in situations where other lawyers would have been tempted to do otherwise."

Another said: "He has practiced law at the highest level of ethics and integrity. His professional and

personal ethics are recognized and highly regarded by members of the bar and bench... Mr. Batchelor has consistently treated colleagues, adversaries, the bench, staff and his clients with respect."

As an appellate specialist, he regularly represents clients in commercial, employment and personal injury litigation, having briefed and argued more than 200 appellate cases. Drawing on this background and his experience as a pro tem circuit judge, he has worked as a mediator since 1995 and as an arbitrator since 1989. He has served as a special master in federal court and as a discovery referee in state court.

Many of Batchelor's cases have made new laws in the Oregon courts. His advocacy in *McGanty v. Staudenraus* resulted in the refinement of three torts under Oregon law: intentional interference with economic relations, intentional infliction of severe emotional distress and wrongful discharge. In another case, *Portland 76 Auto v. Unocal*, the Ninth Circuit Court of Appeals agreed with his construction of the Robinson-Patman Act and reversed a multi-million dollar antitrust judgment against his client. In a third high-profile case, *Pool v. VanRheen*, the Ninth Circuit Court of Appeals affirmed the



dismissal of a Section 1983 claim that his client had violated the first amendment rights of a commander in the sheriff's office.

Batchelor attended Brigham Young University and Oklahoma State University on wrestling scholarships, and competed in the 1968 Olympic trials. A native Oregonian, he returned to the state in 1969 to attend Willamette University, where he was editor-in-chief of the *Willamette Law Review*.

The MBA Professionalism Award honors men and women who hold the highest ethical standards and exemplary conduct in the practice of law, and make the practice of law more enjoyable.

### President's Column

Continued from page 1

The Supreme Court hasn't developed published reports, but has developed initiatives and realized real progress on them. For example, Chief Justice De Muniz's "State of the Courts" report issued last January reflects that, in 2007, the Supreme Court decided a record 74 percent of its cases within six months of argument and submission, and decided 40 percent of its cases within three months of argument. And the report highlights the critically important progress recently made, in light of the Chief Justice's leadership, in the relationship between the legislature and the judicial branch, in judicial branch funding, and the judicial branch's "eCourt" program (starting first in our appellate courts) that will transform the operations of the judicial branch, which will benefit Oregonians in many important ways.

Both appellate courts, given the limited resources available to them, work extremely hard to serve the people of Oregon well. And, again, both "Chiefs" - who are really excellent leaders - are committed to working hard each year to have their respective courts meet that goal better. But the task is not easy. The Court of Appeals is one of the country's busiest intermediate appellate courts, yet its staffing hasn't changed significantly in 32 years (including the number of judges). In 2007, each of that court's judges participated in more than 1,000 cases and the court authored a record 572 written opinions. In 2007, the Supreme Court decided more than 1,200 petitions for review and issued 80 written opinions, many addressing the state's most difficult and important legal issues of the

day. Continued critical thinking needs to be done by the bench, bar, legislature and public to ensure that our appellate courts properly serve their essential public function well now and into the future and have the resources needed to do that. I hope that many, if not all, of you will take part in that effort.

And that thought brings me back to Measure 51 which, if you aren't familiar with it, asks voters to "cap" contingent fees on all kinds of cases to 25% of the first \$25,000 recovered and 10% of any recovery above \$25,000. As it has with other initiatives that affect justice or our judicial system generally, the MBA Board will decide soon its position on Measure 51. I'm reasonably sure that the board will vote to oppose the measure at its May 6 meeting, as other legal associations and groups have already done or will do in the near future.

The proponents of the measure are very well funded and reliable polling shows that the measure has (at least initially) strong support. So, I encourage you to vigorously oppose the measure, not just with your vote, but with your time and money. And I especially encourage you to take the time to reach out to non-lawyers and help them understand why this measure is an insidious and ill-advised concept. Now, as before, I believe that MBA members must be leaders (within our profession and community) in defeating every initiative that threatens the independence of our judiciary and fair access to justice for all Oregonians. If you share my view (and soon, I believe, the board's collective view) that Measure 51 is such an initiative, please do your part to help defeat Measure 51.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** May 9, 2008  
**Memo Date:** April 24, 2008  
**From:** Ann Fisher, Chair, Public Affairs Committee  
**Re:** eCourt™ Implementation Task Force

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### Action Recommended

Consider charge and proposed membership of task force to implement Oregon Judicial Department eCourt™ initiative.

### Background

In the February 2008 Special Session, the legislative assembly passed HB 5100 which established additional authority for state agencies to issue bonds and certificates of participation (COPs). Included in this bill was approval of the first COP sale for the Oregon Judicial Department (OJD) eCourt™ project in the amount of \$24.4 million to convert court operations from a paper-based system to an electronic system over the next five years.

The COPs authorized in February will fund the first two of eight stages of the project, to be completed by October 2009. The design of the new system will be similar to the federal courts' electronic system. Each of the stages requires OJD to seek further bonding or COP authority from the legislature, with the estimated total cost reaching \$118.5 million. One of the legislature's primary goals is to make the courts more accessible and cost-effective.

On April 4, 2008, Chief Justice De Muniz made a special appearance at the Board of Governor's meeting to provide the board with an overview of the eCourt™ Program. The judiciary wants to work closely with the bar to inform and educate bar members about the eCourt™ Program as well as provide an opportunity for input. The ultimate goals for the program are for individuals to have access to court information 24/7, to provide a paperless court system, to standardize court business practices, to provide electronic case management, and to provide a common interface to all agencies. The program is set up so that if the final phases remain unfunded, the first phase can stand alone and still be of functional value. Access to the court system is a priority. Individuals without computers will be able to file paper documents with the courts and hard copies of court documents will be available to those who still prefer that option. Additional public access is anticipated through public computers at government agencies and in libraries. The eCourt™ will roll out July 14, 2008, with Supreme Court filings, and will be available in all courts in late August 2008. Those desiring to use the eCourt™ Program will be required to meet minimal standards and

to take an online tutorial before file documents electronically. Additional information will appear on the Supreme Court's website as it becomes available. President Rick Yugler will work with bar staff to appoint a task force to work with the Supreme Court to provide a forum for discussion to foster the exchange of information and to educate bar members. The task force will include individuals various bar groups and bar staff.

The proposed charge for the task force is attached as an exhibit.

The proposed membership roster will be distributed at the May 9 meeting.

## OSB Task Force on Oregon eCourt Implementation

### Proposed Charge

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

## OSB Task Force on Oregon eCourt Implementation

### Bar Sections & Groups

#### **Appellate**

Tom Christ  
Josh Ross

#### **Business**

Andrew Morrow  
Jim Kennedy

#### **Business Litigation,**

*Joe Arellano - not confirmed*

#### **Computer and Internet**

Marinus Damm

#### **Constitutional**

#### **Criminal**

*Greg Horner - not confirmed*  
*Tahra Sinks - not confirmed*

#### **Family**

#### **Government**

#### **Intellectual Property**

#### **Judicial Administration Committee**

Doug Bray  
Kristin David

#### **Juvenile**

#### **Labor & Employment**

#### **Law Practice Management**

SG checking with Margaret Robinson

#### **Litigation**

#### **Procedure & Practice Committee**

Graham Sweitzer

#### **Products Liability**

#### **Sole & Small Firm Practitioners**

#### **Miscellaneous**

Mark Comstock  
John Svoboda  
Hon. Ginny Linder  
Brooks Cooper

### Internal Bar Departments

IDT  
Discipline  
CAO  
Public Affairs  
Communications

### OJD Staff

Mollie Croisan  
Barb Conway  
Bud Borja

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9, 2008  
Memo Date: April 23, 2008  
From: Ann Fisher, Chair, Public Affairs Committee  
Re: 2009 Law Improvement Package

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### Action Recommended

Consider Public Affairs Committee request to approve 2009 OSB package of Law Improvement proposals for introduction.

### Background

Attached is a list of legislative proposals from bar groups approved by the Public Affairs Committee at its April 4, 2008 meeting. Once approved by the board these bills will be submitted to Legislative Counsel's office for bill drafting purposes and pre-session filing. If anyone would like to see the text or background explanation of any of the proposals, binders will be available at the May 9 meeting.

Oregon State Bar  
2009 Law Improvement Proposal Overview

**Board of Governors:**

1. Board of Governors
  - Amends ORS Ch. 9 to add two new board members to the Board of Governors.
2. Military Assistance Panel
  - Creates provisions allowing attorney fees, liquidated damages, and an exemption from arbitration in cases under Servicemember Civil Relief Act.

**OSB Sections:**

3. Business Law
  - Changes the required notice period for short form mergers with a subsidiary from 30 to 10 days, conforms to Model Business Corporation Act.
  - Amends ORS 60.441(3) to treat classes and series of stock alike when determining voting groups, and to allow articles of incorporation to provide for separate voting groups.
4. Consumer Law
  - Allows a debtor to choose either the federal or state exemptions in bankruptcy cases.
5. Criminal Law
  - Corrects an error in 2003 legislation by reinstating a time period after which a motion in arrest of judgment is “deemed denied” if the trial court has not yet ruled upon the motion.
  - Codifies existing case law to create a clear procedure that governs the pleading and proof of all previous-conviction elements.
6. Debtor/Creditor
  - Clarifies the procedure used to enforce a purchaser’s right to possession of property purchased at a foreclosure or execution sale, and that the F.E.D. statutes are available in such situations.
  - Amends ORS Ch. 18 to provide that information provided on Judgments and Writs of Garnishment forms be truncated to omit full SSN.
  - Excludes outright debt buyers from ORS Ch. 697, which regulates collection agencies.
  - Changes to HB 3630, mortgage lending bill, passed in 2008 Session. Amends ORS 86.750(3) to require that a trustee foreclosing a residential trust deed record affidavits of mailing and service of the notice required, and to provide a bar date for the grantor to raise the issue that they did not receive notice.

## 7. Elder Law

- Clarifies that courts have authority to enter a judgment, not just an order, on the award of costs and attorney fees in probate proceedings.

## 8. Estate Planning & Administration

- Makes technical corrections to the Uniform Trust Code.
- Implements the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.
- Clarifies application of the disclaimer statute in cases of intestate succession.
- Amends ORS 127.007 and 127.015 to authorize springing powers of attorney.
- Regulates fees charged by heir search firms.
- Increases the small estate limits under the probate code: personal property increased from \$50,000 to \$100,000, and real property from \$150,000 to \$250,000.
- Allows a trustee, personal representative, or executor to apply to the Oregon Department of Revenue for a determination of inheritance tax and discharge from tax liability.
- Allows conservatorships to be extended from current age of 18 to 21.

## 9. Family Law

- Proposal to Modify ORS 107.730 – Modification of family abuse restraining orders (FAPA) Orders
- Proposal to Add Language to Stalking and Family Abuse Prevention Act (FAPA) Statutes Clarifying that Legal Service of Process, Not Done for Purpose of Harrassment, is Not a Violation of Court Orders

## 10. Indian Law

- Brings uniformity to treatment of corporations and other entities established by American Indian Tribal Government in the Oregon statutes.

## 11. Real Estate and Land Use

- Make service requirements on LUBA consistent with other appeals.
- Clarifies ORS 197.298(1) to allow local governments to bring higher quality farmland and forestland into UGB only when lands of lower quality are not sufficient.
- Clarifies parties who may act without a real estate license in selling their property.
- Clarifies language describing a “trust or estate” in Oregon statutes.



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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9, 2008  
Memo Date: April 15, 2008  
From: Bette Worcester, Public Member Selection Committee Chair  
Re: BOG Public Member Recruitment

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### Action Recommended

Information only.

### Background

Each year in early April, the BOG Public Member Selection Committee begins recruitment of non-members to serve on various bar committees, boards and councils. In 2009, we will have vacant seats on the BOG, Disciplinary Board, Fee Arbitration, House of Delegates, Judicial Administration Committee, Public Service Advisory Committee and the State Lawyers Assistance Committee.

Recruitment is done in a variety of ways including the placement of ads in the Bulletin, on the bar's website and in newspapers throughout the state. A letter is also sent to law firms asking for their assistance.

The following is a timeline for this year's recruitment and selection of the BOG Public Member.

June 20	Application deadline
As applications come in	Send reference checks
July 18	Committee meeting to select finalists
August 22	Interview BOG Candidates
August 29	Second interview/backup day if needed
September 11	Board to vote on committee recommendation

A copy of the application is provided on the next two pages. If you know someone who would serve the bar well, please encourage him or her to apply.

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**Board of Governors**

1 Statewide Vacancy

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The Board of Governor (BOG) is charged with the executive functions of the state Bar and directs its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It has the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for regulation and management of the affairs of the state Bar not inconsistent with law. Public members serve four-year terms and must be residents of this state and cannot be an active or inactive member of the Oregon State Bar.

**Disciplinary Board**

Openings in Regions 1, 3, 4, and 5

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The Disciplinary Board (DB) is another component of the disciplinary process. If the State Professional Responsibility Board authorizes formal charges, the DB acts as the hearing or trial panel for each contested case. Each trial panel consists of two lawyers and one public member. Terms are for three years and members may serve two terms.

**Fee Arbitration**

Ongoing recruitment

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Works to resolve disputes regarding attorneys' fees. Volunteer arbitrators, including one public member listen to both sides and then make a decision. Each matter can take one-half to an entire day. Terms are generally three years and members may be reappointed.

**House of Delegates**

Openings in Regions 5 and 6

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The House of Delegates (HOD) is a governance forum for the OSB through elected and ex-officio representatives. The HOD debates and decides matters of bar policy. The public members are appointed by the Board of Governors, one from each in-state region. Terms are for three years.

**State Professional Responsibility Board**

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The State Professional Responsibility Board (SPRB) is a nine-member board, composed of seven resident attorneys and two members of the public. The board acts as the grand jury in the discipline system, making probable cause decisions on complaints. The board meets monthly and the workload is substantial, SPRB members serve three-year terms.

**Oregon State Bar Regions**

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- Region 1** Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties
- Region 2** Lane County
- Region 3** Benton, Coos, Curry, Douglas, Jackson, Josephine, Lincoln and Linn Counties
- Region 4** Clatsop, Columbia, Tillamook and Washington Counties
- Region 5** Multnomah County
- Region 6** Clackamas, Marion, Polk and Yamhill Counties

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## Committees

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### **Affirmative Action**

Advise on programs designed to increase racial and ethnic minority participation in the Oregon legal profession. Meets 2nd Friday of every month at 3:30 p.m. at various locations.

### **Client Security Fund**

Investigate and recommend acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. Meets on random Saturdays, every other month, 9:30 a.m. at various locations.

### **Judicial Administration (one statewide vacancy)**

Advise Board of Governors on judicial selection and administration issues. Meets the 3rd Thursday of every month, 3:00 p.m. at the Oregon State Bar.

### **Legal Services**

The Legal Services program is responsible for reviewing and reporting to the Board of Governors on filing fee funds. The committee meets 1-2 times a year in various locations.

### **Minimum Continuing Legal Education**

Provides input, analysis and evaluation of the program that accredits education programs for Oregon attorneys. Meets via a phone conference call, four times a year at noon.

### **Professionalism Commission**

Promotes educational opportunities for lawyers, judges and the public. It also promotes professionalism and designs and develops creative approaches to the promotion of professionalism and equality. Meets quarterly on a Friday at the Oregon State Bar.

### **Public Service Advisory (one statewide vacancy)**

Provides volunteer opportunities to increase understanding and respect of the justice system by adult Oregonians. Meets quarterly on Saturday, at 10:00 a.m. at the Oregon State Bar.

### **Quality of Life**

Educate lawyers and firms about the benefits of balancing personal life and career obligations. Meets monthly on Fridays at 1:00 p.m. at various locations.

### **State Lawyers Assistance (two statewide vacancies)**

Investigate and resolve complaints about lawyers whose conduct impairs their ability to practice law. Meets on the fourth Thursday every month, 4:00 p.m. at the Oregon State Bar.

### **Unlawful Practice of Law**

Review and evaluate complaints concerning individuals who are not licensed or otherwise permitted to practice law in Oregon. Members are assigned individual complaints to investigate and recommend action in accord with the Committee's authority. The Committee reviews member reports and makes recommendations to Board of Governors. Meets second Friday of each month, 3:00 p.m. at the Oregon State Bar.

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last)	
Residence Address: (number, street, city, state, zip)  County:	Residence Phone:
	Office Phone:
Office Address: (number, street, city, state, zip)  County:	E-Mail Address:
Office Mailing Address: (if different)  County:	Occupation: (and job title, if any)

**College and Post-Graduate Education:**

School	Location	Dates	Degrees

**Employment:** List major paid employment chronologically beginning with most recent experiences.

Dates (from/to)	Employer and Position Held	Address

**Community/Volunteer Services:** List major volunteer employment and significant volunteer activities chronologically beginning with most recent services.

Dates (from/to)	Employer and Position Held	Address

81.C

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

**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime or violation? Do not include minor traffic offenses or juvenile convictions if expunged.

Yes  No

Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?

Yes  No

If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

**Opportunities:**

If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

Board of Governors       Disciplinary Board       Fee Arbitration       House of Delegates  
 Local Professional Responsibility Committee       State Professional Responsibility Committee

Committees:     Affirmative Action       Client Security Fund       Minimum Continuing Legal Education  
 Judicial Administration       Legal Services       Quality of Life  
 State Lawyers Assistance       Unlawful Practice of Law       Public Service Advisory  
 Professionalism Commission

**References:** List names, addresses, and phone numbers of three people who may be contacted as references.

Name	Address	Phone
Name	Address	Phone
Name	Address	Phone

Applicant's Signature \_\_\_\_\_ Today's Date \_\_\_\_\_

Where did you learn about the public member opportunities available at the Oregon State Bar?

Application deadline is June 20, 2008. Return applications to  
Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935

## **Oregon New Lawyers Division (ONLD)**

The ONLD was created in recognition of the special interests of new lawyers that are often different from those of more experienced attorneys. New lawyers are more likely to be concerned with issues of professional advancement, balancing family and career and substantive legal education.

The ONLD has its own bylaws, budget, programs and subcommittees comprised exclusively of ONLD members. The Executive Committee is made up of 11 members, 6 regional members (one from each bar region), 5 at-large members, and is governed by a chair, chair-elect, secretary and treasurer, all of whom are elected from the division's members.

The purposes of the ONLD are to encourage new lawyers to participate in bar activities, conduct programs of value to new lawyers and law students, promote public awareness and access to the legal system, and to promote professionalism among new lawyers.

Every lawyer who has practiced six years or less, or is 36 years old or younger (whichever is later) is automatically a member of the ONLD. Additionally, any law student presently attending an ABA accredited law school in Oregon is automatically considered an associate member of the Division. The ONLD is the only Division of the bar and represents over 3,000 lawyers, approximately 25% of the Bar.

The ONLD conducts a number of quality projects each year through the work of its five subcommittees. Additionally, the Executive Committee provides an online job resource list and distributes legal information brochures at a fair booth each year. The following is a description of the ONLD's five subcommittees and their current annual activities. Please keep in mind that as the ONLD Executive Committee changes, its projects and activities change as well.

### **Continuing Legal Education (CLE) Subcommittee**

The CLE Subcommittee organizes low cost, high quality CLE seminars geared specifically toward new lawyers.

**SuperSaturday:** Each October since 2005, the ONLD has hosted a full-day CLE program with three concurrent tracks of five one-hour sessions. Attendees may focus on an entire track or mix and match CLEs as they choose throughout the three tracks. With last year's attendance reaching nearly 100 members, the division is considering the addition of a smaller scale SuperSaturday outside of the Portland area.

**Brown Bag CLEs:** Nearly every month the ONLD holds a one-hour CLE seminar at the Multnomah County Courthouse focusing on various topics of interest to new lawyers. Recent topics and speakers include Mistakes Newer Lawyers Make with Judge Eric Bloch, Child Abuse Reporting with Helen Hirschbiel, and What Every New Lawyer Should Know about Ethics and Professionalism While Practicing Law in Oregon with John Acosta and Mark Fucile.



**Law School CLEs and Socials:** When possible the ONLD plans a CLE program and/or social in conjunction with Eugene and Salem Executive Committee meetings. In March, one of the subcommittee's co-chairs presented a CLE in Salem. Both local attorneys and Willamette law students attended the seminar and stayed afterward to socialize.

#### **Law-Related Education (LRE) Subcommittee**

The LRE subcommittee organizes projects geared toward teaching the public about the legal system. The subcommittee provides opportunities for new lawyers to assist in the projects and get involved in their community.

**Constitution Day:** The LRE subcommittee began a pilot program in 2007 to coordinate with local attorneys to give presentations to middle and high school classrooms around the state of Oregon on Constitution Day. The goal is to establish supportive, flexible relationships between local attorneys and teachers, and engage students with a practical understanding of the U.S. Constitution.

**Essay Contest:** Each spring the subcommittee provides Oregon high school students the opportunity to earn a \$500, \$350, or \$250 scholarship (respectively for first, second, and third place) by demonstrating their analytical and writing skills. For the contest, students submit a persuasive essay of 750 to 1000 words using only the "closed universe" of reference materials and the fact pattern provided. The ONLD selects three finalists and each receives the scholarship money and a congratulatory letter from the Chief Justice of the Oregon Supreme Court.

#### **Law School Outreach (LSO) Subcommittee**

The LSO Subcommittee focuses on meeting the needs of law students and recent graduates as they make the transition from student to lawyer.

**Law School Panels:** Twice a year the LSO Subcommittee visits each Oregon law school for a panel presentation. Typically the panels focus on topics such as surviving law school and preparing for the bar examination.

**Law School CLEs and Socials:** When possible the ONLD plans a CLE program and/or social in conjunction with Eugene and Salem Executive Committee meetings. The subcommittee is working with the CLE Subcommittee to plan a social for U of O students this October.

**New Lawyer Resource List:** The New Lawyer Resource List is an informal mentoring program designed to help young lawyers and law students establish connections with Oregon attorneys who work in their field of interest. Attorneys on the list have volunteered to be contacted by anyone who desires advice and counsel on a career path in the law. The subcommittee created the resource list in late 2007, currently more than 350 lawyers are on the list.

### **Member Services and Satisfaction Subcommittee**

The subcommittee works to bring new lawyers from around the state together and provide a network for professional and social interaction. The subcommittee also promotes professionalism and participation in bar activities.

**Mentor Program:** The Mentor Program pairs new admittees with more experienced lawyers in their local communities. Mentors act as an invaluable resource of practical advice, professional contacts and support to aid and guide mentees in their career. Matches are made based on geographic area, practice type, firm size and other special interest areas.

**Swearing-in Ceremony Reception:** Twice a year, following the swearing-in ceremony, the Member Services and Satisfaction subcommittee hosts a reception for new admittees and their families. The ONLD has a table set up with information about the division and sign-up sheets for new members to get involved.

**Rafting Trip:** This year the subcommittee is working to plan a rafting trip for new members and their families. The event will likely include a group social event centered on a meal or possible CLE program. The event is tentatively scheduled for July and details are still underway.

**Annual Meeting:** Each year in November, the ONLD holds an annual meeting. The subcommittee works to plan this social event and secure sponsorship for refreshments.

### **Pro Bono Subcommittee**

The Pro Bono subcommittee identifies pro bono needs not being addressed by other organizations and suggests ONLD programs and proposals to enhance delivery of legal services to the indigent.

**Pro Bono Fair and Awards Ceremony:** Every year the subcommittee works with other pro bono groups of the Oregon Law Center/Legal Aid Services of Oregon, the MBA and the OSB to plan and execute the Pro Bono Fair and Awards Ceremony. The fair hosts almost 20 pro bono providers who use the fair to recruit new volunteers. The award ceremony recognizes bar members, law students and law firms that provide pro bono services throughout the year. Two free CLE seminars are also offered to bar members; the intent is to provide training to members in areas needing additional pro bono services.

**Reporting Form:** In 2007, the Pro Bono subcommittee created a reporting form to assist bar members in the tracking of their pro bono work. The form is meant to serve as a record keeping form similar to that of the MCLE reporting form- it is not submitted to the bar. The committee is continuing to work on getting the form more widespread.

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: March 25, 2008  
From: Sylvia E. Stevens, General Counsel  
Re: Review of Denied CSF Claims

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### Action Recommended

Review the following claims for reimbursement that have been denied by the CSF:

No. 07-10 Rothenfluch v. Knapp	\$73,381.00
No. 07-03 Jones v. Judy	\$40,000.00
No. 07-07 Douglas v. Dunn	\$7,731.00
No. 07-22 Scharn v. Mason	\$45,428.20

### Background

#### No. 07-10 Rothenfluch v. Knapp (\$73,381.00)

Mr. Rothenfluch submitted his application for reimbursement to the CSF in May 2007. At its meeting on January 26, 2008, the CSF Committee denied his claim and he was notified of the Committee's decision on February 4, 2008. On February 15, 2008 he submitted a timely request for BOG review of the Committee's action.

Rothenfluch's application explained that in 2000 he became involved with a group of investors (International Financial Resources, LLC). The principal actor in the group was one Ed Johnson. In September 2000, Johnson was referred to Salem attorney Thomas Knapp, who told Johnson that he had a client in Greece, Antonio Abirached, who could assist the group to obtain a \$10 million loan to finance their business plan. Knapp indicated that the group would first have to provide advance fees to secure the loan. Several weeks later, on behalf of the investor group, Johnson wired \$800,000 to Knapp. Over the next few months, Knapp repeatedly assured Johnson that the loan would be funded soon, but nothing happened. In July 2001, Johnson flew to Greece to meet with Abirached, who informed Johnson that additional fees were required to complete the loan arrangements. Johnson returned to the states and wired an additional \$425,000 to Abirached.

Between August 2001 and January 2002, Johnson was in regular contact with Knapp, who continued to promise that the loan would be funded. In January 2002, Knapp assured Johnson he had seen the paperwork for the loan, but required an additional \$47,000 from the investors, which Johnson supplied. In March, Knapp requested another \$100,000 in advance loan fees. Johnson complied, bringing the total paid by the investor group to more than \$1.3 million. No loan was ever made. It was subsequently discovered that Knapp used some of

the money received from Johnson to purchase a new Mercedes automobile and to pay the mortgage on his office building.<sup>1</sup>

Rothenfluch initially requested reimbursement in the amount of \$432,526 (consisting of \$549,132 lost to Knapp, plus \$116,606 in federal taxes paid, less \$126,000 reimbursed by Johnson). In early October 2007, Rothenfluch amended his application to reduce the amount for which he sought reimbursement to \$73,381. After reviewing his and the US Attorney's records, Rothenfluch apparently realized that only \$263,381 of his funds had been delivered to Knapp and that he had received a total payback (from International Financial Investors, LLC) of \$190,000.

Rothenfluch also submitted an affidavit in October 2007 in further support of his amended claim. In it, he explains his understanding that the investment plan for his group was to loan \$1 million to an overseas trading company and make a 100% return. He also understood that Knapp was holding the funds until the entire loan amount had been collected and that Knapp represented the investor group. Rothenfluch claims he became skeptical about the investment plan and called Knapp, who assured him the investor's funds were being held in a trust account and that Knapp represented the investors. Rothenfluch says he questioned Knapp about his qualifications and was assured that Knapp knew what he was doing. Rothenfluch claims to have talked to Knapp between three and seven times between October and December 2000 to check the status of the investment plan.

The CSF Committee first reviewed Rothenfluch's claim in October 2007. The following excerpt from the minutes reflects the discussion at that time:

"The committee had concerns about whether there was an attorney-client relationship; alternatively, if Knapp was acting as a fiduciary, were his duties owed to his Greek colleague, to Johnson or to the investor group? There is also a question about whether this is nothing more than an investment gone bad for which the fund shouldn't be responsible. The committee noted that the US Attorney's theory of the case is that Johnson was using Knapp to get investment capital from a Greek financier, which contradicts Rothenfluch's story. Finally, the committee questioned the difference between the \$34,000 restitution ordered for Rothenfluch and his \$73,000 claim."

The claim came before the Committee again at its January 2008 meeting. While there was no disagreement that Rothenfluch's loss resulted from Knapp's dishonesty, there were several issues that continued to concern the Committee. One had to do with the fact that Rothenfluch provided no documentation of the amounts of money he claims to have given to Knapp through Johnson or International Financial Resources, LLC. When asked for cancelled checks, Rothenfluch provided copies of (1) a check from Traveller's Insurance to

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<sup>1</sup> Knapp resigned Form B in January 2004 with several complaints pending, but unrelated to the conduct described by Rothenfluch. Knapp and Abirached were indicted in 2005 on federal charges relating to their financial activities. Knapp pleaded guilty to one count of Money Laundering in September 2006 and the other charges (wire fraud, transportation of stolen property, conspiracy) were dismissed. Knapp was sentenced to one year and one day in prison and was ordered to pay more than \$300,000 in restitution. Abirached remains a fugitive.

Rothenfluch in the amount of \$263,381.57, endorsed by Rothenfluch, (2) a check from Bank of America – AO Group, LLC to payable to Rothenfluch in the amount of \$100,000, and (3) a receipt showing distribution of proceeds of a property sale to Rothenfluch in the amount of \$69,145.61. Rothenfluch provided no checks issued by him to Johnson, International Financial Resources, LLC or Knapp. Nevertheless, the Committee did not doubt that Rothenfluch delivered funds to Johnson/International Financial Resources, LLC for some investment purpose.<sup>2</sup>

The Committee was never able to understand why Rothenfluch sought \$73,381 from the CSF when he was awarded restitution of only \$34,557.78 (listed in the sentencing order as his “Total Amount of Loss”). Additionally, Rothenfluch’s attorney reported that Rothenfluch had received restitution of \$4,300 from Knapp, but it does not appear that amount has been deducted from the amount claimed. Despite being asked, Rothenfluch was not able to explain the discrepancy in the amounts, saying he has no information about how the court calculated his loss.

The Committee was also struck by Rothenfluch’s generally vague understanding of what was happening with considerable sums of his money. As indicated, he initially claimed that more than \$500,000 had been passed to Knapp through Johnson; later he acknowledged that at least \$100,000 of the money given to Johnson had been used for a different investment. He made a similar adjustment as to the amount he had been reimbursed by Johnson (through the investment group).

Of greatest concern to the Committee was the lack of evidence of an established lawyer-client relationship between Rothenfluch and Knapp. It did not help that in his initial application, Rothenfluch’s explanation of his loss indicated unequivocally that Knapp represented Abirached. Five months later, after being contacted by the CSF, Rothenfluch submitted his affidavit claiming to have understood (and confirmed with Knapp) that Knapp represented the investor group. Either way, there is no evidence that Rothenfluch individually was Knapp’s client.

In the absence of an established lawyer-client relationship, CSF Rule 2.5.2 makes a claim eligible for reimbursement if the loss arose from “the failure to account for money or property entrusted to the lawyer in connection with the lawyer’s practice of law or while acting as a fiduciary in a matter related to the lawyer’s practice of law.” The Committee concluded that Rothenfluch’s funds were given to Knapp in his capacity as a loan broker, and not “in connection with” his practice of law. The Committee also concluded that if Knapp was “acting as a fiduciary in a matter related to [his] practice of law,” his fiduciary duties were to his client Abirached and not to the investor group in which Rothenfluch participated.

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<sup>2</sup> This was supported by a cancelled check showing the International Financial Resources, LLC paid Rothenfluch at least \$150,000 as a “repayment of principal (partial).”

The Committee ultimately concluded that Rothenfluch's claim does not meet the requirements for reimbursement from the Client Security Fund. Rothenfluch has not submitted any additional information with his request for BOG review of the claim.

**No. 07-03 Jones v. Judy (\$40,000.00)**

Harold Jones was the personal representative of his brother's estate. In 1999, he hired Grants Pass attorney William Judy to handle the probate. When the estate was settled in February 2000, Jones received a total of \$49,501 for his share of the estate and his personal representative's fees. At Judy's urging, Jones loaned Judy \$50,001 at 20% on a note that was due in one year. In February 2001, Judy paid Jones interest of \$10,000 and renewed the \$50,001 note for another year. The second note was also signed by Dominic Notter, although Jones never met Notter. Judy didn't pay the note when it came due; Jones made several demands and at some point Judy told him "the money is gone." Jones took no other action to collect on the note.

The CSF Committee concluded that this was not a loss that resulted from the lawyer-client relationship or any work that Judy did for Jones, but was rather a bad loan, and that there was insufficient evidence of dishonesty. Mr. Jones made a timely request for BOG review of the Committee's decision, attached as Exhibit A.

Between 2004 and 2006, the CSF reimbursed seven of Judy's former clients in amounts ranging from \$350 to \$50,000. Most of the claims related to loans made by the clients to facilitate Judy's investment in the development of a software program that would anticipate stock market trends. Judy began soliciting investors for the software system in 1998 while his partner Dominic Notter ostensibly worked on marketing the invention.<sup>3</sup> Judy's family was prominent in the Grants Pass area and he had many clients who had known him all of his life. Because of earlier problems with another project, Judy typically raised funds by offering high interest rate promissory notes, telling the clients he was putting the money into the software project and that they could be assured of repayment because it had a "proven track record." In late 2000 and early 2001, the FBI began investigating Judy and Notter. In October 2001, the bar began an investigation on the complaint of an unhappy investor. In December 2003, the US Attorney charged Notter and Judy with mail fraud and "structuring." According to the US Attorney's charging information, the software system was a hoax. Judy submitted his Form B resignation in September 2004; he pleaded guilty to the federal charges in December 2004 and served a two year prison term. Notter fled the jurisdiction and has not been found. Judy was ordered to pay restitution of more than \$3 million.

Jones' loan to Judy was investigated by the FBI in connection with the criminal case and Judy was ordered to pay restitution to Jones in the amount of \$39,808 (the difference between the loan principal and the amount repaid by Judy as interest).

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<sup>3</sup> Notter was apparently the brains of the outfit, having been a math whiz in school. FBI records also show that virtually all the money Judy solicited was delivered to Notter and there is no evidence that Judy got much of it back. During the time that Judy was soliciting investors, Notter was building a large home outside Grants Pass.



The CSF Committee found the requisite attorney-client relationship between Judy and Jones. However, it was not persuaded that Jones' loss "arose from" that relationship as much as from Jones' desire to earn a high rate of interest on his loan. The Committee was also concerned that Jones didn't file his claim until 2007, more than two years after he knew of the loss and more than two years after Judy's conviction.

As indicated, this claim is similar to many that were paid in prior years. At least three of the "loan claims" were approved by the BOG in June 2005 after having been denied by the Committee for the same reasons the Jones claim was denied. Subsequent to that determination, the Committee reopened and paid (with BOG approval) another loan claim that had been denied but not appealed.

The area of greatest concern to the Committee was whether there is sufficient evidence of dishonesty. Notwithstanding the federal conviction, some members of the committee who have a long history with the Judy claims are not persuaded that Judy was intentionally deceiving his clients during the early days of the investment scheme and some don't believe the Judy ever fully understood that the scheme was a complete hoax. On the other hand, once the FBI began investigating, Judy should have been aware that putting more client funds into the scheme was unwise and certainly not likely to produce a return from which he could repay the loans. Using that analysis, when this note was renewed in early 2001, Judy was aware that the investment scheme was under suspicion; it also wasn't producing any revenue, and his ability to repay the loan was minimal. There is little doubt that Jones' "interest payment" came from funds advanced by others, and not from any sales of the software.

The other issue for the Committee was the untimeliness of the claim. CSF Rule 2.8 requires that the claim have been filed "within two years of the later of... (a) the date of the lawyer's conviction.... or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall a claim against the Fund be considered if it is submitted more than six (6) years after the date of the loss."

Jones' claim was filed in March 2007. Judy was convicted 2-1/2 years earlier, in December 2004. Jones was undoubtedly aware of the federal investigation because his loan is among those that formed the basis of the indictment and restitution order. Jones was also aware of his loss at least in February 2002 when Judy failed to repay the loan as promised. Additionally, there was considerable publicity in the Grants Pass area about Judy's prosecution and conviction, including mention that several clients had been reimbursed by the CSF. On the other hand, Jones is elderly and, according to his son, embarrassed about having been fooled by Judy and doubtful that he would ever be able to recover his loss.<sup>4</sup>

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<sup>4</sup> Note that Rule 2.11 provides that the Committee may "in cases of extreme hardship or special and unusual circumstances," recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of the CSF Rules. Because the Board is the ultimate trustee of the Fund, it presumably has the same authority to waive its own rules.

The issue for the BOG is whether this loss arose from and was because of an established attorney-client relationship and from dishonest conduct. The BOG must also consider whether the claim was timely filed.

**No. 07-07 Douglas v. Dunn (\$7,731.00)<sup>5</sup>**

Jeremy Douglas hired Hillsboro attorney Timothy Dunn in May 2004 to defend him against pending assault charges. Dunn estimated his fees at \$2000 to \$3000 if the case was resolved without trial and no more than \$4000 if it went to trial. A deposit of \$1000 was paid by the client's mother, Helen Douglas, at the initial meeting.

In mid-June, the court reduced Douglas' \$25,000 bail to \$5000 and released the balance of \$20,000 to Dunn. Douglas pleaded guilty in August 2004 and was sentenced in October. There was a restitution hearing in December 2004, but no restitution was ordered and by February 2005 the matter was completed.

Shortly thereafter, Helen Douglas, on Jeremy's behalf, requested an accounting and a refund of the any unused funds. In April 2005, Dunn refunded \$7,500 and promised a full accounting. He repeated those promises for the next 12 months in response to Ms. Douglas's continuing inquiries, but provided no further information until April 2006, at which time he send two checks totaling \$2,769.99. Dunn promised a further explanation of his time and billing but failed to provide it.

In her responses to the Committee's investigation, Ms. Douglas complained about the quality of Dunn's representation of her son, including her unhappiness that he pleaded guilty and served time in jail, which she claimed delayed his entry into medical school. She also faulted Dunn for not advising Jeremy about the consequences of his plea, about his post-conviction rights and about how to navigate the jail system. She asserted that Dunn charged too much for his work, that she should have had to pay no more than the \$3000 Dunn originally quoted.

Dunn offered little in response to the Committee investigator's questions. He claims to have done a fair job of representing Jeremy Douglas and spent a significant amount of his time preparing for and appearing at the restitution hearing, at which the victim sought \$30,000 but was awarded nothing. He acknowledged that Helen Douglas blamed him for what she considered a bad outcome. Dunn offered no supporting documentation for his fees, saying that he has approximate dates and times in his files, but is unable to reconstruct with any accuracy the amount of time he spent on the case. He also offered no explanation for the random amounts he refunded to Douglas. Nevertheless, Dunn claims he spent more than \$10,000 worth of time on the case, based on his hourly rates of \$175-\$200. (During some of the time that he represented Jeremy Douglas, Dunn was on diversion arising out of other disciplinary matters, all of which Dunn attributes to alcohol dependence. Dunn's

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<sup>5</sup> This is the ninth claim against Dunn received to date by the CSF. One has been paid, this one and another were denied, and the rest are pending.



diversion was terminated in October 2006 when new disciplinary charges were authorized; he was placed on interim suspension in October 2007 and disbarred in February 2008.)

After discussion with the CSF investigator Douglas conceded that Dunn was entitled to reimbursement for his out-of-pocket expenses in the case, adjusting her claim to \$6,220.85 as follows:

Total funds received by Dunn	\$21,000.00
Less amounts reimbursed	(10,269.00)
Itemized expenses	(1,510.15)
Douglas's allowance for services	<u>(3,000.00)</u>
Refund due	\$6,220.85

Dunn, as indicated, believes he earned not less than \$10,000. If that is true and the amount includes his out-of-pocket expenses, Douglas would be entitled to a refund of only \$731.00; if the \$10,000 represents only his fees, the Douglas would not be entitled to any refund.

The Committee voted in August 2007 to deny the claim on the basis that it was a dispute over the amount Dunn's fees. Pursuant to CSF Rule 2.2, the unearned portion of a fee is compensable only if (i) the lawyer provided no legal services to the client; (ii) the services were minimal or insignificant; or (iii) the claim is supported by an independent determination that the client is owed a refund. The Committee found that none of those requirements were met here. Douglas did not ask for BOG review of the decision at that time.

In March 2008, following Dunn's disciplinary trial, Helen and Jeremy Douglas requested that the BOG review the Committee's denial of their claim; they now seek reimbursement of \$3091 (it is not clear how this amount is calculated). In their request for review they rely on the trial panel's opinion in Dunn's case and on the encouragement of Disciplinary Counsel Stacy Hankin. The trial panel opinion recites Dunn's receipt of \$21,000, his refund of \$10,269, and his costs of \$1501.15; it also recites Dunn's failure to render a full accounting of the monies received. The trial panel concluded that Dunn's conduct violated Oregon RPC 1.15-1(c) and (d), which require, respectively, that a lawyer deposit client funds in trust and account for them upon request. The trial panel did not find that Dunn engaged in any dishonest conduct.

CSF Rule 2.5 indicates that a claim is compensable and the loss "arose from, and was because of...the failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law...." Read in isolation, that would suggest that a claim is compensable by the Fund any time the lawyer fails to provide, upon request of the client, adequate records of how client funds were used. The CSF Rules are clear that losses are eligible for reimbursement only if they involve dishonest conduct by the lawyer.

"Dishonest conduct" is defined in Rule 1.6 as a "willful act against a client's interest by defalcation, by embezzlement, or by other wrongful taking." It is thus difficult to construe the rules, taken together, as meaning anything other than that a "failure to account"

must be the equivalent of misappropriation and not a mere failure to provide documentation of how a client's funds were used.

There is no doubt that Dunn failed in his responsibilities to his clients, either because of his alcoholism or otherwise. In this case, however, the Committee could find no evidence of dishonesty. Unearned fees are reimbursable by the CSF only in the following circumstances:

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

The committee concluded that Douglas's claim does not meet any of those requirements.

In support of their request for BOG review, the Douglas's have submitted additional documentation, which is attached as Exhibit B.

**No. 07-22 Scharn v. Mason (\$\$45,428.20)**

Russell Scharn hired Hillsboro attorney Beth Mason in February 2005 to defend him in a domestic relations matter involving a change of parenting time and contempt charges. Over the next nine months, according to her billing statements, Mason prepared a response and counterclaim, attended a change of venue hearing, negotiated with opposing counsel about a custody evaluation, discussed a schedule for depositions, conferred with her client about the custody evaluation, negotiated about and attended a hearing on summer vacation visits for her client, and conferred with the evaluator and opposing counsel about the report.

In late November 2005 Scharn fired Mason (ostensibly because he felt she wasn't making any progress on settling or preparing for trial) and on December 5, 2005 the court granted her motion to withdraw. During the nine months Mason represented him, Scharn paid a total of \$12,578.50 in fees in addition to \$350 for the initial consultation.

At the time of Mason's withdrawal, trial in the matter was set for January 10, 2006. The court denied Scharn's motion for a continuance and he proceeded to defend the case himself, albeit unsuccessfully. He was ordered to pay the opposing party's attorney fees of \$27,500; he also paid \$5000 to another attorney to assist him (apparently to oppose the petition for attorney fees).

Scharn's claim for reimbursement included a lengthy list of Mason's failures including:

- She claimed she would be his "biggest advocate" but didn't follow through;
- Requesting Scharn bring certain evidence and be prepared to testify at a change of venue hearing, then not using the evidence or his testimony;
- Failing to interview witnesses or take any depositions in preparation for trial;

- Promising to file a counter-contempt motion, but failing to do so;
- Charging him for travel time and “waiting time” in the courthouse;
- Promising to try to settle the case but doing nothing in that regard;
- Failing to inform the court in her motion to withdraw that trial was set for the following month;<sup>6</sup>
- Failing to deliver Scharn’s file despite two or more requests;
- Offering to help (after she withdrew) with Scharn’s trial preparation but providing only “useless” questions for the evaluator.

Mason resigned her membership in the bar in August 2007 with unrelated charges pending. Scharn made a claim to the PLF and recently settled for \$20,000, although the details of the settlement have not been provided.

The CSF Committee concluded that there was no evidence of dishonesty to support Scharn’s claim. He does not deny that Mason performed services; his complaints go to the quality of her work. The Fund would not, in any event, reimburse him for “consequential damages” such as the opposing party’s attorney fees he was required to pay or the amounts he paid to successor counsel.

Scharn made a timely request for BOG review of his claim and he and his current counsel, Richard Maizels, submitted supporting documents, which are attached as Exhibit C. Scharn claims that Mason was “completely dishonest throughout our entire attorney-client relationship. She abused, deceived, and misled me from the beginning.” He also claims that Mason’s work was of minimal or insignificant value to him. In recognition of CSF rules, Scharn has reduced his claim for reimbursement to the \$12,828.50 paid in fees to Mason. Maizel’s reiterates the position that Mason’s work was of minimal value to Scharn, that “what she did was of no benefit to Mr. Scharn and further her conduct worked an extreme hardship on him, resulting in a devastating result in his subsequent hearing.”

Based on Scharn’s comments in his request for review, I interviewed Dan Peters, the opposing lawyer in Scharn’s case. He stated that Mason advocated vigorously for Scharn during the period she represented him, disputing every issue and making the case more difficult than it might otherwise have been. He also says that Scharn was quite well-prepared when he appeared *pro se* and didn’t have any trouble presenting his position, although that may be the result of his extensive familiarity with the parties’ long-standing disputes and his experience with legal proceedings rather than the benefit of any of Mason’s work.

Attachments:           Ex. A--Jones request for review  
                              Ex. B--Douglas request for review  
                              Ex. C--Scharn request for review

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<sup>6</sup> This appears to have been an oversight on Mason’s part; when called on it by opposing counsel, she acknowledged her error to the court.

SEPTEMBER 19, 2007

OREGON STATE BAK

5800 S.W. MEADOWS ROAD

P.O. BOX 1689

LAKE OSWEGO, OREGON 97035-0889

ATTENTION: KAREN L. GARST EXECUTIVE DIRECTOR

MS. GARST:

PLEASE PROCESS THIS REQUEST FOR BOARD REVIEW  
OF THE COMMITTEE'S DECISION REGARDING  
CLIENT SECURITY FUND CLAIM NO. 07-03,  
CLAIMANT HAROLD AND MARY JONES.

WE APOLOGIZE FOR THE LATENESS OF THIS REQUEST  
AS OUR SON HAS NOT BEEN ABLE TO ASSIST  
US UNTIL RECENTLY DUE TO OBLIGATIONS WITH  
HIS EMPLOYER.

SINCERELY

Harold D Jones  
Mary J. Jones

HAROLD JONES & MARY JONES

432 N.E. ROYAL DRIVE

GRANTS PASS, OREGON 97526

PHONE 541-479-1439

ATTACHMENT FROM U.S. ATTORNEYS OFFICE, DEPT OF JUSTICE  
BARB EOTHERS - VICTIMS ADVOCATE EVIDENCE OF DISHONESTY

EX. A 1 of 11



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, Fax (503) 684-1366

July 2, 2007

Harold Douglas and Mary Joan Jones  
432 NE Royal Drive  
Grants Pass, OR 97526

Re: Client Security Fund Claim No. 07-03  
Claimant: Harold and Mary Jones  
Lawyer: William S. Judy

SEATED →

Dear Mr. and Mrs. Jones:

At its meeting on June 30, 2007 the Client Security Fund Committee considered your claim for reimbursement. After discussing the facts and the requirements for eligibility for reimbursement, the committee voted to deny your claim for \$40,000 against William S. Judy. The Committee concluded that there was insufficient evidence of dishonesty. The claim is also untimely since it was filed more than two years after discovery of the loss or Judy's conviction.

Under Client Security Fund Rule 4.10.1 the denial of this claim by the committee is final, unless your written request for review by the Oregon State Bar Board of Governors is received by the Executive Director within 20 days of the date of this letter. Requests for Board review must be sent to: Karen L. Garst, Executive Director, Oregon State Bar, 5200 SW Meadows Road, Lake Oswego, OR 97035-0889.

If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact me should you wish any further information.

Sincerely,

*Sylvia E. Stevens*  
Sylvia E. Stevens  
General Counsel  
Ext. 359, Fax: (503) 598-6959  
Email: sstevens@osbar.org

SES:cs

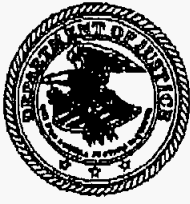
cc: William S. Judy  
Jennifer Kimble, CSF Committee Chair

SPOKE TO  
SYLVIA E. STEVENS  
GENERAL COUNSEL

11:30 A.M. 7/16/2007  
MONDAY

SYLVIA SAYS: STATOE 2 YEAR LIMIT  
OFFERED WAIVED.  
BUT MORE BASIC ISSUE IS OF DISHONESTY

DAD RESIGNED LOAN  
→ SHOULD HAVE KNOWN BETTER TO LET TO GET MONEY BACK.  
BUT HAROLD JUST WANTED HIS PROMISED 2%  
INTEREST. HE BELIEVE 2% INTEREST AND FILLED  
FAITH IN JUDY. BUT NOT SURE?



**U.S. Department of Justice**  
*United States Attorney's Office, District of Oregon*  
405 East 8<sup>th</sup> Avenue, Suite 2400, Eugene OR 97401-2708

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FOR: Daniel Jones

DATE: 12/13/07

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<input type="checkbox"/>	Vicki Briggs, Legal Assistant	465-6531	465-6901
<input type="checkbox"/>	Chris Cardani, AUSA	465-6531	465-6839
<input type="checkbox"/>	Kirk Engdall, AUSA	465-6316	465-6946
<input type="checkbox"/>	Bud Fitzgerald, AUSA	465-6531	465-6846
<input type="checkbox"/>	Trudylee Fleming, Legal Assistant	465-6917	465-6909
<input type="checkbox"/>	Sean Hoar, AUSA	465-6917	465-6792
<input type="checkbox"/>	Karen Kelly, Receptionist	465-6917	465-6771
<input type="checkbox"/>	Marti Mills, Supervisory Secretary	465-6316	465-6911
<input type="checkbox"/>	Frank Papagni, AUSA	465-6917	465-6627
<input type="checkbox"/>	John Ray, Supervisory AUSA	465-6316	465-6741
<input type="checkbox"/>	Cheryl Root, Paralegal Specialist	465-6316	465-6843
<input type="checkbox"/>	Roxanne Schaub, Legal Assistant	465-6531	465-6902
<input type="checkbox"/>	Tim Simmons, AUSA	465-6531	465-6740
<input checked="" type="checkbox"/>	Barb Yothers, Victim/Witness Advocate	465-6917	465-6907

Concerning: US v. Judy

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*Co-def. Don. P. N. Her*

KARIN J. IMMERGUT, OSB #96314  
United States Attorney  
District of Oregon  
WILLIAM E. FITZGERALD, OSB #91515  
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Eugene, OR 97401  
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RECEIVED OCT 25 14 02 40 USDO-ORE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	Case No. 04-60102-AA
	)	
Plaintiff,	)	<u>INFORMATION</u>
	)	18 U.S.C. § 1341 and 2
vs.	)	31 U.S.C. § 5324(a)(3) and (d)(2)
	)	
WILLIAM SHULER JUDY III,	)	
	)	
Defendant.	)	

**THE UNITED STATES ATTORNEY CHARGES:**

**COUNT ONE**

**[MAIL FRAUD AND AIDING AND ABETTING]**

Beginning at a date unknown and continuing to at least October 31, 2001, in the District of Oregon and elsewhere, Defendant WILLIAM SHULER JUDY III,

Information - 1

acting with the intent to defraud, knowingly carried out a scheme and artifice to obtain money and property by knowingly making materially false and fraudulent promises and statements, and used and caused to be used the mails to carry out and attempt to carry out an essential part of the scheme.

As part of this scheme and artifice to defraud:

1. Defendant WILLIAM SHULER JUDY III, a trusts and wills attorney in Grants Pass, Oregon, and his business partners, known and unknown to the Grand Jury, devised a fraudulent investment scheme known as the Extensive Software System (hereinafter "ESS"). Defendant JUDY solicited clients, personal acquaintances, and family members to invest in the ESS scheme.

2. Defendant JUDY and his partners promised investors that the ESS could accurately predict movements in the stock market, making it possible for ESS users to receive high percentage returns on stock trades and option contracts whether the market was rising or falling. Potential investors were routinely treated to a staged demonstration of the ESS.

3. Defendant JUDY and his partners bolstered investors' confidence by falsely telling them that the ESS had a proven record of performance. However, as Defendant JUDY and his partners well knew and believed, the ESS had no record of performance and was, in truth and fact, a hoax.

Information - 2



4. Defendant JUDY and his partners falsely told investors that money invested in the ESS would be used for research and development of the ESS software. In truth and fact, most of the investment money was not used for research and development. Instead, as Defendant JUDY well knew and believed, the partners diverted ESS investment proceeds to pay for their own personal expenses, including home construction, personal debts and living expenses.

5. Defendant JUDY and his partners concealed a substantial portion of ESS investment proceeds from taxing authorities by structuring financial transactions and moving money to foreign accounts.

6. Defendant JUDY allowed his accounts to be used to conceal ESS money from taxing authorities. In early 1999, Defendant JUDY met with two of his partners. At the meeting, the partners advised Defendant JUDY of a three million dollar trade relating to a group of investors from the state of Georgia. Defendant JUDY agreed to allow his bank account to be used to structure a \$300,000 payment to prevent detection by taxing authorities.

7. From April through August, 1999, \$300,000 was wired from a foreign bank account to Defendant JUDY's bank account in the United States. During the same time period, Defendant JUDY paid his partners most of the \$300,000 by writing them checks in amounts ranging from \$8,000 to \$9,500, all with the intent

to prevent the banks from submitting currency transaction reports to taxing authorities, as required by law.

8. Many of the ESS investors became suspicious after failing to receive the high returns promised by Defendant JUDY and his partners. In response to investor demands to recoup investments, Defendant JUDY and his partners falsely told the investors that the money was gone and could not be paid back due to unforeseen circumstances.

9. The ESS scheme made substantial use of the mails. Defendant JUDY and his partners routinely mailed forms and interest payments to ESS investors and received funds from ESS investors through the mail.

10. On or about April 18, 2001, in the District of Oregon and elsewhere; Defendant WILLIAM SHULER JUDY III, having devised the above-described scheme and artifice to defraud and to obtain money and property from investors in the ESS scheme, by means of materially false and fraudulent pretenses, representations and promises, used the mails to carry out an essential part of the scheme and artifice to defraud, by causing Beverly Newcombe's cashier's check for \$85,298.73 to be mailed to him.

All in violation of Title 18, United States Code, Sections 1341 and 2.

**COUNT TWO**

**[STRUCTURING AND AIDING AND ABETTING]**

On or about the following date, in the District of Oregon and elsewhere,  
 Defendant WILLIAM SHULER JUDY III, knowingly and for the purpose of  
 evading the reporting requirements of Section 5313(a) of Title 31, United States  
 Code, and the regulations promulgated thereunder, structured, assisted in  
 structuring and attempted to structure and assist in structuring the following  
 transaction with a domestic financial institution, and did so while violating  
 another law of the United States, specifically, mail fraud, in violation of Section  
 1341 of Title 18, United States Code, as part of a pattern of illegal activity  
 involving more than \$100,000 in a 12-month period:

<u>Date</u>	<u>Financial Institution</u>	<u>Description</u>
7/2/1999	Community Bank of Grants Pass	Check # 300, drawn on Account No. 010015345, in the amount of \$9,500, made payable to Don Notter

All in violation of Title 31, United States Code, Sections 5324(a)(3) and 5324(d)(2) and Title 31, Code of Federal Regulations, Section 103.11, and Title 18, United States Code, Section 2.

## SENTENCING ALLEGATIONS

### Base Offense Level

Upon conviction of either of Counts One or Two, defendant WILLIAM SHULER JUDY III will be subject to base offense level 6 under Title 18, United States Code, Sections 3551 and 3553, and the 2000 version of the United States Sentencing Guidelines Manual, effective November 1, 2000, hereinafter "U.S.S.G.," pursuant to U.S.S.G. §§ 2F1.1(a) and 2S1.3(a).

### Loss Amount - - Mail Fraud

The offense described in Count One, together with all relevant conduct, involved more than \$800,000.00 but less than \$1,500,000.00 in losses. Therefore, upon conviction of Count One, Defendant WILLIAM SHULER JUDY III will be subject to an eleven-level increase in his offense level pursuant to U.S.S.G. §§ 1B1.3(a)(1) and 2F1.1(b)(1)(L).

### Loss Amount - - Structuring

The offense described in Count Two, together with all relevant conduct, involved more than \$200,000.00 but less than \$350,000.00 in losses. Therefore, upon conviction of Count Two, Defendant WILLIAM SHULER JUDY III will be subject to an eight-level increase in his offense level pursuant to U.S.S.G. §§ 1B1.3(a)(1), 2F1.1(b)(1)(I) and 2S1.3(a).

Information - 6

### More Than Minimal Planning

The offense described in Count One, including all relevant conduct, involved more than minimal planning and a scheme to defraud more than one victim. Therefore, upon conviction of Count One, Defendant WILLIAM SHULER JUDY III will be subject to a two-level increase in his offense level pursuant to U.S.S.G. §§ 1B1.3(a)(1) and 2F1.1(b)(2).

### Sophisticated Means

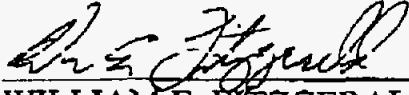
A substantial portion of the scheme described in Count One was committed from outside the United States and otherwise involved sophisticated means. Therefore, upon conviction of Count One, Defendant WILLIAM SHULER JUDY III will be subject to a two-level increase in his offense level pursuant to U.S.S.G. §§ 1B1.3(a)(1) and 2F1.1(b)(6).

### Abuse of Trust

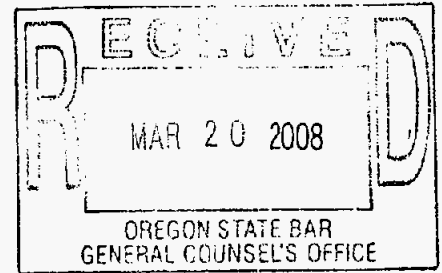
With regard to the offenses described in Count One, defendant WILLIAM SHULER JUDY III abused a position of public and private trust. Therefore, upon conviction of either count, defendant will be subject to a two-level increase in his offense level pursuant to U.S.S.G. § 3B1.3.

DATED this 25<sup>th</sup> day of October, 2004.

KARIN J. IMMERGUT  
United States Attorney

  
\_\_\_\_\_  
WILLIAM E. FITZGERALD  
Assistant United States Attorney

March 17, 2008



Oregon State Bar  
Client Security Fund  
PO Box 231935  
Tigard OR 97281-1935

I am requesting that you reconsider our claim for \$3091.00, against Attorney Timothy Dunn. Please refer to the decision of the trial panel of the Oregon State Bar Disciplinary Board. You will see that Mr. Dunn has been DISBARRED from the practice of law in the State of Oregon. If you have any more questions regarding this matter please contact me. Also, Stacy Hankin, Assistant Disciplinary Counsel, has more information on our case against Mr. Dunn, she maybe of some help in answering your questions.

Thank you for your consideration in this matter.

*Helen L Douglas*  
*Jeremy S. Douglas*

Helen Douglas  
Jeremy Douglas  
3790 Valley Creek Rd NW  
Salem OR 97304-9707  
503-409-2936 (cell)

2005, the Accused failed to pursue the client's legal matter, failed to keep her reasonably informed about the status of her matter, and failed to promptly comply with her reasonable requests for information.

On January 25, 2006 the client terminated the Accused's services and asked for a refund. That day the Accused and the client had a brief telephone discussion in which she confirmed that she wanted her money back and he told her he had the papers ready to file. On January 27, 2006 the Accused filed a petition for dissolution on behalf of the client and withdrew the \$1,500 fee he had previously deposited in his client trust account, although at that time he had not yet earned the entire \$1,500.

After January 27, 2006 the Accused failed to pursue the client's legal matter, failed to keep her reasonably informed about the status of her matter and failed to comply promptly with her reasonable requests for information. On September 19, 2006 the client requested a refund from the Accused. He failed to do so, even though he had not yet completed the legal matter for which he accepted the \$1,500 flat fee.

On February 28, 2007 the client complained to the Bar about the Accused's conduct. On March 1, 2007 Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested that he respond. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on April 5, 2007. In this matter, the Accused has violated Sections 1.3, 1.4(a), 1.5(a), 1.15-1(c), 1.16(d), and 8.1(a)(2) of the Rules of Professional Conduct.

**Case No. 06-100.** At the end of May, 2004 the mother of a man facing criminal charges retained the Accused to represent her son. She paid the Accused a \$1,000 retainer and deposited \$25,000 with the court for bail. In mid-June 2004 the court



reduced bail to \$5,000 and assigned the \$20,000 balance to the Accused to secure payment of his fees. Between June 4 and October 15, 2004 the Accused paid a total of \$10,929.50 from his client trust account to his office account.

By early February 2005 the criminal matter had been completed and the mother began asking the Accused for a refund of unearned fees and a full accounting of the funds he had received. On April 11, 2005 the Accused refunded \$7,500 from the client trust account to the mother, provided a statement of "total costs advanced" showing payment of \$1,510.15 from the trust account, and promised to render a full accounting by the end of that week. He failed to render the promised accounting.

Between April 2005 and March 2006 the mother inquired repeatedly about a further refund and an accounting as promised by the Accused. The Accused did not respond to these requests until March 27, 2006 when the mother again asked for a refund. On April 3, 2006 the Accused sent her two refund checks. One, in the amount of \$2,269, was from his client trust account; the other, in the amount of \$500, was from his business account. With those checks he sent a handwritten note promising an explanation the following Monday. No further explanation or accounting was ever made. In this matter, the Accused has violated Sections 1.15-1(c) and 1.15-1(d) of the Rules of Professional Conduct.

#### SANCTIONS

~~The trial panel is bound to consider four factors in determining appropriate sanctions for violation of rules of conduct for lawyers: 1) the nature of the duty violated, 2) the mental state of the accused, 3) the actual or potential injury resulting from the conduct, and 4) the existence of aggravating and mitigating circumstances. ABA~~

March 21, 2008

Oregon State Bar  
Karen L. Garst, Executive Director  
16037 SW Boones Ferry Rd  
PO Box 231935  
Tigard, Oregon 97281-1935

RE: Client Security Fund Claim No. 07-22  
Claimant: Scharn, Russell William  
Lawyer: Mason, Beth

**Request for Review by Oregon State Bar Board of Governors**

Dear Ms. Garst:

I received the attached letter denying my claim on March 19, 2008. Needless to say, I'm disappointed.

Your conclusion "...that there was no evidence that the fees weren't earned." is contrary to the simplest of facts: Ms. Mason failed to provide me with my file pursuant to OSB Formal Ethics Op. No. 2005-125. The fact is without my file, there is no evidence that the fees were earned.

Had Ms. Mason provided me with my file, the evidence would be even more clear. Ms. Mason's work was minimal and insignificant at best (Section 2. Reimbursable Losses, 2.2.3). What would be even more evident is every step of the way, every corner we turned, Ms. Mason went out of her way to deceive me for her own personal profit at the expense of my children.

As important and also not addressed in your denial is the evidence I provided that Ms. Mason was completely dishonest throughout our entire attorney-client relationship. She abused, deceived, and misled me from the beginning. She took complete advantage of my trust, violating every ethical code of conduct imaginable. When Jeffery Chicoine called, we discussed this and on short notice I provided him additional information.

Under Section 2. Reimbursable Losses: A loss of money or other property of a lawyer's client is eligible for reimbursement if:

**2.2 "The loss was caused by the layer's dishonest conduct." Evidence provided with initial application and additional evidence provided to Jeffery Chicoine March 3, 2008.**

2.2.1 "...a lawyer's misrepresentation or false promise to provide legal services to a client in

exchange for the advance payment of a legal fee." **Evidence provided.**

2.2.3 "...the legal services that the lawyer actually provided were, in the Committee's judgement, minimal or insignificant...." **The evidence, even with out my file, clearly demonstrates Ms. Mason's minimal and insignificant effort to represent me.**

2.6 "As a result of [the] dishonest, .... 2.6.3.... the lawyer resigned from the Bar. **Ms. Mason resigned from the Bar after she was found to have lied to the Bar while under investigation.**

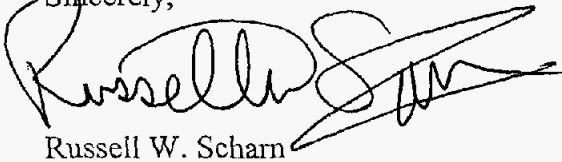
2.7 "A good faith effort has been made by the claimant to collect the amount claimed, to no avail." **I made every effort to locate Ms. Mason and my file. The last news I heard was that she had left the country. She, and my file's whereabouts are unknown to me. Additionally, in an effort to collect part of the amount claimed, I addressed these concerns with the Oregon State Bar Professional Liability Fund. On March 4, 2008, I accepted a settlement offer which covered some of the loss.\***

\*I understand the Client Security Fund does not reimburse the cost of hiring another attorney to complete the representation. I also understand it does not reimburse clients for obligations to third parties. In light of these facts and the above mentioned settlement, I am revising my loss to just those fees paid to Ms. Mason: \$12,928.50.

I have turned this information over to my attorney, Richard Maizels and asked that he assist me in the matter. Please refer any further correspondence to him.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell W. Schar". The signature is written in a cursive style with a long, sweeping underline.

Russell W. Schar

cc Richard Maizels  
621 SW Morrison Ste 1025  
Portland, Oregon 97205  
503-223-2126

March 17, 2008

Russell William Scharn  
17836 SW Dodson Dr  
Sherwood, OR 97140

Re: Client Security Fund Claim No. 07-22  
Claimant: Scharn, Russell William  
Lawyer: Mason, Beth

Dear Mr. Scharn:

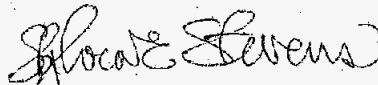
At its meeting on March 8, 2008 the Client Security Fund Committee considered your claim for reimbursement. After discussing the facts and the requirements for eligibility for reimbursement, the committee voted to deny your claim for \$45,428.20 against Beth Mason. The Committee concluded that there was no evidence that the fees weren't earned. The Client Security Fund does not reimburse the cost of hiring another attorney to complete the representation. The Client Security fund also does not reimburse clients for obligations to a third party.

Under Client Security Fund Rule 4.10.1 the denial of this claim by the committee is final, unless your written request for review by the Oregon State Bar Board of Governors is received by the Executive Director within 20 days of the date of this letter. Requests for Board review must be sent to: Karen L. Garst, Executive Director, Oregon State Bar, 16037 SW Upper Boones Ferry Rd PO Box 231935 Tigard, OR 97281-1935

If no request for review is received from you within the allotted time, the committee's decision will be final and the file will be closed.

Please do not hesitate to contact me should you wish any further information.

Sincerely,



Sylvia E. Stevens  
General Counsel

Ext. 359, Fax: (503) 598-6959

Email: sstevens@osbar.org

SES:cs

cc: Beth Mason

Scott Asphaug, CSF Committee Chair

16037 SW Upper Boones Ferry Road, PO Box 231935, Tigard, Oregon 97281-1935

(503) 620-0222 toll-free in Oregon (800) 452-8260 Regulatory Services fax (503) 684-1360

www.osbar.org

**RICHARD MAIZELS**  
Attorney at Law

621 SW Morrison Street, Suite 1025  
Portland, Oregon 97205-3813  
Telephone (503) 223-2128 Ext. 306  
Facsimile (503) 274-8575  
RMaizels@comcast.net

March 18, 2008

Board of Governors  
c/o Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
P.O. Box 231935  
Tigard OR 97281

Re: My client: Russell Scharn  
Attorney involved: Beth Mason

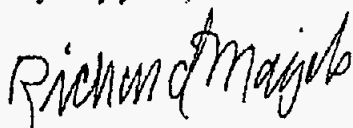
To the Board:

I represent Russell Scharn regarding his claim to be reimbursed for his attorney's dishonest conduct. That attorney was Beth Mason. I assume you have the relevant documentation to reach a fair and equitable conclusion. It is my position that there is no dispute that her conduct was dishonest and that it falls directly within the reimbursable loss definition of the Client Service Fund rules.

I refer specifically to paragraph 2.2.3. It would be error to fail to recognize that the legal services Ms. Mason purported to provide were minimal and insignificant. What she did was of no benefit to Mr. Scharn and further her conduct worked an extreme hardship on him, resulting in a devastating result in his subsequent hearing.

I urge you to rectify this wrong committed by a former member of the Bar. Her conduct, in my opinion, was a classic example of the purpose of our Client Security Fund.

Very truly yours,



Richard Maizels  
RM:pm

COPY

RICHARD MAIZELS  
Attorney at Law

621 SW Morrison Street, Suite 1025  
Portland, Oregon 97205-3813  
Telephone (503) 223-2126 Ext. 306  
Facsimile (503) 274-8575  
RMaizels@comcast.net

January 14, 2008

Steven Carpenter  
Attorney at Law  
Professional Liability Fund  
Suite 300  
5335 SW Meadows Road  
P.O. Box 1600  
Lake Oswego OR 97035

Re: Russell Scharn v. Beth Mason

Dear Mr. Carpenter:

I will attempt to review what occurred during the time that Beth Mason represented my client, Russell Scharn. The chronological dates of what occurred and the input are the words of my client, so it would fair to say that this is what his testimony would be if the matter went to trial.

1. 02/07/05: This was the initial meeting at the time Beth Mason was hired by my client for the purpose of representing him for the contempt citation.
2. In the next several weeks my client and Ms. Mason discussed the process, time lines and order of events, including my client's list of witnesses which was provided to Ms. Mason. There were discussions regarding depositions, taking statements from witnesses and, most importantly, filing counter contempt charges against my client's ex-wife.

My client will testify that Ms. Mason had no contact with any of the seventeen witnesses from the list he provided to her, even after stating verbally and in writing how valuable these witnesses would be in that they could provide good evidence to not only establish a defense, but to show improper conduct on the part of his ex-wife, amounting to her contempt.

Steven Carpenter  
Attorney at Law  
Professional Liability Fund  
January 14, 2008  
Page 2

Ms. Mason did not talk to any of the witnesses, nor did she talk to any of my client's ex-wife's witnesses or take his ex-wife's deposition, which would have been critical to the contempt charges. What was really interesting to my client is that Ms. Mason explained to him when and how they would accomplish getting depositions and statements; however, nothing was ever done.

My client constantly asked when Ms. Mason would file the counter contempt charges against his ex-wife. My client discussed this matter with Ms. Mason on several occasions and provided her with detailed and specific documentation. See Exhibits 1, 2 and 3 enclosed.

3. 02/28/05: My client's ex-wife filed a change of venue hearing in Yamhill County. Ms. Mason asked my client to bring evidence and be prepared to testify. She felt that the matter should and would remain in Yamhill County. At the hearing, Ms. Mason presented no evidence and called no witnesses, even though she directed my client to bring evidence and be prepared to testify. As a result, venue was changed to Washington County, which turned out to be a disaster. See Exhibit 4 enclosed.
4. 02/26/05: Apparently Ms. Mason contacted my client's ex-wife's attorney, Dan Peters, and discussed some confidential evidence that my client had provided to her regarding my client's ex-wife's current husband. His ex-wife's current husband had a prior conviction for domestic violence and assault, which information was critical in the parenting time and child custody issues. Ms. Mason disclosed this information after telling him that she would not provide opposing counsel with the evidence stating "This is trial by ambush."
5. 03/21/05: Apparently Ms. Mason sent a packet to the expert, Dr. Loveland, regarding a child custody evaluation he was preparing. Ms. Mason did not include all the critical information that my client had provided to her. See Exhibits 5, 6 and 7 enclosed.
6. 09/26/05: Dr. Loveland's child custody evaluation was received by Ms. Mason. My client agreed to the recommendation and asked Ms. Mason to settle that portion of the case.

Steven Carpenter  
Attorney at Law  
Professional Liability Fund  
January 14, 2008  
Page 3

7. 10/28/05: My client was finally able to meet with Ms. Mason more than a month after receiving the child custody evaluation. She had cancelled several appointments prior to this one, and my client realized at this time that things were not going well, and again asked Ms. Mason to discuss settlement with Mr. Peters, his ex-wife's attorney. There is no evidence that she did so.
8. 11/10/05: Apparently there was a conference call between Dan Peters and Dr. Loveland, but my client was not advised of the results of that discussion.
9. 11/26/05: Since my client had no contact with Ms. Mason for a month, he sent an email to her to see what had occurred regarding settlement. He was very concerned because it was getting close to the trial date and nothing was being done to settle the case, nor had anything been done to prepare for court. Ms. Mason's response was that she did talk to the attorney but "I don't know where we are right now. I'll call you next week."
10. 11/30/05: My client, by this time, was frantic and had no idea what to do, but he did realize that from everything that had gone on previously, Ms. Mason was not going to prepare for trial and was not going to help him in any way, so he had no alternative but to terminate her. He requested a copy of his file, including all hand-written notes.
11. 12/14/05: My client sent an email to Ms. Mason again asking for his file, but received nothing. Later, he received three pages of hand-written notes, which was the result of the November 10, 2005, conference call with Dr. Loveland and Daniel Peters. That was all she provided in response to his request for his file. See Exhibit 8 enclosed.

All during this time, my client provided to Ms. Mason the many pages of email correspondence between him and his ex-wife. Ms. Mason billed him for 5.6 hours of reading this material, but apparently took no notes. At no time did she ever attempt to use the material, and it is doubtful that she read it because, had she read it, she would have immediately filed contempt charges against my client's ex-wife. Again, this is all critical to what transpired at trial.



Steven Carpenter  
Attorney at Law  
Professional Liability Fund  
January 14, 2008  
Page 4

12. 12/05/05: My client went to Ms. Mason's office to try to get his file. Ms. Mason told him she did not have it, as it had been taken to archives at another site.

Sometime later in December, Ms. Mason notified the court that she was no longer my client's attorney and that NO matters were pending. (See motion and affidavit enclosed.). In actuality, there was a four-day trial scheduled to begin on January 10, 2006.

Because of the holidays, my client tried, but was unable to contact an attorney who would help him on short notice. My client appeared in court prior to the trial date and asked for a setover, which was denied. On January 10, 2006, the trial went forward and my client attempted to represent himself the best way he could. When he tried to offer the email evidence that would establish contempt on the part of his ex-wife, it was objected to by Mr. Peters and the judge said since there was no responsive pleading, he would receive the evidence. If the court erred in failing to review the emails, it was Ms. Mason's fault for placing my client in this predicament. My client was held in contempt for no reason at all and an attorney fee of \$27,500 was awarded to Mr. Peters. The attorney fee award in itself is a travesty but, moreover, child custody was changed and, because Ms. Mason did not settle that part of the case according to the terms of the custody evaluation, the court unloaded on my client and changed custody to my client's and the children's detriment, probably because my client was without an attorney. He was badgered in chambers by the judge and his ex-wife's attorney for over an hour and he felt helpless without an attorney.

Very truly yours,

Richard Maizels

RM:pm  
Enclosures

**RICHARD MAIZELS**  
Attorney at Law

621 SW Morrison Street, Suite 1025  
Portland, Oregon 97205-3813  
Telephone (503) 223-2126 Ext. 306  
Facsimile (503) 274-8575  
RMaizels@comcast.net

March 25, 2008

Board of Governors  
c/o Oregon State Bar  
16037 SW Upper Boones Ferry Rd  
P.O. Box 231935  
Tigard OR 97281

Re: My client: Russell Scharn  
Attorney involved: Beth Mason

To the Board:

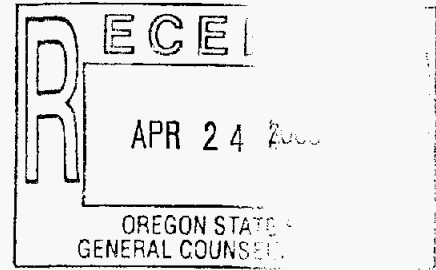
I have just learned that Mr. Scharn has asked to be reimbursed for money that does not come within the Client Security Fund and the Client Service Fund rules. I would like to supplement my letter by merely stating that my client is actually seeking reimbursement only for attorney fees paid to Ms. Mason.

Very truly yours,



Richard Maizels  
RM:pm

April 12, 2008



Oregon State Bar  
Helen Hierschbiel, Deputy General Counsel  
5200 SW Meadows Rd.  
PO Box 1689  
Lake Oswego, OR 97035-0889

RE: Client Security Fund Claim No. 2007-22

Dear Ms. Hierschbiel:

After receiving an email from your assistant, Ms. Sylvia Stevens, I am taking this opportunity to present additional information for review by the Board of Governors. I would like to apologize for my lack of understanding at the beginning of this process. Even now, I am a bit confused regarding the procedures I'm to follow.

Per the instructions on my original application, I included documents describing in detail how Ms. Mason was dishonest and how that caused my loss. After speaking with Mr. Jeffrey Chicoine on March 3, 2008, he asked for additional information, again focusing specifically on how Ms. Mason was dishonest. I called him the following day and after a brief discussion, faxed him some handwritten notes I had hastily prepared the night before. Since then, I received an email from Ms. Sylvia Stevens.

Ms. Stevens agreed to accept additional information to present to the Board of Governors at the May 2008 conference but this time states the Client Security Fund will only compensate a client when there is evidence of something close to theft by the lawyer. I am now adding a little more specific information in this packet. I hope that this, along with the previous information I have provided will convince the Board of Ms. Mason's dishonesty throughout our relationship resulting in the theft of my fees.

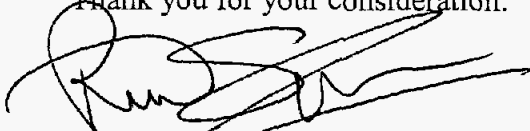
On a final note, I'd just like to add that I hold no ill will toward Ms. Mason. When I first learned she was suffering from a long term illness, I felt very bad and that certainly explained a lot. However, I believe Ms. Mason had an obligation to inform me of this (in some way), thus allowing me to decide whether to seek other or additional counsel. This dishonest behavior (lying by omission) was the foundation of the problem. The specific incidences that followed were the building blocks of disaster.

I would like to believe Ms. Mason's illness was the cause for her behavior. It is difficult to swallow that this may have been purposeful. Nonetheless, I believe the evidence I provide today

along with the other documents previously submitted clearly evidence Ms. Mason was dishonest from the first day we met, for more than ten months to follow. Not providing me my file (as required by law) after repeated requests was the final dagger. I'm sure that if I could provide that to you, there would be additional evidence of deceit resulting in the theft of my funds.

As noted previously, I amended my original request for losses. The actual total is \$12,928.50, just those fees paid to Ms. Mason per your previous instructions.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Russell W. Scharn', written over a horizontal line.

Russell W. Scharn

cc Richard Maizels, Attorney  
Sylvia Stevens, OSB

On February 7, 2005, I met with Ms. Mason for the first time. After presenting my case, Ms. Mason told me she had recently handled cases like this and that she sympathetic to my situation. She assured me of her loyalty and said she would be my biggest advocate.

For the next several months Ms. Mason regularly made comments which bolstered my opinion of her and her ability to win my case. This was especially true during phone conversations and personal meetings with her, while she did some of the same in emails.

For ten months Ms Mason deceived me into believing all was well; the evidence against my ex-wife was getting better and better; her current husband was going to be an issue; my witnesses were going to be great; how doing depositions was her speciality and how my ex-wife was completely out of control.

All this time she was deceiving me into believing we would win at trial while doing nothing to prepare for the trial.

Even after she was terminated, she lies to me stating, "I firmly believe that you need maximum amount of time with your children...." If this was even close to the truth, she would have followed through with everything she talked about for ten months.

Beth Mason  
<bmason@bmasonlaw.com  
>

To Russ\_Scham@orp.uscourts.gov  
cc

03/10/2005 08:32 AM

bcc

Subject Re: Question and Update

ATTORNEY CLIENT CONFIDENTIAL COMMUNICATION - IF YOU ARE NOT THE INTENDED RECIPIENT STOP READING AND DELETE THIS MESSAGE IMMEDIATELY.

SEE MY REPLIES IN CAPS BELOW

Russ\_Scham@orp.uscourts.gov wrote:

>  
> Good morning Beth.  
>  
> I received a copy of the Order for Custody Evaluation and then the  
> revised Order after Daniel commented.  
>  
> My question is: Monica is the Petitioner. Why are we doing this  
> Order, especially when I have agreed to use Dr. Loveland under duress  
> of another contested hearing. It would seem to me that they should be  
> filing these types of Motions/Orders for our review and signature.  
> WE'RE DOING THIS BECAUSE I LIKE MY FORM OF ORDER BETTER - IT PROVIDES  
> PROTECTIONS FOR YOU THAT I HAVEN'T FOUND IN OTHER ORDERS (ALSO, WE  
> ARE ALSO ASKING FOR CUSTODY - EVEN THOUGH SHE STARTED IT - IT'S NOW  
> BOTH OF YOU IN THE MIX)  
>  
> I'm sure there is a reason for this, but I just don't know what it is.  
>  
> On another note, I was able to track down Tom's assault conviction. I  
> have requested the relevant documents which should be coming within  
> the next few days. The prosecuting attorney was very helpful! GREAT -  
> ~~LET ME KNOW WHEN YOU HAVE THE DOCUMENTS~~  
>  
> I also copied 90 pages from Tom's Washington County divorce file. I  
> did not have time to read the documents I requested but will do so and  
> let you know if there is anything interesting. Can you think of  
> anything from that file that would be of assistance to you? ANYTHING  
> THAT HAS TO DO WITH VIOLENCE, OR BAD ACTS (AFFIDAVITS ARE GOOD PLACES  
> TO FIND THAT), OR CONTEMPT MATTERS - IT WOULD BE HELPFUL TO SEE THE  
> DECREE, AS WELL, AS THAT GIVES US SOME FINANCIAL INFORMATION - ALSO IF  
> HE HAS SOME RESTRICTIONS ON CONTACT WITH OTHER CHILDREN, THAT WOULD BE  
> OF INTEREST. ALSO - ANYTHING ABOUT JOB HISTORY - IF HE MOVES AROUND,  
> THAT'S AN INDICATOR OF INSTABILITY.  
>  
> Lastly, I would like to review and/or discuss the information you  
> prepare for Dr. Loveland before you send it off. I would also like to  
> discuss with you briefly what to expect during this process. I have  
> never done anything like this before. OF COURSE - WE ALWAYS BRIEF  
> YOU BEFORE WE SEND YOU IN FOR THE SESSION. I WILL BE WORKING ON THE  
> MATERIAL FOR DR. LOVELAND SOON SO IF YOU HAVE PARTICULAR THINGS YOU  
> WANT INCLUDED, PLEASE LET ME KNOW. KEEP IN MIND THAT ANYTHING THAT I  
> SEND HIM ALSO GOES TO HER ATTORNEY.

BETH

>

Russ  
Scharn/ORP/09/USCOURTS  
03/17/2005 12:11 PM

To Beth Mason <bmason@bmasonlaw.com>  
cc  
bcc  
Subject Re: FYI

Monica is back on her feet now so we're back to the regular schedule.

Oh yeah.... I got the transcripts from the restraining order hearing and the child support hearing. I'll bring them along next week. Haven't gotten the arrest/conviction information from Tom's assault, but it should be any day now. I'll bring that too.

Russell W. Scharn  
U.S. Probation  
Drug/Alcohol Treatment Services  
503-326-8621  
Fax: 503-326-8700

Beth Mason <bmason@bmasonlaw.com>

Beth Mason  
<bmason@bmasonlaw.com  
>  
03/17/2005 11:07 AM

To Russ\_Scharn@orp.uscourts.gov  
cc  
Subject Re: FYI

ATTORNEY CLIENT CONFIDENTIAL COMMUNICATION - IF YOU ARE NOT THE INTENDED RECIPIENT DELETE IMMEDIATELY WITHOUT READING.

Wow - she's really out of control, isn't she? Are you still getting extra time with the kids due to her surgery? I'm not too worried about the calls, as anyone who is loyal at all to you will call you just as these two did. The fact that the babysitter is concerned enough about her safety to call her lawyer will not help Monica.

Beth  
Russ\_Scharn@orp.uscourts.gov wrote:

>  
> I received two calls on Tuesday. One from Tami Albrecht, my day-care  
> provider (potential witness). The other from my ex-girlfriend, Kim  
> Kelleher (potential witness).  
>  
> Tami told me Monica called her on Tuesday and was very emotional,  
> saying she was suing me for "breach of contract" because I use Tami  
> for my summer day-care when I should be allowing the children to be  
> with Monica. Monica wanted a copy of our contract to provide day-care  
> (there is none) and asked Tami to talk to her attorney. Tami is very  
> concerned and asked me if I thought Monica was "capable of doing  
> something to me." If you recall from my notes, Monica came to Tami's  
> home a couple of years ago, unannounced on my custody day, and  
> attempted to take the children. During that incident, Monica was  
> hysterical, crying, and demanding she be allowed to take the kids,

Beth Mason  
<bmason@bmasonlaw.com  
>

03/30/2005 11:55 AM

To Russ\_Scharn@orp.uscourts.gov

cc

bcc

Subject Re: Counseling for Emily

ATTORNEY CLIENT CONFIDENTIAL COMMUNICATION IF YOU ARE NOT THE INTENDED RECIPIENT DELETE IMMEDIATELY WITHOUT READING.

SEE MY RESPONSES BELOW

Russ\_Scharn@orp.uscourts.gov wrote:

>  
> Good morning Beth!  
>  
> I just had a very nice conversation with Dr. Head. She explained that  
> Monica seemed mostly concerned about issues related to Emily adjusting  
> to the new blended family, with Tom in the picture. My friend, Kim  
> had said something similar, that Monica told her Emily was showing  
> signs of "withdrawing" while at her home. This makes a little more  
> sense to me as Emily does not exhibit these behaviors at our home.  
> ~~THIS DOES MAKE SENSE - IT ALSO ECHOES SOME OF THE CONCERNS WE HAVE~~  
> ~~ABOUT TOM~~  
>  
> I told her a little about our current situation. Dr. Head said, "I  
> think she's (Monica) decided you are the enemy." This statement alone  
> explains everything I've been trying to say for years. No matter what  
> I say or do, it's met with resistance, taken as being disrespectful or  
> as an attack. What's best for the children is immediately lost in  
> translation. ~~INTERESTING OBSERVATION THIS EARLY IN THE CASE - THIS~~  
> ~~WILL COME BACK TO BITE HER.~~  
>  
> Dr. Head was not aware that Monica was asking that I have supervised  
> visits with the kids and said she thought was "absolutely absurd."  
> She said she thought it was commendable that I moved to Sherwood to  
> be close to the children. I told her I have done this twice. ~~THIS~~  
> ~~IS ALSO HELPFUL~~  
>  
> Dr. Head said she would like to talk to Dr. Loveland and would agree  
> with his decision whether she should see Emily at this time as it does  
> not appear to be urgent that Emily be in counseling. She also agreed  
> to meet with me at any time and suggested that if Emily does continue  
> in counseling, she meet with me for additional information that would  
> be helpful. I THINK YOU HAVE HIS PHONE NUMBER, JUST HAVE HER CALL HIM  
> DIRECT - HE ALREADY HAS MY LETTER ON POINT. LET ME KNOW WHAT THEY DECIDE.

>  
> I like her!  
>  
> Thank you,  
>  
>  
> Russell W. Scharn  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700



Beth Mason  
<bmason@bmasonlaw.com>  
>

To Russ\_Scham@orp.uscourts.gov

cc

04/27/2005 04:14 PM

bcc

Subject Re: FYI

Monica is so clueless here -- no wonder your daughter is having problems in this blended family. See if there are any other criminal reports by the ex-wife - I agree with you, the son learned this some place.

Beth

Russ\_Scham@orp.uscourts.gov wrote:

>

> Yep. Tom's son has visited the house and the kids know him but they  
> don't talk about him a lot. My thought is that a boy who treats his  
> mother like this learned it from someone..... Tom?.....who was  
> beating his then girlfriend about the same time. I'd like to know if  
> Tom was assaultive towards Chris Darnall (ex-wife) too.

>

> Russell W. Scham  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700

>

>

>

> \*Beth Mason <bmason@bmasonlaw.com>\*

>

> 04/27/2005 03:25 PM

>

>

> To

Russ\_Scham@orp.uscourts.gov

> cc

> Subject

Re: FYI

>

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>

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>

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>

> Wow - your mother will be a critical witness in this case - and is his  
> son around your children?

>

> Beth

> Russ\_Scham@orp.uscourts.gov wrote:

>

>

> > Beth,

>

> > Just wanted to give you another FYI.

bmason@bmasonlaw.com  
12/22/2005 08:52 AM

To Russ\_Scham@orp.uscourts.gov  
cc  
bcc  
Subject Re: Thank you, and one request....

>The offer stands, if you want some assistance  
Beth

> You're right. I would never presume I would stand a chance in court with  
> even the least skilled attorney and Mr. Peters seems to me to be far and  
> above that level. If you recall, I asked you about evidence in this case  
> and you said something like trial by ambush. I'm counting on the fact  
> that Monica follows a long established pattern of lying.... even to Mr.  
> Peters.

> I'm sending a letter today suggesting we settle this but if that does not  
> work, I will rely on the truth, and a little ambush.

> Russell W. Scharn  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700

> bmason@bmasonlaw.com  
> 12/21/2005 08:04 PM To Russ\_Scham@orp.uscourts.gov cc Subject  
> Re: Thank you, and one request....

>> Russ -

> I firmly believe that you need maximum amount of time with your children,  
> and I know that I was too expensive for you to send to court. However, I  
> still believe that you should have some structure or you will be  
> slaughtered with Dan Peters. My pleasure.

> Beth

> > Thank you again! I did not expect this offer but sincerely appreciate  
> it.

> >

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> > Russell W. Scharn  
> > U.S. Probation  
> > Drug/Alcohol Treatment Services  
> > 503-326-8621  
> > Fax: 503-326-8700

On February 18, 2005, we had a Change of Venue hearing in Yamhill County Court, McMinnville, Or.

I had prepared several documents with evidence relating to the case. Ms. Mason advised me via email to be prepared to testify. We talked the day before the hearing and she told me she would call me to the stand and present the documents I brought.

Ms. Mason did not call me as a witness. She did not present one of the several documents I brought as evidence and thus lost resulting in the matter being transferred to Washington County. Ms. Mason later told me it was probably better that the case was transferred to Washington County as she was better know there. The second she said this, I remember thinking she lost the case purposefully.

Additionally, Ms. Mason billed me \$325 per hour (her court rate) for travel time and sitting at the Yamhill County Courthouse having coffee, discussing her upcoming motorcycle vacation. The court time was less that 30 minutes.

Beth Mason  
<bmason@bmasonlaw.com>  
02/14/2005 01:27 PM

To Russ\_Scham@orp.uscourts.gov  
cc  
bcc

Subject Re: Change of Venue Hearing on 2/18/05

ATTORNEY CLIENT CONFIDENTIAL COMMUNICATION, IF YOU ARE NOT THE INTENDED RECIPIENT, STOP READING AND DELETE THIS MESSAGE.

SEE MY REPLIES BELOW IN CAPS  
Russ\_Scham@orp.uscourts.gov wrote:

>  
> Good day Beth!  
>  
> I'm hoping you and Mr. Peters can agree to have this matter heard in  
> Yamhill County without a change of venue hearing. If there is a  
> hearing on Friday, I wanted to share a couple of things with you. I  
> HAVE A CALL IN TO HIM - HE HAD CALLED ME LAST WEEK ASKING FOR ME TO  
> AGREE TO THE CHANGE OF VENUE, SO I WOULD GUESS WE ARE STILL ON.  
>  
> 1) The majority of my proposed witnesses reside in Yamhill County and  
> a few others live closer to McMinnville than Hillsboro.  
>  
> 2) I clocked the milage from Monica's home (I live about 1/2 mile  
> from her) to Hillsboro: 20.4 miles. Then to McMinnville: 22.1 miles.  
> Only 1.7 mile difference.  
>  
> 3) It actually took less time for me to travel to McMinnville  
> (straight shot down Hwy. 99) that to Hillsboro, out the back roads.  
>  
> 4) Of course the primary reason is the Court's familiarity with this  
> case and other issues that have occurred in Yamhill County.  
>  
> Please give me a call or email if the hearing is on. I will attend.  
> ~~GOOD - I WILL NEED YOU THERE IN A SUIT AND TIE PREPARED TO TESTIFY, IF~~  
> ~~NECESSARY ABOUT WITNESSES, DISTANCES AND TIME, AS WELL AS THE~~  
> ~~COLLATERAL ISSUES WHICH ARE FAMILIAR TO THE COURT.~~

BETH

>  
>  
> Russell W. Scham  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700  
>  
>

>-----  
>  
>No virus found in this incoming message.  
>Checked by AVG Anti-Virus.  
>Version: 7.0.300 / Virus Database: 265.8.8 - Release Date: 2/14/2005  
>  
>

**Mason & Associates**  
P.O. Box 1549  
Beaverton, OR 97075-1549  
(503)641-7990

February 25, 2005  
Invoice submitted to:

Russell Scham  
17836 SW Dodson Dr.  
Sherwood OR 97140

Professional services

		<u>Hours</u>	<u>Amount</u>
2/9/2005	BW Review, organize and index pleadings and correspondence received from client	0.50	45.00
2/10/2005	BW Review, organize and index pleadings and correspondence received from client	0.50	45.00
	BM Listen to voicemail from Dan and responsive letter	0.40	110.00
2/14/2005	BM Review client's e-mail and respond	0.30	82.50
<del>2/15/2005</del>	<del>BM Prepare Amended Response and Counter Claim to Orders to Show Cause</del>	<del>1.00</del>	<del>275.00</del>
	BM Revise and finalize Amended Response and Counterclaim	0.50	137.50
2/16/2005	BW Letter to Yamhill County with Respondent's Amended Response to Respondent's Orders to Show Cause Re: Remedial Contempt and Modification of Judgment (Custody and Parenting Plan)	0.30	27.00
2/17/2005	BW Prepare file for hearing	0.20	18.00
*	BM Telephone call with client re: court on Friday	0.10	27.50
* 2/18/2005	BM <u>Travel</u> to McMinnville and return for change of venue hearing	3.50	1,137.50
	<i>Billed @ \$325 per hr Professional services, current month</i>	7.30	\$1,905.00
2/25/2005	Trust applied - current month		(\$1,905.00)
	<i>Total fees and costs now owing</i>		\$0.00
	<i>Client trust replenishment required</i>		\$1,905.00

# ATTORNEY FEE ESTIMATE <sup>1</sup>

Mason & Associates  
 P.O. Box 1549  
 Beaverton, Oregon 97075-1549  
 (503) 641-7990 (503) 646-2053 fax

Client: Mason & Associates

Date: 2/2/05

**HOURLY RATES:<sup>2</sup>**

Beth Mason - Attorney \$275 office / \$325 trial  
 Barbara J. Aaby - Attorney \$225 office / \$250 trial  
 Lillian Bier - Attorney \$210 office / \$235 trial

Deanna Ballou Jensen - Attorney \$210 office / \$235 trial  
 Paralegals - \$90 / hour

**UNCONTESTED CASE:**

Flat Rate: \$ 2,300  
 Including Court Costs

**MEDIATED CASE:** \$ 1,000 - 5,000 Est Rng  
 Mediator: \$ 1,000 - 3,000  
 Initial Retainer: \$ 1,500  
 Minimum Monthly Retainer:<sup>3</sup> \$ 1,000

**NEGOTIATED CASE:** \$ 3,000 - 25,000 Est Rng  
 Initial Retainer: \$ 1,500 - 2,500  
 Minimum Monthly Retainer:<sup>3</sup> \$ 2,000

**CONTESTED CASE:** \$ 15,000 - 30,000 Est Rng  
 Level One: \$\$ Issues Only  
 Initial Retainer: \$ 2,500  
 Minimum Monthly Retainer:<sup>3</sup> \$ 2,000  
 Pre-Trial Retainer:<sup>4</sup> \$ 15,000

**CONTESTED CASE:** \$ 25,000 - 50,000 Est Rng  
 Level Two: Custody / Parenting Time - Oregon  
 Initial Retainer: \$ 5,000  
 Minimum Monthly Retainer:<sup>3</sup> \$ 5,000  
 Pre-Trial Retainer:<sup>4</sup> \$ 25,000-35,000

**CONTESTED CASE:** \$ 35,000 - 70,000 Est Rng  
 Level Three: Custody / Parenting Time - Interstate  
 Initial Retainer: \$ 5,000  
 Minimum Monthly Retainer:<sup>3</sup> \$ 5,000  
 Pre-Trial Retainer:<sup>4</sup> \$ 30,000-40,000

**CONTESTED CASE:** \$ 35,000 - 60,000 Est Rng  
 Level Four: \$\$ Issues/Custody/Parenting Time - Oregon  
 Initial Retainer: \$ 5,000  
 Minimum Monthly Retainer:<sup>3</sup> \$ 5,000  
 Pre-Trial Retainer:<sup>4</sup> \$ 30,000-40,000

**OTHER ESTIMATED FEES:<sup>5</sup>**

Appraisals:  
 Personal Property \$ 500+ (varies)  
 Real Estate \$ 500+ (varies)  
 Pension \$ 500+ (varies)  
 Business \$ 3-10,000 (varies)  
 Other: \_\_\_\_\_ \$ \_\_\_\_\_  
 Other: \_\_\_\_\_ \$ \_\_\_\_\_

Court Filing Fee \$ 300+ (varies)  
 Depositions \$ 300-500 each  
 DRO \$ 750-1,000 each  
 CPA \$ varies  
 Custody Study \$ 3,000 - 5,000  
 Private Investigator \$ varies  
 Other: \_\_\_\_\_ \$ \_\_\_\_\_

<sup>1</sup>Your attorney has estimated the fees to handle your case. However, this office controls only 1/2 of your case. A significant amount of time will be spent responding to what the other party does or does not do. Your attorney's fees and costs may be higher than these estimates.

<sup>2</sup>Hourly rates may change without notice. The hourly rates at which a case is started will continue until the work for which we were retained is completed. Subsequent modification or enforcement matters will be billed at the hourly rates then in effect.

<sup>3</sup>"Minimum Monthly Retainer" is the minimum balance you must keep with this office each month. These funds are held in a separate account called a "trust account," until you are billed for services rendered. When our fees and/or costs advanced are billed to you, money is transferred from your trust account to pay those charges. You are required to replenish your trust account each month to bring the balance back up to the minimum monthly amount described above. After the case is completed, any credit balance in your trust account is refunded to you.

<sup>4</sup>"Pre-Trial Retainer" is the minimum amount you must have in your trust account 60 days before trial if you want our office to represent you at trial.

<sup>5</sup>These are fees paid on your behalf to others, from your trust account.

(10/24/03)

During our first meeting on February 7, 2005, one of the documents I provided to Ms. Mason was a list of witnesses including a brief discussion of what some of them would testify to. This is also one of the documents I brought to the change of venue hearing as 12 of the 17 witnesses were residing in Yamhill County, making their appearance in a Yamhill County court more convenient than a Washington County court.

Ms. Mason both verbally and in writing stated several times how she would interview, depose, and question on the stand some of these witnesses.

Ms. Mason never even once contacted any of these witnesses. She not only failed to depose any of the witnesses (or myself) she never so much as scheduled them. It's no wonder that she did not know where we were on November 26, 2005, just 46 days from trial (minus and holiday time any of the parties may not be available).

Witnesses and Information

1.7 miles closer  
to Hillsboro  
transfer to Mar

Jim Wood- Eugene, OR  
Margo Durdel- Tigard, OR

Can both testify that on December 31, 1999, while Monica was employed full-time as a teacher for Dayton elementary school, knowing they had/have a zero tolerance policy regarding use of illegal drugs, smoked marijuana.

Kimberly James-? ~~last known Hillsboro~~

Victim of the dog theft incident will further explain Monica's lies, bizarre behavior, why mediation failed and her feelings about this terrible incident

Larry Silvis- 1060 SW View crest, Dundee, OR 97115 503-538-7665

Larry was mentioned in the dog theft police report as a witness. Monica later accused him of being an accomplice, which he denied. Testify to Monica's lack of truthfulness.

Larry Cotter- ~~Unknown~~

Larry was Monica's ex-boyfriend, also mentioned in the dog theft police report as notifying the victim her dog was stolen by Monica. May be able to discuss other bizarre behaviors, lies, etc...

Officer Kenneth Lyon- Dundee Police, 620 SW Fifth St. Dundee, OR 97115 503-538-2244

Officer Lyon can add some additional details to his police report about Monica lying to him and her state of mind during the contacts he had with her.

John Lasswell- Tigard, OR

John is Monica's father who was present during one of the conversations with the police and the victim. While he will support Monica, on the stand, he will have to tell the truth about her stealing the dog and her state of mind.

Tami Albrecht- Newberg, OR

Tami is my friend and day care provider for the past 4 years. Tami can testify about the July 16, 2002 incident at her home. Monica went there, made a scene in front of my children, her children, and other children in her care. Tami told me at the time she was very concerned about Monica's behavior, crying and demanding she be allowed to take the



children. One child specifically said to Tami, "I'm scared."

Kim Kelleher- McMinnville, OR

Kim is an ex-girlfriend who can testify to the July When I had arranged for Kim to watch the kids while I was in Alaska. Kim spoke to Monica at length. Monica refused to allow the kid to come with Kim, accusing her of "trying to replace me as the mother."

Carol Cline- Dayton Elementary School, Dayton, OR 503-864-2217

Ms Cline is the school nurse. She can testify about the January 9, 2003 incident where Monica called me at work and told me Donald had a temperature of 110 and I needed to come pick him up. I called the nurse who told me she saw Donald, that he did not have a temperature, but appeared tired and a little sluggish.

Michelle and Scott Archibald-13885 SE Fletcher Rd, Dayton, OR 97114 503-864-2617

Michelle and Scott have a daughter, Emily's age. Both were present on When I drove into the Dayton school parking lot to find Emily and another young girl crying hysterically. When I ran up to Emily, she was so distraught, she did not recognize me. I had to grab her and hold her until she calmed down. Monica had allowed the children to walk to her house alone but they could not get in. Confused and scared, the girls walked back to school alone.

Michelle talked with me shortly after this incident and told me her daughter was recently allowed to stay the night with Emily at Monica's house. When her daughter came home, she told Michelle that a strange man she had never seen stayed the night with Monica that night and that she was very frightened. Michelle felt this was wrong not only for the safety of her daughter but not in line with their Christian values. Michelle has never allowed her daughter to spend the night with Emily at Monica's home since.

Lisa Decker-Griffith- Newberg, OR

Lisa was my neighbor on Villa Rd. In Newberg, OR. She can testify to the bird bath incident, hearing Monica yelling at me in front of the house, when the children were in the family room, then knocking over the concrete birdbath in my flower bed.

Jane Parisi-Mosher- 435 N. Evans St. McMinnville, OR 97128 503-472-0210

Jane was our mediator in both 2000 and 2004. Jane told me she could not be called as a witness. I'm listing her anyway. Jane could testify to Monica's demeanor, her unwillingness to cooperate toward a mutually agreeable parenting plan, and Tom's confrontation with her one evening when he showed up at mediation with Monica and demanded he be allowed to join and participate in mediation.

Donna Owens - character and lies Monica told her,

Mrs Woodworth - theft, OJ 1st Mr. Bales' truth & lies

Sara Simon - My character - Keller - uncharacter - Steward

values  
of faith  
M... ..

**The Restraining Order-** This is the single, most serious incident that has occurred in this relationship in the past 5 years. Yet in Monica's quest to paint this picture of "Russ the Bad Guy," this incident is not even mentioned.

See the three different stories Monica tells, 1) To the police right after the incident, 2) In the restraining order, 3) In a letter to Jane during our 2004 mediation attempt.

I believe the entire incident was planned by Monica, as she took advantage of me allowing her into my home to pick up some of the children's clothes, got me alone in the back bedroom and then proceeded with her plan.

	<u>closer to <del>Monica</del></u>	<u>closer to Hills</u>
Eugene 1		
Tipton 11	111	11
Dunder 11	111	
unknown 11	1	<u>50/50</u>
Meunier 111		11
McMinnick 11		one & Monica
Dayton 11		
Lafayette 1		
Sturwood 11		

Beth Mason  
<bmason@bmasonlaw.com>  
04/27/2005 04:14 PM

To Russ\_Scharn@orp.uscourts.gov  
cc  
bcc

Subject Re: FYI

Monica is so clueless here - no wonder your daughter is having problems in this blended family. See if there are any other criminal reports by the ex-wife - I agree with you, the son learned this some place.

Beth  
Russ\_Scharn@orp.uscourts.gov wrote:

>  
> Yep. Tom's son has visited the house and the kids know him but they  
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> mother like this learned it from someone..... Tom?.....who was  
> beating his then girlfriend about the same time. I'd like to know if  
> Tom was assaultive towards Chris Darnall (ex-wife) too.

>  
> Russell W. Scharn  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700

> \*Beth Mason <bmason@bmasonlaw.com>\*

> 04/27/2005 03:25 PM

---

> To Russ\_Scharn@orp.uscourts.gov  
> cc  
> Subject Re: FYI

> Wow - your mother will be a critical witness in this case - and is his  
> son around your children?

> Beth  
> Russ\_Scharn@orp.uscourts.gov wrote:

> > Beth,  
> > Just wanted to give you another FYI.

Beth Mason  
<bmason@bmasonlaw.com>  
03/03/2005 09:36 AM

To Russ\_Scham@orp.uscourts.gov  
cc  
bcc  
Subject: Re: Evaluation with Dr. Loveland

ATTORNEY CLIENT CONFIDENTIAL COMMUNICATION - IF YOU ARE NOT THE INTENDED RECIPIENT PLEASE DELETE IMMEDIATELY WITHOUT READING

SEE MY REPLIES IN CAPS BELOW  
Russ\_Scham@orp.uscourts.gov wrote:

>  
> Good morning Beth!  
>  
> I received and read the Stipulated Order for Custody Evaluation and I  
> have a concern. The order requires "parties" to participate and make  
> the children available; however, there is no mention of Tom  
> participating. THE ORDER ONLY ADDRESSES THE PARTIES TO THE ACTION,  
> ALTHOUGH LOVELAND WILL REQUIRE TOM TO PARTICIPATE  
>  
> I think it is critical that he be required to participate. I believe  
> you mentioned to me that he would be required to do so. As you are  
> aware, I am concerned that Monica, in her affidavit, is attempting to  
> paint a "wonderful family" picture of her situation with Tom, thus,  
> shedding a negative light on my situation. My desire to have him  
> participate is twofold:  
>  
> 1) Tom and Monica started dating less than two years ago. I believe  
> they met on the internet or through personal adds, but I'm not sure.  
> He has shared very little information about himself with me. If he  
> ~~is in fact a good guy, perhaps Dr. Loveland will be able to determine~~  
> ~~this, which will help set my mind at ease regarding his relationship~~  
> with my children.  
>  
> 2) As you know, I have concerns about his behavior. Shortly after I  
> met him, he threatened me with legal action and then said, "...and you  
> don't want this to go to Court because you'll be messing with deep  
> pockets." Less than a year later, here we are.  
>  
> Tom confronted our mediator prior to a session with Monica and I. He  
> was argumentative, demanding he be allowed to participate in mediation  
> and again threatened to have his attorney become involved.  
>  
> Monica disclosed to me that Tom had been arrested and convicted of  
> assault. She told me this involved an ex-girlfriend and that Tom was  
> required to participate in counseling, which he did. She told me that  
> she had seen the paperwork and actually talked to the ex-girlfriend  
> and was convinced this was an isolated incident and that it would not  
> happen again. WE NEED TO TRACK THIS DOWN. - WILL YOU DO THAT, OR DO I  
> NEED TO DO THAT? I DON'T WANT TO WAIT FOR DEPOSITIONS TO DO THIS  
>  
> I have other concerns which are likely more a result of my  
> conservative Christian values and my professional experience. But  
> again, as the expert, perhaps Dr. Loveland could get a better feel for  
> Tom if he is included. HE WILL BE - THAT'S WHY THE COST IS \$5,300 -  
> IT'S BASED ON THE NUMBER OF PEOPLE INVOLVED  
>

bmason@bmasonlaw.com  
11/26/2005 08:05 AM

To Russ\_Scham@orp.uscourts.gov  
cc  
bcc  
Subject Re: Update...

>I did talk with him and we had a conference call with Dr. Loveland, but  
>I don't know where we are right now. I will follow up next week.

Beth

> Happy Holidays Beth,

>

> Did you have a chance to talk with Daniel about settling this matter  
> before court in January? I do not want to wait until the last minute and  
> go into court unprepared. With the holiday breaks upon us, there is not  
> much time.

>

> Thank you.

>

> Russell W. Scham  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700

>

On March 23, 2005, I met with Ms. Mason in her office. I provided her with several large binders containing letters and email correspondence between my ex-wife and I over the past five years.

I told Ms. Mason the large majority of the letters and emails were of no importance, just normal day-to-day conversations. I provided her a hand written note listing dates and specific letters/email I thought were pertinent to the case. I specifically circled the issues that involved my ex-wife being in contempt of the original court order. Ms Mason had asked for this information previously so she could file contempt allegations against my ex-wife as I had requested.

Ms. Mason later billed me for 5.6 hours @ \$275 per hour (\$1,540) for reading the letters and emails. Afterward, I personally read the letters and emails noted in my list. It took less than one hour.

Shortly after that (I don't recall the date) I asked Ms. Mason what she thought about the letters and emails. I specifically asked about filing the counter contempt charges against my ex-wife. She said, "we don't have to worry about that right now."

Ms. Mason never filed contempt allegations against my ex-wife as I had asked, and she agreed. I also believe she lied about reading the binders. I believe this is, in part, why she refused to provide my file upon request. The file would prove she did not read the binders among other things.

Content Issues

1

# Letters

9-12-00

Monica Not providing school mat/info to me

11-8-00

Agree to pay 1/2 extra expenses w/ receipt

1-9-01

Request for life Ins. info

3-7-01

2nd request for life Ins info (may have been 3rd or 4th)

3-19-01

Request for equality in pick-up/drop-off; Another request for life Ins info; Stop petty arguments

6-7-01

M. Parents screaming, yelling, crying when I dropped off D.V.

9-19-01

Petty disagreements, M. playing kid stuff on my time.

9-26-01

Accused of not paying my share; saying things I did not say; Still no life insurance information

10-3-01

Request for receipts for expenses; if I pay for 1/2 of items, return 1/2 when outgrown.

10-7-01

M. letter - She provides majority of kids' needs. #

10-10-01

Response to 10-7 ltr; get bills to me in timely manner

10-25-01

M. letter \$ + receipts

10-30-01

Response to 10-25 ltr. Request to provide child/school info in a timely manner. Suggest other school. Got life Ins info.

4-9-02

M very upset/accused me of not doing my share I suggest I'll take the kids more, get them in Nalberg school or anything else to help her.

4-16-02

Request exchange days + make-up ASAP. to avoid being accused of owing her days

7-22-02

\$ I will not talk to M when she curses at me and/or cries. I've had enough of that.

7-30-02

Trade days

12-02

Formal objection to M having male overnight w/kids are home - in violation of Ct order. No PG 13 movies!

9-9-02

M. letter \$ - increase in health Ins for kids.

9-9-02

\$ Please discuss extra expenses you want me to pay 1/2

9-20-02  
9-23-02  
10-8-02  
10-9-02  
10-11-02  
10-21-02

Increase support from \$450 to \$495.93 extra Ins.  
Discuss problem w/ sports in McMinnville, time, \$, participation  
M allowing OT to leave the area alone  
M continues to argue/complain she got screwed in divorce &  
issues at my home still hers. M not sending home work +  
school info to me  
\$ + request for receipts  
School problems - request Newberg / CS Lewis  
M. letter \$

10-22-02  
10-22-02  
10-26-02  
10-30-02

Concerns about M wanting to move to La Fayette  
letter to Dawn Williamson (child counselor) M took kids  
"because of the way I'm turning the kids against her."  
M will not see counselor or mediator.  
M. Ltr M says she will not move to La Fayette if I  
agree not to oppose kids @ Dayton Ele  
Response to 10-26 ltr - Object to her reasons + offer to  
pay all cost of school + daycare - Sports etc getting  
worse

11-20-02

Concerns about M talking to kids about adult  
issues; use of kids as messenger for insults  
and other adult situations. Suggest counseling/  
mediation again. Stop petty

1-15-03  
about w/ Jim

M leaves kids home alone w/ "Jim". Male I have  
never met or heard of. Just 2 wks ago she was  
still dating Randy so know this guy approx 2 wks.  
Suggest mediator or counselor. Plan that I will keep  
kids clothes @ my house, I will buy my 1/2 No more  
problems or accusations.

1-27-03  
Request mediator

2-4-03  
2-5-03

Bills more timely again. Lying to children  
M Ltr clothing issue - asks I stop writing letters  
"harassment" not in a joint parenting situation.  
demands full pmt 130 pmts not completed. Ex. C 31 of 37  
Response to 2-5 Hr clothes, pmts, letters, cooperation

2-17-03



2-17-03

2-18-03

3-1-03

demands full pmt, payments not guaranteed.  
 Response to 2-5 Ht' clothes, payments, letters, co-parenting  
 PG-13 movies, telling kids to lie to me  
 late drop-off, pick-up - mediator or caseworker  
 Received bill M said she had paid. More threats  
 about Ct + Attny. Another offer for casework/mediator

On November 30, 2005, I fired Ms. Mason. I hand delivered a letter to her office terminating her services. I asked for a copy of my file including all hand written notes. I believed it was critical to get her notes so I could try to understand what she was thinking and where she was planning to go with my defense.

Two weeks passed and I had received nothing. I again requested my file and her notes. She replied by saying she didn't catch that I wanted her notes and that she had a few.

Ms. Mason spent 10+ months supposedly working on my case; close to 50 hours billed and then provided me three pages with some scribbled notes saying this was all she had. It seems dishonest to say that during a 30 minute phone conversation 10 months into a case you write three pages of notes but during the previous 49.5 hours of phone conversations, office visits, court preparation, two court appearances, and binder reading, you wrote nothing down. This is the definition of dishonesty and theft.

I even went to Ms. Mason's office prior to the trial date and requested in person, my file. Ms. Mason looked me straight in the face and said my file had been moved to archives and was no longer in the office. This statement came less than 30 days after her termination, while we were still communicating via email, and a trial scheduled in two weeks.

bmason@bmasonlaw.com  
12/14/2005 03:35 PM

To Russ\_Scharn@orp.uscourts.gov  
cc  
bcc  
Subject Re: Previous request for my file

> I'm sorry, I didn't catch that you needed my notes. I have a few, but I think you have copies of everything else, including Loveland's report. I have some notes about my telephone conversation with Loveland and Peters but they are in my shorthand. I will forward them and I will be happy to interpret them for you at no cost. If you need additional copies of pleadings and correspondence, please let me know promptly and I will have those copied as well.

Beth

> Ms. Mason:

>

> On November 30, 2005, I notified you that I would no longer need your representation in my case. I asked you for a copy of my file at that time. It has now been two weeks and I have not received my file.

>

> As you know, I have a hearing scheduled for January 10-14, 2006, less that 30 days from now. I believe the information in my file (especially your notes) may be critical to representing my case to the court. Would you please give me an approximate date that I can expect to receive my file in the mail.

>

> Thank you,

>

> Russell W. Scharn  
> U.S. Probation  
> Drug/Alcohol Treatment Services  
> 503-326-8621  
> Fax: 503-326-8700

>

Griff,

This Ball I got from Beth when I  
requested my Bill?? Said this was  
all she had - No other notes

Sharon

11/10/05

TC of Dean Peters' documents

1. ~~TC of Dean Peters' documents~~ & ST (COST) CUSTODY

① Maintain what have w/ PC

② 5/9 w/ PC

③ W/ proper information  
No trouble coming up  
problems

④ Follow a well written plan -  
spell out clearly -

⑤ Proceed from the start -  
Lynons' notes - fairly  
dynamic w/ assist  
for change -

⑥ Testing did little in this  
recommendation -

⑦ Use page 140 - Unit of the MPT 2  
often used in a specification

(6)  
Sham

10-28-05  
Copy of Plan  
re. Bouland's report.

1. Trial by ambush.
2. parents' coordinator  
Drt Baker  
② Billie Bell
3. 5/9 - 50/50 - alt. weeks
4. legal custody -  
same plan - w/ PC  
w/ details -
5. Votified prescription  
meds, dental services.  
Emily & Donald seeing  
a counselor.  
Emily funds slingshot  
help room & driveway  
decisions.
6. She leaves for work @  
6:45 AM to teach in HB.  
& home by 4:30 AM.

7. If the marriage fails -  
she can't stay in a local  
house on a full salary -  
will move again to be  
near the school.

\* 8. Parents want to make her  
stay in the local school  
district.

9. Tom spent a lot of  
time in other positions.

10. \* 4/22/2010 - he will receive  
from US Government for  
part of his present  
income.

He

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 28, 2008  
From: Sylvia E. Stevens, General Counsel  
Re: CSF Claims Recommended for Payment

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### Action Recommended

No. 08-05 Fowler v. Tripp	\$2,400.00
No. 07-05 Olshove v. Tripp	\$2,700.00
No. 08-09 Moore v. Miller	\$1,000.00
<b>TOTAL</b>	<b>\$6,100.00</b>

### Background

#### No. 08-05 Fowler v. Tripp (\$2,400.00)

Mr. and Mrs. Fowler hired Dennis Tripp in June 2001 to assist with some family business issues relating to Mr. Fowler's rights in the business following his father's death. Tripp promised to get copies of the company bylaws and a trust created by Mr. Fowler's father and to advise the Fowlers about their options. The Fowlers gave Tripp a \$3000 retainer for his services on the matter. Sometime later, Tripp spoke to the company's attorney; he also accompanied the Fowlers to a meeting of the family shareholders to discuss whether Fowler's mother would relinquish her interest in the business. When the Fowlers contacted Tripp after that meeting, he told them to "sit tight" and wait to see for the other family members to make the next move. They heard nothing further from Tripp and learned from a newspaper article that he died in April 2005. The Fowlers called Tripp's office to ask for an accounting; they were told that Tripp "had his own accounting method." Subsequently, they received copies of documents they had brought to Tripp and a partial accounting for legal services that did not explain what portion of the \$3000 Tripp had earned. They did not receive any refund of their retainer.

This is the seventh claim to the CSF involving Dennis Tripp (two others are pending). The committee's information indicates that Dennis Tripp had been living beyond his means for some time before he was diagnosed with cancer in October 2004. He declined treatment. After his death it was discovered that Tripp's may misappropriated funds from several clients beginning as early as 2001. The CSF has paid in excess of \$69,000 to six of Tripp's former clients; we recovered Tripp's trust account balance of slightly more than \$8,000 from US Bank in July 2007.

**No. 07-05 Olshove v. Tripp (\$2,700.00)**

Olshove consulted with Dennis Tripp in September 2003 regarding a personal bankruptcy. He gave Tripp a \$2,700.00 retainer and began to collect the financial records that Tripp requested for preparation of the petition. It is not entirely clear when the last of the financial records were delivered to Tripp, but Olshove claims it was sometime in mid-2004. He heard nothing from Tripp until he was informed of Tripp's death in April 2005. Tripp had not prepared or filed the bankruptcy petition. The PLF recovered and returned Olshove's documents and assisted him in finding another attorney to assist with the bankruptcy. No portion of Olshove's retainer was returned.

The CSF Committee concluded that any work done by Tripp was de minimis at best and of no value to Olshove. At the time of Tripp's death, it could not be determined which of his clients was entitled to the funds in his trust account; in any event the balance was much less than the amounts claimed by former clients. (As noted above, the CSF has recovered the approximately \$8,000 trust balance.) The Committee believes Tripp's conduct was dishonest and that this claim should be paid in full and without a requirement that the claimant obtain a civil judgment.

**No. 08-09 Moore v. Miller (\$1,000.00)**

Terry Lynn Moore hired Prineville attorney Jeffrey Miller in September 2007 to set aside a default judgment in a dissolution of domestic partnership case. She paid him a flat fee of \$400 and he was able to get the default judgment set aside. In November, Miller agreed to represent Moore with the dissolution proceeding in exchange for a flat fee of \$1,000.00, which Moore paid. The next month, Miller sent two letters to opposing counsel in an effort to settle the issues. No other work was done on the matter.

In February 2008, Moore learned that Miller has been arrested for disorderly conduct and violation of a FAPA order. Moore's sister contacted Miller regarding the status of Moore's matter. Miller said he would not be able to continue representing Moore and would refund the \$1,000 advance fee. He has yet to do so. He is facing additional criminal charges in Prineville and there is an open disciplinary investigation (not involving Miller's representation of Moore). The disciplinary investigation indicates that Miller suffers from untreated bipolar disorder and that his marriage and financial matters are in shambles.

The CSF Committee concluded that Miller's failure to refund the unearned fee is an act of dishonesty. The Committee voted unanimously to pay this claim in full, and to waive the requirement for a judgment or disciplinary sanction.



**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 22-23, 2008  
**Open Session Minutes**

The meeting was called to order by President Rick Yugler at 12:25 p.m. on Friday, February 22, 2008 and adjourned at 5:55 p.m. The meeting reconvened at 9:00 a.m. Saturday, February 23, 2008, and adjourned at 10:10 a.m. Members present from the Board of Governors were Kathleen Evans, Ann Fisher, Gerry Gaydos, Tim Gerking (Friday), Kellie Johnson, Gina Johnnie, Christopher Kent, Robert Lehner, Audrey Matsumonji, Stephen Piucci (Friday), Carol Skerjanec, Bette Worcester, Terry Wright, and Rick Yugler. Members of OSB staff present were Karen Garst, Susan Grabe, Jeff Sapiro (Friday), Sylvia Stevens, Rod Wegener, and Teresa Wenzel. Members present from the PLF on Friday were Robert Cannon, Tom Cave, and Ira Zarov. Others present Friday were Willard Chi (ONLD by phone), Gary Georgeff, Marilyn Harbur (ABA Delegate), and Judge Adrienne Nelson (ABA Delegate by phone).

February 22, 2008

1. **Work Session - Regulatory Services**

Mr. Sapiro gave an informative presentation concerning Regulatory Services and the Disciplinary Counsel Office explaining the function of those departments within the bar.

2. **Oath of Office**

Kellie Johnson was sworn in as a new Board of Governors member from Region 5. Ms. Johnson introduced herself to the board and discussed her background and goals.

3. **Report of Officers**

A. **Report of the President**

1. **President's Report**

Mr. Yugler reported on the status of the courthouse access task force. The Chief Justice supports the idea of issuing lawyers a bar card that would allow access to all courthouses without the need to go through security. The bar has offered to provide the cards to lawyers and card readers at each courthouse. The courthouses are owned and operated by the counties and some counties have expressed concern that the cards could be easily forged and might allow security breaches. Mr. Gerking and Mr. Piucci have been appointed to the task force chaired by Judge Paul Lipscomb, which will try to develop a model that will

work for all counties. Ms. Garst reported that the bar is currently in the process of providing bar members with new bar cards containing the new six-digit bar numbers. They do not have any security features.

Mr. Yugler attended the Affirmative Action retreat. He commended Ms. Garst and Margaret Robinson for their work on AAP issues, which has opened communications, improved confidence, and allowed for better understanding among the stakeholders. Matters in this area are improving and when the Diversity Program Administrator is hired, there is every expectation that the program will move forward in a positive fashion. Mr. Yugler emphasized that the board and the bar are very committed to the program.

Mr. Yugler directed board members to his written report for a full review of his recent activities.

2. Meeting with Chief Justice Paul J. De Muniz, January 31, 2008

The Chief Justice expressed appreciation for the bar's support of the May 2, 2008 Rule of Law Conference that Judge Ellen Rosenblum is organizing. The bar will provide meeting space and refreshments.

B. Report of the President-elect

1. Miscellaneous

Mr. Gaydos also attended the Affirmative Action Program retreat and thanked Mr. Yugler and Ms. Wright for being a part of it. He also commented on the work of Phyllis Lee in bringing the various sides together for additional communication and understanding. Margaret Robinson was commended for doing a great job – she had a full time job as Member Services Manager and took on what is another full time job with the Affirmative Action Program. The hiring group for the new Diversity Program Administrator is beginning to review applications and evaluate candidates.

Mr. Gaydos attended the recent National Conference of Bar Presidents in Los Angeles and emphasized the respect members of that group have for the Oregon bar and its Executive Director, Karen Garst. He reported on the successful BOWLIO event in early February, reminded the board that OLIO is coming up in the summer, and encouraged other members of the board to get involved in the fun. He also attended the Polk and Marion Counties Judges Reception and Awards Dinner where Senator Kate Brown received an award.

C. Report of the Executive Director

1. Retirement Letter

Ms. Garst submitted her formal retirement letter to the board. She will retire December 31, 2008.

2. Miscellaneous

Ms. Garst informed the board that she had attended the Los Angeles meeting of the National Association of Bar Executives. She has informed her colleagues around the country of her retirement and encouraged them to apply for the Executive Director's position. Ms. Garst updated the board on the new building and the moving process. The move went well, although there is still furniture coming for the lobby and staff continues to get settled. All should be well prepared for the February 29 open house. The architects did a great job: The building is well built and should last the bar for many years. OPUS is negotiating with possible tenants for the empty space in the OSB building.

D. Oregon New Lawyers Division

Mr. Chi discussed events in which the Division participated including the Law School Outreach Subcommittee's sponsorship of a panel focusing on "Surviving Law School" and "Studying for the Bar;" the Law Related Education Subcommittee's essay contest and plans for Constitution Day (September 18), in which they are asking attorneys to participate; SuperSaturday CLEs; the Pro Bono Subcommittee's creation of a new pro bono reporting form that was given to new lawyers at the swearing in ceremony; the Member Services and Satisfaction Subcommittees' commencement of the Mentoring Program; participation in the Young Lawyers Division of the ABA with a focus to the future of the profession; and development of the ONLD's brand "ONLD PRO," which will help avoid confusion with other bar groups. The ONLD is also participating in the search for the Diversity Program Administrator.

Upcoming ONLD events include a seminar featuring Judge Eric Bloch speaking to mistakes new lawyers make; planning session for the Oregon State Fair; planning for the Pro Bono Challenge, which will be held April 15 with Gerry Gaydos as Master of Ceremonies; and participation in the OSB Futures Conference in September.

#### 4. Board Members' Reports

Board members and staff introduced themselves to Ms. Johnson and informed the board of events they had attended since the last meeting of the board, including an investiture, section/committee/division meetings, dinners, special events, and appearances before the legislature. The board was encouraged to begin looking for public members to participate in bar groups and boards.

Board members commented on the good turnout at the Conference of Bar Leaders and the desire of sections, committees, and local bars to know their board liaisons. Board members were reminded they do not need to attend every meeting of groups to which they are liaisons, but are encouraged to attend when possible and to maintain contact with the chair of the committee/section/division. It was reported that the Multnomah Bar Association's Equality Committee is bringing national speakers to Portland in July and will look to the Diversity Section for funding. Some Board members reported on comments from bar members that their dues are high. Ms. Johnson suggested that staff put together a brief handout with information that board members can distribute at meetings and will look into adding the information to the bar's website.

#### 5. Professional Liability Fund

##### A. PLF Update

The PLF move is going well and staff likes its new space. There will be an open house in the future. It was noted that the new location of the bar is more accessible to mass transit. Mr. Zarov reported that the OAAP/SLAC Task Force has made tremendous progress; a report will be presented to the BOG in May that will include protocols and understandings for cooperation between the groups.

##### B. Financial Report

The PLF had net income for 2007 of \$5.6 million. It is not likely to be repeated, as it was largely a function of good investments and reduced claim frequency and size. Future investment income is expected to decline because of the global economic downturn; poor financial times also tend to result in more and larger claims. A recent survey shows a high level of satisfaction with claims handling.

##### C. Report on OAAP/Practice Management 2007 Contacts

The OAAP/Practice Management Advisors have been very busy and their work is believed to be at least partly responsible for the reduction in claims.

The OAAP closed 17 practices in 2007 due to deaths, retirements, disciplinary suspensions, and career changes.

D. Goals for 2008

Goals for 2008 include conclusion of the move to the new building, looking into increasing primary coverage from \$300,000 to \$500,000, and continuing to move toward a paperless office. This year is the 30-year anniversary of the PLF and it will be celebrated by hosting the NABRICO (National Association of Bar Related Insurance Companies) conference in Portland. OSB President Rick Yugler will speak to the group. The PLF continues to look at succession planning and ways to fill the gap as 70%-80% of the staff attorneys with over 100 years of knowledge will be retiring in the near future.

E. Revision of PLF Bylaw 6.200-300

**Action:** Ms. Wright moved, Ms. Skerjanec seconded, and the board unanimously passed the motion to approve the changes to the PLF Bylaws 6.200-300 as proposed by the PLF Board of Directors.

6. Special Appearances

A. ABA House of Delegates Mid-Year Meeting

Marilyn Harbur and Judge Adrienne Nelson presented a report on the ABA House of Delegates Mid-Year meeting. The resolutions passed at the meeting fell into several categories. The public welfare resolutions encouraged federal, state, and local governments to develop better access to long-term health care; established programs for victims of identity theft; established a Model Act Governing Reproductive Technology; urged Congress to enact programs to train attorneys to assist veterans in obtaining health benefits and services; and approved a uniform jurisdiction act for adult guardianships and protective proceedings for elderly individuals. The environmental resolutions provided for the preservation and enhancement of ecosystem benefits and urged Congress to enact legislation assuring that the U.S. takes a leadership role in international legal, policy, financial, and educational discussions. The Rule of Law resolutions assigned the redistricting process for Congress and the legislature to an independent commission; encouraged school officials to obtain a better understanding of the religion clause in the U.S. Constitution; supported the Pakistani bar and bench urging immediate release of all judges and lawyers and asking the President to restore its Constitution. The criminal law resolutions amended Model Rule 3.8 to establish a prosecutor's obligations when there is information or evidence that a defendant was wrongly convicted and approved the ABA Criminal Justice Standards for Prosecutorial Investigations. The courts resolutions passed related to Uniform

Rules of Discovery of Electronically Stored Information; Uniform Interstate Depositions and Discovery Act; retention of ten-day time limit in Federal Bankruptcy Rules for filing notice of appeal; and encouraged appropriate treatment of "dual jurisdiction" youth in juvenile justice systems. The business resolution passed was the Uniform Limited Cooperative Associations Act. Law practice resolutions that passed adopted a Model Rule on Conditional Admission to Practice Law and concurred in the adoption of Interpretation 301-6 of the Standards for Approval of Law Schools concerning sufficiency of law schools' bar passage rate.

The Model Rule on conditional admission was quite controversial, because it provides for confidentiality of the fact that a lawyer with mental health or substance abuse issues is conditionally admitted to practice. Mr. Sapiro pointed out that Oregon has had a similar rule for some time, although it has been used only rarely and only when the applicant's problem is clearly under control. Moreover, while the applicant's medical and treatment records are confidential, the fact of the conditional admission is not. Mr. Harbor and Judge Nelson requested a meeting between the BOG and the ABA delegation to discuss this matter and the direction the BOG would like the delegates to pursue concerning this matter.

The other resolution drawing controversy was the issue of making bar passage rates a factor in whether a law school is accredited. The resolution passed, but not without discussion of the fact that the new standard will likely have an adverse affect on minority law schools.

## 7. Rules and Ethics Opinions

### A. Proposed Formal Ethics Opinion

Mr. Piucci and Ms. Stevens presented the recommendation of the Legal Ethics Committee for adoption of a formal ethics opinion that interprets Oregon RPC 5.5 and defines the scope of "temporary practice" by out-of-state lawyers. The board acknowledges that the mobility of lawyers is a problem and there are other issues in this area.

**Action:** Mr. Piucci moved, Ms. Matsumonji seconded, and the board passed the motion to approve the proposed Formal Ethics Opinion regarding temporary practice by out-of-state attorneys in arbitration or mediation in Oregon and the assisting of an out-of-state attorney in proceedings by an Oregon attorney. Mr. Kent, Ms. Fisher, and Mr. Yugler were opposed. Ms. Skerjanec abstained.

B. Proposed Amendments to the Bar Rules of Procedure

Mr. Sapiro presented information concerning the amendments to the Bar Rules of Procedure. The changes are mainly housekeeping changes and will not go into effect until they are approved by the Supreme Court.

**Action:** Ms. Evans moved, Ms. Wright seconded, and the board unanimously passed the motion to approve the amendments to the Bar Rules of Procedure and forward them to the Supreme Court with a recommendation to approve.

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

A. Client Security Fund

1. CSF Claim No. 07-19 *Kaa v. Dunn*

Ms. Evans presented information concerning Ms. Kaa's request for review of the Client Security Fund Committee's denial of her claim for reimbursement.

**Action:** Ms. Wright moved, Ms. Johnson seconded, and the board unanimously approved the motion to uphold the CSF Committee's recommendation to deny CSF Claim No. 07-19 *Kaa v. Dunn*.

B. CSF Claim Recommended for Payment

1. No. 07-15 *Jones v. Dunn* - \$900

The board removed CSF claim No. 07-15 *Jones v. Dunn* from the Consent Agenda for discussion. Though Mr. Jones was asking for \$1,800, the board felt that Mr. Dunn had done some work on the case and concurred with the CSF Committee that Mr. Jones should receive \$900.

**Action:** Mr. Gaydos moved, Ms. Evans seconded, and the board unanimously passed the motion to pay \$900 for CSF Claim No. 07-15 *Jones v. Dunn*.

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

A. Access to Justice Committee

Ms Wright distributed a spreadsheet reflecting contributions to the Campaign for Equal Justice by HOD members, which is well below the 100% level to which the HOD committed itself by resolution in 2005. She encouraged board members to contact HOD delegates who have not contributed and to

remind them of the HOD's commitment. Ms. Skerjanec reminded the board that support for access to justice can be accomplished in ways other than direct financial contributions and that those other contributions should be recognized.

Ms. Wright explained that the LRAP Advisory Board is requesting that the board budget an additional \$12,000 for 2009, which will allow one more member to participate in the LRAP.

The committee is looking for ways to expand pro bono participation among the bar and will look to enclosing the pro bono forms with dues statements.

B. Appointments Committee

Ms. Evans reported that this is the first time in a long time that the committee has more volunteers than it has positions that need to be filled. She informed the Board that there was a special focus on the volunteer applicants who had graduated from the Leadership College, being sure each of them was appointed to a position of their preference.

C. Budget and Finance Committee

1. New Bar Center

Mr. Wegener reported that the bar has closed on a "bridge loan" of \$13 million which is on deposit at Wells Fargo to purchase the bar building later this year. He also presented a document to be approved by the board for authorized signers on the bar's bank accounts.

**Action:** The board passed the committee motion to ratify the execution of the \$13 million loan documents with Ms. Wright abstaining.

Ms. Stevens informed the board that it is within the board's authority to engage in borrowing to finance the new bar center, although neither the Bar Act nor the Bylaws are crystal clear on that point. She recommended that the Policy and Governance Committee consider a revision to Bar Bylaw 7.102 in the future.

**Action:** The board unanimously passed the committee motion to designate certain signers for the bar's bank accounts.

D. Executive Director Evaluation Committee

Ms. Skerjanec presented the committee's recommendation for the Executive Director Search Committee and the board discussed the make up of the



proposed committee. One concern centered on the absence of a non-lawyer member of the committee.

**Action:** Ms. Worcester moved, Ms. Wright seconded, and the board passed the motion to amend the committee motion to include the appointment of Mr. Lehner as a public member to the Executive Director Search Committee. Mr. Lehner abstained.

**Action:** The committee motion passed unanimously as amended.

E. Member Services Committee

**Action:** The board unanimously passed the committee motion to reduce the Law Student membership fees from \$25 to \$10.

The Futures Conference will take place September 12 in Bend. HOD recruitment is underway and the committee asks the board to encourage members in their region to run for the HOD. The Affirmative Action Program is doing well; BOWLIO was a success; recruitment for the AAP Administrator is moving forward; and Margaret is doing a great job. Legal Publications may be looking to change pricing on BarBooks™ to enhance receipts. The Leadership College's first event, the ONLD meetings, and the first open house all went well.

F. Policy and Governance Committee

1. Redistricting of BOG Regions

Mr. Gerking presented the committee's recommendation for redistricting. He reminded the board that if it approved the committee's recommendation, it would take a legislative change to implement the redistricting and bar staff would prepare the draft bill to be submitted to the legislature. The final draft needs to be approved by the BOG by April 1 to be included in the 2009 legislative session. Continued discussion included a concern that there is no representation for out-of-state members.

**Action:** The board unanimously approved the committee motion to (1) add two new lawyer members to the board; (2) remove Clackamas County from Region 6 and establish it as a new district with the two new lawyer members; (3) move Lincoln and Yamhill Counties to Region 4; (4) move Linn and Benton Counties to Region 6; and (5) move Klamath County to Region 3.

2. Access to Justice of Bias MCLE Rule

Mr. Gerking presented the committee's recommendation explaining the compromise that was agreed to by proponents of the membership petition as well as members of the Diversity Section who favor retention of the requirement. Mr. Gerking reminded the board that the proposed changes must be approved by the Supreme Court. Mr. Georgeff participated by phone and indicated that although not everyone is happy, the proposed rule change is a good compromise and one with which he could live. He thanked Messrs. Yugler and Gerking, and Judge Baldwin, commenting that they were instrumental in finding a good compromise and thanking them for their efforts. Comments from the board included a "thank you" to Mary Crawford for her efforts; opposition to the rule, but willingness to live with the compromise; thanks to Mr. Gerking for his efforts; and optimism that the Supreme Court would be willing to accept the compromise.

**Action:** The board passed the committee motion to approve the compromise, which changes the requirement name to Access to Justice; requires members to complete three credits in alternate reporting periods; requires new admittees to take a prescribed introductory course approved by the bar; and allows excess or unneeded credits to be used or carried over only as general credits. The motion passed with Ms. Fisher abstaining.

G. Public Affairs Committee

1. Update on Special Session

Ms. Fisher gave an update on the functions and concerns of the Public Affairs Committee for the benefit of newer board members. The committee asked the board for \$30,000 from the contingency fund to oppose ballot measures 51 and 53 as directed by the HOD for such things as polling, pages in voters' pamphlet, and public awareness ads, but no TV ads. There was also concern regarding Initiative #17 concerning controversial jury instructions. If the board chooses to oppose this initiative, it will be addressed in the 2009 budget.

**Action:** The board unanimously passed the committee motion to use \$30,000 from the bar's contingency fund to oppose ballot measures 51 and 53.

The board agreed by consensus that Mr. Yugler should file a petition with the Supreme Court challenging the certified ballot title for Initiative 17.

10. Consent Agenda

**Action:** Ms. Evans moved, Mr. Lehner seconded, and the board unanimously approved the Consent Agenda with CSF Claim No. 07-15 removed. (See 8.B.1 of this document for action taken concerning CSF Claim No. 07-15.)

11. **Default Agenda**

Concern was expressed that the president and others should exercise care in representing their personal views in correspondence in ways that may suggest the communication is on behalf of the board.

12. **Closed Session Agenda**

Saturday, February 23, 2008

- A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet)  
lavender Action agenda Discuss/
- B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet)  
Discuss/ green Action agenda

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

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**Oregon State Bar**  
**Meeting of the Board of Governors**  
April 4, 2008  
**Special Session Minutes**

The meeting was called to order by President Rick Yugler at 3:00 p.m. on Friday, April 4, 2008 and adjourned at 4:10 p.m. Members present from the Board of Governors were Kathleen Evans, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, Kellie Johnson, Christopher Kent, Robert Lehner, Audrey Matsumonji, Stephen Piucci, Carol Skerjanec, Robert Vieira, Bette Worcester, Terry Wright, and Rick Yugler. Members of OSB staff present were Karen Garst, Susan Grabe, David Johnson, Sylvia Stevens, and Teresa Wenzel. Others present were Chief Justice Paul J. De Muniz and Tim Martinez, PLF.

April 4, 2008

1. **Special Appearance**

A. Chief Justice Paul J. De Muniz

Chief Justice De Muniz addressed the board about the e-Court™ Program. The judiciary wants to work closely with the bar to inform and educate bar members about the e-Court™ Program. The ultimate goals are for individuals to have access to court information 24/7, to provide a paperless court system, to standardize court business practices, to provide electronic case management, and to provide a common interface to all agencies. The program is set up so that if the final phases remain unfunded, the first phase can stand alone and still be of functional value. The Chief Justice assured the board that access to justice is a priority. Individuals without computers will be able to file paper documents with the courts and hard copies of court documents will be available to those who still prefer that option. Additional public access is anticipated through public computers at government agencies and in libraries. The e-Court™ will roll out July 14, 2008, with Supreme Court filings, and will be available in all courts in late August 2008. Those desiring to use the e-Court™ Program will be required to meet minimal standards and to take an online tutorial before file documents electronically. Additional information will appear on the Supreme Court's website as it becomes available. President Rick Yugler will work with bar staff to appoint a task force to work with the Supreme Court to educate bar members. The task force will include individuals from the Board of Governors, Oregon Department of Justice, various bar groups, and bar staff. There are still procedural and educational issues to be worked out, but the system is well on its way to fruition.

**Motion:** Ms. Fisher moved, Ms. Wright seconded, and the board unanimously passed the motion to implement an e-Court™ Task Force per the Chief Justice's request. Bar staff will present a proposal at the board's May meeting.

2. Executive Director Search Special Committee [Ms. Skerjanec]

A. Approval of Executive Director Job Description

**Motion:** Ms. Wright moved, Ms. Johnson seconded, and the board unanimously approved the motion to add the following to the Executive Director Job Description:

“Participate in efforts to expand access to justice for all Oregonians.”

**Motion:** The board unanimously passed the committee motion to approve the Executive Director Job Description with the addition of the previous motion and the following grammar and punctuation changes:

Change “Responsible for development of the board agenda...” to “Develops board agenda...” and remove the second period on the second bullet point on the final page of the exhibit.

The board met in Executive Session pursuant to notice given by Ms. Stevens' memo of April 2, 2008, to consider a former bar member's request that the OSB subordinate its judgment liens to a new lender.

**Motion:** Mr. Greene moved, Ms. Evans seconded and the board passed the motion to decline politely to subordinate its judgments, with Ms. Fisher and Mr. Piucci opposing.

**Motion:** Mr. Kent moved, Ms. Wright seconded, and the board unanimously passed the motion to authorize Ms. Stevens to enter into further negotiations with the former bar member.

Oregon State Bar  
Board of Governors Meeting  
February 21-23, 2008  
Executive Session Agenda

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

I. Unlawful Practice of Law [Ms. Wright]

A. UPL Litigation

1. Wesley Harris dba Wes 1 Action Paralegal Service

**Action:** Ms. Wright moved, Ms. Evans seconded, and the board unanimously passed the motion to initiate a law suit against Mr. Harris to enjoin him from the unlawful practice of law.

2. Marc Stefan

**Action:** Ms. Wright moved, Ms. Evans seconded, and the board unanimously passed the motion to approve a cease and desist agreement with Mr. Stefan.

3. Lori Ann Warnick dba Able Document Center

**Action:** Ms. Wright moved, Ms. Johnnie seconded, and the board unanimously passed the motion to approve a cease and desist agreement with Ms. Warnick.

4. Michael "Mick" Wagner

**Action:** Mr. Kent moved and Ms. Worcester seconded the motion to initiate contempt proceedings against Mr. Wagner. The motion passed with Ms. Wright abstaining.

B. Pending UPL Litigation

General Counsel updated the board on pending UPL litigation.

II. General Counsel's Report

Ms. Stevens updated the board on pending non-disciplinary litigation involving the Oregon State Bar.

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**Oregon State Bar  
Board of Governors Meeting  
February 22-23, 2008  
Judicial Proceedings Agenda**

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. Judicial Proceedings Protocol

B. Reinstatements

1. Valeri Aitchison - 943011

**Action:** Ms. Worcester presented information concerning the 8.1 reinstatement application for Ms. Aitchison. The board unanimously approved the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Aitchison be reinstated as an active member of the Oregon State Bar.

2. Leonard J. Bergstein - 730273

**Action:** Ms. Evans presented information concerning the 8.1 reinstatement application for Mr. Bergstein. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Bergstein be reinstated as an active member of the Oregon State Bar.

3. Sean Cee - 935180

**Action:** Mr. Sapiro presented information concerning the 8.1 reinstatement application for Mr. Cee to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

4. Robert C. Conratt - 892179

**Action:** Ms. Skerjanec presented information concerning the 8.1 reinstatement application for Mr. Conratt to satisfy the one meeting notice

requirement of Bylaw 6.103. The application will come before the board at a later meeting.

5. Craig C. Coyner - 740689

**Action:** Ms. Worcester presented information concerning the 8.1 reinstatement application for Mr. Coyner. The board unanimously approved the motion to forward a recommendation to the Oregon Supreme Court to deny Mr. Coyner's reinstatement application to be an active member in the Oregon State Bar.

6. Kaarin Axelson Forester - 952048

**Action:** Mr. Gaydos presented information concerning the 8.1 reinstatement application for Ms. Forester to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

7. Shawn Wesley Gordon - 923157

**Action:** Ms. Fisher presented information concerning the 8.1 reinstatement application for Mr. Gordon to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

8. John M. Griffith - 970600

**Action:** Ms. Worcester presented information concerning the 8.1 reinstatement application of Mr. Griffith. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Griffith be reinstated as an active member of the Oregon State Bar.

9. Lisa Henderson - 952940

**Action:** Mr. Sapiro presented information concerning the 8.1 reinstatement application for Ms. Henderson to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

10. Michael A. Hudson - 784490

**Action:** Ms. Wright presented information concerning the 8.1 reinstatement application for Mr. Hudson to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

11. Teresa Lynn Kaiser - 820706

**Action:** Mr. Lehner presented information concerning the 8.1 reinstatement application of Ms. Kaiser. The board passed a motion, with one member abstaining, to waive the one meeting notice requirement under Bylaw 6.103.

**Action:** The board passed a motion to forward a recommendation to the Oregon Supreme Court that Ms. Kaiser be reinstated conditionally as an active member of the Oregon State Bar subject to the following: Ms. Kaiser agree to maintain sobriety, attend multiple AA meetings a week and provide verification of her attendance, have and maintain a relationship with a sponsor, report on her compliance with all terms of the conditional reinstatement to the bar, and remain on probation two years after her bench probation lapses. In addition, Ms. Kaiser should be required complete 45 hours of MCLE credits before her reinstatement becomes effective.

12. Steven D. Marsh - 010749

**Action:** Mr. Gaydos presented information concerning the 8.1 reinstatement application for Mr. Marsh. The board unanimously approved the motion to forward a recommendation to the Oregon Supreme Court to deny Mr. Marsh's reinstatement application to be an active member in the Oregon State Bar.

13. Robert B. Noggle - 803286

**Action:** Mr. Lehner presented information concerning the 8.1 reinstatement application of Mr. Noggle. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Noggle be reinstated as an active member of the Oregon State Bar conditional upon his obtaining 30 CLE credit hours before his reinstatement is effective.

14. Shana Pavithran - 951070

**Action:** Ms. Evans presented information concerning the 8.1 reinstatement application of Ms. Pavithran. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Pavithran be reinstated as an active member of the Oregon State Bar.

15. Mark W. Siegel - 934253

**Action:** Ms. Wright presented information concerning the 8.1 reinstatement application for Mr. Siegel to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

16. Michael R. Smith - 915120

**Action:** Ms. Fisher presented information concerning the 8.1 reinstatement application for Mr. Smith to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

17. Steven B. Johnson - 940995

**Action:** Mr. Sapiro presented information concerning the 8.1 reinstatement application for Mr. Johnson to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

B. Disciplinary Counsel's Report

As written.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** May 9, 2008  
**Memo Date:** May 9, 2008  
**From:** Timothy Gerking, Appointments Committee Vice Chair  
**Re:** Appointments for the Consent Agenda

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### Action Recommended

Approve the following Appointments Committee recommendations.

#### Affirmative Action Committee

**Recommendation:** Darleen Ortega, term expiring, 12/31/2010

#### Client Security Fund Committee

**Recommendation:** Connie Swenson, term expiring, 12/31/2010

#### Legal Ethics Committee

**Recommendation:** Jet Harris, term expiring, 12/31/2009

#### MCLE Committee

**Recommendation:** Michael McNichols, Chair, term expiring, 12/31/2009

**Recommendation:** Jennifer Niegel, Secretary, term expiring, 12/31/2008

**Recommendation:** Max Rae, term expiring, 12/31/2010

#### Uniform Criminal Jury Instructions Committee

**Recommendation:** Ricardo Menchaca, term expiring, 12/31/2008

#### Unlawful Practice of Law Committee

**Recommendation:** Matt Goldberg, term expiring, 12/31/2010

#### Local Professional Responsibility Committee (Clackamas/Linn/Marion County)

**Recommendation:** John Beckfield, Chair, term expiring, 12/31/2008

#### Post Conviction Relief Task Force

**Recommendation:** Steve Gorham

#### House of Delegates- Region 1

**Recommendation:** Timothy L. Williams, term expiring, 4/15/2011

#### House of Delegates- Region 2

**Recommendation:** Liane I. Richardson, term expiring, 4/15/2011

#### House of Delegates- Region 3

**Recommendation:** Matthew DeVore, term expiring, 4/15/2011

**Recommendation:** William P. Haberlach, term expiring, 4/15/2011

**Recommendation:** Joel D. Kalberer, term expiring, 4/15/2011

**Recommendation:** Matthew Powell, term expiring, 4/15/2011

**Recommendation:** Daniel Adam Rayfield, term expiring, 4/15/2011

#### House of Delegates- Region 4

**Recommendation:** David Eder, term expiring, 4/15/2011

**Recommendation:** Cecilia K. Nguyen, term expiring, 4/15/2011

**Recommendation:** J Russell Rain, term expiring, 4/15/2011

**Recommendation:** John J. Tyner, term expiring, 4/15/2011

**House of Delegates- Region 5**

**Recommendation:** Michael G. Hanlon, term expiring, 4/15/2011

**Recommendation:** Frank H. Hilton, term expiring, 4/15/2011

**Recommendation:** Thomas J. Matsuda, term expiring, 4/15/2011

**Recommendation:** Gregory F. Silver, term expiring, 4/15/2011

**House of Delegates- Region 6**

**Recommendation:** Dennis Koho, term expiring, 4/15/2011

**Recommendation:** Michael H. Bloom, term expiring, 4/15/2011

**Recommendation:** Elizabeth K. Bonucci, term expiring, 4/15/2011

**Recommendation:** Rebecca Lee Hillyer, term expiring, 4/15/2011

**Recommendation:** David W. Hittle, term expiring, 4/15/2011

**Recommendation:** Anastasia Yu Meisner, term expiring, 4/15/2011

**House of Delegates- Region 7**

**Recommendation:** Christopher B. Rounds, term expiring, 4/15/2011

**Recommendation:** David A. Seddelmeyer, term expiring, 4/15/2011

**Board on Public Safety Standards and Training (BPSST) Private Security Policy  
Committee**

**Recommendation:** Phil Agrew\*

\* formal appointment made by the BPSST

**Officers**

*President*

Richard S. Yugler, Portland

*Vice Presidents*

Timothy C. Gerking, Medford  
Carol DeHaven Skerjanec, Vale

*President-Elect*

Gerry Gaydos, Eugene

**Board of Governors**

*Attorney Members*

*Region 1*

Carol DeHaven Skerjanec, Vale

*Region 2*

Gerry Gaydos, Eugene

*Region 3*

Timothy C. Gerking, Medford

*Region 4*

Ann L. Fisher, Portland

*Region 5*

S. Ward Greene, Portland  
Kellie F. Johnson, Portland  
Christopher H. Kent, Portland  
Steven V. Piucci, Portland  
Theresa L. Wright, Portland  
Richard S. Yugler, Portland

*Region 6*

Kathleen A. Evans, Salem  
Gina Anne Johnnie, Salem

*Public Members*

Robert M. Lehner, Eugene  
Audrey T. Matsumonji, Gresham  
Robert L. Vieira, Portland  
Bette L. Worcester, West Linn

*Executive Director*

Karen L. Garst, Lake Oswego

February 29, 2008

Paul R. Duden  
Williams Kastner  
888 SW 5th Avenue, Suite 600  
Portland, OR 97204

Re: *In re Samwick*

Dear Paul:

Disciplinary Counsel staff tells me that the case involving Matthew Samwick recently resulted in Mr. Samwick submitting a Form B resignation. Although the Supreme Court has yet to act on the resignation, it appears that this matter is near conclusion.

I understand that you devoted hundreds of *pro bono* hours to this case serving as bar counsel. As you well know, the case was quite complex to begin with, and you were instrumental in sorting out the various entities and transactions that were relevant to the bar's allegations. You were continually generous with your time during the pre-trial phase of the case, even after repeated resets obtained by Mr. Samwick required the bar to start, stop and start again with its preparation. You also willingly traveled to Seattle and Baker City for lengthy depositions and represented the bar over several trial days before the resignation was submitted.

On behalf of all bar members, please accept my thanks for your substantial contribution of time and energy to this complex litigation. You provided a tremendous service to both the bar and the public for which we are most grateful. The bar couldn't have obtained the outcome in this case without your excellent efforts.

Very truly yours,



Richard S. Yugler  
President, Oregon State Bar

cc: Martha Hicks

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: May 9-10, 2008  
Memo Date: April 22, 2008  
From: Karen L. Garst, Ext. 312  
Re: Operations Report

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### 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 has several issues on this board's agenda. In June, it will meet jointly with the Member Services Committee to review CLE Seminars and Legal Publications budgets and policy issues.

Building: We have a final punch list (very short) with OPUS Northwest and LRS Architects. We have a slightly longer internal list with items that are more a part of normal operations, but in a new facility. We expect both of these lists to be done by the summer. Art has been picked for the first floor (several prints on canvas), 2<sup>nd</sup> floor stairwell (past presidents reframed) and the reception area (existing Daumier prints reframed) at a price of less than \$9,000.

### Member Contacts

#### Brown Baggers:

I attend the Landye Bennett; Kolish Hartwell; Sussman Shank; Kell Alterman; Stoel Rives; Markowitz Herbold brown baggers and Sylvia Stevens substituted for me at Lane Powell.

County Bar Associations: Douglas and Yamhill counties were visited as well as the Grande Ronde Tribal Court, the latter being a first in my experience with the bar.

Campaign for Equal Justice: I attended their annual luncheon meeting where they announced they had met their \$1 million goal for 2007.

## 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:** The auditors have come and gone and are finalizing their review work in order to publish the Audited Financial Statements for the May board meeting. Dues payments are ahead of prior years with about 500 members still unpaid. Last year at this time we were at about 700 unpaid. Increasing the late fee apparently made an impact. Certified notices, warning of suspension, go into the mail to unpaid members on May 1. Finally, we're on the verge of publishing March financial statements which will put us back on schedule. We are all glad to get this brutal first quarter behind us!

**Admissions (Board of Bar Examiners):** The bar exam pass rate for the February exam was 64 percent. This is consistent with the results from past February exams. The grading session went well with a new statistician. The previous statistician retired after approximately 40 years of service. Successful applicants can take their oath of office at the Admission Ceremony on Thursday, May 1st in Salem. The board has been busy with several projects. The board approved changes to the rules for admission which would provide consistency in the treatment of graduates of law schools outside the United States. Currently, foreign graduates who wish to sit for the exam may submit to an "equivalency panel" for a determination as to whether their legal education is "substantially similar" to an ABA-accredited law school. However, foreign graduates may not be admitted through reciprocity or as house counsel. The proposed rule changes would allow these graduates to be admitted as house counsel or via reciprocity. The rules sub-committee is considering numerous other changes to the rules for admission. The National Conference of Bar Examiners (NCBE) held their Annual Conference in Portland on April 3-6th. The Board held an all-day retreat Saturday, April 12th. The retreat was very productive and allowed the board to focus on some of the larger policy issues. The work of the Admissions Task Force continues with the next meeting on Monday, April 28th in Salem. It seems likely that the task force will recommend some changes to the current exam. The Board has been weighing alternative exam sites and may be changing the location of future exams beginning in 2009. Board members have been involved in the recently-formed workgroup on out-of-state lawyers. This group also includes representatives from the UPL Committee and OSB Discipline. The Admissions Director will be meeting with the Disability Law Section to discuss concerns regarding special accommodation applicants. He will also be attending a workshop in Madison, Wisconsin for new admissions directors the second week of May.

**Affirmative Action Program:** Frank Garcia, Jr., accepted the position of Diversity Administrator. His start date with the OSB is May 5, 2008. He has over 16 years of leadership experience in diversity management and access and equity programs for large complex organizations in the public and private sectors. He has experience developing programs for students with the goal of achieving increased retention, academic excellence

and civic leadership. Recruiting for participants in the AAP Employment Programs continues. These programs include clerkship stipends, public honors fellowships, bar exam grants and OSB scholarships. Networking socials were held at the University of Oregon Law School and Willamette Law School. A social is planned for April 28 at the Lewis and Clark Law School. Cheryl Taylor has been hired in a temporary position to provide support for the AAP. She is a graduate from Willamette Law School.

**Client Assistance Office:** Since the last report the CAO and DCO staff met to develop a procedure and policy on handling complaints against bar attorneys to comply with the Supreme Court's order of March 20, 2008 allowing for review by the full SPRB of a dismissal of a complaint against a staff member by the SPRB Chair. That meeting also addressed complaints against bar lawyers that concern a staff members processing of a complaint as an employee performance issue. Over the past two months CAO staff members continue to work with IDT regarding the CAO database. On March 14, 2008 Chris Mullmann spoke to the Oregon Criminal Defense Lawyers Association in Eugene on Post Conviction cases. Paul Neese spoke to the Oregon Community Foundation in Eugene before approximately 40 people (lawyers and non-lawyers) on ethics in estate planning. Upcoming in-house CLE presentations for CAO staff include issues in elder law with Mark Williams in May and ex parte orders in domestic relations practice with Shawn Menashe in June. By the way, Chris Mullmann became a grandfather for a second time with the birth of his grandson Brady Ansgar on March 25, 2008.

**Client Security Fund:** The Fund has received 12 claims in the first quarter of 2008; if that level of activity continues, the Fund will have nearly twice the claims in 2008 that it had in 2007. The Committee is engaged and hard-working.

**Communications/RIS:** The Legal Links pamphlet series has been updated, with new versions made available to local bars for use in Law Day activities. Updating of all Web-Law/Tel-Law scripts is near completion. The Legal Links cable television crew taped two new programs along with the Attorney General Candidates Forum sponsored by the bar's Administrative Law Section. Department staff coordinated the annual 50-Year member luncheon in April, is working on the Rule of Law Conference in May, and continues planning for the Future of the Legal Profession Conference in September. The April Bar Bulletin featured "The Only Lawyer in Town," a cover story on practicing law as a true solo. Future articles now in the works cover future planning and treatment of children under the law. On the media front, the 2008 Judicial Voters Guide has been published to the bar's website and has already received substantial media coverage. In RIS, implementation of new call center software has provided new detail about actual call volume. Initial projections indicate that in recent years call volume has ballooned from 80,000 to over 120,000 calls annually. While this increase in public awareness and usage is a measure of great success of past years' public awareness campaigns, call volume now exceeds call handling capacity. Referral & Information Services is now evaluating call volume-centric staff scheduling and other means of increasing resources for public service.

**CLE Seminars:** The CLE Seminars Department held five live seminars and a workshop using the new conference center, all to great success. Capacity is double that of the old building. The overflow room is very convenient, as it is located next to the main meeting room, and members also appreciate having free wireless Internet available. The close proximity of the catering kitchen makes seminar prep and clean up more efficient for Seminars staff. Almost a dozen programs are scheduled for summer, with half of them taking place at the bar center. Included in the summer programming is a session that will use the book "Blink: The Power of Thinking Without Thinking" as the platform for discussing bias and how it detrimentally affects access to justice in the Oregon judicial system.

**Discipline:** The SPRB continues to meet monthly to review disciplinary complaints and oversee prosecutions. The next meeting is set for April 18, 2008. Approximately 35 matters will be on the board's agenda at that meeting. Twenty-five disciplinary proceedings have been concluded thus far in 2008. This includes Supreme Court approval of 8 Form B resignations (two more are pending before the court) and three stipulations for suspensions. It also includes ten stipulations for discipline approved by the Disciplinary Board (two suspensions and eight reprimands) and three trial panel opinions that were not appealed (two disbarments and one suspension). One case has been given diversion treatment by the SPRB. The Supreme Court also issued an opinion in the contested reinstatement case involving Bruce Gunter, affirming the Board of Governors recommendation that reinstatement be denied. A copy of the opinion is in the board's agenda material for the May meeting. Steven Marsh has retained counsel and filed a petition for review of the board's adverse reinstatement recommendation from February. Therefore, the case will be litigated. Craig Coyner has not contested the board's adverse recommendation. Disciplinary counsel's office continues to investigate the merits of several other reinstatement applications, some of which will be before the Board of Governors in May.

**Facilities:** There is no new information about potential tenants for the vacant space on floor one and three. However, the broker keeps in contact to indicate that serious negotiations continue with the eye center for the larger space on the first floor and two other financial-related firms are looking at the other space on the first floor. Another company has expressed interest in the space on the third floor. The building is actively used by members on Saturdays. On the most recent Saturdays, two to four groups have held meetings here. The punch list is getting shorter all the time with most being the finishing touches on matters. The most unfinished in the security system, the installation of which failed the latest inspection by the city. Opus has sent the bar the invoice for the last change orders for the bar and PLF and the invoice is being reconciled. The first mortgage payment was made March 15.

**Fee Arbitration:** The program continues to run smoothly. Requests for arbitration remain at the same level as in recent years.

**General Counsel:** There is rarely a shortage of work in this office. In recent weeks we have filed a challenge to a ballot title with the Secretary of State and then the Supreme Court. Working with the BOG on legal and policy issues is a continuing function. General Counsel's review of complaints dismissed by the Client Assistance Office continues to be a significant area of responsibility. We also devote substantial 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 clarify 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. DCG has also put together an informal group with representatives from the BBX, the UPL Committee, DCO and GCO to discuss UPL issues involving out-of-state-lawyers who do not fall within RPC 5.5 and to ensure that we have a consistent approach. There is only one significant legal matter pending; it was dismissed at the trial level but an appeal is expected. Both GC and DGC continue outreach to the legal community through speaking engagements. The office also has ongoing responsibility for advising OSB managers on a variety of issues including human resources, public records, and contracts.

**Human Resources:** Positions filled - Diversity Program Administrator, Legal Publications Assistant Editor, Member Services Program Assistant, and Public Records Coordinator. Positions open - RIS Assistant (Bilingual), Affirmative Action Program Administrative Assistant, Administrative Assistant - Human Resources, and Executive Director. This year's performance appraisal process is nearly complete. Employees for all but three supervisors have received their appraisals. The 2008 - 2009 benefit plans were brought in at a cost increase of \$100 per year. The health insurance plans increased an average of 6%.

**Information Technology Department:** Our IDT efforts this first quarter centered around the building move. The entire department participated in the physical move and all desktops in the building were operational by Monday morning. We were given the opportunity to test (with success!) the disaster recovery system we had established for our electronic files when one of our primary drives was corrupted during the move. We focused on other move related issues over the course of the next month (e.g., replacement of printer drives that had broken) and helped the building staff acclimate to the new phone system and software). We completed the final peg of the bar's rebranding efforts with the launch of the new website in mid-February. In addition to the new logo and palette, the site features a streamlined navigation system and a new structure that increases responsiveness and interactivity of the web pages, all of which is designed to improve the user experience as they view the information on site (over 2,000 pages and growing).

**Legal Publications:** The revision of Fee Agreement Compendium and the 2007 supplement to Uniform Civil Jury Instructions, released in December 2007, have generated revenue of \$22,700 and \$39,189, respectively. The 2007 supplement to Uniform Criminal Jury Instructions, released in January 2008, has generated revenue of \$26,300 to date. A revision

of Documentation of Real Estate Transactions is scheduled for release at the end of May 2008, and a supplement to Family Law is scheduled for release in June 2008. In March, Rosina Busse joined the department as our new Assistant Editor, and has quickly proven her ability to provide excellent service to the bar in this role. The renewal notice process for BarBooks™ online library has continued on an automatic basis. At this time, the renewal rate for subscribers who have passed their initial expiration date is 61% for sole practitioners and 90% - 100% for all other firm sizes. BarBooks™ revenue for 2008 to date is \$297,094, based on a mix of deferred, renewal, and new subscription revenue. Deferred revenue for 2009 is already \$17,616. The department manager is in the process of implementing the Task Force recommendation, approved by the BOG, to allow sole practitioners who office share to purchase BarBooks™ at firm pricing. At this time, nine county law libraries have subscribed to BarBooks™.

**Legal Services Program:** The Association of Legal Services forwarded a recommendation to the Legal Services Program (LSP) Committee regarding the \$750,000 general fund appropriation granted to legal services from the 2007 Legislative Session. The LSP Committee approved the Association's recommendation and it was subsequently approved by the BOG's Access to Justice Committee. This item will be on the BOG's May 9 agenda. The Loan Repayment Assistance Program (LRAP) Committee will meet on May 3 to select six loan recipients. The Pro Bono Committee is currently focused on changing an admissions rule to allow out of state attorneys to practice pro bono in Oregon. The Pro Bono Committee is also working to revise the definition of the emeritus attorney status.

**Member Services:** Over 200 members attended the events associated with the Pro Bono recognition events on April 15. Two CLE sessions were held for those interested in doing pro bono work. A Pro Bono Fair featured various non-profit groups in need of lawyers to do pro bono legal work. A reception and awards ceremony concluded the evening. A networking brown bag session was held for current and past Leadership College Fellows. June 20, 2008 is the deadline for Public Member applications. Nine public members are needed for various boards and committees. Preference polls were conducted in Union, Wallowa, Jackson and Washington counties for four circuit court positions. 34% of the eligible member voters returned a ballot. The poll was conducted electronically and by mail for those who do not have an e-mail address. Michelle Casney is now working in Member Services as the Member Services Program Assistant.

**MCLE:** Over 400 notices of noncompliance were mailed on February 11. Members had through April 14 to complete their credits and submit a compliance report. We mailed a letter to the Supreme Court on April 17 recommending suspension of 55 members. These members have an additional 14 days to submit their compliance reports. Over 1,625 accreditation applications have been processed since the beginning of the year. The next meeting of the MCLE Committee is scheduled for Friday, June 20.

**Public Affairs:** The February Special Session scheduled to last no more than a month, ended

seven days earlier than the deadline. Intended to address the most pressing fiscal and policy issues facing the state, the session, according to leadership, demonstrated that the legislature was able to successfully deliver results on a diverse agenda with broad partisan support. The legislative assembly passed 73 bills in just 15 days including a package of mortgage lending bills, a legislative alternative to the Mannix proposal on mandatory minimums (initiative petition 40) which was referred to the voters for the November ballot as well as other issues of interest to the bar. Bar groups were actively involved in at least 10 bills during the Special Session and monitored significantly more than initially expected. Public Affairs Committee forwarded 27 Law Improvement proposals to the board for pre-session filing and introduction in the 2009 legislative session. The package included a BOG proposal to reconfigure the board regions and add 2 new board member positions as well as a proposal originating with the Military Assistance Panel to allow attorney fees for pursuing claims under the Servicemember Civil Relief Act. Public Affairs Committee will develop a charge and proposed membership roster for the eCourts Integration Task Force as well as coordinate its work. Public Affairs also has the Appellate Process Review Committee Report on its work plan schedule to revisit its findings and study ways the bar can increase the effectiveness of court operations.

#### **Professional/Community Development**

*Leadership Training:* I participated in a workshop in April at Oregon State University in the Community College degree program on leadership. There were 30 mid-level managers from several states. I really enjoyed the interaction.

*Clackamas Community College:* I am now chair of their Budget Committee. We were forced to raise tuition rates because of revenues not keeping up with either inflation or enrollment.

*Art Institute of Portland:* At our May meeting, we will consider starting a culinary program, competing with at least two other schools in the community. Stay tuned.

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**Status of Actions**  
**Board of Governors Meetings**  
 Updated – April 23, 2008

<b>Date</b>	<b>Action</b>	<b>Assg. to</b>	<b>Completion</b>
September 28, 2007	Ask SPRB to study issue of activities of suspended or disbarred lawyers	Jeff	SPRB Notified
September 28, 2007	Created a task force on advertising	Sylvia	3d meeting scheduled for 4/25.
November 3, 2007	Approved Katrina Rule to HOD	Sylvia	HOD on 9/08.
February 22-23, 2008	Implement PLF Bylaw 6.200-300 Revisions	Ira	DONE
February 22-23, 2008	Publish Formal Ethics Opinion regarding temporary practice by out-of-state attorneys in arbitration or mediation in Oregon.	Sylvia	Deferred pending further consideration by LEC at inquirer's request.
February 22-23, 2008	Send proposed Bar Rules of Procedure changes to Supreme Court	Jeff	DONE
February 22-23, 2008	Pay \$900 for CSF Claim No. 07-15 <i>Jones v. Dunn.</i>	Sylvia	DONE
February 22-23, 2008	Ratify the execution of the \$13 million loan documents.	Rod	DONE
February 22-23, 2008	Implement designation of certain signers for the bar's bank accounts.	Rod	DONE
February 22-23, 2008	Notify members of ED Search Committee.	Christine	DONE
February 22-23, 2008	Reduce the Law Student membership fees from \$25 to \$10.	Rod and Margaret	DONE
February 22-23, 2008	Draft legislation for redistricting of BOG regions.	Sylvia and Susan	DONE
February 22-23, 2008	Send proposed MCLE Rule changes regarding AJ credit to Supreme Court.	Sylvia	Court Approved
February 22-23, 2008	Designate use \$30,000 from the bar's contingency fund to oppose ballot measures 51 and 53.	Susan and Rod	DONE
February 22-23, 2008	CONSENT AGENDA – meeting minutes.	Teresa	DONE
February 22-23, 2008	CONSENT AGENDA – CSF Claims	Sylvia	DONE
February 22-23, 2008	CONSENT AGENDA – Appointments	Danielle	DONE

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## MEMORANDUM

**TO:** Oregon State Bar Board of Governors and Karen Garst

**FROM:** Adrienne Nelson and Marilyn Harbur

**SUBJECT:** 2008 Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

**DATE:** February 29, 2008

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### REPORT ON THE ABA MIDYEAR MEETING

The 69th Midyear Meeting of the American Bar Association (the "ABA") was held February 6-11, 2008, at the Hyatt Regency Century Plaza Hotel, in Los Angeles, California. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a one-day session. The Nominating Committee also met.

The Nominating Committee sponsored a "Meet the Candidates" Forum on Sunday, February 10, 2008. Stephen N. Zack, candidate for President-Elect seeking nomination at the 2009 Midyear Meeting, gave a speech to the Nominating Committee and to the members of the Association present.

### THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the "House") met on Monday, February 11, 2008. Laurel G. Bellows of Illinois presided as Chair of the House.

The Los Angeles Navy and Marine Corp Center presented the colors. The invocation for the House was delivered by Armando Lasa-Ferrer of Puerto Rico. William C. Trotter III of Mississippi sang the Star-Spangled Banner. The Chair of the House Committee on Credentials and Admissions, Palmer Gene Vance II of Kentucky, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for the 2008 Midyear Meeting of the House. The motion was **approved**.

Linda A. Klein of Georgia, Chair of the Committee on Rules and Calendar, provided a report on the Final Calendar for the House, including recently filed reports. She moved to consider the late filed report, adopt special rules for consideration of Report 200, adopt the final calendar and approve the list of individuals who sought privileges of the floor. All four motions were **approved**. Ms. Klein noted that the deadline for submission of Reports with Recommendations for the 2008 Annual Meeting is May 7, 2008, while the deadline for

Informational Reports is June 6, 2008. She also referred to the consent calendar, noting the deadline for removing an item from the consent calendar.

Deceased members of the House were named by the Secretary of the Association, Armando Lasa-Ferrer of Puerto Rico, and were remembered by a moment of silence. Richard J. Podell of Wisconsin offered remarks about Daniel W. Hildebrand of Wisconsin. Dwight L. Smith of Oklahoma remembered Sharon L. Corbitt and her husband, James C. Lang, of Oklahoma, both of whom recently died in a house fire.

Later in the day, Linda A. Klein moved the adoption of the items remaining on the consent calendar. The motion was **approved**.

In addition, Alan O. Olson of Iowa, Chair of the House's Technology and Communications Committee, provided an update on the House of Delegates website and encouraged members to use the on-line directory of House members and the House discussion board.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the recommendations presented to the House.

## **I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES**

### **Statement by the Chair of the House**

Laurel G. Bellows of Illinois, Chair of the House, welcomed new members to the House. Chair Bellows recognized the efforts of the members of the Rules and Calendar Committee and the Tellers who make the House operations possible and productive. Chair Bellows encouraged all House members to participate in the debates.

Chair Bellows encouraged members of the House to continue to support the program efforts of the Fund for Justice and Education. She also asked members to consider making a donation to the ABA Legal Opportunity Scholarship Fund, which provides twenty law school scholarships annually. She recognized Past President William G. Paul of Oklahoma, who led the effort to establish the scholarships in 1999.

Chair Bellows encouraged members of the House to continue to promote ABA policies passed in the House by becoming active members of the ABA Grassroots Action Team and by participating in ABA Day in Washington, scheduled for April 16-17, 2008, in Washington, D.C.

Chair Bellows reminded House members about the on-line directory of House members. She also asked delegates to provide input regarding the House by completing a survey created by the Select Committee.

Chair Bellows announced that at the 2008 Annual Meeting, the House will elect two members to the Committee on Scope and Correlation of Work. One position will be a five-year term and the other position will be a four-year term to fill a vacant position. She encouraged

those interested in the positions to contact members of the Scope Nominating Committee by March 17, 2008.

Noting that the appointments process for President-Elect H. Thomas Wells, Jr. of Alabama is currently underway, Chair Bellows encouraged those interested in a presidential appointment to apply on-line by March 1, 2008.

Finally, Chair Bellows recognized several members of the House whose children now also serve as delegates in the House.

#### Statement by the Secretary

Armando Lasa-Ferrer of Puerto Rico, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2007 Annual Meeting, which was approved by the House. On behalf of the Board of Governors, Secretary Lasa-Ferrer presented and referred the House to Report Nos. 177, 177A, and 177B, the Board's Informational and Transmittal Reports to the House.

#### Statement by the ABA President

In his remarks to the House, President William H. Neukom of Washington, welcomed the delegates to the 141<sup>st</sup> meeting of the House of Delegates. He recognized the House's important role in the creation of policy that reflects the sentiments of the United States legal profession, such as the adoption of resolutions supporting law school debt relief, and the provision of habeas corpus, due process and effective counsel for detainees. He highlighted numerous ABA programs that promote the rule of law in the United States and abroad, noting the partnerships between the ABA and state and local bar leaders.

Mr. Neukom mentioned several important events that occurred since August 2007. First, in November, Pakistan's President Pervez Musharraf announced a state of emergency, suspended the constitution and insisted that all judges take an oath of loyalty to him. Those who refused to take the oath, as well as many protestors, were arrested or placed under house arrest. The ABA condemned that action. Over 700 lawyers demonstrated in Washington, D.C., in support of the Pakistani judges and 13,000 ABA members signed a petition asking President Musharraf to restore the constitution, reinstate the judges and release the protestors. The ABA will continue to try to assist the judges and lawyers in Pakistan.

Second, the ABA is part of a broad coalition seeking passage of legislation that would increase salaries for federal judges, who have not received a merit pay increase since 1992. Mr. Neukom said that to attract and retain the best federal judges, it is imperative that judges have a reasonable compensation scheme that reflects the demanding and important work that judges perform.

Third, the ABA is leading efforts to pass legislation at the federal level that will clarify and reinforce the guarantees of the attorney-client privilege. Finally, the ABA is focusing on goals-based management and will be presenting a new long-range plan to the House in August,

the draft of which is being provided to members of the House at this meeting.

President Neukom highlighted several upcoming events for 2008. Two summits are scheduled for 2008: a Goal IX Diversity summit, and a legal education summit that will bring together law school deans, law firm managing partners and general counsel to talk about legal education and coordination with practitioners. The ABA will once again be lobbying on ABA Day in Washington in April. The top two lobbying priorities are protecting the attorney-client privilege and increasing funding for the Legal Services Corporation (LSC), which is currently budgeted for \$311 million. In 1981, the appropriation for LSC was \$321 million – that translates to \$732 million in today’s dollars, which is \$321 million less than the current appropriation.

Law Day will celebrate its 50th anniversary on May 1, 2008. An event focusing on separation of powers is being planned to celebrate this anniversary. In addition, state and local bar associations are being encouraged to set up multi-disciplinary roundtable meetings to discuss and design programs relating to access to justice, merit selection of judges, civics in the classroom, and other programs.

Finally, President Neukom updated the House on the ABA’s World Justice Project, which features eleven co-sponsors and has already raised \$6 million of the \$8 million it plans to raise by Spring 2008 to promote its projects. These projects include a scholars program that is creating Nobel-quality work; multi-disciplinary meetings on five continents that have recognized the importance of the rule of law; a rule of law index that will be applied in five countries this year; and an international World Justice Forum in Vienna in July 2008 with attendees from many disciplines and countries. It is anticipated that the World Justice Program will emerge as a stand-alone enterprise in 2009.

#### Statement by the Treasurer

The Treasurer, Wm. T. Robinson III of Kentucky, referred members of the House of Delegates to his written report. He reported that the ABA is in sound financial shape. Mr. Robinson said that the ABA has now achieved its goal of maintaining a permanent reserve of fifty percent of annual general revenue expenditures. He said the ABA has also changed the way it looks at investment income, such that it now calculates the average return over several years to predict revenue. This has made revenue predictions more reliable. Treasurer Robinson reported that improved efficiency and planning have created a \$5 million surplus in dues and should allow us to avoid increasing dues for at least one year beyond the normal three-year dues cycle. He said that even a forecast of lower dues revenue than was budgeted for 2008 should not be problematic, as the ABA has created a cost-cutting plan that can be implemented as soon as necessary.

Treasurer Robinson thanked the Board of Governors and its committees for their hard work on the finances of the organization. He also recognized Executive Director Hank White, Acting Chief Financial Officer Kay Geary, and Treasurer-Elect Alice Richmond.

#### Statement by the Executive Director

Henry F. White, Jr. of Illinois, Executive Director and Chief Operating Officer of the ABA, provided an update on five internal priorities he recommended to the Board of Governors in August 2007. First, over 100 staff persons participated in the development of internal and external communications plans to improve internal communications and enhance the image of the ABA for members and the general public. Second, planning functions have been consolidated with the creation of the Planning, Policy and Governance Group, enabling those with planning expertise and historical knowledge to guide the development of strategic, long-term and near-term plans. Third, the ABA has been determining which areas of non-dues revenue generation will bring the best results in the shortest period of time. The conclusion is that the ABA will focus initially on publishing, affinity programs, continuing legal education and grants, with publishing being the primary focus. Revenue has increased fourteen percent for the first quarter year over year. Fourth, new strategies have been implemented to ensure human resources transactions are transparent and that all staff are aware of present policies. Finally, membership is addressed at every opportunity. Slightly less than one-third of all U.S. lawyers are ABA members.

To increase membership, Executive Director White said he emphasizes two points when others ask him why they should be ABA members. First, there is no competition between the ABA and state and local bar associations. Rather, we are collaborators. We serve as the national champion of issues that have a significant impact on the state and local levels. Second, to those who suggest the ABA should not involve itself in international affairs, he explains that the ABA has been asked on numerous occasions to continue its international involvement in order to provide stability by promoting the rule of law. In closing, Mr. White recognized that the ABA provides camaraderie, networking, leadership skill development, a forum for debate and other opportunities that make the ABA a welcoming place for all lawyers. He suggested that the ABA's appeal for membership must be personal and compelling, and that we as individual ABA members have a role to play in recruiting new members.

### Report of the Nominating Committee

The Nominating Committee met on Sunday, February 10, 2008. On behalf of the committee, Thomas R. Curtin of New Jersey, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

#### OFFICERS OF THE ASSOCIATION

##### President-Elect (2008-09)

Carolyn B. Lamm of the District of Columbia

##### Chair of the House of Delegates (2008-2010)

William C. Hubbard of South Carolina

#### MEMBERS OF THE BOARD OF GOVERNORS (2008-2011)

### District Members

District 1: Stephen L. Tober of New Hampshire

District 2: W. Anthony Jenkins of Michigan

District 4: Robert N. Weiner of the District of Columbia

District 6: Howard H. Vogel of Tennessee

District 12: Craig A. Orraj of New Mexico

### Section Members-at-Large

#### General Practice, Solo and Small Firm Division

Lee S. Kolczun of Ohio

#### Tort Trial and Insurance Practice Section

Mitchell A. Orpett of Illinois

#### Minority Member-at-Large

Richard A. Soden of Massachusetts

#### Woman Member-at-Large

Lauren Stiller Rikleen of Massachusetts

#### Young Lawyer Member-at-Large

Jonathan W. Wolfe of New Jersey

### Remarks by President-Elect Nominee

President-Elect Nominee Carolyn B. Lamm of Washington, D.C., addressed the House. She expressed appreciation at being selected as the President-Elect Nominee. Ms. Lamm emphasized that attorneys must work together, asserting that no firm, solo practitioner, judge, institution or constitution can fight for itself. She said that like Atticus Finch from "To Kill a Mockingbird," we must fight the good fight, as keepers of the Constitution and the rule of law. She asserted that uniting and supporting lawyers is one of the primary roles of the American Bar Association.

President-Elect Nominee Lamm recognized fellow candidates James R. Silkenat of New York and Paul T. Moxley of Utah and thanked them for addressing important issues such as membership. Ms. Lamm said ABA membership must be increased, and ABA membership must reflect the diversity of the profession and the population. She emphasized that ABA dues must be affordable to ensure diversity, including participation by young lawyers and solo practitioners.



## II. RECOMMENDATIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on recommendations brought before the House follows. The recommendations are categorized by topic areas and the number of the recommendation is noted in brackets.

### ARMED FORCES LAW

[108] On behalf of the Section of Litigation, Patricia L. Refo of Arizona moved Report 108 urging Congress to enact legislation, like the Veterans Advocacy Act of 2007, which promotes the provision of legal services to veterans and members of the Armed Forces to assist them in obtaining the full range of health care, benefits and services to which they are lawfully entitled. Robert L. Weinberg of the District of Columbia, Gregory L. Ulrich of Michigan and Dale C. Doerhoff of Missouri spoke in favor of the recommendation. The recommendation was approved.

### BOARD OF GOVERNORS REPORT WITH RECOMMENDATION AMENDING ILLINOIS ARTICLES OF INCORPORATION

[177C] On behalf of the Board of Governors, Secretary Armando Lasa-Ferrer of Puerto Rico moved Report 177C amending the ABA's Illinois Articles of Incorporation. The recommendation was approved.

### BUSINESS LAW

[10C] On behalf of the Ohio State Bar Association, Kathleen B. Burke of Ohio moved Report 10C supporting the retention of the 10-day time limit in Rule 8002 of the Federal Rules of Bankruptcy Procedure for filing a notice of appeal from a judgment, order or decree in a bankruptcy case and opposing any proposed amendments to Rule 8002 that would lengthen the time for filing a notice of appeal. Michael H. Reed of Pennsylvania spoke in favor of the recommendation. The recommendation was approved.

### CRIMINAL JUSTICE

[102B] On behalf of the Section of Administrative Law and Regulatory Practice, Thomas M. Susman of the District of Columbia moved Revised Report 102B urging national, federal, state, tribal, territorial and local bar associations, in cooperation with state and local pro bono, lawyer referral, and legal aid programs, to establish programs for representation of victims of identity theft who need assistance in recovery from the crime. Nina Marino of California spoke in favor of the recommendation. The recommendation was approved as revised.

[105A] On behalf of the Criminal Justice Section, Nina Marino of California moved Report 105A urging federal, state, local, tribal and territorial governments and their prosecutors to vigorously prosecute cases of elder abuse, neglect and financial exploitation by the creation of special elder abuse units within the prosecutor's office or by the designation of a specially trained prosecutor to handle elder abuse cases. David M. English of Missouri spoke in favor of the recommendation. The recommendation was approved.

[105B] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Report 105B amending Rule 3.8 of the ABA Model Rules of Professional Conduct to identify prosecutors' obligations when they know of new evidence establishing a reasonable likelihood that a convicted defendant did not commit the offense of which he was convicted. The recommendation was approved.

### CRIMINAL JUSTICE (cont.)

[105C] On behalf of the Criminal Justice Section, Nina Marino of California moved Report 105C urging federal, state, tribal, local and territorial governments to authorize and implement sentencing laws and rules of procedure that both protect public safety and give mitigating consideration to youthful offenders. The recommendation was approved.

[105D] On behalf of the Criminal Justice Section, Stephen A. Saltzburg of the District of Columbia moved Revised Report 105D adopting the black letter *ABA Criminal Justice Standards on Prosecutorial Investigations*, dated February 2008 to supplement the *ABA Criminal Justice Standards on the Prosecution Function*. The recommendation was approved as revised.

### ELECTION LAW

[102A] On behalf of the Section of Administrative Law and Regulatory Practice, Thomas M. Susman of the District of Columbia moved Revised Report 102A urging each state to assign the redistricting process for congressional and legislative districts to an independent commission, leaving to each state the precise manner of configuring such commission and the specific redistricting criteria to be applied. Mr. Susman also moved to amend the recommendation. The amendment was approved. W. Scott Welch III of Mississippi spoke in opposition to the recommendation. Robert L. Weinberg of the District of Columbia spoke in favor of the recommendation. The recommendation was approved as revised.

### ENVIRONMENTAL LAW

[101] On behalf of the Standing Committee on Environmental Law, R. Kinnan Golemon of Texas moved Revised Report 101 urging federal, state, territorial and tribal governments, when considering and approving legislation, regulations and policies, to preserve and enhance the benefits that people derive from ecosystems, with due regard for economic, human and social impacts. Lee A. DeHihns III of Georgia spoke in favor of the recommendation. The recommendation was approved as revised.

[109] On behalf of the Section of Environment, Energy and Resources, Lee A. DeHihns III of Georgia moved Revised Report 109 urging the United States government to take a leadership

role in addressing the issue of climate change through legal, policy, financial and educational mechanisms and to engage in active international discussions to address climate change, and urging Congress to enact and the President to sign appropriate climate change legislation. Sheila Slocum Hollis of the District of Columbia and R. Kinnan Golemon of Texas spoke in favor of the recommendation. Tom Bolt of the Virgin Islands moved to amend the recommendation. The amendment was approved. The recommendation was **approved as revised and amended**.

### FAMILY LAW

[107] On behalf of the Section of Family Law, Marshall J. Wolf of Ohio moved Revised Report 107 approving the *Model Act Governing Assisted Reproductive Technology*, dated February 2008, as appropriate legislation and recommending consideration and adoption of the Model Act by appropriate governmental entities. David M. English of Missouri, Timothy B. Walker of Colorado and Ellen J. Flannery of the District of Columbia spoke in favor of the recommendation. The recommendation was **approved as revised**.

### HEALTH LAW

[10A] On behalf of the New York State Bar Association, Kathryn Grant Madigan of New York moved Report 10A urging federal, state, territorial and local legislative bodies and governmental agencies to develop and assess innovative long-term care programs such as the "Compact for Long-term Care," as a reasonable and fair solution to long-term care financing. Richard C. Macias of California moved to amend the recommendation. The amendment was approved. David M. English of Missouri and Richard L. Theis of Illinois spoke in favor of the recommendation. The recommendation was **approved as amended**.

### IMMIGRATION

[111A] On behalf of the Commission on Immigration, Mark D. Agrast of the District of Columbia moved Report 111A supporting fee levels for immigration and naturalization benefits that are not so burdensome as to deter eligible applicants from filing and urging Congress and the executive branch to ensure that adequate funds are appropriated to enable U.S. Citizenship and Immigration Services to implement these fee levels. John K. Uilkema of California spoke in favor of the recommendation. The recommendation was **approved**.

[111B] On behalf of the Commission on Immigration, Mark D. Agrast of the District of Columbia moved Revised Report 111B supporting the issuance of federal regulations that codify the Department of Homeland Security Immigration and Customs Enforcement National Detention Standards, and supporting improvement, periodic review, and increased oversight of detention standards implementation in order to ensure that detained non-citizens and their families are treated humanely and have meaningful access to counsel and to the legal process.

Robert E. Juceam of New York, Richard Pena of Texas, and Stephen A. Saltzburg of the District of Columbia spoke in support of the recommendation. Tom Bolt of the Virgin Islands moved to amend the recommendation. The amendment was approved. The recommendation was approved as revised and amended.

### INDIVIDUAL RIGHTS AND RESPONSIBILITIES

[106] On behalf of the Section of Individual Rights and Responsibilities, C. Elisia Frazier of Florida moved Revised Report 106 encouraging efforts to increase public understanding of the Establishment Clause and the Free Exercise Clause (the "Religion Clauses") of the U.S. Constitution as they apply in the public elementary and secondary schools and encouraging bar associations to help school officials to better understand and apply the Religion Clauses. Mark I. Schickman of California spoke in favor of the recommendation. The recommendation was approved as revised.

### JUDGES/COURTS

[10B] On behalf of the New York County Lawyers' Association, Catherine A. Christian of New York withdrew Report 10B adopting the black letter *Protocols for Judges in the Settlement and Trial of Cases Involving Unrepresented Litigants in Housing Court*, including the Preface, dated February 2008.

### LAWYER ASSISTANCE PROGRAMS

[112] On behalf of the Commission on Lawyer Assistance Programs, the Hon. Robert L. Childers of Tennessee moved Revised Report 112 adopting the *Model Rule on Conditional Admission to Practice Law* including the commentary, dated February 2008. Robert A. Stein of Minnesota, David S. Baker of Atlanta, Daniel W. Van Horn of Tennessee, Alice E. Richmond of Massachusetts, Michael S. Greco of Massachusetts, and James J. Alfini of Texas spoke in favor of the recommendation. James F. Williams of Washington, Mark A. Alcott of New York and Robert L. Ostertag of New York spoke in opposition to the recommendation. Mr. Ostertag moved to postpone indefinitely consideration of the recommendation. W. Scott Welch III of Mississippi and Dennis W. Archer of Michigan spoke in opposition to the motion to postpone indefinitely. The motion failed. John T. Berry of Florida, representing the National Organization of Bar Counsel ("NOBC"), advised the House that the NOBC takes no position on the recommendation. The recommendation was approved as revised.

### LEGAL EDUCATION

[103] The House approved by consent Report 103A as submitted by the Standing Committee on Paralegals, granting approval, reapproval and the extension of the term of approval to several paralegal education programs.

[113] On behalf of the Section of Legal Education and Admissions to the Bar, Jose Garcia-Pedrosa of Florida moved Report 113 concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting Interpretation 301-6 (February 2008) of the Standards for Approval of Law Schools concerning the sufficiency of a law school's bar

passage rate. Chris Johnson of Michigan, Christopher J. Sprowls of Florida, Robert J. Grey, Jr. of Virginia, Myles V. Lynk of Arizona and Kay H. Hodge of Massachusetts spoke in favor of the recommendation. Victor M. Marquez of California, Jay E. Ray of Texas, Joseph G. Bisceglia of Illinois, Vanita M. Banks of Illinois, Andre L. Dennis of Pennsylvania and Harold D. Pope III of Michigan spoke in opposition to the recommendation. The recommendation was approved.

[200] On behalf of the Section of Legal Education and Admissions to the Bar, Sidney S. Eagles, Jr. of North Carolina **withdrew** Report 200 concurring in the action of the Council of the Section of Legal Education and Admissions to the Bar in denying provisional approval to the Eugenio Maria de Hostos School of Law in Mayaguez, Puerto Rico.

### RULE OF LAW

[10D] On behalf of the New York State Bar Association, Kathryn Grant Madigan of New York moved Revised Report 10D expressing support for and solidarity with the Pakistani bar and bench; and urging the immediate release of all detained judges and lawyers and calling upon the President of Pakistan to restore Pakistan's constitution, to reinstate Pakistan's Supreme Court justices and high court judges and to release all judges, lawyers and other people who were wrongly arrested during the state of emergency. Mark A. Alcott of New York, Karen J. Mathis of Colorado, Marc L. Sallus of California, and Robert L. Weinberg of the District of Columbia spoke in favor of the recommendation. The recommendation was **approved as revised unanimously**.

### SPECIALIZATION

[104] The House **approved by consent** Report 104 as submitted by the Standing Committee on Specialization, reaccrediting the Legal Professional Liability Program of the American Board of Professional Liability Attorneys and the Medical Professional Liability Program of the American Board of Professional Liability Attorneys of Malverne, New York, and the Elder Law Program of the National Elder Law Foundation of Tucson, Arizona, as designated specialty certification programs for lawyers, and withdrawing accreditation of the Accounting Professional Liability program of the American Board of Professional Liability Attorneys of Malverne, New York.

### SUBSTANCE ABUSE

[100] On behalf of the Standing Committee on Substance Abuse, Edward H. Jurith of the District of Columbia, **withdrew** Report 100 urging state, territorial, and tribal legislative bodies and governmental agencies to adopt strategies that foster and encourage the prescribing of prescription medications for effective pain management and that reduce the incidence of prescription drug diversion and abuse, including the enactment of legislation to authorize and implement Prescription Drug Monitoring Programs.

## UNIFORM ACTS

[110A] On behalf of the National Conference of Commissioners on Uniform State Laws, Hon. Martha L. Walters of Oregon moved Report 110A approving the *Uniform Rules Relating to the Discovery of Electronically Stored Information Act*, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein. The Hon. David J. Waxse of Kansas and Robert A. Stein of Minnesota spoke in favor of the recommendation. The recommendation was approved.

[110B] On behalf of the National Conference of Commissioners on Uniform State Laws, Hon. Martha L. Walters of Oregon withdrew Report 110B approving the *Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act*, promulgated by the National Conference of Commissioners on Uniform State Laws in 2006, and amended in 2007, as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.

## UNIFORM ACTS (cont.)

[110C] The House approved by consent Report 110C as submitted by the National Conference of Commissioners on Uniform State Laws, approving the *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.

[110D] The House approved by consent Report 110D as submitted by the National Conference of Commissioners on Uniform State Laws, approving the *Uniform Interstate Depositions and Discovery Act*, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.

[110E] On behalf of the National Conference of Commissioners on Uniform State Laws, Hon. Martha L. Walters of Oregon moved Report 110E approving the *Uniform Limited Cooperative Association Act*, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007 as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein. The recommendation was approved.

## YOUTH AT RISK

[300] On behalf of the Commission on Youth at Risk, Laura V. Farber of California moved Revised Report 300 urging the federal government, states, territories and tribes to revise laws, court rules, policies and prosecutorial practices related to "dual jurisdiction" youth (defined as those with juvenile "dependency" cases that aid victims of child abuse or neglect, who are also charged with acts of delinquency). Miriam A. Krinsky of California and Karen J. Mathis of Colorado spoke in favor of the recommendation. The recommendation was approved as revised.

## CLOSING BUSINESS

At the conclusion of the meeting of the House on Monday, February 11, Chair Bellows thanked numerous people for their assistance with the House meeting, including the Committee on Rules and Calendar and the ABA staff who support the House.

Chair Bellows called upon James R. Silkenat of New York and the New York delegation for a report on the 2008 Annual Meeting that will take place in New York City. Chair Bellows also recognized Mr. Silkenat for his myriad contributions to the ABA.

Chair Bellows thanked the numerous bar associations who served as hosts for the 2008 Midyear Meeting. A resolution was approved in appreciation of their efforts.

Finally, Chair Bellows recognized Linda A. Klein of Georgia, who moved that the House adjourn *sine die*.

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Oregon State Bar

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**2007** Disciplinary  
Counsel's Office

Annual Report

March 2008

Jeffrey D. Sapiro  
Disciplinary Counsel

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## **I. INTRODUCTION**

This is the Annual Report of the Oregon State Bar Disciplinary Counsel's Office for 2007. The report provides an overview of Oregon's lawyer discipline system, an analysis of the caseload within the system, along with the dispositions in 2007, and a discussion of significant developments over the last year.

## **II. STATE PROFESSIONAL RESPONSIBILITY BOARD (SPRB)**

The principal responsibility of Disciplinary Counsel's Office is to serve as counsel to the State Professional Responsibility Board (SPRB), the body to which the investigative and prosecutorial functions within the discipline system are delegated by statute. The SPRB seeks to enforce the disciplinary rules in the Code of Professional Responsibility (the DRs) and the Rules of Professional Conduct (the RPCs), while operating within the procedural framework of the Bar Rules of Procedure (the BRs). The SPRB is a nine-member board of unpaid volunteers, consisting of one lawyer each from Board of Governors (BOG) Regions 1 through 4 and 6, two lawyers from Region 5 and two public members.

The SPRB met 13 times in 2007. With regular meetings and conference calls combined, the SPRB considered approximately 310 case-specific agenda items during the year. This does not include the many policy matters also considered by the board.

The Bar was fortunate to have the following individuals on the SPRB in 2007:

Amy R. Alpern (Portland) – Chairperson  
Richard H. Braun (Portland)  
Liz Fancher (Bend)  
John F. Folliard, Jr. (Portland)  
David W. Hittle (Salem)  
Jolie Krechman (Portland) – Public Member  
Linda Lee Lynch (Eugene) – Public Member  
James A. Marshall (Albany)  
Martha J. Rodman (Eugene)

The term of Amy Alpern expired at the end of 2007. The new appointment for 2008 is Jana Toran (Portland). Jack Folliard is the SPRB Chairperson for 2008.

### III. SYSTEM OVERVIEW

#### A. COMPLAINTS RECEIVED

Prior to August 1, 2003, all complaints against Oregon lawyers were filed with and reviewed by Disciplinary Counsel's Office. Effective August 1, 2003, the Bar's Client Assistance Office (CAO) handles the intake of all oral and written inquiries and complaints about lawyer conduct. Only when the CAO finds that there is sufficient evidence to support a reasonable belief that misconduct may have occurred does the matter become a disciplinary complaint that is referred to Disciplinary Counsel's Office for investigation. See BR 2.5.

The table below reflects the shift of the intake function to CAO and the fact that substantial screening is done in that phase of the process. In 2002, before the Client Assistance Office was created and all matters came to Disciplinary Counsel, 1,424 files were opened by Disciplinary Counsel during the course of the year. By comparison, in 2007, with CAO screening matters for the full year, Disciplinary Counsel opened 365 files (involving 376 Oregon lawyers). These are substantially identical numbers to those in 2006.

#### Files Opened by Disciplinary Counsel

Month	2002	2003	2004	2005	2006	2007
January	122	126	14	34	28	30
February	120	112	53	29	40	49
March	146	125	34	30	41	42
April	123	120	29	30	53	30
May	125	91	29	42	22	19
June	108	106	31	47	23	29
July	123	115	31	35	29	31
August	116	13	30	32	36	23
September	117	30	45	22	21	16
October	119	32	89*	31	38	38
November	93	27	45	41	23	46
December	112	23	27	31	29	23
<b>Total</b>	<b>1,424</b>	<b>920</b>	<b>457</b>	<b>404</b>	<b>383</b>	<b>376</b>

\*61 complaints vs. same lawyer/same conduct

The breakdown of the open files for 2007 is: 284 referrals from CAO, 77 trust account overdraft notices from financial institutions that came directly to Disciplinary Counsel's Office, and 15 matters opened by Disciplinary Counsel on the office's initiative.

For 2007, statistical information regarding complainant type and complaint subject matter is found in Appendix A to this report. Similar information for 2006 is found in Appendix B for comparison purposes.

Every complaint Disciplinary Counsel's Office received in 2007, was acknowledged in writing by staff, analyzed and investigated to varying degrees depending on the nature of the allegations. As warranted, staff corresponded with the complainant and the responding attorney, and obtained relevant information from other sources, to develop a "record" upon which a decision on merit could be made.

If, after investigation, staff determined that probable cause did not exist to believe that misconduct had occurred, the matter was dismissed by Disciplinary Counsel. BR 2.6(b). Complainants have the right under the rules of procedure to contest or appeal a dismissal by Disciplinary Counsel staff. In that case, the matter is submitted to the SPRB for review. The SPRB reviewed 43 such appeals in 2007, affirming all of the staff dismissals.

When Disciplinary Counsel determined from an investigation that there may have been probable cause of misconduct by a lawyer, the matter was referred to the SPRB for review and action. Each matter was presented to the board by means of a complaint summary (factual review, ethics analysis and recommendation) prepared by staff. Each file also was made available to the SPRB. In 2007, the SPRB reviewed 179 of these probable cause matters. The following section describes that process of review in more detail.

## B. SPRB

The SPRB acts as a grand jury in the disciplinary process, determining in each matter referred to it by Disciplinary Counsel whether probable cause of an ethics violation exists. Options available to the SPRB include dismissal if there is no probable cause of misconduct; referral of a matter back to Disciplinary Counsel or to a local professional responsibility committee (LPRC) for additional investigation; issuing a letter of admonition if a violation has occurred but is not of a serious nature; offering a remedial diversion program to the lawyer; or authorizing a formal disciplinary proceeding in which allegations of professional misconduct are litigated. A lawyer who is offered a letter of admonition may reject the letter, in which case the Rules of Procedure require the matter to proceed to a formal disciplinary proceeding. Rejections are rare.

A lawyer who is notified that a formal disciplinary proceeding will be instituted against him or her may request that the SPRB reconsider that decision. Such a request must be supported by new evidence not previously available that would have clearly affected the decision, or legal authority not previously known to the SPRB which establishes that the decision to prosecute is incorrect.

In 2007, the SPRB took action on 23 investigative reports submitted by investigative committees and 223 matters investigated by Disciplinary Counsel staff. Action taken by the SPRB in recent years and in 2007 is summarized in the following table:

### Action Taken by SPRB

Year	Pros.	Admonition Offered	Admonition Accepted	Dismissed
2002	113	57	55	274
2003	102	43	43	250
2004	136	28	26*	89†
2005	131	43	43	122
2006	94	33	33	85
2007	133	40	40	77

\* Two of the admonition letters offered were later reconsidered by the SPRB and the matters were dismissed.

† This lower number again reflects the shift of the intake function to the Client Assistance Office

(CAO) which now handles non-jurisdictional matters. There no longer is a right to appeal these matters to the SPRB.

Note that the figures for prosecutions reflect the number of complaints that were authorized for prosecution, not necessarily the number of lawyers being prosecuted. For example, one lawyer may be the subject of numerous complaints that are consolidated into one disciplinary proceeding.

In addition to the normal complaint review process, the SPRB also is responsible for making recommendations to the Supreme Court on matters of urgency including temporary and immediate suspensions of lawyers who are suffering under some disability, have been convicted of certain crimes, or have been disciplined in another jurisdiction subjecting them to reciprocal discipline here in Oregon. There were seven (7) such matters in 2007.

### **C. LOCAL PROFESSIONAL RESPONSIBILITY COMMITTEE (LPRCS)**

Most complaints are investigated in-house by Disciplinary Counsel staff. However, some matters that require in-depth field investigation are referred by staff or the SPRB to local professional responsibility committees (LPRCs). There are 16 such committees made up of single county or multi-county districts. Total membership for all LPRCs is approximately 80. At the option of the committee, each LPRC may have one public member.

Each year at the time of appointment, LPRC members are provided with a handbook prepared and updated by the Disciplinary Counsel's Office. The handbook describes in detail the responsibilities each LPRC member is asked to undertake. It also provides practical suggestions in conducting an LPRC investigation, contains copies of resource materials including the applicable statutes and procedural rules, and includes examples of final LPRC reports in a standardized format requested by the SPRB.

Under the applicable rules of procedure, Disciplinary Counsel staff arranges for an assignment to be made to an individual committee member, and the committee member is authorized to report back his or her findings without going through the entire committee. A committee member has 90 days to complete an assignment, with one extension of 60 days available. If an investigation is not completed by then, the rules require the matter to be referred back to Disciplinary Counsel for completion. BR 2.3(a)(2)(C). Sixteen (16) matters were referred to LPRCs in 2007. All but two of these investigations were completed timely under the rules. The two exceptions were called back and completed by Disciplinary Counsel staff.

### **D. FORMAL PROCEEDINGS**

#### **(1) Prosecution Function**

After the SPRB authorizes formal proceedings in a given matter, attorneys in Disciplinary Counsel's Office draft a formal complaint and may arrange for volunteer bar counsel to assist in preparation for trial. Bar Counsel are selected from a panel of lawyers appointed by the Board of Governors.

Discovery methods in disciplinary proceedings are similar to those in civil litigation. Requests for admission, requests for production, and depositions are common. Disputes over discovery are resolved by the trial panel chairperson assigned to a particular case.

Pre-hearing conferences to narrow the issues and to explore settlement are available at the request of either party. Such conferences are held before a member of the Disciplinary Board who is not a member of the trial panel in that case.

## **(2) Adjudicative Function**

Members of the Disciplinary Board, appointed by the Supreme Court, sit in panels of three (two lawyers, one non-lawyer) and are selected for each disciplinary case by a regional chairperson. The panel chair rules on all pretrial matters and is responsible for bringing each case to hearing within a specific time frame established by the rules.

After hearing, the panel is required to render its decision within 28 days (subject to time extensions), making findings of fact, conclusions of law and a disposition. Panels rely on the *ABA Standards for Imposing Lawyer Sanctions* in determining appropriate sanctions when misconduct has been found.

## **E. DISPOSITIONS SHORT OF TRIAL**

Fortunately, many of the disciplinary proceedings authorized by the SPRB are resolved short of trial with resignations or stipulations. Form B resignation (resignation "under fire") does not require an admission of guilt by an accused lawyer but, because charges are pending, is treated like a disbarment such that the lawyer is not eligible for reinstatement in the future. Ten (10) lawyers submitted Form B resignations in 2007, thereby eliminating the need for further prosecution in those cases. While a resignation ends a formal proceeding, it is often obtained only after a substantial amount of investigation, discovery and trial preparation.

A significant number of cases are resolved by stipulations for discipline in which there is no dispute over material fact and both the Bar and the accused lawyer agree on the violations committed and appropriate sanction. Stipulations must be approved by the SPRB or its chairperson on behalf of the Bar. Once that approval is obtained, judicial approval is required from the state and regional chair of the Disciplinary Board in cases where sanctions do not exceed a 6-month suspension, or from the Supreme Court for cases involving greater sanctions. Judicial approval is not always given, in which case the parties must negotiate further or proceed to trial.

In 2007, 69 formal proceedings were concluded: 18 by decision in a contested case; 35 by stipulation; 10 by Form B resignation; 4 by reciprocal discipline order; and 2 by diversion.

## **F. APPELLATE REVIEW**

New rules of procedure governing appellate review in disciplinary proceedings took effect in 2004. In prior years, the Supreme Court automatically reviewed those discipline cases in which a trial panel imposed a sanction in excess of



a six-month suspension. Beginning January 1, 2004, automatic review by the court was eliminated. Trial panel decisions, even those imposing disbarment, now are final unless either the Bar or the accused lawyer seeks Supreme Court review. Review by the court is mandatory if so requested by a party. In 2007, nine (9) cases that in prior years would have required appellate review were final after trial, one resulting in a disbarment and the others resulting in suspensions of various durations.

When there is an appeal, lawyers in Disciplinary Counsel's Office prepare the record for submission to the court, draft and file the Bar's briefs and present oral argument before the court. The SPRB decides for the Bar whether to seek Supreme Court review.

In 2007, the Supreme Court rendered five (5) discipline opinions in contested cases. The court also approved two (2) stipulations for discipline and imposed reciprocal discipline by court order in three (3) other cases. The court also issued orders in four (4) cases suspending those lawyers on an interim basis while the disciplinary proceedings against them were pending.

Among the noteworthy court decisions were:

In *In re Balocca*, 342 Or 279, 151 P3d 154 (2007), the court discussed the differences between a client paying a retainer that must be held by the lawyer in a trust account, and a client paying a fee that is deemed earned by the lawyer upon receipt and need not be deposited into trust. The latter arrangement must be supported by a clear written fee agreement signed by the client in order for the lawyer to be excused from trust accounting requirements. Although the general burden of proof in disciplinary matters is on the bar, the burden of proving the existence of a written fee agreement that makes trust accounting of client payments unnecessary is on the lawyer. In this case, the lawyer could not produce such an agreement or prove that one existed. Accordingly, the money he had received from his client should have been treated by him as trust funds. It was not, which resulted in a finding by the court that the lawyer violated two trust account rules, DR 9-101(A) and DR 9-101(C)(3). In another part of this same case, the court determined that a lawyer who agrees to perform a legal service for a client for a flat fee but does not complete the work, cannot thereafter justify keeping the fee paid by applying an hourly rate to the hours expended on the matter. To do so denies the client the benefit of the flat-fee arrangement and constitutes an excessive fee under DR 2-106(A). The lawyer was suspended from practice for 90 days.

In *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007), dealt with similar fee issues. There, the lawyer accepted a retainer to handle a divorce for a client. The lawyer considered the retainer nonrefundable and earned on receipt. Therefore, when the client terminated the lawyer's services shortly after retaining him, the lawyer refused to refund any of the money to the client. Because the lawyer did not have a written fee agreement with the client, his assertion that the retainer was nonrefundable and earned on receipt was not proper. He was found to have violated the excessive fee rule, DR 2-106(A), and DR 2-110(A)(3) for failing to refund the unearned portion of the client's fee, and was suspended from practice for 30 days.

In *In re Levie*, 342 Or 462, 154 P3d 113 (2007), the lawyer was found to have committed several ethics violations when, in a dispute concerning his client's compliance with the terms of a settlement agreement, the lawyer falsely represented to opposing counsel that all his client's sculptures had been turned over to a gallery for sale, when in fact three sculptures were on display in the lawyer's law firm. The lawyer also falsely represented that there were no security interests encumbering the sculptures. Finally, the lawyer misrepresented to an arbitrator that opposing counsel knew of and consented to the three sculptures being displayed in the law firm. The lawyer was suspended from practice for one year.

The lawyer in *In re Fitzhenry*, 343 Or 86, 162 P3d 260 (2007), was in-house counsel for a publicly-held corporation regulated by the SEC. In connection with an independent audit of the company's financial statements and assertions of received revenue, the lawyer signed a management representation letter to the auditors confirming that a particular transaction the prior year was a fixed commitment by a purchaser to buy over \$4 million in company product. In fact, the lawyer knew that the corporation did not have a fixed commitment for the sale, and that this information was material to the auditors' determination whether the corporate financial statements accurately represented the company's revenue. The lawyer was suspended from practice for four months for violating the rule that prohibits misrepresentations, DR 1-102(A)(3).

## **G. CONTESTED ADMISSIONS/CONTESTED REINSTATEMENTS**

Disciplinary Counsel's Office also represents the Board of Bar Examiners (BBX) in briefing and arguing before the Supreme Court those cases in which the BBX has made an adverse admissions recommendation regarding an applicant. The actual investigation and hearing in these cases are handled by the BBX under a procedure different from that applicable to lawyer discipline cases.

For reinstatements, Disciplinary Counsel's Office is responsible for processing and investigating all applications. Recommendations are then made to the Board of Governors. Many reinstatements are approved by the board without any further level of review. For reinstatement applicants who have had significant, prior disciplinary problems or have been away from active membership status for more than five years, the Board of Governors makes a recommendation to the Supreme Court. In cases when the board recommends against reinstatement of an applicant, the Supreme Court may refer the matter to the Disciplinary Board for a hearing before a three-member panel much like lawyer discipline matters, or may direct that a hearing take place before a special master appointed by the court. Disciplinary Counsel's Office has the same responsibilities for prosecuting these contested cases as with disciplinary matters. The office also handles the appeal of these cases, which is automatic, before the Supreme Court.

## IV. DISPOSITIONS

Attached as Appendix C is a list of disciplinary dispositions from 2007. The following table summarizes dispositions in recent years:

Sanction Type	2002	2003	2004	2005	2006	2007
Disbarment	5	1	2	2	3	1
Form B Resignation	10	11	12	9	6	10
Suspension	24	24	31	34	36	35
Suspension Stayed/probation	3	1	2	1	0	0
Reprimand	44	32	15	22	14	20
Involuntary Inactive Transfer	0	0	1	0	0	0
<b>Total Lawyer Sanctions</b>	<b>86</b>	<b>69</b>	<b>63</b>	<b>68</b>	<b>59</b>	<b>66</b>
Dismissals After Adjudication	1	4	2	1	5	0
Dismissed as Moot	2	0	1	1†	0	0
Diversion	-	1	1	3	4	2
Admonitions	58	43	26	43	33	42

† no further action taken pursuant to BR 2.6(f)(2)

In conjunction with a stayed suspension or as a condition of admission or reinstatement, it is common for a period of probation to be imposed upon a lawyer. Disciplinary Counsel's Office was monitoring four (4) lawyers on probation at the end of 2007, along with five (5) lawyers in diversion. Two (2) lawyers successfully completed probation last year and the probations were terminated. One (1) lawyer successfully completed diversion and the diverted complaint was dismissed. Most probations and diversions require some periodic reporting by the lawyer. Some require more active monitoring by a probation supervisor, typically another lawyer in the probationer's community.

The types of conduct for which a disciplinary sanction was imposed in 2007, or a Form B resignation was submitted, varied widely. The following table identifies the misconduct most often implicated in those proceedings that were concluded by decision, stipulation, order, or resignation in 2007:

Type of misconduct	% of cases in which misconduct present
Neglect of legal matter	44%
Dishonesty or misrepresentation	35%
Trust account violation	29%
Failure to respond to OSB	29%
Conduct prejudicial to justice	18%
Failure to return property or funds	18%
Inadequate accounting records	17%
Criminal conduct	14%
Excessive or illegal fees	14%
Improper withdrawal	12%
Improper communication	8%
Incompetence	8%
Unauthorized practice	8%
Disregarding a court rule or ruling	3%
Multiple client conflicts	3%
Self-interest conflicts	3%
Other	3%

## V. SUMMARY OF CASELOAD

A summary of the pending caseload in Disciplinary Counsel's Office at the end of 2007 follows:

New complaints pending	188
Pending LPRC investigations	0
Pending formal proceedings	71*
Probation/diversion matters	9
Contested admission/contested reinstatement matters	3
<b>Total</b>	<b>271</b>

\* Reflects no. of lawyers; no. of complaints is greater.

In addition to disciplinary matters, Disciplinary Counsel's Office processed and investigated approximately 180 reinstatement applications in 2007; processed approximately 520 membership status changes (inactive, active emeritus, and active pro bono transfers and voluntary resignations); and responded to roughly 2,700 public record requests during the year.

## VI. STAFFING/FUNDING

In 2007, Disciplinary Counsel's Office employed sixteen staff members (14.55 FTE), along with occasional temporary help. In addition to Disciplinary Counsel, there were seven staff lawyer positions. Support staff included one investigator, one paralegal, one office administrator, one regulatory services coordinator, three secretaries, and one public records coordinator. Current staff members include:

### Disciplinary Counsel

Jeffrey D. Sapiro

### Assistants Disciplinary Counsel

Jane E. Angus  
Amber Bevacqua-Lynott  
Mary A. Cooper  
Susan R. Cournoyer  
Linn D. Davis  
Stacy J. Hankin  
Martha M. Hicks

### Support Staff

Lynn Bey-Roode  
Jennifer Brand  
Barbara Buehler  
Karen L. Duncan  
Sandy L. Gerbish  
Vickie R. Hansen  
R. Lynn Haynes  
Raya J. Levin

Disciplinary Counsel's Office is funded out of the Bar's general fund. Revenue is limited (roughly \$80,300 for 2007) and comes from cost bill collections, reinstatement fees, a fee for good standing certificates and *pro hac vice* admissions, and photocopying charges for public records.

Expenses for 2007 were \$1,523,500 with an additional \$370,000 assessed as a support services (overhead) charge. Of the actual program expenses, 90.2% consisted of salaries and benefits. An additional 5.6% of the expense budget went to out-of-pocket expenses for court reporters, witness fees, investigative expenses and related items. 4.2% of the expense budget was spent on general and administrative expenses such as copying charges, postage, telephone and staff travel expense.

## VII. OTHER DEVELOPMENTS

### A. TRUST ACCOUNT OVERDRAFT NOTIFICATION PROGRAM

The Oregon State Bar has a Trust Account Overdraft Notification Program, pursuant to ORS 9.132 and RPC 1.15-2. Under the program, lawyers are required to maintain their trust accounts in financial institutions that have agreed to notify the Bar of any overdraft on such accounts. Approximately 65 banks have entered into notification agreements with the Bar.

In 2007, the Bar received notice of 77 trust account overdrafts. For each overdraft, a written explanation and supporting documentation was requested of the lawyer, with follow-up inquiries made as necessary. Many overdrafts were the result of bank or isolated lawyer error and, once confirmed as such, were dismissed by staff. If circumstances causing an overdraft suggested an ethics violation, the matter was referred to the SPRB. A minor violation resulting in an overdraft typically results in a letter of admonition issued to the lawyer. More serious or on-going violations result in formal disciplinary action. A summary of the disposition of trust account overdrafts received in 2007 follows:

#### 2007 Trust Account Overdrafts

Dismissed by staff	74
Dismissed by SPRB	0
Referred to LPRC for further investigation	1
Closed by admonition letter	0
Closed by diversion	0
Formal charges authorized	0
Closed by Form B resignation	2
Pending	0
<b>Total Received</b>	<b>77</b>

### B. PUBLIC RECORDS

In Oregon, lawyer discipline files are public record with very limited exceptions. Disciplinary Counsel staff responds to an average of 225 public records requests each month. These requests come from members of the public who inquire into a lawyer's background or from other Bar members who have a need to examine these records.

Disciplinary history data is on computer such that many disciplinary record inquiries can be answered without a manual review of a lawyer's file. A significant number of requests, however, require the scheduling of appointments for file review.

During 2007, the Bar continued to implement new document management and retention policies. Pursuant to a recent decision of the Board of Governors and with the consent of the Supreme Court, ethics complaints dismissed for lack of probable cause will be retained for ten (10) years, rather than permanently. Retained records will be scanned and maintained in electronic format, thereby reducing the physical file storage needs of the Bar.

### **C. CUSTODIANSHIPS**

ORS 9.705, *et seq.*, provides a mechanism by which the Bar may petition the circuit court for the appointment of a custodian to take over the law practice of a lawyer who has abandoned the practice or otherwise is incapable of carrying on. In 2006, the Board of Governors authorized Disciplinary Counsel staff to seek such an order when a Multnomah County lawyer walked away from his practice. A custodianship order was obtained in the latter part of the year and during 2007, the lawyer's files and available client funds were returned to the affected clients. The custodianship was completed and closed by court order in January 2008.

### **D. PRO HAC VICE ADMISSION**

Uniform Trial Court Rule 3.170 provides that all applications by out-of-state lawyers for admission in a single case in Oregon (*pro hac vice* admission) must first be filed with the Oregon State Bar, along with a fee of \$250. Disciplinary Counsel's Office is responsible for reviewing each application and supporting documents (good standing certificate, evidence of professional liability coverage, etc.) for compliance with the UTRC. The filing fees collected, after a nominal administrative fee is deducted, are used to help fund legal service programs in Oregon.

In 2007, the Bar received and processed 398 *pro hac vice* applications, collecting \$94,500 for legal services.

### **E. CHILD SUPPORT SUSPENSIONS**

Statutory provisions require that, under prescribed circumstances, the licenses of certain professionals, including lawyers, be suspended if the licensees are delinquent in the payment of child support. See, ORS 25.750, *et seq.* Notices from support enforcement agencies that lawyers are delinquent in their payments come to Disciplinary Counsel's Office and are then submitted to the Oregon Supreme Court. After considering written submissions by the parties, the court takes appropriate action.

In 2007, the Bar received only one (1) child support notice. In this matter, the court suspended the lawyer and three months later lifted the suspension once the lawyer brought the child support obligation current.

## **F. CONTINUING LEGAL EDUCATION PROGRAMS**

Throughout 2007, Disciplinary Counsel staff participated in numerous CLE programs dealing with ethics and professional responsibility issues. Staff spoke to law school classes, local bar associations, Oregon State Bar section meetings, specialty bar organizations and general CLE audiences.

## **VIII. CONCLUSION**

In 2007, the Oregon State Bar remained committed to maintaining a system of lawyer regulation that fairly but effectively enforces the disciplinary rules governing Oregon lawyers. Many dedicated individuals, both volunteers and staff, contributed significantly toward that goal throughout the year.

Respectfully submitted,

Jeffrey D. Sapiro  
**Disciplinary Counsel**

## APPENDIX A 2007

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	12	3.2%
Client	137	36.4%
Judge	16	4.2%
Opposing Counsel	42	11.2%
Opposing Party	41	10.9%
Third Party	39	10.4%
Unknown	0	-
OSB	89	23.7%
<b>TOTAL</b>	<b>376</b>	<b>100%</b>

COMPLAINT SUBJECT MATTER	NUMBER	PERCENTAGE
Adoption	3	.8%
Advertisement	0	-
Arbitration	0	-
Bankruptcy	7	1.9%
Business	5	1.3%
Civil dispute (general)	40	10.6%
Conservatorship	8	2.1%
Criminal	62	16.5%
Domestic Relations	53	14.1%
Estate Planning	5	1.3%
Guardianship	3	.8%
Immigration	4	1.1%
Juvenile	3	.8%
Labor Law	2	.5%
Litigation (general)	19	5.1%
Land Use	0	-
Other	31	8.2%
Paternity	0	-
Personal injury	15	4%
Probate	20	5.3%
Real Estate	5	1.3%
Social Security	1	.3%
Tenant/landlord	3	.8%
Tax	0	-
Trust Account Overdraft	77	20.5%
Workers Comp.	6	1.6%
Unknown	4	1.1%
<b>TOTAL</b>	<b>376</b>	<b>100%</b>



## APPENDIX B 2006

COMPLAINANT TYPE	NUMBER	PERCENTAGE
Accused (self-reported)	11	3%
Client	133	35%
Judge	8	2%
Opposing Counsel	40	10%
Opposing Party	56	15%
Third Party	42	11%
Unknown	0	-
OSB	93	24%
<b>TOTAL</b>	<b>383</b>	<b>100%</b>

COMPLAINT SUBJECT MATTER	NUMBER	PERCENTAGE
Adoption	2	1%
Advertisement	0	-
Arbitration	0	-
Bankruptcy	8	2%
Business	2	1%
Civil dispute (general)	40	10%
Conservatorship	10	3%
Criminal	69	18%
Domestic Relations	47	12%
Estate Planning	1	-
Guardianship	2	1%
Immigration	5	1%
Juvenile	2	1%
Labor Law	0	-
Litigation (general)	36	9%
Land Use	1	-
Other	43	11%
Paternity	0	-
Personal injury	21	5%
Probate	9	2%
Real Estate	8	2%
Social Security	2	1%
Tenant/landlord	2	1%
Tax	0	-
Trust Account Overdraft	66	17%
Workers Comp.	3	1%
Unknown	4	1%
<b>TOTAL</b>	<b>383</b>	<b>100%</b>

## OSB DISPOSITION LIST - 2007

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
1	06-33	Patrick T. Hughes 21 DB Rptr__	60 day suspension	Stip	DB	1/2/07	3/3/07	6-101B, 1.3, 1.4(a)	June 2007
2	04-133, 134; 05-08	Steven Black 21 DB Rptr__	One year suspension	CC	DB	10/31/06	1/9/07	1-102A4, 1-103C, 6-101A NG - 1-102A2, 1-102A3, 5-105E, 7-102A5	April 2007
3	06-131	Jason C. McBride 21 DB Rptr__	Reprimand	Stip	DB	1/9/07	1/9/07	1.3	Feb/Mar 2007
4	06-26; 06-27	Richard T. Perry 21 DB Rptr__	97 day suspension	CC	DB	11/15/06	1/17/07	6-101B, 7-101A2, 1.3, 1.4(a), 1.4(b)	Feb/Mar 2007
5	06-29	J. Kevin Hunt 21 DB Rptr__	Reprimand	Stip	DB	1/18/07	1/18/07	1.4(a), 8.1(a)(2)	Feb/Mar 2007
6	06-96	Gary A. Bisaccio 21 DB Rptr__	Reprimand	Stip	DB	1/18/07	1/18/07	6-101B, 1.3, 8.4(a)(4)	Feb/Mar 2007
7	05-02	Michael G. Balocca 342 Or 279, 151 P3d 154	90 day suspension	CC	S Ct	1/19/07	2/19/07	2-106A, 2-110A3, 5-105C, 9-101A, 9-101C3	April 2007
8	06-56	James J. Kolstoe 21 DB Rptr__	Four year suspension	CC	DB	11/20/06	1/22/07	1-102A2	Feb/Mar 2007
9	05-181	Eric M. Cumfer 21 DB Rptr__	Two year suspension	CC	DB	11/21/06	1/22/07	1-102A3, 2-110A1, 2-110A2, 2-110A3, 7-101A1, 7-101A2, 1.4, 1.15-1(d), 8.1(a)(2)	April 2007
10	05-148, 149, 150, 179; 06-28	Daniel J. Bertak 21 DB Rptr__	Four year suspension	CC	DB	11/22/07	1/29/07	9-101A, 1.3, 1.15-1(c), 1.15-1(d), 1.16(d), 5.5(a), 8.1(a)(1), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4), ORS 9.160	April 2007
11	06-34, 35, 36	Samuel J. Nicholls 21 DB Rptr__	Three year suspension	CC	DB	12/13/06	2/13/07	2-106A, 2-110A3, 6-101B, 9-101C3, 1.3, 1.4(a), 1.15-1(d), 8.1(a)	May 2007
12	06-95	Richard T. Perry (II) 21 DB Rptr__	Six month suspension, consecutive with <i>Perry I</i>	CC	DB	12/18/06	2/18/07 4/25/07	1.3, 1.4(a), 1.15-1(d), 8.1(a)(2)	April 2007
13	05-81	A. E. Bud Bailey 21 DB Rptr__	Reprimand	Stip	DB	2/20/07	2/20/07	5-101A, 5-104A	May 2007
14	05-65; 05-104	Cheryl B. Chadwick SC S052541	Form B resignation	--	S Ct	2/21/07	2/21/07	1-102A2, 1-102A3, 2-106A, 2-110A3, 7-102A7, 7-102A8, 9-101A, 9-101C3, 9.527(2)	June 2007
15	05-75	William Redden 342 Or 393, 153 P3d 113	60 day suspension	CC	S Ct	2/23/07	4/24/07	6-101B	April 2007
16	05-21	Edward N. Fadeley 342 Or 403, 153 P3d 682	30 day suspension	CC	S Ct	2/23/07	4/24/07	2-106A, 2-110A3, 9-101A, 9-101C3,	May 2007

## OSB DISPOSITION LIST - 2007

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
17	07-11; 07-12	Benjamin M. Karlin 21 DB Rptr__	Reprimand	Stip	DB	2/26/07	2/26/07	1.3, 1.4(a), 1.4(b)	June 2007
18	06-54	Neil J. Driscoll 21 DB Rptr__	60 day suspension	Stip	DB	2/26/07	3/1/07	3.3(d), 3.5(b), 8.4(a)(3), 8.4(a)(4)	April 2007
19	05-166; 06-08	Clayton J. Lance 21 DB Rptr__	Six month suspension	Stip	DB	3/2/07	4/1/07	6-101A, 6-101B, 1.15-1(d), 8.1(a)(2)	June 2007
20	05-133; 06-53, 106, 107	Michael L. Doss 21 DB Rptr__	Six month suspension	Stip	DB	3/5/07	4/2/07	1.3, 1.4, 1.5(a), 1.15-1(a), 1.15-1(c), 1.15-1(d), 8.1(a)(2)	May 2007
21	06-82	Tonya M. Van Wallegheem 21 DB Rptr__	Reprimand	Stip	DB	3/5/07	3/5/07	8.4(a)(3)	May 2007
22	05-141 to 144, 183 to 186; 06- 46	William S. LaBahn 21 DB Rptr__	Disbarment	CC	DB	1/9/07	3/12/07	1-102A3, 1-102A4, 6-101B, 7-110B, 1.3, 1.15-1(a), 1.15-1(c), 5.5(a), 8.1(a), 8.4(a)(3)	May 2007
23	04-97	Iain Levie 342 Or 462, 154 P3d 113	One year suspension	CC	S Ct	3/8/07	5/7/07	1-102A3, 1-102A4, 5-101A, 7-102A5, 7-106A, 9-101A	July 2007
24	05-135	Kathryn E. Jackson 21 DB Rptr__	60 day suspension	Stip	DB	5/8/07	6/9/07	1-102A4, 6-101A	Aug/Sept 2007
25	07-55	C. David Hall 21 DB Rptr__	Reprimand	Stip	DB	5/17/07	5/17/07	1-102A3, 8.4(a)(3)	July 2007
26	06-38, 138 to 141; 07- 02	William N. Kent SC S54781	Form B resignation	--	S Ct	5/22/07	5/22/07	1-102A2, 1-102A3, 9-101A, 9-101C3, 9- 101C4, 1.3, 1.4(a), 1.4(b), 1.5, 1.15-1(c), 1.15-1(d), 1.16(d), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4)	July 2007
27	05-90, 05- 151	Todd W. Wetsel 21 DB Rptr__	18 month suspension	CC	DB	4/6/07	6/9/07	1.1, 1.3, 1.4(a), 1.7(a)(2), 1.15-1(d), 8.1(a)(2), 8.4(a)(3), 6-101A, 6-101B, 9-101A	July 2007
28	06-50	Russell D. Bevans 21 DB Rptr__	60 day suspension	Stip	DB	6/14/07	6/15/07	1.3, 1.4(a), 1.4(b)	July 2007
29	06-61, 62, 98, 99; 07- 56, 60	Oscar Nealy SC S054858	Form B resignation	--	S Ct	6/19/07	6/19/07	6-101B, 9-101A, 9-101C3, 1.2(a), 1.3, 1.4(a), 1.4(b), 1.15-1(a), 1.15-1(c), 1.15- 1(d), 1.16(d), 3.3(a), 5.3(a), 5.5(a), 8.1(a)(1), 8.1(a)(2), 8.4(a)(3), 8.4(a)(4)	July 2007
30	07-25	Mark Carton SC S054743	Reciprocal discipline - 30 day suspension	CC	S Ct	6/19/07	8/18/07	1-102A2	Aug/Sept 2007
31	03-85	James A. Fitzhenry 343 Or 86, 162 P3d 260	120 day suspension	CC	S Ct	6/28/07	7/11/07	1-102A3	Aug/Sept 2007

## OSB DISPOSITION LIST – 2007

Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
32	07-04 Gregory L. Gudger 21 DB Rptr __	Reprimand	Stip	DB	7/3/07	7/3/07	1.5(a), 9-101A	Aug/Sept 2007
33	06-124 Dean M. Shyshlak 21 DB Rptr __	60 day suspension	Stip	DB	7/10/07	8/1/07	6-101B, 9-101A, 1.3, 1.4(a), 8.4(a)(3)	Oct 2007
34	06-07 Arthur P. Klosterman 21 DB Rptr __	120 day suspension	Stip	DB	7/10/07	8/9/07	1.3, 1.4(a), 8.1(a)(2)	Oct 2007
35	06-63 Jason T. Fehlman 21 DB Rptr __	One year suspension	CC	DB	5/8/07	7/18/07	8.4(a)(2); ORS 9.527(2)	Aug/Sept 2007
36	06-080 Stuart A. Sugarman 21 DB Rptr __	Reprimand	Stip	DB	7/19/07	7/19/07	8.1(a)(2)	Aug/Sept 2007
37	06-97 Glen M. Feest SC S055019	Form B resignation	--	S Ct	7/24/07	7/24/07	1-102A4, 6-101B, 9-101C3, 9-101C4, 1.3, 1.4(a), 1.4(b), 1.15-1(d), 8.1(a)(2)	Oct 2007
38	07-62 Robert S. Shatzen S 054883	BR 3.5 reciprocal – no further discipline imposed	CC	S Ct	7/24/07	7/24/07	CA Rule 955; CA B & P Code §6103	No
39	07-90 Catherine Carroll	Diversion	--	SPRB	7/21/07	8/9/07	1.15-1(a), 1.15-1(c)	No
40	07-31 to 07-35 Thomas K. Okai SC S055020	BR 3.1 suspension	Stip	S Ct	8/13/07	8/13/07	1.2(c), 1.3, 1.4(b), 1.5(a), 1.7(a)(2), 1.15-1(c), 1.15-1(d), 1.16(d), 3.1, 8.1(a)(2), 8.4(a)(2), 8.4(a)(4)	No
41	07-119 Beth Mason SC S055100	Form B resignation	--	S Ct	8/14/07	8/4/07	8.1(a)(1), 8.4(a)(3)	Oct 2007
42	06-67 Michael Mick Banks 21 DB Rptr __	Seven month suspension	CC	DB	6/14/07	8/14/07	6-101B, 1.2(a), 1.3, 1.4(a), 1.4(b), 8.1(a)(2)	Nov 2007
43	07-07 Vicki R. Vernon	Diversion	--	SPRB	8/17/07	8/17/07	1.3, 1.4(a)	No
44	06-125 Michael A. Kesner 21 DB Rptr __	60 day suspension	Stip	DB	8/27/07	8/28/07	1.1, 8.4(a)(4)	Nov 2007
45	06-16, 07-93 William C. Abendroth 21 DB Rptr __	120 day suspension, plus BR 8.1 reinstatement	Stip	DB	8/27/07	8/27/07	1.3, 1.4(a), 1.15-1(d), 1.16(a)(2), 8.1(a)(2), 8.4(a)(3)	Oct 2007
46	06-40 Willard Merkel 21 DB Rptr __	Reprimand	CC	DB	7/9/07	9/8/07	4.1(a), 8.4(a)(3)	Nov 2007
47	07-124 Steven D. Marsh 21 DB Rptr __	Reprimand	Stip	DB	9/13/07	9/13/07	9-101C3, 1.15-1(a)	Dec 2007
48	06-111 Shane A. Reed 21 DB Rptr __	Reprimand	Stip	DB	9/19/07	9/19/07	7.5(c)(1), 8.4(a)(3)	Dec 2007

## OSB DISPOSITION LIST - 2007

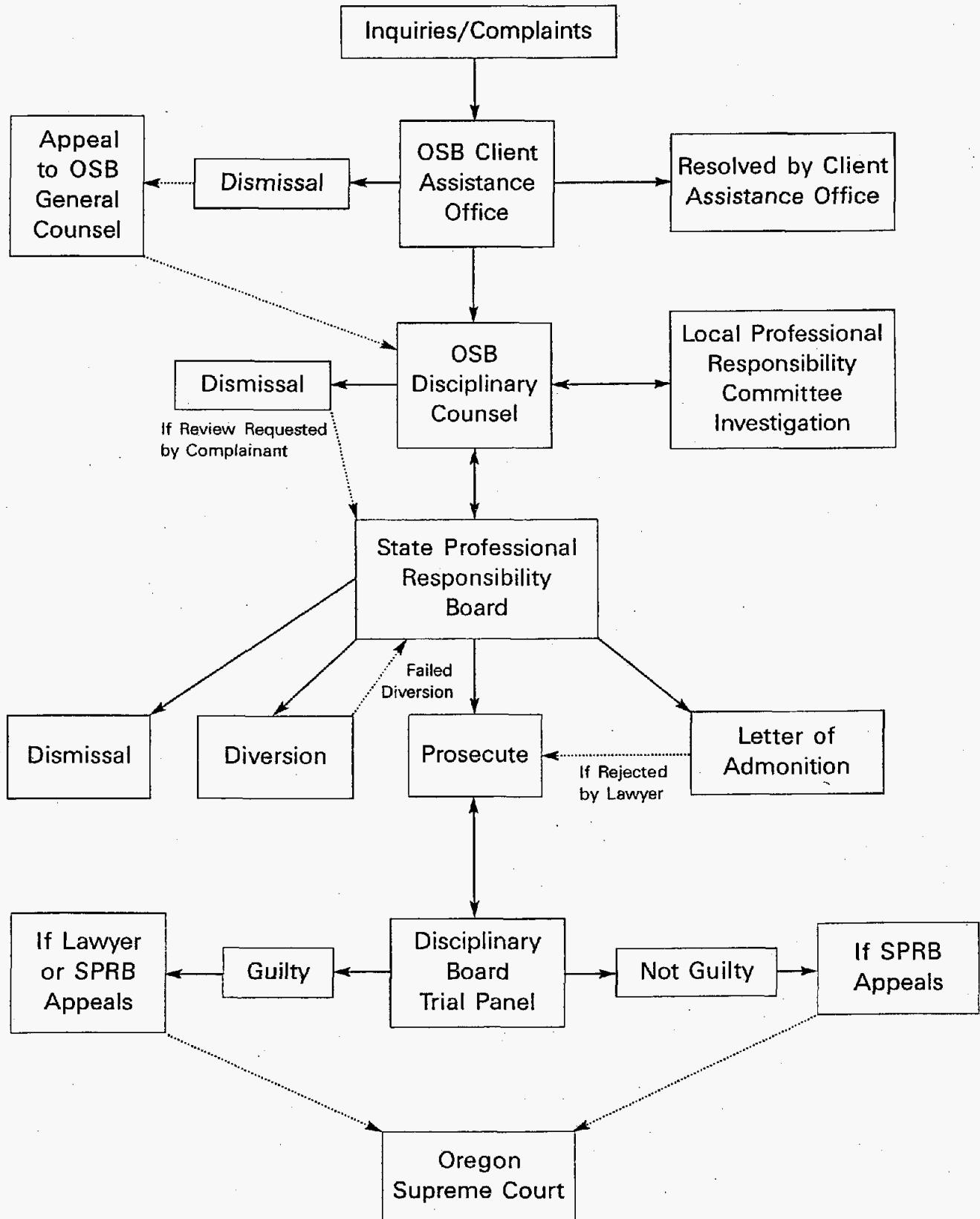
	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
49	07-64	Lincoln Nehring 21 DB Rptr __	30 day suspension	Stip	DB	9/19/07	9/22/07	9.527(2), 8.4(a)(2), 8.4(a)(3)	Nov 2007
50	06-60	Thomas J. Greif 21 DB Rptr __	Reprimand	Stip	DB	9/20/07	9/20/07	5-105E	Dec 2007
51	06-85	Gary D. Babcock 21 DB Rptr __	60 day suspension	CC	DB	7/24/07	9/26/07	9-101A, 9-101C3, 1.15-1(a), 8.1(a)(2)	Nov 2007
52	06-77, 06-78	Andrew P. Colvin 21 DB Rptr __	120 day suspension	Stip	DB	10/1/07	10/1/07	1.15-1(a), 1.15-1(b), 1.15-1(c), 1.15-2(l)	Dec 2007
53	03-110, 126; 04- 104, 115; 05-143; 06-37, 100, 114, 115, 126	Timothy P. Dunn S054353	BR 3.1 suspension	CC	S Ct	10/4/07	10/4/07	1-102A4, 1-103C, 2-110A2, 2-110A3, 6-101B, 7-106A, 9-101A, 9-101C3, 1.3, 1.4(a), 1.4(b), 8.1(a)(1), 8.1(a)(2)	No
54	07-32, 07-100	Thomas K. Okai S055213	BR 3.4 suspension	CC	S Ct	10/4/07	10/4/07	8.4(a)(2), 9.527(2)	No
55	06-83	Will Childs SC S055208	Form B resignation	--	S Ct	10/4/07	10/4/07	5.5(a), 8.1(a)(1), 8.1(a)(2), 8.4(a)(3)	Dec 2007
56	07-125	Samuel R. Blair SC S055209	Form B resignation	--	S Ct	10/4/07	10/4/07	Hawaii RPC 1.3, 1.4, 1.15(c), (d), (e), (f)(3), (f)(4) and (g), 1.16(a)(1)	Dec 2007
57	07-130	Dawna Scott Andersen SC S055210	Form B resignation	--	S Ct	10/4/07	10/4/07	8.4(a)(2), 8.4(a)(3)	Dec 2007
58	05-167 to 170; 06-86 to 87	Brian J. Sunderland SC S055212	One year suspension	Stip	S Ct	10/4/07	10/7/07	1-102A3, 1-102A4, 7-102A7, 7-106A, 7-110B, 9-101A, 9-101C3, 1.15-1(a), 1.15-1(c), 5.1(a), 5.1(b), 8.4(a)(4)	Dec 2007
59	06-135, 136; 07- 40, 41	Lawrence P. Cullen 21 DB Rptr __	Six month suspension	Stip	DB	10/9/07	11/1/07	6-101B, 1.3, 1.4(a), 1.15-1(d)	Dec 2007
60	07-120	Thomas John Hastert SC S055215	BR 3.5 reciprocal discipline - reprimand	CC	S Ct	10/18/07	10/18/07	Calif. RPC 1-300	Feb/Mar 2008
61	06-72	Kathleen Kelly Moore 21 DB Rptr __	60 day suspension; restitution	Stip	DB	10/29/07	11/1/07	2-106A	Jan 2008
62	07-43	Keith G. Jordan SC S055065	BR 3.5 reciprocal discipline - 270 day suspension	CC	S Ct	11/1/07	1/1/08	Calif. RPC 3-700(d)(2), 3-110(d)(3), 3-110(a), Bus. & Prof. §6068(m),	Jan 2008
63	07-100	Marsha L. McDonough 21 DB Rptr __	Reprimand	Stip	DB	11/5/07	11/5/07	1.1, 1.3, 1.4(a)	Jan 2008

## OSB DISPOSITION LIST - 2007

	Case No.	Case Name/Cite	Disposition	CC/ Stip	S Ct/ DB	Date of Action	Effective Date	DRs ORS	Bulletin Summary
64	06-137	Jon G. Springer 21 DB Rptr __	Reprimand	Stip	DB	11/13/07	11/13/07	1.3, 1.15-1(a), 1.15-1(c)	Jan 2008
65	07-156	Larry Epstein SC S055441	BR 3.4 suspension	CC	S Ct	12/5/07	12/5/07	8.4(a)(2), 9.527(2)	No
66	07-72	Sharon L. Hockett SC S055440	Form B resignation	--	S Ct	12/5/07	12/24/07	1-102A2, 9-101A, 9-101C3, 1.15-1(a), 8.1(a), 8.4(a)(2), 8.4(a)(3)	Feb/Mar 2008
67	07-140	Kevin L. Cathcart 21 DB Rptr __	Reprimand	Stip	DB	12/12/07	12/12/07	3.3, 8.4(a)(3)	Jan 2008
68	07-68	Dale G. Rasmussen 21 DB Rptr __	120 day suspension	Stip	DB	12/11/07	12/12/07	1-102A3, 7-102A7	Feb/Mar 2008
69	07-114	Edward Fitch 21 DB Rptr __	Reprimand	Stip	DB	12/13/07	12/13/07	8.4(a)(4)	Feb/Mar 2008
70	07-165	Thomas MacNair 21 DB Rptr __	Reprimand	Stip	DB	12/13/07	12/13/07	1.3, 1.4(a)	Feb/Mar 2008
71	06-101	T. Michael Ryan SC S055548	18 month suspension	Stip	S Ct	12/12/07	1/1/08	1.3, 1.4(a), 1.4(b), 1.5, 1.15-1(a), 1.15-1(c), 8.1(a)(1), 8.1(a)(2), 8.4(a)(4)	Feb/Mar 2008
72	07-133	William B. Knowles SC S055442	Form B resignation	--	S Ct	12/26/07	12/26/07	WA RPC 1.4, 1.5(a), 1.15(d), 8.4(b), 8.4(i),	Feb/Mar 2008
73	07-105	Randy Kane 21 DB Rptr __	Reprimand	Stip	DB	12/31/07	2/1/08	8.4(a)(3)	April 2008

APPENDIX C-5

# OREGON STATE BAR DISCIPLINARY PROCESS



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**Minutes**  
**Access to Justice Committee**  
**OSB Board of Governors**  
April 4, 2008  
Tigard, Oregon

**Committee Members Present:** Terry Wright (Chair), Tim Gerking, Rick Yugler, Audrey T. Matsumonji, Christopher H. Kent, and Robert M. Lehner; **Staff:** Judith Baker  
**Committee Members Absent:** Bob Vieira; **Guests:** Tom Matsuda, Debra Lee

1. **Minutes of the February 22, 2008 Meeting.**

The minutes were approved as submitted.

2. **Work Plan for Committee**

The committee discussed some of the ideas that came out of the Western States Bar Conference as outlined below:

- ◆ Washington has set-up a commission to oversee a pilot program that allows limited license practitioners to practice law in the areas of landlord tenant and family law. Perhaps a similar commission should be set up in Oregon.
- ◆ The committee discussed and recommended that it would be more effective if the bar's pro bono reporting form was sent out with the bar's due statements. The committee also wants the pro bono reporting form to include a question concerning monetary donations to legal service organizations. The goal in gathering this information is so the bar can acknowledge how lawyers contribute to access to justice.
- ◆ The committee would like to consider having a dues increase in 2009 to support the Loan Assistance Repayment Program. In addition the 2008 HOD meeting should include and update of the LRAP. It is important to highlight the LRAP in the Bulletin and other bar publications to show that the LRAP is an essential and important part of the bar's functions. It was mentioned that an annual article in the Bulletin would be helpful. One of the articles should include information regarding the impact LRAPs have in legal service organization's ability to retain lawyers.

3. **Recommendation Regarding General Fund Disbursement to Legal Aid**

The committee was asked to consider a recommendation forwarded by the Legal Services Program (LSP) committee regarding the \$700,000 general fund appropriation being held by the OSB. Judith explained that after the 2007 legislative session the OSB had been given a one-time \$700,000 general fund appropriation to fund increased costs for legal aid during the

2007-09 Biennium. In August 2007 the LSP Committee met and approved and forwarded a recommendation regarding the funds to the BOG. The recommendation asked that 1) the \$700,000 be managed by the bar's LSP pursuant to the LSP Standards and Guidelines; 2) the \$700,000 be held and invested by the OSB until the legal aid providers completed a strategic planning process; and 3) that a small portion of the funds be distributed over the next six months to the Center for Nonprofit Legal Services and Lane County Law and Advocacy Center.

Tom Matsuda, Executive Director of Legal Services of Oregon attended the meeting by telephone and was asked to explain the Association of Legal Aid's current recommendation before the committee. Tom explained that the Association is made up of LASO, OLC, CNPLAS and LCLAC. He said that the members of the Association and Columbia County Legal Aid participated in an extensive strategic planning process last fall. During that process demographic statistics were updated and studied and staffing needs were reviewed.

Tom explained, that the updated demographic statistics were based on 2004 Census estimates for Oregon which were published in 2005. Since those estimates we based on 100% of the federal poverty guidelines and legal aid clients are 125% of the national poverty guidelines, legal aid worked with experts at the State Department of Employment to create a formula to determine statistics for 125% of poverty in Oregon. Tom further added that the updated statistics revealed large poverty increases in certain areas such as Washington, Clackamas and Deschutes Counties. Yamhill County was also high. A major part of the strategic planning process recommendation, which has been approved by the LASO/OLC board, is to maintain existing staffing.

The executive directors considered the current distribution of offices, staff and resources around the state. They agreed that the highest current statewide priority is keeping the new Klamath Falls Regional Office open. The funding for that office is sufficient for LASO's 2008 operating budget but uncertain for 2009, depending on success at obtaining new federal, in-state, or private funding. Therefore, the recommendation seeks a distribution of half of the available funding this year according to revised poverty population percentages and a deferred decision on distribution of the remainder until revenue projections for 2009 are clearer, hopefully by the end of this calendar year.

**The specific recommendations are:**

1. Distribute half of the appropriated funds in 2008 after necessary approvals are obtained, plus interest earned up to the date of distribution. The distribution percentages will be updated to the most recent figures obtained in the programs' 2007 strategic planning process. Any general fund amounts previously distributed to Association programs under the interim agreement should be credited against the 2008 allocation amounts.

2. If the allocation amounts between LASO and OLC need to be adjusted, both programs will submit a joint recommendation as they have in the past. The allocation amount for Lane County will go to Lane County Legal Aid and Advocacy Center.
3. The OSB would hold the remaining half of the general funds in an interest-bearing account until the Association submits a recommendation for distribution of the remainder in 2009.

**ACTION:** The committee approved the method of distribution for the \$700,000 general fund appropriation and will forward to the BOG. This recommendation is contingent on the BOG reviewing the documents reflecting the poverty populations percentages used to calculate the disbursement and the actual disbursement to each program.

#### 4. Next Meeting

The next meeting will be in Salishan on May 9, 2008.

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**Minutes**  
**Budget & Finance Committee**  
**February 22, 2008**  
Salem Conference Center  
Salem, Oregon

**Committee Members Present:** Ward Greene, chair; Carol Skerjanec; Gerry Gaydos; Bette Worcester; Chris Kent; Bob Lehner. **Other BOG Members:** Rick Yugler. **Staff:** Karen Garst; Rod Wegener.

**1. Minutes – November 3, 2007 Committee Meeting**

The minutes of the November 3, 2007 meeting were approved.

**2. Financial Report – December 31, 2007**

Mr. Wegener reported the first draft of the final 2007 financial statements indicate a Net Revenue of \$46,067 compared to a budgeted Net Revenue of \$412,035. Mr. Wegener explained the variance is effected in part by the bar making lease payments instead of mortgage payments (only the interest is included as an expense) with the sale of the building, and the lower than budget CLE revenue. CLE Publications and Seminar revenue was \$392,000 below budget and both will have a net expense for the year. Mr. Wegener will send a final report to the entire board when the final statements are complete.

In spite of the poorer statements in 2007, Mr. Wegener reported that in mid February after the deposit by Thrivent of the loan proceeds into the bar's Wells Fargo account, the bar has \$27.6 million in cash and investments - its highest total ever. That number is extraordinary because of the loan proceeds deposit and most member fees are paid by January 31.

The committee discussed the possibility of marketing the conference center at the new building as a new source of revenue.

**3. New Bar Center**

Mr. Greene reported the first day at the new building was Monday, January 28, and the PLF expects to begin to move in on February 15. President Yugler signed various loan closing papers for the "bridge" financing on February 11 and the next day \$13 million less a 1% lender withholding was deposited into the bar's newly-opened Government Money Market account at Wells Fargo. Included on the board agenda is a Certificate of Authority, which is a resolution of the board required by Wells Fargo to maintain the account. Mr. Yugler also asked that the entire board ratify his execution of the loan documents.

The Lease Commencement Date with Opus was January 26, and the lease will continue until Opus has rented enough of the vacant space in the bar center to its satisfaction. So far, three parties have expressed an active interest in the space on the first floor.

#### 4. Other Business

Mr. Yugler reported the Public Affairs Committee has discussed requesting the board authorize the expenditure of \$25,000 to \$30,000 to combat various initiatives with negative impact on the legal profession in Oregon. The matter had been discussed as early as the November 2007 board retreat, but no formal action was taken. No amount for this purpose is included in the 2008 budget. The committee suggested Mr. Yugler present the matter to the board through the Public Affairs Committee. The committee discussed how such funds would be recorded in the 2008 budget – as a new expenditure, or an allocation from the Contingency Fund, which has a \$50,000 budget in 2008, and no formal action would be taken until the matter is discussed before the entire board.

Mr. Wegener reported that Lawriter has sold Casemaker to Collexis, a South Carolina technology company. The bar's agreement with Lawriter expires in September 2008, and Mr. Wegener indicated the sale should not have much impact on the renewal. The long-term impact of the sale could be positive, as competition in this market increases.

Mr. Wegener also reported he will include the review of the bar's investment portfolio on a future committee agenda.

Mr. Greene asked that the matter of CLE revenue be included on the next committee meeting's agenda.

#### 5. Next committee meeting

The committee will meet next on April 4 at the bar center in Tigard.

**Minutes**  
**Budget & Finance Committee**  
**April 4, 2008**  
**Oregon State Bar Center**  
**Tigard, Oregon**

**Present - Committee Members:** Ward Greene, chair; Carol Skerjanec; Gerry Gaydos; Bette Worcester; Chris Kent; Bob Lehner. **Other BOG Members:** Ann Fisher; Kellie Johnson; Rick Yugler. **Staff:** Karen Garst; Linda Kruschke; Rod Wegener.

**1. Minutes – February 22, 2008 Committee Meeting**

The minutes of the February 22, 2008 meeting were approved.

**2. Financial Report – December 31, 2007**

The financial report for 2007 had been sent to the board members prior to the meeting. Mr. Wegener commented on some of the highlights in the report. The net revenue for 2007 is \$10,610, far below the budget net revenue of \$412,035. The variance is attributed to two circumstances – with the sale of the bar center, the low interest expense in the mortgage payments included in the budget is replaced by higher rent payments not included in the budget, and CLE Seminars and Legal Publications revenue falling well below the budget.

Mr. Wegener also mentioned the balances of the various funds and contingencies beginning 2008, and when Mr. Wegener reported the Client Security Fund balance is \$712,886, Mr. Kent inquired if the balance is too high. Mr. Wegener explained that the member assessment has been only \$5.00 for the past few years and the CSF Committee has a statement about what the minimum fund balance should be, and the current balance is in excess of that policy.

**3. Financial Report – February 29, 2008**

Mr. Wegener stated the February statements are not available yet and the January statements do not reflect any unusual activity. The statements are delayed in part due to the additional information requested by the auditors of the accounting department. The audit report is scheduled to be available to the committee at its next meeting.

**4. CLE Revenue and Operations**

This matter was on the agenda due to revenue from CLE Seminars and Legal Publications falling below budget in 2007 and prior years and the activities generating large net expenses. Bar management has discussed the matter also and Ms. Garst has instructed a marketing plan with a report be available by mid year. BarBooks is a key part of the marketing plan as some members are complaining about the renewal subscription rate. The task force met recently and for now is not recommending any changes, but has reported a group rate for solo attorneys with the same address will be offered to those attorneys. The Policy & Governance Committee will look at various policy issues on this topic at its June meeting.

Linda Kruschke, the Publications Manager, presented various facts and figures about BarBooks. She stated that renewals for 2008 are promising and it is too early to determine the full effect of the first-time renewals. If all subscription revenue were recorded in a 12-month period, and not treated as unearned revenue for accounting purposes, the subscription revenue would approximate the revenue budgeted for the subscriptions.

**5. New Bar Center**

Mr. Wegener stated there was no new information on the building and the latest on the leasing of the vacant space in the bar center was not new either. Earlier in the week, the broker reported that there still are three parties interested in the two vacant spaces on the first floor and one party has inquired about the third floor space. The party looking at the 6,000 s.f. on the west side of the first floor seems the most interested in locating here.

**6. Next committee meeting**

The committee will meet next on May 9 prior to the board meeting at Salishan.



# OREGON STATE BAR

## Financial Statements Summary

### March 31, 2008

### Narrative Summary

Financially, it would be nice if we could end the year now. The first quarter contains mostly positive variances and the Net Revenue from operations is \$827,872 and the Fanno Creek Place (new building operations) is a Net Expense of \$202,446 for a total \$625,426 Net Revenue. There are some significant variances which are addressed on the next page. A new reporting format is being developed for the building and in the future this financial report will summarize program operations and new building operations.

... continued

### EXECUTIVE SUMMARY

<u>Revenue</u>	Actual 3/31/2008	Seasonal Budget 3/31/2008	Budget Variance	% of Budget	Actual 3/31/2007
Member Fees	\$ 1,581,821	\$1,521,275	\$60,546	4.0%	\$ 1,472,669
Program Fees	1,561,507	1,301,894	259,613	19.9%	1,421,444
Other Income	127,799	71,904	55,895	77.7%	84,254
Total Revenue	<u>3,271,127</u>	<u>2,895,074</u>	<u>376,053</u>	13.0%	<u>2,978,367</u>
<b>Expenses</b>					
Salaries & Benefits	1,554,317	1,567,515	(13,198)	-0.8%	1,448,474
Direct Program	874,428	848,557	25,871	3.0%	921,740
General & Admin	14,510	23,316	(8,806)	-37.8%	8,103
Contingency	0	12,500	(12,500)	-100.0%	0
Total Expense	<u>2,443,255</u>	<u>2,451,888</u>	<u>(8,633)</u>	-0.4%	<u>2,378,317</u>
Net Rev Bef Mkt Adj	827,872	\$ 443,185	<u>384,687</u>		600,050
Market Adjustment	(307,674)				9,614
Inventory decrease	(29,358)				(92,862)
Net Rev before gain	490,840	443,185			516,802
Fanno Creek Place	(202,446)	(162,081)			-
Net Revenue	<u>\$ 288,394</u>	<u>\$ 281,104</u>			<u>\$ 516,802</u>

Positive Budget Variance

### Membership Fees

One of the reasons *Membership Fees* shows a positive variance is the increase in *Late Fees*,

222.A



## Member Services Committee

Board of Governors

February 22, 2008

**Present:** Gerry Gaydos, Chair, Terry Wright, Vice Chair, Ann Fisher, Christopher Kent, Gina Jonnie, Kellie Johnson, Dennis Karnopp, Stephen Piucci, Rick Yugler,  
**Staff:** Margaret Robinson, Karen Lee, Danielle Edwards

### **Minutes of January 18, 2008**

The minutes of the January 2008 meeting were approved.

#### **CLE Seminars Update**

Karen Lee, Manager of the CLE Seminars Department, gave the committee an update on the department. Karen and her six staff members provide a full range of services and are practically a self-sufficient department. They offer bar sponsored CLE seminars as well as co-sponsored seminars with OSB sections. The committee discussed the OSB's approach to CLE credit, members in Oregon are only required to watch or listen to CLE to obtain credit while in other states members are often required to pay for the CLE material to obtain credit.

#### **Affirmative Action Program Update**

Several applications have been received for the administrator's position and each has been categorized by their level of qualification. Phone interviews have been conducted and a meeting of the screening committee is scheduled for March 3 to select candidates for in-person interviews. Interviews will be scheduled for late March.

Dennis Karnopp, Affirmative Action Committee Member, attended the meeting to show support for the program. A member of the AAC will attend each of the BOG Member Services Committee meetings for the remainder of this year.

#### **Law Student Associate Membership Program**

The committee discussed the Law Student Associate Membership Program and its cost to law students. The committee suggested asking sections to create an ex-officio position on their executive committees for a law student member. Additionally, the committee will submit a recommendation to the Budget and Finance Committee to reduce the \$25 registration fee to \$10.

#### **Futures Conference**

Planning of the Futures Conference is under way, the date, location and speakers have all been set. There are several meetings being held in conjunction with the conference, which should help ensure a good attendance.

#### **HOD Recruitment**

The committee discussed recruitment of HOD members for the 2008 election. Each member of the committee will be sent the HOD roster to determine who is currently serving on the HOD. Recruitment letters will be sent to all 2007 section chairs, past local bar association presidents, members who indicated an interest in serving on the HOD

from the volunteer preference form, all committee members and all HOD delegates who have terms expiring this year.

#### **Leadership College Report**

The Leadership College is off to a great start. There were 35 fellows selected for 2008 and this year's kickoff session was held at the World Forestry Center in January. Kellie Johnson resigned from the Leadership College Advisory Board due to her election to the BOG. Kellie's position on the LCAB will be replaced by the BOG during the February meeting.

#### **New Lawyers Division Report**

The ONLD meet in January for their annual retreat. They are off to a good start with several projects in their early stages. Ann Fisher, BOG Liaison to the ONLD, mentioned their continued involvement in the ABA and their 2008 focus on "repackaging" their activities and services.

#### **Open House**

The first open house was held on February 15. Approximately 125 guests attended the open house and dedication. The event ran smoothly and staff received good comments about the quality building. The second open house is scheduled for February 29 and will include a history presentation, a word from each of the Attorney General candidates and a reception.

## **Member Services Committee**

Board of Governors

April 4, 2008

**Present:** Gerry Gaydos, Chair, Terry Wright, Vice Chair, Ann Fisher, Christopher Kent, Kellie Johnson, Rick Yugler

**Staff:** Margaret Robinson, Karen Lee, Linda Kruschke, Anna Zanolli, Kay Pulju, Danielle Edwards

### **Minutes of February 22, 2008**

The minutes of the February 2008 meeting were approved.

### **Issues and Ideas**

Members discussed the ABA's teleconferences and the importance of capturing bar CLE seminars on video. The committee encouraged the Seminars Department to create a business plan for the bar and sections to "capture everything".

### **ABA Medal**

The Communications Department drafts award nominations and is accepting nominations for the ABA Medal. Committee members were encouraged to send ideas to Kay Pulju. The committee would like to see a spreadsheet created listing the awards the bar is asked to nominate members for. The spreadsheet should include the award name, criteria, timeline, ect.

### **Futures Conference**

The conference planning is under way, there are several great speakers scheduled. The Future of Law Practice Subcommittee needs a chair.

### **HOD Recruitment**

Committee members discussed the need to clarify the logistics and importance of the HOD when recruiting candidates. The lack of candidates could be a result of a general misunderstanding of what the HOD does, why it is important and the time commitment involved. Staff will work with Tim on a timeline to work on the issues facing HOD recruitment.

The committee thinks it is important to hold an event along with the HOD meetings, possibly a free CLE seminar for delegates or a reception. There was a concern raised regarding this year's possible lack of a quorum and the need to call each of the delegates to ensure attendance.

### **AAP Update**

Recruiting for the AAP employment programs is in process. A meeting of the Stakeholder Committee is scheduled to reach a consensus on the hiring of the Diversity Program Administrator. A social was held at the University of Oregon Law School and the Willamette College of Law for past and present OLIO participants.

**Virtual Tour of the OSB Center**

Anna Zanolli provided a brief presentation of a possible bar virtual tour. The committee discussed two focuses for the tour: easy to use and low cost. Terry and Anna will work together on a full bar tour and present it to the Committee for comments before launching.

**CLE Seminars Update**

The department will be adding an additional .5 FTE to focus on seminar course material formatting which will allow existing staff to devote more time to online education with the intent to increase revenue. The committee encouraged Karen Lee, CLE Seminars Manager, to recommend rule changes that will help the department increase revenue.

**Legal Publications Update**

Bar Books revenue is close to what was expected. Renewals are high for the large firms while solo practitioners have the lowest renewal percentage. The committee would like more analysis done on the members and firms who did not renew, possibly a survey to determine areas for improvement. The department is making changes to their marketing and an online bookstore revamp was discussed.

## Policy and Governance Committee Minutes – February 22, 2008

**Committee members:** Chair – Tim Gerking, Vice-Chair – Bette Worcester, Kathy Evans, Bob Lehner, and Audrey Matsumonji. **Staff:** Sylvia Stevens and Karen Garst.

### 1. Minutes

Minutes from the January 18, 2008 meeting were approved as drafted.

### 2. Redistricting

The committee discussed the plan it is recommending to the full board. They continue to think that the proposal to add two lawyer members is a good solution. Legislation will need to be submitted by April 1 to the Public Affairs Committee for introduction at the 2009 Legislative Session. Transition rules will be developed if the board supports this proposal.

### 3. Access to Justice MCLE Proposal

The compromise should work. Some concerns were expressed about the new name “Access to Justice” because it is used for several other entities (CEJ, Chief’s committee, etc.) Justice Martha Walters has suggested “Administration of Justice.” Judge Baldwin wants to keep the Access to Justice name. The decision was made not to propose another name. While the committee felt the general membership will not be happy with the continuation of any requirement, the proposal represents a compromise and it is important to put the issue behind the bar. Rick was congratulated for the effort he put into garnering a compromise.

### 4. HOD Breakout

The committee discussed briefly the discussion at the HOD breakout session at the Conference of Bar Leaders on February 15. Tim stated that the discussion centered on how to improve the structure of the HOD and how to increase communication between the HOD and the BOG. One idea that surfaced was to allow the sections and local bar association presidents to have alternates at the HOD meeting. There also was discussion about having either two HOD meetings per year or another set of regional HOD meetings. It might be time to have each region choose a chief delegate in order to facilitate at least the regional delegate meetings. While there was no consensus on the location, the HOD meetings after 2009 will likely be held at the bar center to save money.

**ACTION:** Staff will investigate whether a proxy system could be provided for section chairs through the Standard Section Bylaws.

### 7. Next Meeting

The next meeting of the committee will be at the bar center on April 4.

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## Policy and Governance Committee Minutes – April 4, 2008

**Committee members:** Chair – Tim Gerking, Vice-Chair – Bette Worcester, Kathy Evans, Ward Greene, Bob Lehner, Audrey Matsumonji, and Bob Vieira. **Other Board Members:** Carol Skerjanec. **Staff:** Sylvia Stevens and Karen Garst.

### 1. Minutes

Minutes from the February 22, 2008 meeting were approved as drafted.

### 2. Access to Justice – Content Committee

The committee reviewed the proposal from the Diversity Section to create a committee that would review the best practices in other states with similar AtoJ programs, review the content of Oregon's courses, and make recommendations regarding integration of AtoJ elements in all CLEs. The committee decided that it did not want to explore integration of AtoJ elements in all CLEs. It also felt that the charge to a committee was unclear in regard to a system for assessing the quality of all programs offered for AtoJ credit given the hundreds of courses approved for credit and the impact on the provider community. The committee asked staff to draft a letter to the Diversity Section asking them to examine the best practices in AtoJ in other states and to inform the Policy and Governance Committee about what they learned. If at that time, they want to make a recommendation for a process to determine a quality "seal of approval" process, they should articulate that process for the P and G Committee to review prior to undertaking such an effort. The committee wants to emphasize the broad nature of the current MCLE rule that allows courses from cultural competency to substantive law content to be approved for credit. The committee indicated it is not interested at this point in time in making further rule changes.

**ACTION:** Committee will review staff draft of letter to Diversity Section at its May meeting.

### 3. Redistricting

The committee reviewed staff's recommendation for integration of new board members into the election cycle assuming the legislature approves the additional two new lawyer members the board is proposing to the 2009 legislature. They discussed whether to have the two year term for one of the new board seats or for Region 5 and decided to leave it for one of the new board seats.

**ACTION:** Recommend adoption of the implementation plan as drafted by staff to the full board.

#### 4. House of Delegates

The committee discussed creating alternate delegates for section chairs and local bar presidents. It reviewed the proposed HOD rule change that would provide for an alternate delegate for the two ex-officio positions indicated, provided that the person has been authorized for that role. The committee deferred consideration of changing the model section bylaws until after the HOD meeting. The committee also discussed having a chief regional delegate and decided not to pursue that idea at this time, but rather to invite HOD delegates to board meetings when the board meets in their region.

**ACTION:** Recommend proposal to change HOD rules to the full board with subsequent referral to the HOD at its September 13, 2008 meeting.

#### 5. Bylaw 7.102

The committee reviewed staff's recommendation to clarify the board's borrowing authority. It was decided that Ward would work with Sylvia to tweak the language and present to the committee and the board at the May meeting.

**ACTION:** Revise proposal and recommend bylaw change to the full board.

#### 6. Judicial Endorsements

The committee reviewed staff's recommendation to revise the OSB Bylaws and the Standard Section Bylaws to clarify the authority of the respective groups to endorse judicial candidates.

**ACTION:** Recommend adoption of the proposed changes as drafted by staff to the full board.

#### 7. Next Meeting

The next meeting of the committee will be at Salishan on May 9-10 in conjunction with the board meeting.

Public Affairs Committee  
OSB Board of Governors  
February 21, 2008 Minutes  
Salem Conference Center

**Committee Members Present:** Ann Fisher, Kathy Evans, Gerry Gaydos, Steve Piucci, Carol Skerjanic, and Rick Yugler. **Staff:** Susan Grabe and Sylvia Stevens.

1. **Minutes.** The minutes from the January 18 minutes were approved with an amendment to clarify that Carol Skerjanic was present at the meeting.
2. **Political update.** Committee members discussed the status of the 2008 Special Session and reviewed the activity level of bar groups in the process. Ann Fisher informed PAC of her recent appearance in front of the House Veteran's Affairs Committee with Gerry Gaydos to provide an overview of the bar's Military Assistance Panel ("MAP") activities as well as other bar programs (pro bono, modest means and lawyer referral) that serve to complement the MAP efforts.
3. **Motion fees.** The committee reviewed feedback from bar groups regarding motion fees and discussed whether feedback from other groups should be solicited as well as the best way to present the information to the Chief Justice. PAC scheduled a conference call for Monday, March 10 at 4:00 p.m. to finalize its comments.
4. **Initiative Strategy.** The committee reviewed the ballot measure strategy document developed as a result of the board retreat in November 2007.

**ACTION:** PAC agreed by acclamation to adopt the ballot measure strategy as a template to address issues the bar is currently facing.

5. **Budget allocation.** As part of the discussion of the November retreat, the committee questioned whether the money to oppose the ballot measures set forth in the 2007 HOD resolution (specifically for a statement in the voter's pamphlet and polling research) had been allocated in the 2008 budget. In an attempt to clarify the issue, PAC submitted a motion for board approval relating to the budget.

**ACTION:** Gerry Gaydos moved and the committee unanimously agreed to request the board clarify that \$30,000 of the 2008 OSB budget be allocated to fight initiatives the bar and House of Delegates oppose.

6. **Initiative Petition #17 re jury nullification.** PAC reviewed the Attorney General's letter to the Secretary of State regarding jury nullification and considered whether to further challenge the certified ballot title.

**ACTION:** Carol Skerjanic moved and the committee unanimously agreed to petition the Supreme Court for further changes to the ballot title regarding initiative petition 17 relating to jury nullification.

7. **Overview of OSB public affairs process.** Public Affairs Director Susan Grabe provided the committee with an overview of the internal process for the board and bar groups to meet the April 1 deadline for bar groups to submit proposed legislation for the 2009 session. General Counsel Sylvia Stevens also provided an historical perspective of the bar's ability to take positions on legislation and proposed initiatives/referenda.

Public Affairs Committee  
OSB Board of Governors  
April 4, 2008 Minutes  
Tigard, Oregon

**Committee Members Present:** Ann Fisher, Gerry Gaydos, Kellie Johnson, Chris Kent, Steve Piucci, Carol Skerjanic, and Rick Yugler. **Others present:** Chris Kent. **Staff:** Susan Grabe, Sylvia Stevens, David Nebel, and Sally Lajoie.

1. **Minutes.** The minutes from the February 21 meeting were approved.
2. **Special Session Update.** Committee members discussed the status of the 2008 Special Session and reviewed the activity level of bar groups in the process. Ann Fisher informed PAC of her recent appearance in front of the House Veteran's Affairs Committee with Gerry Gaydos to provide an overview of the bar's Military Assistance Panel ("MAP") activities as well as other bar programs (pro bono, modest means and lawyer referral) that serve to complement the MAP efforts.
3. **2009 Law Improvement Proposals.** The chair provided the committee with an overview of the law improvement proposals from bar groups and led the discussion on those which merit further consideration. Committee members expressed concern about whether it made sense to pursue legislation to create a tax credit for lawyers representing servicemembers pro bono when pro bono work in other areas would not be eligible for a tax credit. Other discussion by the committee related to understanding the substance of the proposals under consideration.

**ACTION:** Gerry Gaydos moved and Steve Piucci seconded the motion to forward the 2009 Package of Law Improvement proposals, without the Military Assistance Panel tax credit proposal, to the board for approval and submission to the legislature for the 2009 legislative session. The motion passed unanimously.

4. **ABA Lobby Day.** Rick Yugler discussed the bar's participation in ABA Lobby and the request for Legal Services Corporation funding. The committee agreed that the OSB representatives should raise the pending ballot measures regarding caps on contingency fees and sanctions with Oregon's congressional delegation and request them to consider signing a voter's pamphlet statement in opposition to the measures.
5. **Initiative Strategy.** Public Affairs is coordinating with opposition groups regarding the campaign. Rick Yugler raised with the committee a request from a member to place an ad in the Bulletin soliciting funds to oppose the initiatives. Concerns were raised about the wisest and most effective course of action for the bar. Other alternatives considered included a direct mail solicitation from the president personally.

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**OREGON STATE BAR**  
**Client Security - 113**  
**For the Three Months Ending March 31, 2008**

Description	March 2008	YTD 2008	Budget 2008	% of Budget	March Pr Yr	YTD Pr Yr
<b>REVENUE</b>						
Interest	\$2,419	\$8,059	\$32,100	25.1%	\$3,983	\$10,587
Judgments	524	1,466	5,000	29.3%	800	1,100
Membership Fees	140	65,530	69,700	94.0%	120	63,855
<b>TOTAL REVENUE</b>	<b>3,083</b>	<b>75,055</b>	<b>106,800</b>	<b>70.3%</b>	<b>4,903</b>	<b>75,542</b>
<b>EXPENSES</b>						
<b>SALARIES &amp; BENEFITS</b>						
Employee Salaries - Regular	2,218	6,653	29,000	22.9%	2,143	6,428
Employee Taxes & Benefits - Reg	722	2,128	8,900	23.9%	467	1,865
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>2,940</b>	<b>8,781</b>	<b>37,900</b>	<b>23.2%</b>	<b>2,610</b>	<b>8,293</b>
<b>DIRECT PROGRAM</b>						
Claims	3,700	3,700	150,000	2.5%	59,671	59,671
Collection Fees	0	0	1,000	0.0%	190	190
Committees	0	0	250	0.0%	0	0
Pamphlet Production	0	0	300	0.0%	0	0
Travel & Expense	0	0	1,100	0.0%	0	0
<b>TOTAL DIRECT PROGRAM EXPEN</b>	<b>3,700</b>	<b>3,700</b>	<b>152,650</b>	<b>2.4%</b>	<b>59,861</b>	<b>59,861</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>						
Messenger & Delivery Services	0	0	50	0.0%	0	0
Office Supplies	0	0	150	0.0%	0	0
Photocopying	0	0	300	0.0%	0	30
Postage	27	50	250	20.0%	19	47
Professional Dues	0	0	200	0.0%	0	72
Telephone	1	18	100	18.0%	0	0
Training & Education	120	120	375	32.0%	0	0
Staff Travel & Expense	0	258	683	37.8%	0	0
<b>TOTAL G &amp; A</b>	<b>148</b>	<b>446</b>	<b>2,108</b>	<b>21.2%</b>	<b>19</b>	<b>149</b>
<b>TOTAL EXPENSE</b>	<b>6,788</b>	<b>12,927</b>	<b>192,658</b>	<b>6.7%</b>	<b>62,490</b>	<b>68,303</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(3,705)</b>	<b>62,128</b>	<b>(85,858)</b>		<b>(57,587)</b>	<b>7,239</b>
Indirect Cost Allocation	784	2,352	9,406		735	2,206
<b>NET REV (EXP) AFTER ICA</b>	<b>(4,489)</b>	<b>59,776</b>	<b>(95,264)</b>		<b>(58,322)</b>	<b>5,033</b>
	=====		=====		=====	=====
Fund Balance beginning of year		712,886				
Ending Fund Balance		772,662				
		=====				







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Oregon State Bar

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2007

# Program Measures Review

March 2008

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## Affirmative Action Program

*The goal of the Affirmative Action Program (AAP) is to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, to educate attorneys about the cultural richness and diversity of the clients they serve, and to remove barriers to justice.*

### Program Description

In 1975, the Oregon State Bar approved the recommendation of the Civil Rights Committee to establish an affirmative action program with the goal of “achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon, while at the same time not lowering the standards for admittance...” At that time, there were 27 ethnic minority attorneys in Oregon, 0.5% of the total active bar members. Statistical reports for November 2007 indicate that 780 of 13,494 bar members (5.8%) self-identify as ethnic minorities.

The AAP served only ethnic minority participants through 1998 (466 active OSB ethnic minority members—4.1%). In 1998, the AAP’s mission became an access to justice mission with focus also given to increasing ethnic minority diversity through outreach efforts. Beginning with the class entering in 1998, eligibility for AAP programs was split—anyone (regardless of ethnicity) who could help advance the program’s mission was eligible to apply for allocative programming. Only ethnic minorities were eligible to participate in non-allocative/outreach programming (hereafter Opportunities for Law in Oregon, or OLIO) until 2005.

OLIO is a recruitment/retention strategy for ethnic minority law students. Beginning with the OLIO Orientation in 2005, OLIO participation included non-ethnic minority upper division students who were committed to advancing the OLIO mission. Upper division students interested in participating in the OLIO Orientation must complete applications which demonstrate such commitment. An additional development in 2005 was the inclusion of a young prospective law student in a pilot project. The objective is to mentor younger ethnic minorities in Oregon and to provide greater community ties through the young person’s family and other organizations.

All AAP programs and activities are designed to recruit and retain participants who can help to advance the program’s mission. While there can be no specific numerical goals as measurable diversity targets, the program will have achieved its diversity focus of the mission upon the creation of a critical mass of participants—that is, when the bar membership can recruit and retain a minimum number of participants who can self-sustain at least that minimum number.

Empirical data (i.e., the number of AAP participants passing the Oregon bar examination) correlate with traditional cost/benefit analysis. Because AAP goals are premised on the value of diversity and identifying methodologies to best instill and reinforce that value, AAP analysis also involves non-empirical data that takes into account subjective evaluations of program participants - i.e., law

students from Oregon law schools, law personnel from Oregon law schools, lawyers from various areas of practice, law firm managers from various areas of practice, judges, and public participants with ties to the legal community. Collective evaluations help to establish a series of links which, in conjunction with traditional empirical data, continually enhance the AAP while identifying overall consistent measures of AAP performance. This analysis formally began with 2004 Program Measures as “Outcome #7.”

The AAP was scheduled to sunset in 2006. On September 16, 2006, the House of Delegates voted almost unanimously to reauthorize the AAP assessment for another 15 years at \$30 per member per year.

### **Volunteers/Partnerships**

Volunteers: 150. This number represents a decrease of 230 due to the fact that BOWLIO did not take place as scheduled. The volunteers include members of the Affirmative Action Committee; a 2006 Group which included some lawyers and judges not on the AAC, Employment Retreat lawyers and judges; Employer Forum lawyers and law firm hiring staff; all lawyers and judges and community members at OLIO activities including the OLIO Orientation, Clerkship Luncheon, skills workshops, and BOWLIO; law school staff and administrators; and OSB exempt staff.

Partnerships: The Affirmative Action Program partners with University of Oregon School of Law; Willamette University College of Law; Lewis & Clark Law School; Portland State University; local bar associations (i.e., Multnomah Bar Association, Lane County Bar Association); the judiciary; public and private practitioners and law firms; specialty bars (i.e., Oregon Chapter of the National Bar Association, Oregon Gay and Lesbian Law Association, Oregon Women Lawyers, Oregon Minority Lawyers Association); Access to Justice Committee; Oregon Law Foundation; KAPLAN testing service; PMBR Multistate Specialist, Uniting to Understand Racism Foundation; OSB Diversity Section, and the American Bar Association Environmental and Energy Resources Law Section.

## **Outcome #1: Increase the number of AAP participants.**

### **Allocative:**

The AAP initiated a registration system in the fall of 1998 to achieve more efficient and consistent participation. Any law student or graduate who can help advance the program mission can apply for allocative programs; thus, the AAP Registrants numbers include non-ethnic minorities. The following tracks registrants by law school start year and includes OLIO participants. Typically, the totals will increase as more participants enter the program after their start year and even after graduation (e.g., bar exam grants)

2007-08 – 79 Registrants

2006-07 – 45 Registrants

2005-06 – 68 Registrants

2004-05 – 93 Registrants

**OLIO:**

In academic year 2006-2007, the three Oregon law schools included 193 self-identified ethnic minorities in a total student population of 1433. Ethnic minorities in previous years were: 2005 – 276; 2004-232; and 2003–246. Ethnic minority law student enrollment among the Oregon law schools has decreased since 1998. AAP participation figures tend to mirror law school trends. (We actually have more registrants with fewer student enrollees.)

**Outcome #2: Increase the number of AAP student participants who attend law school and take the bar exam in Oregon.**

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**Allocative:**

Scholarships are used as a recruiting and retention tool. Students admitted to an Oregon law school, as well as upper division law students (non-ethnic minorities are eligible), may apply. The classes under Program Measures analysis—measuring retention in terms of sitting for the Oregon State Bar Examination—run from the start of year 1998 through 2004. The total number of award recipients in this time period was 99 (increase of 8 from 2006), of whom 39 (increase of 3) took the bar exam and 26 passed. Twenty-five had Oregon addresses in 2008.

Except for a significant rise in 2000, scholarship applications (numbers can represent interest in the program) decreased annually from 1998 through 2002, paralleling the decrease in ethnic minority populations in law schools. The number of scholarships available in 2002 was reduced to meet 2002 budget goals. Because this program is important but lowest priority as identified in 2002, scholarship data appears in greater detail in the following table should the need for budget cuts again become necessary:

Year	No. of Scholarships				In Oregon two years later
	No. of Applications				
			Sat for Bar Exam	Passed	
2007	8	71	TBD	TBD	TBD
2006	8	70	TBD	TBD	TBD
2005	8	48	TBD	TBD	TBD
2004	8	65	2	1	1
2003	8	51	4	2	2



**OLIO:**

From 1998 to 2004, 192 ethnic minority law students participated in OLIO orientation as incoming students. Of these, 100 sat for the bar exam, 84 passed, and 77 have Oregon addresses.

Beginning in 1998, AAP conducted an OLIO orientation and support program designed to acculturate ethnic minority law students to the study and practice of law in Oregon. Participants responded that they would recommend the orientation to other ethnic minority law students. The orientation is the most important OLIO event to solicit interest in the program. Hence, data is tracked in greater detail and appears in the following table:

Year	Entering Students			Bar Exam	Passed	In Oregon Two Years Later
	Upper Division Students	Others*				
2006	63	38	35	TBD	TBD	TBD
2005	39	18	35	TBD	TBD	TBD
2004	37	18	34	12	8	8
2003	34	16	25	20	15	13
2002	35	12	43	20	6	6

(\*Lawyers, judges, OSB staff)

**Outcome #3: Increase the number of AAP participants who pass the Oregon Bar Examination.**

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Each year, the Bar Exam Grant program provides application fee reimbursement. In 2000, the program was expanded to include a commercial bar preparation course (PMBR) that focused on multi-state testing, traditionally the more challenging aspect of the bar exam for many ethnic minority law students and others.

**Allocative:**

In the 1998-2004 time period, there were 73 grant recipients. Of these, 69 sat for the bar exam (4 withdrew in 2005), and 49 became bar members (44, had Oregon addresses in 2008). An entire grant covers costs for the admissions application fee and the PMBR course. There is no limit to admissions fee awards for applicants who must re-take the exam. Re-takers can receive the PMBR course only once. Thus, some applicants had both an AAP Grant and

a PMBR Grant; some had either the AAP Grant or PMBR. Individuals are counted only once.

**OLIO:**

Nearly all OLIO functions address the Oregon State Bar Examination to some extent. For example, Summer Clerkship Luncheons include segments relating law clerk assignments with the Multistate Performance Test. There were 388 OLIO participants from 1998 to 2004. Of these, 191 sat for the bar exam; 133 became bar members, of whom 117 had Oregon addresses in 2008.

In 2006, AAP conducted a bar exam workshop for OLIO bar applicants. All participants indicated they would recommend the workshop to ethnic minority bar applicants. Workshop participants who passed the Oregon bar examination number as follows:

- 2007 – graduated; started 2004 – 0 passed out of 2 participants
- 2006 – graduated; started 2003 – 5 passed out of 8
- 2005 – graduated; started 2002 – 1 passed out of 6
- 2004 – graduated; started 2001 – 5 passed out of 9

**Outcome #4: Increase the number of career placements in Oregon.**

**Allocative:**

The Clerkship Stipend Program awards stipends to top-scoring applicants who help the program achieve its mission. From 1998 to 2004, 102 students received stipends. Of these, 56 sat for the bar exam, and 38 became members (36, had Oregon addresses in 2008.) In 2007, all participants reported a positive experience.

The Public Honors Fellowship Program allocates fellowships to top-scoring applicants who help the program achieve its mission in public interest practice. From 1998 to 2004, there were 32 fellowship award recipients. Of these, 32 sat for the bar exam, and 21 became members. (19, had Oregon addresses in 2008.) Nine recipients from 1998–2004 continued employment in public interest law.

**OLIO:**

The First Year Internship Program (FYIP), formerly known as the First Year Honors Program, began in 2001 with employer participation represented by the larger Portland firms. Around 2003, the larger firms began to implement their own “diversity scholarship” programs to attract ethnic minority law students with higher academic records from across the nation and in Oregon. FYIP employer participation began to decrease as the firms began developing these scholarship programs. A few firms ran their programs concurrently with FYIP.

While all FYIP student participants state that this program should continue, this program remains vulnerable as employer participation declines. In the event that FYIP termination becomes an issue, FYIP data is tracked in detail:

Year	Number of Applicants		Number of Employers		Number of Placements		Sat of Bar Exam Passed		In Oregon Two Years Later
2007	35	5	6	TBD	TBD	TBD			
2006	29	6	7	TBD	TBD	TBD			
2005	32	7	7	TBD	TBD	TBD			
2004	34	5	6	6	6	6			
2003	31	5	6	3	3	3			

Since its inception, all interns reported finding the program of value and recommended that it be continued.

**Outcome #5: Increase the number of ethnic minority lawyers who remain in Oregon practice five years from starting law school.**

This measure relies on data that begins with the Class of 2001 and 2002 (entering 1998 and 1999) and retention tracked in 2006 and 2007. Records show that there were 230 registrants entering in 1998 and 75 had Oregon addresses by the end of 2006.

**Outcome #6: Increase awareness of the value of diversity in the legal profession.**

The AAP Administrator worked closely with the Diversity Section regarding the compromise of the Elimination of Bias MCLE requirement, and assisted with communicating the issues between both the AAC and the section. In 2007, the Affirmative Action Program has become more visible to the members-at-large, and the minority community has stepped up to assist in educating the members-at-large about the importance of diversity in the legal community. Through the efforts of working with Bar News, more employers signed up to be included in the catalog to hire students of color for the summer.

**Outcome #7: Assess AAP effectiveness through personal experiences of three participants from the following cohorts: law students from each Oregon school; law staff/faculty/administrators from each Oregon school; lawyers from various practice areas/law firm settings; law firm management; judges; and public participants with ties to the legal community.**

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**AAP sent a short survey to three individuals representing the following cohorts:**

1. Current law student from each Oregon law school (sent to Leslie Gomez, Willamette; John Lee, UofO; Akaash Gupta, L&C)
2. Admissions directors of each Oregon law school (sent to Carolyn Dennis, Willamette, Shannon Davis, L&C, Larry Seno, UofO)
3. Lawyers who participated in AAP (sent to Chanpone Sinlapasai-Okamura, Denise Keppinger, Antonio Gonzalez)
4. Law firm recruiters (sent to Brynion Berkey, Dori John, Dan DiResta)
5. Judges (sent to Richard Baldwin, Cheryl Albrecht, Adrienne Nelson)
6. Non-bar members with ties to the AAP (sent to Rene Cardenas, Judy Edwards, Susan Hughes)

The individuals were asked to rate on a scale from 1 (low) to 5 (high) their level of satisfaction with the following:

1. The value of the OSB Affirmative Action Program as a whole.
2. The value of OLIO as a program to support ethnic minority law students.
3. The service AAP staff provides to you.

At this writing, there are nine responses, with at least one in each cohort. There are 23 responses assigning "5" and four responses assigning "4." Item 1 received 2 fours, Item 2 received 1 four, and Item 3 received 1 four.

## Client Assistance Office

*The primary goal of the Client Assistance Office (CAO) is to promptly review and properly process complaints and inquiries about the conduct of members of the Oregon State Bar. A secondary goal is to help the public access general information and resources that address their legal concerns.*

### **Program Description**

One of the principal responsibilities of the CAO is to assist the Supreme Court in reviewing inquiries and complaints about lawyers. Lawyers are required to comply with the rules of professional conduct for the protection of the public and the legal system. The CAO was established to screen and evaluate all inquiries and complaints about lawyer conduct. Those presenting sufficient evidence to support a reasonable belief that misconduct may have occurred are referred to Disciplinary Counsel's Office for further investigation. Upon transfer, the matter is recorded as a disciplinary complaint. As appropriate and as resources permit, the CAO will also attempt to assist those who contact the bar about the conduct of OSB members with common problems, such as obtaining file materials from their lawyers, and to resolve issues between lawyers and clients that are the result of poor communication or misunderstanding.

As part of General Counsel's Office, the CAO also provides ethics assistance to bar members as needed. CAO lawyers are frequent speakers at continuing legal education programs of the bar and other organizations.

### **Volunteers/Partnerships**

The CAO staff consists of three lawyers (the CAO Manager and two Assistant General Counsel assigned to the CAO), two administrative assistants, and a clerk. The total FTE in CAO is 6.0.

The CAO occasionally calls on members and others to provide training on specific practice areas, common problems, and other resources available to the public and members. The CAO also works with other entities that play a role in maintaining high standards of ethics and professional conduct, including General Counsel's Office, Disciplinary Counsel's Office, the Professional Liability Fund and its Loss Prevention Program (the Oregon Attorney Assistance Program), the Office of Public Defense Services, and the State Lawyers' Assistance Program.

### **Outcome #1: Establish and maintain effective and prompt intake of inquiries and complaints, dismissing or referring to DCO within 60 days in 90% of all cases.**

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From January 1, 2007 until December 31, 2007, the CAO disposed of 2,613 inquiries. CAO staff resolved 27.3% (713) the same day, 6.5% (170) were resolved within two days, 14.3% (374) were resolved within three to six days, 15.6% (408) were resolved within one to two weeks, and 8.15% (213) were

resolved in less than one month. One hundred and ninety-six (7.5%) were resolved within 31 to 60 days. In sum, 79.4% of all inquiries/complaints were resolved in less than 60 days. The average disposition time was 42 days. One reason for not meeting the goal of disposing of 90% or more of its cases in less than 60 days is that we have more often been asking lawyers to respond to complaints before making a sufficient evidence determination. The time involved in deciding a matter when the lawyer and the complaining party get a say greatly increases the amount of time CAO has a matter. This year we kept statistical information on what are referred to as "general information inquiries." These are often calls that require staff to make additional phone calls, provide information on issues other than how to file a complaint, or discuss lawyer client relations with callers. They also include people who simply drop into the bar office. We found that these inquiries take up a significant part of staff time and need to be included as an indication of the daily routine of CAO lawyer and staff time.

All telephone inquiries are responded to within 24 hours, as are all referrals to other agencies.

**Outcome #2: Assure the appropriate disposition of inquiries and complaints, particularly those that involve accusations of disciplinary violations with concurrence by General Counsel in at least 90% of CAO appeals. Ensure a high level of competence among CAO staff.**

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From January 1, 2007 to December 31, 2007, there were 277 appeals of CAO staff dismissals to General Counsel and all but four were upheld. CAO staff exceeded this goal for 2007, as 98.6% of appeals were upheld by General Counsel.

Between January 1, 2007 and December 31, 2007, 282 cases were referred to DCO for further investigation. DCO expects that not less than 90% of CAO referrals should warrant further investigation. The CAO is unaware of any referrals that were not further investigated by DCO. CAO staff exceeded this goal in 2007. DCO records show that CAO referred 284 cases to DCO. CAO and DCO staff are working with IDT staff to reconcile these records.

To assure appropriate professional training and develop and enhance staff expertise, CAO conducted in-house mini-CLE sessions for CAO and other staff on de-escalation of difficult situations, criminal law, social security claims, and pro hoc vice admission requirements. CAO staff also met with Susan Isaces, the Executive Director of the Commission on Judicial Fitness and disability to discuss how the Commission operates. Additionally, CAO staff met with members of the bar's Public Affairs staff in Salem during the legislative sessions to learn about that process and had the opportunity to observe debates in both the House and Senate. CAO staff invited a number of speakers to Open Forum meetings for all bar staff, including former Chief Justice Carson; United States Attorney Karen Immergut; attorney Tom Johnson, who represented one of the

detainees in Cuba; and dermatologist Maran Landers, who spoke to staff about recognizing symptoms of skin cancer.

CAO lawyers participated as speakers in a number of conferences and each attended a national conference concerning the conduct of lawyers and the operation of programs similar to that of the CAO.

**Outcome #3: Increase member and public awareness of and satisfaction with CAO services.**

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As noted above, CAO staff maintains records of the time it takes to dispose of inquiries/complaints and it is a goal to dispose of 90% of all inquiries/complaints within 60 days of receipt. CAO did not meet this goal this year. However, the CAO staff did receive a number of letters and calls from the public thanking staff for their assistance and feedback from lawyers also expressing support for the program.

During the year, CAO staff worked with staff members from the Information and Design Technology staff to update and revise the CAO information on the bar's internet website and to revise the various printed brochures used by CAO.

CAO staff lawyers spoke at a number of bar-sponsored CLE programs over the year and always took the opportunity to educate members on the operation of the CAO.

This year, one of our lawyers and our two intake coordinators attended the fall judicial conference at Salishan to provide more information to the judges about the role of CAO. CAO also staffed the bar's public booth at the State Fair to provide information to the public about our operations. As more members of the public, the bar, and other agencies learn of the expanded role, it appears the CAO will remain a valuable resource and screening tool for inquiries and complaints about lawyer conduct.

**Outcome #4: Monitor and recommend technological improvements that may benefit the department and make recommendations to the Executive Director.**

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CAO continues to work closely with Information and Design Technology department staff to refine the database to more accurately reflect the type and nature of inquiries/complaints that CAO receives. Staff, with help from IDT, revised the entire CAO database and worked diligently to eliminate any "bugs" in the system. Staff provided input that allowed the successful introduction of that database. It is still being refined as we become more familiar with it. Additional training was provided to intake staff on how to access and utilize the OJIN network to provide more information for staff lawyers in reviewing their cases.

# CLE Publications Department

The CLE Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools.

## Program Description

Building on a history of service that began in the 1950's when OSB published its first legal handbook, CLE Publications provides Oregon attorneys with the basic reference tools they need to practice law in a variety of areas.

The library contains 48 titles, ranging from 100-page booklets to five-volume treatises, from A (Administering Oregon Estates) to W (Workers' Compensation). The books are distinguished from those of national publishers because they are Oregon-specific and written by Oregon practitioners. The focus is on Oregon statutes, cases, administrative rules, forms, and legal traditions. The books also provide practice tips, caveats, queries, and notes. Many titles include practice forms on computer disk and the entire library was previously available on CD-ROM. Beginning in February 2007, the entire library became available online as BarBooks™ online library. The program strives to publish 5,000 pages per year, which amounts to 10 to 14 books or supplements to existing books. Members consistently indicate that these CLE books are very important to their practice.

## Volunteers/Partnerships

Volunteers: Over 270 bar member volunteers served as authors and editors of books published in 2007. In addition, volunteers organized into committees produced material for *Uniform Civil Jury Instructions*, *Uniform Criminal Jury Instructions*, *Oregon Formal Ethics Opinions*, and the *Disciplinary Board Reporter*. All told, over 320 bar volunteers were involved in some way to produce CLE books for members in 2007.

Partnerships: The CLE Publications Department is in partnership with the judiciary through preparation of Uniform Civil and Uniform Criminal Jury Instructions to be used by the courts and lawyers. The department also occasionally works with sections both formally and informally to produce books and supplements. In addition, the department worked with both the Public Affairs Department and the CLE Seminars Department in 2007 to produce *2007 Oregon Legislation Highlights*, which was released in conjunction with a legislative update seminar.

### **Outcome #1: Achieve a break-even financial position where year-end revenues are not less than expenses and indirect cost allocation.**

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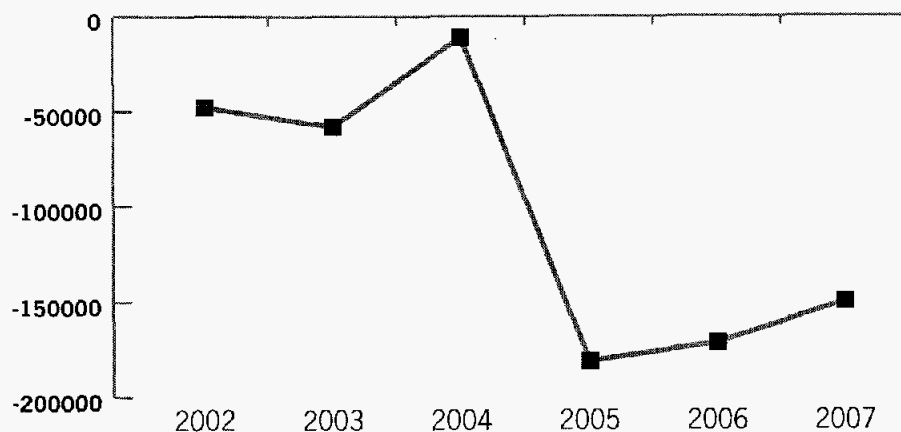
In 2007, the CLE Publications Department generated print book revenue of \$639,301, which was 91% of budget, and BarBooks™ revenue of \$220,753, which was 61% of budget. Total expenses were 97% of budget. The shortfall in the budget in 2007 is due to several factors. First, sales of BarBooks™ online



library were slower than anticipated, so that \$139,605 of the BarBooks™ revenue was deferred to 2008 because of accounting practices. Second, the *Family Law* cumulative supplement, which is a best seller, was scheduled for release in 2007. However, this book was delayed because of significant statutory changes made by the 2007 Legislature that delayed the receipt of chapters from authors and delayed in-house editing to allow for inclusion of those changes in the publication. Third, a system error resulted in the double counting of budgeted revenue for *Advising Oregon Businesses* vol. 1&2. The budget includes \$116,150 in revenue for this title, but that figure should have been \$52,540.

In late 2005 and early 2006, several new marketing strategies were implemented for print books, including the offer of a 10% early-bird discount on all new releases, a statement of benefits to the customer on the cover of each brochure, different brochures sent to past purchasers of the book and those who had never purchased the book, inclusion of a short list of other available titles, either new releases or related books, in each brochure, and using HTML format for e-mail marketing with related titles linked from the e-mail. With the exception of the different brochures to past purchasers, which proved unsuccessful, these strategies were continued in 2007. The early-bird pricing and HTML e-mails in particular have been very successful. The early-bird pricing has moved the bulk of initial sales closer to the release date so that as much as 69% of the revenue has been realized on a book in the first 30 days after release. The HTML e-mails have generated web sales of books other than the primary title being advertised by the email. Total sales of every backlist titled promoted in an HTML e-mail in 2007 exceeded 100% of the budgeted revenue for that title and in some cases exceeded 200% of budgeted revenue.

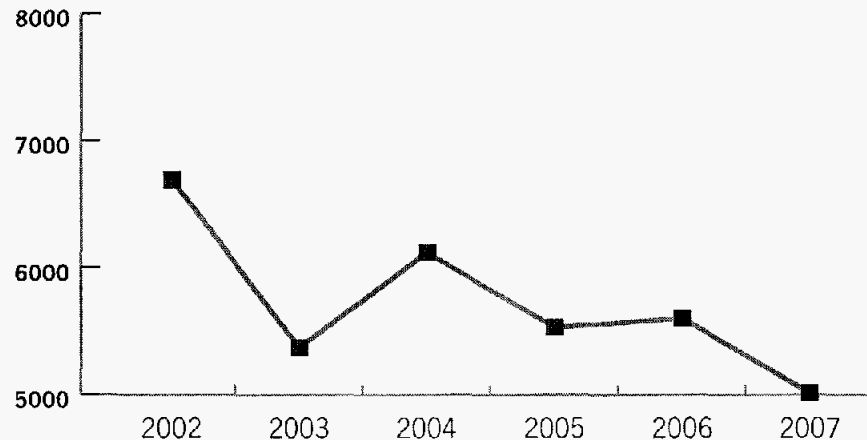
### End of Year Balances



## **Outcome #2: Produce high quality books that meet members' needs.**

Eleven books were published in 2007, including 3 revisions, 6 supplements, a new volume of the *Disciplinary Board Reporter*, and a new edition of *Oregon Legislation Highlights*, for a total page count of 5,014.

### **Number of Pages Published**



Surveys were conducted on three of the 2007 releases (surveys conducted approximately six months after release date). In addition, surveys were completed in 2007 for two books that were released in late 2006. The average response rate of those surveyed was 15%. An incentive of a drawing for five \$20 gift certificates was used to encourage participation in the survey. The first question, "When you practice in this area of law how valuable is this book?" received an average rating of 3.9 on a scale of 1-5. The second question, "How satisfied are you with the quality of this book?" received an average rating of 4.1. Written survey comments included the following: "Very good publication. A good resource for bankruptcy practitioners (and more general practitioners, as well) in Oregon." "Keep up the good work." "OSB Manuals [are] very helpful."

In e-mail surveys by CLE staff in 2004, 2005, and 2006, members expressed a high level of satisfaction with CLE books. Responses regarding book quality were 4.1, 4.1, and 4.1, respectively, and regarding value to the practitioner were 3.9, 3.9, and 3.9, respectively, in those years. Since 1999, members have consistently rated the quality of CLE books at 4 or above. Two random member surveys in the last seven years rate CLE Publications as one of the top two bar programs.

In 2006, the CLE Publications Department streamlined the editing process with onscreen editing with tracked changes. This process is a great benefit to our authors because it allows them to see all of the edits we have made to their manuscript. Author feedback has been very positive. This process also helps with overall department workflow in that it minimizes the amount of time

necessary for word processing each chapter, minimizes the potential for errors inherent in inputting written edits, and frees up production time for work on the BarBooks™ online library.

**Outcome #3: Maintain electronic offerings that are comparable to what other legal publishers offer.**

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As a result of the passage of the HOD proposal in the fall of 2005 to develop a subscription or licensing model for CLE Publications online, the Board of Governors appointed a Task Force of five HOD members, two BOG members, and the CLE Publications Department manager. The Task Force completed its work in April 2006 and the recommended pricing structure based on firm size was approved by the Board of Governors. The pricing structure also provided for BarBooks™ subscribers to receive a 40% discount on the purchase of print books. The BarBooks™ project was launched by the target release date of January 2007. The CLE Publications Department manager worked with the IDT Department to develop a robust, professional, and easy-to-use online library. In August 2007, county and law school library access was added to the BarBooks™ online library, and in November 2007 the renewal system was implemented.

By the end of 2007, 14% of the law firms in Oregon had paid subscriptions to BarBooks™. See table below for breakdown of paid subscriber base by firm size compared to the number of firms in each category. In addition to the paid subscriptions, the CLE Publications Department provides complimentary subscriptions to Legal Aid of Oregon and the Professional Liability Fund.

**BarBooks Subscribers by Firm Size**

Comparison to Total Membership

Firm size	Number of firms in range	Number of BarBooks paid subscribers	Percentage of Total
1 Attorney	2674*	360	13%
2 Attorneys	382	46	12%
3 to 5 Attorneys	400	49	12%
6 to 9 Attorneys	157	20	13%
10 to 19 Attorneys	93	16	17%
20 to 29 Attorneys	25	5	20%
30 to 49 Attorneys	16	7	44%
50 to 99 Attorneys	7	5	71%
100+ Attorneys	3	3	100%
Total	3757	511	14%

\*1 Attorney firms are Active members in Oregon with PLF coverage.

In 2006 and 2007, the CLE Publications online bookstore generated \$148,219 and \$114,344 in sales, respectively. The online bookstore revenue increased significantly each year from 2001, when it was launched, through 2006. See chart below for each year's web sales. In 2007, the substantial decrease in online sales is most likely attributable to the fact that BarBooks™ subscribers cannot use their 40% print book discount if they purchase a print book at the online bookstore. Discounted sales of print books to BarBooks™ subscribers were approximately \$31,000. If those sales had been made at the online bookstore, the 2007 online sales figures would have been much closer to the 2006 figures.

Year	2002	2003	2004	2005	2006	2007
Web sales	\$24,000	\$63,500	\$73,500	\$118,153	\$148,219	\$114,344

In 2005, the department started using HTML e-mail marketing to drive more traffic to the online bookstore. In 2004, new CLE releases were first placed in the "spotlight" on the OSB website homepage. Since going online in 2001, the CLE Publications bookstore has enhanced the purchasing experience by providing information on each book in the CLE library. Customers are able to view and download a partial chapter sample, a chapter outline, and the table of contents for each book. Plans have been started to further upgrade the online bookstore to allow for discounts to be applied in the purchasing process.

**Outcome #4: Adequately protect OSB's intellectual property rights.**

In 2006, the department explored available formats for the new BarBooks™ online library with an eye toward security. Based on the recommendation of the bar's computer consultant, the department opted to create BarBooks™ using Adobe Flash Player because it provided greater security of the bar's intellectual property than Portable Document Format (PDF), HTML format, or asp format. Adobe Flash Player provides a professional viewing environment and robust search ability for the user, but does not allow the user to save individual documents on their computer.

In 2005, the CLE Publications Department instituted a policy to obtain copyright agreements from all volunteer authors. By the end of 2006, the department had obtained copyright agreements from 100% of authors for every book released in 2005. A plan to contact all past authors who had not previously submitted a copyright agreement has also been very successful. We have now obtained copyright agreements from 100% of all past and current authors.

The forms-on-disk license policy that was introduced in 2004 has also been fairly successful. In 2007, the department sold 161 additional user licenses, and the total revenue for additional user licenses was \$5,069. In 2006, the department sold 250 additional user licenses, and the total revenue for additional user license was \$8,350. In 2005, the department sold 215

additional user licenses, almost double the number sold in 2004 when the policy was implemented. The total revenue for additional user licenses in 2005 was \$8,175. The 2007 figure may be less than in 2005 and 2006 because BarBooks™ subscriber firms have access to all forms without purchasing additional user licenses.

**Outcome #5: Promote diversity of CLE Publications authors.**

In 2006 and 2007, the CLE Publications Department manager discussed diversity issues with editorial review boards for books started in those years, encouraging them to recruit minority authors whenever possible. In 2005 and 2006, CLE Publications volunteer opportunities were included in several e-mails sent by the Communications Department to specialty bar groups. In addition, the CLE Publications Department solicited new volunteers with each customer survey that was completed.

For books that were released in 2007, 30% of the authors and editors were female compared with 32% of the active membership of the bar, and 70% of the authors and editors were male compared with 68% of the active membership. For books that were released in 2006, 27% of the authors and editors were female compared with 32% of the active membership of the bar, and 73% of the authors and editors were male compared with 68% of the active membership. For books that were released in 2005, 34% of the authors and editors were female compared with 31% of the active membership of the bar, and 66% of the authors and editors were male compared with 69% of the active membership. The ethnic origin of authors and editors for books released in 2005, 2006, and 2007 is compared to the active membership of the bar in the table that follows. All of the books that were released in 2005 and almost all that were released in 2006 were planned before this program outcome was added to the program measures for the department.

Ethnic Origin	2005 Authors & Editors	2005 Active Members	2006 Authors & Editors	2006 Active Members	2007 Authors & Editors	2007 Active Members
Asian	3.81%	2.25%	0.64%	2.30%	2.22%	2.33%
Black	0.85%	0.73%	0.64%	0.76%	0.74%	0.74%
Hispanic	0.85%	1.38%	0.64%	1.39%	0.37%	1.38%
Native Americans	0.00%	0.54%	1.27%	0.52%	0.00%	0.81%
Other	0.85%	0.60%	0.00%	0.68%	3.33%*	0.52%
White	56.78%	47.78%	55.41%	47.52%	47.41%	48.25%
Declined	36.86%	46.73%	41.40%	46.83%	45.93%	45.97%

\*This number includes 7 non-member authors whose ethnicity is unknown.

## CLE Seminars Department

*The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible.*

### **Program Description**

As a provider of CLE seminars, the OSB operates in a competitive market that includes a large number of CLE providers, multiple options for accessing CLE seminars, and fluctuations in the legal profession and the economy. To meet these challenges and provide a meaningful educational experience for bar members, the Seminars Department utilizes a two-pronged approach providing: (1) accessible CLE available in a wide range of formats, i.e. live seminars and video replays, audio and video products, and online media streaming; and (2) traditional and non-traditional live CLE settings that acknowledge diverse learning styles and provide valid learning experiences for all bar members.

### **Volunteers/Partnerships**

Volunteers: 383 attorneys and other professionals volunteered 423 times as planners and speakers in 2007.

Partnerships: The CLE Seminars program co-sponsors seminars with OSB sections and the Creditor Debtor Section of the Washington State Bar Association, the Washington State Bar Business Law Section, and the CLE Society of British Columbia.

### **Outcome #1: Meet the needs of members for readily accessible CLE by providing members 24/7 access to OSB CLE Seminars-branded information, services, and products.**

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Members continued to utilize a number of non-live formats to obtain CLE credit. The department partnered with another CLE provider to offer members 6 teleseminars, in which the department received total revenue in the amount of \$1,346. 979 customers purchased 5,314 hours of online CLE. Net revenue from online CLE was \$97,452, an increase of 12% over 2006 revenue. Total revenue from portable CLE products (audio and video sales and rentals) was \$313,284.

Changes in user technology continue to influence purchases. Audiocassette sales and VHS sales and rentals continued to fall, and most likely will be phased out within the next two years. However, audio CD sales and DVD sales and rentals increased. DVD rentals increased \$26,500 compared to 2006, and audio CD sales increased over \$50,000 during this period.

**Outcome #2: High member satisfaction with CLE curriculum, planning, and section co-sponsored seminars and activities.**

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The CLE seminars program maintained a high level of member satisfaction, with 84% of attendees who returned evaluation forms rating the CLE seminars as “excellent” or “very good.” This is a slight increase from last year. In 2006, 82% of attendees returning evaluation forms rated CLE Seminars as “excellent” or “very good.” The CLE Seminars Department co-sponsored CLE events with 16 sections, including four institutes. On the annual section survey conducted by Member Services, the department received mostly “excellent” ratings for providing accurate information, timely distribution of notices, staff assistance, and courtesy, averaging 4.6 on a scale of 1 to 5. One of many comments the department received summed up the department’s ability to meet this outcome: “Thanks for your hospitality and kindness. Your staff is to be commended for their courtesy to me.” For 2007, seminar evaluations included ratings for the seminar check-in process and onsite department staff. Of those returning an evaluation, 92% rated the check-in process as either “very good” or “excellent.” Onsite staff ratings achieved 91% “very good” and “excellent.”

**Outcome #3: Provide quality educational opportunities for members that also recognize different learning styles.**

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2007 saw an increase in the use of technology to enhance traditional lecture formats. In addition to PowerPoint presentations, presenters used a variety of sound and video clips from television shows, movies, and even public service announcements. One CLE presentation that qualified for elimination of bias credits incorporated a 45-minute video about institutional racism in Portland and its effects on three generations of an African American family. The comments for this presentation were very positive and are as follows:

“Excellent presentation! Every attorney should attend this specific course! Graphically real, compelling provocative, intellectually stimulating.”

“Really liked the history at the beginning – very eye-opening. I’m shocked at the number and type of discriminatory acts/laws, but I thought (until today) that these laws were all off the books. Great job by Cliff. I’m glad we’re required to attend classes on this topic – really fascinating. And embarrassing – in that we have so far to go. I need to learn more about identifying the causes of bias.”

	Live seminars	Advanced level institutes	Video compilations	Hours of audio & video streaming	Video replay sites	Teleseminars	Webcasts
2007	50	5	3	887.75	15	6	1
2006	42	4	3	1170	15	4	3
2005	51	5	3	1040	14	NA	0
2004	46	3	3	900	14	NA	1

**Outcome #4: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.**

To offset increases in paper and postage costs, the department relied more upon web-based communications, namely, the department's CLE website. A newly redesigned site was launched in June. Features included more icons and visuals for quicker recognition and navigation; an enhanced calendar that listed every OSB CLE sponsored event, including video replays and the ability to check the status of the replay online; a home page column to highlight upcoming institutes, special events, and featured speakers; the use of videos to promote CLE events; and an online product catalog that allowed customers to automatically complete an order form with product information. The department also redesigned its HTML e-mail announcing upcoming CLE events, making it more computer-friendly and visually appealing for recipients. As a result, the amount of marketing collateral that was printed and mailed in 2007 continued to decline. Many of the website features and e-mail announcements were accomplished with existing department staff, therefore the costs of using more Web and Internet-based communications remained low. For 2007, the department spent an average of \$1,312 for printed marketing materials and \$1,066 in postage per program, compared to \$1,679 and \$1,779 respectively, in 2006.

The department also reduced the number of seminar books printed for each event, relying on print-on-demand orders to maintain the book inventory for product orders and video replays.

The board's policy of providing complimentary seminar registration to a group of individuals including judges, accounted for approximately \$50,000 in foregone revenue.

Board of Governors policy requires that CLE Seminars be self-supporting. Registration fees, product sales, and pre-paid registration (Season Tickets) finance seminars and department expenses. In 2007, the department



continued to evaluate direct expenses and instituted changes in an effort to reduce direct costs. For example, the department continued to substantially reduce the number of catalogs that were printed and mailed. The print total was limited to 50 copies, with the intention of printing additional copies only on demand to save costs. Active members with valid e-mail addresses were sent an e-mail link to an electronic version of the catalog. By further reducing the number of printed catalogs and mailings, the department saved \$1,860 compared to 2006 catalog and mailing expenses.

In spite of these savings, the department ran a deficit of approximately \$167,257 a 8.8% shortfall compared to 2006 total revenues. However, the board's policy of providing complimentary seminar registration to a group of individuals accounted for approximately \$50,000 of that deficit.

	Total Revenue	Net expense (revenue)	Complimentary CLE registration	Net expense (revenue)	Loss as a percentage of revenue	Season Ticket Revenue
2007	1,329,216	167,257	50,000	117,257	8.8%	315,542
2006	1,252,597	136,896	27,305	109,591	8.7%	341,515
2005	1,392,514	138,895			10.0%	296,235
2004	1,322,176	156,448			11.8%	291,800
2003	1,229,495	184,751			15%	292,552

**Outcome #5: Promote diversity of CLE speakers and planners.**

In 2007, the program utilized 383 individuals as speakers and planners. Of that number, 67% were male and 33% were female. Active bar membership for 2007 was 68% male and 32% female. Determining accurate racial or ethnic identities are more difficult, as 46% of the 2007 bar membership declined to state their race. For the program, 43.6% of the speakers identified themselves as White, 2.87% as Asian, .52% as Black, .52% as Hispanic, and .26% as Native American. 4.96% seminar participants identified themselves as "Other," while 47.52% declined to state a racial identity.

# Communications

The Communications Department works to ensure consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits member practices and to increase member awareness of and involvement in bar activities. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice system.

## Program Description

The OSB Communications program was created in 1998 to focus efforts on enhancing the image of the bar and of the justice system. A member survey in 1996 had identified low public esteem for lawyers and the legal system as the most significant issue facing the profession.

The Member Communications group publishes the OSB Bulletin, Bar News, BOG Updates and miscellaneous publications designed to benefit members in their practices and increase awareness of leadership issues and program activities. This group also coordinates various annual events and other membership projects and events, including membership surveys and research.

Public Communications comprises programs and services designed to educate the public about laws, lawyers, and the legal system, and how to find help with legal problems. Education efforts include: public legal education seminars and cable TV programs, pamphlets and specialty publications, public service announcements, website materials, and Tel-Law. Media relations activities support the department's education and access goals as well as those of partner groups.

## Volunteers and Partnerships

### *Member Communications:*

Volunteers: 100 members annually serve as authors and sources.

Partnerships: Communications partners with OSB leaders, as well as county and specialty bars.

### *Public Communications:*

Volunteers: More than 300 lawyer volunteers assisted with public information programs and media relations in 2007.

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

## Member Communications Outcomes

### Outcome #1: Increase satisfaction with the OSB member communications.

*Implement Bulletin redesign, ensuring member satisfaction with design and content changes.*

The new Bulletin design and production process launched with the February/March 2007 issue. Based on a plan researched and developed over the prior year, the new design incorporated more color, increased design elements on feature stories, re-ordered columns and other sections of the magazine, and updated the fonts and basic style guidelines. In addition, design and production responsibilities moved from the editorial staff in Communications to the design and production staff in the IDT department.

Changes to the editorial side rolled out throughout the year. Based on reader feedback, columns on Legal Writing and Technology became regular features. OSB news items, including Discipline, CLE information, and committee/section news were grouped together into a single section with headings such as Bar Notes and Bar Actions. The Briefs section was revised to focus on short items that reinforce feature stories or promote bar materials published elsewhere. A cartoon was added to the page toward the end of the year. In addition, staff developed a planning calendar to ensure consistent attention to OSB priority issues and a balanced mix of feature topics.

Advertisers, who bear the cost of the new design features, have been pleased with the changes. Member reaction to the new design has also been positive. An editor's note in the debut issue invited comments and suggestions from readers. The most common suggestion, which was adopted, was to increase the font size for readability. On the editorial side, the new legal writing column is a clear success. This column generates more letters to the editor than any other element of the magazine. A follow-up survey to members who participated in the planning survey will take place in the summer of 2008.

*Develop and implement a subscription process for electronic communications to members.*

Although implementation of the subscription process was delayed by superseding priorities in the IDT department, the subscription program has been mapped out and planned with input from several bar departments. The groundwork for an electronic subscription process was laid in the further development of the website's Member Login page, which now allows members to update their own membership profiles. Since November 2007, members have had the ability to update their address and contact information, and more than 1,500 have done so. The next step is to add options for receiving bar communications and subscribing to electronic communications. Members will be able to subscribe to section and other list serves, select digest options for list serves, and temporarily suspend list serve subscriptions while away from the office. They will also be able to subscribe/unsubscribe for the electronic Bar News and BOG Update publications, select legal topics for which they would

like to receive e-mail notices (and indicate whether by e-mail or print) and designate an e-mail address other than the one in their main database listing for any electronic communication. Once completed, a member will be able to review and revise any profile information upon login to the member site. These expanded services will launch in the summer of 2008.

**Outcome #2: Increase membership involvement with public communications.**

*Increase bar leader participation in public education program and services:*

Recruitment of guests for each legal links episodes begins with bar sections, increasing involvement and leader awareness of the program. In 2007 we taped eight regular episodes with guests from six sections, the Board of Governors, Oregon Women Lawyers, and Multnomah County Courts. Section and committee leaders were also invited to participate in the updating of Tel-law/Web-law scripts and production of the new PSA series “30-Second Law School.” The Member Services Department ratings from bar leaders for public communications held steady in 2007 at an average of 4.0 from section leaders and 4.4 from committee leaders (scale of 1-5 with 5 equivalent to “excellent”). In total, 10 of the 17 leaders who responded rated the bar’s public communications as “excellent.”

*Increase member/leader participation in media outreach programs:*

The bar’s media coordinator joined the executive director’s brown bag lunch series to inform members of our media program and enlist support. As a result, 12 lawyers have added their names to the media speakers list, and several have called for advice when dealing with a media issue. A new group of bar leaders also participated in the “Building a Culture of Dialogue” event in May of 2007. The Bar/Press/Broadcasters Council considered the May event, which involved a scenario based on the shootings at Virginia Tech, to be the most engaging and informative version of what has become a very popular program. As a direct result, a number of bar members sought appointment to the council, including Supreme Court Justice Michael Gillette. A recruitment effort at the Oregon Judicial Conference brought in four new judges who are enthusiastic about participating in public education projects with the bar.

**Outcome #4: Maintain member satisfaction with the bar’s annual events.**

In 2007 approximately 120 guests attended the 50-Year Member Luncheon and 240 attended the annual Awards Dinner. In addition, another 240 attended the stand-alone luncheon for the first presentation of the Wallace P. Carson, Jr., Award for Judicial Excellence. Total registrations for the first two events were comparable to prior years (a small increase for the 50-year event and a small increase for the awards dinner) and the third was a unique event.

For the 50-year luncheon, scheduling of bar leader participation was problematic and there were some communication problems between leaders and staff. Those issues will be addressed for 2008 (feedback on the date and location for 2008 was solicited from board members in 2007). The honorees, however, were very well pleased with the event. Special arrangements were made for family and group photographs, and extra time was reserved after the luncheon for guests to mingle. Several guests remained until the very end, and we received many compliments on the extra attention to their needs. The Awards Dinner repeated its successful format and location used in 2006, resulting in a well-attended event that balanced the interests of appropriately honoring award winners with respect for the time and schedules of all guests. The Carson award luncheon was particularly well-received. The guest list included many of the most distinguished lawyers and judges in Oregon, which was an appropriate honor for Justice Carson.

Staff also created an event planning calendar to coordinate OSB events with those of other law-related groups. The calendar was used both to avoid conflicts in scheduling OSB events and assist board members in planning their participation in events sponsored by outside groups. The planning calendar will become an annual project.

### Public Communications Outcomes

#### **Outcome # 1: Increase public understanding of the importance of an independent and adequately funded judicial system.**

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*Complete series of editorial board visits focusing on judicial independence issues in support of bar and OJD priorities, increasing print coverage of judicial system need:*

The media relations program planned, coordinated, and/or participated in editorial board meetings with 18 newspapers across the state, focusing primarily on judicial salaries and the OJD budget. This resulted in editorial support from all of the major newspapers in the state. Our media coordinator also worked closely with Susan Nielsen of the *Oregonian* to keep the issue in front of the press throughout the session. As a result, the judicial budget, which is often omitted in the broad budget stories, was included in every editorial that covered the *Oregonian's* broad priorities for the state, an unprecedented level of media attention to this issue. This work was a key part of the bar's efforts to support the OJD budget priorities, resulting in a significant raise in judicial salaries (16% in '07 plus 3% in '08), strong support for the OJD budget overall, and creation of a public officials compensation commission to encourage the state to be more strategic in its salary policy in the future.

**Outcome #2: Increase the amount of practical, understandable legal information available to the public.**

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*Complete revision of the Tel-Law/Web-Law series.*

Although many scripts are updated on an ongoing basis, a series of staff departures delayed the planned revision of all scripts. Revisions continue into 2008 under a new model developed in response to the experienced delays. First, a staff person has been assigned as project manager to oversee the entire revision process. A master list of all legal information publications, including Tel-Law and the Legal Links pamphlet series, is now available to all staff involved with updating. Two other staff are assigned to recruit and work with lawyer volunteers on updating for legal accuracy. Another staff person is acting as editor, charged with increasing readability and merging duplicative scripts and pamphlets. The goal is to have a master script for each topic, which will appear on the website in html with a “printer friendly” option and can also be formatted for printing onto a Legal Links pamphlet shell. Only the most popular and “emergency” topics, such as “72-Hour Eviction Notices” and “Your Rights if You Are Arrested” will be available by phone. The former Tel-Law system was discontinued in December of 2007 when the bar moved operations and changed phone systems. The newly limited telephone scripts will be recorded onto a new system, with instructions for accessing additional topics on the bar’s website or by calling the bar’s receptionists. This move to online access over phone access reflects the public’s increased familiarity with and preference for obtaining information over the internet, and also will result in significant savings on WATS line costs.

*Establish the OSB website as a primary source for information on Oregon law for the public.*

The bar’s website is now promoted to the public through many vehicles: every legal links program, pamphlet, and specialty publication includes the web address. All Yellow Pages ads and promotional items such as pencils and magnets include the web address. On-hold messages for both the main OSB phone lines and the RIS phone lines refer callers to the bar’s website. As the website becomes better known we are able to increase our reliance on it as a convenient and cost-effective means of getting legal information to the public.

Although we are currently unable to track page views and unique visitors, the popularity of the OSB site is evident from a simple google search. Results for a search of the words *legal + information + Oregon* show the main OSB website as the second result with the public page’s “Legal Topics” index in third place. (Cornell Law School’s long-established information site takes first place.) A search for *lawyer + free + information + Oregon* brings up the OSB site’s “Hiring a Lawyer” page in the top spot, followed by the “About Oregon Law” page. In testing of similar search terms the OSB website appeared at least once in the top 10 results list every time.

The following quote was sent to the bar from a non-lawyer: “[Y]our website is fantastic! What a great tool for the people (like me) who like to be aware of things that may be helpful at a later date. I wish I had known about your website before my divorce and custody issues!”

**Outcome #3: Increase the public’s ability to access the justice system.**

***Review the effectiveness of materials developed for special populations.***

This project was taken on by members of the Public Service Advisory Committee, with staff assistance. The review encompassed a number of discussion points and issues, including: census data results indicating a reduced need for Vietnamese language materials; the difference between bilingual ability and ability to act as a translator; cost of professional translation services; low usage of Russian language materials; increased need for Spanish language services; literacy issues among non-English speakers; and the difficulty of regularly updating foreign language materials.

The committee ultimately developed a plan to focus on access to legal help for non-English speakers. The consensus was that the population most in need of help is less likely to be helped by written materials than connections with available services. As a result, pamphlets and web materials in Russian and Vietnamese will be discontinued in favor of an online directory of services available to non-English speakers covering several languages. The Spanish language materials will be retained, with professional translations made after the English versions are revised.

## Discipline Department

*The goal of the Disciplinary Counsel's Office (DCO) is to ensure an ethical bar, public and member confidence in the system, and a fair, efficient, and cost-effective system to discipline lawyers who violate the Oregon Rules of Professional Conduct. The office also strives to process membership status changes, pro hac vice admission applications and public records requests in a thorough and timely manner.*

### **Program Description**

One of the primary reasons for the existence of the bar is to regulate lawyer conduct for the protection of the public and the integrity of the legal profession. The Disciplinary Counsel's office administers regulatory programs that are mandated by statute or court rule as part of the professional regulation of lawyers in Oregon. The DCO's functions include: investigation, litigation, and probation and diversion monitoring in the Lawyer Discipline program; administration of the Trust Account Overdraft Notification program; representation of the bar in contested reinstatement proceedings; representation of the Board of Bar Examiners in contested admissions proceedings; administration of membership status changes including inactive transfers, resignations and reinstatements; screening all Oregon *pro hac vice* admission applications for eligibility; and responding to public record inquiries concerning members' disciplinary history, including the issuance of good standing certificates.

### **Volunteers/Partnerships**

#### *Volunteers*

The State Professional Responsibility Board (SPRB), the group responsible for oversight of disciplinary investigation and prosecution, is comprised of seven lawyers and two public members. Serving as field investigators when needed on 16 professional responsibility committees are 79 lawyers and three public members. Approximately 85 lawyers serve on a statewide panel from which co-counsel (with staff) may be appointed for cases headed to trial. For the Disciplinary Board, 67 lawyers and public members serve as adjudicatory officers from which trial panels are selected.

#### *Partnerships*

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



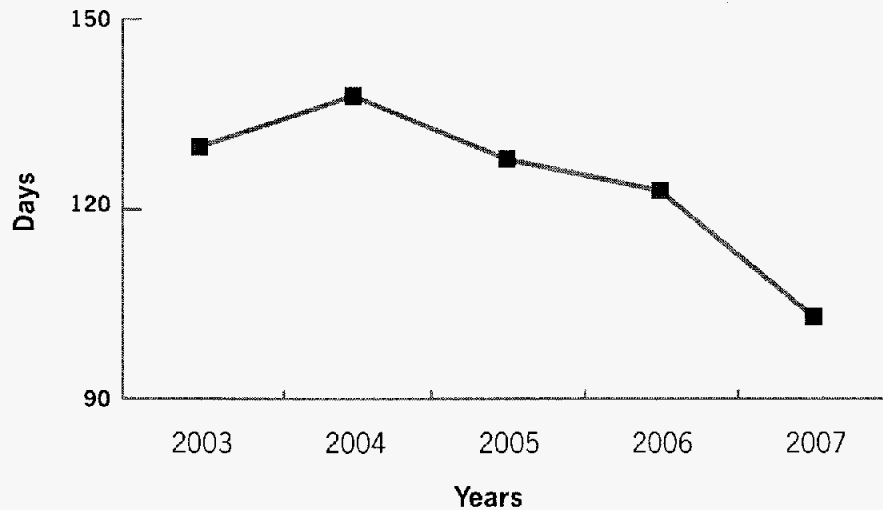
**Outcome #1: Thoroughly and promptly investigate complaints or reports of misconduct until all essential facts are known and analyzed.**

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The first standard is for new complaints to be reviewed and acknowledged within 14 days upon receipt by DCO. For 2007, initial review and acknowledgement of new complaints took place on average within eight days. Staff met this standard with 86% of the complaints received; another 8% (or a total of 94%) were reviewed and acknowledged within 21 days. Performance was better than the 2006 average of 10.7 days. The average in 2005 was eight days.

For in-house investigations, the standard is for staff to make its “no probable cause” decisions within 120 days after receipt of a lawyer’s initial response. In 2007, this standard was met with an average of 103 days, better than the 2006 average of 123 days and the 2005 average of 128 days. Staff met the standard in 69% of the investigations that led to a no probable cause finding. A significant number were problematic or time-consuming, however; 25% of the investigations in this category took more than six months to conclude.

**“No Probable Cause” Decisions** (Standard is 120 days)

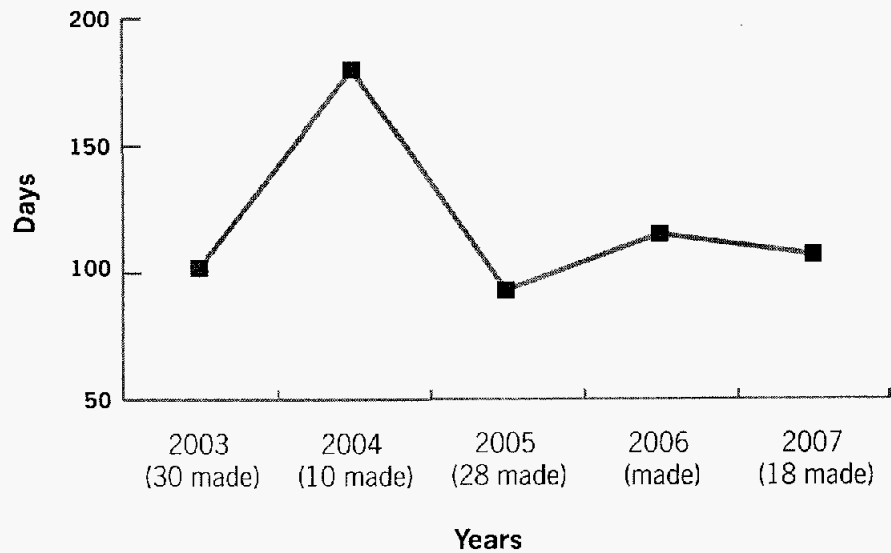


Staff dismissals may be appealed to the SPRB. To gauge whether staff is making appropriate dismissal decisions, the standard provides that staff dismissals for lack of probable cause should be upheld by the SPRB in more than 90% of all cases. In 2007, all 44 of the staff dismissals were upheld by the SPRB (100%). (One matter was tabled briefly while staff obtained further information, and then the dismissal was affirmed.) This compares to the same 100% affirmed rate in 2006, and 97% in 2005.

In certain cases, investigations are assigned to LPRC’s for completion. So as not to delay these investigations, the standard provides that staff referrals to an LPRC should be made within four months after the complaint is first received by DCO. In 2007, referrals were made on average within 107 days, which is slightly better than the average of 115 days in 2006, but not as

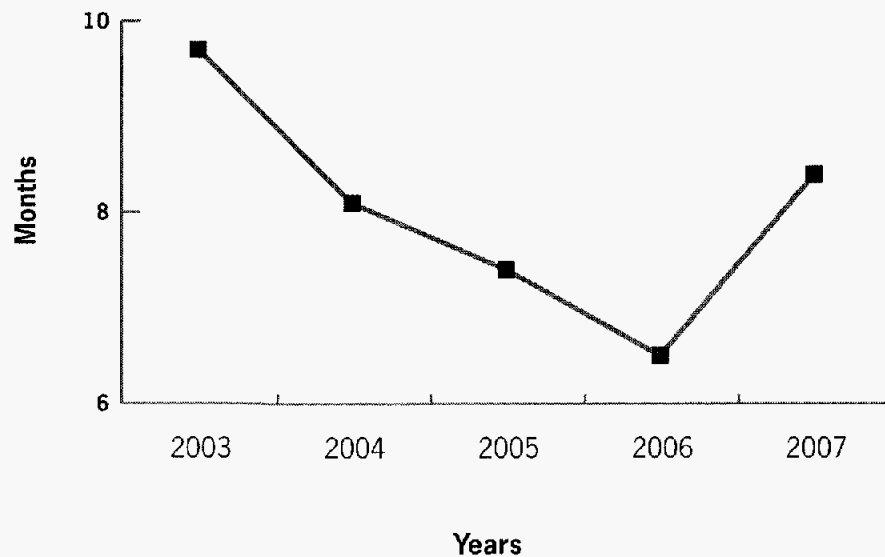
good as the average of 93 in 2005. Sixty-three percent of the 2007 referrals met the standard; another 19% of the referrals (or a total of 82%) were made within six months. Delays commonly occur when the lawyer under investigation promises, but does not timely deliver, responsive information or documentation and staff ultimately concludes that an LPRC referral, which did not initially appear necessary, must be made. The number of LPRC referrals is relatively small, as most investigations are done in-house: 16 in 2007, 18 in 2006, 28 in 2005.

**Timeframe of Referrals to LPRCs** (Standard is 120 days)



Most investigations are done by DCO staff. The standard for in-house investigations where probable cause of a violation may exist provides that investigative reports should be presented to the SPRB within nine months of receipt of the complaint. In 2007, 179 in-house probable cause investigations were presented to the SPRB, on average within 8.4 months. Sixty-six percent of the investigations were presented within the nine month standard. Another 14% (or a total of 80%) were presented within 12 months. Volume was less in 2006, but time-based performance was better that year, when 156 in-house probable cause investigations were presented to the SPRB, on average within 6.5 months, and in 2005 when the average was 7.4 months. The 2007 numbers reflect that staff concluded a number of the older, more complex investigations during the year, which was a positive development but adversely affected the applicable time standard.

### Presentation to SPRB *(Standard is 9 months)*



In 2007, staff continued to utilize revised LPRC rules to make a more personal and direct contact with individual LPRC investigators and to work with them on assigned matters. Most (16 of 18) LPRC investigations were completed timely under the rules (90 day deadline with one 60 day extension possible). Two were not completed and were called back so staff could complete them. The quality of LPRC reports was inconsistent in 2007, rated by staff as excellent or good in 69% of the investigations, but fair or poor in the remainder. No formal training conference for LPRC members was conducted in 2007; the small number of referrals did not justify the expense. However, staff updated the LPRC Handbook and distributed it to all LPRC members at the beginning of the year.

### **Outcome #2: Promptly explore settlement after formal proceedings are authorized and, if no settlement is likely, pursue litigation to successful conclusion.**

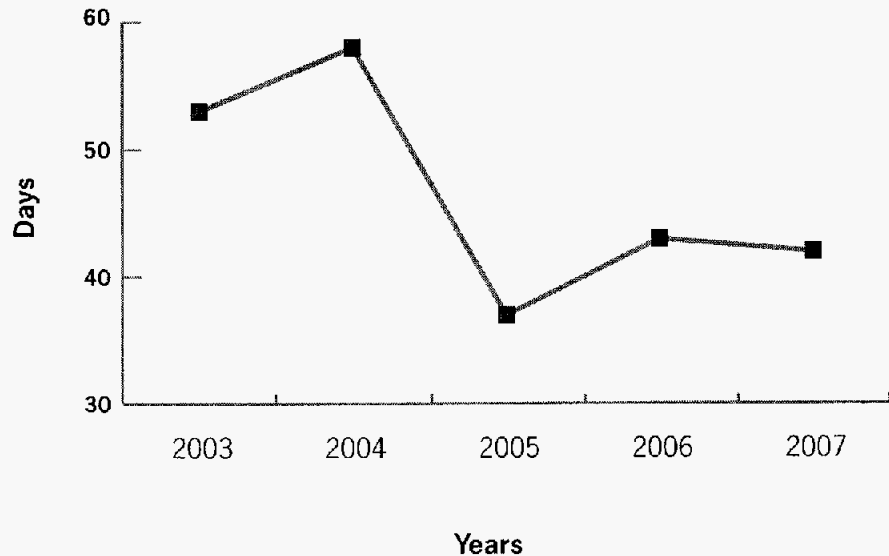
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The standard for this outcome is to resolve formal proceedings by settlement, resignation or diversion in 70% of the cases. In 2007, a total of 69 formal disciplinary proceedings became final. Of these, 47 (or 68%) were resolved by stipulation, resignation or diversion, just below the standard. This compares to 71% in 2006 and 81% in 2005. In part, the 2007 percentage reflects a higher than typical number of cases that went by default; accused lawyers failed to respond or appear, which prevented any stipulated outcome in those matters.

To expedite formal disciplinary proceedings, the standard provides that DCO should file formal complaints within 60 days after a case is authorized by the SPRB. In 2007, staff filed its formal complaints within an average of 42 days after cases were authorized. This compares with an average of 43 days in 2006, and 37 days in 2005. Eighty-two percent of the 2007 formal complaints were

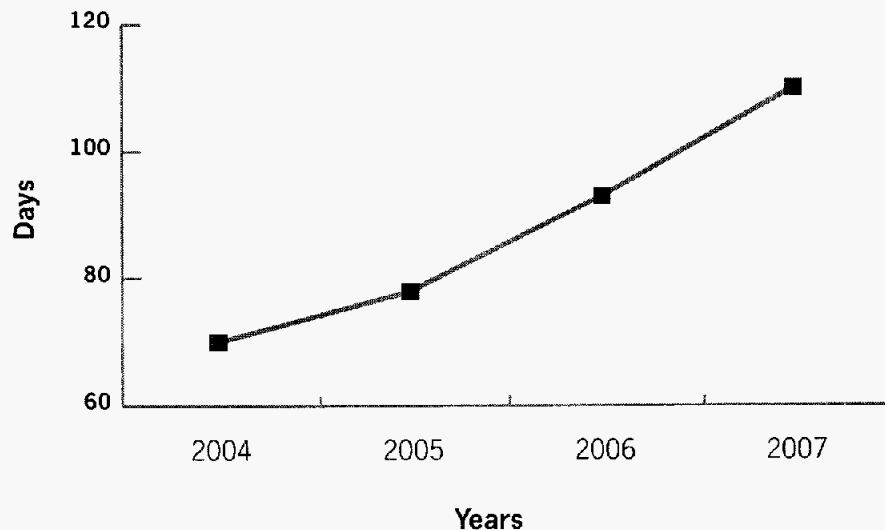
filed within the applicable time standard. Another 11% (or a total of 93%) were filed within 90 days after SPRB authorization.

### Filing of Formal Complaint *(Standard is 60 days)*



Trial panel appointments are to be requested within 120 days after a formal complaint is filed, subject to exceptions for complex or consolidated cases. In 2007, DCO staff requested panel appointments within 110 days on average after the formal complaint was filed. Sixty-five percent of all requests were made within this 120 day time standard. Another 6% (or a total of 71%) were made within 150 days. Time averages were better in 2006 (93 days) and 2005 (78 days). The average in 2007 was affected adversely by a number of cases in which the bar had difficulty obtaining service of process on the accused lawyers (they were out-of-state, out-of-country, could not be located) and the appointment of a panel does not occur until after service.

### Trial Panel Appointments *(Standard is 120 days)*



The next standard involves completing discovery and being prepared for trial on the first trial setting, with exceptions for cases involving complex discovery or pre-trial issues, consolidated proceedings, witness unavailability or scheduling circumstances beyond staff control. In 2007, there were 53 trial settings. Of these, the cases were either tried as scheduled or settled without the need for trial 34 times. Resets occurred at the request of the accused lawyer (and frequently over DCO's objection) nine times. An additional three settings were postponed because of trial panel member conflicts. Three trials became unnecessary because the lawyers resigned; two more because the SPRB reconsidered and decided only to admonish the lawyers. In only two cases were resets sought and granted at the bar's request: once because bar counsel had to have surgery, and once because the accused lawyer failed to provide timely discovery such that the bar could not prepare adequately for trial. These numbers are similar to those in 2006.

The final standard under this outcome provides that the bar should prevail, by stipulation, resignation, diversion or decision, in at least 90% of formal proceedings. In 2007, the bar prevailed in 69 of 69 proceedings (100%). (No discipline was imposed by the Supreme Court in one reciprocal discipline case, but this was the recommendation of the SPRB and therefore is counted in the "OSB prevailed" category.) This compares to 92.7% in 2006, and 97% in 2005.

**Outcome #3: Render highly effective and competent legal services, in terms of staff's knowledge of substantive and procedural law, written work product, preparedness and quality of advice or advocacy.**

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The outcome under this standard represents the quality of legal services rendered by DCO. Various surveys were conducted to obtain input in this regard. In the survey sent to volunteer bar counsel at the conclusion of each case in 2007, the vast majority reflected "excellent" ratings for staff in all categories (14 of 16 for pre-trial analysis and preparation, 13 of 15 for pre-trial work, 10 of 10 for trial memos, 15 of 16 for overall assistance), and the remainder were in the "good" category. The results were similar in 2006.

In addition, the SPRB rated DCO "5.0" (on a scale of 1-5) in questions posed to them regarding the work of Disciplinary Counsel and his staff. The areas covered were sending out agenda and documents in a timely fashion, organizing agenda items, providing the board with all relevant information, providing appropriate legal advice and counsel, exercising sound professional judgment, command of applicable rules and precedent, professional oversight of investigative and prosecutorial functions, and identification of long range issues. In 2007, responses from the Board of Governors survey were in the outstanding column. Questions asked involved accessibility, flexibility in accommodating schedules, professional courtesy, substantive and procedure legal knowledge, among others. Similar results were obtained in previous years from surveys of the SPRB and the BOG.

**Outcome #4: Process inactive transfers, resignations, reinstatements, pro hac vice admission applications, requests for good standing certificates and public records requests in a timely manner.**

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Regulatory Services staff performed timely despite a considerable workload in 2007. *Pro hac vice* applications were down a bit from the prior year but still significant. (398 in 2007, 412 in 2006, 467 in 2005). All were timely processed, even the substantial number that requested same day, or even while-you-wait service. Inactive, active emeritus and active pro bono transfers (418 for the year, up from 393 the prior year), resignations (112, up from 100 the prior year) and financial reinstatements (43, up from 13 the prior year) also were timely processed. Other reinstatement applications (from resigned or inactive status, from disciplinary suspensions or from MCLE suspensions) were timely processed for consideration by the Board of Governors, the Executive Director or the Supreme Court.

Staff turn-around time on public records requests (a total of 2,700 for the year) and scheduling in-person appointments to review public records was consistently prompt in 2007, despite added responsibilities for a major file retention and scanning initiative. The office also responded timely to requests for good standing certificates (712 for the year).

**Outcome#5: Monitor the availability of technological improvements that may benefit the program and present recommendations to the Executive Director as appropriate.**

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DCO staff continued to devote considerable time to IDT's on-going project to upgrade the discipline database. Staff met with outside contractors and program designers, provided specifications and evaluated programming drafts and designs. Staff also assisted with the final steps in the process of posting disciplinary history information on the bar's website, providing raw data and evaluating the posted information for accuracy. In addition, DCO provided design input and helped evaluate scanning software which now is being utilized to implement the retention policy applicable to disciplinary and membership records. Temporary staff was hired and trained on the scanning software and equipment in order to reduce the volume of paper records retained by the bar. Staff also developed the capability to provide responses to public records requests in an electronic format.

## General Counsel's Office

*General Counsel's Office primary objective is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interests of the Oregon State Bar. Secondary objectives are to administer the Client Assistance Office (see CAO Program Measures), the Client Security Fund and Fee Arbitration Programs effectively and efficiently, and to provide timely and accurate ethics assistance to members. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.*

### **Program Description**

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

General Counsel's Office administers the Client Security Fund, which reimburses clients who have suffered a loss of money or property through the dishonest conduct of their lawyers. The Fund is financed entirely by member assessments, recoveries from lawyers on whose behalf reimbursement has been made, and interest on invested funds. The maximum reimbursement per claim is \$50,000. A volunteer committee of bar members and a public member investigates and reviews all claims and forwards recommendations for payment to the Board of Governors.

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

General Counsel's Office provides ethics assistance to bar members. We respond to approximately 4,000 telephone requests, 400 e-mail requests, and 100 requests for advice letters each year. General Counsel and the Deputy General Counsel contribute a column on professional responsibility issues to each issue of the OSB *Bulletin* and make presentations at continuing legal education programs of the bar and other organizations. General Counsel's Office is liaison to the OSB Legal Ethics Committee, assisting in the development of formal opinions that are issued by the Board of Governors.

General Counsel's Office provides assistance to the Disciplinary Board and serves as the Disciplinary Board Clerk's Office, a central repository for all pleadings and official documents relating to formal disciplinary proceedings. The DB Clerk maintains the original record of pleadings and other documents

in disciplinary cases, tracks the progress of the proceedings through final disposition, provides periodic notices when events do not occur within the time frame set out in the Bar Rules of Procedure, and assists with the logistics of arranging hearings.

General Counsel's Office provides legal advice and staff support to the Unlawful Practice of Law Committee. The UPL Committee is responsible for investigating complaints regarding the unlawful practice of law and either resolving the complaint or making recommendations to the BOG for litigation to enjoin the unlawful practice of law. Prevention is also a focus of committee activity.

### **Volunteers/Partnerships**

General Counsel's Office partners with members and others to fulfill its responsibilities. Although on a smaller scale than in the past, OSB members continue to be willing to represent the bar on a *pro bono* or discounted fee basis in the more complex non-disciplinary litigation in which the bar is involved. The bar also receives legal representation on employment and some other non-litigation matters either *pro bono* or at reduced fees. Members of the Client Security Fund, Legal Ethics and UPL Committees are all volunteers, including the public members; the same is true of the panelists for the Fee Arbitration Program.

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

GCO continued to provide timely, appropriate and helpful advice to the BOG and the Executive Director on legal and policy issues facing the Bar in 2007. One significant legal matter continues but is expected to be resolved in 2008 with no adverse consequences to the bar. Otherwise, non-disciplinary litigation remains infrequent and of minor significance. Outcomes during 2007 were positive and BOG satisfaction with the bar's handling of its litigation matters appears to be good.

GCO provided helpful background and other information to assist in BOG analysis and decision-making on various governance matters including the resolution of the membership challenge to the elimination of bias MCLE requirement, questions about the primacy of the membership over the HOD, development of guidelines for the bar's more active role in partisan political issues, and assuring the minority community of the BOG's continuing support for the Affirmative Action Program.

General Counsel and Deputy General Counsel worked closely with the HR Manager and the ED to offer effective and timely advice on personnel matters; no new employment claims arose in 2007 and all workers' compensation and unemployment claims were handled without difficulties. GCO also responded promptly to requests from department managers on legal issues relating to their departments and programs.



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

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The Fee Arbitration Program continues to be an effective and efficient process for resolution of fee disputes, despite the fact that interest in and utilization of the program remains at a modest level. GCO administrative staff is well-trained and able to administer the program with only minimum oversight. In 2007, we received 250 requests for information, from which 99 petitions for arbitration were filed. There was no response to 20 of the petitions and 16 were expressly declined. Nine matters were resolved prior to hearing and 35 went to hearing in 2007. The attorney received a full award in 13 cases, the client prevailed in 7 cases, and the fee was reduced in 13 cases (two cases were resolved without an award). Fourteen matters were pending at the end of the year. Surveys continue to reflect a high degree of satisfaction among parties whose claims were successful, while unsuccessful parties question the fairness of the process. We continue to hear frustration from clients that attorneys are not required to participate and frequently don't. Arbitrators have unanimously high praise for the program and often provide helpful suggestions for enhancing the process. Notwithstanding the underutilization of the program, we are able to recruit an adequate pool of qualified arbitrators, including public members in every judicial district. GCO continues to explore ways to increase public knowledge about the program, as well as ways to increase lawyer participation.

**Outcome #3: Resolve CSF claims promptly in a fair and consistent manner; maintain financial health of fund.**

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Client Security Fund activity increased significantly in 2007, with twice the number of new claims received than in 2006. Claim resolution generally takes approximately six months, due in part to the committee's alternate-month meeting schedule and coordination with BOG meetings for final approval. The CSF began 2007 with nine claims pending and another 28 were filed during the year. Of those, 11 were paid and eight were denied, and 17 were carried over into 2008. The total amount of the 11 claims paid in 2007 was \$107,789, more than double the \$46,311 reimbursed in 2006, but significantly less than the largest payout in recent years: \$253,553 in 2005. Collection of receivables was steady but uneventful, totaling approximately \$5,000.

Interest in serving on the CSF Committee remains high and members are enthusiastic about and devoted to the importance of their work. While the CSF has not conducted any formal surveys, anecdotal information reflects that claimants who are reimbursed are always appreciative. Occasional thank-you letters also indicate that reimbursement by the Fund restored the claimant's faith in the legal system and the profession. The Committee spent considerable time in 2007 enhancing the information on the web; the Committee continues to explore ideas for publicizing the Fund to members and to the public.

**Outcome #4: Provide timely, accurate and helpful ethics assistance to members.**

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The ethics “helpline” continues to be one of the Bar’s most highly-valued services and a significant activity of General Counsel’s Office. Most informal advice is given over the telephone or by e-mail. We receive only a handful of requests for advice letters and we have taken the view that an e-mail response satisfies the “writing” requirement in RPC 8.6. Calls are nearly always returned the same day and written responses are nearly always provided within three business days. Anecdotal information indicates that member satisfaction with our ethics assistance is very high and General Counsel’s service on the ABA Standing Committee on Ethics and Professional Responsibility contributes to the respect members have for our ethics counsel. Both General Counsel and Deputy General Counsel made a variety of CLE presentations on a wide range of professional responsibility topics to a wide range of audiences. General Counsel is working with an Advertising Task Force to study and suggest appropriate revisions to the rules governing lawyer advertising.

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

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The Disciplinary Board Clerk function is now a well-settled aspect of disciplinary proceedings, and while mature, continues to be enhanced by regular suggestions from trial panel chairs and DCO. The DB Clerk works closely and effectively with DCO staff and attorneys to ensure that information is provided timely and that records are accurate. The DB Clerk also assists with the scheduling of hearings and providing other administrative assistance to trial panels, and has streamlined and improved the organization of records. While it is not clear that the creation of a DB Clerk has had any effect on the time for resolving disciplinary matters, it has had the salutary effect of creating a neutral body for the maintenance of the records.

**Outcome #6: Provide competent and prompt support to the Unlawful Practice of Law Committee in the investigation and litigation of UPL matters.**

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Under the guidance of Deputy General Counsel, the UPL Committee is functioning at a much higher level both administratively and substantively. Process and procedure enhancements have been implemented, including recognition of the need for executive session on certain issues and for rigorous analysis of matters recommended for prosecution. Bringing UPL into GCO has exposed it to new ideas and energy which ensure that committee resources are utilized to the best possible end.

We continue to be able to recruit lawyers to handle UPL prosecutions on a *pro bono* basis and Deputy General Counsel has taken a more active role in some matters. The committee continues to see more claims involving out-of-state lawyers and GCO is working with DCO and the BBX to determine the best approach for handling those matters. Committee participation can be uneven at times, but the time commitment required for UPL investigations and monthly meetings is significant. Nevertheless, interest in serving on the UPL Committee continues to be high and the committee's work is enhanced by effective orientation and training organized by staff.

## Legal Services Program

*The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 to fund an integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians.*

### **Program Description**

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 establish a Legal Services Program (LSP) (ORS 9.572 to 9.578). Standards and Guidelines were created by the Civil Legal Services Task Force in 1997, and in 1998 a Legal Services Program Committee was established to provide ongoing oversight, evaluation and support to legal services providers to ensure compliance with the Standards and Guidelines and to further the program's goals.

Besides conducting peer reviews and facilitating integration of services among the legal services providers, LSP works with other funding sources and organizations to promote statewide collaboration and to improve access to civil justice in Oregon. A large part of the collaborative effort is with the private bar through the Campaign for Equal Justice. The program also provides oversight and coordination for the bar's Pro Bono Program and promotes the OSB Pro Bono Aspirational Standard.

In 2005, the Access to Justice Committee assessed the impact of educational debt on the ability of law graduates to enter and remain in public interest jobs. This assessment led the Committee to conclude that the Oregon State Bar should develop a statewide Loan Repayment Assistance Program (LRAP) to assist Oregon lawyers to pay their educational debt while working in public interest jobs in Oregon. LSP staff supported the BOG's Access to Justice Committee in developing the LRAP policies and guidelines in 2006 and awarded the first forgivable loans in 2007. In 2008 the LRAP Program will award six loans with each recipient entitled to obtain a loan for three consecutive years.

The LSP Administrator continues in the dual role of Oregon Law Foundation Executive Director supporting the collaborative efforts with other legal services funding sources. The Pro Bono Developer is also responsible for developing and administering the LRAP.

### **Volunteers/Partnerships**

#### *Volunteers:*

The Legal Services Program Committee: 7 Attorneys, 2 Public Members.

Pro Bono Committee: 15 Attorneys

LRAP Advisory Board: 9 representatives of public service law

### *Partnerships:*

The Program works closely with all of the funded legal aid programs, the Campaign for Equal Justice, the Oregon Law Foundation, and the Multnomah Bar Association.

## **Outcome #1: Improve Access to Legal Services for low-income Oregonians.**

### **Filing Fees**

During the 2007 Legislative Session, it was decided that the legal aid programs should get more funding and Senate Bill 5549 Section 36 was enacted. Section 36 appropriated to the Judicial Department, out of the General Fund, the amount of \$700,000, which is to be forwarded as a one-time grant to the OSB for legal aid services. House Bill 2331 was also enacted which increases the filing fee amounts going to legal aid starting on July 1, 2009. This increase in filing fee will increase revenue to legal aid by \$700,000 per biennium. The Oregon Law Foundation continued to persuade a number of banks to increase the interest rates paid by financial institutions through the IOLTA program tripling IOLTA revenue from 2004 levels. Because of the increased revenue in 2007 the OLF was able to double the grant awarded to the Association of Legal Aid in 2007 from 2004 levels and Legal Aid Services of Oregon (LASO) reopened the Klamath Falls office in 2007, filling a gap in Oregon's statewide legal service system.

Filing fees distributed to legal aid programs totaled over \$4.8 million in 2007 (does not include the \$700,000 general fund appropriation), \$4.5 million in 2006, \$4 million in 2005, \$3.8 million in 2004, and \$3 million in 2003. *Pro hac vice* distributions were \$99,500 in 2007, \$100,000 in 2006, \$116,750 in 2005, \$93,250 in 2004 and \$59,250 in 2003.

### **Delivery System**

The LSP continues to work with advocacy groups to form an integrated statewide delivery system. This is accomplished by meeting with the legal service providers, coordinating with other funding sources such as the Campaign for Equal Justice and Oregon Law Foundation and staffing the bar's Access to Justice Committee as well as working on increasing an awareness of pro bono with the Oregon Bar.

The LSP Administrator participated in statewide strategic planning process with the legal service providers in Oregon. The purpose of the strategic planning process was to make recommendations to distribute or redistribute existing and new funding to provide relative equal access to legal services for low-income clients regardless of where they live or their status.

## **Pro Bono**

The Pro Bono Committee pursued several initiatives in 2007 to enhance Oregon's pro bono culture including developing interactive resource materials for law firms to create a pro bono policy and amending Admissions Rules to allow house counsel licensed in other states to engage in pro bono work through an OSB Certified Pro Bono Program. The third Annual Pro Bono Fair featured two free CLE programs, a pro bono opportunities information fair, and the ONLD Pro Bono Challenge Awards Ceremony. Just over 13% of lawyers reported pro bono hours for 2006. 9.2% reported pro bono hours for 2007.

### **Outcome #2: Assure that standards are met and quality services are being provided.**

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A peer review was conducted for Legal Aid Services of Oregon (LASO). LASO is the largest provider of legal services in the state. The peer review was a considerable undertaking utilizing 13 volunteers and visiting seven LASO offices statewide. The volunteers assisted with all aspects of the peer review process. This included onsite reviews, contacting community members, and a document review. It was clear from the peer review that LASO staff understands the principles of the bar's LSP Standards and Guidelines. LASO's organizational values, priority-setting processes, and advocacy methods are in line with these principles. LASO's priority-setting process is centered on the needs of its client community and staff is committed to protecting the individual rights of low income clients by implementing a broad range of legal advocacy approaches.

Staff continued to work with Columbia County Legal Services (CCLA) in 2007. On September 30, 2007, CCLA submitted to the LSP Committee a document called *Columbia County Legal Aid Response to Compliance Concerns of Legal Services Program Committee of the Oregon State Bar*. The report was in response to the LSP Committee meeting of January 22, 2007, in which the LSP Committee directed CCLA to (1) move forward with the service plan as submitted by CCLA on November 30, 2006, (2) conduct a thorough assessment of client need, and (3) set priorities for client services. The committee accepted CCLA's Report as submitted finding CCLA in compliance with the LSP Standards and Guidelines. All other programs are in compliance.

### **Outcome #3: Assure that legal services are being delivered efficiently and cost-effectively.**

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In 2007, legal services programs continue to provide excellent service to low-income Oregonians. Having the LSP Administrator also in the role of executive director for the Oregon Law Foundation allows for an understanding of the delivery of civil legal services to the poor that benefits both funders. The LSP peer reviews are also used by the Oregon Law Foundation eliminating the need for two monitoring bodies. Partnering with other like-minded entities

such as the ONLD Pro Bono Challenge and the MBA Young Lawyers Pro Bono Committee ensures lack of duplication and increases in efficiencies.

## **Loan Assistance Repayment Program**

*The Oregon State Bar recognizes that substantial educational debt can create a financial barrier which prevents lawyers from pursuing or continuing careers in public service law. The Oregon State Bar's program of loan repayment assistance is intended to reduce that barrier for these economically-disadvantaged lawyers, thereby making public service employment more feasible.*

### **Outcome #1: Develop and revise sound policies and guidelines for the OSB LRAP**

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The ATJ Committee spent over a year developing the LRAP Policies and Guidelines, including research on comparable programs nationwide and consultation with other groups with LRAP experience, including the University of Oregon Law School, Lewis and Clark Law School, the Washington State Bar and the American Bar Association. The proposed LRAP Policies and Guidelines were modeled closely after the Washington State Bar LRAP, which was developed over a period of six years with a wealth of due diligence. The BOG approved the LRAP Policies and Guidelines in November, 2006. After undergoing the application and selection process in the spring of 2007, the LRAP committee evaluated the program policies and suggested certain changes. The changes were finalized and made part of the policies in December 2007.

### **Outcome #2: Assist civil and criminal lawyers in paying their educational debt while working in public interest jobs in Oregon.**

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The Access to Justice Committee sought recommendations for members of the LRAP Advisory Committee in December, 2006. The LRAP Advisory Committee was appointed by the BOG in February, 2007. The program received 58 applications in 2007, with the applicants having an average salary of \$38,576 and an average outstanding debt of \$99,144. The committee chose seven participants using criteria such as geographical and ethnic diversity, type of work, financial need, and educational debt to income ratio, extraordinary personal expenses, and assistance from other loan repayment assistance programs. Each participant will receive \$5,000 per year for three years. The LRAP Advisory Committee will select six new recipients annually.

## Member Services Department

*The goal of Member Services is to provide excellent service to its internal and external customers by promoting an accountable, client-focused culture.*

### **Program Description**

Member Services provides services to Oregon State Bar member groups such as sections, committees, local bar associations, and specialty bars. These services include sending meeting notices, maintaining rosters, electronic communications, bar liaison network, bar leadership conference, appointments process, and annual reports. The department is responsible for Oregon State Bar judicial preference polls and elections. The member and public service programs of the Oregon New Lawyers Division (ONLD) are managed by the department. The Oregon State Bar Leadership College is administered by the department. The department administers the affinity member Visa Card and other member benefit related programs.

In August 2007 the Affirmative Action Program (AAP) of the Oregon State Bar was placed in the Member Services Department. The AAP has a goal to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, to educate attorneys about the cultural richness and diversity of the clients they serve and to remove barriers to justice. The AAP outcomes and measures for 2007 are detailed separately from the other Member Services programs.

### **Program Resources**

**Volunteers:** The foundation of the many programs in Member Services is built upon volunteer hours and expertise. Approximately 600 OSB members serve on the 38 section Executive Committees or as members of 21 bar committees. In addition, approximately 300 members of the ONLD volunteer for division programs and activities.

**Partnerships:** The department coordinates with the Governor's office on judicial and appellate selection processes. The Classroom Law Project and the ONLD work together on the Mock Trials program. The Multnomah Bar Young Lawyers Section, Legal Aid, Oregon Law Center, and OSB Pro Bono Committee work with the ONLD on projects such as the Pro Bono Fair and Pro Bono Challenge. The ONLD also works with the Federal Emergency Management Agency to provide legal assistance to victims of disasters in Oregon. The affinity member Visa Card program partners with Bank of America and the department works with JBL&K on other member benefit programs.



**Outcome #1: Assure that the internal and external customers of Member Services are satisfied with services received.**

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In 2007, a standard of 4.0 (on a scale of 1-5) to measure the satisfaction of Member Services Department customers was exceeded with ratings of 4.6 from section officers; 4.7 from committee officers; 4.5 for bar liaison services to sections ; 4.6 from Conference of Bar Leaders participants; 4.8 from local bar presidents; and 5.0 for Law Day support. A rating of 5.0 was received from the Oregon New Lawyers Division for staff support and administration.

Accomplishments for 2007 included: continuation of the Leadership College featuring joint sessions with the ONLD and the BOG. One Fellow wrote “The College continues to be inspiring. Thank you for including us in the social hour and the BOG dinner. It is a fabulous opportunity for us to meet and get to know the BOG members”; HOD elections with 10,673 ballots sent electronically and 2,231 paper ballots resulting in a significant cost savings; the concept of episodic volunteerism utilized in the volunteer opportunity process; ONLD response to a FEMA alert recruiting lawyers in Regions 4, 5, and 6 to assist flood victims; development of the New Lawyers Resource List, an online listing of new lawyers volunteering to serve as a resource to law students; a Super Saturday CLE event that had 91 registrants (the most to date) and 18 speakers within a format of 15 sessions that was held at the bar center resulting in a \$5,000 savings; the Pro Bono Fair and ONLD Pro Bono Challenge; creation of the Past Presidents’ Council; standardization of the format for the 2007 Annual Committee and Section Reports; and Constitution Day events.

BOG Committees: Member Services works with the BOG Member Services Committee, Appointments Committee, Public Member Selection Committee and the Appellate Screening Committee. Issues that were addressed in 2007 include member communications; alternative models for volunteerism in the bar; recruitment for the BOG and HOD; judicial selection; appointments to bar committees, Past Presidents’ Council; HOD/BOG communication; and HOD reimbursement.

**Outcome #2: Assure that database functions result in timely and accurate information.**

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In 2007, the accuracy of over 195 committee meeting notices, over 250 section executive committee meeting notices, hundreds of broadcast e-mails, maintenance of the list serves (over 70), local bar presidents list, and the monthly update of the CLE Clearinghouse, was rated at 4.4 from section officers and 4.7 from committees. Efforts continued to increase the use of e-mail communication to save on expenses. Historical ratings can be seen in the table at the end of this section.

**Outcome #3: Assure deadlines are met.**

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In 2007, committee and section deadlines were met by initial notices, reminders, and a checklist for bar liaisons as well as listings in the Bar Leaders Handbook. Deadlines for the appointments process, elections (printing and mailing), and announcements were met as has been the practice (see table for more detailed information).

**Outcome #4: Assure successful distribution and tabulation of polls and elections; continue improvements in working relationship with Governor's office and local bar associations in the conduct of judicial polls and appellate selection process.**

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In 2007, all elections were conducted in a timely manner. Judicial preference polls were conducted in the primary and general elections. Online elections were utilized for all elections and continue to result in savings. A BOG special election was held due to the resignation of a member of the Board. The technical processes for online voting continue to be refined.

**PROGRAM MEASUREMENTS 2007**

*Member Services Department Chart*

<b>Customer</b>	<b>Service Quantities &amp; Ratings</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>
Sections	# of Sections reporting	19	19	18	28
	# Executive Meeting Notices sent	250+	250+	250+	250+
	% timely	98	98	97	97
	Rating accuracy of information	4.4	4.5	4.5	4.3
	Rating timely notices	4.7	4.6	4.6	4.5
	Rating courtesy of staff	4.9	4.8	4.8	4.7
Committees	# of committees reporting	15	11	8	11
	# of meeting notices sent	195+	195+	195+	195+
	% timely	96	99	96	96
	Rating accuracy of information	4.7	4.3	4.4	4.8
	Rating timely info/notice	4.6	4.5	4.8	4.8
	Rating courtesy	4.8	4.8	4.7	4.8
Local Bars	Rating Bar Leaders Conf.	4.8	4.8	4.6	4.7
	Rating overall satisfaction	4.8	5.0	5.0	5.0
	Increase in services	-	1%	2%	15%
	Rating Law Day Services	5.0	5.0	5.0	5.0

**PROGRAM MEASUREMENTS 2007** *continued*

<b>Customer</b>	<b>Service Quantities &amp; Ratings</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>
Sections and Committees Effective with 2005 appraisal process (22 responded)	Liaison assignments working well	22 yes		22 yes	
		21 yes		27 yes	
	Continue with assignment?	1 no		1 no	
		2 yes		4 yes	
	Additional liaison responsibility?	19 no		24 no	
		3 yes		2 yes	
	More training needed?	18 no		26 no	
	Getting enough information?	22 yes		28 yes	
ONLD	% Administrative time	30	30	30	30
	% Staff time	50	50	50	50
	# Exec. Committee Mtgs.	11	11	11	11
	Satisfaction with management	5.0	5.0	5.0	5.0
	Clerical support	5.0	5.0	5.0	5.0
	Knowledge of OSB	5.0	5.0	5.0	5.0
	Follow-through & completion	5.0	5.0	5.0	5.0
	Subcommittee support & info	5.0	5.0	5.0	5.0

# Minimum Continuing Legal Education

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

## **Program Description**

The MCLE Rules promulgated by the Supreme Court delegate oversight and administration of the MCLE program to the OSB Board of Governors. The BOG is charged with formulating new or amended MCLE Rules for the Court's approval; the BOG is also authorized to adopt regulations to implement the Rules. The MCLE Rules generally require all active members of the bar to complete 45 hours of continuing legal education every three years. Six of the hours must be in legal ethics or professionalism, including one hour of training in mandatory child abuse reporting. Members are also required to complete three hours of training on elimination of bias during each reporting period. New admittees are also generally required to include ten hours of practical skills training.

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

## **Volunteers/Partnerships**

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

## **Outcome #1: Assure prompt and efficient processing of compliance reports and performance of annual audit.**

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Processing in 2007 of the 2006 compliance reports continued to be prompt and efficient. There was less confusion surrounding the elimination of bias credit requirement. The compliance reports received in 2007 included a transcript reflecting activities for the entire three year reporting period, which many members appreciated. MCLE staff continues to receive comments regarding the helpful and courteous assistance provided. The audit was completed by the end of May 2007.

The 2007 audit reflected nearly 100% compliance. 85% of reports received were processed in five days or less, which was the same outcome as in 2006. Anecdotally, members are generally satisfied with the program.

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

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OSB's MCLE Rules are among the most flexible and generous in the country, allowing for a wide range of programs and accredited activities from which members can meet their requirement. In 2007, over 5,700 programs were accredited, including many online programs. Staff received many positive comments from members about the ability to complete credit requirements with online programs. Nineteen members were suspended in 2007 for non-compliance for the reporting period ending 12/31/2006, a rate (.004 of the reporting group) that has remained constant for the past few years. The standard for this outcome is less than 1% of the reporting group suspended for non-compliance.

2007—19 members suspended for noncompliance (.004%)

2006—19 members suspended for noncompliance (.004%)

2005—16 members suspended for noncompliance (.004%)

The regulation change allowing members to file compliance reports via fax or e-mail has been very popular among bar members. As of early 2007, members may review and print their compliance reports via the website. Staff continues to refine the compliance report, instructions and other informational materials to assist members in meeting their requirements.

# Public Affairs Department

*The goal of the Public Affairs Program is to apply the public policy knowledge and experience of the legal profession and program staff to the public good. This work is achieved by advising government officials, responding to issues affecting the justice system, proposing legislation for law improvement, and advocating on those matters that affect the legal profession and the public it serves.*

## **Program Description**

The program provides information and assistance to bar groups, bar members, and government bodies on a wide variety of bar related legislation and public policy issues, with special emphasis on current legal system problems and needs of the profession. The law improvement program works primarily with sections and committees on law improvement projects, and identifies responses to significant legal trends that affect the practice of law and the bar. The Public Affairs Committee of the Board of Governors oversees the special projects and other work of the program. It also recommends positions on public policy issues affecting the legal profession and bar governance.

## **Volunteers/Partnerships**

**Volunteers:** In addition to the six board members on the Public Affairs Committee, each biennium the program works with several hundred lawyer volunteers—the vast majority are from bar sections and committees working on law improvement projects.

**Partnerships:** Working relationships occur internally with most other OSB departments and generally every section, committee, and task force of the bar. Outside coalition building is an ongoing activity, which currently emphasizes government leaders, business interest groups, political candidates, and local legal communities.

**Outcome #1: Ensure successful and high quality work on public policy projects and problems, including law improvement. (Development and enactment cycles occur in alternate years and require ongoing involvement with the OSB Public Affairs Committee and numerous bar groups.)**

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In legislative years, Public Affairs works closely with the Public Affairs Committee to promote the enactment of the bar's law improvement package and policy priorities. The 2007 legislative session ran from when it convened on January 8 to its adjournment on June 28. Since adjournment, staff has been monitoring interim activities, preparing for the 2008 "Special" Supplemental Session and has begun to work with sections and committees to develop legislative proposals for the 2009 session.

In the 2007 legislative session, the highest priorities for the Bar were to increase judicial salaries; increase indigent defense salaries; address court facilities; and

ensure successful passage of the bar's package of law improvement proposals. The first priority was to increase judicial salaries. Judges' salaries had not been increased since 2002 and were among the lowest in the nation. A coalition of judges, business interests and the bar was successful in gaining a judicial salary increase of over 19% by mid-2008. In conjunction with the salary increase, the bar supported passage of the Public Officials Compensation Commission which will recommend salary levels for all elected public officials, including judges, to ensure a regular and routine review of salary levels.

The second priority was to increase indigent defense salaries. The base indigent defense pay rate had not been increased since 1991. Bar staff worked with the Public Defense Services Commission and the Oregon Criminal Defense Lawyers Association to gain a small, but significant, increase in pay for indigent defense practitioners.

The third priority was to address the adequacy of court facilities throughout the state. Many of Oregon's courthouses – including those in several of the most populous counties – are dangerous, inadequate and in need of repair or outright replacement. A coalition of the courts, the counties, and the bar formed in 2006 successfully lobbied the legislature to establish and fund an interim committee to assess all courthouses, recommend standards, and develop a proposal for dealing with needed improvements are made. Additionally, the bar co-sponsored legislation with the courts that will lay the groundwork for an e-filing system in Oregon.

The fourth priority for the bar was to enact the 2007 package of law improvement proposals brought forward from the board, sections and committees. These measures are generally designed to make the legal system function better, hence the term "law improvement." Of the 25 proposals introduced, four originated with the BOG itself, and 21 were from bar groups. 22 of the 25 bills were enacted into law.

Another priority in 2007 that developed after session ended was a House of Delegates resolution submitted by the Board of Governors to oppose three initiative petitions in circulation for the November 2008 ballot. Initiative petition 52 would make designation of incumbency unavailable to a judge in the first election after appointment; initiative petition 51 would substantially limit contingent fees; and initiative petition 53 would provide a new standard for imposition of sanctions for frivolous cases. Public Affairs will be working with the BOG to develop appropriate strategies and materials if one or more of these measures are approved for the ballot.

The strategy to oppose these ballot measures will be similar to the approach in 2006, when the bar took an active role in successful efforts to defeat Constitutional Amendment 40, which would have required the election of appellate judges by district. Both the Board of Governors (BOG) and the House of Delegates (HOD) passed resolutions to oppose the measure. Staff worked closely with the Board of Governors in developing materials to disseminate to the public in opposition to the measure's passage. Arguments against the measure were posted on the OSB website and placed in the Voter's Pamphlet.

Staff also worked on a draft letter that bar members could send to clients urging their opposition to the measure; this was sent to the membership with a cover letter from individual BOG members.

**Outcome #2: Inform customer groups while encouraging participation in the governmental process.**

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During the session, the Public Affairs staff acted as a conduit for information between the legislature and interested bar groups, and as the point of contact between bar groups and the Public Affairs Committee. Members representing the bar or specific sections supported or opposed a broad range of bills brought forward by others and lent expertise to improve measures that the legislature considered. Bar groups monitored approximately 200 proposals and took positions or commented on over 75.

In 2007, the department provided a number of training opportunities for bar volunteers. At the beginning of the session, Public Affairs conducted a Legislative Tips training workshop with key legislators participating. Working with the OSB Leadership College, Public Affairs organized a program that showcased both the bar's priorities and lawyers as leaders in the legislative process. Public Affairs also organized a Day at the Capitol, drawing lawyers from throughout the state to Salem to speak with legislators about bar priority issues. Ratings for all three programs were excellent or very good. Comments received indicated satisfaction with Public Affairs programming stating that the program was proactive and effective and that staff was organized and professional. In addition, Public Affairs coordinated bar volunteers to appear at meetings of the Ways and Means Committee held throughout the state in support of an increase in compensation for judges.

Since the end of the session, the Public Affairs Department has worked with volunteers, editors and other departments to produce the *2007 Legislation Highlights* book and to organize a Legislative Session Review CLE in October for which over 100 lawyers registered. A dinner with the Joint Judiciary Committee and past President's Council followed the CLE Seminar with about 45 attendees. To prepare for both the "Supplemental Session" scheduled for the month of February, 2008 and the next regular session which begins in January, 2009, Public Affairs staff has met with most bar groups to discuss the process by which a group may submit legislative proposals for bar. Staff will continue to monitor the work of a number of interim legislative committees, and bar-related work groups, including the Interim Committee on Court Facilities and Court Technology, both Judiciary Committees as well as the Council on Court Procedures, and the Oregon Law Commission.

The department continues to publish its newsletter – *The Capitol Insider* – on a regular basis twelve times a year via broadcast e-mail to bar leaders throughout the state, an increase from eight editions published in 2006. Reader feedback continues to be positive with readership numbers increasing. The website continues to improve and provides a user-friendly resource for bar members and the public.



**Outcome #3: Assure operational efficiency.**

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Improvements in program operations continue through the use of technology, e-mail and the bar's website, as well as other record retention and electronic data management tools. Further modifications to the Access bill tracking database and early alert system have continued to improve and will continue to achieve cost and program efficiencies for the bar.

## Referral and Information Services

*Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.*

### Program Description

The **Lawyer Referral Service (LRS)** began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. Approximately 1,300 OSB members participate as LRS panel attorneys. Referral and Information Services (RIS) also offers several other programs that help both the people and the lawyers of Oregon. **Modest Means** is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes and criminal defense. **Problem Solvers** is a pro bono program offering legal advice for youth ages 11-17. **Lawyer to Lawyer** connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. **Military Assistance Panel** connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

### **Outcome #1: Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner.**

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2007 saw significant personnel changes in RIS, which affected the outcomes of all Program Measures. RIS hired a Spanish-speaking RIS Assistant in 2007, filling a long-vacant position. However, another RIS Assistant resigned, as did the RIS Administrator (who took the position as Director of Admissions). RIS functioned without an Administrator for approximately six weeks until the new Administrator started in July. RIS filled the non-Spanish-speaking RIS Assistant position at the very end of 2007. An additional 0.5 FTE RIS staff allocation in 2008 will help meet increasing call volume and improve customer service.

Although ACD call-tracking software was installed in 2006, the software began malfunctioning in 2007. In turn, RIS could not rely upon the software to analyze call patterns, measure average call queue hold times, individual staff performance, nor develop call volume-centric staffing. With the impending move of the Bar Center in late 2007/early 2008, and the decision to buy an entirely new call system and software for the new bar center, IDT and RIS agreed that valuable staff time and expense would be misplaced if devoted to the extensive troubleshooting necessary to fix the ACD software. Instead, IDT and RIS worked together in developing a needs analysis for the new call system and software that would surpass the malfunctioning ACD product's capabilities. In turn, with full implementation of the new system and software, RIS anticipates being able to closely monitor the foregoing metrics in 2008.

RIS focused on improving staff customer service and client-screening skills in 2007. RIS staff participated in both formal and informal training seminars. Substantive training included issue-spotting and topical overview of discrete areas, such as Probate, Estate Planning, Criminal Law and Criminal Procedure. Communications and customer service training included Universe “Short-cuts” training, individual coaching, and group seminars, such as “Upset or Irate Callers: Strategies for Managing the Emotional Call,” a training of common interest to and attended by Client Assistance Office (CAO) and Reception staff. In addition, the RIS Administrator assisted in CAO staff training, improving call triage, and overall customer service for both Referral & Information Services and CAO. These training seminars helped improve staff skills in issue-spotting, matching callers with appropriate LRS panel attorneys, and communicating with members and the public. Due to RIS personnel changes and variance in individual training needs, the new RIS Administrator took the approach of focusing on individual customer service and triage coaching in lieu of multiple, formal training seminars.

RIS is, in effect, an in-house call center: receiving multi-lingual LRS, Modest Means, Military Assistance Panel, and Problem Solvers calls from the public; and Lawyer to Lawyer and attorney registration calls from members. Both the past and present RIS Administrators worked with IDT and other supervisors to ensure that RIS needs received appropriate priority and weight when prospective call systems and software were evaluated. In 2008, RIS will be able to augment its prior procedures and introduce separate English and Spanish call queues and on-hold messages; fully analyze call patterns and average call queue hold times; better assess individual staff performance; develop call volume-centric staffing; and thus provide better customer service to the public and members alike.

## **Outcome #2: Ensure fiscal integrity and consistent program operations.**

RIS sought to increase departmental revenue through implementation of a new LRS fee structure (which the Board of Governors approved in 2006 for RIS program year 2007). The RIS 2007 Budget predicted \$135,000 in attorney registration revenue. However, implementation of the new, slightly higher fee structure – the first increase in LRS fees to lawyers in 22 years – resulted in a lower number of attorney registrations and somewhat lower than expected revenue (\$122,730 as of November 30, 2007). The RIS 2008 budget predicts more modest year-over-year increases in revenue (\$123,000 for 2008), and RIS intends to increase attorney-registrations via an increase in online and in-person marketing efforts.

RIS continued efforts to promote the availability of referral notification by e-mail to program panelists. Sixty-eight percent panelists now opt to receive electronic notifications in lieu of fax or mail notifications. Such efforts directly decrease costs – paper use, staff time, and postage. Since postage rates increased in 2007, RIS will modulate to an all electronic notification system by assessing increased fees for mail notification.

**Outcome #3: Increase member and public awareness of RIS programs.**

RIS continues outreach efforts by maintaining a presence at events, such as the Professional Liability Fund's 3-day conference *Learning the Ropes*; including information in new admittee information packets; advertising in the Bulletin and Bar News; and distributing Lawyer Referral Service business cards to the courts and Legal Aid offices statewide. In addition, RIS responded quickly to the needs of six counties declared disaster areas by coordinating efforts with FEMA and the ABA and Oregon New Lawyers Division, implementing a disaster legal services panel, and recruiting volunteer attorneys to provide pro bono legal services to flood victims.

Problem Solvers referrals increased by 52 %, while Military Assistance Panel referrals decreased by 45%. Attorney participation levels remained constant in both programs. Due to changes in RIS and Communications marketing and design personnel, and preparations for the move to the new bar center, Problem Solvers and Military Assistance Panel public awareness campaign ideas were postponed. The delay, however, has proved to be fruitful. The Oregon New Lawyers Division has since indicated that it will assist with the Problem Solvers pilot program and roll-out in 2008.

# Support Services

*Support Services serve OSB staff and departments directly and its membership and the public indirectly. The day-to-day support services it provides are critical to the organization's operational success and to its ability to fulfill its functions as a professional organization, as a provider of assistance to the public, and as a regulatory agency.*

## **Program Description**

Support Services include a comprehensive range of functions:

**Accounting and Finance** services include accounts payable, accounts receivable, order processing, payroll, financial statement preparation, budgeting, membership dues billing and collections, and similar services to all sections.

**Design Center** provides a wide range of print and web design functions for bar departments, as well as bar sections. The Design Center administers the bar's website and produces the annual Membership Directory.

**Distribution Center** manages the bar's inventory of printed materials and office supplies. It also provides shipping, copying and delivery services, each year sending out almost one million pieces of mail and parcels that include CLE brochures, pamphlets, tapes, handbooks, publications and section newsletters.

**Facilities** oversees the 41,000-s.f. office building owned by OSB to provide a safe, functional, and comfortable business environment, and to maintain, protect, and enhance the value of the asset.

**Human Resources** serves OSB departments and staff with employment recruitment, training and development, performance appraisal, staff and bar member benefit administration, personnel policy development, and worker's compensation management, ensuring compliance with federal and state requirements.

**Information Systems** manages the bar's network and proprietary software, including access to OSB's website hosted off-site. The department oversees hardware at each employee workstation.

## **Volunteers/Partnerships**

**Partnerships:** As needed, consultants and contractors are engaged to resolve specific issues outside the responsibility and expertise of bar staff. For example, professional insurance brokers review Human Resources policies and advise on market conditions when securing general property & liability, workers' compensation, health and employment practices coverage. Where possible, OSB and PLF contract together to reduce premium rates for insurance and benefit programs.

**Outcome #1: Financial Integrity - Maintain the fiscal integrity and stability of the bar through monitoring the budget, reserves, and financial forecast of operations.**

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The bar's 2007 Net Revenue will not fall within the targeted range. The preliminary Net Revenue before the final ICA allocations and minor adjustments report a Net Revenue of \$10,610. However, the 2007 budget did not contemplate a sale of the bar center, so a full year of mortgage payments instead of rent is included. If the expense variance of the mortgage vs. lease payments is offset by the additional revenue generated by the proceeds from the building sale, the Net Revenue will increase by \$130,000, and adjust the Net Revenue to \$140,000 – still outside the range. The other major impact on Net Revenue was the shortfall in CLE Seminars and Publications revenue by a collective \$392,000. If that shortfall would have been only \$227,000, the bar's Net Revenue would have attained the low end of the targeted range.

At December 31, 2007, the bar had \$12.2 million in cash and investments, an amount large enough to cover the bar's restricted fund balances (Affirmative Action Program, Client Security Fund, Legal Services, and LRAP), the mortgage prepayment, PERS, and contract legal fees contingency funds, the capital and operating reserves, and the proceeds from the sale of the bar center.

The preliminary comparison of "Cash Available" to the bar's "Reserve Requirements" indicates the bar ended 2007 \$613,000 in excess of its reserve requirements. This schedule reports that the bar has cash or investments available to underwrite all fund balances and designated funds established by the board and sets aside the proceeds from the sale of the bar center. However, after the new building is purchased and the final tenant improvements determined and designated funds are reallocated, this excess probably will be depleted by the end of 2008. As long as the bar does not incur a deficit in the reserve requirement in 2008 and budgets through 2010 remain as forecast, a member fee increase in 2011 remains on target.

**Outcome #2: Support services - Provide service and support to internal and external customers that is readily accessible, reliable, consistent, and high quality.**

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From the surveys of members performed by Member Services:

- Accounting Department received a 4.7 (4.5 in 2006) for timely mailings, 4.6 (4.4 in 2006) for completeness, and 4.9 (4.8 in 2006) for courtesy from 22 section treasurers' ratings. All 2007 ratings are higher than 2006 and only 2 of 66 ratings were not "excellent" or "very good."
- Design & Web Services received a 4.2 (4.3 in 2006) for quality of product (15 responses) and 4.7 (4.4 in 2005) on courtesy from 14 evaluators.
- Facilities ratings from section and committee members were: 4.2 (same as 2006) for meeting space, 4.0 (3.7 in 2006) for coffee service, and 4.4

(4.5 in 2006) for courtesy. These are very favorable ratings considering the large number of staff that can be involved in setting up the room and coffee service before and during the meetings.

There were no formal surveys and evaluations of the accounting, IDT, or facilities management completed in 2007. Based on informal discussion with staff and the practice of “observation while walking around,” the service and support to internal customers is high for the accounting department and facilities. The greatest contribution from facilities was the close and attentive working with staff to determine furniture needs in the new building. In particular, the service of the bar’s facility manager, Darrell Stoffer, was excellent. The service from IDT was improved with the implementation of the Help Desk position. However, there were numerous expressions from staff about delays or lack of communication in projects.

The performance of the services provided by IKON as the copy and distribution center facilitators was erratic during 2007. The IKON agreement expires in June 2008, and the bar will evaluate alternatives to continuing with IKON.

**Outcome #3: Project Management - Identify, implement, and manage projects which: improve processes by streamlining routine activities, eliminating redundant and processes of little value, and seeking and planning to make routines more efficient; save dollars and/or time through cost reductions or revenue generation, or reduce significantly the time to perform a task or process; or gain a significant new learning that enhances the skills of the employees or departments.**

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**Accounting**

The number of members who paid their membership fees online increased for the fourth consecutive year in 2007.

Year	Via Web
2007	15.4%
2006	12.7%
2005	12.0%
2004	9.2%

The value of paying fees online is reflected in a member’s email: “Just paid my 2007 OSB dues online and I have to tell you that it was a pleasure! The online payment page was very easy to find and the payment instructions were quite clear... Payment was quickly processed and I am actually feeling pretty good about paying the dues this year.”

Online sales of BarBooks subscriptions were integrated with Great Plains, the bar’s accounting software with the invoice and the payments coming into the system directly from the e-commerce site.

In May, the bar changed its online credit card authorizer to Affiniscap for credit card merchant services through a contact with a vendor at a NABE conference. This change has saved the bar \$14,800 in only nine months compared to the prior vendor.

### **IT and Design Functions and Projects**

There were numerous technology-related upgrades and improvements affecting numerous departments during 2007. A sample of them include the following:

#### **Website development:**

- The e-commerce front end for BarBooks™ was completed and online sales began in mid-February. Access to BarBooks™ was provided for the county law libraries through a new system designed to provide a single, secure entrance for the wide variety of equipment and systems that exist throughout the counties.
- The disciplinary history feature was completed and the bar's website now displays contact and discipline history for all active, inactive, suspended, disbarred, and resigned members. This was a joint project with the Discipline and Communications Departments and displays sanctions since 1991.

#### **Database development:**

- The bar's yearly fee accounts were consolidated into a single system that could include billings for multiple years. This streamlined system eliminated creating and maintaining separate accounts for each fee year and closing the online payment system for days to balance one year's account before opening the next for payment. This latter point is critical as the balancing period conflicted with the receipt of statements by members, many of whom wanted to pay online as soon as they received their statement, but were prevented from doing so since the site was closed.
- A beta version on the new CAO/DCO tracking program was introduced and the CAO staff began full testing in December. The first two DCO modules track the majority of activity; development of the remaining stages will follow in 2008.
- The design of the document management system for discipline scanning was completed with training for production and administration of the system. The system will serve as the link between the documents and the new CAO/DCO database.

#### **Print design and production:**

- Advertising revenue for the 2007 directory increased one percent over 2006 while printing costs increased eight percent.



- A new logo was designed for the bar and integrated into all print and web products and materials and accompanied with the move to the new bar center.

#### **Systems and network development:**

- Application updates were distributed to all desktops through an automated process on the server providing a quicker response, requiring less labor, and assuring a more uniform desktop configuration throughout the organization.
- A secure file transfer routine was established with the Oregon Judicial Department to assist with their appellate case management application by providing data from our membership database. This has proven to be a model for future collaborative efforts and the bar is now contacted by other state courts.

Indirect costs include the building costs. With the building sale in 2007, those costs are not reasonably comparable with the budget and the prior year. Using all costs other than the building, the indirect costs exceed the 2007 budget by 1.1% and are 2.8% more than last year. Three areas where the budget was exceeded was in auditing (selection of a higher fee firm), contract services (more expense for scanning to electronic files), and lease expense (the telephone lease was continued rather than cashed out). Since personnel costs are 42% of these indirect costs (salaries were increased by 5%), the percentage overages are reasonable.

#### **Outcome #4: Bar facilities - Maintain the bar facilities in a manner designed to enhance the value of the bar center as an asset while providing a safe, clean, and efficient workplace.**

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The transition from owner to tenant in the old bar center happened in early June. There was no measurable impact to staff, except those with facilities responsibilities. The bar maintained a very cordial relationship with the new owner, and no conflicts arose during the eight months of the bar as tenant. Even the move from tenants in one building to tenants in the new building transpired with minimal impact on staff, other than the expected recycling of unneeded files and packing of one's office. The move of staff offices was completed on January 25 and 26, and ended with the bar opening its new office at normal time on Monday, January 28.

Two major accomplishments were the sale of the bar center and obtaining financing for the new bar center. The bar completed both transactions before the real estate and lending market and the general economy began steady declines.

On March 6, 2007 the bar executed a one-year loan commitment from Thrivent Financial which allowed the bar to procure a 15-year loan with a 30-year amortization at 5.99%. If the bar had allowed that commitment to expire, the cost to borrow in 2008 would have been much higher to the bar. The

broker stated in early February, 2008 that the rate could have been as high as 7.5%, and with the tightening lending market, the bar could have encountered other less favorable loan terms.

Once Opus informed the bar it would exercise its right not to sell the building at occupancy, the bar's procured a "bridge loan" with Thrivent Financial. This allowed the bar to implement the initial favorable loan terms and not be dependant on Opus to sell the building to the bar prior to the commitment expiration on March 6, 2008.

Part of the decision to move from the old bar center was to avoid the needed major and costly repairs or replacement of the roof and HVAC system. Fortunately, through consistent oversight by the bar's facility staff these repairs were not needed while the bar occupied the building. The two significant over-budget expenditures in 2007 were for utilities and maintenance and both are attributable to the age and inefficiency of the HVAC system.

**Outcome #5: Fulfill employee placement needs for all regular and temporary vacancies within a reasonable period of time, incorporating a diverse effort of outreach and recruitment.**

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Hiring continued at a regular pace in 2007. There were 24 open positions of which two remain open compared to 20 open positions in 2006 and 18 open positions in 2005. Twenty-one of the 22 people hired in 2007 remained at the bar at the end of 2007. Five of these were internal hires. The one person hired who left within the same year was forced to resign due to family issues after one week. The bar hired six males, promoted one male to a management position, and hired two Hispanic employees, one of which is the employee who left after one week.

The positions were filled within an average of 76.6, an increase of 2.6 days over 2006, an increase of 4.4 days over 2005, and an increase of 17.4 days over 2004, mostly due to a decrease in Oregon's unemployment rate and hiring with committees. On average, non-exempt positions were filled 69.7 days, a decrease of 1.0 days from 70.8 in 2006, 58 days in 2005, and 60.4 days in 2004, and exempt positions were filled in 96 days in 2007, and increase of 13.4 days over 2006 at 82.6 days, 83.4 days in 2005, and 46 days in 2004. Because of the internal hires, the start dates for some positions were delayed until the internal position being vacated could be filled.

A survey of new hires in 2007 revealed a uniformly positive experience with the bar's HR Manager and department during the phone interview, personal interview and initial orientation. All scores were above 4.0 on a scale of 1-5 with most averages above 4.5. One person who did not receive a job commented "My contact and communication with you were truly a pleasure and your organization and courtesy were fantastic." The following is a comment about the interview process – "Always asked if I had questions, arranged time versus playing telephone tag, always could call back if questions." Another commented "I received a good understanding of the job and the interview

process.” There were several comments about the manager’s professionalism. Comments from surveys of supervisors of new hires in 2007 were very positive about the hiring process. One manager commented, “I think the OSB is very lucky to have an HR Department that is fully engaged in the process of building a good team. Recruiting well takes time and effort, but really pays off dividends in finding the right fit for each position.”

**Outcome #6: Ensure training and development programs and opportunities are provided in a cost-efficient manner. Ensure organizational strategy and compliance training needs are met.**

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In 2007, training included seven workshops with topics from “Helping Agitated People De-escalate Part II” to an overview of how pay is determined. The total cost of 2007 all staff training was compensation and unemployment insurance for a total cost of \$1,338 with five costing nothing (internally provided or through benefit providers). Harassment training is now provided to all new hires. A random survey of bar staff gave a 4.2 on a scale of 1-5 for the bar’s training efforts including the following comment, “More onsite seminars, investments, etc... retirement one this year was eye-opening.”

**Outcome #7: Ensure that proper employee-related risk management exists by securing the most cost-effective and comprehensive worker’s compensation and employment practices liability insurance coverage. Ensure that human and physical resources are prepared, protected and trained in critical aspects of safety, wellness, and management skills.**

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There was one workers’ compensation claim filed in 2007 (SAIF later denied the claim as a work-related injury). There were no claims in 2006, one in 2005, one claim in 2004, and no claims in 2003, 2002, and 2001. The 2007 workers’ compensation insurance policy was renewed with SAIF Corporation with an annual premium of \$10,136 reflecting a premium decrease of 0.015% from 2006. The 2006 premium was a 6.25% decrease, the 2005 premium reflected a premium increase of 24% over the 2004 premium.

The 2007 employment practice liability insurance policy was renewed with an annual premium of \$8,643 The 2006 employment practices liability insurance policy was renewed with an annual premium with the same limit of \$2,000,000 and deductible of \$15,000 as in 2006 with an annual premium of \$8,633 and as in 2005 with an annual premium was \$11,237 reflecting a premium increase of 15% over the 2004 premium due primarily to the claim. There were no claims in 2007.

The bar’s Safety Committee, reactivated in 2004, meets on a quarterly basis. During the meetings, the committee addresses injuries, unsafe practices, and unsafe working conditions. Each quarter, two committee members conduct a safety inspection of the building. Any issues discovered are discussed for best

resolution during the committee meeting. A random survey of staff gave a 4.2 on a scale of 1-5 for the work of the Safety Committee. Comments included "Productive team to be on with Christine Kennedy's leadership." "I know the space heater rules though!"

**Outcome #8: Ensure compliance with regulatory requirements through continual audits of current policies and practices; updating policies and practices, when appropriate, and increasing efficiencies in departmental operations.**

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In 2007, the Telework Authorization Notice was updated to include language for non-exempt employees and their need to take breaks and meal periods. Work began on the evaluation of all job classifications. A database was created allowing for the regular distribution, to managers and supervisor, of staff emergency contact information. A database was created to more efficiently track resume activity. The tuition reimbursement form was revised to be more easily understood by users.

<b>2007 Financial Summary</b>	2007 <b>Actual</b>	2007 <b>Budget</b>
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### Revenue

MEMBERSHIP FEES	\$6,123,365	\$6,158,000
Member fee revenue as a % of all general fund revenue	58.4%	57.5%
PROGRAM FEES	3,957,165	4,245,270
OTHER INCOME <sup>3</sup>	408,164	310,580
<b>Total Revenue<sup>1, 3</sup></b>	<b>\$10,488,694</b>	<b>\$10,713,850</b>

### Expenses

SALARIES & BENEFITS	\$6,495,919	\$6,410,564
Full-time equivalent (FTE) staff (excluding CSF, AAP, & LS)	83.2	82.8
DIRECT PROGRAM	3,641,633	3,588,910
GENERAL & ADMINISTRATIVE	340,533	252,341
CONTINGENCY	0	50,000
<b>Total Expenses<sup>1</sup></b>	<b>\$10,478,085</b>	<b>\$10,301,815</b>

### Reserve Account<sup>2</sup>

OPERATING RESERVE (See Note)	\$500,000	\$500,000
CAPITAL PURCHASE FUND (determined by needs)	1,093,000	1,093,000
<b>Total Reserve Account</b>	<b>\$1,593,000</b>	<b>\$1,593,000</b>

<sup>1</sup> These numbers do not include Client Security Fund (CSF), Affirmative Action (AAP), and Legal Services (LS).

<sup>2</sup> The reserve account includes two items. First, the operating reserve is to assure continued operation of the bar in the event of a non-dues revenue reversal or catastrophic event. Through 1999, this reserve was set by the Board of Governors as a percentage of non-dues revenue. Beginning in 2000, the board capped the reserve at \$500,000. Second, the capital purchase fund is for anticipated capital needs to replace or replenish capital assets or improvements which are made infrequently to maintain building standards, or to make major improvements.

<sup>3</sup> These totals do not reflect the unrealized gain of \$129,992 in the market value of the investment portfolio.

### Annual Dues per Member

GENERAL only	\$447
GENERAL including CSF & AAP	\$482

### Membership

ACTIVE	13,494	100%
Female	4,381	32%
Male	9,113	68%
Minority (not all members identified)	780	
INACTIVE	3,588	
<b>Total</b>	<b>17,082</b>	

## 2007 Actual

Program/Department Name	Revenue		Expenses		Employees	
	\$	%	\$	%	FTE	%
Admissions	640,325	6.1%	685,524	6.5%	4.2	4.8%
Affirmative Action (see below)						
Client Security Fund (see below)						
Client Assistance Office	85	0.0%	554,315	5.3%	6.0	6.9%
Communications	27,512	0.3%	568,563	5.4%	5.7	6.5%
CLE Publications	865,149	8.2%	1,029,980	9.8%	7.6	8.7%
CLE Seminars	1,329,215	12.7%	1,496,473	14.3%	6.6	7.6%
Disciplinary Counsel	80,316	0.8%	1,893,621	18.1%	15.6	17.9%
General Counsel	3,563	0.0%	451,480	4.3%	2.7	3.0%
Legal Services (see below)						
Loan Repayment Assistance Program	69,731	0.7%	44,306	0.4%	0.2	0.2%
MCLE	256,300	2.4%	171,588	1.6%	1.5	1.7%
Member Communications	342,522	3.3%	523,821	5.0%	2.1	2.4%
Member Services	450	0.0%	463,550	4.4%	3.9	4.5%
New Lawyers Division	6,935	0.1%	196,170	1.9%	0.8	0.9%
Public Affairs	12	0.0%	473,389	4.5%	4.0	4.6%
Referral & Info Services	124,365	1.2%	373,538	3.6%	4.3	4.9%
Support Services:						
Bar Center Facilities	25,273	0.2%	379,705	3.6%	0.8	0.9%
Design Center	185,057	1.8%	226,420	2.2%	1.0	1.1%
Governance	355	0.0%	630,401	6.0%	2.5	2.9%
Special Projects			221,389	2.1%	0.0	0.0%
Administration (*):						
Membership Fees (**)	6,123,365	58.4%	93,852	0.9%		
Other Income	408,164	3.9%				
Accounting					4.1	4.7%
Customer Service					1.8	2.1%
Distribution Center					0.5	0.6%
Human Resources					1.5	1.7%
Information Systems					6.0	6.9%
Contingency			0	0.0%		
<b>Totals</b>		<b>100.0%</b>		<b>100.0%</b>	<b>83.2</b>	<b>95.4%</b>
Affirmative Action	435,506		480,285		2.5	2.9%
Client Security Fund	130,824		151,674		0.4	0.4%
Legal Services	5,537,411		4,856,705		1.1	1.3%
					<b>87.2</b>	<b>100.0%</b>

\* All administration costs are allocated to the program areas.

\*\* Does not include \$65,499 in Membership Fees allocated to LRAP



Oregon State Bar

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2006-2007

**OREGON STATE BAR FUND  
AUDITED FINANCIAL REPORT**

**For the two years ended  
December 31, 2007**



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**INDEPENDENT AUDITOR'S REPORT**

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

We have audited the accompanying statement of net assets of the Oregon State Bar Fund (the Bar), a fund of the Oregon State Bar, as of December 31, 2007, and the related statement of revenues, expenses and changes in net assets, and cash flows for the two-years then ended. These financial statements are the responsibility of the Bar's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to the financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Oregon State Bar Fund as of December 31, 2007, and the changes in its net assets and its cash flows for the two-years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1, the financial statements present only the Oregon State Bar Fund and do not purport to, and do not, present fairly the financial position of the Oregon State Bar as of December 31, 2007, and the changes in its financial position, or, where applicable, its cash flows for the two-year period ended in conformity with accounting principles generally accepted in the United States of America.

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

The accompanying managements' discussion and analysis on pages 10 through 13 are not a required part of the basic financial statements but are supplementary information required by accounting principles generally accepted in the United States of America. This supplementary information is the responsibility of the Bar's management. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

In accordance with Government Auditing Standards, we have also issued our report dated May 5, 2008, on our consideration of the Bar's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be considered in assessing the results of our audit.

*Moss Adams, LLP*

Portland, Oregon  
May 5, 2008

## **MANAGEMENT'S DISCUSSION AND ANALYSIS**

As management of the Oregon State Bar we offer readers of Oregon State Bar's financial statements this narrative overview and analysis of the financial activities of the Bar for the two-year period ended December 31, 2007.

The Oregon State Bar is comprised of the Oregon State Bar Fund and the Professional Liability Fund (PLF). The financial statements and accompanying notes are presented for the Oregon State Bar Fund only (the Bar) and do not contain the accounts of the PLF. Financial information and statements for the PLF are presented in its annual report available from the PLF, 16037 SW Upper Boones Ferry Road, Tigard, Suite 300, P.O. Box 231600, Oregon 97281.

We encourage readers to consider the information presented here in conjunction with additional information that we have furnished in our notes to the financial statements.

### **Financial Highlights**

- At December 31, 2007, the Bar's assets exceeded its liabilities by \$13,083,885.
- The Bar has \$3,452,832 invested in capital assets, net of accumulated depreciation.
- The increase in net assets for the two-year period was \$6,788,550.

The overall financial condition of the Bar remains stable. The active attorney membership of the Bar increases steadily as the ability to practice law in Oregon is mandatory membership in the Bar. As a result, membership fee revenue is a consistent increase in operating revenue for the Bar. A substantial portion of program fee revenue is subject to commercial competition and changing attorney practices, and a matter under management assessment.

### **Overview of the Financial Statements**

The Bar is a self-supporting entity and follows enterprise fund reporting. Accordingly, the financial statements are presented using the economic resources measurement focus and the accrual basis of accounting. The Bar's bi-annual report consists of the Statement of Net Assets, the Statement of Revenue, Expenses and Changes in Net Assets and the Statement of Cash Flows. The Statement of Net Assets presents the full accrual assets and liabilities and over time may provide a useful indicator of whether the financial position of the Bar is improving or deteriorating. The Statement of Revenues, Expenses and Changes in Net Assets presents information showing how the Bar's assets changed as a result of two years' operations. Regardless of when cash is affected, all changes in net assets are reported when the underlying transactions occur. As a result, there are transactions included that do not affect cash until future fiscal periods. The Statement of Cash Flows presents information showing how the Bar's cash changed as a result of two years' operations. The Statement of Cash Flows is prepared using the direct method and includes the reconciliation of operating income to net cash provided by operating activities (indirect method) as required by GASB 34.

The notes to the financial statements provide additional information that is essential to a complete understanding of the data provided in the financial statements.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)

### Financial Summary

The following schedule presents a summary of revenues, expenses and increase in net assets for the Bar for the two years ended December 31, 2007 and the percentage change from the previous two-year period.

	<u>2006-2007</u>	<u>2004-2005</u>	<u>CHANGE</u>
<b>REVENUES:</b>			
<b>Operating:</b>			
Membership fees	\$ 13,795,743	\$ 11,954,834	15%
Program fees	18,990,542	16,678,446	14%
Other operating revenues	<u>16,853</u>	<u>75,082</u>	-78%
<b>Total Operating Revenues</b>	<u>32,803,138</u>	<u>28,708,363</u>	
<b>Non-operating:</b>			
Investment income	1,121,100	498,935	125%
Rental revenue	49,561	51,491	-4%
Gain on sale of building & land	5,473,625		100%
Interest expense	<u>(52,237)</u>	<u>(110,600)</u>	-53%
<b>Total Non-operating Revenues</b>	<u>6,592,049</u>	<u>439,826</u>	
<b>TOTAL REVENUES</b>	<u>39,395,187</u>	<u>29,148,188</u>	35%
<b>EXPENSES:</b>			
<b>Administrative expense:</b>			
Salaries and benefits	13,188,776	11,829,000	11%
Services and Supplies	3,260,696	2,506,568	30%
Depreciation	<u>621,933</u>	<u>833,096</u>	-25%
<b>Total administrative expense</b>	<u>17,071,405</u>	<u>15,168,664</u>	13%
Program expenses	<u>15,535,232</u>	<u>14,033,136</u>	11%
<b>TOTAL EXPENSES</b>	<u>32,606,637</u>	<u>29,201,800</u>	12%
<b>CHANGE IN NET ASSETS</b>	6,788,550	(53,611)	12763%
<b>NET ASSETS, January 1, 2006</b>	<u>6,295,335</u>	<u>6,348,946</u>	-1%
<b>NET ASSETS, December 31, 2007</b>	<u>\$ 13,083,885</u>	<u>\$ 6,295,335</u>	108%

In June 2007, the Bar sold its office building at 5200 SW Meadows Road, Lake Oswego, Oregon for \$8,000,000. The sale was in anticipation of the Bar moving to a new office building at 16037 SW Upper Boones Ferry Road, Tigard Oregon in early 2008. For the remainder of the year, the Bar rented and occupied the building it just sold. The net proceeds from the sale were deposited into an interest-bearing account to be used when the Bar is in position to purchase the new office building. The result of this transaction caused investment income, interest expense, rent expense (included in administrative expense), and depreciation to report significant dollar and percentage changes from the previous two-year period.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)

Total assets, liabilities and net assets were as follows:

	<u>2006-2007</u>	<u>2004-2005</u>	<u>CHANGE</u>
<b>ASSETS</b>			
Current Assets	\$ 17,920,386	\$ 8,014,708	124%
Capital Assets	<u>3,452,832</u>	<u>2,976,974</u>	16%
<b>Total Assets</b>	<u>21,373,218</u>	<u>10,991,682</u>	
<b>LIABILITIES</b>			
Current Liabilities	8,289,333	4,441,814	87%
Long Term Liabilities	-	<u>254,533</u>	100%
<b>Total Liabilities</b>	<u>8,289,333</u>	<u>4,696,347</u>	
<b>NET ASSETS</b>			
Invested in Capital Assets	3,452,832	2,407,857	43%
Restricted	1,425,595	759,381	88%
Unrestricted	<u>8,205,458</u>	<u>3,128,097</u>	162%
<b>Total Net Assets</b>	<u>\$ 13,083,885</u>	<u>\$ 6,295,335</u>	108%

The increase in current assets and capital assets is primarily due to the sale of the building and the deposit of the sale proceeds into an interest-bearing account. Additionally, prepaid expense increased by \$387,906 for rent and deposits. Construction in process of \$2,764,938 was created for payments and commitments for the eventual purchase of the new office building occupied in 2008. Furnishings and equipment for the new building totaling \$221,489 were purchased but not yet put into service. See "Note 14 - Subsequent Events" for more information regarding the new building.

With the building sale, the Bar paid off its mortgage on the building, resulting in the elimination of long-term liabilities.

The increase in current liabilities is due to the increase in deferred revenues for membership fees for 2008 billed in 2007.

The increase in restricted net assets is from an Oregon legislative appropriation granted to the Legal Services program in 2007. The original appropriation of \$700,000 was designated for disbursement to the various legal aid providers in the state and will be fully disbursed during 2008.

## **MANAGEMENT'S DISCUSSION AND ANALYSIS (CONTINUED)**

### **Capital Assets**

At December 31, 2007, the Bar had \$3,452,832 invested in furniture, equipment, software, construction in process and assets purchased not yet in use. See the Statement of Net Assets for additional information on capital assets.

Major capital events during the last two years included:

- Sale of land and building in June 2007, resulting in the removal of \$3,427,970 in building and \$242,017 in land from capital assets.
- Disposal of \$196,883 of furniture and equipment in anticipation of moving to a new building in 2008. Of this amount, \$136,029 was computer equipment that was replaced with purchases of \$76,267 in computer equipment.
- Construction in process of \$2,764,938 was created for costs related to the new building anticipated to be purchased in 2008 or 2009.
- Furnishings for new building resulted in Assets Purchased Not in Use in the amount of \$221,489.

Please refer to Note 6 – Capital Assets for additional information.

### **Debt Administration**

The Bar paid in full the \$332,858 balance of its mortgage on the building at the closing of the building sale in June 2007. Please refer to Note 7 – Mortgage Payable, for additional information.

### **Requests for information**

This financial report is designed to provide a general overview of the Oregon State Bar's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Chief Financial Officer, PO Box 231935, Tigard, OR 97281-1935

**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**STATEMENT OF NET ASSETS**

**December 31, 2007**

**ASSETS**

Current Assets:	
Cash and cash equivalents	\$10,662,281
Investments	1,511,256
Accounts and other receivables, net of allowance for doubtful accounts of \$ 306,470	4,926,643
Publications inventory	319,237
Prepaid expenses and deposits	<u>500,969</u>
Total Current Assets	<u>17,920,386</u>
Capital Assets:	
Furniture and equipment, depreciable	2,967,191
Construction in process, non-depreciable	2,764,938
Assets purchased not in use, non-depreciable	<u>221,489</u>
	5,953,618
Less accumulated depreciation	<u>(2,500,786)</u>
Total Capital Assets, net	<u>3,452,832</u>
<b>TOTAL ASSETS</b>	<b><u><u>\$21,373,218</u></u></b>

**LIABILITIES AND NET ASSETS**

**LIABILITIES:**

Current Liabilities:	
Accounts payable and accrued liabilities	\$374,496
Compensated absences payable	421,261
Deferred revenue	<u>7,493,576</u>
Total Current Liabilities	<u>8,289,333</u>
<b>TOTAL LIABILITIES</b>	<b><u>8,289,333</u></b>

**NET ASSETS:**

Invested in capital assets	3,452,832
Restricted	1,425,595
Unrestricted	<u>8,205,458</u>
<b>TOTAL NET ASSETS</b>	<b><u>13,083,885</u></b>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b><u><u>\$21,373,218</u></u></b>



**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**

**TWO YEARS ENDED December 31, 2007**

<b>REVENUES:</b>	
Membership fees	\$13,795,743
Program fees	18,990,542
Other operating revenues	<u>16,853</u>
<b>TOTAL OPERATING REVENUES</b>	<b>32,803,138</b>
<b>EXPENSES:</b>	
Administrative expense:	
Salaries and benefits	13,188,776
Services and supplies	3,260,696
Depreciation	<u>621,933</u>
Total administrative expense	17,071,405
Program expenses	<u>15,535,232</u>
<b>TOTAL EXPENSES</b>	<b><u>32,606,637</u></b>
<b>OPERATING INCOME</b>	<b>196,501</b>
<b>NON-OPERATING REVENUES (EXPENSES):</b>	
Investment income	1,121,100
Rental revenue	49,561
Gain on sale of building & land	5,473,625
Interest expense	<u>(52,237)</u>
<b>TOTAL NON-OPERATING REVENUES (EXPENSES)</b>	<b><u>6,592,049</u></b>
<b>CHANGE IN NET ASSETS</b>	<b>6,788,550</b>
<b>NET ASSETS, January 1, 2006</b>	<b><u>6,295,335</u></b>
<b>NET ASSETS, December 31, 2007</b>	<b><u>\$13,083,885</u></b>

**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**STATEMENT OF CASH FLOWS**

**TWO YEARS ENDED DECEMBER 31, 2007**

<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>	
Cash received from customers	\$ 32,912,988
Cash paid to suppliers	(19,096,711)
Cash paid to employees	(13,254,581)
<b>NET CASH USED BY OPERATING ACTIVITIES</b>	<b>561,696</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>	
Investments converted to cash equivalents	2,490,746
Sale of investments	1,072,174
Purchase of investments	(1,000,000)
Interest received from cash and investments	1,121,101
<b>NET CASH PROVIDED BY INVESTING ACTIVITIES</b>	<b>3,684,021</b>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:</b>	
Cash paid for construction in process	(2,764,938)
Assets purchased not yet in use	(221,489)
Purchases of fixed assets	(332,822)
Proceeds from sale of building, furniture and equipment	7,695,082
Principal paid on mortgage payable	(551,318)
Principal paid on capital lease payable	(17,799)
Interest expense	(52,237)
<b>NET CASH PROVIDED BY CAPITAL FINANCING ACTIVITIES</b>	<b>3,754,479</b>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES:</b>	
Rental income	49,561
<b>NET CASH PROVIDED BY NONCAPITAL FINANCING ACTIVITIES</b>	<b>49,561</b>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>8,049,757</b>
<b>CASH AND CASH EQUIVALENTS, January 1, 2006</b>	<b>2,612,524</b>
<b>CASH AND CASH EQUIVALENTS, December 31, 2007</b>	<b>\$ 10,662,281</b>
<b>RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	
Operating Income	\$ 196,501
Adjustments to reconcile operating income to cash provided by operations:	
Depreciation	621,933
Changes in operating assets and liabilities:	
Increase in accounts receivable, net of doubtful accounts	(4,356,646)
Decrease in publications inventory	325,711
Increase in prepaid expenses and deposits	(387,906)
Decrease in accounts payable and accrued liabilities	(238,588)
Decrease in compensated absences payable	(65,804)
Increase in deferred revenue	4,466,495
<b>NET CASH USED BY OPERATING ACTIVITIES</b>	<b>\$ 561,696</b>

See notes to financial statements.

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**OREGON STATE BAR**  
**OREGON STATE BAR FUND**

**NOTES TO FINANCIAL STATEMENTS**

**TWO YEARS ENDED DECEMBER 31, 2007**

**NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Organization**

The Oregon State Bar was created in 1935 and charged with the duty of licensing and disciplining attorneys and the administration of examining applicants for admission to the practice of law. The Bar is a public corporation and an instrumentality of the Judicial Department of the State of Oregon and is governed by and authorized to carry out the provisions of ORS 9. The Bar is not subject to any statute applicable to a state agency, department, board or commission or public body unless the statute expressly states it is applicable to the Bar. The funds of the Bar are independent of the State of Oregon, except for the Bar's responsibility to report annually its financial condition to the Chief Justice of the Supreme Court of the State of Oregon. All persons actively engaged in the practice of law in Oregon are required to be members of the Bar.

The Bar is governed by a 16-member Board of Governors and is comprised of twelve active member attorneys representing six geographic regions and four public members. Attorney members of the Board are elected by the Bar membership for four-year terms. The Board appoints public members.

The Bar is comprised of the Oregon State Bar Fund and the Professional Liability Fund (PLF). The financial statements and accompanying notes are presented for the Oregon State Bar Fund only (the Bar) and do not contain the accounts of the PLF. Financial information and statements for the PLF are presented in its annual report available from the PLF, 16037 SW Upper Boones Ferry Road, Tigard, Suite 300, P.O. Box 231600, Oregon 97281.

**Basis of Presentation**

The Bar's financial statements are prepared in accordance with government accounting principles generally accepted in the United States of America applicable to enterprise funds. Enterprise funds are used to account for operations that are financed and managed in a manner similar to private business enterprises or where the governing body has decided that periodic determination of net income is appropriate.

**Basis of Accounting**

These financial statements apply GASB Statement Number 34, *Basic Financial Statements – and Management's Discussion and Analysis for State and Local Governments* and related standards. This standard provides for significant changes in terminology, recognition of contributions in Statement of Revenues, Expenses and Changes in Net Assets, inclusion of a management discussion and analysis as required supplementary information and other changes.

## **NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

The Bar's financial statements are prepared on the accrual basis of accounting. Under this method of accounting, revenues are recognized in the period when earned and expenses are recorded at the time liabilities are incurred.

As permitted by Government Accounting Standards Board (GASB) No. 20, the Bar has elected not to apply Financial Accounting Standards Board (FASB) pronouncements issued after November 30, 1989, unless GASB amends its pronouncements to specifically adopt FASB pronouncements after that date.

When both restricted and unrestricted resources are available to use for the same purpose, it is the Bar's policy to use restricted resources first, then unrestricted resources as they are needed.

### **Use of estimates**

The preparation of the financial statements, in conformity with generally accepted accounting principles, requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

### **Cash and Cash Equivalents**

For financial reporting purposes, cash and cash equivalents include cash on hand, cash in bank checking and savings accounts, and other short-term investments, which are readily convertible to cash. Investments in mutual funds or investments with maturity dates within 90 days of year end are considered cash equivalents. Cash equivalents also include deposits in the Oregon State Treasurer's Local Government Investment Pool (LGIP) and are reported at fair value. The LGIP is subject to regulatory oversight by the Oregon Short Term Fund Board and the Oregon Investment Council.

The LGIP is administered by the Oregon State Treasury. The LGIP is an open-ended no-load diversified portfolio offered to any agency, political subdivision or public corporation of the State who by law is made the custodian of, or has control of, any fund. The LGIP is commingled with other state funds in the Oregon Short-term Fund (OSTF). In seeking to best serve local governments of Oregon, the Oregon Legislature established the Oregon Short-Term Fund Board, whose purpose is to advise the Oregon State Treasury in the management and investment of the LGIP.

### **Investments**

Investments, consisting primarily of U.S. corporate bonds, notes and commercial paper, are stated at fair value determined by quoted market prices.

### **Accounts receivable**

Collectibility of receivables is routinely assessed by management. Receivables are written off when they are determined to be uncollectible. The allowance for doubtful accounts is estimated based on the Bar's historical losses, and a review of specific current and prior member accounts. This assessment provides the basis for the allowance for doubtful accounts. The allowance for doubtful accounts at December 31, 2007 was \$306,470.

## **NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

### **Capital Assets and Depreciation**

The Bar classifies purchases of durable goods or computer software, with a cost of \$500 or more as a capital asset. Capital assets (building, office and computer equipment, furniture and computer software) are recorded at cost and depreciated over their estimated useful lives using the straight-line method of depreciation. The building was depreciated over 50 years, improvements over 15 years and furniture, equipment and software from three to ten years.

### **Publications Inventory**

The Bar's Legal Publications department creates and sells legal books to the Bar's membership and other interested parties. An inventory of publications for sale is maintained and is valued at cost. The Bar uses the average cost method of inventory valuation.

### **Deferred Revenue**

Bar membership fees received prior to the beginning of the membership year (January 1) are reflected as deferred revenue.

### **Compensated Absences**

Employees earn vacation leave at rates from 8 to 20 hours per month depending, in part, upon their length of service. Unused vacation leave is paid to employees upon termination of employment. Earned but unpaid vacation leave is reflected as compensated absences payable.

### **Operating and non-operating revenues**

The Bar distinguishes operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services in connection with the Bar's ongoing principal operations. The principal operating revenues of the Bar are membership fees and program fees. Operating expenses include the cost of providing the services for membership and program related activities, as well as administrative expenses. Revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

### **Net Assets**

Net assets comprise the various net earnings from operations, non-operating revenues, expenses and contributions of capital. Net assets are classified in the following three categories.

**Invested in capital assets** – consists of all capital assets, net of accumulated depreciation.

**Restricted** – consists of external constraints placed on net asset use by creditors, grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

**Unrestricted net assets** – consists of all other net assets that are not included in the other categories previously mentioned.

## **NOTE 2 - CASH AND INVESTMENTS**

Investments are made in accordance with policy guidelines adopted by the Board of Governors. The policy guidelines adopted by the Board require that funds be invested in a manner which ensures the protection of the cash assets and emphasizes safety, liquidity and rate of return. The Bar's investment policy authorizes the Bar to invest in:

- Oregon State Treasurer's Local Government Investment Pool, no percentage limit for this issuer.
- U.S. Treasury Obligations, no percentage limitation for this issuer.
- Federal Agency Obligations, each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- U.S. Corporate Bonds or Notes, Moody "A" or Standard & Poor's "A" or better, each issuer limited to \$100,000.
- Commercial Paper, Moody "P-1" or Standard & Poor "A-1" or better, each issuer limited to \$100,000.
- Mutual Funds that commingle one or more of the approved types of investments.
- Mutual funds of U.S. and foreign equities and not including individual stock ownership.

In addition to the percentage limitation to a single issue, no more than 45 percent of the total investment portfolio will be invested in a combination of U.S. Corporate Bonds or Notes, Commercial Paper or non-equity mutual funds. The entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months. No more than 45 percent of the total long-term investments may be in equities. Up to five percent of the total long-term investments may be in international equities. "Total long-term investments" excludes investments intended to be held for one year or less. Mutual fund equity funds will be chosen for long-term growth, reserve fund appreciation, stability and portfolio diversification and not for the short-term appreciation or trading profits. The Bar was in compliance with all of the investment guidelines for the year ended December 31, 2007.

The State Treasurer is the investment officer and is responsible for all funds in the State Treasury and the Local Government Investment Pool. These funds must be invested, and the investments managed, as a prudent investor would, exercising reasonable care, skill and caution. Investments in the pool are further governed by portfolio guidelines, issued by the Oregon Short-Term Fund Board, which establish diversification percentages and specify the types and maturities of investments. The portfolio guidelines permit securities lending transactions as well as investments in repurchase agreements and reverse repurchase agreements. The pool was in compliance with all portfolio guidelines at December 31, 2007.

Amounts in the State Treasurer's Local Government Investment Pool are not required to be collateralized. There is no material difference between the fair value of the Bar's position in the State Treasurer's Local Government Investment Pool and the value of the pool shares at December 31, 2007. There were no known violations of legal or contractual provisions for deposits and investments during the fiscal year.

## **NOTE 2 - CASH AND INVESTMENTS (Continued)**

Cash and investments at December 31, 2007 (recorded at fair value) consisted of:

Cash on hand	\$	603
Demand deposits with financial institutions		317,778
Local Government Investment Pool		7,167,136
Vanguard 500 Index Fund – mutual fund shares		2,713,625
Lazard Int'l Equity Portfolio – mutual fund shares		363,139
Federal Home Loan note – Wells Fargo Investments		<u>100,000</u>
Subtotal cash and equivalents:	\$	<u>10,662,281</u>
Corporate bonds and notes – Wells Fargo Investments		1,511,256
Total cash and investments:	\$	<u>12,173,537</u>

Funds on deposit with LGIP include \$7,360,058 cash proceeds from the June 2007 sale of the former Oregon State Bar Center. These funds will be used towards the future purchase of the new Oregon State Bar Center building. See "Note 14 - Subsequent Events" for details of this future transaction.

### **Interest Rate Risk**

As a means of limiting its exposure to fair value losses resulting from rising interest rate risks, the Bar avoids the purchase of investments unless it will be held to maturity. The Bar investment policy requires investments not to exceed a maturity of 84 months. The Federal Home Loan note and corporate bonds and notes at December 31, 2007 had an average maturity of 40 months.

### **Credit Risk**

The Bar's investment policy does not limit investments as to credit rating for securities purchased from the U.S. Government Agencies. Corporate Bonds or Notes were rated "A" by Standard & Poor's and "A" by Moody. The Vanguard and Lazard mutual funds were rated three stars and two stars, respectively, by Morningstar. The Local Government Investment Pool is unrated.

### **Custodial Credit Risk**

Deposits with financial institutions include bank demand deposits. The balance per the December 31, 2007, bank statement is \$1,174,718. Of these deposits, \$115,320 is covered by federal depository insurance, and \$1,059,398 is uninsured. These balances are uncollateralized.

## **NOTE 3 – RELATED PARTY TRANSACTIONS**

During the two-years ended December 31, 2007, the Bar generated rental revenue from a related party, the Oregon Law Foundation, in the amount of \$49,561. In addition, at December 31, 2007, the Bar was owed a combined \$542,428 from the PLF and the Oregon Law Foundation for payments made on their behalf.



#### **NOTE 4 – PREPAID EXPENSES**

The balance in the Bar's prepaid expense accounts increased significantly in 2007 due to the prepaid rent and deposits related to the move to a new office building and the subsequent purchase of the building. The building lease/purchase is described later in "Note 14- Subsequent Events."

#### **NOTE 5 - OPERATING LEASES**

Future minimum operating lease payments for office equipment are \$39,305. This lease expires June 30, 2008. Lease expense for the two years ended December 31, 2007 amounted to \$157,219.

After the Bar sold its building in 2007, it leased back the building from the new owner in a lease that terminated January 31, 2008. Lease expense related to this arrangement amounted to \$307,500 for the two years ending December 31, 2007. Future minimum lease payments for the building are \$45,000.

#### **NOTE 6 – CAPITAL ASSETS**

Capital assets are recorded at cost and depreciated over their estimated useful lives using the straight-line method of depreciation. The building was depreciated over 50 years, improvements over 15 years and equipment and furniture from three to ten years.

	Balance 12/31/2005	Purchases/ Additions	Sales/ Disposals	Balance 12/31/2007	Accumulated Depreciation 12/31/2007	Net Book Value
Land	\$ 242,017		\$ (242,017)	-		-
Building	3,427,970		(3,427,970)	-		-
Furniture & Equipment	2,646,356	332,822	(197,749)	2,781,429	(2,315,024)	466,405
Leased	185,762			185,762	(185,762)	-
Construction in process	-	2,764,938	-	2,764,938	-	2,764,938
Assets purchased not in use	-	221,489	-	221,489	-	221,489
	<u>\$ 6,502,105</u>	<u>\$ 3,319,249</u>	<u>\$ (3,867,736)</u>	<u>\$ 5,953,618</u>	<u>\$ (2,500,786)</u>	<u>\$ 3,452,832</u>

On June 6, 2007, the Bar sold the land and building located at 5200 SW Meadows Road, Lake Oswego. The selling price was \$ 8,000,000. This transaction resulted in a gain to the Bar of \$5,473,625 which is included in non-operating revenues in the accompanying Statement of Revenues, Expenses and Changes in Net Assets. The proceeds of this sale will be used to purchase a new building in a future transaction described in "Note 14 - Subsequent Events."

At the end of 2007, the new building was not ready for occupancy by the Bar. Therefore, significant payments that were made for tenant improvements and other building related costs are contained in Construction in Process. New furnishings and equipment were also purchased and are reflected in the Assets Purchased Not In Use account on the Statement of Net Assets.

## **NOTE 7 - MORTGAGE PAYABLE**

The mortgage note payable, on the former bar building, had a balance at 12/31/2005 of \$551,318 with an interest rate of 7.25%, amortized over 15 years. It was due and payable on or before June 1, 2009. The mortgage was paid off at the sale of the building in June 2007.

Balance 01/01/2006	\$	551,318
Regular principal payments		(218,460)
Remaining principal paid at sale of building		<u>(332,858)</u>
Balance 12/31/2007	\$	<u><u>-</u></u>

## **NOTE 8 - NET ASSETS**

### **Restricted**

Oregon Revised Statutes Section 9.625 - 9.665 established a Client Security Fund within the Oregon State Bar Fund to mitigate monetary losses to clients caused by dishonest conduct of active members of the Bar in the practice of law. It is funded by assessments to members and used to reimburse losses incurred by Bar member clients up to a maximum of \$50,000 per client per claim. At December 31, 2007 the Fund has restricted \$712,886 of net assets for future payments.

Oregon Revised Statutes 9.572 - 9.574 established the Legal Services program to provide legal services to indigent residents of the State. The program is funded by a portion of fees collected by the State Court Administrator and remitted to the Bar for distribution to the various legal service providers within the State.

For the two years ended December 31, 2007, proceeds amounted to \$9,200,279 of which \$160,509 was retained for administrative purposes and \$9,039,770 distributed to the legal services providers. In 2007, Legal Services received a special legal aid legislative appropriation \$700,000. Of this amount, \$12,360 has been disbursed. The balance of \$697,470, with accrued interest earned, is scheduled to be disbursed during 2008 to the various legal service providers within the State.

### **Unrestricted**

Unrestricted net assets are comprised of the following components:

Bar Section Activities	\$	567,043
Affirmative Action Program		(30,614)
Board Designated Funds		987,031
Loan Repayment Assistance Program		81,022
Unallocated		<u>6,600,976</u>
Total Unrestricted Net Assets	\$	<u><u>8,205,458</u></u>

### **NOTE 9 - MEMBERSHIP FEES**

Membership fees for the two years ended December 31, 2007 are comprised of the following:

General membership fees	\$ 12,220,781
Section fees	699,387
Client Security Fund fees	133,244
Affirmative Action Fund fees	<u>742,331</u>
Total Membership Fees	<u>\$ 13,795,743</u>

### **NOTE 10 - RENTAL INCOME**

The Oregon Law Foundation occupied space in the Oregon State Bar Center building. Rental income, along with nominal amounts received for meeting room rentals, amounted to approximately \$49,561 for the period January 1, 2006-December 31, 2007.

### **NOTE 11 - DEFINED BENEFIT RETIREMENT PLAN**

Employees may participate in the Oregon Public Employees Retirement System (PERS), a cost sharing, multiple-employer defined benefit plan. All employees are eligible to participate after completing six months of service. The PERS retirement plan offers a number of different retirement options. These options include annuities, survivorship benefits and lump sum payments. PERS also provides death and disability benefits. PERS is administered under Oregon Revised Statute (ORS) Chapter 238. The authority to establish

and amend the benefit provisions of the plan rests with the Oregon Legislature. PERS issues a publicly available financial report that may be obtained by writing to PERS, P.O. Box 23700, Tigard, Oregon, 97281-3700 or by calling 1-503-598-7377.

Participating employees are required by statute to contribute 6% of their salaries to the Individual Account Program portion, a defined contribution plan, under either plan. The Bar is required to contribute actuarially computed amounts determined by PERS. As of December 31, 2007, the rate is 5.45% of covered employees' salaries for PERS participants and 8.03% of covered salaries for OPSRP participants. The Bar is contributing 100% of the required employer contribution amount.

Employee contributions totaled approximately \$300,194 \$282,291, \$243,311 and \$228,125 for the years ended December 31, 2007, 2006, 2005 and 2004, respectively. The Bar's contribution for these four years totaled approximately \$281,423, \$258,884, \$280,166 and \$186,555 respectively.

### **NOTE 12 - RISK MANAGEMENT**

The Bar is exposed to various risks of loss related to torts, theft or damage to and destruction of assets, and natural disasters for which the Bar carries commercial insurance. The Bar does not engage in risk financing activities where the risk is retained (self-insurance) by the Bar. For the past three years insurance coverage has been sufficient to cover any losses.

**NOTE 13 - COMMITMENTS AND CONTINGENCIES**

The Bar is a defendant in various lawsuits. The outcome of these lawsuits is not determinable at this time; however it is the opinion of management, based on the advice of in-house counsel, that the ultimate disposition of these lawsuits will not have a materially adverse effect on the financial statements.

**NOTE 14 - SUBSEQUENT EVENTS**

In December 2007, the Bar exercised an option to purchase the newly constructed Bar building for approximately \$17.5 million. The builder/owner responded to exercise its right to extend the closing date on the sale of the building to no later than January 26, 2009.

In February 2008, the Bar received \$13 million in loan proceeds for the eventual purchase of the new building. The loan is secured by the lender's first lien on interim securities, which were deposited by the Bar into a money market mutual fund invested exclusively in short-term money market instruments that consist of U.S. government obligations and repurchase agreements collateralized by U.S. government obligations. Once the bar purchases the building, the interim securities will be liquidated and applied to the purchase of the building. The new building becomes the security for the new loan agreement.

The loan payments are \$77,859 beginning March 15, 2008. The loan term is fifteen years with the payments amortized over thirty years at an interest rate of 5.99%.

In January 2008, the Bar entered into a lease agreement with the builder/owner with a monthly base rate of \$99,305. The Bar also entered an agreement with the PLF to sub-lease approximately 18,000 r.s.f. The lease term is fifteen years and the monthly base rent is \$38,248. PLF occupied the space on February 15, 2008.

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

The Board of Governors  
Oregon State Bar  
Oregon State Bar Fund

We have audited the financial statements of the Oregon State Bar Fund (the Bar), a fund of the Oregon State Bar, as of and for the two-years ended December 31, 2007, and have issued our report thereon dated May 5, 2008. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Internal control over financial reporting**

In planning and performing our audit, we considered the Bar's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Bar's internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control over financial reporting that we consider to be significant deficiencies.

A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Bar's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Bar's financial statements that is more than inconsequential will not be prevented or detected by the Bar's internal control. We consider the deficiency described in the accompanying schedule of findings and responses as item 2007-1 to be a significant deficiency in internal control over financial reporting.

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS – (continued)**

A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Bar's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. However, we believe that none of the significant deficiencies described above is a material weakness.

**Compliance and other matters**

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

We noted certain matters that we reported to management of the Oregon State Bar in a separate letter dated May 5, 2008.

The Bar's response to the finding identified in our audit is described in the accompanying schedule of findings and responses. We did not audit the Bar's response and, accordingly, we express no opinion on it.

This report is intended solely for the information and use of the Board of Governors, and management, and is not intended to be and should not be used by anyone other than these specified parties.

*Moss Adams, LLP*

Portland, Oregon  
May 5, 2008

Item 2007-1: Controls over payroll processing could be improved

*Criteria:* Procedures should be in place to monitor payroll processing and ensure adequate preventive and detective controls are in place that identify and correct errors (unintentional or otherwise) as close to the point of origination as possible. One such control is to have adequate segregation of duties that limits the ability of an individual from having significant control over any one process.

*Condition:* During the audit we found that controls over payroll processing could be improved. Specifically, we found that the payroll clerk creates a document from employee timesheets which they use to enter data into the system, including their own time. This document is not independently reviewed nor is the final payroll register before processing. Once payroll is processed, the payroll clerk prepares the journal entry which is also not reviewed. The payroll clerk also has access to update the payroll processing system master file. Finally, we found one payroll monthly reconciliation that was either missing or not performed.

*Cause:* Management has not implemented adequate preventative and detective internal controls over the payroll process.

*Effect:* Improper internal controls increase the risk of inaccurate payroll expenses and the risk of payroll misappropriation.

*Recommendation:* We recommend that management implement procedures to increase the control framework over payroll processing. Specifically, management should consistently review the payroll clerk's time entered, the payroll register and employee change report; limit access to the payroll processing system master file to human resources; and review the journal entry to record payroll expense prior to posting.

*Management's Response:*

*Management agrees. In January 2008, management implemented a set of payroll review procedures to strengthen internal controls in payroll processing.*



## Communications with Those Charged with Governance under SAS No. 114

To the Board of Governors  
Oregon State Bar

We have audited the financial statements of the Oregon State Bar, Oregon State Bar Fund (the "Bar") as of and for the two-years ended December 31, 2007, and have issued our report thereon dated May 5, 2008. Professional standards require that we provide you with the following information related to our audit.

### **OUR RESPONSIBILITY UNDER AUDITING STANDARDS GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA**

As stated in our engagement letter dated November 27, 2007, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

Our responsibility is to plan and perform the audit in accordance with generally accepted auditing standards and to design the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Bar's internal control over financial reporting. Accordingly, we considered Bar's internal control solely for the purposes of determining our audit procedures and not to provide assurance concerning such internal control.

We are also responsible for communicating significant matters related to the financial statement audit that, in our professional judgment, are relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

### **PLANNED SCOPE AND TIMING OF THE AUDIT**

We performed the audit according to the planned scope and timing previously communicated to you in the engagement letter dated November 27, 2007.

### **SIGNIFICANT AUDIT FINDINGS**

#### **Qualitative Aspects of Accounting Practices**

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Oregon State Bar are described in Note 1 to the financial statements. *No new accounting policies were adopted and there were no changes in the application of existing policies during 2006 or 2007.* We noted no transactions entered into by the Bar during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

**Significant Accounting Estimates**

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were.

Management's estimate of the allowance for doubtful accounts is based on management's estimate of historical losses and specific prior and current member dues. We evaluated the key factors and assumptions used to develop the allowance for doubtful accounts in determining that it is reasonable in relation to the financial statements taken as a whole.

Management's estimate of the fixed asset lives and depreciation methods is based on approximating cost of the asset over its useful life. We evaluated the key factors and assumptions used to develop the fixed asset lives and depreciation methods in determining that it is reasonable in relation to the financial statements taken as a whole.

**Financial Statement Disclosures**

The disclosures in the financial statements are consistent, clear and understandable. Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. The most sensitive disclosure affecting the financial statements was:

Disclosure of Subsequent Events in Note 12 to the financial statements describing the loan commitment and election to purchase the new Oregon State Bar Center

**Significant Difficulties Encountered in Performing the Audit**

We encountered no significant difficulties in dealing with management in performing and completing our audit.

**Corrected and Uncorrected Misstatements**

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We did not have any adjusting or passed journal entries.

**Disagreements with Management**

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

**Management Representations**

We have requested certain representations from management that are included in the management representation letter dated May 5, 2008.



***Disbursement controls***

ISSUE

The individual who reviews changes to approved vendor master files should not have access to modify vendors in the system. In addition, according to the Oregon State Bar's policy, all disbursements should be reviewed by the accounting supervisor and the chief financial officer.

FINDING

During our review of controls over the financial system, we found that the same individual who has access to add or change vendors in the vendor master file, also reviews the activity log of changes to the vendor master file each month. During our control testing of disbursements, we found two of eighteen disbursements that, while reviewed by the accounting supervisor, were not reviewed by the chief financial officer.

RECOMMENDATION

We recommend management ensure the activity log of changes to the vendor master file is reviewed by someone without access to modify vendors and ensure all disbursements are reviewed by the CFO.

***Fixed asset policies***

ISSUE

Policies and procedures provide for the standardization of accounting principles and maintain consistency for management decisions and controls.

FINDING

The Oregon State Bar has not formally documented its policy regarding fixed asset capitalization and fixed asset useful lives.

RECOMMENDATION

We recommend management document the capitalization and useful life policy of fixed assets to ensure the policy is consistently followed.

***Cash Receipt Controls***

ISSUE

Incoming checks should be restrictively endorsed immediately upon opening.



Oregon State Bar

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2007

**COMMITTEE  
& SECTION**

Annual Reports

# 2007 COMMITTEE AND SECTION ANNUAL REPORTS

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The Oregon State Bar would like to thank all Committee and Section volunteers for their service. Committees and Sections are vital to the ability of the bar to provide both member and public services and to keep the organization responsive to the needs of its members, the courts, and the bar. To all 2007 Committee and Section members, thank you for your time and expertise.

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# COMMITTEES

## AFFIRMATIVE ACTION COMMITTEE

### *Activities and accomplishments:*

The AAP saw many changes during 2007: it suffered the loss of the AAP Administrator, Stella Manabe, after a reorganization of the program into Member Services Department; the Executive Director removed herself from oversight of the AAP and the manager of Member Services agreed to oversee the AAP and report directly to the BOG. Efforts are underway to replace the administrator, with input from stakeholders from diversity organizations such as OMLA, OWLS, OSB Diversity Section, NALA, OGALLA, OHBA, OC-NBA, and the three Oregon law schools.

**SCHOLARSHIP PROGRAM:** The Scholarship Subcommittee scored 71 applications, and awarded 8 scholarships in the amount of \$2000 each, which were paid in two installments directly to each law school.

**FIRST YEAR INTERNSHIP PROGRAM:** 36 first-year law students submitted packets of materials, which were sent to our 2007 participating employers. Students submitted their Personal Statements along with resumes and legal writing samples. 6 students received summer employment with the firms of Bullivant Houser Bailey PC, Dunn Carney Allen, K&L Gates, Schwabe Williamson & Wyatt PC, and Stoel Rives LLP. Additionally, 2 students were hired for the law firm Diversity Program with Stoel Rives LLP.

**CLERKSHIP STIPEND PROGRAM:** 47 students applied for 20 stipends designated to secure clerkships with employers who could match at least the \$5.00/hour stipend. Stipend recipients worked for Ackley, Melendy & Kelly, Allen 2, Brindle McCaslin & Lee, Doyle Law PC, Hutchinson, Cox et al, Joanne Reisman, Johnson Clifton et al, Juvenile Rights Project, Lane County Legal Counsel, Legal Aid in Eugene, Liberty NW, Metro Public Defender, Oregon Law Center, Portland City Attorney, Standard Insurance, Tri Met, and Westside Family Law.

**PUBLIC HONORS FELLOWSHIP:** The Public Honors Subcommittee reviewed 12 applications for 6 positions. Once again, the AAP accepted the ABA Section of Environment, Energy, and Resources grant for 2007, which was utilized by an applicant who worked for Goal One Coalition. Other Public employers included the Oregon Court of Appeals, the Oregon Supreme Court, Legal Aid of Portland, and the Multnomah County DA's Office.

**BAR EXAM GRANT:** 12 applications were reviewed

for both the February and July 2007 exams. A total of 10 grants were awarded. OMLA, through their annual auction in July, raised funds to award Bar Exam Preparation Course scholarships for the two ethnic minority graduates who did not receive awards through the Bar Exam Grant program.

**OLIO:** The bar's Affirmative Action Program includes OLIO (Opportunities for Law in Oregon), a recruitment/retention strategy for Oregon's ethnic minority law students. All entering ethnic minority law students are invited to participate in the OLIO Orientation. All students, regardless of ethnicity, who are committed to advance the OLIO mission can apply to participate in the Orientation and are also eligible to participate in other OLIO activities.

**9<sup>TH</sup> ANNUAL EMPLOYMENT RETREAT** took place in January at Lewis & Clark Law School. Over 90 attended the day-long retreat, which included traditional resume building, interviewing skills and mock interviews. The Employer Forum finished up the day. 24 firms rented tables for the forum, and students were encouraged to visit each employer table with a game of Texas Hold 'Em to win prizes.

**2007 OLIO ORIENTATION** earmarked the largest attended OLIO in its ten-year history, with 88 incoming and upper division law students, and 89 attorneys, judges, law school and firm representatives, staff and supporters. Funding for the Orientation was provided through a generous grant from the Oregon Law Foundation (OLF), and various donations from law firms, such as Ball Janik LLP, Barran Liebman LLP, Brownstein Rask Sweeney et al, Bullivant Houser Bailey PC, Cosgrave Vergeer Kester LLP, Davis Wright Tremaine LLP, Karnopp Petersen LLP, Tom Kranovich, Attorney at Law, Schwabe Williamson & Wyatt PC, and Stoel Rives LLP.

**5<sup>th</sup> Annual BOWLIO** was postponed until January 2008 due to lack of staffing resources.

### *Recommendations for 2008:*

The focus for 2008 will be on rebuilding the AAP after the major set backs caused by: (1) Executive Director Karen Garst's restructuring and demotion of the AAP without consulting the AAC and the community of stakeholders; (2) the way the restructuring was communicated to the AAC and community of stakeholders; (3) Executive Director Garst's comments made at the September 14, 2007 AAC meeting; (4) the demotion of the AAP Administrator; and (5) the loss of Stella Manabe, the former AAP Administrator who created and implemented the nationally renowned

OLIO program. On January 12, 2007, the AAC will hold its annual retreat jointly with the OSB Diversity Section Executive Committee, OMLA Board of Directors and the Chair of the MBA Equality Committee. The AAC will partner up with these organizations to rebuild the AAP, move the program forward, and regain the trust of Oregon's lawyers and law students of color. The retreat will focus on how to best rebuild and move the AAP forward.

Respectfully submitted: Amanda L. Mayhew (CH), Trung D. Tu (SEC), Richard J. Brownstein, Michael E. Cal-lier, Madeleine Campbell, Lori E. (Pleshko) Deveny, David Winston Giles, Ronald G. Guerra, Dennis C. Karnopp, Tom Kranovich, Parna A. Mehrbani, Hon David Schuman, Magali Sosa-Tirado, Kim Sugawa-Fujinaga, Lisa M. Um-scheid, Beth S. Wolfsong, Kimberley Ybarra-Cole, Rene Cardenas Jr (PM), Marva Fabien (BC).

**CERTIFIED PUBLIC ACCOUNTANTS  
—JOINT COMMITTEE**

*Activities and accomplishments:*

- The committee regularly held meetings in February, April, June, August, and (will hold a meeting in December) for approximately 1 hour at the Oregon State Bar.
- The committee members wrote and edited articles for the Professional Insight feature in the Oregon Certified Public Accountant (the Oregon CPA equivalent to the OSB's Bulletin). The articles covered items of interest to both accountants and lawyers.
- The committee held its Fall retreat at the Black Point Inn in Oregon City.
- The committee recommended changes to its charge to include a focus on helping to develop guidelines regarding the unauthorized practice.

*Matters considered/Matters pending:*

The Committee has considered applying for status as a section of the OSB.

*Recommendations for 2008:*

- Continue to update and maintain the committee's website hosted by the OSCPA.
- Involve lawyers and accountants outside the committee in the work on unauthorized practice of law guidelines.
- Continue to arrange opportunities for lawyers and accountants to network and work on issues of common

interest.

- Submit Professional Insight articles to the Oregon Certified Public Accountant.

Respectfully submitted: Darin S. Christensen (CH), Vivian M. Lee (SEC), Gary R. Barnum, Joshua M. Barrett, Lana G. Becker, Jay D. Broudy, J Ellen Burson, William H. Dolan, Eric R. Foster, Marcus M. Henderson, Gary S. Leavitt, Patricia Annette Leighton, David J. Malcolm, Wil-liam S. Manne, Hollis K. McMilan, Shane D. Moncrieff, Hoang H. Nguyen, Gregson Parker CPA, John D. Parsons, Jeremy P. Prickel, James G. Rabe, Steven B. Resnikoff, Cam Sivesind, Brian S. Thompson, Fredrick H. Williams, Nancy K. Winn, Cathi Pittman (BL).

**FEDERAL PRACTICE AND PROCEDURE**

*Activities and Accomplishments:*

In 2007, the Federal Practice and Procedure Committee worked on three distinct projects: (1) providing input into developing a component of the OSB Economic Survey that would obtain information from litigators regarding hourly rates charges in specialty areas of practice to assist the courts in evaluating petitions for attorneys fees; (2) to assist with planning and/or sponsorship of the District of Oregon Annual Conference; and (3) to revitalize and reorganize the pro bono panel in federal court.

With regard to the Economic Survey, Committee Chair Dana Sullivan served as a member of a working group to help develop a supplement to be distributed to members of certain Bar Sections to obtain data regarding hourly rates charged by Section members. Several Sections opted to participate in the supplemental survey of hourly rates and the supplemental surveys will soon be sent out, if they have not already been distributed.

The District Conference of the District of Oregon took place on November 29 and 30, 2007, in Eugene. Judge Ann Aiken took charge of planning the conference with the as-sistance of the Ninth Circuit attorney representatives. Our Committee served as a co-sponsor of the program. How-ever, Judge Aiken did ask for assistance from our Commit-tee in promoting the conference among federal practitioners to increase attendance.

Magistrate Judge Janice Stewart, a judicial member of the Committee, has spearheaded an effort to revitalize the federal court pro bono panel and to systematize the process through which the court refers out cases involving pro se plaintiffs for evaluation. Judge Stewart made substantial progress in developing a system for screening and referring cases and has been working on enlisting the support of local

law firms to provide attorneys for the Pro Bono Panel. The federal court Attorney Admission Fund approved reimbursing attorneys up to \$3,000 per case for time spent screening cases and for out-of-pocket expenses incurred.

***Matters Considered/Matters Pending:***

Other than the projects described above, there were no other matters considered by the Committee. The only matter that remains pending is the Pro Bono Panel project, which the Committee will continue working on in 2008.

***Recommendations for 2008:***

The Committee will be meeting in January to identify its goals for 2008. The hope is to identify a number of different projects of interest to committee members that will offer concrete goals that can be accomplished within the year. Each committee members will volunteer to serve as a member of a subgroup that will focus on the particular project that is of the greatest interest to him or her.

**Possible projects include:**

- Review the federal, local and docketing rules for potential conflicts and make proposals to resolve any conflicts identified.
- Continuing work to systematize the Pro Bono Panel referral process. There are several discrete projects that need to be done, including composing a list of community resources for the court to give to pro se litigants, looking into whether the court should also have a pro se manual to give to pro se litigants, formulating a mentoring program to assist young lawyers who want to take on pro bono cases, and formulating a rewards system for those who do provide pro bono services.
- Provide greater assistance with the District Conference or develop a presentation on federal practice to be included in the OSB New Lawyers Section's CLE, if such a program would not be duplicative of the annual federal practice CLE presented by the Federal Bar Association.

Respectfully Submitted: Dana L. Sullivan (CH), Danielle J. Hunsaker (SEC), Joel I. Bruhn, Thomas K. Doyle, Charles Edward Fletcher, William R. Goode, Michelle LH Ing, Vishnu N. Jetmalani, Matthew J. Lysne, Kristina M. Thompson, Michael C. Zusman, Hon Randall L. Dunn (ADV), Hon Garr M. King (ADV), Hon Janice M. Stewart (ADV), Richard S. Yugler (BC), Cynthia L. Easterday (BL).

## JUDICIAL ADMINISTRATION COMMITTEE

***Activities and Accomplishments:***

**JAC Website**

The JAC made it a priority project to improve the communication lines between the Bench and Bar's various rule making committees and the affected legal community. With that purpose in mind, the JAC created a website. The website will timely post each committees minutes and commenting periods for any proposed rule. The website address is <http://www.orjac.homestead.com/index.html>. The JAC's goal is to insure that each proposed rule receives the proper attention and input from both the Bench and Bar. The website will also allow the various rule making committees to keep abreast of what the other committees are considering.

The JAC also assigned JAC members as liaisons to each of the rule making committees to insure timely postings and broadcasts. In addition, the JAC assigned members as liaisons to all major Bar organizations to insure the widest range of participation in the rule making process.

***Legislative and Political Issues:***

The committee continued in its role to closely monitor legislation that impacts the judiciary and judicial administration, and support legislation that furthers those ends. This included measures addressing general funding, improvements to court facilities, judicial salaries, electronic filing and the public defense services.

The JAC also participated in various legislative activities, including participating in the Oregon State Bar's legislative day and contributing to the Public Defense Services Task Force.

The JAC was also represented and assisted in the appellate judge selection process.

**Streaming CLE's Tailored for Judges:**

The JAC is considering producing six one-hour streaming CLE videos tailored especially for judges.

***Matters Considered:***

The JAC considered holding a "summit on the courts" in conjunction with the Multnomah Bar Association. The JAC anticipated that the event would follow the successful format used for the Citizens for Justice summit held in 2000 at Portland Community College. That matter has been tabled for the time being.

***Pending Matters:***

The JAC's project to produce streaming CLE videos for judges is still under consideration.

**Recommendations for 2008:**

**JAC Website**

The JAC website should continue as a priority project. The goal of improving communication lines between the Bench and Bar's various rule making committees and the affected legal community is an important and ongoing project.

**Chief Justice DeMuniz eCourt Initiative**

The JAC should take an active role in promoting and assisting Chief Justice DeMuniz in his commitment to move the Oregon Judicial Department into the world of electronic filing and document management. The Chief Justice is building upon the work performed by the OSB Task Force on State Court Electronic Filing. This important work is deserving of JAC's attention. The eCourt initiative will significantly improve access to courts and fundamentally change for the better key components of the administration of justice in this state. The JAC should monitor this effort, report on its progress, and assist in moving the initiative forward.

**Streaming CLE's tailored for Judges**

The JAC should continue to consider this project. Selected CLEs conducted at the judicial conference should be filmed, converted to streaming video, and made accessible to judges to view on their own schedule.

**Judicial Outreach**

The Board of Governors should continue to rely upon the JAC, as needed, to assist the judiciary in its public outreach campaign. In 2006, the JAC passed on to the Chief Justice and the presiding judges and trial court administrators of the circuit courts the judicial outreach notebook entitled "Strong Courts Build Strong Communities." Partially as a result of the Committee's work, the Oregon Judicial Department adopted "judicial outreach" as one of its strategic initiatives. The JAC has since removed public outreach from its active agenda. Should future issues arise that cause the Board to again take an active role in assisting the judiciary on public outreach, the JAC should be a considered a primary resource for that work.

Respectfully submitted: Michael H. Bloom (CH), Douglas Marion Bray (SEC), Russell L. Baldwin, Christopher Cauble, Ann S. Christian, Kathleen G. Dolan, Hon Dale R. Koch, Steven M. Lippold, Jack L. Morris, Charles A. Ringo, Jaye W. Taylor, Hon Debra Kay Zuhlke Vogt, Eric J. Waxler, Hon Russell B. West, Richard Moellmer (PM), Audun (Dunny) I. Sorensen (PM), Jonathan P. Hill (BC), Susan Evans Grabe (BL).

**LEGAL ETHICS COMMITTEE**

**Activities and accomplishments:**

The committee met six times during 2007. The committee's work focused on the drafting of Formal Ethics Opinions (FEO) in response to suggestions from committee members and requests from third parties. The following are opinions that were finalized by the committee and approved by the Board of Governors (BOG) in 2007:

- FEO 2007-177: Issues Conflicts, where a lawyer or lawyers within the same firm face a common legal issue in unrelated client matters and intend to take conflicting positions on the legal issue in the two matters.
- FEO 2007-178: Competence and Diligence, addressing the duties and responsibilities of attorneys, and their supervisors, representing indigent criminal defendants.
- FEO 2007-179: Pretrial Publicity, addressing a number of scenarios, in both criminal and civil cases, where attorneys make or wish to make public, out-of-court statements about pending litigation.
- FEO 2007-180: Internet Advertising, addressing the ethical responsibilities of lawyers who wish to use Internet referral services.

During 2007, the committee also approved and referred to the BOG an opinion considering when an out-of-state lawyer may participate in an arbitration in Oregon, and under what circumstances an Oregon attorney may assist the out-of-state lawyer with the Oregon matter. The committee was also finalizing two opinions addressing a variety of circumstances in which a lawyer may or must withdraw from representation of a client. The committee also began work on an opinion considering the ethical responsibilities of a lawyer who currently holds a position involving adjudication of matters involving state agencies and who wishes to negotiate for employment with the state.

**Additional comments:**

During the upcoming year, the committee plans to continue working on pending opinions, and to respond to new requests for opinions.

Respectfully submitted: Paul E. Levy (CH), Harry Michael Auerbach (SEC), Carolyn Alexander, E Joseph Dean, Roger J. DeHoog, Deanna L. Franco, Michele Grable, Guy B. Greco, Dana C. Heinzelman, Ethan D. Knight, Joan-Marie Michelsen, William H. Replogle, Sheree Lynn Rybak, Yvonne Ana Tamayo, Brenna Tanzosh, S Ward Greene (BC), Sylvia E. Stevens (BL).



## LEGAL HERITAGE INTEREST GROUP

### *Activities and accomplishments:*

During 2007, the Legal Heritage Interest Group scheduled and held four regular business meetings. Of note was the group's January meeting and tour at the Washington County Historical Society located on the Rock Creek Campus of Portland Community College.

During 2007, the group accomplished the following:

- Met with the Karen Garst, Executive Director and Britt Brewer of LRS Architects in connection with the location and design of the Members' Room at the new OSB Center. In addition, plans for historical exhibits in the new center were planned. Member Janet Kreft led these efforts.
- Designed and scheduled for January 31, 2008, an OSB CLE "Learning Law from Oregon History." Member Maiya Hall led this effort. Advisory Member Fred Granata will be one of the speakers.
- Continued to solicit articles on historical topics for publication in the OSB Bulletin.
- Referred those interested in oral histories to the U.S. District Court Historical Society's program.
- Continued efforts aimed at selling copies of *Serving Justice*.

### *Matters considered/Matters pending:*

We maintained liaison with other groups interested in Oregon legal history, notably the US District Court of Oregon Historical Society, Oregon Women Lawyers and the Queen's Bench history committee.

We continue to explore liaison and joint meetings with other organizations interested in Oregon legal history and perhaps other OSB sections.

### *Recommendations for 2008:*

- The Legal Heritage Committee should be continued through the next membership year.
- In 2008, the group's initial meeting should be held at the new OSB Center to review the equipping of the Members' Room and view spaces available for historical exhibits.
- Efforts should continue at the new OSB Center towards showcasing Oregon legal history, with special emphasis in honoring the efforts and contributions of women and other minority lawyers. This includes support for developing a "timeline" exhibit honoring

contributions of Oregon lawyers of color.

- Develop an archive policy to be adopted by the OSB's Board of Governors, to ensure the safe keeping of items of future historic interest.
- Continued efforts in marketing the Oregon State Bar's history, *Serving Justice, A History of the Oregon State Bar 1890-2000*.
- Continue support for the oral history efforts of the U.S. District Court Historical Society.
- In addition, continue efforts to develop ideas and recruit authors for articles of historical interest in the OSB Bulletin.

Respectfully submitted: David B. Avison (CH), Janet D. Kreft (SEC), Richard D. Barber Sr, Bill Y. Chin, Jack Gore Collins, Mary Crawford, Betty I. Crofoot, Maiya M. Hall, Estate of Jack L. Kennedy, Randall B. Kester, S Diane Rynerson, Jacqueline A. Tommas, Anthony H B. Wilson, Hon Owen M. Panner (ADV), Kathleen A. Evans (BC), Marlyce Gholston (BL), Paul Nickell (BL).

## LEGAL SERVICES PROGRAM COMMITTEE

### *Activities and Accomplishments:*

The committee conducted and completed a peer review of Legal Aid Services of Oregon as instructed by the LSP Standards and Guidelines peer review policies.

### *Matters Considered/Matters Pending:*

The committee made a final recommendation concerning the Columbia County Legal Aid Program finding the program in compliance with the LSP Standards and Guidelines. The committee also considered and made a recommendation to the BOG concerning two matters which are outlined below:

1. The BOG approved the committee's recommendation concerning the one-time \$700,000 General Fund appropriation to the OSB to fund increased costs for legal aid during the 2007-09 Biennium.
  - a. 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;
  - b. 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.

- c. 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;
2. The BOG approved increasing the filing fee administrative fee from \$90,000 to \$108,000. This increase starts in 2008.

***Recommendations for 2008:***

The committee will hear a progress report from Columbia County Legal Aid. The committee will also participate in a peer review of either the Center for Nonprofit Legal Services or Lane County Law and Advocacy Center.

Respectfully Submitted: Samuel E. Tucker (CH), Bob Turner (SEC), Beverly C. Pearman, Douglass H. Schmor, Scott G. Seidman, Hon Francisco J. Yraguen, Ron Chase (PM), Celeste Ulrich (PM), Debra FJ Lee (ADV), Thomas J. Matsuda (ADV), Ralph Saltus (ADV), David Thornburgh (ADV), Linda K. Eyerman (BC), Judith Baker (BL).

**LOAN REPAYMENT ASSISTANCE PROGRAM COMMITTEE**

***Activities and accomplishments:***

- The committee finalized the policies and procedures applicable to the award of forgivable loans.
- The committee finalized application documents.
- The committee communicated the availability of the forgivable loans through a variety of means and received 58 applications. The average debt of the applicants was \$99,144, with an average salary of \$38,576.
- The committee met twice in executive session to review the applications and determine the awardees. Factors considered by the committee in awarding the forgivable loans were:
  - Financial need;
  - Educational debt to income ratio;
  - Type and location of work;
  - Demonstrated commitment to public service;
  - Assistance from other loan repayment assistance programs; and
  - Financial information, in addition to salary, such as:
    - Income-producing assets;

- Medical expenses;
  - Child care expenses;
  - Child support; and
  - Other appropriate financial information
- The committee awarded \$5,000 forgivable loans to seven of the 58 applicants. The awardees had an average debt of \$146,961, with an average salary of \$38,730. The loans are renewable for up to two additional years, provided the applicants continue to meet the requirements of public interest employment, proof of good standing on loan payments, and proof of outstanding debt.

***Matters Considered/Matters Pending:***

- The committee reviewed the policies and procedures and changed the debt requirement to \$60,000. No other substantive changes were made.
- The committee is reviewing the federal College Cost Reduction and Access Act (CCRAA), signed into law in September, 2007, to determine if and how the LRAP should change in response to the law.

***Recommendations for 2008:***

- The committee should continue to monitor the CCRAA and will make minor changes to the application to better judge the impact of the law on the applicants.
- The committee should continue to market the availability of the loans.
- The committee will evaluate the current awardees to determine their compliance with the guidelines, and ensure that loan forgiveness or enforcement occurs per the guidelines.
- The committee will evaluate the 2008 applicants and decide who will be awarded loans, using the guidelines as set forth above.

Respectfully submitted: Timothy C. Gerking (CH), Theresa L. Wright (VC), John J. Connors, Maya Crawford, Linda K. Eyerman, Marva Fabien, Heather Kemper, Dan Norris, Ross M. Williamson, Catherine Petrecca (BL).

## MINIMUM CONTINUING LEGAL EDUCATION COMMITTEE

### *Activities and Accomplishments:*

- The Committee reviewed and made decisions on requests for review of MCLE Administrator decisions;
- The Committee considered changes to the number of members on the committee; and
- The Committee continued to develop expertise regarding the MCLE programs in Oregon and other states.

### *Matters Considered/Matters Pending:*

#### **At its March meeting the committee -**

- Reviewed a proposed addition to MCLE Regulation 5.100(a). The committee recommended the addition so that presenters could be allotted more time to be calculated in instances of panel presentations.
- The committee reviewed a request for waiver of late fees for late reporting/compliance of MCLE requirements.
- Reviewed the appropriateness of receiving credit for program planning and requested a draft of a proposed rule.

#### **At its June Meeting the committee -**

- Reviewed a request for waiver of later fees for late reporting/compliance of MCLE requirements.

#### **At its September Meeting the committee -**

- Discussed whether the committee should add or maintain the number of members serving on the committee.

The committee also considered requests for review of the MCLE Administrator's decisions from the following people/entities:

#### **March**

Jewish Learning Institute  
Spanish for Lawyers Program  
OAAP/PLF Program

#### **June**

Oregon Women Lawyers  
CLE Authority

## September

Davis Wright Tremaine  
Lewis & Clark

### *Recommendations for 2008:*

In the year ahead, the committee anticipates adding an additional member. This will bring the total members of the committee back to its original amount. The committee should also continue reviewing and making recommendations to modify MCLE regulations as the need arises to ensure serving the purposes of MCLE requirements. Finally, the committee should continue to assist the MCLE Administrator in interpreting and applying the MCLE regulations.

The committee meetings should continue to be held once a quarter or as necessary.

Respectfully submitted: Kara K. Davis (CH), Pamela Palmer (SEC), Saville W. Easley, Michael D. McNichols, Jennifer L. Niegel, Stace B. Gordon (PM), Carol DeHaven Skerjanec (BC), Denise Cline (BL).

## PRO BONO COMMITTEE

### *Activities and Accomplishments:*

The committee met 11 times this year. There were 15 regular members and 2 advisory members. Meetings were held once a month during the noon hour with a recess for the month of August.

### SUBCOMMITTEES

**Law Firm Involvement Subcommittee:** This group created a model pro bono policy template, model policy worksheet, and model policy handbook as "tools" for law firms, solo practitioners and government attorneys to use in developing, amending and implementing written pro bono policies for their firms, practices or agencies. These tools were launched as an interactive web-based program on the OSB Website in October 2007. To view the policy toolkit, please go to [www.osbar.org/probono](http://www.osbar.org/probono). This subcommittee also coordinated their work with that of the Multnomah County Bar Association's Pro bono Pledge Task Force. In January 2008, the MBA will launch their Pro Bono Pledge, challenging individual attorneys and law firms in Multnomah County to take one pro bono case during 2008, give money to a group that provides free civil legal services, and create a pro bono policy using the OSB template. **Recommendation for 2008:** This subcommittee should continue its work in 2008 by exploring ways to promote and market the model policy "tools."

**House Counsel Rule:** This subcommittee explored barriers to pro bono for corporate counsel. The impetus came from contacts made by Intel which was seeking to expand its pro bono efforts in Oregon. The Committee recommended modification of the in-house counsel rule (Rule 16.05) to allow pro bono work with certified pro bono programs by in-house corporate counsel who are not licensed in Oregon. Under the leadership of Bruce Rubin, the Committee developed a proposal that was submitted to the Access to Justice Committee and eventually approved by the Board of Governors. At the time of writing this report, the proposal is before the Supreme Court for consideration at its December meeting and passage is anticipated. Recommendation for 2008: Upon approval by the Supreme Court of the revised in-house counsel, this subcommittee will have concluded its work. However, many of the same issues arise in connection with Oregon's emeritus attorney rules and it is recommended that these receive the Committee's attention and energy in 2008 (see "Other Activities" below).

**Opportunities for Government Lawyers Subcommittee:** This subcommittee continued from 2006 with the purpose of exploring barriers to pro bono for government lawyers, researching the model pro bono policy for government lawyers developed by the Minnesota State Bar, and discussing statutory limits on pro bono work as set forth in ORS 180.140(6); i.e., AAGs can only do direct pro bono work on behalf of indigent clients and are prohibited from using any government resources in doing that work. The chair of this subcommittee met with the Portland City Attorney's Office and researched the Oregon Department of Justice's current personnel policy on pro bono work by Assistant Attorneys General. Recommendation for 2008: This subcommittee continue its work by considering possible changes to policies and rules that pose barriers to government lawyers providing pro bono services.

**Mandatory Pro Bono Graduation Requirement at Law Schools:** Under the leadership of Bruce Rubin, research was done on pro bono requirements at law schools statewide. The Pro Bono Committee learned about a pilot project at the University of Idaho Law School that mandated pro bono service as part of graduation requirements for law students. Bruce Rubin contacted each of Oregon's three law schools to determine whether a mandatory pro bono requirement would be welcome and what assistance each school would like from the Oregon State Bar through the Pro Bono Committee. The Committee considered ways to increase pro bono participation by law students generally and concluded that, rather than a mandatory pro bono requirement, it would be most helpful for the Bar to have an increased presence on campuses, to extend invitations to law school students to participate on pro bono panels, and

to coordinate matching up attorneys with students who are available to do pro bono. A memorandum summarizing this work was prepared by Bruce Rubin dated April 23, 2007 and is available upon request. Recommendation for 2008: The Committee consider whether there are ways to more fully involve law students in the Pro Bono Committee or the provision of pro bono services.

**Revision of OSB Aspirational Standard:** This subcommittee was to consider the advisability of revisions to the Oregon State Bar's Bylaw 13.1, the Pro Bono Aspirational Standard, along the lines of ABA Model Rule 6.1. Recommendation for 2008: The subcommittee was unable to progress in this work during 2007 but considers this an important undertaking that should continue in 2008.

**Judicial Involvement Subcommittee:** This subcommittee was formed to identify and increase the role of judges in promoting pro bono work. Recent research has shown that judicial participation and encouragement is essential and perhaps the most crucial factor in increasing pro bono services provided within a state. Recommendation for 2008: The subcommittee should continue its work in 2008 by supporting and coordinating with, where possible, a Supreme Court task force to be formed under Judge Ellen Rosenblum's leadership to consider revision of Oregon's judicial canons along the lines of the ABA model judicial canons, with an emphasis on facilitating judicial involvement in pro bono and providing appropriate guidelines for judicial conduct vis-à-vis the self-represented litigant.

***Other Activities:***

**Input on 2007 Pro Bono Roll Call and Pro Bono Fair:** The Committee received regular reports and provided input on the 2007 Pro Bono Fair held on April 4, 2007 at the Marriott Portland Waterfront hotel, as well as the Bar's Pro Bono Roll Call. A total of 1,358 attorneys participated (10.5% of the 12,931 active, active emeritus, and active pro bono members), reporting a total of 92,717 hours, including 36,012 hours of Volunteer Legal Representation (Category A), 19,936 hours of Volunteer Law Improvement Activities (Category B), and 36,769 hours of Community Service (Category C). Among the 1,358 participants, most were reported by law firms and OSB Certified Pro Bono Programs.

**Emeritus Attorney Pro Bono Services:** ABA Commission on Law and Aging Director, Holly Robinson, attended the May meeting of the Committee and spoke about the Commission's proposed resolution for states to adopt emeritus pro bono practice rules. Oregon is among 20 states that currently have emeritus rules in place. These rules exist to permit retired attorneys to undertake pro bono work. The Committee considered the Commission's proposals for facilitating pro bono efforts, and reviewed existing Oregon



rules. Possible barriers to emeritus pro bono services in Oregon were identified. **Recommendation for 2008:** A new subcommittee be formed in 2008 to look at incentives and possible rule changes with respect to emeritus pro bono work, including qualification, the amount of fees, PLF coverage, and compliance with MCLE requirements for out-of-state attorneys.

**Respectfully submitted:** BeaLisa Sydlik (CH), Maya Crawford (SEC), Jeanette Eileen Bello, Brandon A. Benson, Melissa Bobadilla, Willard H. Chi, Amity L. Clausen, Brien Joseph Flanagan, Hon Bryan T. Hodges, Jacinta Wang Kilber, Clay McCaslin, Tim McNeil, David J. Petersen, Bruce A. Rubin, Kimberly K. Tucker, Catherine L. Keenan (ADV), Linda K. Eyerman (BC), Catherine Petrecca (BL).

## PROCEDURE & PRACTICE COMMITTEE

### *Activities and Accomplishments:*

The Procedure & Practice Committee has been monitoring and reviewing legislative proposals that affect Procedure and Practice issues in Oregon. Committee members were available to present testimony on several bills before the legislature.

The Procedure & Practice Committee proposed three bills in the 2007 Legislative Session, all of which passed and were signed into law.

HB 2366 modified ORS 12.060 concerning the tolling of the statute of limitations for claims by minors. Our proposal clarified that the statute is also tolled on claims for the recovery of medical expense incurred in an injury to the minor. This would avoid possible duplicative litigation related to the same incident. We provided testimony at committee hearings on the bill.

HB 2367 was presented to our committee by the Council on Court Procedures and the committee agreed to propose this legislation. HB 2367 clarified voting requirements for the Council on Court Procedures.

HB 2368 was presented to our Committee by the Oregon Judicial Department and our committee agreed to propose this legislation. HB 2368 amended ORS 19.270 to reduce the delay and costs to litigants as a result of confusion about procedures of the appellate courts and trial courts relating to cases on appeal.

Our committee also provided input to the groups advocating SB 499 and SB 501.

Along with the proposals submitted, the Procedure & Practice Committee has liaison assignments with the following groups: 1) Uniform Trial Court Rules (UTCR),

2) Council on Court Procedures (CCP), 3) Chief Justice's Civil Law Advisory Committee (CJCLAC), and 4) Oregon Law Commission. Each of these committees had meetings in which P&P members attended and participated.

### *Matters Considered/Matters Pending:*

The Procedure & Practice Committee will continue to monitor progress on proposals for e-filing and e-service of court documents.

The Procedure & Practice Committee has been asked to examine whether changes to ORS 12.020(1) and (2) should be made regarding the date upon which a lawsuit is deemed "commenced". The present plan is to form a subcommittee at the beginning of next year to examine the issue and report to the Board of Governors whether the committee believes these changes would improve the practice of law.

The committee will continue to explore issues that affect the practice of law that arise out of the legislative process and case law. Furthermore, the committee will continue to provide liaison to the Council on Court Procedures, Chief Justice's Civil Law Advisory Committee, UTCR, and the Oregon Law Commission.

### *Recommendations for 2008:*

None at Present. At this time the Committee does not expect to propose legislation for the 2009 session.

**Respectfully submitted:** Scott O. Pratt (CH), John A. Schwimmer (SEC), Paul Bovarnick, Wm Keith Dozier Jr, William G. Earle, Justine Fischer, Andrew D. Glascock, Timothy W. Grabe, Mustafa T. Kasubhai, Harrison Latto, James E. McCandlish, John N. McKeegan, David F. Rees, Glenn Wallace Robles, Alexander S. Wylie, Ann L. Fisher (BC), Sally Ann LaJoie (BL).

## PUBLIC SERVICE ADVISORY COMMITTEE

### *Activities and accomplishments:*

During the 2007 session, the Public Service Advisory Committee provided advice regarding the following topics, among others:

- "30-Second Law School." How these short and informative television spots can be most effectively and economically used on cable television and in movie theaters.
- Tel-law. Whether the Tel-law program should be updated and continued, given its declining use.
- Impact of fee increases. Discussion about the impact of the recent fee increase in the lawyer referral program.

- Public records. To what extent the lawyer referral program is subject to public records law.
- Translation of public legal information. Various service providers were contacted about the need to translate public legal information into Spanish, Russian, and Vietnamese. Discussion about how best to create a permanent infrastructure for providing this service.
- Sesquicentennial video contest. Whether the bar should sponsor a video contest to celebrate the upcoming sesquicentennial. The project could be promoted to the classroom law project, college students, as well as attorneys and other adults.

***Recommendations for 2008:***

Continue work on translating public information materials into other languages.

Respectfully submitted: Hon Youlee Y. You (CH), Charles C. Reynolds (SEC), Cheryl A. Albrecht, Joel C. Corcoran, Jessica L. Cousineau, Martin M. Fisher, Dexter A. Johnson, Stephan K. Otto, Jason L. Posner, Diane C. Rivera, Naomi Stacy, C Robert Steringer, Douglas L. Tookey, Bruce Anderson (PM), Radmer Investigations (PM), Kathleen A. Evans (BC), M Kay Pulju (BL), George D. Wolff (BL).

**QUALITY OF LIFE COMMITTEE**

The Quality of Life Committee will have held eight meetings during 2007 (a ninth meeting was cancelled for lack of attendance). At the start of the year, the Committee's goals were:

- Continue to work on outreach to members of the Bar and create materials to facilitate presentations at speaking opportunities.
- Submit one article for publication in the Bulletin or other Bar publication.
- Make at least one presentation to law schools concerning financial planning and maintaining life balance.
- Update and maintain the Quality of Life website.
- Study the Bar and other LRAP programs, and determine if it is appropriate for the Committee to participate in the Bar LRAP.
- Study and determine how the Committee can complement the activities of the OAAP.

***Activities and accomplishments:***

- The Articles Subcommittee completed the research and writing of an article entitled "Law and the Pursuit of Happiness: Fatness versus Fitness" that is to be published in the Bar Bulletin in January, 2007. Work has begun on the preparation of a second article on sustainability and quality of life issues related to the practice of law.
- The Law School Presentation Subcommittee continued to work on making presentations to law school students concerning quality of life issues. The Subcommittee has been in contact with Oregon law schools and is discussing with them presentations that will complement information already being presented to the law students by the respective law schools.
- A strategy was developed for using the Quality of Life website, the website was converted to a system that allows the Committee to readily maintain and improve the website, and the website was evaluated and further updated to improve use of the website for members of the Bar.
- The Committee determined that the Oregon State Bar LRAP program is being established to function in a way that does not include involvement of the Committee. The Committee continues to monitor LRAP programs as well as a new federal law providing loan forgiveness for qualifying people.
- Representatives of the OAAP have started attending Committee meetings, and a presentation was made by a representative at one of the meetings that described for the Committee the mission and recent activities of the OAAP. OAAP has undertaken a more active role in working with the Committee to provide resources to and assist the Committee in complementing the work of the OAAP.
- The Committee began investigating sustainability and quality of life issues related to the practice of law. This included having a presentation by Dick Roy on sustainability. The Committee is investigating the possibility of having a CLE workshop for the bar on sustainability and the practice of law, as well as the article mentioned above.

***Matters considered/Matters pending:***

In addition to the points raised above, the conversion of an outline on the Committee and quality of life issues to a Power Point presentation for use by the Committee in speaking before groups of the Bar did not progress this year as planned. This is still a pending item that can be complet-

ed to facilitate speaking by members of the Committee. The outline may need revising if it is to include the new issue of sustainability and how it can affect quality of life and the practice of law. Also, the Committee can become more active in reaching out to sections and groups in and associated with the Bar.

As a further point, the issue of sustainability discussed above is a matter that was first investigated by the Committee this past year. A request has been submitted by the Committee to the BOG to add this to the mission statement of the Committee.

### ***Recommendations for 2008:***

In view of the above comments, it is recommended that the Committee revive the outreach program and seek ways to educate the members of the Bar in quality of life matters in a way that will be useful. In the recent past, outreach attempts have produced relatively little if any response or interest by local bar associations or other bar groups.

Other ongoing objectives for 2008 can include making a presentation to one or more law schools, preparing and publishing an article, and making the website a more valuable resource for the members of the Bar.

Further, if supported by the BOG, the Committee can continue to pursue issues, articles and workshops on sustainability and how it applies to the Bar, the practice of law, and the quality of life. A determination can then be made as to whether the issue of sustainability should be part of the mission of the committee, specifically, or the bar, generally.

Respectfully submitted: Edward B. Anderson (CH), James H. Curtis (SEC), Herbert Leland Harry, Theodore P. Heus, Ellen K. Jones, Jacinta Wang Kilber, Douglas Scott Sedwick, Deborah Grace Trant, Mary D. McCourt (PM), Shari R. Gregory (PLF), Michael P. Long (PLF), S Ward Greene (BC), Stacy J. Hankin (BL).

## **STATE LAWYERS' ASSISTANCE COMMITTEE**

### ***Activities and accomplishments:***

During 2007, the committee received new referrals from attorneys, the Bar, and others. Each referral was investigated in accordance with the OSB Bylaws and the SLAC authorizing statute, ORS 9.568. The committee continues to accept jurisdiction and to monitor remedial programs for several attorneys. Additionally, the committee evaluates and monitors lawyers who are referred through the diversion process from Discipline. Also this year for the first time, the Committee agreed to supervise an attorney who had been Conditionally Admitted to the OSB. Other inves-

tigations resulted in the committee declining jurisdiction. Much of the business conducted by the committee involved confidential discussions surrounding cases assigned to each member. Those confidential discussions cannot be revealed in this report.

The committee formalized some of its processes for monitoring lawyers under their jurisdiction. They completed several documents, including the Monitoring Agreement, which is used with a lawyer under SLAC's jurisdiction. The committee also developed a new print advertisement which has run in the Bulletin and other publications.

### ***Matters Considered/Pending Matters:***

Retiring BOG member, Jack Enbom, sent an open letter to the OSB President recommending several steps to encourage greater communication and cooperation between the committee and the Oregon Attorney Assistance Program (OAAP). This resulted in the formation of a Task Force comprised of selected members of the OSB Board of Governors and the PLF Board of Directors. In addition to Task Force members, representatives of SLAC, OSB, and the OAAP attended Task Force meetings. The Task Force met several times in 2007 and 2008 and a report has been drafted. The final report of the Task Force is still pending.

### ***Recommendations for 2008:***

Increase efforts already underway to promote the profile of SLAC and conduct outreach with various bar constituencies.

Implement any recommendations the Board of Governors may make to SLAC after release of the Task Force Report.

Continue to seek creative ways to help the impaired lawyer and protect the public.

Respectfully submitted: Gregory J. Hazarabedian (CH), Hon Ted E. Grove (SEC), Hon Henry C. Breithaupt, Susan R. Gerber, Bruce M. Howlett, Michael C. Lewton, Robert M. Lusk, Laura B. Rufolo, Stephen J. Williams, Dr Shane Haydon (PM), Donald Muccigrosso (PM), Meloney Crawford Chadwick (PLF), Michael P. Long (PLF), Albert A. Menashe (BC), Jonathan P. Benson (BL).

## **UNIFORM CIVIL JURY INSTRUCTIONS COMMITTEE**

The committee passed of a set of Agency instructions which will apply to all cases which improves the current instructions which focus on automobile tort cases, completed revision to two Employer Liability Law instructions, and

completed revisions to the comments to the Punitive Damages and Ability to Pay instructions. The committee also passed a special verdict form which separates questions of fault and causation, and will likely complete a set of similar verdict forms after consideration of the stepwise instructions and same nine rule. A User's Guide subcommittee was formed in 2007 which produced a near-complete draft of a User's Guide similar to the Uniform Criminal Jury Instructions' User's Guide. Early drafts of a few more Agency instructions and a few more damages instructions for contracts and torts were passed and are likely to be complete in 2008. Finally, a set of Domestic Animals torts instructions were drafted and passed or close to completion. They were withdrawn by the author in light of 2007 legislation. With time to review the new laws, I anticipate those instructions can be completed.

***Recommendations for 2008:***

- Consider adding instructions or commentary for Life Expectancy and Present Value per Hon. Edwin J. Peterson's suggestion.
- Solicit input for instruction revisions or new instructions with a cutoff date early in the year so the committee has time to work on all instructions without being overloaded. Ask the tort, employment, and business litigation bars, and judges for input about new or revised instructions.
- Check the members' summer schedules early to ensure a quorum at the summer meetings.
- Focus on balanced recruitment of judges and lawyers on both sides of the civil practice areas (torts, employment, business). To keep the current tenor of the committee, I would also suggest recruiting people who are easy to work with.

Respectfully Submitted: Christopher T. Hill (CH), Thomas A. Melville (SEC), Steven C. Burke, David J. Elkanich, Caroline R. Guest, Katherine Heekin, William B. Kirby, Michael Hugh McGean, Charles J. Merten, Jenny M. Morf, Rick Pope, Charles Robinowitz, Hon Thomas M. Ryan, Timothy L. Williams, Timothy C. Gerking (BC), Linda L. Kruschke (BL).

**UNIFORM CRIMINAL JURY INSTRUCTIONS COMMITTEE**

***Activities and accomplishments:***

In 2007 the Uniform Criminal Jury Instructions committee met monthly. The committee drafted and approved instructions respecting different theories of aggravated

murder, jury sentencing, and other issues. In response to a 2007 decision by the Oregon Supreme Court the committee completely revised the instructions related to the four culpable mental states prescribed under Oregon law. The committee continued its ongoing review of the entire publication for updating out-of-date material and findings errors in existing instructions. The committee drafted and approved several instructions to reflect legislation enacted by the 2007 Legislative Assembly. I am pleased to report that the Uniform Criminal Jury Instructions publication remains the standard reference for criminal jury instruction issues in the State of Oregon.

***Matters considered/Matters pending:***

The committee continues to review the Uniform Criminal Jury Instruction publication.

***Recommendations for 2008:***

The committee should continue to operate in the same fashion in 2008.

Respectfully submitted: Steven Griffin (CH), Sheryl Bachart (SEC), Nancy J. Cozine, Leah B. Cronn, Erika L. Hadlock, Spencer J. Hahn, Bronson D. James, Joanna Jenkins, Jeffrey M. Lowe, Karla L. Nash, Christopher R. Piekarski, Sara Snyder, Timothy A. Sylwester, Heather L. Weigler, Ladd Wiles, Robert M. Lehner (BC), Dean P. Land (BL).

**THE UNLAWFUL PRACTICE OF LAW COMMITTEE**

***Activities and Accomplishments:***

The Unlawful Practice of Law Committee (UPLC) met every month during 2007, except for August, to discuss UPL issues, present the findings of Committee member investigations, and recommend action based on those findings. Actions that the UPLC may recommend on UPL complaints are: 1) Dismissal, 2) Notice letter, 3) Admonition letter, 4) Cease and Desist agreement or 5) prosecution for injunctive relief. The prosecution and signed Cease and Desist agreements must be approved by the Board of Governors.

During most of 2007 the UPLC consisted of twenty-one members four of which were non-attorney, public member. As noted in the 2006 report, one of our public members is employed as a paralegal. Her insight and knowledge was extremely helpful as many of our cases involve individuals who hold themselves out and paralegals. Towards the end on 2007 one public member and two attor-

ney member resigned primarily for family or employment obligations.

As in prior years, the UPLC saw a variety of complaints including multi jurisdictional practice by lawyers licensed in other states, professionals in law related fields such as accounting, tax advice and financial services, non-lawyer bankruptcy petition preparers and debt collectors and non-lawyers performing services for the immigrant populations. The majority of cases in which the UPLC found that the activities of the respondent involved UPL were resolved by the respondent accepting a letter of admonition. However, there are currently eleven cases that the BOG has approved for prosecution and two cases pending BOG approval for prosecution. Not surprisingly, many of the cases approved for prosecution involve the same individuals that the UPLC has received multiple complaints on throughout several years.

#### ***Matters Considered/Matters Pending:***

As of December 1, 2007, the UPLC received 56 new reports. Additionally, we had 41 cases still open from 2006, 2005 and even 2004. Throughout the year we reduced the back log to 11 cases, 10 from 2006 and one from 2005. Out of the 56 new cases in 2007, 43 remain open. Additionally, the committee spent considerable time addressing due process concerns with regards to a contested admonitions. A committee member undertook the task of drafting proposed revisions to the by-laws (Subsection 20.700). Unfortunately, the creation of a contested admonition procedure that satisfies due process concerns and is manageable with the limited resources of the UPLC, remains elusive.

#### ***Recommendations for 2008:***

The UPLC has played a vital role in protecting the public from those who would practice law in Oregon without a license. One issue that continues to plague the UPLC is the aging of cases. Many times cases are 1 or 2 years old before they are resolved. We need to do a better job of achieving timely disposition of cases. Also as discussed above we need to resolved the gap in our by-laws that allows for a contest admonition process. As it currently stands an individual who rejects an admonition only leaves us with the choices of dismissing the complaint or referring the matter to the BOG for prosecution.

Respectfully submitted: Noel Snyder (CH), Alan K. Brickley (CH-Elect), J O'Shea Gumusoglu (SEC), Alice M. Bartelt, C Lane Borg, Frederic E. Cann, Michael L. Connolly, Matthew A. Goldberg, Brent J. Goodfellow, Jacqueline M. Jacobson, Roland A. Johnson, Matthew C. McKean, Jane E. Mopper, Clayton Huntley Morrison, Jeffery W.

Ring, Todd M. Siegel, Ronald M. Somers, Dean Dailey Hollomon (PM), Allen L. Oyler (PM), Gregory A. Sackos (PM), Deanne Snedeker (PM), Theresa L. Wright (BC), Helen M. Hirschbiel (BL).

## SECTIONS

### ADMINISTRATIVE LAW SECTION

#### *Executive Committee 2007:*

Chair: Steve Rissberger  
 Past Chair: Ann Fisher  
 Chair Elect: vacant  
 Treasurer: Janice Krem  
 Secretary: Thomas Ewing

At Large: William Boyd, Thomas M. Cooney, Katherine McDowell, Katherine Logan, Frank Mussell, Irene Bustillos Taylor, Karen Berkowitz, Jonathan M. Norling

Annual Business Meeting, November 9, 2007

The annual business meeting was called to order at the Holiday Inn in Wilsonville, Oregon, by Chair Rissberger. The meeting occurred during a full day CLE put on by the section that included breakfast and lunch, as well as five speakers and a panel discussion. Approximately 30 section members, including a majority of current executive board members, attended the meeting. New officers and members-at-large were elected unanimously. The Executive Committee will continue to encourage participation from members with diverse backgrounds in both government and private practice.

#### *2008 Executive Committee*

Chair: Janice Krem  
 Chair Elect: Chris Cauble  
 Treasurer: Thomas E. Ewing  
 Secretary: Frank Mussell  
 Past Chair: Steve Rissberger  
 Bar Liaison: David Nebel

#### *Members-at-Large*

Kyle Martin  
 Frank Mussell  
 Jonathan M. Norling  
 Steven R. Schell  
 Irene Bustillos Taylor  
 Karen Berkowitz  
 William J. Boyd  
 Phil Johnson

#### *Executive Committee Activities*

The Executive Committee met five times during the year at the offices of the Oregon State Bar and once at the Office

of Administrative Hearings' facility on Cherry Street in Salem. Additional business was conducted throughout the year by e-mail. The executive committee played a significant role in planning a half-day CLE as well as overseeing legislative activities conducted by the section during the 2007 session.

#### *Subcommittee Activities*

The Newsletter Editorial Board produced three quality newsletters during the calendar year. Several new members were added to the editorial board. This should increase the quality of the newsletter as well provide a greater number of potential contributors.

The Legislation and Rules Committee adopted positions opposing or urging amendments to five separate bills during the legislative session. Several members testified before the legislature in various committee hearings and work sessions. The committee was successful in amending two proposed bills, though these bills were later withdrawn by their sponsors. The committee also was successful in negotiating an arrangement with a state occupational licensing agency under which the agency agreed to withdraw legislation that would have allowed it to assess costs against any licensee who unsuccessfully challenged a disciplinary action. The section has long opposed legislation that—in effect—penalizes private citizens who seek to exercise their due process rights by requesting a hearing.

The Continuing Education Committee successfully planned and put on a six hour CLE on November 9 entitled Administrative Law: The Good, the Bad and the Ugly. The CLE featured three appellate judges and several prominent attorneys as presenters. Topics during the CLE ranged from the performance of the Office of Administrative Hearings, to recent Oregon Supreme Court decisions, to the effect of the adoption of Ballot Measure 49 on land use proceedings. 87 attorneys and administrative law judges attended the event.

#### *Continuing Legal Education*

The Section sponsored a six hour CLE on November 9 entitled: Administrative Law—the Good, the Bad and the Ugly. The event was approved for four and one-third CLE credits by OSB, including one ethics credit. 87 attorneys and administrative law judges attended the CLE. The event raised \$1,600 for the section.

#### *Budget:*

The section had total expenditures of \$7,616 against to-

tal revenue of \$10,070 during 2007. The November 9 CLE generated a profit of just over \$1,600.

### *Recommendations for 2008:*

The section intends to continue publication of newsletters and make improvements to its website. It also hopes to sponsor a debate between attorney general candidates and possibly host another CLE event. We plan, as well, to develop several legislative proposals for the 2009 session.

Respectfully submitted: Steve Rissberger (CH), Ann L. Fisher (Past CH), Janice Krem (TR), Thomas E. Ewing (SEC), Karen Ann Berkowitz, William J. Boyd, Christopher Cauble, Thomas M. Cooney, Kathryn A. Logan, Katherine A. McDowell, Frank T. Mussell, Jonathan M. Norling, Steven R. Schell, Irene Bustillos Taylor, Ann L. Fisher (BC), David W. Nebel (BL).

## AGRICULTURAL SECTION

### *Activities and accomplishments:*

The Section continued work on its Lease Compendium. It also continued to meet regularly, sharing interesting developments in agricultural law and updates on relevant legislation.

### *Budget:*

The Section ended the year with approximately \$5000.

### *Legislative issues:*

The Section spent quite a bit of time discussing and updating members on the legislation affecting farm estate taxes, HB3618. These discussions carried over into the first part of 2008.

### *Matters considered/Matters pending:*

The Section reviewed, in some detail, the impact of HB3618 on its member's clients. The Section also discussed and considered the benefits and methodology for putting together a Lease Compendium.

### *Activities for 2008:*

The Section is hosting a Round-Up in The Dalles, Oregon on May 30th. The Section is considering additional in-person meetings for its members and continuing efforts on the Lease Compendium. The Section intends to continue to monitor important legislation for the agriculture industry.

Respectfully submitted: David W. Smiley (CH), Elizabeth Howard (CH-Elect), Joseph H. Hobson Jr (Past CH), George L. Anderson (TR), Lawrence B. Rew (SEC),

Timothy J. Bernasek, David M. Blanc, Heath Curtiss, Steven J. Joseph, Jesse D. Lyon, Steven L. Shropshire, Charles K. Toole, Carol DeHaven Skerjanec (BC), Dani Edwards (BL).

## ANTITRUST/TRADE REGULATION SECTION

The membership of the Section continued to remain relatively stable in 2007. With the \$5 increase in annual dues adopted at the last annual meeting and effective this year, the Section had additional funds to put into our CLE programs. The Executive Committee hopes to expand membership by offering exciting programs, both on timely antitrust topics and on other trade regulation issues.

### *Activities and Accomplishments:*

The Executive Committee focused its efforts on delivering two high quality CLEs in 2007. On June 14, 2007, we offered a program on "Advertising Pitfalls and How to Avoid Them," which featured speakers from the Oregon Attorney General's office, NIKE, Inc., and Stoel Rives LLP to provide perspectives on advertising from regulatory enforcers, in-house counsel and outside counsel. On November 2, 2007, the Section held its annual meeting where FTC Commissioner William Kovacic presented a talk on the status of manufacturer restrictions on retailers following the Supreme Court's decision in *Leegin Creative Products*; Oregon Attorney General Hardy Myers spoke on 2007 trade regulation legislation and recent trade regulation cases brought by the Department of Justice; and two members of the Executive Committee gave the annual update of Supreme Court and Ninth Circuit antitrust decisions.

The Section is also participating in a Bar survey on hourly rates for antitrust specialists.

### *Recommendations for 2008:*

In 2008, the Executive Committee intends to provide excellent CLEs on topics of interest to the Section membership. The Section expects to sponsor two or three CLEs. The Section will also consider whether to sponsor legislation through the Bar for the 2009 legislative session. The Section expects to complete its participation in the Bar's hourly rate survey.

Respectfully submitted: Scott G. Seidman (CH), Christina L. Beatty-Walters (CH-Elect), Thomas Russell Johnson (Past CH), Kenneth Ray Davis II (TR), David L. Silverman (SEC), Sarah J. Adams, David Stanley Aman, Andrew E. Aubertine, Vincent F. Chiappetta, Kristin Lee Cleveland, Stephanie K. Hines, Chin See Ming, Robert M. Lehner (BC), Chris L. Mullmann (BL).



## APPELLATE PRACTICE SECTION

### *Activities and accomplishments:*

This year, the appellate practice committee worked hard on its core functions. There was a successful CLE presented at the Oregon State Bar that was well received. In addition, the executive committee monitored legislative developments, fielding request for assistance from various groups.

The section continued with the production and publication of the Oregon Appellate Almanac. Thanks to all the contributors and also to the Oregon State Bar IDT production department. Their help, including Mr. Andy Baudoin was invaluable.

The section helped the appellate courts with disseminating vital information to appellate practitioners via the list serve. Harry Auerbach prepared an excellent Amicus Curiae memorandum for the Oregon Court of Appeals regarding whether a statement of points required by ORS 19.205(1) and ORAP 2.05(7) is necessary when less than the entire record is designated. The court expressed its gratitude for the memorandum.

The section again hosted a social event on the Willamette River. The two hour cruise had special guest from Russia on board. It is reported that a good time was had by all.

### *Budget:*

The section's finances are in fine shape thanks to the treasurer's eagle eye. The section sent out a letter to the members who did not remain with the section. Most left the section because they are no longer appellate practitioners.

### *Any other comments:*

The group worked hard and did an exceptionally good job of communicating via email. It was a pleasure to serve with them.

Respectfully submitted: Walter J. Ledesma (CH), Scott Shorr (CH-Elect), Keith M. Garza (Past CH), Jeffrey C. Dobbins (TR), Judith Giers (SEC), Charles F. Adams, Harry Michael Auerbach, Marc D. Brown, Meagan A. Flynn, Melanie Carole Hagan, Lisa E. Lear, Wendy M. Margolis, Mary M. Reese, Thomas W. Sondag, Thomas W. Brown (ADV), M Elizabeth Duncan (ADV), Jacqueline L. Koch (ADV), James W. Nass (ADV), Jane Ellen Stonecipher (ADV), Timothy C. Gerking (BC), Julie Hankin (BL).

## AVIATION LAW SECTION

### *Activities and Accomplishments:*

The Aviation Law Section meets at noon on the last Thursday of each month at the Shanghai Noble house Restaurant in Portland. The section discusses issues germane to aviation law specifically and the practice of law generally. The section co-sponsors the annual Pacific Northwest Aviation Law Conference with the Seattle-King County Bar Association - Aviation Section.

The Section took a year off from sponsoring a class at Lewis and Clark Law School, but will again teach a course in aviation law in the Spring of 2008. Past-Chair Phil Rush will lead the course with numerous guest speakers from the section.

The Section held a noon CLE by Peyton Starr formerly of the FAA.

The Section is active with the Lawyer Pilots Bar Association, a national association of lawyers specializing in Aviation Law and related fields, the National Association of Insurance Adjusters and the Aviation Section of the King County, Washington Bar Association.

### *Budget:*

The Section dues are \$20 per year. Annual budget is approximately \$1,000.00

### *Legislative Issues:*

The Section closely tracks legislation that affects pilots, aircraft owners and aviation businesses.

Respectfully submitted: Stuart W. Smith (CH), Thomas J. Flaherty (CH-Elect), Timothy E. Miller (TR), Philip A. Rush (SEC), John R. Barker, Donald B. Bowerman, Lance Caldwell, Jonathan M. Hoffman, Robert B. Hopkins, John C. Hutchison, Barbara Ann Jacobson, Steven L. Myers, David J. Sweeney, Christine Tracey, A Richard Vial, Hon Charles A. Sams (ADV), Martin Schedler (MEM Emeritus), Robert D. Newell (BC), Sarah Hackbart (BL).

## BUSINESS LAW SECTION

The mission of the Business Law Section is to provide excellent service to the diverse group of business law practitioners throughout the State of Oregon by

- Providing regular, timely and useful information about the practice of business law.
- Promoting good business lawyering and professionalism.



- Fostering communication and networking among our members.
- Advocating improvement of business law.
- Supporting Oregon's business infrastructure and business community.

In 2007, the Section fulfilled that mission through the activities of the Executive Committee and other Committees, CLE programs and through the Section's web site, [www.orbuslaw.org](http://www.orbuslaw.org).

### ***Budget:***

The Section has approximately 1,175 members and expects to continue at or above that level in 2008. Section revenues, generated largely through member dues, are projected to be about \$34,600 in 2007 and have been relatively stable over the past few years. Expenses in 2007 are projected to be about \$31,000, an increase of approximately \$10,500 over 2006, although still substantially below revenues. Major Section expenses in 2007 included costs associated with the Section's web site and its annual meeting. Despite the increased annual expense, the Section expects to have a fund balance of over \$71,000 at the end of 2007. A major goal of the Executive Committee is to reduce this balance by funding additional programs and services that will benefit the members of the Section.

### ***Legislative issues:***

The Legislative Committee, chaired by Chris Hall, focused on legislation under consideration by the Legislature during its 2007 session. The Committee provided information about pending legislation to Section members and provided input to bill sponsors on a number of bills, including a proposal to allow corporate charters to include provisions relating to sustainability issues. The Committee is in the process of preparing business law improvement legislation for the 2009 legislative session, which will be submitted to the Bar in April 2008.

### ***Matters considered/Matters pending:***

#### **Web site and Listserv**

The Section web site continues to be a key element of the Section's activities. The site includes a variety of tools to assist members in their practices, including a series of checklists for transactions and issues that are frequently encountered by practitioners, a variety of legal research and other links, current news items of interest to business lawyers, and copies of the Section newsletter. The Section contracts with a web site administrator on a part-time basis to update the site. The Section also maintains an active

listserv which allows members to post questions and raise issues for discussion by Section members.

#### **Newsletter**

The Oregon Business Lawyer is usually published 2-3 times per year with articles and case law summaries of interest to business lawyers. In 2007, the OBL Committee, led by Drew Ognall, searched for volunteers interested in forming a new editorial staff. The Committee has recruited Ellen Theodorson and continues to search for others who will commit to providing material or issues of note on a regular basis for future issues.

#### **Annual Meeting/CLE**

The Section's annual meeting was held in October and included a presentation by Professor Charles Elson, the Director of the John L. Weinberg Center for Corporate Governance at the University of Delaware, regarding current topics in corporate governance. The Section plans to implement an annual all-day CLE in connection with future annual meetings starting in 2008.

#### **Networking/Regional Outreach**

The Section has members throughout the state and seeks opportunities to involve members outside the Portland metropolitan area and the Willamette Valley in its activities. In 2008, Pat Lockary Chapman, who practices in Eugene, will chair the Section's Executive Committee, and Sally Anderson-Hansell, who practices in Hermiston, will serve as Section treasurer. The Section sponsored a reception for law students working as summer associates in Portland interested in business law. To encourage participation in the Section, new admittees are offered a free Section membership for the balance of their year of admission.

#### **Other Committees**

The Financial Institutions/Commercial Finance Committee, chaired by Clifton Molatore, meets regularly to discuss issues affecting business lawyers representing financial institutions and other commercial and consumer lenders. The Committee held a CLE in November 2007 providing a 2007 legislative update. The Opinion Committee, chaired by Jeff Cronn, began meeting in 2007 to review Oregon opinion practice and to consider and report on standards of practice that vary from national practice.

#### ***Recommendations for 2008:***

In 2008, the Section will continue its efforts to improve the Section web site and the Oregon Business Lawyer, particularly through an improved system of providing case law updates. Other activities will include additional continuing legal education activity. Finally, the Section Committees

will continue to pursue the initiatives outlined above.

Respectfully submitted: Jason M. Brauser (CH), Patricia Lockary Chapman (CH-Elect), Andrew J. Morrow Jr (Past CH), Brenda L. Meltebeke (TR), Michelle S. Druce (SEC), Dean N. Alterman, Sally Anderson-Hansell, Melissa A. Boge, Gustavo J. Cruz Jr, Jason A. Dalton, M Christopher Hall, Timothy L. Jackle, Andrew H. Ognall, Paul J. Taylor, Kevin S. Thomas, Peter Threlkel (ADV), Gerry Gaydos (BC), Sarah Hackbart (BL).

## BUSINESS LITIGATION SECTION

### *Activities and accomplishments:*

During 2007 the Business Litigation Section continued its CLE programs and presented four CLEs. All CLEs were held in Portland at the Governor Hotel. These were:

<i>Date</i>	<i>CLE</i>	<i>Speaker(s)</i>
2/21/07	Everything You Need to Know about Patent Litigation but Were Afraid to Ask	Hon. Michael W. Mosman, Peter Heuser and Robert A. Shlachter
5/09/07	Punitive Damages after Philip Morris USA v. Williams	William A. Barton, William B. Crow and William F. Gary
9/12/07	Winning Tort Damages in Business Cases—Lessons from Plaintiffs' Counsel in <i>Freightliner</i> and <i>Yoshida</i>	Richard J. Stone and Michael Siedl
12/12/07	New Adventures in Privilege: A Primer on Cutting Edge Issues in the Attorney-Client Privilege and Work Product Doctrine for the Business Litigator	Bruce H. Cahn and Beverly C. Pearman

A new slate of officers has been elected effective January 1, 2008. The Board will meet January of 2007 for the annual planning session. Topics will include CLE topics for 2008 and holding a CLE out of the Portland area, presently

anticipated to be in Eugene. In addition, the Committee is exploring additional communications channels for Section members, including electronic newsletters and web-based discussion groups.

The Business Litigation Section does not at this time anticipate proposing any new legislation.

Respectfully submitted: Bruce H. Cahn (CH), Keith S. Dubanevich (CH-Elect/TR), Christopher T. Carson (Past CH), Joseph C. Arellano (SEC), David H. Angeli, Michael Coker, Paul W. Conable, Mary Ellen Page Farr, Julie Bardacke Haddon, John F. McGrory Jr, Renee E. Rothauge, Kerry J. Shepherd, Julie R. Vacura, Richard S. Yugler (BC), Teresa Wenzel (BL).

## CIVIL RIGHTS SECTION

### *Activities and Accomplishments:*

- planned, recruited speakers for and hosted a full-day CLE "Trial Evidence in Employment and Civil Rights Cases"
- monitored proposed state legislation impacting civil rights practitioners and explored recommendations for state civil rights law improvement
- past Chair, Dennis Steinman, attended a luncheon with Lewis & Clark students to promote section membership
- current Chair, David Park, attended a District Court, Oregon pro se litigant conference hosted by Judges Stewart and Ashmanskas to brainstorm ideas to improve the Court's current volunteer pro bono representation program of which 75% to 80% of the Court's volunteer needs are in prisoner litigation, civil rights and employment discrimination cases
- analyzed geographic composition of section membership and strategized ways to expand section membership outside of Portland Metropolitan area
- co-sponsored and participated in attorney fee survey for attorneys handling civil rights litigation
- donated \$500 to the Campaign for Equal Justice
- donated two free section memberships to the Oregon Minority Lawyers Association for its summer auction
- published three newsletters, recruited two new members to the editorial board and increased the editor's fee for editing the newsletter
- held annual meeting and elected new officers and members at large

- formed subcommittee to plan a public interest CLE for 2008 on school segregation/desegregation
- formed subcommittee to plan next year's annual substantive CLE on First Amendment litigation

### ***Budget***

- due to the cancellation of the public interest forum on Torture planned for 2007 the section will end 2007/begin 2008 with a positive account balance of approximately \$4,000
- Matters Pending/Recommendations for 2008
- selection of topics and recruitment of speakers for first amendment CLE
- identification and recruitment of speakers for public interest CLE
- preparation of section membership survey to identify and prioritize section members' primary practice interests and determine how to better serve them

Respectfully submitted: David D. Park (CH), Katelyn S. Oldham (CH-Elect), Dennis Steinman (Past CH), John M. Kreutzer (TR), Beth Englander (SEC), Amy L. Angel, Loren W. Collins, Scott N. Hunt, Steven A. Kraemer, Richard F. Liebman, J Scott Moede, Robert L. Vieira (BC), Paul Nickell (BL).

## **CONSTITUTIONAL LAW SECTION**

### ***Activities and accomplishments:***

The Constitutional Law Section provides a forum for its members to expand their familiarity and involvement with state and federal constitutional law issues, to improve their knowledge of constitutional law and related issues, and to interact with one another in those pursuits. The Section this year planned and presented on November 30, 2007, in partnership with the OSB, its annual, day-long constitutional law CLE. Participating were national constitutional law scholar, Erwin Chemerinsky, Portland State University history professor, David Johnson, State Law Librarian, Joe Stephens, and distinguished Oregon lawyers and judges.

The Section is planning, in cooperation with The Classroom Law Project, a series of DVDs on the Oregon Constitution that will be suitable as teaching aids from middle school to law school. The goal is to have these teaching materials ready by 2009 for use in Oregon's sesquicentennial celebration of its statehood. We are also planning, in cooperation with Oregon Public Broadcasting, a program on the initiative and referendum sections of the Oregon Constitution. In cooperation with the Oregon Law Review we are

planning a 2009 issue to be devoted to articles concerning the Oregon Constitution. We have continued our orconlaw blog (<http://orconlaw.blogs.com>) and hope to increase the level of activity and participation in the blog in 2008.

We are also exploring the possibility of creating an amicus committee that would monitor important constitutional law cases headed toward the Oregon appellate courts and would seek out counsel to assist in the representation of parties that are not represented by counsel or to assist counsel who would like to have assistance.

### ***Budget:***

Our year-end fund balance is \$19,802. That includes \$10,000 consisting of two \$5,000 grants received, one from the Wayne Morse Center at the U of O and one from the Multnomah County Bar Foundation. It is expected that this \$10,000 will be spent in 2008 on research and production costs for our DVDs to be used in teaching the Oregon Constitution. Our expected expenditures for 2008 are close to those of the current year, with the exception of money that may be raised from grants and grant money that will be spent on the sesquicentennial project.

### ***Recommendations for 2008:***

The Section will sponsor a constitutional law CLE in the fall of 2008. We will be working hard in 2008 to raise money for the teaching DVDs and will cooperate with Oregon Public Broadcasting for a television program on the initiative and referendum sections of the Oregon Constitution and with the Oregon Law Review for the 2009 issue on the Oregon Constitution. We hope to continue with a ramped-up and active orconlaw blog and will continue to work on the possibility of an amicus committee that will be concerned with helping to locate counsel for important constitutional issues in the Oregon courts. We are also open to new and even better ideas and projects and we solicit members' ideas and suggestions.

Respectfully submitted: Les Swanson (CH), Erin C. Lagesen (CH-Elect), James N. Westwood (Past CH), Chin See Ming (TR), Ruth M. Spetter (SEC), Paula Lynne Abrams, Hon Henry C. Breithaupt, Gregory A. Chaimov, Katherine G. Georges, John Paul (Toby) Graff, David Euan Leith, Michael H. Simon, Alycia N. Sykora, Edward H. Trompke, Hon Youlee Y. You, Jonathan P. Hill (BC), Paul Nickell (BL).

## CONSTRUCTION LAW SECTION

### *Activities and accomplishments:*

The Construction Law Section membership has remained consistent, with a slight increase during 2007. The Executive Committee met approximately every two months from noon until 1:30 pm at various locations. Telephone access was provided for non-Portland-area members.

### **CLE Programs**

The Section's primary activity continues to be providing continuing legal education opportunities for its members. In 2007, the Section sponsored the following CLE activities:

- On March 8, 2007, Eric Grasberger and Stoel Rives hosted a lunch-time presentation summarizing the results of the Construction Claims Task Force.
- On various dates, Schwabe Williamson & Wyatt hosted lunch-time presentations on topics such as Reading Plans and Specifications (January 8), Interpreting Building Codes (February 2), Construction Delay Claims (April 6), Mold and Indoor Air Quality Issues in Construction (June 1), and Construction Defect Claims (August 3). Jack Levy set up this series of CLE presentations.
- On November 30, 2007, the Section teamed up with the local chapter of the Associated General Contractors to present a half-day seminar on new legislation. The Section's Annual Meeting was held following this CLE.

### **Referee Program for Construction Litigation**

Members of the Section continued to work with judges around Oregon to implement the Referee Program into other counties. This program was first used in Multnomah County and is now used in Clackamas County. The Section also met with Chief Justice De Muniz to discuss this program.

### **Website**

The Section continues to work on creating a user-friendly web site for its members. The Executive Committee hired Paul Tichy to assist with the web site.

### **Newsletter**

The Section published three editions of its newsletter. Starting in 2007, the Section began publishing the newsletter electronically to all members, except for members without an email address or those who request a paper version.

## **Elections**

The following new members were elected to the Executive Committee at the November 30 annual meeting: Dan Gragg, Tom Ped, Jim Prichard, Pete Vitezniak, and Bill Boyd.

Respectfully submitted: Alan L. Mitchell (CH), Jack Levy (Past CH), D Gary Christensen (TR), Angela Otto (SEC), Jason W. Alexander, John A. Berge, Timothy M. Dolan, Darien S. Loiselle, James H. Van Dyke, Robert D. Newell (BC), Sarah Hackbart (BL).

## CONSUMER LAW SECTION

### *Activities and accomplishments:*

### **Meetings**

The Executive Committee has met monthly since its formation. Executive Committee meetings are generally held from noon to 1:00pm on the third Wednesday of each month at the Lewis & Clark Legal clinic, 310 SW 4<sup>th</sup> Ave., Suite 1018, Portland.

### **CLE**

The Section presented two CLEs. The first one in August was a free hour long presentation by Judge Todd on the operations of the small claims court. The second was a full day in September addressing the use of credit reports, ECOA and a half day of EOB which addressed specific issues in consumer cases. The Section's annual meeting and election of officers was held in conjunction with the September CLE.

### **Newsletter and Website**

The Section publishes a newsletter on topics of interest to consumer lawyers, with the mailing assistance of the Oregon Department of Justice. Four issues of the newsletter were published in 2007. The Section also maintains a website which was updated with new links for consumers and the new library information for section members is also on the site. The site can be accessed at <http://www.osbconsumerlaw.homestead.com>.

### **Public Outreach**

Several members of the Executive Committee visited low income housing complexes and gave presentations and answered questions of residents on FDCPA, bankruptcy issues, credit reports and ID theft.

### **Budget:**

A small loss was incurred for the September CLE. Otherwise, the year activities stayed in budget.

**Legislative issues:**

The Section sponsored a Bill in the 2007 legislative session that would create a judgment and bankruptcy exemption for funds received under the federal additional child tax credit. Although we did have a hearing and a meeting with Senator Walker, we were not successful in getting the Bill passed. Also, members of the Section have been participating in the workgroup formed by the Governor concerning mortgage foreclosure and foreclosure rescue companies.

**Matters Considered/Matters Pending:**

Currently pending is a CLE presentation by Lou Savage of the DOJ's office on the new ID Theft legislation that passed the 2007 legislature. Potential proposed bills for the 2009 legislature are being considered now due to the short deadline to have those proposals in to the Bar and BOG.

**Recommendations for 2008:**

The incoming Chair plans to continue and expand our consumer outreach program to reach a wider audience and to cover more topics. Similarly, he plans to look for ways to expand the Section's library and fine tune the delivery system. A focus will be put on support for pro-consumer legislation that gets introduced in the 2008 special session. Finally, hold a year-end Section social event that will be enjoyable for all.

**Any other comments:**

The Section offered free dues to first time section members. We had 62 people join the Section under the free dues provision. We also provided new member packets for distribution to the new admittees to be included in the New Member packets distributed by the Bar. The NCLC manuals, with all updates, are available for check-out and use by Section members. Finally, the Section has been working on the specific economic survey with OSB.

Respectfully submitted: Pamela E. Yee (CH), Moloy K. Good (CH-Elect), Hope A. Del Carlo (Past CH), Greta E. Gibbs (TR), Bret A. Knewton (SEC), Justin Michael Baxter, Brenda M. Bradley, Margaretta Eakin, Danny H. Gerlt, Phil Goldsmith, Keith D. Karnes, Eva Novick, Tim Alan Quenelle, Terrance J. Slominski, Robert S. Sola, Truman A. Stone, Theresa L. Wright (BC), David W. Nebel (BL).

**CRIMINAL LAW SECTION**

The Criminal Law Section was created to provide a forum for the discussion of issues affecting practitioners in the criminal justice system and to educate the members of the Section on current issues in the field. The Section has more

than 600 members, including defense attorneys, prosecutors and judges. The Executive Committee is made up of twelve members, always consisting of six from the defense and six from the prosecution.

The Section is funded through dues and the income from its annual Continuing Legal Education (CLE) program. Marc Sussman was the treasurer in 2007 and Peter Deuel will be the treasurer in 2008. The section will be using its funds to put on the CLE, continue to improve its website as well as publish newsletters for its membership.

**Legislative issues:**

For the first time, the Section will be working on legislation that benefits both criminal prosecution and criminal defense. The Section will be proposing a fix for a new trial or motion in arrest of judgment where it could be changed from "deemed denied" the way it is on a motion for a new trial to be assumed on both types of motions.

**Activities and accomplishments:**

In April of 2007, the Section held its 20<sup>th</sup> Annual Contemporary Issues in Criminal Justice CLE. As always, the CLE included a session on relevant and recent state and federal case law in criminal law. The CLE provided a legislative update from the Oregon District Attorneys Association Legislative Chair and the Oregon Criminal Defense Lawyers lobbyist. Recently retired Chief Justice Wally Carson made the keynote address. The highlight of the program was the panel discussion of actual jurors from Clackamas, Washington, and Yamhill Counties and their candid comments about what worked and did not work from their perspective in trials.

Soon after the completion of the CLE, the Executive Committee began planning the 2007 CLE. The CLE will, as always, provide relevant case law updates and practice tips. In addition the Section plans to have an update on the 2008 special legislative session, the candidates for Attorney General and an ethics panel presentation on discovery.

As the tradition of the Executive Committee is to meet outside of the Portland area to accommodate those members who travel monthly to the Bar office from afar the committee chose to meet once in Salishan in September and once in Salem December.

Respectfully submitted: Janelle Factora Wipper (CH), Gregory B. Scholl (CH-Elect), Rebecca A. Duncan (Past CH), Marc Sussman (TR), Bradley C. Berry (SEC), Peter L. Deuel, Gregory D. Horner, Jennifer S. Lloyd, Joseph A. O'Leary, Daniel Ousley, Lindsay R. Partridge, Tahra Sinks, Robert M. Lehner (BC), Kateri Walsh (BL).

## DEBTOR-CREDITOR SECTION

### *Activities and accomplishments:*

The Debtor-Creditor Section operates primarily through its Subcommittees described below. The Section conducts an Annual Meeting and CLE program and co-sponsors the Northwest Bankruptcy Institute with the Washington State Bar Creditor-Debtor Section on topics relevant to the debtor-creditor practice. The Section provides service to the public primarily through its pro-bono bankruptcy clinic and C.A.R.E. program. It publishes a newsletter, is active in legislative matters, and maintains a Section website.

### **Active Subcommittees**

This year three new committees were added: Award of Merit (actually an old committee, reactivated), Local Bankruptcy Rules Project, and Public Education.

**Annual Meeting:** Organizes and Conducts Annual Meeting. 2007 Annual Meeting held on November 7, 2007 at the offices of Miller Nash

**Award of Merit:** Seeks out persons who deserve special recognition for extraordinary contributions in the debtor-creditor area. This year Awards of Merit were presented to Dick Edwards and Laura Walker.

**C.A.R.E. Program:** Conducts Credit Information Programs at High Schools throughout the Portland and Eugene areas

**Consumer Bankruptcy:** Meets regularly to discuss issues affecting the consumer bankruptcy practice

**Continuing Legal Education:** Conducts CLE programs in conjunction with Annual Meeting and at other times on topics relevant to the Section's membership

**ECF:** Addresses current issues with Bankruptcy Court's ECF filing system

**Legislative:** Sponsors new legislation and comments on legislative proposals applicable to Debtor-Creditor practice. During the 2007 legislative year the subcommittee sponsored several bills

**Local Bankruptcy Rules Project:** Comments and advice on local bankruptcy rules in connection with the court's review of those rules

**New Lawyers:** Conducts networking and CLE programs for newer members of the Section

**Newsletter:** Publishes three issues per year containing topics relevant to the section's membership

**Nominating:** Proposes nominees to fill vacancies on Section's Executive Committee

**Northwest Bankruptcy Institute:** Co-sponsors Annual CLE Program with Washington State Bar Creditor-Debtor Section. Venue alternates between Portland and Seattle. 2007 session held in Vancouver, British Columbia with the 2008 Institute scheduled for Seattle, Washington.

**Pro Bono:** Conducts bankruptcy clinics and provides volunteer lawyers for low income bankruptcy clients

**Public Education:** Develops strategies to educate the general public concerning debt management and bankruptcy

**Saturday Session:** Conducts annual meeting between Bankruptcy court judges and staff and bankruptcy practitioners on current issues relevant to local practice

**Website:** Maintains the Section's website at [www.osb-dc.org](http://www.osb-dc.org)

### **CLE Programs**

This year's activities included:

January 20, 2007

- Saturday Session, Salem Conference Center

April 27

- Northwest Bankruptcy Institute, Vancouver, BC

November 9

- Annual Meeting CLE, Portland

### **Newsletters**

The Winter 2007 Edition included:

- Counsel in the Crosshairs: Insolvency Counsel and Ethics Issues

- C.A.R.E. Committee Report

- ECF Update

- The Spring 2007 Edition included:

- Homestead Exemption in Question

- Ninth Circuit Clarifies Law on Ordinary Course of Business Defense to Preference Cases.

- Lender Beware

The Fall 2007 Edition included:

- Delaware Signals a Death Knell for "Deepening Insolvency"

- Phantom Income and Phantom Gains: No Money to Pay Tax Due on Cancelled Debt or Capital Gains

- Discharge of Student Loans In and Out of Bankruptcy



**Budget:**

The section has been operating within its proposed budget for 2007. As of October 31, 2007, the section has an ending fund balance of \$43,505.00.

**Legislative issues:**

The Legislative Committee was very active during 2007. Four bills the section sponsored passed: SB 30 concerning non-judicial trust deed foreclosure service requirements, SB 302 concerning secured creditors remedies after debtor's death, SB 303 concerning wage garnishment, and SB 304 concerning correcting a dropped cross-reference in UCC Revised Article 9. The committee also commented on numerous other bills presented.

**Recommendations for 2008:**

The Section and Executive Committee have a full plate. If we can keep the momentum going on existing programs we will be doing well.

Respectfully submitted: Stephen T. Tweet (CH), Teresa H. Pearson (CH-Elect), Thomas W. Stilley (Past CH), Thomas M. Renn (TR), Miles D. Monson (SEC), Douglas P. Cushing, Estate of Linda Johannsen, Douglas Pahl, Richard J. Parker, Hon Albert E. Radcliffe, Brandy Augusta Sargent, Tara J. Schleicher, Heather Harriman Vogl, Patrick Whelan Wade, Ian H. Wallace, S Ward Greene (BC), Karen D. Lee (BL).

**DISABILITY LAW SECTION**

November 14, 2007

The Disability Law Section Executive Committee met approximately every month during 2007. Meetings were held at the OSB headquarters in Lake Oswego, with meetings also taking place at the Oregon Advocacy Center in downtown Portland, and at the University of Oregon Law School in Eugene.

**Activities and Accomplishments:**

**Outreach/Development:** The Section continued its relationship with the University of Oregon Disability Studies Initiative, by holding two meetings at the law school. Executive Committee member Heidi von Ravensberg is a faculty member of the Disability Law Initiative and serves as an informal liaison.

The Executive Committee will soon welcome four new members: Lana Traynor, Thomas Doyle, Christina Thacker, and Jonathan Caver.

**Continuing Legal Education:** On May 10, 2007, the Section co-sponsored a CLE with the Oregon Social Secu-

rity Claims Representatives for social security practitioners on social security work incentives. Lunch was provided and the CLE was held at the Oregon Advocacy Center. An audio file replay was emailed to section members on November 9, 2007, for the benefit of those who could not attend.

The Section is planning a day long CLE in Eugene in conjunction with the Disability Studies Initiative on disability law in general. There will be panel presentations on education, employment, architecture and other issues of interest to disability law practitioners. The CLE will be held in early 2008.

**Newsletter/Website:** Members have expressed interest in a tangible, print newsletter in addition to a website. After several years, a print newsletter will be published in early 2008.

**Matters Considered/Matters Pending:**

**Other on-going projects include:** advocacy regarding accessibility of the new OSB headquarters and the Eugene Federal Court House; monitoring and outreach concerning Bar Exam accommodations; and training brochures for lawyers and clients regarding access to justice for people with disabilities as recommended by the Oregon Judicial Department Task Force.

Executive committee member Heidi von Ravensberg provided technical assistance to the OSB regarding Braille signage in the new building. The Section met with OSB staff and members of the Board of Bar Examiners to gather information and provide input regarding the bar exam accommodation process.

**Legislative Issues:**

Neisha Saxena served as legislative liaison for 2007. In 2008, Neisha Saxena, Ted Wenk and Lana Traynor will serve in this capacity.

Executive Committee members Alice Plymell and Heidi von Ravensberg worked with Oregon Advocacy Center Executive Director and Disability Law Section founding member Bob Joondeph to draft proposed legislation for the 2007 session creating a regulatory body to license prosthetists and a minimum warranty for prosthetic devices. These bills did not pass this session. The Section is in the process of discussing legislative issues for 2009.

**General Budget Information:** Our ending balance was \$6,561, and we were under budget for the year.

**Recommendations for 2008:**

- CLE in Eugene jointly sponsored with U of O Disability Studies Initiative;

- Development and maintenance of a Section website, and production of a print newsletter;
- Continue outreach in the form of Committee meetings in Eugene;
- Continue development by recruiting new Executive Committee members.

Respectfully submitted: Neisha A. Saxena (CH), Linda Ziskin (Past CH), Alice M. Plymell (TR), Theodore E. Wenk (SEC), Barbara J. Fields, Heidi von Ravensberg, Ann L. Fisher (BC), Margaret Robinson (BL).

## DIVERSITY SECTION

### *Activities and accomplishments:*

The OSB Diversity Section envisions a bar that reflects Oregon's diversity. Further, the Section leads the effort to recognize and eliminate barriers in Oregon's legal system. The Section's Executive Committee includes representation from specialty bars, local bars, and various demographics that also strive to increase diversity in the Oregon bar. The section has 206 members.

The activities of the Section during 2007 included the following:

#### **Executive Committee Meetings**

Except for a retreat held jointly with the OSB Affirmative Action Committee at the Oregon Bar Center, the executive committee met monthly at the offices of Gevurtz Menashe and Schwabe Williamson and Wyatt in downtown Portland.

#### **Elimination of Bias (EOB) MCLE Workgroup**

In an ongoing effort to emphasize the importance of retaining an MCLE credit, in 2007 this workgroup made presentations to the BOG Policy and Governance Committee as well as to members of the Oregon Supreme Court. The executive committee adopted a resolution urging the BOG to retain the MCLE EOB requirement and to charge an administrator to ensure the development of high quality EOB courses as well as creating a subcommittee to maximize the

#### **OSB Bylaws on Diversity**

In April, an OSB membership vote taken via email resulted in the BOG modifying the Article 10 of the OSB Bylaws on Diversity to permit for the US Armed services to publish advertisements in bar publications. The executive committee submitted a proposal for consideration by the HOD to rescind the decision of the BOG in light of the HOD's earlier votes on this issue.

## **OSB Affirmative Action Program**

In September of 2007, the section learned that the former administrator of the Affirmative Action Program unexpectedly resigned. In an effort to ensure the work of the Affirmative Action Program and in particular its retention strategy for ethnic minority law students "OLIO" did not fall by the wayside, the executive committee signed on to a letter of concern sent to the BOG about the changes made to the program and asked that future decisions be made transparent and in consultation with affected members.

### **Partnerships with other organizations**

The DSEC financially supported diversity and inclusion efforts and groups in 2007 including:

- The sponsorship of a CLE presented by Tim Wise, a nationally renowned expert on Affirmative Action.
- A Financial donation to the Oregon Minority Lawyers Association to fund their scholarships for bar preparation courses awarded to ethnic minorities studying for the Oregon State Bar Exam.

### **Recommendations for 2008:**

The DSEC will continue to work collaboratively with other organizations and concerned parties on the Elimination of Bias (nka Access to Justice) MCLE. Members of the DSEC will also serve as liaisons to the Affirmative Action Subcommittee to help organize OLIO for the 2008 incoming class of law students, and to assist in the stakeholder search committee to hire a replacement for the AAP administrator position which is seen as critical to the on-going success of the program. Other possible areas of concern have been identified as a need to follow up on the Convocation of Equality held in 2001, which provided the impetus for the creation of this section.

Respectfully submitted: Mary Crawford (CH), Andrea J. Anderly (TR), Akira Heshiki (SEC), Cheryl A. Albrecht, Beth A. Allen, Hon Richard C. Baldwin, Alice M. Bartelt, Antonio J. Gonzalez, Robert C. Joondeph, Janna Beth M. Kim, Jeanne F. Loftis, Julia Elizabeth Markley, Anthony A. Padilla, Larry Seno, Diane Schwartz Sykes, Joshua S. Williams, Marva Fabien (BC), Sarah Hackbart (BL).

## **ELDER LAW SECTION**

Membership in the Elder Law Section has declined slightly in terms of paid membership from prior years. There were 581 members as of October 31, 2007, 553 of which were paid members of the Section, and 28 of which were complementary members of the Section.



**2006 Section Subcommittee Activities:**

**Subcommittee:** Agency and  
Professional Relations

**Chair:** Mike Edgel

During 2007, the APR Subcommittee continued to meet quarterly with representatives from the Oregon DHS. Numerous significant rule revisions were proposed by DHS during the year, and the subcommittee successfully advocated for different (and more client-friendly) wording for several of these. The rules impacted by the APR Subcommittee included those dealing with annuities; the "care-giving child exception" to transfer penalties; valuation of real estate; care-giving contracts; and others. In addition to rules actually impacted, the Subcommittee made progress in persuading DHS to reconsider its position on the impact of the income-first rule on Petitions for Spousal Support.

**Subcommittee:** CLE

**Chair:** Mark Williams

The CLE subcommittee sponsored the 4th annual UnCLE on May 4, 2007, at the Valley River Inn in Eugene. Pre-registration reached the maximum limit of 75 attendees over a week before the event. The event received extremely positive reviews from participants once again. The 5th annual UnCLE has been scheduled for May 9, 2008, and early registration will be highly advisable. The annual Elder Law CLE was held October 5, 2007, at the Portland Convention Center. This CLE focused on basic topics in our regular rotation of focusing on basic and advanced topics in alternating years. Topics covered included advising clients in the current Medicaid environment, property issues, tax issues, ethics issues, Social Security disability issues, and changes expected given House Bill 2007 and Senate Bill 2, relating to domestic partnerships and other issues, passed by the 2007 Oregon Legislature. Attendance was again high, with 175 registrants. The CLE was again highly rated by registrants.

**Subcommittee:** Computer and Technology

**Chair:** Susan Ford Burns/Ryan Gibb

In addition to posting information on a web page which is part of the Oregon State Bar Website, which is of use to practitioners of elder law in the State of Oregon, the Elder Law Section, in cooperation with the Oregon State Bar, maintains a list serve which is very active, and which has become one of the most significant resources for elder law attorneys around the state.

**Subcommittee:** Legislative

**Chair:** Ryan Gibb

The Elder Law Section proposed two bills for the 2007 legislative session. These bills were HB 2359, which amend-

ed the banking statutes relating to the use of affidavits of heirship, and HB 2360, which amended ORS 125.440.

HB 2359 amended ORS 722.262, ORS 723.466 and ORS 708A.430, relating to the use of affidavits of heirship at financial institutions. This bill was proposed because of concern that financial institutions would require a waiting period after the death of a depositor before a surviving spouse could access the account using an affidavit. The bill clarified that a surviving spouse has the right to access the account using the affidavit without any delay. The bill also clarified the timelines that the Estate Administration Unit and other heirs have to use such an affidavit. Nothing in the bill affected the right of any heir, creditor, or the Department of State Lands to initiate a probate or file an Affidavit of Claiming Successor as a means of handling an estate. The amendment retained the current cap of \$25,000 for the use of these affidavits of heirship. The Oregon Banker's Association had concerns about language in the bill, and slight modifications were made to handle those concerns. This bill has passed through the Legislature and was signed by the Governor. The bill applies to the accounts of depositors who die on or after January 1, 2008.

HB 2360 amended ORS 125.440(2), with regard to the termination of a conservatorship. As it exists, the statute did not allow a conservator to create a trust that would have the effect of terminating the conservatorship. The bill amended the statute by allowing the court to terminate a conservatorship in favor of a trust if the court finds any of the following:

- the trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the protected person's eligibility for needs-based government benefits;
- the value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed \$50,000.00;
- the purpose of establishing the conservatorship was to create such a trust; or
- other good cause is shown to the court.

This bill has passed through the Legislature and was signed by the Governor. It applies to all Conservatorships as of January 1, 2008.

The Elder Law Section was also involved in dealing with HB 2381, proposed by the Oregon Law Commission, which would have significantly modified the current Spousal Elective Share rights. Several members of the Elder Law Section spent significant time working on this bill. This bill did not pass out of the House Judiciary Committee, and therefore is not law. The Elder Law Section plans to con-

tinue to be involved with this legislation in the future.

**Subcommittee:** Newsletter  
**Chair:** Leslie Harris

The Newsletter Subcommittee has continued to arrange for articles of interest to elder law attorneys and will incorporate these into a quarterly newsletter, to be distributed electronically to elder law section members and certain selected others, providing valuable and up-to-date articles and information for elder law attorneys. There is a paid editor, Carole Barkley. Electronic distribution continued in 2007, which continues to provide a cost saving for the section.

**Subcommittee:** Elder Abuse  
**Chair:** Steve Owen

The new Elder Abuse Subcommittee is expected to focus on outreach and education, and will likely initially focus on investigating current practices in various areas of the state, in order to identify the players, and on the general situation relating to elder abuse in a variety of areas. Based upon this information, the role of the Elder Abuse Subcommittee is expected to then be more fully developed.

**Subcommittee:** Fiduciaries and Protective Proceedings  
**Chair:** Gary Vigna

The new Fiduciaries and Protective Proceedings Subcommittee is expected to focus on outreach and education relating to fiduciaries and protective proceedings. The Subcommittee and/or other members of the section will also work with the Chief Justice on a task force in these regards. The subcommittee may also investigate current practices in various areas of the state relating to court visitors, visitor's reports, standards for visitors, appointment of fiduciaries in protective proceedings, instructions for new fiduciaries and for ongoing fiduciaries, and other matters. Based upon this information, the role of the Fiduciaries and Protective Proceedings Subcommittee is expected to then be more fully developed. The Fiduciary and Protective Proceedings Subcommittee is also expected to be involved with possible changes to various Oregon Rules of Civil Procedure, as mooted by a Council on Court Procedures Working Committee. The Subcommittee, or a working group of the Section, is also expected to work on revising a benchguide for the Elderly Persons and Persons with Disabilities Abuse Prevention Act, ORS 124.005 et seq., as requested by the Honorable Paula Brownhill and the Honorable Deanne Darling.

**Annual Meeting**

The Annual Section Meeting was held during the lunch break of the October 5, 2007, CLE program, making it convenient for program registrants to attend.

**Executive Committee Retreat**

The Executive Committee held a planning retreat on September 14, 2007, and September 15, 2007, at Bella Beach. We discussed future issues that will be of concern to elder law attorneys in Oregon, directions in which the practice of elder law is moving, and areas in which the Section may be able to provide support for elder law practitioners.

**Budget:**

Due to the electronic transmittal of the newsletter, the number of members of the Section, and good attendance at both the CLE and the UnCLE, our revenues were more than projected, and our expenses, even by the end of the calendar year, are likely to be less than anticipated, so we expect net revenue for 2007. Section dues will remain at \$25 per year.

**Recommendations for 2008:**

The UnCLE is scheduled for May 9, 2008. The annual CLE will be scheduled in October, 2008, and will probably be set on either October 3, 2008, or October 10, 2008. The Executive Committee will monitor legislation of interest to the Section throughout the short 2008 legislative session and will likely seek to submit legislation for the 2007 legislative session, and to comment upon legislation, and to work with other groups who are seeking to develop legislation or to implement changes in court rules, the Oregon Administrative Rules, and the like. The quarterly newsletter will continue to be distributed in electronic format, and along with the Section list serve, will continue to facilitate information sharing among Section members.

Respectfully Submitted: Steven A. Heinrich (CH), Ryan Edward Gibb (CH-Elect), S Jane Patterson (Past CH), Sylvia Sycamore (TR), Penny L. Davis (SEC), J Geoffrey Bernhardt, Susan Ford Burns, Sam Friedenber, Brian Haggerty, Leslie Kay, Stephen R. Owen, Daniel C. Robertson, Andrea B. Shartel, Ellyn R. Stier, Brian M. Thompson, Gary L. Vigna, Carol DeHaven Skerjanec (BC), David W. Nebel (BL).

**ENERGY, TELECOMMUNICATIONS & UTILITY LAW SECTION**

**Activities and accomplishments:**

The Section sponsored a series of three lunchtime CLEs in Portland on topics pertinent to our membership on September 28, November 7, and December 5, 2007.

The Section continued work on a practice manual for regulatory practice in Oregon.

The Section made charitable contributions in honor of Tracey Sparling (\$100) and to the Campaign for Equal Justice (\$1,000) and the Classroom Law Project (\$1,000).

Respectfully submitted: Lawrence H. Reichman (CH), Ann L. Fisher (CH-Elect), Susan K. Ackerman (Past CH), James Richard George (TR), David F. White (SEC), Brian D. Altman, Stephanie S. Andrus, Melinda J. Davison, Jim Deason, Edward A. Finklea, Stephen C. Hall, Katherine A. McDowell, Jonathan M. Norling, John P. (Jay) Nusbaum, Lisa F. Rackner, Chad M. Stokes, Ann L. Fisher (BC), Cheryl L. McCord (BL).

## ENVIRONMENTAL AND NATURAL RESOURCES SECTION

### *Activities and Accomplishments:*

**Outlook Newsletter:** The Executive Committee published two hard copy editions of its Outlook newsletter this year. Each newsletter is organized around a central topic with articles detailing recent case law and issues on that topic. The winter edition featured articles about Environmental Justice and the summer edition focused on Pesticides.

**E-Outlook Newsletter:** In keeping with the Committee's continuing efforts to use technology to more effectively reach out to its membership, and to provide timely information to section members on "hot topics", the Executive Committee published four editions of E-Outlook.

- Issue 1: Ian Sutton, "Supreme Court Chastises EPA for Failing to Regulate Greenhouse Gas Emissions."
- Issue 2: Hong Huynh, "Legislative Concepts 2007."
- Issue 3: David Ashton, "United States Supreme Court Unanimously Rules Potentially Responsible Parties who Incur Response Costs have a Cost Recovery Remedy under CERCLA Section 107(A)."
- Issue 4: Ian Whitlock, "United States Limits Section 7 Consultation under the ESA on CWA Permitting."

These E-Outlook editions were also posted on the section's website.

**CLE's:** The Executive Committee continued to implement its policy of providing low cost, substantive and interesting CLE's, and to this end organized and presented a full day seminar at the Hatfield Marine Science Center in Newport, Oregon. The seminar, titled Coastal Law in Oregon 2007 explored tribal rights and marine resources, the science behind marine protected areas, and wave energy, among other topics, and was accessible to section members who could not attend in person, via conferencing technology.

**Brown Bag CLE's:** In addition, the Committee presented three lunch time or "brown bag" CLE's on various cutting edge topics in environmental law. Conference call in capabilities enabled section members from all over the state to participate. In addition, the materials from these CLE's were posted on the section's website.

Other section activities included reaching out to law students to encourage participation in the section and inviting student liaisons to come to section meetings. The section also participated in and contributed to various work groups addressing sustainability issues in Oregon and within the Oregon State Bar.

### *Budget:*

The Section's ending balance for 2007 was \$9,386.00. The Committee spent less than the anticipated budget for 2007 primarily because we did not publish as many newsletters as originally anticipated. Much of the budget carryover will go towards financing newsletter publications in 2008 and increasing the Section's technological outreach capabilities. Having a positive end-of-year balance will also mean that we can continue to organize CLE's at a lower cost to the membership.

### *Recommendations for 2008:*

The Executive Committee has plans to publish Outlook newsletters in 2007 on the topics of Environmental Crimes, Cultural Resources and Supplemental Environmental Projects. We anticipate the Committee will also continue to present its brown bag CLE's, in addition to another full-day CLE that focuses on regional issues in Eastern Oregon. In addition, the Committee plans to implement its Strategic Plan goals of reaching out to membership outside of the Portland metropolitan area by continuing to use new technologies to make meetings, CLE's, and newsletters available to the membership through its website and conferencing abilities. The Committee has also expressed a continuing interest in issues related to sustainability.

Respectfully submitted: Renee Moulun (CH), William Sherlock (CH-Elect), Donald H. Pyle (Past CH), Diane Henkels (TR), David Ashton (SEC), Jas Jeffrey Adams, Kristen Tsehai Bonanno, Michael R. Campbell, Leslie A. Carlough, Kenneth P. Dobson, Hong N. Huynh, Stephen P. Kelly, Maggie Langlas, Laura Maffei, Steven L. Shropshire, Susan L. Smith, Anita MA Winkler, Robert M. Lehner (BC), Scott A. Morrill (BL).

## ESTATE PLANNING & ADMINISTRATION SECTION

In 2007, the Section had 1,110 members. The Section annual meeting was held on November 2, 2007 at the Oregon Convention Center.

### *Activities & Accomplishments:*

#### **CLE Programs**

June 15, 2007: Cosponsored with the Oregon State Bar, "Hot Topics in Estate Planning" at the Oregon Convention Center, 3.5 General CLE credits.

November 2, 2007: Cosponsored with the Oregon State Bar, "Administering the Basic Estate" at the Oregon Convention Center. This CLE provided 6.5 General CLE or Practical Skills credits and 1 Ethics credit.

#### **Newsletters**

The Section published four newsletters, in January, April, July and October, which provided articles on a wide range of topics of interest to trust and estate practitioners, including new Oregon legislation, recent Oregon case law developments, and practice tips.

#### **Website**

The Section updated the Section's website to include copies of Section newsletters, selected legislative information, links, and other resources helpful to Section members.

#### **Advance Directive Project**

The Section continued to work on an advance directive project to establish and recommend uniform guidelines to assist individuals in executing advance directives.

#### **Oregon Inheritance Tax**

The Section established a subcommittee to focus on Oregon inheritance tax issues. Members of the subcommittee worked with the Oregon Department of Revenue, other bar sections and professional groups, with regard to interpretation and administration of Oregon inheritance tax provisions.

### *Legislative Issues:*

Three legislative proposals were requested by the Section in the 2007 Legislative Session, all passed and will take effect January 1, 2008.

- SB 305 made necessary technical changes to the Uniform Trust Code.
- HB 2361 made technical changes to the Uniform Principal Income Act.

- HB 2362 amended the Uniform Probate Code to allow declarations rather than affidavits (in some instances) in probate court.

In addition, the Section monitored and testified on selected proposed legislation not sponsored by the Section, but which affected estate planning and the administration of estates and trusts.

For 2008 legislative issues, the Section's primary focus will be on revisions to the Oregon Uniform Trust Code.

### *Budget:*

The Section's financial position continues to remain strong, and the annual membership fee will continue to remain at \$20.00.

### *Matters considered/Matters pending:*

The Section reviewed and discussed the Oregon Law Commission proposal on revisions to the Oregon's elective share statute. The Section will continue to be reviewing the proposed legislation in the upcoming year.

The Section will also be considering proposing new legislation introducing beneficiary deeds in Oregon.

Similar to last year's distribution of complimentary copies of the Willamette Law Review, Oregon Uniform Trust Code and Comments, Special Issue, the Section is working on arrangements to also make the Advisory Committee Comments to the 1969 Probate Code widely available to Section members.

Respectfully Submitted: Timothy J. Wachter (CH), Jonathan A. Levy (CH-Elect), James R. Cartwright (Past CH), Penny H. Serrurier (TR), Susan N. Gary (SEC), Karen C. Allan, William D. Brewer, Donna R. Meyer, Susan A. Miller, David E. Paulson, Michael R. Sandoval, Thomas J. Sayeg, Kenneth Sherman Jr, Anne M. Thompson, Eric H. Vetterlein, Theresa M. Wade, Jeffrey M. Cheyne (ADV), Bernard F. Vail (ADV), Kathleen A. Evans (BC), Sally Ann LaJoie (BL).

## FAMILY LAW SECTION

### *Activities and accomplishments in 2007:*

The Family Law Section continues to be active and successful. Section membership has increased to 1045 members.

The Section successfully conducted its annual three day Annual Meeting and CLE Conference at Salishan by presenting 10.25 general credits and 1.0 ethics credits. This CLE Conference also offered an opportunity to earn 2.0



optional credits: 1.0 child abuse and 1.0 elimination of bias credits. The seminar had 436 participants.

The Section Listserve continues to be a forum through which member can get practice advice on many topics. The Family Law Forum and the section Newsletter continue to be useful practice aids to section members.

### ***Budget:***

The financial position of the section remains strong, particularly with the increased membership and CLE Conference attendance, which helps fund the newsletter.

### ***Legislative Issues:***

The section submitted 3 Law Improvement Proposals to the BOG to be included in the Bar-sponsored bills: SB 306 which clarifies court discretion regarding reinstatement of spousal support, SB 307 regarding expiration of judgments in domestic relations context and HB 2363 which repeals sunset on Oregon Adoption Tax Credit. The two senate bills were passed and the house bill missed by a narrow margin.

### ***Additional comments:***

The Executive Committee continues with its practice of bi-monthly meetings with two face-to-face meetings, one occurring in Salem and the other at the Salishan conference.

These provided an opportunity for those members in all areas of the state to come together and meet personally, socialize, and conduct section business.

Respectfully Submitted: Mary Lois Wagner (CH), Gordon L. Dick (CH-Elect), Jeffrey F. Renshaw (Past CH), Michele Grable (TR), David E. Hull (SEC), Sean E. Armstrong, Marcia Buckley, Richard William Funk, Melissa P. Lande, M Scott Leibenguth, Robert C. McCann Jr, Carl R. Stecker, Elizabeth A. Trainor, Charles M. Zennache', Theresa L. Wright (BC), Susan Evans Grabe (BL).

## **GOVERNMENT LAW SECTION**

### ***Activities and Accomplishments:***

The Government Law Section's purpose is to educate and inform lawyers practicing in areas that deal with government entities. The section conducts two full-day CLE's each year. This year both of the CLE's were well-attended.

The CLE's included:

- The Mid-year CLE at Inn at Spanish Head in Lincoln City is presented every year on Friday in February on the weekend of the Newport Seafood and Wine

Festival. This year the CLE was entitled "The Fear Factor, Lawyering in an Emergency." The section brought together a number of state and local officials who regularly practice in the area and handle situations where emergencies may arise. Helping citizens during an emergency is one of the government's biggest responsibilities, and providing legal advice in such an atmosphere is sometimes difficult. The CLE was well-received.

- The Fall CLE was held at the Salem Convention Center on October 5, 2007. This CLE dealt with the important issue of drinking water supply for municipalities. This is an ongoing concern of the entire state. The section also sponsored a luncheon in which Judge Timothy Sercombe spoke about his experience over the first year after being appointed to the Court of Appeals.

The section is already planning its next Mid-Year CLE. The CLE's are always well-attended, and the cost is reasonable.

The Executive Committee has endeavored to have meetings and sponsor CLEs which seek venues outside the normal Portland-Metro area. Both of the last CLE's were located outside of the Portland area. We try to encourage member participation and membership on the board from around the state.

### ***Main Communication Medium:***

The section publishes email alerts. We have moved to email communication taking the place of hard copy newsletters. The email alerts are sent out seeking input from members and giving important notices concerning pending litigation, court decisions, and new rules by the state agencies. The section works with the Oregon State Bar to update its website. Its website has been the topic of discussion during the past year and continues to be an area that the executive committee concentrates on improving. It is the vision of the executive committee to have the website be an important legal resource for its members and other viewers.

### ***Budget:***

The section has resources within its budget due to high attendance at CLE's. With these resources, the section has been able to contribute to the Campaign for Equal Justices and other important groups. The section has also sponsored luncheons and social gatherings in connection with its CLEs.

Annual dues have been \$10.00 for many years, which is one of the lowest section rates.

The section presently has 435 members. The committee is interested in what the section members want, need, and think. It welcomes input concerning areas that the section should be active in pursuing and methods of informing its members. The section has participated in legislative matters, such as updating ethics laws and other law-improvement measures. The section actively carries on a legislative liaison program.

The section gears its activities and educational events to lawyers who represent the government or represent people doing business with the government. The section tries to foster communication and an understanding between government lawyers and the private bar in this important area of legal practice.

Respectfully submitted: Terrence D. Mahr (CH), Wayne Belmont (CH-Elect), Dan R. Olsen (Past CH), Ruth M. Spetter (TR), John H. Hammond Jr (SEC), Stephen K. Bushong, Vance M. Croney, Henry H. Lazenby Jr, Steven Richard Lounsbury, Sharman Meiners, Christy K. Monson, Lisa M. Umscheid, Karen M. Williams, Ann L. Fisher (BC), Denise Cline (BL).

## HEALTH LAW SECTION

### *Activities and accomplishments:*

In 2007, the Health Law Section sponsored a CLE on October 18 at the Governor Hotel in Portland. The event was attended by about 50 people. Molly Herrmann and Peggy Whitmore presented a session on the role of the Office of Inspector General in health care law. Gwen Dayton provided a legislative update of the most important new laws enacted by the legislature impacting health care in Oregon. Finally, a panel including Steve Conklin, Caroline Coppock, Molly Herrmann, and Ben Knaupp provided attendees with considerable information concerning various aspects of Health Care Contracting.

### *Budget:*

In 2008, the Health Law Section anticipates membership of 290, with total dues revenue of \$6,350. Our fund balance at the beginning of 2008 is \$9,245 with anticipated remaining revenue at the end of the year of \$7,422.

### *Legislative issues:*

The Health Law Section did not sponsor any legislation in 2007.

### *Matters considered/Matters pending:*

### *The Executive Committee considered:*

- Whether to sponsor any legislation and elected not to do so.
- Reports on bills before the Legislative Assembly.
- How/if to update the OSB Health Law Manual. This issue will continue into 2008.
- Effective use of the section Newsletter. This issue will continue in 2008
- Effectiveness of section website. This issue will continue in 2008
- The OSB Health Law Manual and necessary updates. This issue also will continue in 2008
- The Executive At the first meeting in 2008, the Executive Committee will consider whether to make a contribution to the Campaign for Equal Justice.

### *Recommendations for 2008:*

- Continue successful CLE activity
- Determine whether to make contribution to Campaign for Equal Justice
- Update Health Law Manual, including survey of section membership regarding areas of interest for manual
- Determine future of Health Law Section Newsletter
- Determine best use of section website.
- Consider whether to sponsor legislation for 2009 session

Respectfully submitted: Charles A. Sinsel (CH), Gwen M. Dayton (CH-Elect), Gary P. Harrell (Past CH), Nicola Yeats Pinson (TR), Amanda Hill Guldager (SEC), Thomas J. Bikales, Linda DeVries Grimms, Molly Burns Herrmann, Mr. Craig Matthew Hopkins, Kelly Knivila, Lisa T. Murphy, Peter D. Ricoy, Kathleen A. Evans (BC), Jon Benson (BL), Cynthia L. Easterday (BL).

## INDIAN LAW SECTION

### *Activities and accomplishments:*

The Section typically sponsors a day-long CLE every other year. The Section held a CLE in 2006, and plans to hold its next CLE in 2008. In 2007, the Section sponsored a social networking event in April in downtown Portland. In July, the Section sponsored a reception and presentation by Professor Gerald Torres of the University of Texas School of Law. Professor Torres, a nationally recognized expert in Indian law who frequently teaches at the Lewis

and Clark Indian Law Summer Program, engaged Section members in a roundtable discussion on the application of human rights by indigenous peoples in Latin America in the assertion of property interests as compared to concepts of property rights and sovereignty held by Native Americans in North America.

Section members were invited to meet and attend the Root Feast at the Umatilla Reservation in May, and attend the Grand Ronde Pow-Wow in August.

For the fourth consecutive year, the Section co-sponsored the Annual Northwest Tribal Water Rights Conference with the Center for Water Advocacy. This CLE was held on October 24 and 25 at the Squaxin Island Tribe's Little Creek Casino Resort in Shelton, Washington. The Center for Water Advocacy is a non-profit organization that assists Northwest Indian Tribes and their members with legal and policy issues related to water rights and water quality. The theme of this year's conference was the impacts of climate change on water, fish, cultures, economies, and rights.

The Section held its annual meeting on November 1 at the Indigenous Ways of Knowing Conference (IWOK) at Lewis & Clark College. The Section provided sponsorship support for the IWOK reception, and Section members were invited to attend both the reception and the IWOK guest speaker presentation.

#### ***Website and Publications:***

This year the Executive Committee decided to discontinue hard-copy publication of its newsletter, *The Arrow's Edge*, and instead try electronic publication and distribution of articles related to Indian law. The decision to discontinue hard-copy publication was reached based on a number of factors. One consideration was timely publication of articles. Soliciting a sufficient number of articles from the membership to put together an entire newsletter often takes many months. The articles are generally not published until a significant amount of time after submission. Electronic distribution of articles allows for more timely dissemination. The significant cost of producing and mailing a hard-copy publication, as well as the environmental impacts, were also factors considered. In a 2006 survey of the Section membership, the majority of respondents did not oppose electronic publication of a newsletter. The Executive Committee decided that pursuing establishment of a Section website where Section members could have articles posted and that could provide a platform for other member services would be a more cost-effective approach to sharing scholarship on Indian law matters and providing a forum for future membership interaction and resources.

The Executive Committee issued a request for proposals for website design and maintenance, and in July selected a web designer among three respondents. The Executive Committee worked with the web designer to get a basic website designed and online, and plans on establishing a subcommittee to continue to develop and expand the website design and function.

#### ***Legislative Proposals:***

In response to the request by the Oregon State Bar for proposals for "law improvement" amendments to Oregon statutes, the Section submitted three proposed sets of legislative amendments: (i) to amend the Oregon Evidence Code to allow judicial notice of the law of tribal governments (ORS 40.090); (ii) to amend the Evidence Code to allow tribal government documents to qualify for various exceptions to the hearsay rule (ORS 40.406); and (iii) to amend the Uniform Law of Notarial Acts to recognize documents notarized by tribal government officials (ORS 194.505 to 194.595). All three amendments were submitted to the Oregon Legislative Assembly as HB 2364 in January, and the Section provided testimony in support of the amendments. All three of the Section's proposed amendments were enacted into law.

In addition, the Section endorsed HB 2913, which required state circuit courts to give full faith and credit to tribal court domestic relations orders for the purposes of the anti-alienation provisions of the federal Employee Retirement Income and Security Act, and which was enacted into law.

#### ***Membership and Finances:***

As of the end of November, the Section's membership was 173 people, a slight increase from the year-end total of 164 people in 2006. The Section expended more funds than it brought in during 2007, however budget surpluses from previous years are more than sufficient to cover the difference and the Section anticipates beginning 2008 with a remaining surplus of funds. The Executive Committee plans to evaluate future expenditures and the possibility of lowering Section dues in 2008.

#### ***Recommendations for 2008:***

In the early part of next year, the Section plans to host an event for Section members and encourage discussion at such meeting on legislative proposals from the membership. It is anticipated that Past Chair Christopher Burford, who is stepping off the Executive Committee in 2008, will continue to take the lead as the Section's legislative contact. In addition, the Executive Committee has discussed the possibility of creating regional subcommittees to focus on sponsoring events and networking opportunities for Section

members outside of the Portland metropolitan area. The Section plans on sponsoring a full-day CLE in the coming year, either in conjunction with Lewis & Clark Law School or independently, as well as possibly sponsoring some events offering one hour of CLE credit. The Section hopes to continue to advise the membership of opportunities to attend various events throughout the year held by Oregon tribes on their reservation lands, as well as sponsor additional social networking opportunities. The Section also anticipates expanding the information and increasing the utility of the Section's new website, including solicitation of articles for posting in electronic format.

Respectfully submitted: Melissa Masat Robertson (CH), John M. Schultz (CH-Elect), Christopher Linton Burford (Past CH), David D. Shaw (TR), Naomi Stacy (SEC), Jennifer A. Amriott, Deneen Aubertin Keller, Lisa Jean Bluelake, Patricia L. Davis, Douglas C. MacCourt, Vernon Peterson Jr, Lee Kevin Shannon, Suzanne Townsend, Carl V. Ullman, Beth S. Wolfson, Carol DeHaven Skerjanec (BC), Peggy Miller (BL).

## LABOR AND EMPLOYMENT LAW SECTION

### *Activities and accomplishments:*

The Labor and Employment Law Section maintains a membership of 829 members as of October 31, 2007. Attorneys who passed the Oregon State Bar during 2007 were invited to join the section at no cost for the 2007 membership year.

The section continued its practice of sponsoring "Breakfast Briefing" seminars in Portland and Eugene. Programs were held in March and April concerning "Cat's Paw" liability, in June concerning the tax consequences of employment settlement agreements, and in October and November concerning card recognition of labor unions.

On October 6, 2007, the section held its annual meeting and continuing legal education program at the Seventh Mountain Resort in Bend. Speakers and topics covered in the continuing legal education program were as follows:

Update on Labor and Employment Cases	Richard F. Liebman, Barran Liebman LLP
Recent Developments at the National Labor Relations Board and the State of Oregon Employment Relations Board	Richard Ahearn, Regional Director, NLRB Region 19 Vickie Cowan, ERB Member

The Future of Employment Litigation in Federal Court	Scott Hunt, Busse & Hunt Caroline Guest, Schwabe Williamson & Wyatt PC
Common Ethics Issues Facing Labor and Employment Practitioners	Helen Hierschbiel, Oregon State Bar

Approximately 50 people attended the meeting and continuing legal education program, and it was very well received.

### *Other comments:*

Giles Gibson will become the section chair on January 1, 2008. Newly elected officers are:

Chair:	Giles Gibson
Chair-Elect:	Allyson S. Krueger
Past-Chair:	Craig R. Armstrong
Treasurer:	Thomas K. Doyle
Secretary:	Adam D. Morrison

New Members-At-Large (two-year terms ending 12/31/2009) are:

Jennifer L. Bouman  
Scott N. Hunt  
Sherman B. Kellar  
Paul M. Ostroff

Continuing Members-At-Large (terms ending 12/31/2008) are:

Alice L. Dale  
Henry H. Drummonds  
Stephanie M. Harper

Respectfully submitted: Craig R. Armstrong (CH), Giles Gibson (CH-Elect), Michael J. Tedesco (Past CH), Allyson S. Krueger (TR), Adam D. Morrison (SEC), Vickie L. Cowan, Alice L. Dale, Thomas K. Doyle, Henry H. Drummonds, Stephanie M. Harper, Robert M. Lehner (BC), Christine Kennedy (BL).

## LAW PRACTICE MANAGEMENT SECTION

### *Activities and accomplishments:*

During the year the Section focused on having a CLE on Law Practice Management. This was accomplished on October 12, 2007 when the Section hosted a CLE on client engagement, trust account, document retention, and disaster recovery. The Section began the ground work necessary for the creation of a more comprehensive section website.



Section membership at the end of 2006 was 205 members. The Section membership as of December 7, 2007 was 202 members.

### ***Budget:***

The Section recommends an increase in the budget for the upcoming year to focus on web development. Other than that increase, the Section expects its budget to be nearly identical to the 2007 budget.

### ***Recommendations for 2008:***

It is recommended that the Section goals for 2008 be to maintain the Section's commitment to having a significant CLE relating to law practice management, to get a more comprehensive section website up and running, and to maintain membership.

The LPMS executive committee decided in 2006 that it would be more efficient to have a section website that is more comprehensive than the existing website. The new website would include the ability to post articles rather than have a quarterly newsletter. The implementation of this site will be a significant priority for the Section in the coming year.

Respectfully submitted: Dawnne L. Linenbrink (CH), Eric (Skip) Winters (CH-Elect), David L. Carlson (Past CH), M David Daniel (TR), Carol Decker (SEC), Mary Patricia Sauer, Dawna Mason, Michael C. Petersen, Dee Crocker (PLF), Timothy C. Gerking (BC), Margaret Robinson (BL).

## **LITIGATION SECTION**

### ***Activities and accomplishments:***

Comprised of attorneys practicing in areas ranging from civil to criminal, plaintiff to defense, personal injury to commercial, consumer to business, and real estate to family litigation, the Litigation Section remains the largest section of the Oregon State Bar. Our signature activities continue to be publication of the Litigation Journal, selection of the annual Owen M. Panner Professionalism Award winner, and sponsorship of the annual Litigation Institute and Retreat and the biennial Fundamentals of Oregon Civil Trial Procedure CLE, which was held this year. Once again the Litigation Section was pleased to offer four scholarships to the Litigation Institute and Retreat, which enabled public service and minority lawyers to attend this important event. As is our tradition, members of the Executive Committee paired up with scholarship recipients to personally host them at the Institute and Retreat. We continued to support the work of the Civil Law Advisory Commission by

having our chair-elect serve as an active liaison member. We provided detailed flyers for the new admittee packets at the spring and fall swearing-in ceremonies. We still maintain a website; assist in providing speakers for other CLE events, and work to promote communication, camaraderie, and professionalism within the bench and bar. Here are some further details:

- **Litigation Journal.** We produced three issues of the Journal this year, coming in under budget for this project. Editor Denny Rawlinson continues to spearhead a first-rate publication in the Journal. We received several high quality unsolicited articles in 2007. We believe it is still seen as a valuable resource and a reason why lawyers choose to join the Section.
- **2007 Litigation Institute and Retreat.** 2007 marked our 14<sup>th</sup> annual Institute and Retreat, which we co-sponsor with the Oregon State Bar. Our four scholarship recipients were sent to us by OMLA (2 scholarships), Oregon Law Center, and Legal Aid Services of Oregon. The attendance numbers were down a bit but the evaluations told us that the program was very well received. The lower attendance might have been slightly affected by the unexpected last minute cancellation of our national speaker. Due to their superb advance planning, Bar liaison Karen Lee and the Institute Planning Committee were able to quickly book a first-rate substitute speaker, who was very well received.
- **2008 Litigation Institute and Retreat.** Plans are well in hand for the 15<sup>th</sup> Annual Litigation Institute and Retreat, "The Art of Persuasion." By popular demand, we are bringing nationally known speaker Michael Tigar back to headline the program. Mr. Tigar is difficult to book because he is in high demand, but he has told us in the past that he was eager to return. We look forward to presenting him to our audience on March 7-8, 2008.
- **2007 Panner Professionalism Award; Award Selection Process.** We were delighted to give the 2007 Panner Award to Assistant U.S. Attorney James L. Sutherland, who was genuinely surprised to receive it. This year we focused on revamping and recording the Panner Award selection process with two goals in mind: To complete the process each year in time to permit announcement of the award winner with the initial "save the date" communications for the Institute and Retreat, and to compile a written timeline and templates that will both streamline the selection process and provide ongoing guidance as new members rotate onto the selection subcommittee and experienced members retire from it.

We believe we accomplished those goals.

- **2008 Panner Professionalism Award.** We were extremely pleased to have our largest and most outstanding selection of nominees in recent memory. It made the selection task an arduous one, but that's a burden the subcommittee and full Executive Committee welcomed. After extensive investigation and extra meetings, the subcommittee recommended three excellent candidates, from whom the Executive Committee chose Carl Burnham as our 2008 Panner Award recipient. Mr. Burnham has accepted the award and confirmed that he will attend the March 8, 2008 awards dinner during the 15<sup>th</sup> Annual Litigation Institute and Retreat.
- **Fundamentals of Oregon Civil Trial Procedure.** This two-day seminar was presented on October 19-20, after our last Executive Committee meeting. The follow-up report is set for our January, 2008 meeting.
- **Website.** We worked with our web designer to update the look of our website and are pleased with the result. Our goal for 2008 is to update and improve the content.
- **Civil Law Advisory Commission.** John Berge, who served as chair-elect this year, also served as our liaison to the Commission. He attended meetings as our representative and reported back to us regarding the Commission's work on electronic access and filing at the state level and its continuing investigation into trial access and procedure. Because of a scheduling conflict Mr. Berge is going to serve as chair-elect for a second year in 2008; he volunteered to continue to serve as CLAC liaison during 2008 to maintain continuity for the Litigation Section.
- **OSB Economic Survey.** The Executive Committee authorized the Section's participation in the hourly rates supplement to the latest economic survey, allocating funds for that purpose. The EC members worked together to craft a list of practice areas for which the Bar will request survey input.
- **Charitable contributions.** The Executive Committee approved a \$2500 contribution to the Campaign for Equal Justice on behalf of the Section, and authorized a \$250 contribution to OMLA for its bar examination scholarship fund.
- **Rawlinson Scholarship.** The Executive Committee unanimously approved a proposal to fund a scholarship to the 2008 Institute and Retreat in honor of its founding father, former Section Chair Dennis Rawlinson. The EC members personally contributed \$375 for this purpose and appointed a subcommittee

to work with Mr. Rawlinson to select a scholarship recipient. The EC anticipates that their fund will pay for the full cost of the CLE program.

***Budget:***

We expect to end the year with a surplus of \$8,640, up from an ending fund balance of \$3,785 for 2006. Part of this increase is the result of higher dues, but it also reflects our deliberate effort to hold the line on expenses this year, particularly as to Executive Committee expenses. We were also significantly under budget on seminar and Litigation Journal expenses. The seminar savings came primarily from the late cancellation of our national speaker, so it is an unexpected savings. We had previously cut back on the number on annual issues of the Litigation Journal in an effort to cut expenses. With this year's savings, we may choose to go back to four issues for 2008.

Treasurer Tracy Prall has submitted our 2008 budget. It forecasts an ending fund balance of \$16,884.

***Legislative issues:***

Liaison Lindsey Hughes kept the Executive Committee informed about proposed legislation of interest. The Section did not take a position on any proposed legislation. In addition, OSB Public Affairs representative David Nebel attended the Executive Committee's October 15, 2007 meeting to explain the process and parameters for proposing or supporting proposed legislation, in anticipation of the April 1, 2008 deadline for submitting legislative ideas to the Bar.

***Matters considered/Matters pending:***

As reported above, the Executive Committee considered and passed on: the Bar's invitation to participate in the upcoming Economic Survey; the annual request for a contribution to the Campaign for Equal Justice; OMLA's request for a contribution to its bar examination scholarship fund; the proposal to create and fund a scholarship to the 2008 Institute and Retreat in honor of Denny Rawlinson; a proposal to revamp and document the Panner Award selection process; selection of the 2008 Panner Award recipient; reappointment of John Berge to the Civil Law Advisory Commission; and nomination of a slate of officers and new members at large, which was presented at the October 15, 2007 Annual Meeting of the Section. The EC was particularly eager to recruit new members at large from diverse practice areas and from around the state; we were pleased to achieve that goal when Kim D'Aquila, Doug Hojem, and Randy Turnbow accepted our invitation to membership, and we were gratified that Steve Larson was nominated from the floor at our Annual Meeting and was then elected to a term as member at large.

In addition, the U.S. Attorney's office asked the Executive Committee to provide complimentary dinners for all who attended the 2007 Panner Awards dinner from that office; after thorough discussion, the EC approved two complimentary dinners in addition to those already provided to award recipient Jim Sutherland and spouse and those who spoke at the dinner on his behalf. The EC also considered adopting a policy of providing awards dinner discounts for staff and office members whenever the Panner Award recipient works for an organization that traditionally provides its staff low salaries. The EC ultimately decided to consider the issue on a case by case basis going forward.

The Executive Committee also considered a suggestion to hold the July 2008 meeting someplace other than Ashland. It will take up this issue at the January 2008 meeting.

#### ***Recommendations for 2008:***

The Executive Committee has just received a written request for complimentary Section membership for judges. It will consider that request at its January 12, 2008 meeting.

The outgoing chair recommends that the EC make a concerted effort in 2008 to update and expand the content on the Section's website.

#### ***Any other comments:***

On behalf of the entire Executive Committee, the outgoing chair salutes Bar liaison Karen Lee and her staff and Member Services representative Sarah Hackbart for their tireless and extremely effective work on behalf of the Section. Their professionalism, unflappability, and relentless good cheer were much appreciated.

Respectfully submitted: Nancie K. Potter (CH), John A. Berge (CH-Elect), Marc A. Spence (Past CH), Tracy A. Prall (TR), Raymond D. Crutchley (SEC), Benjamin M. Bloom, Stephen K. Bushong, Colleen O'Shea Clarke, W Eugene Hallman, Lindsey H. Hughes, Michael R. Mahony, Simeon D. Rapoport, Hon Thomas M. Ryan, Kathryn P. Salyer, Sarah Rhoads Troutt, Timothy L. Williams, Robert D. Newell (BC), Karen D. Lee (BL).

## **PRODUCTS LIABILITY SECTION**

### ***Activities and accomplishments:***

The Products Liability Section grew slightly in 2007, from 178 to 180 members.

The executive committee met ten times this year, planned and put on a half-day CLE in October, published two issues of the newsletter and has another newsletter issue that is close to publication.

A subcommittee of the Executive Committee has set in motion a law school essay contest for the three Oregon law schools to recruit potential newsletter articles and generate student interest in issues of products liability.

The section continues to maintain a web site with information pertinent to section members.

Finally, the section voted in a great slate of new members for the 2008 executive committee.

### ***Budget:***

Section revenues and expenses have remained stable. The section has accumulated a small surplus, which the executive committee intends to use in part next year to award a prize in the law school essay contest and may use to increase the value of the CLE to members.

### ***Legislative issues:***

The executive committee maintained a legislative contact to monitor legislation last session, but did not identify any legislative issues in which the section should take a position.

### ***Matters considered/pending:***

The executive committee considered whether to contribute to various charitable groups this year and determined that this is not the best use of section members' money. No matters are pending.

### ***Recommendations for 2008:***

The executive committee hopes to publish three issues of the newsletter in 2008 and to increase attendance at the annual fall CLE.

Respectfully submitted: Meagan A. Flynn (CH), Bruce C. Hamlin (CH-Elect), Jay W. Beattie (Past CH), Edward T. Tylicki (TR), Michelle K. McClure (SEC), Charles E. Bolen, Jeffrey A. Bowersox, Eugene H. Buckle, Stephen Christopher Bush, John W. Knottnerus, Scott F. Kocher, Scott C. Lucas, William Alexander Masters, Leslie W. O'Leary, Heather J. Van Meter, Deanna L. Wray, Linda K. Eyerman (BC), Teresa Wenzel (BL).

## **SECURITIES REGULATION SECTION**

### ***Activities and accomplishments:***

The Securities Regulation Section held monthly luncheons in Portland at the Governor Hotel with CLE speakers of interest to its members. A list of the monthly lunch speakers and the dates and subjects of their presentations held to date follows:

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OSB SECURITIES REGULATION SECTION  
LUNCHEON SPEAKERS FOR 2007

*Feb. 2007*

*NWSI-No Luncheon*

*March 21, 2007*

Jeff Cronn of Tonkon Torp and  
Michael J. Esler of Esler Stephens & Buckley  
*Aiding and Abetting or Advising and Assisting?*  
*A Lively Discussion of Reynolds v. Shrock*

*April 18, 2007*

Kevin C. Anselm, Oregon Division of Finance  
and Corporate Securities  
*Current Securities and Financial Product Regulation  
and Compliance in Oregon*

*May 16, 2007*

Bob Banks, Banks Law Office  
*The NASD-NYSE Merger: How and Why, and  
What it Means for Securities Regulation and Arbitration*

*June 20, 2007*

David Rees, Stoll Stoll Berne Lokting & Shlachter PC  
*Strong Inferences and Scheme Liability: The Supreme Court to  
Address Pleading Scienter and Liability of Secondary Actors  
Under Federal Securities Laws*

*July 18, 2007*

Keith A. Ketterling, Stoll Stoll Berne  
Lokting & Shlachter PC  
*Teaching an Old Dog New Tics – The Challenges  
Facing BD's in Selling Real Estate TIC Securities*

*Sept. 19, 2007*

Richard Baum and Danielle Benderly of Perkins Coie LLP  
*Stock Option Granting Practices: the Good,  
the Bad and the Ugly*

*Oct. 17, 2007*

Michael Fennel, General Counsel for  
the Portland TrailBlazers  
*What Does A Sports Lawyer Really Do?*

*Nov. 14, 2007*

Allison Rhodes and Dayna Underhill,  
Hinshaw & Culbertson LLP  
*Multiple Investor Representation and other Kamikaze Missions*

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***Budget:***

The Section continues to enjoy a positive financial situation. As of October 31, 2007, the Section had a surplus in excess of \$8,300 which it has maintained for several years, and the cash flow from membership fees and other revenue sources is sufficient to cover the expenses relating to luncheons and the section's other activities.

In 2007, the Section awarded a \$500 scholarship to a top student at each of Oregon's three law schools who were chosen by the professor who teaches securities regulation at each school. The Section also contributed \$500 to each of the Campaign for Equal Justice and the Oregon Minority Lawyers Association. The Executive Committee also agreed to allow Judges and their staff members to attend Section luncheons on a complimentary basis. Members of the Executive Committee also participated in panel discussions with law students at the University of Oregon and Willamette University to discuss securities law as a practice area and why students should consider taking a course on the subject in law school.

***Recommendations for 2008:***

For 2008, the Section projects another surplus. In 2008, the Section expects to continue its monthly luncheons, its scholarships and its sponsorship of and participation in the Northwest Securities Institute.

Respectfully submitted: Sherrill A. Corbett (CH), Timothy S. DeJong (CH-Elect), David G. Post (Past CH), Gustavo J. Cruz Jr (TR), David S. Matheson (SEC), A Jeffery Bird, Tanya A. Durkee, Joshua E. Husbands, Robert C. Laskowski, Richard M. Layne, Ian Merrill, Charmin B. Shiely, Paul H. Trincherro, Robert D. Newell (BC), Susan Evans Grabe (BL).

**TAXATION SECTION**

The Executive Committee meets four times a year. The membership is fairly stable at around 450 members, thus creating the stable revenue base. The Section is financially healthy and anticipates using funds to increase the quality of CLE by bringing in speakers from out of town for the Tax Institute and a regularly-produced luncheon program series as a benefit to members. In addition, funds have been authorized for the improvement and maintenance of the Section's web site. This report provides more details on the Section's activities and goals.

***Activities and accomplishments:***

Luncheon Series: Tax luncheons are held in both Portland and Salem for local practitioners. Both series

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In addition, the section's annual meeting was held on October 17, 2007. Michael Fennel, General Counsel to the TrailBlazers organization spoke to our section.

included sessions throughout the entire year. While both lunches make some profit, the primary focus is education of members.

**Annual Oregon Tax Institute:** The Section held the 6th annual Tax Institute, and was able to make a small profit again this year. Our marks for the Institute were very high. The current plan for the 2008 Tax Institute includes some changes. For the first time the Tax Institute will be jointly produced by the taxation sections of the Oregon and Washington State Bar Associations. We are testing this format in order to attempt to increase our access to out-of-state attendees and speakers. If successful, we plan to present the Institute in Portland and Seattle, respectively, in alternate years. The event will be coordinated by the Member Services personnel of the Oregon State Bar.

**Broad Brush Taxation Seminar.** The Broad Brush Taxation Seminar, which is held every other year, was held in October. This Seminar is aimed at those Bar members who are not tax experts.

**Web Site.** The Section's web site has been redesigned, and is maintained, by Spotted Horse Software, which also does work for other sections of the Oregon Bar. While it is still produced on paper and mailed to Section members, the Section's newsletter is now also accessible electronically through the web page.

**Newsletter:** The section continues to produce a newsletter to our members, with articles of interest to tax practitioners. A Newsletter subcommittee meets via teleconference about once a month. Three newsletters were produced this year; the Committee hopes to issue 4 newsletters during 2008.

**Tax Section ListServ:** The Committee authorized the Tax Section ListServ in 2006. The activity was initially sparse, but with the addition of a newly designed Web Site and more publicity regarding its availability, its use has gained momentum. We are hopeful that, as it becomes more known to members its use will continue to increase as a useful resource for the exchange of information.

**IRS Practitioner's Forum.** The Committee participates in coordinating and producing the IRS Practitioner's Forum, held annually. This event is co-sponsored with the OSCPA and the Internal Revenue Service. The Taxation Section has used funds that have accumulated in the past from our sponsorship of the event as scholarships for tax law students to the conference this year. We plan to continue this practice and to continue participating in the Forum.

#### ***Legislative Subcommittee:***

The Committee is quite proud of the fact that our posi-

tive interactions with the Oregon Department of Revenue have increased in frequency and effect. Members of our Legislative Subcommittee have devoted a substantial number of hours, including travel time to Salem for legislative hearings and meetings with the Department of Revenue, in order to have a positive impact upon drafting and revising proposed legislation in a variety of tax areas. The Legislative subcommittee meets periodically with heads of the Department of Revenue to discuss ongoing tax issues and to keep open lines of communication. The Department forwards proposed administrative rule changes to the subcommittee, which are then forwarded to executive committee members for review and comment. Proposed legislation and administrative rules changes are discussed at each of our quarterly Executive Committee meetings. It appears that cooperation between the Section and the Department of Revenue continues to increase, and that our assistance to the Department in preparing and reviewing constructive legislative proposals is appreciated.

Respectfully submitted: Marc K. Sellers (CH), Mark L. Huglin (CH-Elect), C Jeffrey Abbott (Past CH), Valerie Sasaki (TR), Katherine O. VanZanten (SEC), Larry Joseph Brant, Steven L. Christensen, Gwendolyn Griffith, Philip N. Jones, Neil D. Kimmelfield, Robert T. Manicke, Thomas J. Sayeg, Barbara J. Smith, David C. Streicher, Jeffrey S. Tarr, Jeffrey M. Wong, Kathleen A. Evans (BC), Karen D. Lee (BL).

## **WORKERS COMPENSATION SECTION**

### ***Activities and accomplishments:***

The section held its 25<sup>th</sup> Annual Meeting on May 18, 2007, at the Salishan Lodge at Glededen Beach, Oregon. At the meeting, the section elected the following officers and members-at-large to serve on the Executive Committee:

#### **Officers:**

Chair	Holly Somers
Chair Elect	Matthew Roy
Treasurer	Meg Carman
Secretary	Matthew Fisher
Past Chair	Linh Vu

#### **Members-at-Large:**

Rob Guarassi  
Mustafa Kasubai  
Dean Lederer  
Julie Masters  
Chuck Mundorff

Jill Reichers  
Jennifer Roumell  
Arthur Stevens, III  
Mark Thesing  
Geoffrey Wren  
Dale Johnson

The meeting was held in conjunction with a two-day seminar. The seminar was approved for an unprecedented 9 MCLE credits. The program included various legal and medical speakers covering topics relevant to practitioners of workers' compensation on both sides of the Bar.

The section also sponsored a Bench/Bar Ethics CLE on November 9, 2007, free of charge to its members. The conference covered two hours of discussion regarding ethical dilemmas faced by practitioners of workers' compensation law. The Campaign For Equal Justice also presented a discussion regarding access to justice that was approved for one elimination of bias credit. The CLE was held at the Willamette Valley Vineyards in Turner, Oregon.

***Budget:***

The executive committee has approved the section's budget for 2008. Generally, the largest expenditures relate to the seminars sponsored by the section. In the past two years, the section has also experienced a budget surplus, due largely to its well attended annual meeting and CLE at Salishan Lodge. The executive committee has been and continues to consider how best to apply the budget surplus to benefit the section.

***Recommendations for 2008:***

The executive committee will continue with monthly meetings held in accordance with the section bylaws. The standing committees will continue to meet on an as-needed basis to function with the following general goals:

• **Legislative/Rules:**

Monitor proposed and potential legislation and rules under the Board and Department; provide advice to the committee regarding the advisability of proposed legislation or rule changes, and review current workers' compensation laws to keep the committee apprised of new developments.

• **Professionalism:**

Advance the interests of section members by sponsoring seminars and programs dealing with professionalism and ethics; consider means by which the section can improve relations between the membership and those providing services to

injured workers and employers, clients and members of the public. The goal for 2008 is to put on at least one Bench/Bar ethics CLE at Willamette Valley Vineyards.

• **Race/Ethnic:**

Identify means by which the section can facilitate the use of the workers' compensation forum by practitioners and members of the public; educate lawyers, judges and those providing services to injured workers and employers regarding the potential impact of cultural differences upon use of the workers' compensation system.

• **Salishan/CLE:**

Plan and coordinate the annual section business meeting and CLE. The 2008 annual meeting/CLE will again be held at Salishan Lodge on May 16-17.

• **Communications:**

Monitor the development and production of the section's website and continue efforts in getting relevant practice information to all section members.

• **Douglas Daughtry Award Committee:**

This committee is made of the most recent three past section chairs and meets to make recommendations to the full committee on the merit of nominations for the award. This committee will begin meeting in March 2008 to start accepting nominations and making recommendations to the full committee for the award, which, if given, will be presented at section's Annual Meeting at Salishan on May 16, 2008.

Respectfully submitted: Linh T. Vu (CH), Holly J. Somers (CH-Elect), Martin L. Alvey (Past CH), Meg Carman (TR), Matthew Lansing Roy (SEC), Matthew M. Fisher, Robert J. Guarrasi, Mustafa T. Kasubhai, Dean J. Lederer, Julie Masters, Charles R. Mundorff, Jill M. Riechers, Jennifer R. Roumell, Arthur Wilber Stevens III, Mark Thesing, Geoffrey G. Wren, Bette L. Worcester (BC), Suzanne Cushing (BL).





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