

OREGON STATE BAR
MEETING OF THE BOARD OF GOVERNORS

Schedule of Events

July 18-19, 2008

7/8/2008 2:26 PM

Meeting Place Oregon State Bar Center Phone: 503-620-0222
16037 SW Upper Boones Ferry Road
Tigard, OR 97281-1935

Friday, July 18, 2008



- 8:00 a.m. – 8:15 a.m. **Appointments Committee** (Evans, Gerking, Fisher, Johnnie, Piucci, Vieira, Wright) *
Columbia B Room
- 8:30 a.m. – 9:30 a.m. **Member Services Committee** (Gaydos, Wright, Johnson, Fisher, Johnnie, Kent) **
Columbia B
- 9:00 a.m. – 9:30 a.m. **Policy and Governance Committee** (Gerking, Worcester, Evans, Greene, Lehner, Matsumonji, Vieira) **
McKenzie Room
- 9:30 a.m. – 10:30 a.m. **Public Affairs Committee** (Fisher, Gaydos, Johnson, Piucci, Skerjanec, Vieira)
Columbia B Room
- 10:30 a.m. – 11:30 a.m. **Access to Justice Committee** (Wright, Vieira, Gerking, Kent, Lehner, Matsumonji)
McKenzie Room
- 11:30 a.m. – 12:00 p.m. **Public Member Selection Committee** (Worcester, Lehner, Greene, Johnnie, Vieira)
Columbia B Room
- 12:00 p.m. – 1:00 p.m. **Lunch**
McKenzie Room

2:30 p.m. – 3:00 p.m.

Dessert Social – Foyer outside of Columbia Room A and B (main floor)
Recognition of bar staff in leadership positions in national bar organizations.

1:00 p.m. – 5:00 p.m.

Board Meeting
McKenzie Room



5:30 p.m. – 7:30 p.m.

BOG Dinner
Rick Yugler's home

Saturday, July 19, 2008

9:00 a.m.

Board Meeting – if necessary

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

NO MEETING

Budget and Finance Committee (Green, Skerjanec, Gaydos, Kent, Lehner, Worcester) *

NO MEETING

Executive Director Evaluation Special Committee (Skerjanec, Fisher, Gaydos, Johnnie)

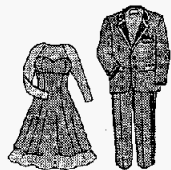
Business Attire



Casual Attire



Let's Dress Up



Oregon State Bar
Meeting of the Board of Governors
July 18-19, 2008
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on July 18, 2008, and continue to the morning of July 19, 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, July 18, 2008

12:30 p.m.

1. Work Session - Legal Publications [Linda Kruschke] I-X
2. Report of Officers

1:00 p.m.

- A. Report of the President [Mr. Yugler]
 1. Meeting with Chief Justice Paul J. De Muniz Inform A-B
~~Handout~~
July 10, 2008
 2. President's Report Inform 1-2
 3. Miscellaneous Inform

1:15 p.m.

- B. Report of the President-elect [Mr. Gaydos]
 1. Miscellaneous Inform

1:25 p.m.

- C. Report of the Executive Director [Ms. Garst] Inform

1:30 p.m.

- D. Oregon New Lawyers Division [Mr. Chi]
 1. ONLD Report Inform 3

3. Board Members' Reports

Inform

1:40 p.m.

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

4. Special Appearances

2:00 p.m.

A. ABA Update (Judge Nelson, Ms. Harbur, Mr. Derr)

1. Meeting and Resolutions Overview Inform
2. ABA HOD Delegates Resolution Positions Action 5-15
[Ms. Fisher]

- *(1) Consider ABA Ethics Committee request that Oregon State Bar co-sponsor ABA adoption of a Model Rule on screening lateral hires.*
- *(2) Consider whether to direct ABA delegates on specific resolutions.*

2:30 p.m.

5. Dessert Social

6. Professional Liability Fund [Mr. Zarov]

3:00 p.m.

- A. Update Inform
- B. Financial Report and PLF Audit Inform 17-25
- C. Change to PLF Policy 7.700(E) Action 27-29

- *Affects how the PLF Excess Policy relates to Non-Oregon Attorneys and Out-of-State Branch offices.*

- D. Change to PLF Policy 7.700 (Addition of Section Q.) Action 31

- *The PLF is considering offering a new excess product that would provide more flexibility in circumstances dealing with a class of lawyers not within traditional underwriting guidelines without risk to the standard PLF Excess Program.*

E. Report on Potential Increase to PLF Primary Limit Inform 33-42

➤ *A report on the BOD consideration of the inquiry of OSB President Rick Yugler about the considerations involved in raising the current PLF primary limit.*

F. Report on the PLF Communication Plan Inform 43-47

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

3:30 p.m.

A. Access to Justice Committee [Wright]

1. ABA Model Rule 6.1 Action 49-65

➤ *The Access to Justice Committee is recommending that the Board of Governors replace the current OSB pro bono aspirational standard, found in Section 13.1 of the OSB Bylaws with the pro bono aspirational standard found in ABA Model Rule 6.1. Any new bylaw is subject to the one meeting notice rule (Article 26 of the Bar Bylaws), unless two-thirds of the entire board waive the notice requirement.*

2. Proposed New Admissions Rule Action 67-71

➤ *The Access to Justice Committee recommends that the BOG support the Board of Bar Examiners' recommendation*

B. Budget and Finance Committee [Greene]

1. Update on New Bar Center Inform

➤ *Opus has approached the bar about selling the building to the bar now. If the proposal is considered viable for the bar's consideration, a report will be presented at the meeting.*

C. Executive Director Search Committee [Ms. Skerjanec]

3:45 p.m.

1. Update Inform

D. Policy and Governance Committee [Gerking]

4:05 p.m.

1. Definition of Who May Practice Law in Oregon Action 73-75

- *The committee has acted on a recommendation of the "Out-of-State Lawyer Group" to clarify that a lawyer who is physically present in Oregon is practicing law in Oregon even if that person does not have any Oregon clients. This will require a statutory change*

4:15 p.m.

- 2. Lawyer/Client Exception to Confidentiality Action 77-78

- *The committee is recommending a change to RPC 1.6 in order to allow an exception to client confidentiality during a probation, diversion, or other monitoring agreement for the purposes of allowing the monitor to be sure that the lawyer is following the dictates of the agreement in regard to his/her clients.*

E. Public Affairs Committee [Fisher]

4:30 p.m.

- 1. Political Update Inform No Exhibit

4:40 p.m.

F. Public Member Selection Committee [Worcester] Inform

- 1. Update

- 8. Consent Agenda Action pink

- 9. Default Agenda Inform blue

- 10. Closed Session Agenda

4:45 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

- 11. 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
July 18-19, 2008
Consent Agenda

8. Consent Agenda

A. Approve Minutes of May 9, 2008

- | | | | |
|----|---------------------------------|--------|--------|
| 1. | Minutes of Open Session | Action | 79-86 |
| 2. | Minutes of Judicial Proceedings | Action | 87- 89 |
| 3. | Minutes of Executive Session | Action | 91-93 |

B. Appointment Committee [Evans] Action ~~Handout~~ 94

C. Client Security Fund Committee [Evans]

1. Claims Recommended for Payment

- | | | | | |
|----|----------------------------------|------------|--------|--------|
| a. | No. 07-24 <i>Hoilien v. Dunn</i> | \$200.00 | Action | 95-96 |
| b. | No. 07-26 <i>Pozsgai v. Dunn</i> | \$980.00 | Action | 96 |
| c. | No. 08-08 <i>Story v. Dunn</i> | \$1,500.00 | Action | 97 |
| d. | No. 08-12 <i>Green v. Dunn</i> | \$200.00 | Action | 98 |
| e. | No. 08-10 <i>Owens v. Childs</i> | \$1,195.00 | Action | 97 |
| f. | No. 08-01 <i>Jones v. Kent</i> | \$1,000.00 | Action | 98 |
| g. | No. 07-17 <i>Cone V. Kent</i> | \$2,705.87 | Action | 99-102 |

D. Policy and Governance Committee [Gerking]

- | | | | |
|----|--|--------|---------|
| 1. | House of Delegates Mileage Reimbursement | Action | 103-104 |
|----|--|--------|---------|

➤ *This bylaw change will implement the 2007 HOD resolution to reimburse HOD members of mileage expenses. 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.*

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Oregon State Bar
 Meeting of the Board of Governors
 July 18-19, 2008
 Default Agenda

9. Default Agenda

A. Executive Director

- | | | |
|---|--------|---------|
| 1. Operations Report | Inform | 105-111 |
| 2. Status of Actions from Past Board Meetings | Inform | 113 |

B. Access to Justice Committee

- | | | |
|----------------------------|--------|---------|
| 1. Minutes – June 13, 2008 | Inform | 115-116 |
|----------------------------|--------|---------|

C. Budget and Finance Committee

- | | | |
|----------------------------|--------|---------|
| 1. Minutes – June 13, 2008 | Inform | 117-118 |
|----------------------------|--------|---------|

D. Member Services Committee

E. Policy and Governance Committee

- | | | |
|--|--------|---------|
| 1. Minutes – May 9, 2008 | Inform | 119 |
| 2. Minutes – Joint with Members Services Committee | Inform | 121-122 |
| 3. Minutes – June 13, 2008 | Inform | 123-124 |

F. Public Affairs Committee

- | | | |
|----------------------------|--------|---------|
| 1. Minutes – June 13, 2008 | Inform | 125-126 |
|----------------------------|--------|---------|

G. Public Member Selection Committee

- | | | |
|----------------------------|--------|-----|
| 1. Minutes – April 4, 2008 | Inform | 127 |
|----------------------------|--------|-----|

H. CSF Financial Report

Inform 129-131

I. *HOD Resolutions - Proposed*

Inform 131A-131F

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Oregon
State
Bar

Legal
Publications

Department Overview

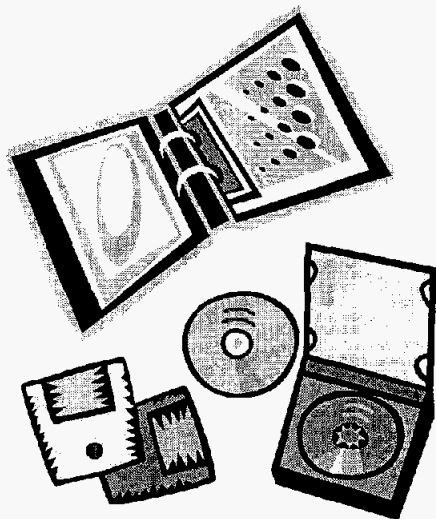
LEGAL PUBLICATIONS MISSION

- Ensure a competent bar by improving the knowledge and skills of Oregon lawyers
- Offer up-to-date, quality publications on a wide range of legal topics
- Deliver products through a variety of media, including print, BarBooks™ online library, and forms on CD
- Be self-supporting through sales of print publications, BarBooks™ online library, and additional user licenses for forms on CD

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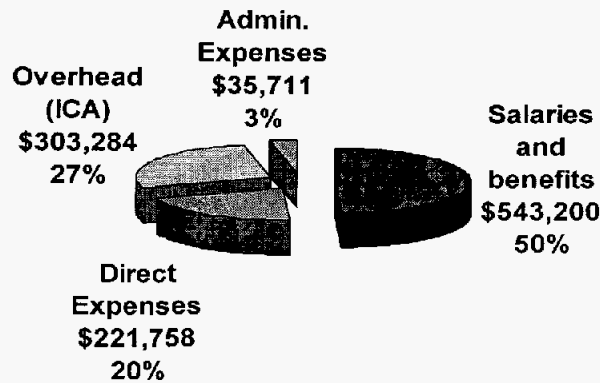
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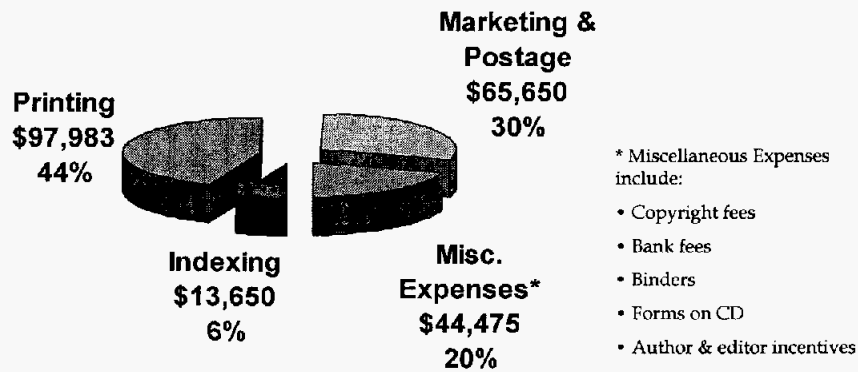
LEGAL PUBLICATIONS 2008 BUDGET EXPENSES

Total: \$1,078,953



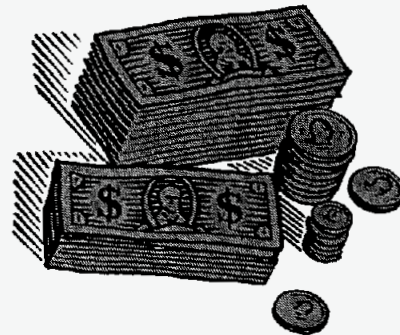
LEGAL PUBLICATIONS 2008 DIRECT EXPENSES

Total: \$221,758



WHAT DOES IT COST TO PRODUCE ONE PUBLICATION?

- Marketing: \$3,000 - \$5,000
- Printing: \$3,000 - \$25,000
- Indexing: \$500 - \$3,000
- Author Incentives: \$50 - \$600
- Disk Duplication: \$0 - \$1,200
- Copyright Fees: \$45



BARBOOKS ONLINE LIBRARY ACTUAL REVENUE

- 2007 Revenue - \$221,039
- 2008 Revenue to date - \$322,922
 - Deferred from 2007 - \$139,605
 - New or Renewal - \$183,317
- 2009 Revenue to date - \$33,402
 - Deferred from 2008 - \$33,402
 - New or Renewal - unknown

BARBOOKS SUBSCRIBERS

2,834 individual Oregon attorneys have access to BarBooks

Firm size	# of firms in range	# of BarBooks paid subs	% of Total subs in range
1 Attorney	2674	439	16%
2 Attorneys	382	55	14%
3 to 5 Attorneys	400	63	16%
6 to 9 Attorneys	157	25	16%
10 to 19 Attorneys	93	16	17%
20 to 29 Attorneys	25	9	36%
30 to 49 Attorneys	16	7	44%
50 to 99 Attorneys	7	6	86%
100+ Attorneys	3	3	100%

OSB VOLUNTEER AUTHORS AND EDITORS

- Between 180 and 250 volunteer authors participate in writing publications that we release each year. Some volunteer for multiple publications.
- Between 15 and 30 volunteer editors participate in organizing, reviewing, and editing our publications each year
- 32 members of the Uniform Civil Jury Instructions and Criminal Jury Instructions Committees volunteer each year to work on our jury instructions publications

EVOLUTION OF AN OSB LEGAL PUBLICATION

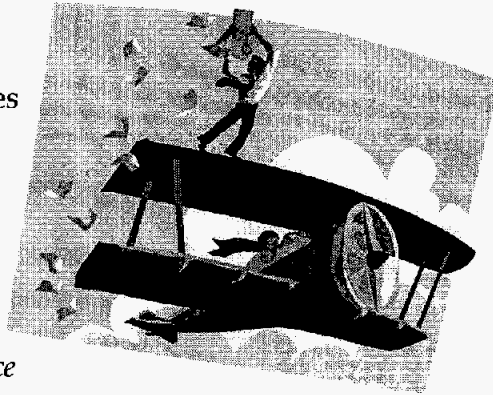
- Editorial board and authors recruited
- Chapters received from authors (after much reminding)
- Chapters cleaned up by Legal Pubs staff
- Chapters reviewed by editorial board (after much reminding)
- Chapters cite checked and edited by Legal Pubs staff
- Chapters word processed
- Chapters sent to authors for final approval
- Final author edits incorporated into chapter
- Tables created by Legal Pubs staff; Index created by contractor
- Chapters copyedited and final corrections made by word processing
- Finals sent to printer as PDF
- Proof of book approved and printing completed
- Chapters posted to BarBooks online library

BARBOOKS POSTING PROCESS

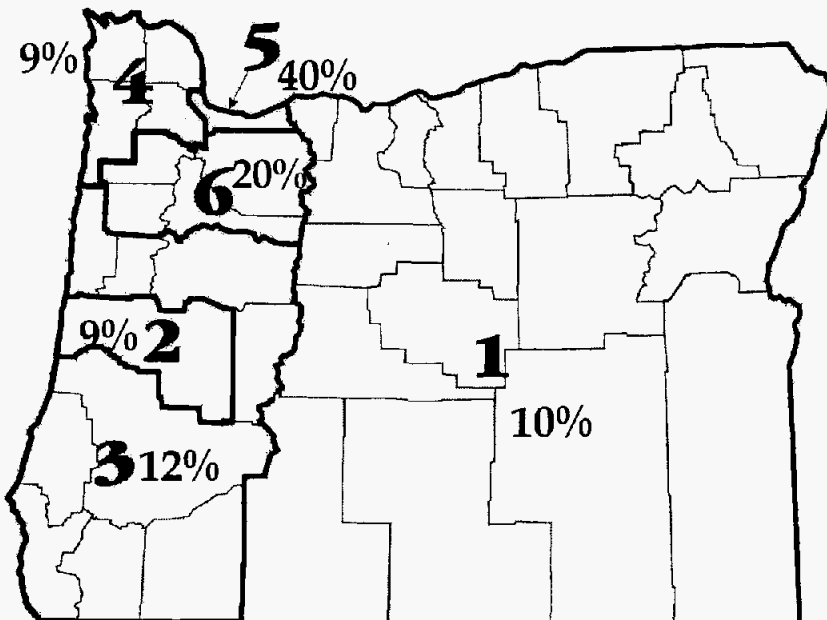
- Each chapter is broken out into sections in MS Word and a macro run to put search information into the properties fields
- Links to other sections referenced in each section are created in the MS Word documents
- Each MS Word document is converted into a Flash Paper document
- Table of contents and chapter outlines for online viewing and navigation are created or updated using the administrative interface
- MS Word documents for searching and Flash Paper documents for viewing are loaded on the Web site via FTP
- New title or supplement is made live and indexed for searching

MARKETING

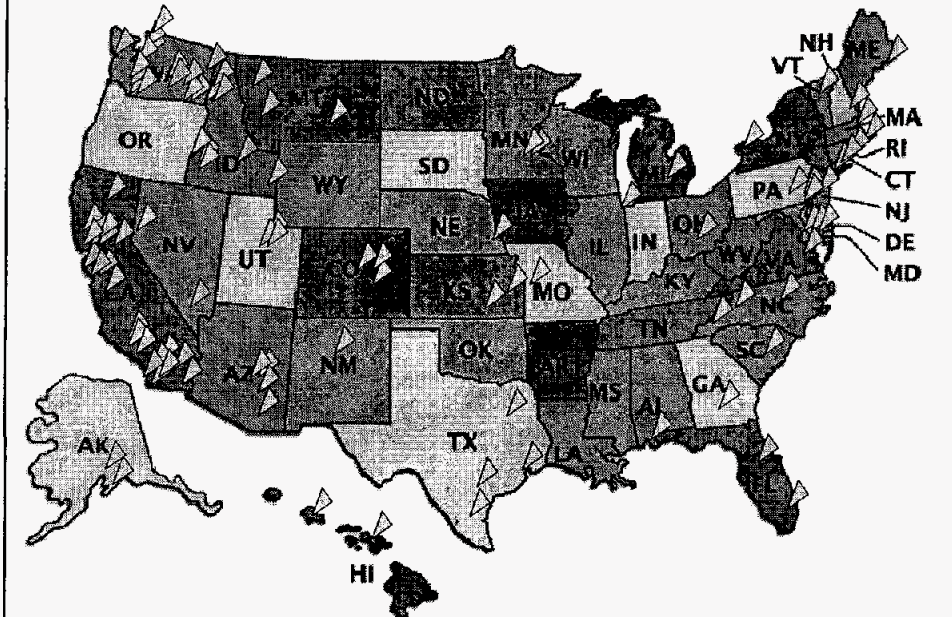
- Brochures and flyers
(print and electronic)
- Postcards
- Monthly catalog updates
- OSB *Bulletin*
- OSB Web site
- Section newsletters
- Broadcast emails
- *Multnomah Lawyer*
- *Daily Journal of Commerce*



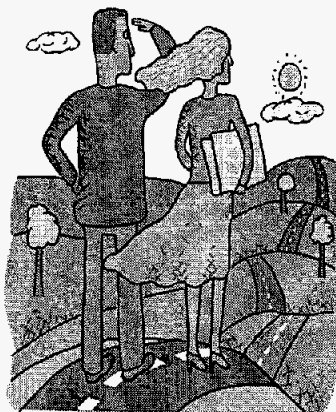
WHERE ARE OUR CUSTOMERS?



WHERE ARE OUR CUSTOMERS?



WHAT'S IN THE FUTURE?



- Upgrade BarBooks™, with eventual linking to primary case law
- Continue to develop a new brand image and marketing plan for Legal Publications
- Development of new publications in areas of law that are not currently served by other sources
 - *Interpreting Oregon Statutory Law* to be released in 2008
 - *Rights of Foreign Nationals* to be released in 2009
 - *Oregon Rules of Evidence with Objections* to be released in 2009



Oregon
State
Bar

Legal
Publications

*Your top-rated legal resource
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BarBooks Total and Deferred Revenue Breakdown

Month	Total Revenue	2007 Allocation	2008 Allocation	2009 Allocation
Jan. 07	\$16,640	\$16,640.00		
Feb. 07	\$60,665	\$55,609.58	\$5,055.42	
Mar. 07	\$105,865	\$88,220.83	\$17,644.17	
Apr. 07	\$31,275	\$23,456.25	\$7,818.75	
May. 07	\$14,690	\$9,793.33	\$4,896.67	
Jun. 07	\$4,860	\$2,835.00	\$2,025.00	
Jul. 07	\$12,920	\$6,460.00	\$6,460.00	
Aug. 07	\$6,545	\$2,727.08	\$3,817.92	
Sept. 07	\$11,920	\$3,973.33	\$7,946.67	
Oct. 07	\$10,805	\$2,701.25	\$8,103.75	
Nov. 07	\$19,010	\$3,168.33	\$15,841.67	
Dec. 07	\$65,450	\$5,454.17	\$59,995.83	
Jan. 08	\$55,450		\$55,450.00	\$0.00
Feb. 08	\$53,385		\$48,936.25	\$4,448.75
Mar. 08	\$40,795		\$33,995.83	\$6,799.17
Apr. 08	\$29,840		\$22,380.00	\$7,460.00
May. 08	\$15,955		\$10,636.67	\$5,318.33
Jun. 08	\$15,250		\$8,895.83	\$6,354.17
Jul. 08	\$11,028		\$5,514.00	\$5,514.00
Aug. 08	\$0		\$0.00	\$0.00
Sept. 08	\$0		\$0.00	\$0.00
Oct. 08	\$0		\$0.00	\$0.00
Nov. 08	\$0		\$0.00	\$0.00
Dec. 08	\$0		\$0.00	\$0.00
Total BarBooks	\$582,348.00	\$221,039.17	\$325,414.42	\$35,894.42

BarBooks and Print Book Revenue

	2007	2008	2009
Book Revenue	\$643,828.00	\$257,516.00	
Total Rev for Year	\$864,867.17	\$582,930.42	\$35,894.42

As of 7/18/08

Prepared by L. Kruschke

X

**Meeting with the Chief Justice
Minutes – July 10, 2008**

Present: Chief Justice Paul De Muniz, Kingsley Click, Rick Yugler, Gerry Gaydos, Susan Grabe and Sylvia Stevens.

OSB Barcard/Court Security Committee

Rick reported that the committee is making some progress, but there is much yet to do and many details to iron out. Multnomah and Marion Counties have expressed considerable interest and may be the subjects of a pilot project. The Chief Justice suggested that the Supreme Court building would also be a good venue to test the system.

Admissions Task Force

The Chief Justice reported that the task force report has been drafted but will not be complete for the July BOG meeting. The group has agreed on some changes to the exam structure but continues to discuss scoring issues. The Chief Justice also noted that the task force was not asked to address issues relating to interstate bar admissions, which may be an appropriate topic for further study. Rick Yugler reported that bar leaders in attendance at the recent Northwest Bars meeting expressed support for the idea of a regional bar exam.

Public Officials Compensation Commission

The Commission has met twice. The Chief Justice attended the latest meeting and spoke about the role of the judicial department. The Commissioners asked lots of questions and he believes his remarks were well received. It is too soon to know whether the OSB's help will be required; the Chief Justice wants to wait and get a better sense of the Commission's approach.

Court Facilities

The Chief Justice has seen some of the evaluations and says the total cost to correct courthouse deficiencies will be staggering. He is gathering data on public/private partnership approaches.

Oregon eCourts

The eCourt rolls out on July 14, 2008 with DOJ and OPDS appellate filings. The Chief Justice expects OSB discipline appeals to be e-filed beginning at the end of August. He complimented the eCourt Task Force for its preliminary work to inform and educate members.

A

OJD Budget

This is in process and should be final by early fall. The OSB will help as needed. The Chief Justice noted that Legal Aid is seeking to double its General Fund appropriation.

Current Activities Update

Rick Yugler related his positive experiences visiting three of the state's nine tribal courts. The tribal judges and lawyers have been very receptive and appreciative of the OSB's interest. The Chief Justice noted that tribal judges are invited to meet with the Supreme Court when it meets around the state, and that tribal judges participate in juvenile court trainings.

Foreign Practice Rule

Rick Yugler reported that the BOG supports in-house counsel admission for foreign-trained lawyers. The BBX has developed a proposal similar to what the BOG recommends, the only real issue being whether the new rule should be limited to lawyers trained in systems based on English common law jurisprudence. The Chief Justice indicated support for easing the barrier to practice.

Judicial Evaluation Conference

Susan Grabe reported on the conference that will be held in Denver in August to promote support for judicial evaluations, particularly in states that elect judges. No one was aware of any Oregon attendees. The Chief Justice will be meeting with Kateri Walsh and Oregonian editors to discuss the Oregonian's plan to issue a judicial questionnaire for the general election. Rick Yugler offered that the BOG's Committee on the Judiciary could be reconstituted if the Chief Justice believes it will be helpful.

Appellate Process Review Committee

The Chief Justice has reviewed and approved the draft report, which should be finalized and issued soon. He complimented Mr. Gaydos on keeping the review committee on task. There was consensus that significant changes have been made to address needs identified earlier; statistics about court performance will be available on an ongoing basis in the courts' annual reports.

Public Financing of Judicial Campaigns

The Governor is strongly supporting public financing of appellate judicial campaigns and the Chief Justice has offered the Governor some feedback. The OSB will also have an opportunity to review and comment on the Governor's legislative proposal.



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 11, 2008
From: Richard S. Yugler, President
Re: President's Report

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.

- 07/10/08 Meeting with Chief Justice, Supreme Court Building, Salem.
- 07/09/08 Oregon Hispanic Bar Association social, Portland.
- 06/26/08 Investiture of Judge Lynn Ashcroft, Marion County Courthouse in Salem
- 06/25/08 Southern Oregon day 3 – Coos County Bar Association lunch in Coos Bay; Tribal Bar and Court for the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw in Coos Bay; Curry County Bar Association dinner in Brookings.
- 06/24/08 Southern Oregon day 2 - Tour – Editorial Visit at Daily Courier in Grants Pass; Josephine County Bar Association dinner in Grants Pass.
- 06/23/08 Southern Oregon day 1 - Lake County Bar Association lunch in Lakeview; Editorial visit at Lake County Examiner in Lakeview; Klamath County Bar Association dinner in Klamath Falls.
- 06/21/08 St. Andrews Legal Clinic Race for Justice
- 06/20/08 Investiture of Judge Sheryl Bachart, Lincoln County Courthouse, Lincoln City.
- 06/18/08 Jackson County Bar Association lunch at Jackson County Courthouse, Medford.
- 06/13/08 BOG Committee Meetings at Bar Center, Tigard; Past Presidents Dinner with ABA President William Neukom at Portland City Grill, Portland.
- 06/12/08 Initiative 51 strategy meeting, Portland.
- 06/09/08 Attorney Access Task Force Planning Meeting, OSB Center, Tigard.

- 06/02/08 Multnomah County Bar Association and Regions 5/6 BOG Governors, luncheon, Portland.
- 05/30/08 Eastern Oregon day 4 – Crook County Bar Association, dinner in Prineville; Editorial visit with Ben Bulletin, Bend; Harney County Bar Association, lunch in Burns.
- 05/29/08 Eastern Oregon day 3 – Malheur County Bar Association, dinner in Ontario; Editorial visit with Argus Observer, Ontario; Baker County Bar Association, lunch in Baker City.
- 05/28/08 Eastern Bar day 2 – Wallowa County Bar Association, dinner in Enterprise; Editorial visit with The Observer, La Grande; Union County Bar Association, lunch in LaGrande.
- 05/27/08 Eastern Oregon day 1 – Mid-Columbia Bar Association, lunch in Hood River; Editorial visit with East Oregonian in Pendleton; Tribal Bar and Court of the Confederated Tribes of Umatilla; Umatilla County Bar Association, dinner in Pendleton.
- 05/21/08 OSB/OJD Ecourts Task Force, OSB Center, Tigard
- 05/21/08 OSB President’s Council, OSB Center, Tigard
- 05/21/08 Multnomah Bar Association Annual Meeting and Dinner, Portland
- 05/16/08 OSB Disciplinary Board Conference and Public Member Luncheon, OSB Center, Tigard.
- 05/08/08-
05/10/08 OSB Board of Governors Meeting in Salishan; ONLD and Lincoln County Bar Association dinner at Salishan.
- 05/05/08 Hispanic Chamber of Commerce lunch in Portland

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 1, 2008
From: Willard Chi, Oregon New Lawyers Division Chair
Re: ONLD Report

Since the last BOG meeting the ONLD met twice to conduct business. In May the executive committee selected High School Essay Contest winners, finalized plans for the July 26 rafting trip, and scheduled their annual full-day CLE for October 25. Members discussed working with John Acosta and the bar's Professionalism Commission to provide a list of contacts and online information for new lawyers to use when they have ethics questions. The Chair and Treasurer also reported on their attendance at the BOG meeting the previous day and encouraged members of the Committee to attend future BOG meetings to gain a better understanding of the BOG and its members, which will help in improving our programs.

In June Frank Garcia, the new Diversity Program Administrator, attended the ONLD meeting to discuss ways the AAP and ONLD could collaborate. The executive committee scheduled a joint meeting with the MBA YLS board and began their awards nomination process.

Since the May BOG meeting two ONLD executive committee members began serving on the eCourt Task Force and an additional member is willing and able to serve on the Casemaker Evaluation Task Force once it begins.

The ONLD submitted several applications for the ABA Young Lawyers Division's annual Awards of Achievement, for specific projects as well as for ONLD's overall accomplishments. Applications will be evaluated at the annual meeting in August. ONLD will send several delegates to the New York meeting to continue its strong relationship with the ABA YLD.

Ed Harnden approached the executive committee regarding the addition of a young lawyer designated seat to the CEJ board. The seat will rotate between an ONLD and MBA YLS member. Jason Hirshon of the ONLD was appointed as the first young lawyer to fill the position.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 1, 2008
From: Ann Fisher, Chair, Public Affairs Committee
Re: ABA House Of Delegates Resolution Positions

Action Recommended

- (1) Consider ABA Ethics Committee request that Oregon State Bar co-sponsor ABA adoption of a Model Rule on screening lateral hires.
- (2) Consider whether to direct ABA delegates on specific resolutions.

Background

See attached materials.

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ARDEN J. OLSON
Admitted in Oregon, Washington and
California
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HARRANG LONG GARY RUDNICK P.C.
ATTORNEYS & COUNSELORS AT LAW

EUGENE OFFICE

June 13, 2008

BY EMAIL GERRY@GCBPC.COM AND FIRST CLASS MAIL

Gerry Gaydos
Gaydos Churnside & Balthrop P.C.
440 E Broadway, Suite 300
Eugene, OR 97401

Re: ABA Model Rules of Professional Conduct 1.10
Proposal to Reverse ABA Aversion to Screening Lateral Moves

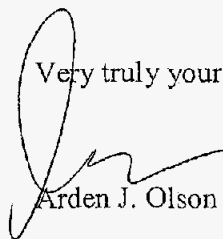
Dear Gerry:

As you know, both Sylvia Stevens and I sit on the ABA Standing Committee on Ethics & Professional Responsibility. The Committee is making a proposal to the ABA House of Delegates in August, attached, finally to accept the principle that screening is an appropriate safeguard against breach of client confidentiality in the context of private firm lateral hires. I have attached a "talking points" summary of why I think the proposal is overdue and appropriate.

Because many of the arguments against the proposal are based on firmly-entrenched fears, rather than on experience, it will be helpful if key states that have had such a screening rule are willing to co-sponsor the resolution before the House of Delegates. Oregon has had one of the longest-standing versions of the rule, and even though Oregon's rule is not identical to the ABA proposal, it would be particularly helpful if Oregon would be willing to co-sponsor.

In the event I could answer any questions for you or for the Board of Governors, I would be happy to do so.

Very truly yours,



Arden J. Olson

AJO:me
Encl.

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AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS
AND PROFESSIONAL RESPONSIBILITY
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

RESOLVED, that the American Bar Association adopts the following amendment to Model Rule of Professional Conduct 1.10:

Imputation of Conflicts of Interest: General Rule

* * *

(e) notwithstanding paragraph (a), and in the absence of a waiver under paragraph (c), when a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

* * *

Comment

* * *

[9] When the conditions of paragraph (e) are met, no imputation of a lawyer's disqualification occurs, and consent to the new representation is therefore not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.

[10] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (e)(1) does not prohibit the

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screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[11] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

REPORT

Model Rule of Professional Conduct 1.10(a) imputes the disqualification of one lawyer in a law firm to all other members of the firm except when the disqualification is based on a personal interest of the lawyer that will not limit the ability of the other lawyers in the firm to represent the client. The only exceptions to the broad application of imputation are in Model Rules 1.11 (addressing private firms that hire former government lawyers), 1.12 (addressing firms that hire a former judge, judicial law clerk, arbitrator, mediator, or other "third-party neutral"), and 1.18 (discussing situations in which information has been imparted by a prospective client). In each of those situations, the law firm may avoid imputed disqualification by screening the disqualified lawyer from any involvement in the matter.

To date, proposals to amend the ABA Model Rules to allow screening when a lawyer moves from one private firm to another have been unsuccessful, most recently in 2002, when a proposal by the Commission on Evaluation of the Model Rules of Professional Conduct ("Ethics 2000") was rejected by the House of Delegates by a margin of 176 to 130. Since the advent of the Model Rules, however, many states have made different policy choices. There are now 21 states in which the movement of a personally disqualified lawyer to a new firm does not result in imputation of that lawyer's disqualification to other lawyers in the new firm if the lawyer is timely screened from participation in the matter.¹

The Standing Committee on Ethics and Professional Responsibility has carefully considered the issues relating to imputed disqualification, and believes that it is time for the American Bar Association to extend the concept of screening, which the Model Rules have long permitted in other contexts, to lawyers who move between private firms.² Such a change must be accomplished, however, without diminishing the duty of confidentiality that a lawyer owes to a former client.

The current Model Rules imputation policy implies that only lawyers moving from public service to private practice should be trusted to honor or comply with an effective screening

¹ See Arizona Rule 1.10(d); Colorado Rule 1.10(d); Delaware Rule 1.10(c); Illinois Rule 1.10(b),(2); Indiana Rule 1.10(c); Kentucky Rule 3.130(1.10)(d); Maryland Rule 1.10(c); Massachusetts Rule 1.10(d)-(e); Michigan Rule 1.10(b); Minnesota Rule 1.10(b); Montana Rule 1.10(c); Nevada Rule 1.10(e); North Carolina Rule 1.10(c); North Dakota Rule 1.10(b); Ohio Rule 1.10(c)-(d); Oregon Rule 1.10(c); Pennsylvania Rule 1.10(b); Tennessee Rule 1.10(c)-(d); Utah Rule 1.10(c); Washington Rule 1.10(e); and Wisconsin Rule 20:1.10(a). Several of these jurisdictions impose the conditions reflected in the proposed amendment, *i.e.*, requiring that the personally disqualified lawyer receive no part of the fee from the matter, and that notice be given to the affected former client or firm. A few have included requirements that an affidavit be given to the former client and/or firm describing the screening procedures or that the matter not be one in which the personally disqualified lawyer participated substantially. New York has under consideration a rule permitting screening so long as no confidential information acquired by the lawyer in the previous representation was "material" or "significant" to the current matter.

² Standing Committee Member Susan Martyn dissents from this Recommendation

procedure. It is also possible to infer from the Model Rules' formulation that former clients of private law firms are entitled to greater protections than are government entities whose lawyers have moved to the private sector. The Committee believes neither presumption is sound. The increasing number of states that have rejected these presumptions is evidence that the ABA's stance does not reflect the realities of the practice of law.

Some who objected in the past to the expansion of screening practices argued that screening permits "side switching," whereby a lawyer who has represented one party in a matter will be permitted to represent an opposing party. On the contrary, the purpose of an effective screening mechanism is to prohibit a disqualified lawyer from having any contact with any other lawyers in the new firm about the matter that gave rise to the disqualification.

The current posture of this Association, embodied in Rule 1.10 of the present Model Rules, can be interpreted as reflecting a deep distrust of lawyers in private practice, assuming that a personally disqualified lawyer and the other lawyers in the lawyer's new firm will cheat, and a skepticism that any screen can be objectively verified to the reasonable satisfaction of private clients. The Standing Committee believes that both of these presumptions should be disavowed.

The screening provisions that have been adopted in nearly half the states have proven effective in protecting client confidentiality, and this belief finds support from lawyers, clients, and disciplinary counsel from those jurisdictions. We are firmly convinced that screening is as effective in the context of private lawyers changing firms as it has been for many years in the context of lawyers moving from government service to private practice. The Ethics 2000 Commission came to the same conclusion, and the rejection of its screening proposal was unfortunate as a matter of principle. Although we recognize that it was an historic concern for promoting government service that supported screening in the contexts of Rules 1.11 and 1.12, the increasing number of states that have endorsed screening for lawyers in all contexts reflects a growing consensus that the public-private distinction is unfounded and should be abandoned.

The Standing Committee's Recommendation is similar to the proposal of the Ethics 2000 Commission advanced in 2002. It draws upon the most reasonable and effective provisions identified in the state rules referred to above, as well as the provisions already embodied in Rules 1.11, 1.12, and 1.18. We believe that the provision requiring notice of the screening to the former client will adequately expose potential conflicts to examination, allaying concerns of former clients that their confidential information may be at risk.

The Committee notes that one of the primary objectives of the Model Rules of Professional Conduct is the achievement of uniformity in the ethical principles adopted nationwide. This objective has not yet been realized because the ABA has not provided practical, effective, and up-to-date advice on this most important aspect of practice. The effectiveness of the Rules as a unifying model will continue to be impaired if the states continue to make their own varying ways in implementing screening proposals.

We urge the members of the House of Delegates to adopt the attached Recommendation amending Model Rule 1.10.

Respectfully submitted,

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
Steven C. Krane, Chair

August 2008

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON
ETHICS AND PROFESSIONAL RESPONSIBILITY

SUMMARY OF SCREENING RECOMMENDATION

The recommended amendment:

- Would create a limited exception to the general rule that when lawyers are joined together in a law firm the conflicts of interest of one are imputed to all.
- Deals with situation in which a lawyer moves to a new firm, and previously represented a client at the old firm to which the new firm is adverse (in a transactional or litigated matter or otherwise)
- Firm can accept or continue the matter provided that:
 - The personally disqualified lawyer is “timely screened” so that confidential information relating to the representation of the former client is not shared within the new firm
 - The personally disqualified lawyer is not directly apportioned a share of the fees from the matter adverse to the former client
 - Written notice is promptly given to any affected client so that the client can make inquiries and assess compliance with the rule
- Applies the very same screening procedure we already have in the Model Rules (Rule 1.0(k)) for moves between public and private employment (Rules 1.11 and 1.12) and for prospective clients (Rule 1.18) to moves between private firms.
 - The public/private screening rule has been in effect since the Model Rules were adopted in 1983
- Applies to all firms regardless of size
- Applies to corporate law offices which fall within the definition of a “firm”
- Strong policy reasons for adopting the rule
 - Protects the expectation of former client that confidential information will not be shared
 - Protects the new firm’s client’s interest in retaining the firm of its choice
 - Protects lawyers’ interests in making career choices (lack of a rule has had a strong impact on more junior lawyers)
 - Protects law firms’ interest in hiring lawyers they want, provided they protect the confidentiality interests of clients formerly represented by those lawyers

History and National Experience:

- Ethics 2000 made similar proposal in 2001, rejected by a divided House (176 to 130)
- Articulated opposition (decrying “side-switching” and valuing lawyer mobility over client loyalty) didn’t explain treating private moves different from public moves
- Despite ABA position, screening is gaining much broader acceptance among the states.
 - 23 states have adopted rules that permit lateral screening with various conditions
 - AZ, CO, DE, IL, IN, KY, MD, MA, MI, MN, MT, NV, NC, ND, NJ, OH, OR, PA, RI, TN, UT, WA, WI

- Screening proposal under review in NY
- At least three states have suggested approval of screening by case law:
 - CT (*Laprise v. Paul*, 2007 WL 4636533 (screening an implied exception to Rule 1.10))
 - GA (*Georgia Baptist Health Care System, Inc. v. Hanafi*, 253 Ga. App. 540 (Ga. App. 2002))
 - TN (pre-rule Formal Ruling 89-F-118 (1989); *Clinard v. Blackwood*, 46 S.W.3d 177 (Tenn. 2001))
- Of the 23 state screening rules, 10 were adopted since the 2001 House vote
 - AZ (2003), DE (2003), NC (2003), TN (2003), MT (2004), IN (2005), NJ (2004), NV (2005), UT (2005), RI (2007)
- No evidence suggests screening is less effective in private moves than in public moves.
- The ABA's posture is fast getting out of step with the majority of the states it wishes to lead, significantly undermining uniformity.
- No evidence of bar complaints from states like IL and OR where screening of laterals in private firms has been allowed for almost 20 years, and the NOBC and other lawyer disciplinary groups have never opposed lateral private lawyer screening.
- Many federal trial and appellate courts have accepted lateral screening in appropriate cases even absent state rules supporting it.

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Ira R. Zarov
Chief Executive Officer

June 16, 2008

To: Professional Liability Fund Board of Directors
From: R. Thomas Cave, Chief Financial Officer *RTC*
Re: April 30, 2008 Financial Statements

I have enclosed April 30, 2008 Financial Statements.

These statements indicate that the Primary Program had a net loss of about \$400,000 for the first four months of 2008. The cause of the loss continues to be poor investment results. PLF investments for April, alone, were excellent. However, investments lost \$350,000 for the first four months instead gaining the budget amount of \$737,000.

There were 304 new claims reported during the first four months of 2008 which was an annual pace of 912. The 2008 budget for claims expense contained two components. The largest portion was for 865 new claims at an average cost of \$19,000 per claim. The budget also included about \$2 million for adverse development of pending claims. If there was no adverse development of pending claims, the \$2 million budget would allow 105 additional claims (a total of 970) at \$19,000 per claim. The actuarial report done at the end of June will give us a better understanding of development (adverse or positive) on pending claims.

These financial statements will be discussed at the June 27, 2008 Board of Directors meeting. If you have any questions, please contact me.

3000

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**Oregon State Bar
Professional Liability Fund
Financial Statements
4/30/2008**

TABLE OF CONTENTS

<u>Page</u>	<u>Description</u>
2	Combined Balance Sheet
3	Primary Program Income Statement
4	Primary Program Operating Expenses
5	Excess Program Income Statement
6	Excess Program Operating Expenses
7	Combined Investment Schedule

**Oregon State Bar
Professional Liability Fund
Combined Primary and Excess Programs
Balance Sheet
4/30/2008**

<u>ASSETS</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$2,130,678.46	\$822,309.00
Investments at Fair Value	42,741,928.60	39,340,124.92
Assessment Installment Receivable	4,765,279.00	4,728,622.00
Due from Reinsurers	46,359.02	362,454.58
Other Current Assets	67,664.02	57,467.21
Net Fixed Assets	872,050.39	300,068.49
Claim Receivables	55,559.30	202,059.30
Other Long Term Assets	<u>15,080.00</u>	<u>15,150.00</u>
TOTAL ASSETS	<u>\$50,694,598.79</u>	<u>\$45,828,255.50</u>
<u>LIABILITIES AND FUND EQUITY</u>		
	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Liabilities:		
Accounts Payable and Other Current Liabilities	\$149,166.16	\$65,188.02
Due to Reinsurers	\$766,461.91	\$719,386.03
Accrued Lease Liability	0.00	237,463.39
Liability for Compensated Absences	298,257.19	309,394.66
Liability for Indemnity	12,430,425.17	11,633,270.38
Liability for Claim Expense	11,026,703.67	9,918,601.26
Liability for Future ERC Claims	2,600,000.00	2,400,000.00
Liability for Suspense Files	1,300,000.00	1,300,000.00
Liability for Future Claims Administration (ULAE)	1,600,000.00	1,600,000.00
Excess Ceding Commission Allocated for Rest of Year	500,925.34	498,328.45
Assessment and Installment Service Charge Allocated for Rest of Year	<u>14,436,178.00</u>	<u>14,196,786.66</u>
Total Liabilities	<u>\$45,108,117.44</u>	<u>\$42,878,418.85</u>
Fund Equity:		
Retained Earnings (Deficit) Beginning of the Year	\$6,183,045.31	\$548,369.88
Year to Date Net Income (Loss)	<u>(596,563.96)</u>	<u>2,401,466.77</u>
Total Fund Equity	<u>\$5,586,481.35</u>	<u>\$2,949,836.65</u>
TOTAL LIABILITIES AND FUND EQUITY	<u>\$50,694,598.79</u>	<u>\$45,828,255.50</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Income Statement
4 Months Ended 4/30/2008**

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Assessments	\$7,115,364.67	\$7,214,975.32	\$99,610.65	\$6,997,320.67	\$21,644,926.00
Installment Service Charge	102,724.33	102,346.68	(377.65)	101,072.67	307,040.00
Other Income	32,052.75	0.00	(32,052.75)	33,230.22	0.00
Investment Return	<u>(301,947.55)</u>	<u>736,801.00</u>	<u>1,038,748.55</u>	<u>1,389,531.92</u>	<u>2,210,403.00</u>
TOTAL REVENUE	<u>\$6,948,194.20</u>	<u>\$8,054,123.00</u>	<u>\$1,105,928.80</u>	<u>\$8,521,155.48</u>	<u>\$24,162,369.00</u>
<u>EXPENSE</u>					
Provision For Claims:					
New Claims at Average Cost	\$5,776,000.00			\$4,810,000.00	
General Expense	25,613.84			26,374.03	
Less Recoveries & Contributions	(7,588.37)			(30,778.49)	
Budget for Claims Expense		<u>\$6,141,090.00</u>			<u>\$18,423,270.00</u>
Total Provision For Claims	<u>\$5,794,025.47</u>	<u>\$6,141,090.00</u>	<u>\$347,064.53</u>	<u>\$4,805,595.54</u>	<u>\$18,423,270.00</u>
Expense from Operations:					
Administrative Department	\$609,127.40	\$598,233.64	(\$10,893.76)	\$511,811.10	\$1,794,701.00
Accounting Department	163,126.97	170,834.36	7,707.39	172,802.17	512,503.00
Loss Prevention Department	534,138.37	571,681.60	37,543.23	540,846.10	1,715,044.00
Claims Department	617,055.25	676,680.36	59,625.11	606,526.25	2,030,041.00
Allocated to Excess Program	<u>(385,111.32)</u>	<u>(385,111.36)</u>	<u>(0.04)</u>	<u>(419,349.08)</u>	<u>(1,155,334.00)</u>
Total Expense from Operations	<u>\$1,538,336.67</u>	<u>\$1,632,318.60</u>	<u>\$93,981.93</u>	<u>\$1,412,636.54</u>	<u>\$4,896,955.00</u>
Contingency (2% of Operating Exp)	\$0.00	\$40,348.68	\$40,348.68	\$0.00	\$121,046.00
Depreciation and Amortization	\$35,969.69	\$71,166.68	\$35,196.99	\$37,473.51	\$213,500.00
Allocated Depreciation	<u>(13,607.00)</u>	<u>(13,607.00)</u>	<u>0.00</u>	<u>(8,744.66)</u>	<u>(40,821.00)</u>
TOTAL EXPENSE	<u>\$7,354,724.83</u>	<u>\$7,871,316.96</u>	<u>\$516,592.13</u>	<u>\$6,246,960.91</u>	<u>\$23,613,950.00</u>
NET INCOME (LOSS)	<u>(\$406,530.63)</u>	<u>\$182,806.04</u>	<u>\$589,336.67</u>	<u>\$2,274,194.57</u>	<u>\$548,419.00</u>

**Oregon State Bar
Professional Liability Fund
Primary Program
Statement of Operating Expense
4 Months Ended 4/30/2008**

<u>EXPENSE:</u>	YEAR					
	<u>CURRENT</u> <u>MONTH</u>	<u>TO DATE</u> <u>ACTUAL</u>	<u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
Salaries	\$272,916.16	\$1,099,040.71	\$1,128,183.36	\$29,142.65	\$1,078,796.55	\$3,384,550.00
Benefits and Payroll Taxes	84,145.98	337,825.12	338,599.80	774.68	337,259.05	1,015,799.00
Investment Services	0.00	5,871.25	8,000.00	2,128.75	5,145.00	24,000.00
Legal Services	507.50	985.50	5,000.00	4,014.50	2,211.00	15,000.00
Financial Audit Services	0.00	0.00	6,000.00	6,000.00	15,200.00	18,000.00
Actuarial Services	0.00	5,557.50	6,333.32	775.82	4,331.25	19,000.00
Information Services	7,503.00	26,259.80	36,500.00	10,240.20	16,498.60	109,500.00
Microfilm Services	0.00	9,841.87	6,666.68	(3,175.19)	5,685.79	20,000.00
Other Professional Services	1,719.35	13,187.05	12,833.28	(353.77)	8,689.62	38,500.00
Professional Services - Relocation	49,893.00	126,285.76	13,333.32	(112,952.44)	1,014.00	40,000.00
Lease Expense-Early Termination	0.00	(86,195.59)	0.00	86,195.59	0.00	0.00
Staff Travel	190.07	700.25	3,816.68	3,116.43	1,258.83	11,450.00
Board Travel	75.51	2,905.22	11,733.32	8,828.10	3,214.14	35,200.00
NABRICO	2,161.06	3,284.54	8,600.00	5,315.46	50.65	25,800.00
Training	580.00	2,549.04	7,199.95	4,650.92	6,085.41	21,600.00
Rent	38,247.92	164,653.33	158,566.68	(6,086.65)	160,852.15	475,700.00
Printing and Supplies	7,604.23	34,169.93	26,666.64	(7,503.29)	14,856.40	80,000.00
Postage and Delivery	2,713.95	14,270.77	13,066.68	(1,204.09)	11,858.86	39,200.00
Equipment Rent & Maintenance	773.00	9,171.71	14,000.00	4,828.29	11,914.68	42,000.00
Telephone	1,484.53	6,371.93	9,333.32	2,961.39	7,256.15	28,000.00
L P Programs (less Salary & Benefits)	19,725.57	119,725.27	165,333.60	45,608.33	114,370.40	496,000.00
Insurance	0.00	10,510.00	21,630.00	11,120.00	9,307.00	64,890.00
Library	126.00	(177.14)	8,333.32	8,510.46	4,704.61	25,000.00
Subscriptions, Memberships & Other	481.09	13,182.12	7,700.00	(5,482.12)	11,425.48	23,100.00
Allocated to Excess Program	(96,277.83)	(385,111.32)	(385,111.36)	(0.04)	(419,349.08)	(1,155,334.00)
TOTAL EXPENSE	\$394,570.09	\$1,534,864.62	\$1,632,318.60	\$97,453.98	\$1,412,636.54	\$4,896,955.00

**Oregon State Bar
Professional Liability Fund
Excess Program
Income Statement
4 Months Ended 4/30/2008**

	<u>YEAR TO DATE ACTUAL</u>	<u>YEAR TO DATE BUDGET</u>	<u>VARIANCE</u>	<u>YEAR TO DATE LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<u>REVENUE</u>					
Ceding Commission	\$250,462.67	\$262,500.00	\$12,037.33	\$249,164.22	\$787,500.00
Prior Year Adj. (Net of Reins.)	4,306.58	0.00	(4,306.58)	1,810.30	0.00
Profit Commission	0.00	16,666.68	16,666.68	0.00	50,000.00
Installment Service Charge	32,202.00	11,900.00	(20,302.00)	33,903.00	35,700.00
Investment Return	(48,067.12)	130,023.68	178,090.80	280,270.10	390,071.00
TOTAL REVENUE	<u>\$238,904.13</u>	<u>\$421,090.36</u>	<u>\$182,186.23</u>	<u>\$565,147.62</u>	<u>\$1,263,271.00</u>
<u>EXPENSE</u>					
Operating Expenses (See Page 6)	\$415,330.46	\$418,170.60	\$2,840.14	\$429,130.74	\$1,254,512.00
Allocated Depreciation	<u>\$13,607.00</u>	<u>\$13,607.00</u>	<u>\$0.00</u>	<u>\$8,744.68</u>	<u>\$40,821.00</u>
NET INCOME (LOSS)	<u>(\$190,033.33)</u>	<u>(\$10,687.24)</u>	<u>\$179,346.09</u>	<u>\$127,272.20</u>	<u>(\$32,062.00)</u>

**Oregon State Bar
Professional Liability Fund
Excess Program
Statement of Operating Expense
4 Months Ended 4/30/2008**

	<u>CURRENT</u> <u>MONTH</u>	<u>YEAR</u> <u>TO DATE</u> <u>ACTUAL</u>	<u>YEAR</u> <u>TO DATE</u> <u>BUDGET</u>	<u>VARIANCE</u>	<u>YEAR</u> <u>TO DATE</u> <u>LAST YEAR</u>	<u>ANNUAL</u> <u>BUDGET</u>
<u>EXPENSE:</u>						
Salaries	\$58,917.33	\$235,669.32	\$236,469.32	\$800.00	\$237,306.00	\$709,408.00
Benefits and Payroll Taxes	17,537.91	70,151.22	69,282.64	(868.58)	81,558.86	207,848.00
Investment Services	0.00	1,003.75	1,500.00	496.25	1,105.00	4,500.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	26,454.67	105,818.68	105,818.68	0.00	108,309.68	317,456.00
Reinsurance Placement & Travel	704.00	1,213.99	2,500.00	1,286.01	818.20	7,500.00
Training	0.00	0.00	333.32	333.32	0.00	1,000.00
Printing and Mailing	135.00	1,220.00	1,833.32	613.32	33.00	5,500.00
Program Promotion	0.00	0.00	333.32	333.32	0.00	1,000.00
Other Professional Services	0.00	253.50	100.00	(153.50)	0.00	300.00
Software Development	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL EXPENSE	<u>\$103,748.91</u>	<u>\$415,330.46</u>	<u>\$418,170.60</u>	<u>\$2,840.14</u>	<u>\$429,130.74</u>	<u>\$1,254,512.00</u>

**Oregon State Bar
Professional Liability Fund
Combined Investment Schedule
4 Months Ended 4/30/2008**

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
Dividends and Interest:				
Short Term Bond Fund	\$35,232.34	\$179,197.37	\$48,762.27	\$213,733.76
Intermediate Term Bond Funds	33,257.81	130,570.76	24,563.82	96,894.86
Domestic Common Stock Funds	0.00	9,652.01	0.00	9,437.22
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	0.00	36,409.54	0.00	46,904.79
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>0.00</u>	<u>40,053.03</u>	<u>0.00</u>	<u>23,015.86</u>
Total Dividends and Interest	<u>\$68,490.15</u>	<u>\$395,892.71</u>	<u>\$73,326.09</u>	<u>\$389,986.49</u>
Gain (Loss) in Fair Value:				
Short Term Bond Fund	(\$4,707.41)	\$4,657.52	(\$43,623.63)	\$11,909.49
Intermediate Term Bond Funds	0.00	157,614.20	(11,986.95)	16,867.28
Domestic Common Stock Funds	312,081.47	(364,513.96)	275,799.80	326,309.06
International Equity Fund	264,121.82	(357,072.95)	300,245.35	555,385.19
Real Estate	0.00	(15,573.63)	0.00	52,681.07
Hedge Fund of Funds	57,060.65	(184,606.06)	70,442.04	214,905.57
Real Return Strategy	<u>39,904.22</u>	<u>13,587.50</u>	<u>47,180.96</u>	<u>101,757.87</u>
Total Gain (Loss) in Fair Value	<u>\$668,460.75</u>	<u>(\$745,907.38)</u>	<u>\$638,057.57</u>	<u>\$1,279,815.53</u>
TOTAL RETURN	<u>\$736,950.90</u>	<u>(\$350,014.67)</u>	<u>\$711,383.66</u>	<u>\$1,669,802.02</u>
Portions Allocated to Excess Program:				
Dividends and Interest	\$9,561.22	\$58,448.23	\$11,453.54	\$67,072.50
Gain (Loss) in Fair Value	<u>93,317.12</u>	<u>(106,515.35)</u>	<u>99,664.59</u>	<u>213,197.60</u>
TOTAL ALLOCATED TO EXCESS PROGRAM	<u>\$102,878.34</u>	<u>(\$48,067.12)</u>	<u>\$111,118.13</u>	<u>\$280,270.10</u>

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008

Memo Date: July 2, 2008

From: Ira Zarov – CEO Professional Liability Fund

Re: PLF Policy 7.700(E)(3)

Action Recommended

The PLF requests that the BOG approve changes to PLF Policy 7.700(E)(3). The policy relates to the treatment of Non-Oregon Attorneys and Out-of-State Branch Offices of firms that participate in the PLF Excess Program.

The revised policy would be changed in the following way:

“(3) The PLF will not offer excess coverage to any firm if the total number of out-of-state and non-Oregon lawyers in the firm exceeds more than 30% of total firm lawyers at the time of application or at any time during the past five years.”

Background

The purpose of PLF Policy 7.700(E)(3) was to prevent the PLF’s exposure in markets that may be a higher risk (i.e., Los Angeles/New York) by covering that firm’s out-of-state branches. In addition, the PLF did not want to cover firms who set up a “satellite office” in Oregon for purposes of obtaining PLF’s excess coverage.

The proposed change is in response to an increase in the number of non-Oregon lawyers practicing in Oregon firms whose principle office is in Oregon. In these instances, the non-Oregon attorneys practice in areas that do not require Oregon bar membership. These arrangements have increased significantly in the patent law area (attorneys who practice in this area do not always obtain an Oregon bar license), and as a result, some firm’s are running afoul of PLF’s Policy 7.700(E)(3) -- the total number of out-of-state and non-Oregon lawyers in the firm exceeds more than 30% of total firm lawyers at the time of application or at any time during the past five years. The majority of these firms’ principal place of business is in Oregon with no out-of-state branches.

Also, with technological advances enabling attorneys to work off-site (i.e., home office and/or in a different state), firms are able to hire attorneys who live in another state who do not have an Oregon Bar license. This type of hiring impacts Policy 7.700 (E) (3) as well.

In order to address these Oregon firms' need to obtain excess coverage through the PLF and for the PLF to maintain these firms as clients, but also being aware of the PLF's exposure to firms who's principal office is not in Oregon, a change to PLF Policy 7.700(E)(3) is proposed – the term “and non-Oregon” would be deleted. This will enable the PLF to offer excess coverage to firms who employ non-Oregon bar members whose principal place of business is in Oregon.

.....

PLF Policy 7.700(E) currently provides as follows:

“(E) Non-Oregon Attorneys and Out-of-State Branch Offices:

(1) Firms with non-Oregon attorneys or out-of-state branch offices may be offered coverage subject to the Excess Program underwriting criteria, the restrictions of this section and any other additional underwriting and coverage limitations imposed by the PLF or its reinsurers. For the purposes of PLF Policy 7.700(E), registered patent agents will be treated the same as non-Oregon attorneys. Non-Oregon attorneys whose principal office is in Oregon must be practicing in areas of law that do not require Oregon bar membership.

(a) Excess coverage may be offered to firms which maintain out-of-state branch offices if the attorneys in such branch offices meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and the reinsurers. Coverage will not be offered for branch offices in any state determined by the PLF to represent an unacceptable level of risk.

(b) Excess coverage may be offered to firms with non-Oregon attorneys if the non-Oregon attorneys maintain principal offices in Oregon and if the non-Oregon attorneys meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and its reinsurers.

(2) The PLF may establish conditions, terms, and rates for coverage for firms with non-Oregon attorneys and/or out-of-state branches, including additional endorsements and exclusions. The PLF may offer “drop-down” coverage for the firm for any firm

members not covered by the PLF primary fund, subject to such deductibles or self-insured retentions as the PLF may establish.

(3) The PLF will not offer excess coverage to any firm if the total number of out-of-state and non-Oregon lawyers in the firm exceeds more than 30% of total firm lawyers at the time of application or at any time during the past five years.

(4) Unless otherwise determined by the PLF, firms will be charged for excess coverage for non-Oregon and out-of-state attorneys at a per-attorney rate equal to the current primary rate plus the rate shown at PLF Policy 7.700(A).

(5) Coverage for non-Oregon and out-of-state attorneys will be subject to a deductible of \$5,000 per claim.”

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 2, 2008
From: Ira Zarov – CEO PLF
Re: PLF Policy 7.700(Q)

Action Recommended

The PLF BOD requests that the BOG approve an additional section to PLF Policy 7.700. The additional section is:

(Q) Non-Standard Excess Coverage: Firms who do not meet the underwriting criteria established by the PLF and its reinsurers under PLF Policies 7.300 and 7.350, may be eligible to purchase non-standard excess coverage offered by the PLF and its reinsurers. In accordance with reinsurance agreements, firms applying for non-standard excess coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

Background

The PLF Excess Plan occasionally has applicants that do not meet the underwriting criteria for our general excess program. A new product has been offered by PLF reinsurers that might offer coverage to firms seeking excess coverage. This product would be independent of our existing Excess treaties and the claims experience with the new product would not affect pricing for our regular excess treaty program. Under the proposal, the reinsurers would determine pricing and coverage terms for firms seeking coverage through the new product.

The addition of the proposed language to PLF Policy 7.700 will allow the PLF to offer such a policy.

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Ira R. Zarov
Chief Executive Officer

Board of Directors
and Officers

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July 2, 2008

To: Oregon State Bar Board of Governors
From: Ira R. Zarov, Chief Executive Officer
Re: PLF Primary Program Limits

No action is recommended. This memo is for informational purposes only.

Background

The current PLF limit of \$300,000 (there is also a \$50,000 claims expense allowance, separate and above the \$300,000 limit) has been in place since 1987. In view of the length of time the limit has been unchanged and the many changes in the legal environment in the last 20 years, as well as natural inflationary pressures, early this year OSB President Yugler asked that the PLF investigate the continuing adequacy of the PLF limit.

The task of reviewing the limit was given to the BOD Long Range Planning Committee (LRPC) which reviewed the effectiveness of the existing limit from a number of points of view. After review, and on the recommendation of the LRPC, the full PLF Board decided that the existing limit fulfills the PLF mission and that the economic costs of increasing the limit outweigh any benefits of a proposed increase. Although the BOD concluded that no change was warranted, it believes that the review of the limit was timely and that in the future, the limit should be periodically examined.

The attached memorandum provides the basis for the BOD's conclusions.

Attachment

Should the PLF Raise the Primary Limit? Discussion Paper

In December of 2007, the PLF BOD was asked by the 2008 President of the Oregon State Bar to examine two issues. This memo examines the first of those issues: Should the PLF increase the primary coverage limit of \$300,000?

Increasing the primary limit involves a number of complicated and interrelated questions, beginning with one of principles: what is the goal of mandatory coverage? A second question, equally important is: what would an increase in the primary limit cost covered parties? In addition, there are technical issues to work out with PLF reinsurers and perhaps other excess insurers. A corollary question is how much would an increase in primary coverage affect excess rates? Because of the number of issues and the nature of the current excess treaties, it would be unlikely that we could implement a limit increase before 2010.

The following questions need to be addressed before any decision to raise the limit is made:

1. What rationales support raising the coverage limit? This question requires consideration of what is the purpose of the PLF? To protect against the average loss clients of covered attorneys might incur? To protect against reasonably conceivable losses clients might suffer? To protect against all losses clients might face?
2. If the limit should be raised, to what level? The reasonable increase options range from \$100,000 to \$700,000 per claim – that is, new limits from \$400,000 to \$1,000,000. In previous discussions, an additional \$200,000 has been proposed. For some levels of coverage there may be an option to reinsure all or part of the new limit, but that option carries significant risks.
3. What will be the cost of an increased limit? The corollary question is how to determine the cost. (There are a number of ways to make projections.)
4. How will the excess program be affected by an increase in the primary limit? How will the ALAS firms and ALAS react to an increase? Will there be value given to these firms based on the increased limit? Should the effects on the excess program of an increase in the primary program be considered at all?
5. Do covered parties want an increase or are they opposed to an increase?

1. Should the limit be raised?

The mission of the PLF is of surprisingly little help in providing a framework with which to evaluate raising the \$300,000 limit. The most applicable part of the Statement of Mission states only that:

The mission of the Professional Liability Fund is to provide primary professional liability coverage to Oregon lawyers in the private practice of law.

There is no discussion of what that liability coverage is designed to accomplish.

Although the legislative grant of authority in the enabling legislation is extraordinarily liberal, it allows the OSB to "do whatever is necessary and convenient" to "establish a professional liability fund." It does not provide specific guidance as to coverage limits. The legislation also states that the obligation of any fund established is to pay, "all sums *as may be provided under such plan*" (emphasis added) for "money damages." There is a reasonable inference from the "sums as may be provided" language that there was no expectation that all damages would be paid and that a reasonable coverage amount would be adopted. Given the original coverage plan's similarity to existing malpractice insurance in most respects, it is reasonable to assume that the original limit was consistent with average 1978 commercial coverage limits.

Prior to formation of the PLF, the BOG published an informational pamphlet that was provided to the membership at the 1977 Annual Convention in order to explain the proposed plan for the PLF. The pamphlet included an explanatory statement and the proposed legislation. That pamphlet gave the basic rationale for the plan and stated that the coverage would be "on a claims made basis with a \$100,000 limit of protection for all claims arising out of the same, related or continuing acts, errors, or omissions, subject to a maximum liability of \$200,000 per coverage period." In fact, the coverage in 1978 was \$100,000, not \$200,000. (It isn't clear what the language referring to \$200,000 contemplated.) There was a \$50,000 defense allowance separate from the indemnity limit. Adjusting for inflation, \$100,000 in 1978 dollars would be approximately \$340,000 in 2008 dollars.

In 1981, the indemnity limits were increased to \$200,000; the expense limit remained at \$50,000. (Until 1985, the second \$100,000 of the \$200,000 limit was reinsured. The increase to \$200,000 was driven, at least in part, by inexpensive reinsurance for the second \$100,000.) In 1987, the limits were increased to \$300,000. The minutes from the 8/15/86 BOD meeting state:

There was some confusion whether the Board had earlier adopted new limits of **\$300,000** or \$250,000. After discussion, Mr. Mautz MOVED that the Fund adopt a \$300,000 primary including defense costs. Mr. Stahl seconded the motion, but upon further discussion the matter was tabled until the cost to the members can be determined. It is hoped that a conference call can be set for purposes of disposing of this item.

1987 Assessment and **\$300,000** Limits: Mr. Stahl reported that the actuarial recommendation for the 1987 assessment is \$1,993 and further, the excess carrier recommends and requests that the limits be raised to a **\$300,000** single limit plan. After considerable discussion, Mr. Stahl moved to adopt the **\$300,000** single limit expense and indemnity and that an assessment of \$1,950 be charged for 1987. Mr. Mautz seconded the motion. After further discussion, Mr. Hutchens moved to bifurcate the motion, requesting further information on (1), the \$300,000 amount and (2), whether the attorney fees within that amount should be limited. After further discussion, Mr. Hutchens withdrew his motion. Agreement was not reached on the amount of the 1987 assessment. After further discussion, a vote was

called upon the issue of the \$300,000 single limits and the motion carried 5-2-1 (Hutchens and Mautz opposed; Grim absent). Other suggestions were made to set the assessment at \$1900 and \$1990. Mr. Hall then moved to set the assessment at \$2,000. The motion was seconded by Mr. Wilson. Chairman Howser then called for a vote and the motion carried 5-2-1 (Mr. Mautz and Mr. Stahl opposed; absent Grim).

As the minutes reflect, the limits were raised not after a nuanced discussion of the effectiveness of the previous limit in meeting the PLF mission. PLF historians report that the operative fact was that the excess carriers had informed PLF that the structure of the PLF Plan was unacceptable to them. The flaw in the Plan was that the PLF policy didn't "burn." In other words, once the \$50,000 primary coverage defense limit was spent either the excess carrier, if any, or covered party assumed the responsibility for defending the case. (That structure also affected the case dynamics: when there was no excess coverage, there was great incentive to pay indemnity on claims.) The increase to the \$300,000 limit was more than a limit increase, it also changed the PLF primary limit to an aggregate, burning limit. (With a burning limit defense costs that exceed the specified defense allowance, if there is one, reduce the amount of coverage available for indemnity. The current PLF policy is also a "burning" limit.)

Neither the PLF's history nor its mission offers clear guidance on the question of whether the basic objectives of the PLF will be better met if the \$300,000 primary limit is increased. By inference, the most reasonable conclusion is to assume that the mission is to provide coverage for the majority of claims. If that is the assumption, examining recent past history of PLF claims provides the best basis for analysis.

Over the past 10 years, there were 8109 PLF claims; of those, 89 were limit claims, or 1.1% of the total claims. In order to determine whether there have been indications that a higher percentage of claims have been approaching the current limit, we also examined claims that were over \$250,000 and \$200,000, for both a five-year and ten-year period. From 2002-2006, the PLF has had 4176 claims; of those 50 claims, or 1.2%, were for \$250,000 or more. Over the ten-year period, 1997-2006, there were 8109 claims; of those, 103 claims, or 1.3%, were over \$250,000. During the same ten-year period there were 159 claims over \$200,000, or 2% of the total claims. (A claim for \$225,000 in 1997, adjusted for inflation, would now be just under \$300,000.) These numbers indicate that the vast majority of PLF claims are within the current limit of \$300,000.

Based on these statistics and assuming that the PLF mission was never intended to pay every claim fully, the present \$300,000 fully covers the vast majority of cases. It also does not seem that inflationary pressures are cause for concern, as for the five years from 1997-2001 there were slightly more cases above \$250,000 than for the years 2002-2006.

2. How High the Limit?

If the choice is made to increase the limit, what should the new limit be? Examining three options gives a good sense of the reasonable possibilities. The three options are

raising the limit to \$400,000, to \$500,000, and to \$1,000,000. In the latter case, we would most likely reinsure all or a portion of the risk.

What would raising the limits accomplish? Based on an analysis of the 43 cases from 1997-2005 that reached the excess layer and for which excess payments were made, assuming the primary coverage was \$400,000, 11 of the 43 claims would have been fully paid. (This number includes non-PLF excess cases.) An increase to \$500,000 would have provided full payment for an additional 6 cases, or, in total, 17 of the 43 excess cases. An increase to \$1,000,000 would pay fully another 8 cases. In other words, 25% of the excess cases would be fully paid with an increase to \$400,000, 40% if the increase was \$500,000 and 58% if we increased the limit to \$1,000,000.

Year	No. of Excess Claims	No. of Excess Claims Within \$400K	No. of Excess Claims Within \$500K	No. of Excess Claims Within \$1 million	No. of Excess Claims Over \$1 million
1997	2	2	0	0	0
1998	4	0	1	0	+3
1999	8	4	0	3	+1
2000	11	3	1	0	+4
2001	3	1	1	0	+1
2002	3	1	0	1	+1
2003	6	0	1	4	+1
2004	3	0	1	0	+3
2005	3	0	1	0	+2

3. What will be the cost to covered parties of an increased limit?

Based on past history, there has been an average of approximately 9 limit claims a year. (In order to be moderately conservative, in order to determine the cost of each option, we have assumed 10 limit claims per year in the future.) By extrapolating from the cost of primary limit claims where excess was available and paid, it appears that virtually all such claims would either reach \$400,000 or be very close. In that case, it would cost covered parties an additional \$1,000,000 (ten claims at \$100,000 additional each). Using 7000 as the base number of covered parties, the cost per covered party would be just under \$150.00.

If the limit was raised to \$500,000 using the same extrapolation, 75% of the claims would reach the \$500,000 limit, while 25% would be concluded at the \$400,000 level. The cost would be approximately \$250 per covered party. (2.5 claims would cost \$100,000 and 7.5 would cost \$200,000 more for a total of \$1,750,000)

The cost of raising the limit to \$1,000,000 cannot be determined as an increase if that level would have to be reinsured and the cost of reinsurance, currently just under \$800.00 for \$700,000 of excess insurance, would no doubt be higher because, unlike commercial or other NABRICO programs, we do not underwrite primary coverage and, as a

consequence, excess insurers would adjust the cost of coverage. It is not clear if the reinsurers would even continue to write that layer of excess absent underwriting.

These numbers do not account for the potential effect that a higher limit would have on cases that previously had settled below the full limit. There is a potential psychological effect on the settlement dynamic that may lead to the evaluation of cases relative to the raised primary limit.

The numbers also assume that the number of excess cases will remain constant and do not account for the effect of a difficult year. In the year 2000, for example, there were 15 limit claims. Using the same extrapolations for 15 rather than 10 claims would increase the cost to the PLF by 50%, or to \$210 and \$375 for limit increases of \$400,000 and \$500,000 respectively.

4. How would an increase in the limit affect the excess program including large (ALAS) firms?

I will be meeting with the reinsurers the week of April 14 and will discuss this issue with them. From initial discussions with AON, the PLF excess broker, it was unclear whether reinsurers would be inclined to decrease the premium for the \$700,000 layer (which would become either \$600,000 or \$500,000 depending on the amount the primary limit was increased) or attempt to maintain pricing at the current level. There are complicated structural reasons why reinsurers may choose not to decrease the pricing. Depending on the reinsurers' response, there is a real possibility that attorneys buying excess may get no more coverage, pay more at the primary level, and pay no less for excess coverage.

The discussion with ALAS firms and ALAS will be dependent on the initial Board reaction to the proposal to increase the limits. The affects of speculating about an increase upon the big firms and ALAS runs the risk of creating controversy that would be avoided if the BOD decides that an increase is not warranted.

5. What do covered parties want?

At the current time, we have only anecdotal information about covered parties' view of the limits. Recently, there was a fairly robust discussion of the limits issue on the Oregon Women Lawyer's website about PLF primary limits. Opinions seemed to be split on the issue. A questionnaire was sent to covered parties in 1999 that sought opinions on a potential increase to the limit. At that time, slightly more than half of covered parties appeared to feel that an increase was appropriate. No change to the plan was made at that time because of differences in intensity between those that were against the idea and those that were for the idea. The survey is attached.

In order to gauge the opinions of covered parties another survey could be sent.

CONCLUSION

The decision whether to raise the primary limit is a policy decision for both the BOD and BOG to consider.

The two most compelling factors are the number of cases that are currently left, in part or in whole, less than fully paid under the current limit and the cost of reducing the number of cases in that category.

As to the first, current limits are adequate for over 98% of the cases. It is estimated that increasing the limit to \$400,000 would fully cover 2-3 additional cases and an increase to \$500,000 would fully cover four cases. The cost per year for the projected increases would be \$150-\$200 per covered party at \$400,000 and \$250 - \$375 per covered party at \$500,000.

Raising the costs for increased limits is also likely to raise corollary issues. For example, part-time attorneys, as well as some other covered parties in certain practice groups, will argue that they don't need a higher limit and that the PLF should take their concerns into account when pricing.

If the PLF continues to be financially successful, the current assessment could remain at \$3200 for the foreseeable future, even with an increase to the primary program limit. History, however, makes clear that there is substantial volatility in PLF claims experience, and that volatility makes it inevitable that at some point in the future the additional costs of raising the limit will be passed on to covered parties.

Attachments

PLF FAX POLL

SHOULD THE PLF INCREASE THE \$300,000 COVERAGE LIMITS?

PLEASE TELL US WHAT YOU THINK! YOU CAN FAX YOUR RESPONSE TO US BY **APRIL 30, 1999** AT **503-684-7250**, OR MAIL YOUR RESPONSE TO: PLF POLL, P.O. BOX 1600, LAKE OSWEGO, OR 97035.

BACKGROUND INFORMATION: The current PLF coverage limits are \$300,000 per claim/\$300,000 aggregate all claims made in a year. Only 4 or 5 claims exceed the limits each year. Our calculations indicate the coverage limits could be increased to \$400,000/\$400,000 by increasing the annual PLF assessment by roughly \$85. (Of course, there would be an equal decrease in the cost of PLF excess coverage for those attorneys buying optional excess coverage above the PLF's primary limits.) The coverage limits for indemnity have not increased since 1987.

Do you favor increasing the PLF limits next year?

- I favor *increasing* the mandatory PLF coverage limits to \$400,000/\$400,000 and *increasing* the annual PLF assessment by roughly \$85.
- I favor making *no change* in the current coverage limits of \$300,000/\$300,000 and *no change* in the annual PLF assessment.

Comments:

PLEASE TELL US ABOUT YOURSELF (Optional):

In what county is your office located? _____ County

What is the size of your firm? _____ attorney(s)

How many years have you been in practice? _____ years

Do you practice full-time or part-time? Full-time Part-time

Does your firm carry excess coverage above PLF limits? Yes No

FAX TO THE PLF AT 503-684-7250, OR
MAIL TO:
PLF POLL, P.O. BOX 1600, LAKE OSWEGO, OR 97035
BY APRIL 30, 1999

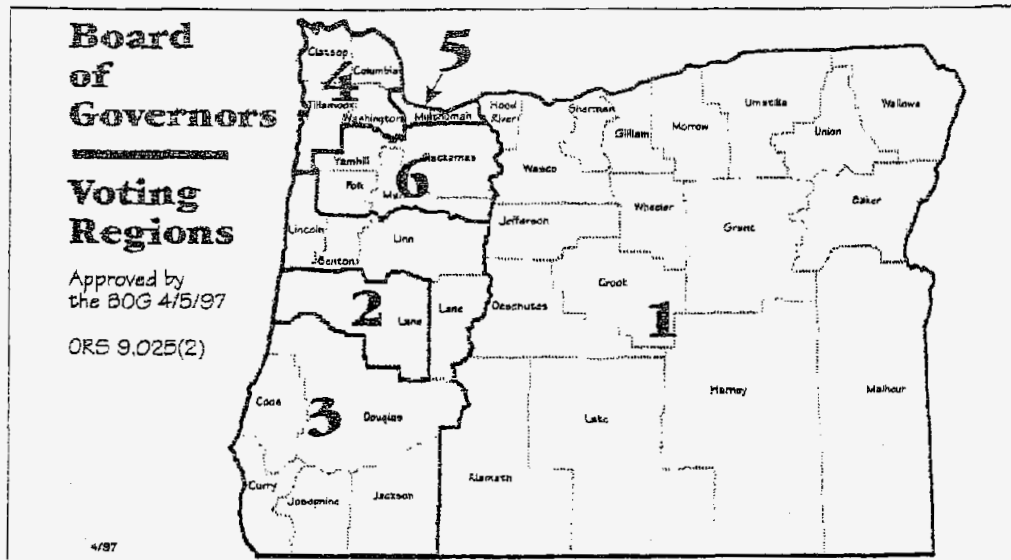
Distribution of Responses by Bar Region

Should coverage limits be raised?

Note: Not all respondents listed a county

	YES	NO	Responses
Region 1 (Eastern Oregon)	54%	46%	71
Region 2* (Lane County)	64%	36%	70
Region 3* (Southern Oregon)	60%	40%	101
Region 4 (Northern Coast plus Wash. Co.)	64%	36%	98
Region 5 (Multnomah County)	61%	39%	296
Region 6 (Mid-Willamette)	42%	58%	95

*All Lane County responses included in Region 2



PLF BOARD DECIDES AGAINST INCREASE IN COVERAGE LIMITS

When the PLF started in 1978, coverage limits were only \$50,000 defense/\$100,000 indemnity for all claims reported in a year. The limits were raised in 1986 to \$300,000 per claim/\$300,000 aggregate all claims, with defense costs included within the limits (i.e., an eroding policy). In 1995 we added a separate \$25,000 claims expense allowance from which the first defense costs are paid (in order to preserve the remaining \$300,000 limits while a claim is being fully evaluated).

Over the years, many lawyers have suggested the Fund should raise its primary limits to keep pace with inflation and the greater number of malpractice claims. Other lawyers have resisted this idea for reasons of cost, and some have even said they don't need the current limits of coverage they have. Each year, of the roughly 800 claims reported to the Fund, no more than three to five cost more than the primary PLF coverage limits, and there is nearly always excess coverage in place for those claims.

Because basic limits have not changed for 13 years, we decided to ask the members for their views through a fax poll distributed in a recent *In Brief*. Lawyers were asked if they favored raising the mandatory limits to \$400,000/\$400,000 at a cost of roughly \$85 in the annual assessment.

We received responses from 752 attorneys, which is 11.4% of the roughly 6,600 attorneys covered by the PLF and probably represents a statistically significant sample of opinion.

SHOULD COVERAGE LIMITS BE INCREASED?

We asked: "Should coverage limits be increased?" Of the attorneys who answered, 57% favored increasing the limits. The breakdown is as follows:

Responding Attorneys	Yes	No
All attorneys	57%	43%
Attorneys with excess coverage	71%	29%
Attorneys without excess coverage	51%	49%
Full-time attorneys	60%	40%
Part-time attorneys	41%	59%

All Bar Regions supported increased limits

IN BRIEF

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Director of Loss Prevention
503-639-6911 or 1-800-452-1639

Professional Liability Fund Board of Directors and Officers

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except Region 6 (Clackamas, Marion, Polk, and Yamhill counties).

Even though a majority of responding attorneys favored an increase in the mandatory coverage limits, nearly half of attorneys without excess coverage were against any increase in limits, chiefly because of the increase in the annual assessment that would follow. Some expressed their views very strongly in written comments.


Based on these results, the PLF Board of Directors decided not to recommend any increase in coverage limits, but instead to encourage attorneys who want higher limits to purchase excess coverage from the PLF or commercial carriers. The cost of excess coverage is now at a 15-year low, and the risk of an uncovered loss at the excess layer continues to be relatively slight for most firms.

We thank all lawyers who took the time to respond to our fax poll and welcome any further comments or suggestions you may have.

Ira R. Zarov
Chief Executive Officer

To: PLF Board of Directors

Board of Directors
and Officers

From: Jeff Crawford 

Robert C. Cannon
Salem
Chairperson

Date: June 27, 2008

James G. Rice
Portland
Vice Chairperson

Re: Proposed New Facility – New AON Excess Product

Kandis Brewer Nunn
Portland
Public Member
Secretary-Treas.

The attached memo was discussed at the May 6, 2008, Excess Coverage Committee Meeting, regarding a new product that the PLF could offer firms seeking excess coverage which do not meet the PLF's underwriting criteria. This product would be independent of our existing Excess treaties. Claims experience with the new product would not affect pricing for our regular Excess treaty program. Under the proposal, the reinsurers would determine pricing and coverage terms for firms seeking coverage through the new product.

Rodney E. Lewis, Jr.
Portland

Ronald L. Bryant
Redmond

Suzanne Bradley Chanti
Eugene

A change to PLF Policy 7.700 is proposed as follows (addition of section (Q) to Policy) to allow the PLF to offer this new product:

Frederick C. Ruby
m

William G. Carter
Medford

Tim Martinez
Salem
Public Member

(Q) Non-Standard Excess Coverage: Firms who do not meet the underwriting criteria established by the PLF and its reinsurers under PLF Policies 7.300 and 7.350, may be eligible to purchase non-standard excess coverage offered by the PLF and its reinsurers. In accordance with reinsurance agreements, firms applying for non-standard excess coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.



Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

To: Excess Coverage Committee – 2009 Excess Coverage Year

From: Kimi Nam

Date: April 29, 2008

Re: New Facility – New AON Product

Below is a copy of the e-mail received from Dan Foley regarding the new product from Aon – this coverage would be for clients who currently do not meet the PLF's underwriting criteria. I have also attached additional information about the product.

-----Original Message-----

From: Daniel Foley [mailto:daniel_foley@aon.com]

Sent: Thursday, March 13, 2008 2:58 PM

To: Ira Zarov

Cc: Kelly Smith; Kevin Gordon

Subject: New Facility - Non Standard Risks [Virus Checked]

Dear Ira,

Aon Re is pleased to announce the formation of a new shared facility for our NABRICO clients. The Primary \$5M Facility is a 100% Quota Share of each client's own paper backed by Faraday, Aspen Re and Liberty Syndicate.

The facility is specifically for non-standard risks that fall outside of the underwriting guidelines of many NABRICO carriers. Non-Standard can be anything from risks with adverse claims activity to risks that have changed to more hazardous areas of practice or territorial scope (eg a Kansas firm opens an office in Houston, TX).

All risks will be priced and considered by the underwriters, but no guarantees are given that any one risk will be provided coverage. Pricing, retro dates, deductibles, ERPs etc are all at the discretion of the reinsurers.

Rather than act as an agent and send these risks to the open markets where policy forms, pricing and conditions can sometimes be unacceptable. For example, many non-standard markets have harsh minimum premiums that would prevent any viable coverage for solo practitioners. The facility may be a useful option for the carriers.

503.639.6911 | Oregon Toll Free: 1.800.452.1639 | Fax: 503.684.7250 | www.osbplf.org

Street Address: 16037 SW Upper Boones Ferry Rd. | Suite 300 | Tigard, OR 97224

Mailing Address: PO Box 231600 | Tigard, OR 97281-1600

In many cases a risk can be sent to the facility and "rehabilitated" until such time that the carrier is able to place the risk back through its main program again.

A claims co-operation clause will give reinsurers consent to settlement and the right to be involved in the handling of a claim. As a quid pro quo, reinsurers have agreed to provide an additional cession limit for ECO/XPL that applies once the treaty limit has been exhausted by contractual loss and/or ECO/XPL.

There is no other NABRICO specific non-standard facility in the market.

The attached summary gives a bullet point guide to the facility. London has recently been successful in increasing the ceding commission to 15% which we trust you will agree is good news. We have also attached an information request list for each risk (in addition to the normal application of each carrier).

Next Steps:

The facility is in slip format so individual wordings are required for each carrier prior to any risk being bound to the facility. Please confirm your interest in this Facility and we will forward the draft wording, markets and other compliance related documents for your review.

Please let us know if you have any questions or comments.

Best Regards,

Dan / Kevin

Daniel Foley | Aon Re Inc.
200 East Randolph Street, 16th Floor
Chicago, Illinois 60601
P: 312.381.5331 F: 312.381.0160 E: Daniel_Foley@aon.com

Primary \$5m Non-Standard Lawyers Facility

We are pleased to announce the creation of a new facility for non-standard lawyers that fall outside the underwriting guidelines of NABRICO carriers.

- The facility is a 100% Quota Share up to a maximum limit of \$5m per claim/\$10m in the aggregate
- The facility is placed with London treaty markets that have existing relationships with NABRICO carriers
- The facility is a reinsurance of the original carrier's own paper.
- Each risk would need to be sent to London for pricing and coverage decisions to be made by the binding underwriters.
- A claims co-operation clause in the facility allows the reinsurers to associate themselves with any claim and would require their consent prior to any settlement.
- The facility provides an additional cession limit for ECO/XPL that applies once the treaty limit has been exhausted by contractual loss and/or ECO/XPL.
- The facility provides a ceding commission of 15% to the NABRICO Carrier
- Quarterly Accounts and bordereaux of cessions within 60 days of the close of each quarter
- We have attached an information list that reinsurers would require in order to evaluate each risk. This list would be in addition to the information provided on normal applications issued by each NABRICO carrier

AON NABRICO PRIMARY \$5m FACILITY

**SUPPLEMENTARY INFORMATION
(additional to standard renewal application)**



Proprietary & Confidential

Law Firm

No of Attorneys

Effective date

Reason for non-renewal (or for referral to Facility)

Fee income for last 12 months

Fee income anticipated for next 12 months

If reason for non-renewal is claims activity, please provide current claims position and claims manager's summary including current carrier's reserves

Details of any risk management initiatives implemented following adverse claims activity

Is the firm seeking prior acts? If so, for how long and who was prior carrier?

(The provision of prior acts coverage will be entirely at the discretion of the binding underwriters)

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 14, 2008
From: Sylvia E. Stevens, General Counsel
Re: Revision of Formal Ethics Opinion on Mediation by Out of State Lawyers

Action Recommended

Consider the Legal Ethics Committee's recommendation to revise the recently approved formal opinion to include a new footnote.

Background

At its meeting in February 2008, the BOG approved a formal ethics opinion dealing with arbitration and mediation of securities cases in Oregon by out-of-state lawyers, based in large part on their expertise in federal securities law. Upon being advised of the BOG's action, the inquirer and some colleagues expressed concern with the opinion and asked the Legal Ethics Committee to reconsider its conclusions. The committee initially declined to revise the opinion, but at its meeting on July 12, 2008, agreed to a modest change.

One of the concerns expressed about the opinion is that the permission for out-of-state lawyers to provide legal services in Oregon doesn't address the fact that many of the cases involve law specific to Oregon, about which the out-of-state lawyers may not have the requisite expertise. RPC 5.5 (c)(3) allows an out-of-state lawyer to handle an arbitration or mediation in Oregon if the services arise out of or are "reasonably related" to the lawyer's practice in a jurisdiction in which the lawyer is admitted. Comment [14] to ABA Model Rule 5.5 suggests a variety of factors that evidence the requisite relationship, including that "the services draw on a lawyer's recognized expertise...[in] a particular body of federal, nationally, uniform, foreign, or international law."

After discussion, the committee voted to add a footnote to the opinion at page 3, recognizing that if a case involves significant Oregon law issues, the lawyer's lack of expertise in Oregon law might suggest that the lawyer's services are not "reasonably related" to the lawyer's practice in his home state. The committee believes this small change retains the analytical thrust of the opinion while acknowledging and addressing at least one of the concerns of the practitioners who objected to the opinion in its original form.

Attachment: Approved Formal Op. No. 2008-XXX with proposed revision.

PROPOSED

FORMAL OPINION NO. 2008-XXX

Unauthorized Practice of Law: Out-of-State Attorney Participating in Arbitration or Mediation in Oregon; Assisting Out-of-State Attorney in Proceedings

Facts:

Lawyer who is admitted in another jurisdiction but not licensed to practice in Oregon is asked to represent a client in a private arbitration or mediation proceeding in Oregon.

Questions:

1. May lawyer undertake the representation?
2. May an Oregon lawyer assist in the arbitration or mediation proceedings?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

These issues are governed by Oregon RPC 5.5, which provides:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential

proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

As a threshold matter, under Oregon RPC 5.5(c) an out-of-state lawyer may provide legal services in Oregon only on a "temporary" basis. There is no single test to determine whether a lawyer's services are provided on a temporary basis. But participating in a single arbitration or mediation would be temporary, even if the proceeding took place over an extended period of time. *See* ABA Model Rule 5.5, Comment [6] ("Services may be 'temporary' even though the lawyer provides services in this jurisdiction ... for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation."). Thus, for example, if an arbitration was going to take weeks, the out-of-state lawyer could set up a base of operations in Oregon and arrange for fax, phone, paralegal, and other support services for the duration of the arbitration and meet there with witnesses.

On the other hand, the out-of-state lawyer could not use the Oregon site to provide legal services in Oregon unrelated to the arbitration. Oregon RPC 5.5(b) prohibits a lawyer not admitted to practice in Oregon from "establish[ing] an office or other systematic and continuous presence in [Oregon] for the practice of law."

Whether an out-of-state lawyer who appears in multiple arbitration or mediation cases in Oregon is practicing in Oregon on a temporary basis is a question not widely addressed. According to Merriam Webster's Collegiate® Dictionary, Eleventh Edition, "temporary" means "lasting for a limited time." As discussed above, there is no single test to determine if an activity is temporary and RPC 5.5(c) places no numerical limit on the phrase "temporary basis." Because Oregon RPC 5.5 was drawn from ABA Model Rule 5.5, we again turn to it for guidance.¹ ABA Model Rule 5.5, Comment [6] is instructive: "Services may be 'temporary'

¹ The two rules differ in one significant aspect. Model Rule 5.5(d) authorizes house counsel and federally-authorized practice without the qualifying language that limits it to a "temporary basis." Oregon RPC 5.5,

even though the lawyer provides services in this jurisdiction *on a recurring basis* ... [emphasis added].” A lawyer with a special expertise or experience may have repeated opportunities to handle matters in Oregon as clients’ needs dictate, without having any plan for such activities to last for an unlimited time or be permanent. We thus conclude that repeated appearances, without more, can fall within the meaning of “temporary basis” in RPC 5.5(c).²

A separate question is whether repeated appearances would constitute “establish[ing] an office or other systematic and continuous presence in this jurisdiction for the practice of law” within the meaning of Oregon RPC 5.5(b). According to Merriam Webster’s Collegiate® Dictionary, Eleventh Edition, “systematic” means “methodical in procedure or plan” and “continuous” means “marked by uninterrupted extension in space, time, or sequence.” In light of those definitions, a lawyer not admitted in Oregon who made multiple appearances in arbitration or mediation proceedings in Oregon would not necessarily be “establish[ing] an office or other systematic and continuous presence in this jurisdiction for the practice of law.”

An out-of-state lawyer may participate in an arbitration or mediation in Oregon, without associating an Oregon lawyer who would actively participate in the matter,³ so long as the services to be provided “arise out of or [are] reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted.” Oregon RPC 5.5(c)(3). A variety of factors could evidence such a relationship, including but not limited to whether: (1) the lawyer has an existing relationship with the client in the lawyer’s home state, (2) the client resides in or has substantial contacts with the jurisdiction in which the lawyer is admitted, (3) the case significantly involves the law of the lawyer’s home state, or (4) the services draw on the lawyer’s recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.⁴ See ABA Model Rule 5.5, Comment [14]. Whether there is a sufficient relationship in any particular case must be analyzed according to the specific facts applicable. Assuming a sufficient relationship exists, the representation is permissible.⁵

Furthermore, if the rules of the arbitration or mediation forum require *pro hac vice* admission for an out-of-state lawyer to appear, the lawyer would need to comply. Oregon RPC 5.5(c)(3).

by contrast, includes house counsel activities in paragraph (c), subject to the temporary limitation. Only federally-authorized practice is permitted in Oregon RPC 5.5(d) without the “temporary basis” limitation.

² Cf., Philadelphia Eth. Op. 2003-13 which states that “participation in multiple proceedings could constitute the unlawful practice of law under Rule 5.5.”

³ We assume that there is no law or order authorizing the out-of-state lawyer’s conduct. See Oregon RPC 5.5(c)(2).

⁴ In arbitrations or mediations which significantly implicate questions of Oregon law, however, the lawyer’s lack of recognized expertise in the applicable Oregon law might suggest that the services are not “reasonably related” to the lawyer’s practice in the lawyer’s home state.

⁵ It is outside the scope of this opinion to determine whether a license to practice law would be required to represent a person or entity in a particular arbitration or mediation. Although such representation might consist of services that a nonlawyer could perform, this opinion assumes that the arbitration or mediation proceeding in question permits representation only by a person authorized to practice law in Oregon. Cf. Oregon Formal Ethics Op No 2005-20.

Unlike some states, Oregon does not condition the right of an out-of-state lawyer to appear in an arbitration or mediation proceeding on registration with any court or payment of any specific fees. Cf. N.J. Comm. on Unauthorized Practice of Law, Opinion 43 (to lawfully represent clients in an arbitration or mediation in New Jersey, out-of-state lawyer must comply with registration requirements, which include paying a fee and contributing to the lawyer's assistance program and fund for client protection).

The foregoing discussion assumes that the out-of-state lawyer is not employed by the client or its organizational affiliate that is a party to the arbitration or mediation. If the out-of-state lawyer is so employed, the lawyer would be permitted to represent the client and its organizational affiliate(s) in the arbitration or mediation proceeding in Oregon, without regard to the reasonable-relationship test of Oregon RPC 5.5(c)(3), as long as such representation was "on a temporary basis" and the forum did not require *pro hac vice* admission. Oregon RPC 5.5(c)(5).

The out-of-state lawyer would be subject to Oregon's disciplinary authority if the lawyer provided or offered to provide legal services in Oregon and the lawyer's conduct with respect to the arbitration or mediation proceedings in Oregon violated any applicable ethics rule. Oregon RPC 8.5(a).⁶

An Oregon lawyer may not assist another person to practice law in violation of the regulation of the legal profession in Oregon. Oregon RPC 5.5(a). If an out-of-state lawyer undertook an arbitration or mediation proceeding in Oregon in association with an Oregon lawyer who actively participated in the matter, the out-of-state lawyer's activity would be authorized by Oregon RPC 5.5(c)(1), and therefore the Oregon lawyer would not be assisting in the unlawful practice of law. On the other hand, if the Oregon lawyer did not actively participate⁷ in the matter, then the Oregon lawyer would be assisting another in unauthorized practice, unless the out-of-state lawyer's activity was authorized by one of Oregon RPC 5.5(c)(2)-(5).

Even when the out-of-state lawyer's activity is authorized under RPC 5.5(c), it would become improper if they expanded to become permanent or regular, because the "temporary basis" limitation applies to all the subsections of Oregon RPC 5.5(c). It would follow that for an Oregon lawyer to help an out-of-state lawyer conduct arbitrations or mediations in Oregon on a permanent or regular basis would be assisting another in unauthorized practice in Oregon.

Approved by the Board of Governors, February 2008.

⁶ Oregon RPC 8.5(a) states: "(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct."

⁷ RPC 5.5(c)(1) does not define what it means to "actively participate" in a matter. However, in ABA Report to the House of Delegates, No. 201B (August 2002) the proponents of the rule indicated that for the provision to apply, the local lawyer cannot serve "merely as a conduit" for the out-of-state lawyer, but must share actual responsibility for the representation. Comment [8] to ABA Model Rule 5.5 also reflects the obligation of shared responsibility.

W.E

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 3, 2008
From: Access to Justice Committee (Bar Liaison Judith Baker, ext. 323)
Re: Proposed Adoption of ABA Model Rule 6.1

Action Recommended

The Access to Justice Committee recommends that the BOG support the adoption of ABA Model Rule 6.1 into the Oregon Rules of Professional Conduct and forward that recommendation to the HOD and the Supreme Court.

Background

Summary

The OSB Pro Bono Committee and the Access to Justice Committee recommend that the Board of Governors recommend to the Supreme Court and the House of Delegates that the OSB replace its current pro bono aspirational standard, found in Section 13.1 of the OSB Bylaws in favor of the aspirational standard found in ABA Model Rule 6.1. Section 13.1 provides as follows:

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable, and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

To replace Section 13.1, the Access to Justice Committee recommends that the OSB and the Supreme Court adopt ABA Model Rule 6.1 (2002) ("Rule 6.1") as part of the Oregon Rules of Professional Conduct ("RPC"). A copy of Rule 6.1 and its comments is attached to this memorandum.

This proposed change would have the following primary effects:

- Movement of the OSB's pro bono aspirational standard from the Bylaws, a relatively obscure document, to the RPC, a very visible document for the state's lawyers.

- Reducing the overall number of hours to which each Oregon lawyer should aspire from 80 to 50.¹
- Encouraging that a "substantial majority" of those 50 hours be provided to persons of limited means or organizations that serve them, whereas Section 13.1 calls for lawyers to handle between 20 and 40 hours, or two cases, for the poor.
- Encouraging lawyers to make financial contributions to legal aid organizations in addition to, rather than in lieu of, the direct provision of pro bono services.

Reasoning

Replacing Bylaws Section 13.1 with Rule 6.1 as part of the RPC will have the following benefits:

- Increasing visibility for the OSB's pro bono standard, both from the publicity surrounding the addition of Rule 6.1 and, in the longer term, the presence of Rule 6.1 in the RPC.
- Increasing Oregon's consistency with other states. Oregon is one of six states that have not adopted rule 6.1. Currently the only states other than Oregon that have not adopted some version of Rule 6.1 are California (voluntary bar), New York (voluntary bar), Texas, Virginia and the District of Columbia. Those are all very large bars that do not have much in common with Oregon's bar.
- Improving the rate of voluntary reporting of pro bono hours to the OSB.² Many Oregon law firms that track pro bono hours of their attorneys already do so using the criteria of Rule 6.1. A primary reason for this is that the National Association for Law Placement (NALP) requires information on a firm's pro bono activities that corresponds to Rule 6.1. Currently, for those firms to report pro bono hours to the OSB, they must complete a time-consuming conversion of hours tracked using Rule 6.1 to an inventory of hours that meet the categories of Bylaws Section 13.1.
- This is a good year to consider a rule change for the pro bono aspirational standard as it will coincide with efforts by the judiciary to amend the judicial canons to encourage more pro bono work by judges. It will also coordinate well with efforts by the Access to Justice Committee to collect pro bono reporting information with annual dues statements. In short, the present political environment seems favorably inclined.
- Pro bono resources should increase if lawyers both provide services and make financial contributions, rather than the "either/or" currently promoted by Bylaws Section 13.1.

¹ In considering this recommendation, the committee should note that in 1989, the bar membership approved Resolution 3 encouraging lawyers to perform 80 hours of voluntary pro bono or its equivalent.

² OSB reporting data shows that 7.1% of members reported pro bono hours in 2003, 5.1% in 2004, 9.5% in 2005, 13.6% in 2006 and 9.0% in 2007.

Expected Opposition

The committee predicts that any coordinated opposition to the proposed change would focus on an argument that the change is a step in the direction of eventually having a mandatory pro bono obligation in Oregon. At first blush, one can understand how a proposal to add a pro bono aspirational standard to the RPC appears to be a move in this direction, given that disciplinary action can be taken against lawyers for violating the RPC (unlike the Bylaws).

However, the history of Rule 6.1 and the ABA Model Rules of Professional Conduct generally show that Rule 6.1 is meant to be wholly aspirational in nature and cannot form the basis for disciplinary action. In fact, the adopted comments to Rule 6.1 from the ABA contain the following direct statement: "Comment [12] The responsibility set forth in this Rule is not intended to be enforced through the disciplinary process." This reflects the ABA's recognition that its model rules are partly obligatory and disciplinary and partly only descriptive of a lawyer's role. As stated in a review of adoption of Rule 6.1 by the Minnesota State Bar:

Rule 6.1 falls into the latter category, and is not intended to be enforced through disciplinary means. The difficulties in enforcement [of an aspirational standard], the inherent constitutional questions, and the practical difficulties that would be encountered in a universal mandatory pro bono obligation make it clear that a voluntary system is best. Importantly, the personal satisfaction derived from helping someone in need is enhanced when the motivation flows from a personal recognition of a moral obligation as opposed to a simple desire to avoid disciplinary sanction. As [David] Hoffman realized, voluntary resolutions may prove more impressive, and more likely remembered.³

Second, without mandatory pro bono reporting the OSB would be unable to enforce Rule 6.1, even if it chose to do so in contravention of the ABA's recommendations.

Third, it should be recognized that in addition to Minnesota, 43 other states have already adopted Rule 6.1 and, in doing so, almost certainly considered (and rejected) the concern that failure to meet the standard could be a basis for disciplinary action. The OSB Pro Bono Committee presently is not aware of a single disciplinary action brought anywhere in the U.S. for failure to meet the aspirational standard of Rule 6.1.

Finally, as the Oregon Supreme Court will not adopt comments to rules, the Committee recommends incorporating Comment 12 as part of the rule.

Summary

Adoption of Rule 6.1 will likely lead to both increased pro bono service by attorneys in Oregon and increased voluntary reporting of the hours of service. With appropriate assurances

³ Reprinted from *Bench & Bar of Minnesota*, (October 1995), Patrick R. Burns, author. David Hoffman was a lawyer who published *Hoffman's Fifty Resolutions* on legal ethics in the early 1800's, intending his resolutions to be adopted by his students upon admission to the bar. Among Hoffman's resolutions was an obligation to provide legal services for free to those who cannot afford them.

and safeguards, the fear that adoption of the Rule is a move towards mandatory pro bono is unfounded and can be satisfactorily addressed.

Attachments

Attached to this memo are:

- 1.) The proposed Rule with Comment 12 incorporated into the text;
- 2.) A copy of ABA Model Rule 6.1 with all Comments thereto;
- 3.) A State-by-State analysis of Rule 6.1, created by the ABA; and
- 4.) A history of pro bono written by Patrick R. Burns for *Bench & Bar of Minnesota* (October 1995).

Proposed Change
ABA Rule 6.1 with Comment 12 incorporated into the body of the rule

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

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State-By-State Pro Bono Service Rules

* See Appendix A, *STATES WITH OTHER PRO BONO POLICIES*, attached hereto.

† See Appendix B, *DEVELOPMENT OF ABA MODEL RULE 6.1: HISTORICAL TIMELINE*, attached hereto.

State	Compared to ABA Model Rule 6.1† (Adopted 1983, Revised 1993, Revised 2002)							Date	Specific Annual Goal	Financial Contribution Quantified?	Details or Comments	Link to State Rule
	Same as 1993 Revision	Similar to 1993 Revision	Same as 2002 Revision	Similar to 2002 Revision	Same as Original	Similar to Original	Different					
AL			X					5/2/90	No	No	Rule 6.1	AL State Rule
AK	X							7/15/93 Amended 4/03	50 hrs	No	Rule 6.1	AK State Rule
AZ		X						12/1/90	50 hrs	No	Rule 6.1 Allows for carryover of excessive hrs.	AZ State Rule
AR			X					12/16/85 revised 5/1/05	50 hrs	No	Rule 6.1	AR State Rule
CA							X*		50 hrs	No	Resolution	CA State Rule
CO	X							11/2/99, effective date 1/1/00	50 hrs	No	Rule 6.1. Judicial Advisory Counsel rejected mandatory service proposal in 3/99. Comment added encouraging law firms to adopt a pro bono policy - <u>(added comment – Nov. 23, 2005)</u>	CO State Rule
CT					X			6/23/86	No	No	Rule 6.1	
DE					X			9/12/85	No	No	Rule 6.1	DE State Rule
DC						X*		amended 8/1/06; effective 2/1/07	50 hrs	\$400 or 1% of income	Rule 6.1. Addition of Comment 6 which parallels ABA Model Rule 6.1 comment 11.	DC State Rule

FL		X						6/23/93	20 hrs	\$350 to legal aid organization alternative	Rule 6.1. Excuses certain bar members and includes reporting requirement, allows for carryover of excess hours. Circuit pro bono committee system in place (see rule 4-6 5-voluntary pro bono plan).	<u>FL State Rule</u>
GA	X							6/12/00, effective 1/1/01	50 hrs	No	Rule 6.1. Language added to ensure that mandatory pro bono reporting might only be adopted through court order.	<u>GA State Rule</u>
HI 56		X						1/1/94	50 hrs (provide at least 25 hours of legal services to persons of limited means and to organizations in matters which primarily address the needs of persons of limited means)		Rule 6.1	<u>HI State Rule</u>
ID				X				9/3/86 Amended 7/1/2004	50 hours	No	Rule 6.1.	<u>ID State Rule</u>

IL							2/8/90			Preamble to Rules of Prof. Conduct states pro bono rule is inappropriate for disciplinary code. Separate mandatory reporting pro bono plan instituted via SC Rule 756. (passed 6/06)	<u>IL State Rule</u>
IN					X		adopted 9/30/04; effective 1/1/05	No	No	Rule 6.1. Separate voluntary pro bono plan instituted via Rule 6.6	<u>IN State Rule</u>
IA			X				effective 7/1/05	50 hours	No	Rule 32: 6.1	<u>IA State Rule</u>
KS					X		1/29/88	No	No	Rule 6.1	<u>KS State Rule</u>
57 KY		X					Adopted 1/1/90; Amended 10/1/94	50 hrs	No but "financial support" encouraged.	Supreme Court Rule 3.130 (6.1). Includes optional reporting and recognition awards; <i>Comment</i> identical.	<u>KY State Rule</u>
LA		X					12/18/86; Revised 1/20/04	50 hrs	No	Rule 6.1. Omits <i>Comments</i> .	<u>LA State Rule</u>
ME					X		2/1/84	No	No	Rule 3.10. Recognizes referrals from central agency. Omits <i>Comment</i> .	<u>ME State Rule</u>
MD		X					effective 7/1/02	50 hrs For full-time practicing attorneys	No	Rule 6.1. Required reporting and State Committee and Action Plans also adopted. (Rules 16-901, 902 & 903).	<u>MD State Rule</u>
MA		X					1/4/99	25 hrs	\$250 to 1% annual taxable professional income encouraged	Rule 6.1.	<u>MA State Rule</u>
MI					X		3/11/88	No	No	Rule 6.1.	<u>MI State Rule</u>

MN			X				Adopted 6/17/05; effective 10/1/05	50 hrs	No	Rule 6.1.	<u>MN State Rule</u>
MS		X					9/12/96; Amended 3/21/05	20 hrs	\$200	Rule 6.1. Includes mandatory reporting requirement. Allows for carryover of excessive hours.	<u>MS State Rule</u>
MO					X		Adopted 9/28/93; effective 7/1/95	No	No	Rule 6.1.	<u>MO State Rule</u>
MT 58				X			Effective 4/1/04	50 hrs		Rule 6.1. Comments omitted.	<u>MT State Rule</u>
NE				X			2/14/96 Revised 9/1/05.	No	No	Rule 6.1	<u>NE State Rule</u>
NV				X			Amended 4/7/06; effective 5/1/06	20 hrs @ no fee or 60 hrs @ reduced fee	\$500/yr to pro bono services org alternative	Rule 191. Includes mandatory pro bono reporting. Defines what does not qualify as pro bono. Establishes PB Committees by District Court.	<u>NV State Rule</u>
NH					X		1993	No	No	Rule 6.1 New rule proposed by Supreme Ct, unlike 6.1. 11/99	<u>NH State Rule</u>

NJ					X		Adopted 7/17/84; caption and text amended and effective 1/1/04	No	No	Rule 6.1. <i>Minus Comment.</i> In 1992, S. Ct. decided <u>Madden v. Delran</u> , requiring 25 hrs mandatory assignments in municipal court for quasi-crim., crim and traffic offenses. In 4/00, S. Ct. rejected <i>Ad Hoc</i> Committee's 11/98 recommendation to alter or eliminate policy.	<u>NJ State Rule</u>
NM		X					1/1/97	50 hrs/yr	\$350 alternative	Rule 16-601. States "may" do instead "should" do and for financial support, "alternatively" instead of "in addition." Includes original rather than revised <i>Comment.</i>	<u>NM State Rule</u>
NY						X*	4/2/05	20 hrs	No	EC 2-25-The Professional Obligation to Render Public Interest and Pro Bono Legal Service	<u>NY State Rule</u>
NC										In preamble of The Revised Rules of Professional Conduct mentions that a lawyer should render public interest legal service.	
ND					X		Adopted 8/1/06	No	No	Rule 6.1. Added comment four mirroring ABA Model Rule Comment 11, to emphasize that law firms should encourage lawyers to do pro bono work.	<u>ND State Rule</u>

OH											The Supreme Court of Ohio has deferred consideration of Model Rule 6.1 until further notice.	<u>OH State Rule</u>
OK				X			Effective 7/1/88	No	No		Rule 6.1.	<u>OK State Rule</u>
OR						X*	3/10/88	80 hrs (2 cases or 20-40 hrs in direct legal services to the poor)	No		Oregon State Bar Board of Governor's Policy 13.1	<u>OR State Rule</u>
PA				X			10/16/87	No	No		Rule 6.1. Added comment four mirroring ABA Model Rule Comment 11, to emphasize that law firms should encourage lawyers to do pro bono work.	<u>PA State Rule</u>
RI				X			11/1/88	No	No		Rule 6.1.	<u>RI State Rule</u>
SC				X			1/9/90	No	No		Rule 6.1.	<u>SC State Rule</u>
SD					X		12/15/87	No	No		Rule 6.1. Nearly identical but recognizes "uncompensated service in public interest activities."	<u>SD State Rule</u>
TN			X				Effective March 1, 2003				Similar to ABA Model Rule 6.1 except does not state an aspirational amount of 50 hours of pro bono work. Also, comments somewhat different.	<u>TN State Rule</u>
TX						X*	9/22/00	50 hrs	No		State Bar Policy	<u>TX State Rule</u>
UT	X						Effective 11/1/05	50 hrs	\$500 alternative		Rule 6.1. Includes voluntary reporting.	<u>UT State Rule</u>
VT		X					Adopted 3/6/02	50 hrs	No		Rule 6.1	<u>VT State Rule</u>

VA		X*						1/25/99, effective 1/1/00	2% of professional time	No, but contribution suggested as alternative.	Rule 6.1 (similar to ABA 6.1 1993 Revision). See also Rules 6.2 and 6.3.	<u>VA State Rule</u>
WA						X		Amended effective 9/1/03; 9/1/06	30 hours	No	Rule 6.1. Includes voluntary reporting. Comments added to Rule 6.1 effective 9/1/05	<u>WA State Rule</u>
WV				X				1/1/89	No	No	Rule 6.1.	<u>WV State Rule</u>
WI				X				6/10/87	No	No	Supreme Court Rule 20:6.1.	<u>WI State Rule</u>
WY			X					Amended and effective 4/11/06	50 hours	\$500 alternative	Rule 6.1.	<u>WY State Rule</u>
Totals	4	11	4	6	15	3	5		28	8		

APPENDIX A
STATES WITH OTHER PRO BONO POLICIES

State	Form	Date of Adoption	Specific Annual Goal	Financial Contribution Quantified	Details
CA	Resolution	12/9/89, Revised 6/02	50 hrs	No	
DC	Resolution of Judicial Conferences of D.C. (2)	(1) D.C.: '97 (2) D.C. Circuit: '98	50 hrs + 1 Ct appt.	Yes - \$400 or 1% of earned income	Rule 6.1 refers to these Resolutions in its <i>Comment 5</i>
NY	The New York Lawyer's Code of Professional Responsibility	4/2/05	20 hrs	No, but urged to "contribute financially"	
OR	Oregon State Bar Board of Governors' Policy 13.1	1988	80 hrs, of which 20-40 hrs of services to poor or 2 cases	No, but "comparable financial contribution" suggested as alternative.	
TX	State Bar Policy	9/22/00	50 hrs	No	
VA	Council of the Virginia State Bar Resolution	2/27/99	No	No	Bar agrees to: 1)provide periodic opps for attys to describe pb and other community svc work; 2)use info to inform public of work lawyers; 3)provide generic info and technical assistance upon request. Consistent with provisions in Rule 6.1

APPENDIX B

DEVELOPMENT OF ABA MODEL RULE 6.1: HISTORICAL TIMELINE

1969: the ABA adopted the Code of Professional Responsibility, which addresses for the first time the responsibility of the lawyer to engage in pro bono work, in Ethical Consideration 2-25. It states among other things: *"Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged."*

1975: the ABA House of Delegates adopted a resolution which formally acknowledges *"the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services"* (the "Montreal Resolution"). It defined pro bono in part by specifying areas in which the services should be rendered, namely: poverty law, civil rights law, public rights law charitable organization representation and the administration of justice.

1983: the ABA adopted Model Rule 6.1, which states that a lawyer *"should render public interest legal service."* It specifies certain ways a lawyer can discharge the responsibility: "by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

1988: the ABA adopted the "Toronto Resolution," which, among other things, resolves to *"[R]ecognize and support the professional obligation of all attorneys to devote a reasonable amount of time, but in no event less than 50 hours per year to pro bono and other public service activities that serve those in need or improve the law, the legal system or the legal profession."*

1993: the ABA revised Model Rule 6.1 to include a quantified aspirational goal (i.e. at least 50 hours per year), a more refined definition of pro bono, and more specific ways to discharge the pro bono responsibility. The substantial majority of the 50-hour responsibility should be discharged through the provision of legal services to low-income people and groups that serve low-income people.

2002: the ABA revised Model Rule 6.1 to add a sentence at the beginning of the Rule to give greater prominence to the proposition that every lawyer has a professional responsibility to provide legal services to persons unable to pay. A new Comment [11] was also added that calls upon law firms to act reasonably to enable all lawyers in a firm to provide the pro bono legal services called for by this Rule.

Last Updated: 4/26/2007

Table can be found online on the ABA website at: <http://www.abanet.org/legalservices/probono/rule61.html>.

Voluntary Pro Bono Legal Services

By

Patrick R. Burns, Senior Assistant Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (October 1995)

The Minnesota State Bar Association, at its June 1995 session, resolved to petition the Supreme Court to adopt Model Rule 6.1 of the American Bar Association's Model Rules of Professional Conduct.^{Ftn 1} This represents a refinement of the longstanding recognition by lawyers that legal services should be provided on a voluntary basis to those who need them but cannot afford them.

The roots of voluntary pro bono services go deep. In the early nineteenth century David Hoffman framed a code of professional ethics for lawyers commonly referred to as *Hoffman's Fifty Resolutions*.^{Ftn 2} Resolution 18 expressed a pro bono obligation:

[T]hose who can afford to compensate me must do so; but I shall never close my ear or heart because my client's means are low. Those who have none, and who have just causes, are of all others the best entitled to sue or be defended; and they shall receive a due portion of my services, cheerfully given.

Hoffman intended his code to be adopted by his students on admission to the bar. He framed the code in "the manner of resolutions, rather than of didactic rules, hoping they may thereby prove more impressive and be more likely to be remembered."^{Ftn 3}

The American Bar Association weighed in on the issue of pro bono work in 1908 when it adopted its Canons of Ethics. Canon 12 carried forward the idea that lawyers ought to provide legal services to those who cannot afford them (with special emphasis on the widows and orphans of lawyers), providing, in part:

A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

The fact that lawyers have long recognized the need to volunteer their efforts and have consistently expressed it as an obligation flowing from the license to practice law is an important part of what distinguishes the practice of law as a profession.

The Code of Professional Responsibility, adopted by the ABA in 1969 and in Minnesota in 1970, addressed pro bono services in the non-mandatory Ethical Considerations, significantly expanding on the philosophy underlying the pro bono obligation. Ethical Consideration 2-25, recognizing the changing times and the increasing pressures on lawyers to produce billable hours, still encouraged service to the disadvantaged. It provided, in part:

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged.

Poverty in this country, far from being a thing of the past, has created a greater need for legal services to the disadvantaged than individual lawyers giving of their time could meet. Since the mid-'60s, government funding of Legal Services Offices has helped to address the need. Ethical Consideration 2-25 recognized the problem, and encouraged support for such measures:

The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need Every lawyer should support all proper effort to meet this need for legal services.

Rule 6.1, as it reads today, was adopted in Minnesota in 1985 with the Rules of Professional Conduct ("Rules").^{Ftn 4} It carried forward the obligation to provide pro bono services yet maintains the voluntary nature of the obligation. The Rules are partly obligatory and disciplinary, and partly descriptive of a lawyer's professional role. Rule 6.1 falls into the latter category, and is not intended to be enforced through disciplinary means. The difficulties in enforcement, the inherent constitutional questions, and the practical difficulties that would be encountered in a universal mandatory pro bono obligation make it clear that a voluntary system is best. Importantly, the personal satisfaction derived from helping someone in need is enhanced when the motivation flows from a personal recognition of a moral obligation as opposed to a simple desire to avoid disciplinary sanction. And, as Hoffman realized, voluntary resolutions may prove more impressive, and more likely remembered.

The proposed ABA Model Rule 6.1 and its comment differ from the current Rule 6.1 in several respects:

1. The Model Rule quantifies the average amount of pro bono work to be performed annually, setting a goal of 50 hours per year;

2. The Model Rule emphasizes the provision of free legal services directly to persons of limited means or to organizations designed primarily to address the needs of persons of limited means;
3. The comment to the Model Rule specifies that lawyers may satisfy the pro bono responsibility collectively by aggregating a firm's pro bono activities;
4. The comment to the Model Rule, in addition to encouraging all lawyers to support legal services programs financially, recognizes that it may not always be feasible to meet the 50-hour goal. Accordingly, it provides that, at such times, a lawyer may discharge his or her pro bono responsibility by providing financial support to organizations which provide free legal services to persons of limited means in an amount reasonably equivalent to the value of the time that would otherwise have been donated.

The adoption of ABA Model Rule 6.1 will constitute a logical next step in the profession's expression of the moral duty to volunteer legal services. It gives more than just a general statement that pro bono work is good. The proposed Model Rule provides a goal for which to strive, outlines suggestions for how that goal may be attained, and continues to emphasize that while the obligation is personal to every attorney, the fulfillment of that obligation remains voluntary.

NOTES

¹ See Minnesota State Bar Association, "Reports and Recommendations to the June 23 General Assembly, Report of the Legal Assistance to the Disadvantaged Committee," 1995 Convention Supplement to 52 Bench & Bar of Minnesota 5 (May/June 1995) at 3.

² Archer, Ethical Obligations of the Lawyer, 1910 at 317, "Hoffman's Fifty Resolutions In Regard to Professional Deportment," Reprinted from American Law School Review, December, 1908.

³ Id.

⁴ Rule 6.1, MRPC, provides: "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 3, 2008
From: Access to Justice Committee (OSB Liaison Judith Baker Ext. 323)
Re: Proposed new Admissions Rule

Action Recommended

The Access to Justice Committee recommends that the BOG support the Board of Bar Examiners' recommendation to the Supreme Court to adopt a new Out-of-State Active Pro Bono Attorney status, Admissions Rule 17.05.

Background

The most recent data show that lower income people obtain legal assistance for their problems less than 20% of the time. (The State of Access to Justice in Oregon, D. Michael Dale, March 31, 2000). Legal Aid and other service providers generally are able to help two out of every 10 people who call for aid. Currently, up to 80% of litigants in Oregon's courts appear pro se at some point in their case.

Clearly, much must be done to help increase the legal assistance available to low-income Oregonians.

One avenue available is to increase the number of lawyers who do pro bono work. Recruiting retired attorneys to fill the need is crucial. According to the American Bar Association:

Over the next decade, as many as 40,000 lawyers a year will retire, consider retiring, or significantly alter their work environment. This generation of lawyers is redefining retirement from a time of leisure to a time of renewed vigor and purpose. The profession still needs these lawyers' talent and experience in the years to come, and many of them want to spend more time serving their communities. . . . On average, senior lawyers contribute nearly 80 volunteer-hours every year. . . .

The American Bar Association recently adopted policy in support of limited practice rules that would allow qualified, retired or otherwise inactive lawyers to provide *pro bono* legal services under the auspices of qualified legal services or other non-profit programs.

Here in Oregon, any attorney can engage in a pro bono only practice, either as an Active Pro Bono Member, or as an Active Emeritus. These programs have been in place for many years. Oregon currently does not allow attorneys

licensed in other jurisdictions to engage in pro bono work here (with the recent exception of House Counsel).

In line with recent trends across the country, the Board of Bar Examiners, upon the request of the OSB Pro Bono Committee, has conditionally approved the creation of a new status that will allow out-of-state attorneys who retire in Oregon to engage in a pro bono only practice through certified programs. [Minor changes to the rule require the BBX to vote on the rule in an August meeting—those changes are incorporated into the copy attached hereto.] The BBX plans to forward the new proposed rule to the Supreme Court following its approval of the final draft.

Some By-law changes must be made to reconcile the new Admissions Rule with the By-laws. The ATJ Committee will consider those changes and forward a recommendation to the BOG at its next meeting.

Attachment:

Proposed Admissions rule 17.05

ADMISSION OF OUT-OF-STATE ACTIVE PRO BONO ATTORNEYS

17.05 Admission of Out-of-State Active Pro Bono Attorneys

An attorney, 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 an Active Pro Bono Attorney, subject to the provisions, conditions and limitations in this rule, by the following procedure:

- (1) The attorney, having actively practiced law for at least 15 years, may apply for admission to practice law as an Active Pro Bono Attorney by:
 - (a) Filing an application as prescribed in Rule 4.15;
 - (b) Presenting satisfactory proof of graduation from an ABA approved law school with a Juris Doctor degree or its equivalent;
 - (c) Presenting satisfactory proof of passage of a bar examination in a jurisdiction in which the applicant is admitted to the practice of law;
 - (d) Not having failed the Oregon Bar Exam two or more times;
 - (e) Presenting satisfactory proof that he/she has not resigned from any Bar with disciplinary charges pending or in lieu of discipline;
 - (f) Presenting satisfactory proof that s/he will practice law under the supervision of an Oregon Certified Pro Bono Program; and
 - (g) Agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Oregon State Bar for disciplinary purposes.
- (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) 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 an Active Pro Bono Attorney in Oregon.

- (5) If the Supreme Court considers the applicant qualified for admission, it shall admit the applicant to practice law as an Active Pro Bono Attorney in Oregon. The applicant's date of admission as an Active Pro Bono 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).
- (6) In order to qualify for and retain admission to practice law as an Active Pro Bono Attorney, an attorney admitted under this rule must satisfy the following conditions, requirements and limitations:
 - (a) The attorney shall be limited to practice exclusively as a pro bono attorney, and through a Certified Pro Bono Program;
 - (b) All business cards, letterhead and directory listings, whether in print or electronic form, used in Oregon by the attorney shall clearly identify that the attorney is admitted to practice in Oregon only as an Active Pro Bono Attorney;
 - (c) The attorney shall pay the Oregon State Bar all annual and other fees required of inactive 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; and
 - (e) The attorney shall promptly report to the Oregon State Bar: 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.
- (7) The attorney shall report immediately to the Oregon State Bar, and the admission granted under this section shall be automatically suspended, when the attorney is suspended or disbarred for discipline or resigns while disciplinary complaints or charges are pending, in any jurisdiction.

- (8) 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.
- (9) For the purposes of this Rule 16.05, the term "Certified Pro Bono Organization" means a legal services provider that has applied for and received certification through the Oregon State Bar and that maintains Professional Liability Coverage for the Active Pro Bono Attorney, either through a waiver of coverage or through purchasing coverage from the PLF.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: June 30, 2008
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Proposed Amendment to ORS 9.160 and 9.162 re: UPL

Action Recommended

Consider the Committee motion to propose amendments to ORS 9.160 and 9.162 to clarify what it means to practice law “in Oregon.”

Background

At its June 13, 2008 meeting, the Policy and Governance Committee considered a proposal from the Out-of-State Lawyer Study Group (OOSLSG) to clarify what it means to practice law “in Oregon.”¹ The group was formed in response to the increasing phenomenon of out-of-state lawyers (OOSLs) who establish a permanent presence in Oregon, but who do not seek admission to the OSB because they do not feel bar membership is necessary. The rationale most often cited for this position is that these lawyers are not practicing law within the meaning of ORS 9.160, because their clients are citizens of the jurisdiction in which they are licensed and they do not opine on Oregon law.

The UPL Committee is of the view that these lawyers are, in fact, practicing unlawfully in Oregon. The BBX has taken a more liberal view and, in the absence of any definitive authority, has declined to treat the possible UPL as a character and fitness issue when the OOSL applies for admission. GCO, CAO and DCO have also encountered questions about OOSL practice. The goal of the study group was to determine what, if any, action the bar should take in regard to this practice and to ensure the various groups have a consistent approach.

The first hurdle the group dealt with was the basic question of whether a lawyer whose clients are entirely out of state and who is dealing only with the law of another jurisdiction is, in fact, practicing law in violation of ORS 9.160(1), which provides:

9.160 Bar membership required to practice law; exceptions. (1) Except as provided in this section, a person may not practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar.

* * *

¹ The OOSL is comprised of representatives of General Counsel’s Office, the Client Assistance Office, Disciplinary Counsel’s Office, the Board of Bar Examiners and the UPL Committee, namely: Helen Hierschbiel, Sylvia Stevens, Chris Mullmann, Jeff Sapiro, Jon Benson, Hon. Jill Tanner, David Hittle, Andrew Altschul, O’Shea Gumusoglu, Lane Borg and Terri Wright.

As indicated, many OOSLs suggest that they are “practicing California law” or “practicing New York law” because their clients are in the other jurisdiction, the legal matter is there, and it involves the law of the other jurisdiction. Nevertheless, it was the ultimate conclusion of the study group that where one practices law is a question of geography—in other words, a lawyer practices in the place where the lawyer is physically located while performing the services.

This view is supported by the recent 11th Circuit decision in *Gould v. Florida Bar, et al.*, 2007 US App. LEXIS 28968 (December 12, 2007), *cert. denied*, 2008 US Lexis 4048 (May 12, 2008). Gould is a lawyer who maintained an office in Florida but who was licensed only in New York. He sought declaratory and injunctive relief out of concern that his proposed advertisements for legal services would cause him to be charged with unlawful practice of law in Florida: One ad offered legal services for “New York Matters Only;” the other offered services relating to “Federal Administrative Law.” Florida law makes it unlawful for “[a]ny person not licensed or otherwise authorized to practice law in this state” to practice law or hold himself out to the public as “qualified to practice law in this state.” The court concluded that Gould was not authorized to practice New York law in Florida. The court also held that, because the practice of “federal administrative law” is not limited to the representation of individuals before federal agencies, Gould’s advertisement for a “practice limited to federal administrative law” was misleading and related at least in part to unlawful conduct.

The US District Court for Maryland reached a similar conclusion in *Ramirez v. England*, 320 F.Supp.2d 368 (DC SD Md. 2004). At issue was the application for *pro hac vice* admission of Lisa Ward, an attorney licensed in Mississippi and the District of Columbia, but not admitted in Maryland, where she lived and maintained a fully functional home office for the practice of law. She also claimed to have an office in Mississippi, but she rarely (if ever) used it. In denying Ms. Ward’s petition for *pro hac vice* admission, the court determined that Ms. Ward’s principal law office was in Maryland and that she had been practicing law in Maryland unlawfully.

The study group believes that at least some of the uncertainty in this area can be cured by amending ORS 9.160 and 9.162 to make it clear that the provision of legal services in Oregon is the practice of law in Oregon, regardless of the location of the client or the jurisdiction whose law is in play. (The study group also expects to propose the adoption of a rule allowing admission on motion for OOSLs who meet certain criteria, much as is currently allowed under or limited reciprocity rule, but the amendment of the Bar Act is not dependent on the expansion of the admission rules.)

The study group recommends the amendment of ORS 9.160 and 9.162 as follows:

9.160 Bar membership required to practice law; exceptions. (1) Except as provided in this section, a person may not practice law in Oregon or represent that person as qualified to practice law in Oregon unless that person is an active member of the Oregon State Bar.

* * *

9.162 Definitions for ORS 9.160 to 9.166. As used in ORS 9.160 to 9.166 and 9.280, unless the context or subject matter requires otherwise:

(1) "Person" means a human being and where appropriate, a public or private corporation, an unincorporated association, a partnership, a limited liability company or any other entity recognized in law, a government or a governmental instrumentality.

* * *

(4) "in Oregon" means being physically present in the state, regardless of whether the client is located in Oregon or whether Oregon law is at issue.

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: June 16, 2008
From: Tim Gerking, Chair, Policy and Governance Committee
Re: Proposed Amendment to Oregon RPC 1.6

Action Recommended

Propose an amendment to Oregon RPC 1.6(b) to add an exception to the duty of confidentiality in order for lawyers subject to conditional admission and reinstatement, disciplinary diversion, and probation to comply with monitoring agreements.

Background

BR 2.10 provides that disciplinary proceedings may be diverted when the subject lawyer agrees to participate in a remedial program. Such programs may consist of someone monitoring the accused lawyer's law practice.

BR 6.2 allows for a suspension to be stayed and a lawyer placed on probation for a period of time. Conditions of probation may include someone monitoring the subject lawyer's law practice.

BR 8.7 allows for conditional reinstatement. The conditions may include some monitoring of the reinstated lawyer's practice.

Admissions Rule 6.10 provides that an applicant for membership in the Oregon State Bar may be conditionally admitted to practice. Conditions of admission may include someone monitoring the applicant's law practice.

While monitors or supervisors for these programs may be any person deemed suitable to undertake the task, ORS 9.568(5) specifically gives the State Lawyers Assistance Committee (SLAC) the authority to act as monitor or supervisor for lawyers placed on probation or in diversion in connection with a disciplinary investigation, or for those lawyers who have been conditionally admitted to the bar. (The information provided to SLAC as a monitor under these diversion and probation agreements is not subject to the statutory confidentiality that protects other information submitted to SLAC.)

A concern has been raised that effectively monitoring a law practice requires actually looking at the subject lawyer's client files. Under RPC 1.6, lawyers have an obligation to keep that information confidential. While there is an exception to this duty when doing so is required by other law, court order, or as required by the rules of professional conduct, there is no exception when doing so is necessary to comply with a monitoring agreement for diversion, probation or conditional admission. The lack of such a clear exception may either discourage the use of the diversion, probation and conditional admission process, or prevent monitors and supervisors from ensuring that the subject lawyers are fully complying with their agreements.

The Policy and Governance Committee recommends that Oregon RPC 1.6(b) be amended to include such an exception, as set forth on the attached page. If the BOG agrees, the proposed amendment will be submitted to the HOD in September for its approval pursuant to ORS 9.490.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client's identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer; or

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor pursuant to a diversion agreement, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, subject to disclosures required of the monitoring lawyer by the diversion agreement, probation, conditional reinstatement or conditional admission.

Adopted 01/01/05

Amended 12/01/06:

Paragraph (b)(6) amended to substitute "information relating to the representation of a client" for "confidences and secrets."

Oregon State Bar
Meeting of the Board of Governors
May 9, 2008
Open Session Minutes

The meeting was called to order by President Rick Yugler at 12:30 p.m. on Friday, May 9, 2008 and adjourned at 5:15 p.m. Members present from the Board of Governors were Ann Fisher, Gerry Gaydos, Tim Gerking, Kellie Johnson, Gina Johnnie, Christopher Kent, Robert Lehner, Audrey Matsumonji, Stephen Piucci, Carol Skerjanec, Robert Vieira, Bette Worcester, Terry Wright, and Rick Yugler. OSB staff present was Karen Garst, Sylvia Stevens, Jeff Sapiro, Rod Wegener, Judith Baker, Susan Grabe, Kay Pulju, Danielle Edwards, and Teresa Wenzel. Present from the PLF were Jeff Crawford, Ira Zarov, James Rice, Tom Cave, Bob Cannon, Tim Martinez, Kandis Brewer Nunn, Ron Bryant, Fred Ruby, Bruce Schafer, and Bill Carter. Others present were Dr. John Enbom, Jessica Cousineau (ONLD), and Willard Chi (ONLD).

1. Call to Order/Finalization of the Agenda

The agenda was accepted by consensus without change.

2. Joint Meeting with Professional Liability Fund

A. Update

Mr. Zarov presented general information concerning the PLF's move into its new offices at the bar center, an open house anticipated for August, the annual NABRICO conference scheduled for August 20-23 hosted by the PLF, and the retirement of Linda Peterson, whose replacement is expected to be hired by August.

Mr. Cave presented information concerning the PLF's finances. Due to the current economic downturn, the PLF is seeing a change from previous years. As of May, more than 100 claims have been filed in 2008, following a traditional pattern in difficult economic times. Investment income is expected to be substantially less than in 2007, but even so, the fund is expected to break even. The fund's reserves are at \$6.1 million, and the PLF believes it will reach the goal of having \$9 million in reserves by 2012.

3. Work Session - Communications Department

Kay Pulju, Communications Manager, presented information regarding the programs and activities of the Communications Department: the *Bulletin*, media relations, public education, special events, marketing, referral and information services, and customer service (reception).

4. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Paul J. De Muniz May 1, 2008

Mr. Yugler reported on his meeting with the Chief Justice, where the topics included the E-court™ program, court security and access cards, the Chief Justice' Compensation Commission, and the Court Facilities Commission Report.

2. ABA Lobby Day

Mr. Yugler indicated the visit to Washington, D.C. was successful and that those attending from Oregon were able to meet with most of Oregon's congressional delegation.

3. President's Report

Mr. Yugler reported that Frank Garcia has been hired as the bar's Diversity Administrator and that he had accompanied Mr. Garcia to a meeting of the Hispanic Bar's Chamber of Commerce. Mr. Yugler believes that Mr. Garcia has a great vision for the bar, has a great deal of work ahead of him, and is the right person for the job. Mr. Garcia will be introduced to the board in June.

Mr. Yugler thanked Ms. Pulju for her work in putting together the Rule of Law Conference. There were approximately 100 attendees from diverse areas of the community including business, churches, government, education, and the military. The program will be streamed on the bar's website and run on cable television. Participants included the Chief Justice and the moderator for the Q and A was April Bauer, a Northwest radio personality.

B. Report of the President-elect

1. Report on Meetings and Events Attended

Mr. Gaydos attended several events/meetings. He commended Ms. Garst on her presentation at the ABA Bar Leaders Institute in Chicago. He commended Ms. Wright on the UPL information she provided at the Western States Bar Conference and observed that it was a good place to network and share experiences with the western bars and to affirm what a great job the Oregon bar does by comparison. The Pro Bono Challenge showed that the ONLD and Oregon really shine in the pro bono arena. He also complimented Mr. Yugler and Willard Chi, ONLD Chair, for their presentations at the April swearing-in ceremony.

2. Northwest State Bars Meeting

Mr. Gaydos attended the Northwest State Bars meeting in Seattle with Mr. Yugler, Ms. Garst, and Ms. Stevens. States participating were Utah, Washington, Oregon, Nevada, and Montana. Montana will be getting a new Chief Justice, which may pave the way for it to join the other northwest states in reciprocity.

3. Miscellaneous

Mr. Gaydos expressed his optimism for the Affirmative Action Program under Mr. Garcia.

C. Report of the Executive Director

1. 2007 Program Measures

Ms. Garst gave a PowerPoint presentation of the 2007 Performance Measures for each of the bar's departments.

5. Board Members' Reports

Board members reported on events and meetings in which they had participated since the last board meeting. Mentioned were : various local bar and section meetings; CEJ fundraiser in Medford where \$10,000 was raised; Leaders' Conference at the bar center where community leaders got together for discussion; Classroom Law Project dinner; CEJ annual luncheon; LRAP Advisory Board meeting; and fifty-year members' luncheon. Of special note was Ms. Skerjanec's encouragement to BOG members to attend the Western States Bar Conference in 2009, Ms. Wright's observation that the Diversity Section is satisfied with the selection process used to fill positions in the Affirmative Action Program, and Mr. Piucci's information about David Sugarman of the OTLA who is starting a "new lawyers" academy to assist new lawyers with the fundamentals of life as a lawyer.

6. Special Appearances

A. SLAC/OAAP Task Force Report

Dr. John Enbom, former BOG public member, presented the report of SLAC/OAAP Task Force. The task force studied how the two entities might cooperate to protect the public while keeping the aspect of client confidentiality in the forefront. Dr. Enbom emphasized that the report should be viewed as a framework and not as literal rules to be followed. The report encourages SLAC to notify OAAP of new referrals and to allow OAAP a reasonable amount of time to alert SLAC of any risks in contacting the lawyer. The report also recommends that outreach include information about the consequences of not cooperating with SLAC . It also suggested that changing the name of SLAC would eliminate some of the confusion about the two programs.

Greg Hazarabedian appeared by telephone on behalf of SLAC and commended Dr. Enbom on his good work chairing the Task Force. Mr. Hazarabedian gave a brief description of how SLAC works, emphasizing that SLAC determines if lawyers are impaired and if they are a risk to the public. If not, SLAC steps away. The consensus of the committee was that the fragile lawyer was problematic and waiting to report to SLAC is dangerous to the lawyer, the bar, and the public.

Motion: Ms. Johnson moved, Ms. Skerjanec seconded and the board unanimously passed the motion to accept the task force report.

B. Limited Admission of Foreign Lawyers as House Counsel

Ms. Stevens presented a request that the BOG support expansion of the House Counsel to allow admission of foreign licensed lawyers. Some board members expressed concern that there might be public protection issues because house counsels are permitted to engage in pro bono services. There was also some concern about whether the Corporate Counsel and other interested sections have an opportunity to comment on any expansion in house counsel admission.

Motion: Ms. Wright moved, Mr. Piucci seconded, and the board unanimously approved forwarding the proposal to the BBX for its consideration, along with an explanation of the board's concerns.

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

A. Access to Justice Committee

1. Distribution of General Fund Appropriation

Ms. Wright presented the committee motion to distribute half of the General Fund appropriation as determined by the Association of Legal Services Programs, with the remainder held by the OSB pending the Association's recommendation for 2009.

Motion: The board unanimously passed the committee motion.

B. Budget and Finance Committee

1. Ratification for the Second Amendment to the Lease Agreement

Mr. Wegener explained that an amendment to the lease with OPUS was necessitated by Washington County's denial of the OSB's property tax exemption unless certain specific language was added to the lease. The Second Amendment also includes the correct amounts of Basic Rent. Because of the need to submit the amendment to the county by May 1, Mr. Yugler signed it on behalf of the bar.

Motion: The board unanimously passed the committee motion to ratify the Second Amendment to the Lease Agreement.

2. Audit Report for OSB for 2006 and 2007

Mr. Wegener reported that the audit went well and the report confirms that the OSB's accounting practices are sound. The auditor recommended only minor changes to eliminate the risk of fraud in connection with checks received.

Motion: The board unanimously passed the committee motion to accept the audit report.

3. Update on New Bar Center

A Lazik eye surgery clinic will likely be a new tenant and is expected to move in by August. The building next door to the bar center was sold to an investment company. The bar center's conference facilities are becoming popular and the public is asking to use them. Staff is working on procedures for public use of the facility.

C. Executive Director Search Committee

1. Status Report

Ms. Skerjanec reported that many resumes have been submitted. The resumes have been sorted, reviewed, and forwarded to the committee. The committee will have a conference call May 13, 2008, to select candidates for telephone interviews.

D. Member Services Committee

1. Update on Committee Activities

Mr. Gaydos reported that the Diversity Program Administrator has been hired; a task force has been appointed to consider whether to contract with a competitor of Casemaker™, which was sold in September; and that plans are going well for the Futures Conference.

E. Policy and Governance Committee

1. Redistricting of BOG Regions

Motion: The board unanimously passed the committee motion to stagger the terms of the two new board members by having the second Region 4 member elected to a two-year term. In the event the legislature does not approve the enabling legislation in time for the 2010 BOG elections, the plan will be implemented for the 2011 board year.

2. House of Delegates – Alternates

Motion: The board unanimously passed the committee motion to allow alternate delegates to the House of Delegates when the section chair or local bar president cannot attend provided the alternate is duly authorized to so act in the section or local bar's bylaws or otherwise.

3. Board's Borrowing Authority

Motion: Ms. Skerjanec moved, Ms. Wright seconded, and the board unanimous passed the motion to waive the one meeting notice requirement for amending Bar Bylaw 7.102.

Motion: The board unanimously passed the committee motion to amend Bar Bylaw 7.102, to clarify the borrowing authority of the President, Executive Director, or the Chief Financial Officer with respect to financial transactions that have been authorized by the Board of Governors.

4. Judicial Endorsements

Motion: The board unanimously passed the committee motion to changed Section 3 of the Standard Section Bylaws to provide that sections may not participate in or take a position in respect to the election or appointment of a candidate for any public office.

F. Public Affairs Committee

1. e-Court™ Implementation Task Force

Motion: The board unanimously passed the committee motion to accept the committee's proposed task force charge and appointments.

2. 2009 Law Improvement Package

Motion: The board unanimously passed the committee motion to approve the 2009 OSB package of law improvement proposals for introduction to the legislature.

G. Public Member Selection

1. Review of the Public Member Recruitment and Selection Process

Ms. Worcester reviewed the public member recruitment and selection process with the board and encouraged the members to contact qualified individuals personally.

8. Special Appearances

A. Oregon New Lawyers Division

Mr. Chi updated the board on activities of the ONLD including: the CLE subcommittee is actively working to increase CLE attendance throughout the state; the high school essay contest concludes May 10 and the winner will receive a monetary award accompanied by a letter from the Chief Justice; on Constitution Day attorneys, working with the teachers, will go to schools and speak with the students about the law and what it means to practice law; the Pro Bono Challenge was attended by 120 members; the ONLD is excited about participating in the Futures Conference and will have breakout sessions; and the Communications Task Force is involved in a multiyear re-branding project and hopes to finalize a new logo very soon. Mr. Chi reminded the board that the ONLD would be doing a beach clean up May 10 and invited board members to participate.

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

A. Client Security Fund [Ms. Evans]

1. Review Denial of CSF Claims

a. 07-10 *Rothenfluch v. Knapp* \$73,381.00

Motion: Ms. Wright moved, Mr. Gerking seconded, and the board unanimously passed the motion to uphold the CSF Committee's denial of the claim.

b. 07-03 *Jones v. Judy* \$40,000.00

Motion: Ms. Wright moved, Mr. Piucci seconded, and the board passed a motion to reverse the decision of the CSF Committee and approved payment of the claim. Mr. Gaydos, Mr. Gerking, Ms. Skerjanec, Mr. Vieira, Ms. Worcester, and Mr. Yugler opposed the motion and Mr. Kent abstained.

c. 07-07 *Douglas v. Dunn* \$7,731.00

Motion: Ms. Johnson moved, Mr. Gerking seconded, and the board passed a motion to uphold the CSF Committee's denial of the claim. Mr. Yugler opposed the motion.

d. 07-22 *Scharn v. Mason* \$45,428.20

Motion: Mr. Gerking moved, Ms. Wright seconded, and the board unanimously passed a motion to uphold the CSF Committee's denial of the claim.

10. Consent Agenda

Motion: The board approved the agenda by consent with one change to Page 9 of the February 22, 2008, minutes.

11. Closed Session Agenda

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

**Oregon State Bar
Board of Governors Meeting
May 9, 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. Reinstatements

1. Michael Banks – 932065

Action: The board reviewed information concerning the BR 8.1 reinstatement application for Mr. Banks to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

2. Sean Cee – 935180

Action: Mr. Gerking presented information concerning the BR 8.1 reinstatement application for Mr. Cee. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Cee be reinstated as an active member of the Oregon State Bar.

3. Robert Conratt – 892179

Action: Ms. Skerjanec presented information concerning the BR 8.1 reinstatement application for Mr. Conratt. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Conratt be reinstated as an active member of the Oregon State Bar.

4. Christian Day – 932517

Action: Mr. Sapiro presented information concerning Mr. Day's request to return to active membership status in light of his 1996 PLF suspension being void by the Supreme Court decision in the *Leisure* case. The board passed the motion that Mr. Day return as an active member of the Oregon State Bar upon completion of 45 MCLE credits. Mr. Yugler abstained.

5. Kaarin Axelson Forester – 952048

Action: Mr. Gaydos presented information concerning the BR 8.1 reinstatement application for Ms. Forester. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Forester be reinstated as an active member of the Oregon State Bar.

6. Shawn W. Gordon – 923157

Action: Ms. Fisher presented information concerning the BR 8.1 reinstatement application for Mr. Gordon. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Gordon be reinstated as an active member of the Oregon State Bar upon receipt of a clear driving record from Washington Department of Motor Vehicles.

7. Lisa Henderson – 952940

Action: Mr. Sapiro presented information concerning the BR 8.1 reinstatement application for Ms. Henderson. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Henderson be reinstated as an active member of the Oregon State Bar upon receipt of a clear driving record from the state of Texas.

8. Michael A. Hudson – 784490

Action: Ms. Wright presented information concerning the BR 8.1 reinstatement application for Mr. Hudson. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Hudson be reinstated as an active member of the Oregon State Bar upon completion of 45 MCLE credits.

9. William A. Nootenboom – 961952

Action: The board reviewed information concerning the BR 8.1 reinstatement application for Mr. Nootenboom to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

10. Mark W. Siegel – 934253

Action: Ms. Wright presented information concerning the BR 8.1 reinstatement application for Mr. Siegel. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr.

Siegel be reinstated as an active member of the Oregon State Bar upon completion of 45 MCLE credits.

11. Michael R. Smith – 915120

Action: Ms. Fisher presented information concerning the BR 8.1 reinstatement application for Mr. Smith. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Smith be reinstated as an active member of the Oregon State Bar.

12. Russell Weed – 914596

Action: Ms. Johnnie presented information concerning the BR 8.2 reinstatement application for Mr. Weed. The board unanimously passed the motion that Mr. Weed be reinstated as an active member of the Oregon State Bar.

13. Sandra H. Westin – 925227

Action: Ms. Johnson presented information concerning the BR 8.1 and BR 8.7 reinstatement applications for Ms. Westin. The board unanimously temporarily reinstated Ms. Westin as an active member of the Oregon State Bar and the board will considers her unconditional reinstatement to active membership at its July meeting.

B. Disciplinary Counsel's Report

Mr. Sapiro referred to his written status memo in the agenda materials and discussed briefly the court decision in the *Gunter* case and the court orders in the Marsh (referred to disciplinary board), and *Cogan* (denial) reinstatement matters.

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Oregon State Bar
Board of Governors Meeting
May 9, 2008
Judicial Proceedings Agenda

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A. Reinstatements

1. Michael Banks – 932065

Action: The board reviewed information concerning the BR 8.1 reinstatement application for Mr. Banks to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

2. Sean Cee – 935180

Action: Mr. Gerking presented information concerning the BR 8.1 reinstatement application for Mr. Cee. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Cee be reinstated as an active member of the Oregon State Bar.

3. Robert Conratt – 892179

Action: Ms. Skerjanec presented information concerning the BR 8.1 reinstatement application for Mr. Conratt. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Conratt be reinstated as an active member of the Oregon State Bar.

4. Christian Day – 932517

Action: Mr. Sapiro presented information concerning Mr. Day's request to return to active membership status in light of his 1996 PLF suspension being void by the Supreme Court decision in the *Leisure* case. The board passed the motion that Mr. Day return as an active member of the Oregon State Bar upon completion of 45 MCLE credits. Mr. Yugler abstained.

5. Kaarin Axelson Forester – 952048

Action: Mr. Gaydos presented information concerning the BR 8.1 reinstatement application for Ms. Forester. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Forester be reinstated as an active member of the Oregon State Bar.

6. Shawn W. Gordon – 923157

Action: Ms. Fisher presented information concerning the BR 8.1 reinstatement application for Mr. Gordon. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Gordon be reinstated as an active member of the Oregon State Bar upon receipt of a clear driving record from Washington Department of Motor Vehicles.

7. Lisa Henderson – 952940

Action: Mr. Sapiro presented information concerning the BR 8.1 reinstatement application for Ms. Henderson. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Henderson be reinstated as an active member of the Oregon State Bar upon receipt of a clear driving record from the state of Texas.

8. Michael A. Hudson – 784490

Action: Ms. Wright presented information concerning the BR 8.1 reinstatement application for Mr. Hudson. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Hudson be reinstated as an active member of the Oregon State Bar upon completion of 45 MCLE credits.

9. William A. Nootenboom – 961952

Action: The board reviewed information concerning the BR 8.1 reinstatement application for Mr. Nootenboom to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

10. Mark W. Siegel – 934253

Action: Ms. Wright presented information concerning the BR 8.1 reinstatement application for Mr. Siegel. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr.

Siegel be reinstated as an active member of the Oregon State Bar upon completion of 45 MCLE credits.

11. Michael R. Smith – 915120

Action: Ms. Fisher presented information concerning the BR 8.1 reinstatement application for Mr. Smith. The board unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Smith be reinstated as an active member of the Oregon State Bar.

12. Russell Weed – 914596

Action: Ms. Johnnie presented information concerning the BR 8.2 reinstatement application for Mr. Weed. The board unanimously passed the motion that Mr. Weed be reinstated as an active member of the Oregon State Bar.

13. Sandra H. Westin – 925227

Action: Ms. Johnson presented information concerning the BR 8.1 and BR 8.7 reinstatement applications for Ms. Westin. The board unanimously temporarily reinstated Ms. Westin as an active member of the Oregon State Bar and the board will considers her unconditional reinstatement to active membership at its July meeting.

B. Disciplinary Counsel's Report

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: July 18, 2008
From: Kathleen Evans, Appointments Committee Chair
Re: Appointments for the Consent Agenda

Action Recommended

Approve the following Appointments Committee recommendations.

Legal Heritage Interest Group

Recommendation: Andrew Harris, term expiring, 12/31/2010

Uniform Criminal Jury Instructions Committee

Recommendation: David Celuch, term expiring, 12/31/2010

Unlawful Practice of Law Committee

Recommendation: Joe Fabiano, public member, term expiring, 12/31/2009

Board on Public Safety Standards and Training (BPSST) Private Security Policy Committee

Recommendation: Phil Agrue*

* formal appointment made by the BPSST

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2009
Memo Date: June 17, 2008
From: Sylvia E. Stevens, General Counsel
Re: CSF Claims Recommended for Payment

Action Recommended

Approve the following claims recommended for payment by the Client Security Fund Committee:

No. 07-24 Hoilien v. Dunn	\$200.00
No.07-26 Pozsgai v. Dunn	\$980.00
No. 08-08 Story v. Dunn	\$1,500.00
No. 08-12 Green v. Dunn	\$200.00
No. 08-01 Jones v. Kent	\$1,000.00
No. 08-10 Owens v. Childs	\$1,195.00
No. 07-17 Cone v. Kent	\$2,705.87
TOTAL	\$7,780.87

Background

No. 07-24 Holien (Gehrke) v. Dunn¹ (\$200.00)

Beaverton attorney Tim Dunn was hired to draft a living trust for Alona Gehrke. Because of her advanced age, Ms. Gehrke was assisted in her dealings with Dunn by her daughter, Mona Hoilien, who also paid Dunn's fees. (Because CSF rules require that the claim be submitted by the client, we have requested a signed application from Ms. Gehrke; if the claim is approved by the BOG we will also ask Ms. Gehrke for permission to remit the reimbursement to Ms. Hoilien.)

The client met with Dunn on August 1, 2007 and a \$500 retainer was deposited toward Dunn's quoted fee of \$200/hour. Dunn gathered information to prepare the living trust. On September 28, 2007, Dunn sent a first draft of a living trust to Ms. Hoilien, who thereafter tried unsuccessfully on several occasions to contact Dunn to get answers for her mother's questions about the draft.

On October 18, 2007, Ms. Hoilien received a letter from Dunn informing her that his license had been suspended² and that she would need to pick up her mother's file and find

¹ This is one of ten claims the CSF has received from Timothy Dunn's former clients. To date, one has been paid and one has been denied. In addition to the four on this report, four are pending.

another attorney to complete the work. When she picked up the file, Dunn requested payment of an additional \$200 for his work on the draft.

Ms. Hoilien subsequently retained another lawyer for her mother. He told her his usual charge for living trusts is \$1000, but he offered a reduced fee of \$500 because of her unsatisfactory experience with Dunn. The new lawyer told Ms. Hoilien that he would need to redo about 75% of Dunn's work.

The Committee debated whether this was really just a fee dispute, but seriously questioned whether Dunn did all the work he claimed, particularly since there was no accounting. The recommendation to reimburse \$200 is based on the difference between the total paid by Ms. Hoilien for her mother's living trust (\$1200) and the amount the second lawyer would ordinarily have charged (\$1000). This was not one of the matters involved in Dunn's discipline; however, given the small amount to be reimbursed and the similarity to Dunn's other misconduct, the committee also recommends waiving the requirement for a civil judgment.

No. 07-26 Pozsgai v. Dunn (\$980.00)

Mr. Pozsgai retained Dunn in April 2007 to handle his divorce. He paid \$50 for his initial consultation. Mr. Pozsgai met with Dunn again on May 3, 2007, at which time he paid an additional \$980, which he understood was a flat fee for the dissolution, including the court costs. After hearing nothing for several months, Mr. Pozsgai contacted Dunn's office and was told by the secretary that the paperwork would be ready "soon." Sometime later, on October 19, 2007, Mr. Pozsgai received a letter informing him of Dunn's suspension from practice.

When Mr. Pozsgai retrieved his file, he found some notes and a spreadsheet prepared by Dunn, a draft petition for dissolution, a draft summons, and various other forms required to be filed with the petition. Nothing had been filed with the court. Mr. Pozsgai inquired about a refund, and was assured by Dunn that his secretary would see to it. No refund, nor any accounting, was received. Mr. Pozsgai's disciplinary complaint was one that resulted in Dunn's disbarment, but no restitution was ordered.

The Committee concluded that Dunn's work was of de minimis value, since a new lawyer would have started over with the petition and the other documents drafted were simple forms. The Committee recommends that Mr. Pozsgai be reimbursed for the entire \$980 paid for the dissolution. No judgment is required because the claim is for less than \$5000 and the same conduct was the subject of a disciplinary sanction.

² Dunn was placed on diversion in November 2004, but while he was on diversion more complaints were received and a formal complaint arising out of approximately a dozen matters was filed in September 2006. Dunn's diversion was terminated in October 2006, and in June 2007, after a lengthy hearing, a referee recommended interim suspension, which the court ordered on October 5, 2007. Dunn was subsequently disbarred by a trial panel on February 20, 2008.

No. 08-08 Story v. Dunn (\$1,500.00)

Joanna Story hired Dunn in January 2005 to handle her divorce. Pursuant to an oral agreement, she paid him a flat fee of \$1,500. For the next six months, she heard nothing from Dunn. In June 2005, Ms. Story asked Dunn not to pursue the divorce because she and her husband were trying to reconcile, but in September 2005 she asked him to proceed once again. Thereafter, despite her many requests, Dunn failed to communicate with Ms. Story.

On January 25, 2006, Ms. Story called Dunn to terminate his services and demand a refund. He told her he had her petition ready to file. Ostensibly with the client's authorization, two days later Dunn filed the petition and related documents and withdrew Ms. Story's \$1,500 from trust. He did nothing more on the matter after that, however, and failed to communicate with Ms. Story. In September 2006, Ms. Story again requested a refund of the unearned portion of the fee. Dunn provided neither an accounting or a refund.

Ms. Story filed a complaint with the Bar in February 2007 and the trial panel ordered Dunn to pay restitution to her of \$1,500, finding that his work was of no value to her. Dunn has not paid the restitution. Based on the trial panel's finding that Dunn's services were of no value to the client, the Committee recommends that Ms. Story be reimbursed in the amount of \$1,500.00. No judgment is required because the claim is for less than \$5,000 and the same conduct resulted in a disciplinary sanction. In exchange for reimbursement from the CSF, Ms. Story will be required to assign her restitution judgment to the Bar.

No. 08-12 Green v. Dunn (\$200.00)

In January 2007, Robert Green hired Dunn to correct an error in a restitution judgment arising out of a criminal matter in which Dunn had previously represented Green by appointment. Dunn did no work on the matter. The client called for information about his matter, but Dunn delayed. Later when the client called, Dunn's phone had been disconnected. For reasons not entirely clear, Green did nothing more until early 2008, when he called the court and learned that Dunn had been disbarred.

The Committee recommends reimbursement of \$200 with waiver of the requirement that Green obtain a judgment.

No. 08-10 Owens v. Childs (\$1,195.00)

In July 2004, Robert Owens needed a referral to a divorce attorney. He contacted Eugene attorney Will Childs, who had previously represented Owens in a criminal matter. Childs said divorce was his specialty and offered to handle the new matter. He quoted \$350 for the filing fee, plus a flat fee of \$845 for his legal services. Owens made those payments in cash in three installments. Sometime in September, Owens received a copy of the divorce petition. Childs said he had filed. Childs told Owens the petition had to be posted in the

courthouse for 90 days before the divorce would be final. Shortly thereafter, Owens left to spend the Christmas holidays in Pennsylvania. When he returned, Childs reported that everything was going fine with the divorce. In February 2005, Childs told his client that the divorce was final, but he didn't provide any documentation. The client never requested any because he trusted Childs and understood that if he needed a copy of the decree he could get it from the courthouse.

In February 2008, Owens' ex-wife needed proof of the divorce in order to remarry. The Lane County court informed her that no divorce petition had ever been filed; this was confirmed by the CSF investigating member.

The Committee had no trouble finding dishonesty on the part of Childs. The only question was whether there was sufficient proof of payment by Owens, who had no receipts for his cash payments. However, a friend of his accompanied him to several of his meetings with Childs and confirms that he saw "quite a bit" of money change hands. The Committee concluded that was sufficient proof of payment.

The Committee recommends that Owens be reimbursed the entire \$1,195 and that the requirement for a judgment be waived. Childs resigned Form B in October 2007, with charges pending that he had practiced unlawfully while suspended for nonpayment of his PLF premium, then lied about it to the bar. Childs has relocated to Texas and requiring Owens to obtain a judgment, even by default, would be a burden in light of his modest income.

No. 08-01 Jones v. Kent (\$1,000.00)

John Jones gave Eugene attorney William Kent \$1000 in June 2004 to defend him against anticipated criminal charges. When those charges didn't materialize, Mr. Jones left the money on deposit with Kent in the event he was charged later. In the fall of 2006, Mr. Jones returned to Kent for help filing bankruptcy. Kent quoted a fee of \$1,500. After an initial meeting, Mr. Jones tried to contact Kent to arrange for payment of the additional \$500 and to provide the information necessary to proceed with the bankruptcy. In December 2006, after no success making contact with Kent, Mr. Jones contacted the OSB's Client Assistance Office. That generated a call from Kent, who promised to refund Jones' retainer, but he failed to do so.

At the time Kent undertook to represent Mr. Jones, he was being investigated by Disciplinary Counsel's Office in connection with several complaints. A formal complaint was filed by the bar in January 2007 and Kent submitted a Form B resignation effective May 22, 2007. He has recently filed bankruptcy.

The Committee recommends full reimbursement to Mr. Jones. No judgment is required because the claim is for less than \$5,000 and was part of Kent's Form B resignation.

No. 07-17 Cone v. Kent (\$2,705.87)

Ellis Cone made a claim for reimbursement of \$365,000 allegedly misappropriated by William Kent. Cone's application is not entirely clear, but it appears that at least \$300,000 of that amount is for the value of assets he claims to have been cheated out of in his divorce. The rest relates to fees he paid for defense of criminal charges. Cone also filed a disciplinary complaint against Kent; formal charges were authorized, which ultimately resulted in Kent's Form B resignation on May 22, 2007.³

Kent and Cone have know each other for more than 30 years and over the years Kent represented Cone on a variety of minor criminal matters, often, according to Kent, at no charge. In 2002 Kent undertook to represent Cone in two criminal matters and a related civil case in Deschutes County. In August 2003, Cone was charged with more serious crimes in Deschutes County, including two counts of attempted murder, kidnapping with a firearm, assault, burglary and unlawful use of a dangerous weapon. There is no record of any payment from Cone to Kent until August 2003, shortly after the third case was filed. Between August and October, Julie Cone delivered \$41,000 to Kent:

<u>Number</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
1703	8/13/03	\$1,000	Bill Kent	"retainer-partial"
1710	8/15/03	\$2,000	Bill Kent	
1715	8/22/03	\$2,000	Bill Kent	
1726	9/3/03	\$1,000	Bill Kent	"Sam [Pitts]"
1774	10/5/03	\$35,000	Bill Kent Atty	"Ellis [Cone] atty fee"
1776	10/5/03	\$6,000	Bill Kent Trust Acct	"Trust acct"

There was no written fee agreement for any of the matters. Kent claims that Cone "didn't like to leave a paper trail." Kent claims that the \$35,000 was a flat fee for the third criminal case and at least some of the other money was for hiring the investigator (Sam Pitts). Cone pleaded guilty on the first two criminal cases; the third case went to trial and Cone was found not guilty of the most serious offenses, but he was convicted of several of the less serious crimes. He is currently incarcerated in the Eastern Oregon Correctional Institution in Pendleton.

While the criminal charges were pending, Julie Cone filed for divorce. According to Kent, she did so in part out of concern that Cone's criminal convictions could lead to civil suits for money damages, and a transfer of assets in a divorce would be less likely to be challenged as a fraudulent conveyance. Kent represented Ellis Cone in the divorce. Julie Cone was independently represented. The case was settled with Julie Cone receiving nearly all the parties' assets. According to Julie's lawyer, Cone agreed to that distribution because

³ Kent was suspended for two years on unrelated charges beginning in July 2006; before that he was reprimanded in 1995 and 2003 and admonished in 1984 and 1999.

the marital debts exceeded the value of the assets, Cone knew he wouldn't be able to pay spousal support if he was incarcerated (the Cones had been married for 32 years), and a good share of the parties' available cash had been used for Cone's legal fees. Cone signed the settlement agreement on the day of his sentencing. He now claims he didn't know what he was signing and that he was cheated out of his share of the assets through collusion between Kent and Julie Cone. As indicated, Julie Cone's lawyer disputes this assertion.

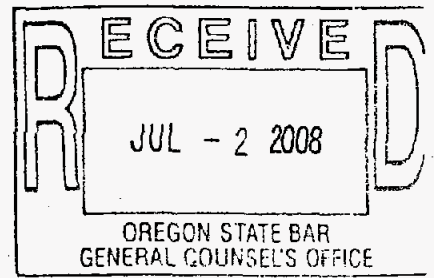
The CSF found no evidence of dishonesty by Kent in connection with the divorce. Moreover, a claim for the value of property lost in a divorce is not compensable under CSF rules.

Cone's claim about the criminal case fees is a little more complicated. Cone disputes Kent's claim that the \$35,000 was a flat fee, saying he had never paid Kent other than by the hour. Cone also claims that at some point Kent assured him there would be a refund of some \$10,000.

The formal complaint against Kent alleged the \$35,000 check was deposited directly into his business account and used almost immediately for a variety of his personal obligations. The other \$12,000 was deposited into his trust account. The CSF investigator contacted Kent's investigator, Sam Pitts, who provided a detailed accounting and invoices totaling \$10,294.13. Pitts says \$1000 was paid by Cone in cash; the rest of his invoices were paid by Kent as they were submitted.

The Committee found no dishonesty regarding the \$35,000 received by Kent for his fees, concluding that it Cone's objections are in the nature of a fee dispute. However, the Committee concluded that Kent improperly retained the difference between the other \$12,000 received on behalf of Cone and the \$9,294.13 he paid to Pitts. Accordingly, the Committee recommends that Cone be reimbursed in the amount of \$2,705.87. The Committee also recommends that the requirement for a judgment be waived (because Cone's claim is for more than \$5,000, the fact that Kent was sanctioned in connection with the same conduct doesn't suffice). As indicated above, Kent has filed bankruptcy and Cone wouldn't be able to obtain a judgment even if he had the wherewithal to pursue legal action.

Upon being advised of the Committee's recommendation, Cone submitted the attached letter seeking reimbursement of \$111,000 paid to Kent in fees.



Ellis Allen Cone
E.O.C.I sio# 4247821
2500 Westgate
Pendleton, Oregon 97801-9699

June 27th, 2008

Sylvia E. Stevens
P.O. Box 231935
16037 SW Upper Boones Ferry RD
Tigard, Oregon 97281-1935

RE: Response to letter dated 6-16-2008; CSF claim no 2007-17.

Dear Ms. Stevens,

First let me thank you for your time and patience. I am writing this to address a couple of questions I have regarding the CSF award of \$2,705.87.

Most importantly is the issue of if I accept the award of \$2,705.87, will it prevent me from further litigation or seeking of rewards/reimbursement from MR. Kent?

Also I would like to know A) How the committee came to the amount stated, and B) Present further evidence showing a much greater loss. In total I lost \$47,000 to MR. Kent in my last court case, due to fraud on his part, and another \$34,000 in other cases previously, that never went to court.

Here is a listing of the check #'s and dates as well as amount paid, which I have photocopies of;

#	Date	Amount
1703	August, 13th, 2003	\$ 1,000.
1710	August, 15th, 2003	\$ 2,000.

#	Date	Amount
1715	August, 22nd, 2003	\$ 2,000.
1726	September, 3rd, 2003	\$ 1,000.
1774	October, 5th, 2003	\$ 35,000.
1776	October, 5th, 2003	\$ 6,000.

These are checks given to MR. Kent. The last check was to pay for a private investigator named Sam Pitts, who never received payment and thus no work, but the money was still taken (stolen), which is the least amount I should be reimbursed.

You can contact Sam Pitts at 541-688-7330.

I believe if I could be allowed to be called as a witness or given the chance to show my documents and proof of money stolen, as well as my proof of MR. Kents fraud, I could stand a better chance of both A) insuring he never practices law again, and B) of being awarded a higher amount for my losses. I have a ton of information and paperwork regarding the illegal and horribly run criminal case against me and of MR. Kents fraud to steal money, while sabotaging my defense to ensure I would go to prison.

Also, do you have the copies of the Affidavits I sent to you? Please let me know if there is anything I can do or you can do to help with my bringing of evidence to the light in front of the proper authorities.

Ms. Stevens, not only was I imprisoned wrongly as to MR. Kents negligence and fraud, I lost my business, my wife and tens of thousands of dollars. I am simply asking for help for justice in these matters.

Thank you for your time once again.

Please respond if there is anything I can do to help.

Ellis Allen Cone

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18, 2008
Memo Date: June 16, 2008
From: Tim Gerking, Chair, Policy and Governance Committee
Re: OSB Bylaw Amendment re: HOD Mileage Reimbursement

Action Recommended

Approve the proposed bylaw amendments regarding mileage reimbursement for HOD delegates.

Background

In September 2007, the House of Delegates passed the BOG's resolution to reimburse HOD delegates for their mileage to attend the annual HOD meeting:

“Therefore, be it resolved that the HOD direct the BOG to devise a policy that would reimburse all lawyer delegates who attend HOD annual or special meetings for roundtrip mileage of 400 miles or less at the allowable IRS rate. The BOG may establish deadlines and other details of the policy.”

The new policy needs to be formalized in the OSB bylaws. The Policy and Governance Committee suggests the following new provision in Bylaw Article 7 Financial Matters. The proposed language also addresses reimbursement of public member delegates who have traditionally been reimbursed for their expenses by informal BOG policy. This is a good time to formalize that policy as well.

Section 7.5 Expense Reimbursements

Subsection 7.500 General Policy

Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors. The Bar must receive requests for expense reimbursement no later than 30 days after the expense has been incurred. If an expense reimbursement form is not submitted within 30 days after the meeting, it must be submitted not later than 45 days after year-end and include justification as to why it was not timely submitted. If these two requirements are not met, reimbursement will not be paid. Supporting documentation in the form of original receipts or copies of original receipts must be submitted

with all requests for reimbursement of expenses while acting on official bar business.

* * *

Subsection 7.502 House of Delegates Meetings

- (a) Elected delegates and ex officio delegates from sections and local bars will be reimbursed for their transportation to and from the annual HOD meeting. The reimbursement is limited to roundtrip mileage up to 400 miles at the allowable IRS rate. Requests for mileage reimbursement must be submitted on a form approved by the Bar within 30 days after the meeting.
- (b) Public member delegates will be reimbursed for the transportation, meals and lodging as provided in Subsection 7.500 and 7.501.

This is the first time this bylaw amendment has been before the Board, so acting on it in July requires waiver, by a 2/3 majority, of the one-meeting notice requirement of Bylaw 26.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: July 18-19, 2008
Memo Date: June 19, 2008
From: Karen L. Garst, Ext. 312
Re: Operations Report

Action Recommended

None.

Background

In order to fully inform the Board of key administrative activities, I have developed the following format for my reports. Please let me know if this is useful to you and covers the issues that you would like to be informed of prior to each BOG meeting.

Board of Governors

Policy and Governance Committee: In June, the committee met jointly with the Member Services Committee to review CLE Seminars and Legal Publications budgets and policy issues. There were requests for follow-up information and there will be another joint meeting on August 15 to review this information and make any policy changes that are warranted.

Member Contacts

Brown Baggers:

I attended the Landye Bennett; Kolish Hartwell; Sussman Shank; Kell Alterman; Stoel Rives; Markowitz Herbold brown baggers and Sylvia Stevens substituted for me at Lane Powell and Smith Freed.

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 audit was completed and the full audit report issued on May

5th. The department is caught up now and tackling some of our projects. We have scheduled a software update to the financial system for July and August. Dues payments are well ahead of last year. We have approximately 300 members with unpaid dues as of 6/17/08 and will probably have a record low number for suspension. We are encouraging inactive, out-of-state attorneys to resign rather than allowing themselves to be suspended for non-payment.

Admissions (Board of Bar Examiners): Admissions has been seeing some record numbers. Oregon reached an all-time record for the number of applicants for the July 2008 exam. 614 people applied for the exam. Approximately 500 of the applicants plan to take the exam by laptop (another record). There was an approximately two fold increase over the prior record for applicants seeking special testing accommodations.

Admissions staff has been working with IDT to develop an on-line bar application and for bar code scanning. There are two phases to this project. Once implemented, these will improve efficiency.

The Admissions Task Force is nearing a first draft of their report. The Out-of-State Lawyers group has been working on solutions to licensing and UPL issues. The OSB Pro Bono Committee and other groups have submitted proposals for admissions rule changes. The Supreme Court recently held a public meeting on a package of proposals from the BBX for rule changes. The BBX has been experimenting with measures to improve the editing and vetting process for bar exam questions.

Affirmative Action Program: Frank Garcia Jr., Diversity Administrator, has hit the ground running. He continues to meet with stakeholders, bar leaders and members of minority communities to network, hear concerns, and establish relationships. The AAP Public Honors and Clerkship Stipend programs gave awards to 21 students - 6 Public Honors Fellowships, 1 ABA Environmental Law Fellowship and 14 clerkship stipends. The Bar Exam Grant Program awarded 7 bar exam grant, 5 PMBR bar preparation courses and 2 PMBR courses donated by OMLA. The first round of clerkship luncheons, which are combined with a legal writing workshop, hosted 30 summer clerks in Eugene, Salem and Portland. The Bar Exam Skills Workshop was presented to 6 bar exam applicants, of whom 5 are repeat takers of the bar exam. OLIO Conference planning continues. Most attendees and presenters are confirmed and the agenda is set. Approximately \$10,000 has been raised toward support of the OLIO Conference.

Client Assistance Office: In May and June the CAO focused on some in house educational seminars. In May, Shawn Menashe came to the office to talk about domestic relations practice and focused on ex parte orders and stalking orders and provided us with a "Bench Guide" about the Family Abuse Prevention Act. In June, Eugene attorney Mark Williams gave us a presentation on issues in Elder Law that was well received by all staff. On June 10, 2008 the CAO arranged for Oregon Court of Appeals Chief Judge David Brewer to speak to all bar staff at the monthly Open Forum meeting. The non-lawyer staff spent a few hours

at the Clackamas County Courthouse on May 30, 2008 observing sentencing hearings, FAPA orders, and some murder pretrial motions. Chris Mullmann attended the ABA National Convention on Professionalism in Boston in early June and in May Scott Morrill gave a one hour CLE presentation to the Washing County Bar Association. The office is continuing to work with IDT to insure that we are in compliance with our documentation retention policy. For the next update we will provide the board with a mid-years statistical summary of cases handled by the CAO.

Client Security Fund: Claims activity continues at a higher level from prior years. At its last meeting, the Committee met with Kateri Walsh to discuss publicity and outreach to lawyers and the public. The Committee also agreed to host a workshop for the National Client Protection Organization in September 2009. The Committee is engaged and hard-working.

Communications/RIS: Approximately 90 community leaders met at the new bar center during community law week for the Rule of Law Conference, co-sponsored by the OJD, OSB, MBA and Portland League of Women Voters. The program, hosted by Rick Yugler, featured an address by Chief Justice Paul De Muniz and included panel presentations on world perspectives on the rule of law. With that conference completed, the department's event staff is now focused on the Future of the Legal Profession conference set for September in Bend. The Bulletin team, in addition to regular editorial planning and production, is preparing to survey readers about the many changes made to the Bulletin over the past year. The survey results will be used to refine both the design and editorial content of the magazine. Other projects recently completed or underway include: a media relations program 'Building a Culture of Dialogue,' which brings together members of the media, judges, prosecutors and defense lawyers to discuss media coverage of high-profile criminal cases; reporting on hourly rate surveys commissioned by bar sections as companions to the recent Economic Survey; production of two Legal Links cable TV programs on animal law; and completion of the biennial Tel-Law update process.

RIS has hired a new bilingual Referral & Information Services Assistant, Selena Somarriba, to replace departing bilingual Referral & Information Services Assistant Dario Aguilar-Gamez. RIS strives to increase the FTE level of Spanish-speaking RIS staff to match increases in the number of Spanish-speaking callers and in overall Latino population growth (57.9%, nationally; 166.2% increase in Oregon -- as of the last census). RIS is now at a 1.8 FTE level of Spanish-speaking staff. RIS is also in the midst of its renewal and registration period for the Lawyer Referral Service. All registration and subject matter qualification forms have been updated and posted to the bar's website in a convenient fill-in-and-print PDF format. In addition, RIS sent all renewal notices in electronic format this year, moving one step closer to an entirely paperless process and realizing savings in staff resource allocation and postage and printing costs.

CLE Seminars: CLE Seminars has successfully webcast four live half-day seminars from the new OSB Center. The technology (via a third party provider) allows registrants to watch a

live seminar from their computers and ask questions via email. The evaluations from past participants indicate a very high level of satisfaction with this format. While not all seminars and seminar locations are conducive to webcasting, it is expected that many of the seminars sponsored by the CLE Seminars Department and that are held at the OSB Center will be available to members via webcast. Another familiar technology, online registration, should be ready for the start of the department's busiest season in September. A soft launch is targeted for the end of June. While most seminars will have online registration, some seminars with special pricing or eligibility restrictions will continue to be handled through the CLE Service Center.

Discipline: The SPRB continues to meet monthly to review disciplinary complaints and oversee prosecutions. The last meeting was on June 13, 2008, at which time 17 matters were on the board's agenda. The SPRB meets next in Ashland on July 12, 2008. Thirty-four disciplinary proceedings have been concluded thus far in 2008. This includes one contested case opinion issued by the Supreme Court (a suspension), approval by the court of 11 Form B resignations (already more than the Form B average for an entire year), and approval of five stipulations for suspensions by the court. It also includes four contested cases decided by trial panels with no subsequent appeal (two disbarments, one suspension and one dismissal), and 12 stipulations for discipline approved by the Disciplinary Board (three suspensions and nine reprimands). One case has been given diversion treatment by the SPRB. Trial panels recently issued opinions in four additional cases, but the time in which either party may seek review by the court has not yet run. Nine other disciplinary cases presently are under advisement before trial panels. The Supreme Court recently approved the recommendation of the Board of Governors to conditionally reinstate Teresa Kaiser. The more routine BR 8.1 reinstatement recommendations made by the board at its last meeting were also approved by the court. 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 July.

Facilities: 20/20 Institute, a laser eye surgery center, has signed a 64-month lease to occupy 6,015 rsf on the southwest side of the first floor. It expects to occupy the space by August 1. The 20/20 sign will be on the building third level to the right of the front entrance. After four months of rent adjustments, 20/20's rent is \$29.00 per rsf, an amount above the \$26.50 stated in the December 2006 amendment with Opus. Once Opus sells the building to the bar, this rent accrues to the bar, but it also will generate a higher sales price, as dictated by the terms of the same amendment. There are no active prospects for the other vacant space on the first and third floor.

The punch list is short and includes mostly wrapping up on doors, the security system, window shades, and other loose ends. Almost all common area signs, plants, and art are installed. The operating expense invoice from Opus is in line with the budget. Opus adjusts the budget every six months and will have an adjustment after June 30. The bar is

paying a small amount of property taxes (for the assessment prior to July 1, 2008) and is waiting for Washington County's decision on the bar's property tax exemption.

Bar staff are developing guidelines for renting meeting rooms. There has been an active interest in the conference center and other rooms from members for hearings or depositions and other unrelated organizations, including 20/20 Institute.

IDT developed the signage for the new building which was completed with the addition of the lobby directory and maps, building dedication plaques, other directional and information signs, and a new monument sign. Photographs of Oregon rivers were added to the conference rooms named for the various rivers. Plants and artwork were added to the lobbies on each floor and a gallery of OSB presidents' photos was added along the main stairway.

Fee Arbitration: The program continues to run smoothly. Requests for arbitration remain at the same level as in recent years.

General Counsel: Our challenge to the ballot title on jury nullification was received with favor by the Supreme Court, which instructed the AGs office to revise the caption and "yes" statements. We continue to work with the BOG on legal and policy issues. 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. The Out-of-State-Lawyers Study Group has proposed a change to the bar act and will be making additional recommendations relating to "admission by motion." General Counsel is working with the Advertising Task Force, which anticipates having a report and recommendations for the BOG in September or November. There are no significant legal matters facing the bar at this time, although appeals are pending in some matters. 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 - CLE Seminars Production Assistant, Administrative Assistant - Human Resources, and RIS Assistant (Bilingual). Positions open - Affirmative Action Program Administrative Assistant (recruitment has not begun), Receptionist, and Executive Director. This year's supervisor evaluation survey is now complete and results are being prepared for review. Employees have received a statement describing the full cost of all their benefits. The workers' compensation policy was renewed with a 5.26% premium decrease. The employment practices liability policy was renewed with a 4.85% premium decrease.

Information Technology Department: IDT tech efforts during the second quarter centered around settling into the new building and shepherding solutions for a few remaining issues. Fax lines had been problematic since the move and we worked closely with Integra who ultimately took responsibility for and fixed the problem by having new lines installed by Verizon. • Programming efforts were focused on the new CAO/DCO program this quarter. The CAO module is in full use and programming on the remaining DCO modules is close to completion. We automated a number of the manual database processes required for online elections and created new menus for use by the Member Services department staff. Web programming efforts centered on the online seminar registration system which is in soft launch mode now with live beta testing through the end of the July and a full launch with the fall CLE programs. The system will be used as well for bar events such as the Futures Conference and OLIO events. Work progressed on the online members profile and the second phase of the site will launch in the next few weeks as we complete work on the backend data collection tables so members can create their customized communications profile. All of the web pages related to discipline were updated in a collaborative effort with the DCO department staff. New online forms were added to facilitate the LRS renewal process and this work accompanied the programming project of automating the renewal process and adding new menus for ease of use by the RIS staff. Print design efforts focused on establishing working relationships with the bar's new primary printing facility, Lynx in Salem, Oregon. In addition to the membership directory, section newsletters, bar stationery items and the new LegalLinks brochure line are now produced with Lynx.

Legal Publications: The 2007 supplement to Uniform Criminal Jury Instructions, released in January 2008, has generated revenue of \$28,237 to date. A revision of Documentation of Real Estate Transactions was released at the end of May 2008, and has generated revenue of \$ 30,412 to date. A cumulative supplement to Family Law is scheduled for release in July 2008, and 2008 Oregon Legislation Highlights is scheduled for release in August 2008. The renewal rate for all BarBooks™ subscribers who have passed their initial expiration date continues to be 61% for sole practitioners and 90% - 100% for all other firm sizes. BarBooks™ revenue for 2008 to date is \$317,126, based on a mix of deferred, renewal, and new subscription revenue. Deferred revenue for 2009 is already \$28,399. 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 BOG approved the recommendation forwarded by the Association of Legal Services regarding the \$750,000 general fund appropriation. Approximately half of the funds were disbursed to legal aid pursuant to the BOG approved recommendation. Lane County Law and Advocacy Center in Eugene has been contacted to have a peer review conducted in July, 2008. The Loan Repayment Assistance Program (LRAP) chose seven loan recipients. All 2007 recipients returned their annual certifications and their loans have been forgiven for 2007. The 2007 and 2008 recipients have signed their

loan agreements and the loan proceeds will be disbursed to the recipients on June 19. The Pro Bono Committee forwarded a recommendation to the BOG's Access to Justice Committee asking the committee to recommend that the BOG approve adoption of ABA Model Rule 6.1 Pro Bono Aspirational Standard.

Member Services: Planning for the Leadership College July session in Pendleton continues. The topic is Sustainability. Fellows and Leadership College Advisory Board members will take a shuttle to and from Pendleton. The session features dinner at the Tamastlikt Cultural Institute and a presentation by Tribal Chairman Minthorn. The exhibits at the Institute will be open during the social and dinner for the Fellows to view. The public member recruitment process continues with nine public members being recruited. As of June 17, 3 public member applications have been received.

MCLE: On June 5, seventeen members were suspended for failure to comply with the MCLE rules. Over 2,700 accreditation applications have been processed so far this year. Jenni Abalan, MCLE Program Assistant, began her half-time schedule on April 1 and will continue working half-time through September. The MCLE Committee will meet on Friday, June 20 to discuss three requests for review.

Public Affairs: On behalf of the OSB Board of Governors, the Public Affairs Committee forwarded its package of 27 Law Improvement proposals to Legislative Counsel's Office for pre-session filing and introduction for the 2009 Legislative Session. Outreach to both internal and external interest groups will take place over the next few months. Public Affairs and CLE Publications are preparing a February Special Session edition of the Legislation Highlights Notebook summarizing the highlights of the special session. Authors and editors have been selected and materials distributed. The publication should be ready for distribution sometime near the end of summer. Public Affairs will also be revisiting the Appellate Process Review Committee Task Force report recommendations and developing an update for board review in the near future. The OSB/OJD Task Force on Oregon eCourt Implementation has met twice to assist the court in developing strategies to educate and train lawyers about implementation of the Oregon eCourt project. The Supreme Court issued its opinion regarding Initiative Petition #17 on jury nullification and the AG has issued a modified ballot title as well. Public Affairs recommended against any further action on the matter.

Professional/Community Development

Clackamas Community College: I am working with a group of retired community college presidents on a video history project. It is coming along slowly but surely.

Art Institute of Portland: At our May meeting, we decided to explore accreditation of a new culinary program. Portland seems to be a mecca for foodies.

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Status of Actions
Board of Governors Meetings
Updated – June 19, 2008

Date	Action	Assg. to	Completion
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	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.
May 9-10	Finalize and distribute SLAC/OAAP report	Helen	DONE
May 9-10	Forward concept of Limited Admission of Foreign Lawyers as House Counsel to the BBX along with the board's concerns	Sylvia	DONE Believed to be discussed by BBX on 6/13.
May 9-10	Distribute General Fund appropriation to legal services providers.	Judith	DONE
May 9-10	Record lease amendment.	Rod	DONE
May 9-10	Approval of staggered terms for new board members if legislation passes.		
May 9-10	Prepare change in HOD rule for alternate delegates for HOD meeting.	Sylvia	In process.
May 9-10	Implement change to Bar Bylaw 7.102 to clarify borrowing authority.	Sylvia	DONE
May 9-10	Implement change to Standard Section Bylaws regarding judicial endorsements.	Margaret	DONE
May 9-10	Notify appointees to e-Court Implementation Task Force.	Susan	DONE
May 9-10	Notify sections of law improvement package approval.	Susan	DONE
May 9-10	Implement decisions on CSF claims (open and consent).	Sylvia	DONE
May 9-10	Finalize minutes approved on consent with one change.	Teresa	DONE
May 9-10	Notify appointees for various groups.	Danielle	DONE

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Minutes
Access to Justice Committee
OSB Board of Governors
June 13, 2008
Oregon State Bar Center, Tigard

Committee Members Present: Terry Wright (Chair), Rick Yugler, Robert M. Lehner, Bob Vieira; **Staff:** Judith Baker, Cathy Petrecca; **Guest:** Maya Crawford

1. Minutes of the May 9, 2008 Meeting.

The minutes were not submitted for approval.

2. ABA Model Rule 6.1 Pro Bono Aspirational Standard

Maya Crawford, Chair of the OSB Pro Bono Committee attended the meeting to present its recommendation that the BOG support the adoption of ABA Model Rule 6.1 into the Oregon Rules of Professional Conduct and forward that recommendation to the HOD and the Supreme Court. Maya began her presentation by highlighting the primary effect the change will have. It will move the OSB's pro bono aspirational standard from the Bylaws, a relatively obscure document, to the RPC, a very visible document for the state's lawyers. It will reduce the overall number of hours to which each Oregon lawyer should aspire from 80 to 50. It will encourage that a "substantial majority" of those 50 hours be provided to persons of limited means or organizations that serve them, whereas Section 13.1 calls for lawyers to handle between 20 and 40 hours, or two cases, for the poor. It will encourage lawyers to make financial contributions to legal aid organizations in addition to, rather than in lieu of, the direct provision of pro bono services.

Maya further outlined the benefits of replacing Bylaws Section 13.1 with Rule 6.1. She said it will increase the visibility of the OSB's pro bono standard, both from the publicity surrounding the addition of Rule 6.1 and, in the longer term, the presence of Rule 6.1 in the RPC. It will increase Oregon's consistency with other states. Oregon is one of six states that have not adopted rule 6.1. Currently the only states other than Oregon that have not adopted some version of Rule 6.1 are California (voluntary bar), New York (voluntary bar), Texas, Virginia and the District of Columbia. Those are all very large bars that do not have much in common with Oregon's bar. It will hopefully improve the rate of voluntary reporting of pro bono hours to the OSB.

Many Oregon law firms that track the pro bono hours of their attorneys already do so using the criteria of Rule 6.1. A primary reason for this is that the National Association for Law Placement (NALP) requires information on a firm's pro bono activities that corresponds to Rule 6.1. Currently, for those firms to report pro bono hours to the OSB, they must complete a time-consuming conversion of hours tracked using Rule 6.1 to an inventory of hours that meet the categories of Bylaws Section 13.1. This is a good year to consider a rule change for the pro bono aspirational standard as it will coincide with efforts by the judiciary to amend the judicial canons to encourage more pro bono work by judges. It will also coordinate well with efforts by the

Access to Justice Committee to collect pro bono reporting information with annual dues statements. In short, the present political environment seems favorably inclined. Finally, Pro bono resources should increase if lawyers both provide services and make financial contributions, rather than the "either/or" currently promoted by Bylaws Section 13.1.

Rick Yugler commented that the bar should conduct its pro bono voluntary reporting in conjunction with the annual membership dues mailing in December. It will do two things. One it will make the report from more visible to members and it will be more likely that attorneys will make a donation to legal service organizations at the end of the year when seeking to make charitable donations.

Maya also spoke to the anticipated opposition to adopting Rule 6.1. She said the committee predicts that opposition to the proposed change will focus on an argument that the change is a step in the direction of eventually having a mandatory pro bono obligation in Oregon. It is understandable that a proposal to add a pro bono aspirational standard to the RPC appears to be a move in this direction, given that disciplinary action can be taken against lawyers for violating the RPC. However, Maya explained, that the history of Rule 6.1 and the ABA Model Rules of Professional Conduct show that Rule 6.1 is meant to be aspirational in nature and cannot form the basis for disciplinary action. In fact, the adopted comments to Rule 6.1 from the ABA contain the following direct statement: "Comment [12] The responsibility set forth in this Rule is not intended to be enforced through the disciplinary process." This reflects the ABA's recognition that its model rules are partly obligatory and disciplinary and partly only descriptive of a lawyer's role.

Maya emphasized that Rule 6.1 has not only been adopted by 44 states as an aspirational pro bono standard but is also the pro bono standard taught in law schools as something lawyers aspire to. Judith Baker pointed out that one of the main differences between Bylaw 13.1 and Rule 6.1 is that Bylaw 13.1 allows non legal public service to count as part of the pro bono aspirational standard and 6.1 does not.

ACTION: The committee members present as well as Rick Yugler agreed with the recommendation of the Pro Bono Committee. Since the committee did not have a quorum the members present decided to forward a recommendation to the next BOG meeting with committee approval taking place the morning of the BOG meeting.

3. LRAP

Terry Wright reported that the Budget and Finance Committee is recommending that the bar's general fund pay for the LRAP's administrative expenses beginning in 2009. She also reported that Karen Garst thought asking for a dues increase in 2009 for LRAP would be too soon. She recommended that LRAP should ask for a dues increase when the next request is scheduled in 2011.

4. Next Meeting

The next meeting will be at the bar center in Tigard on July 18, 2008.

Minutes
Budget & Finance Committee
June 13, 2008
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Ward Greene, chair; Gerry Gaydos; Bette Worcester; Bob Lehner. **Other BOG Members:** Rick Yugler; Kathy Evans; Bob Vieira. **Staff:** Karen Garst; Sylvia Stevens; Rod Wegener.

1. Minutes – May 9, 2008 Committee Meeting

The minutes of the May 9, 2008 meeting were approved.

2. Financial Report – May 31, 2008

Mr. Wegener distributed a copy of the May 31, 2008 financial report at the meeting. Although there still is a positive budget variance, it dropped considerably from April. Mr. Wegener pointed out two activities of greater than expected negative cash flow with the statements on Fanno Creek Place and the slow sales of printed legal publications.

The comments on the members' use of credit cards to purchase bar products and services was made in conjunction with the next item on the agenda, the auditor's comments on the OSB technology environment.

3. Review of Letter from Moss Adams on OSB Technology Environment

The committee discussed in executive session the May 5, 2008 letter from Moss Adams entitled "Confidential report on the technology environment" and the June 5 response to the committee from the executive director and CFO. The letter from Moss Adams originated from its audit of the bar's financial statements and the impact of the bar's technology environment on the bar's internal control or other financial functions. The bar's letter states the bar has or will address all the issues in the Moss Adams' letter. If Moss Adams performs the next financial audit of the bar, it will evaluate the bar's compliance with its statements in the letter.

4. New Bar Center

There was no additional information on the bar center other than that printed on the agenda.

5. OSB Online Legal Research Library

There was no additional information on the online legal research library other than that printed on the agenda.

6. Request from the Access to Justice Committee

By consensus, the committee agreed to transfer all administrative costs of the LRAP program to the bar's general fund, so all revenue of the program can be allocated to grants. The practice will begin with the 2009 budget year.

7. First Look at 2009 Budget

In addition to the items listed in the agenda, other potential matters to discuss for funding on the 2009 budget were charging more for the bar exam, increasing the member fee by \$5.00 dedicated to LRAP, and additional expenses for Public Affairs if the legislature goes to a session every year.

8. Next committee meeting

If a meeting is needed, the committee will meet next on July 18 prior to the board meeting at the bar center.

Policy and Governance Committee Minutes – May 9, 2008

Committee members: Chair – Tim Gerking, Vice-Chair – Bette Worcester, Bob Lehner, Audrey Matsumonji, and Bob Vieira. **Staff:** Sylvia Stevens and Karen Garst.

1. Minutes

Minutes from the April 4, 2008 meeting were approved as drafted.

2. Access to Justice – Content Committee

The committee reviewed the draft letter to the Diversity Section regarding their proposal 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 letter stated the committee's position to not make it mandatory to integrate AtJ issues into all Oregon Courses and asked the section to devise a plan for the first two issues. The committee made minor changes and approved the letter.

ACTION: Send letter to section.

3. Judicial Endorsements

The committee reviewed their proposal on this matter and decided that having either the board make judicial endorsements or permit sections to do so with approval of the board was not in the best interest of the bar. The committee rescinded its recommendation in favor of the proposed bylaw change. Tim was asked to attend the Public Affairs Committee meeting because they too opposed the change.

ACTION: Rescind recommendation of bylaw change to the full board.

4. Next Meeting

The next meeting of the committee will be at the bar center in Tigard on June 13. The major focus will be on the CLE programs in a joint meeting with the Member Services Committee.

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**Policy and Governance Committee
Member Services Committee
Joint Meeting – CLE Seminars and Legal Publications Issues
Minutes – June 13, 2008**

Committee members: Policy and Governance - Bette Worcester, Kathy Evans, Ward Greene, Bob Lehner, and Bob Vieira. Member Services Committee – Ann Fisher, Gerry Gaydos, Gina Johnnie, Kellie Johnson, and Terry Wright. **Guest:** Willard Chi. **Staff:** Denise Cline, Susan Grabe, Karen Lee, Linda Kruschke, Margaret Robinson, Sylvia Stevens and Karen Garst.

The two committees met jointly to discuss the issues surrounding the self-supporting policy for these two programs.

CLE Seminars

Karen Lee outlined the philosophy behind the programming for the department – first as a member service assuring CLE seminars that are accessible to all bar members and second as a self-supporting department generating revenue to cover all direct and indirect expenses. The ICA, or indirect cost accounting, accounts for about 40% of the expenses. As one example, Washington State Bar Association's ICA is about 9% of expenses.

Karen Garst explained how the ICA is calculated. While a formula is used to attribute expenses of Human Resources, IT, and other costs to each department, the formula reflects the use of the department of these resources either by FTE, square footage, etc. She emphasized the most important aspect of budgeting for these programs is to have accurate forecasting so that the overall bar budget does not run an unanticipated deficit at the end of the year. Heretofore, these departments have indicated a "break-even" budget even when that was not achievable.

Legal Publications

Linda Kruschke stated that it was difficult, because of the vagaries of editorial boards and volunteers, to determine exactly which books would come out each year. Some titles are not going to sell well, such as Juvenile Law, but they are very important for the bar's legal publications library nonetheless. She indicated that if the program were a stand-alone business, there would be some expenses it would not likely incur such as a dedicated receptionist.

Discussion

Board members raised the following points.

- It is important to work with sections and incorporate their goals in both of these programs.

- Similar to public transportation issues, some costs cannot be paid for by the service itself and are rightly borne by the general fund as an overall public benefit.
- Policy issues involve either charging more for the services and possibly pricing the products out of the market or subsidizing the costs through non-product revenue.
- There were years when the programs did generate enough revenue even when costs were raised, perhaps costs should be raised higher. Lawyers understand cost increases.
- ICA costs have remained steady for both programs. Seminars have seen more competition while keeping expenses down. Changes outlined in memo are good ideas. Publications have seen increased staff costs while revenue has grown less. Are there enough new publications?
- CLE Seminars (and publications) need to be fairly priced in order to help lawyers and protect the public. Access for solos, new lawyers, and government lawyers needs to be available at a reasonable price especially because of MCLE.
- Some competitors such as OLI are charging lower prices than OSB which must be taken into consideration.

Policy issues other than financial

Karen Lee outlined the current policy to allow members to use a video or seminar for a period of up to five years. This allows members to "re-use" a video in two reporting cycles. The person would have to listen to the audio or video again but it would be the same material they listened to and reported on in a previous reporting cycle. In addition, there is no prohibition from one person buying a video and sharing it with others. This obviously has an impact on revenue. Kellie mentioned that in the DA's office they often view the same tape or more often conduct CLE seminars in house or go to ODAA's seminars because OSB costs are too high. Board members expressed a desire to look at a policy change in this area.

More information

The board members requested the following additional information to be provided at another joint meeting to be held on August 15 with the interim committee meetings.

- A comparison of Washington's and Oregon's calculation of ICA.
- Restrictions on seminar materials in other states.
- Prices of competitors.

Next meeting

There will be another joint meeting on August 15.

Policy and Governance Committee Minutes – June 13, 2008

Committee members: Vice – Chair - Bette Worcester, Kathy Evans, Ward Greene, Bob Lehner, and Bob Vieira. **Guest:** Willard Chi. **Staff:** Helen Hierschbiel, Sylvia Stevens, and Karen Garst.

1. Minutes

Minutes from May 9 were approved as presented.

2. CLE Seminars and Legal Publications

A joint meeting was held with the Member Services Committee regarding CLE Seminars and Legal Publications policy issues, in particular, the self-supporting policy. Another joint meeting will be held on August 15.

3. HOD mileage

The committee approved a bylaw change to implement the HOD resolution to pay HOD members for mileage expenses.

ACTION: Forward committee recommendation to the full board at its July meeting.

4. Definition of who may practice law in Oregon State Bar

The Out-of-State Lawyer Study Group recommended changes to the statute governing the definition of who may practice law in Oregon. The change would stipulate that if a lawyer is physically present in Oregon, they are considered to be practicing law in Oregon even if they do not have any Oregon clients. A couple of suggestions were made to the language including the addition of an LLC as an entity.

ACTION: Sylvia will forward a revised version to the committee prior to the meeting and the revision will be placed on the board's agenda at its July meeting. The recommendation will require a statutory change and will be incorporated as an amendment to the bar's housekeeping bill during the 2009 Legislature.

5. Lawyer/client exception to confidentiality

The committee considered a staff proposal to change RPC 1.6 in order to allow an exception to client confidentiality during a probation, diversion, or other monitoring agreement for the purposes of allowing the monitor to be sure that the lawyer is following the dictates of the agreement in regard to his/her clients. It was clarified that the monitor has to preserve the lawyer/client privilege to information he/she is privy to. Committee members suggested some revisions. Sylvia will forward a revised

version to the committee prior to the meeting and the revision will be placed on the board's agenda at its July meeting.

ACTION: Forward to board after committee reviews language changes through e-mail. After board approves, this will be placed in 2008 HOD agenda.

Next meeting

The next meeting will be held in conjunction with the board meeting on July 18 at the bar center.

Public Affairs Committee
OSB Board of Governors
June 13, 2008 Minutes
Portland, Oregon

Committee Members Present: Ann Fisher, Gerry Gaydos, Kellie Johnson, Steve Piucci, and Rick Yugler. Others present: Willard Chi Staff: Susan Grabe.

1. **Minutes.** The minutes from the May 9, 2008 meeting were approved.
2. **Political Update.** The committee reviewed the materials and discussed the make up of the House (31D – 29R) and Senate (18D – 11R with 1 independent) and the potential for change in both chambers, but primarily in the House.
3. **Initiatives.**

IP#17 re Jury Nullification. After review of the supreme court opinion relating to jury nullification and the modified ballot title, PAC decided not to pursue any further action on the ballot title.

IP#51. Rick Yugler reviewed the current ballot measure strategy regarding IP# 51 and 53 re caps on contingent fees and sanctions. The Past President's Council will sign a fundraising letter that will be paid for and mailed out by the "No against One-sided Measures committee".

4. **2009 OSB Priorities.** The committee discussed OSB priorities for the 2009 legislative session including funding for the court system, indigent defense, eCourt initiative, court facilities and the bar's package of law improvement bills. Other issues discussed included the need for increased staffing levels during the legislative session; and the need to consider staffing levels in general if the legislature transitions to annual sessions. The interim has been busy with little down time especially with the special session in February. Interim Committees are now scheduled to meet regularly throughout the summer and fall.
5. **Oregon eCourt implementation.** Rick Yugler informed the committee that the Oregon eCourt project has met twice and appears to moving forward to develop a strategy to educate bar members about e-filing and to coordinate with the courts regarding the best approach to training. Chris Kent will be the board liaison to that task force.
6. **Appellate Review Committee Report.** Gerry Gaydos provided the committee with an overview and some historical background on the Appellate Review Committee Report. He noted the sensitive nature of the issue and the importance of maintaining a strong working relationship with the court as well as acknowledging the transition of the court with the leadership of a new chief justice, the development of performance measures, the Oregon eCourt initiative and numerous other changes

that have transformed the court system in Oregon in a relatively short time. Staff will prepare an update for PAC review at its next meeting.

7. **Eastern Oregon Tour.** Rick Yugler informed the committee that the Chief Justice was pleased with the favorable press that the bar's tour of Eastern Oregon bars elicited
8. **Public Officials Compensation Commission.** The Department of Administrative Services has developed a website for the commission and will be staffing it. Most appointments have been made and an ambitious meeting schedule has been put in place to ensure that the commission recommendations can be included in the Governor's budget.
9. **Legislative Counsel's office Copyright issue.** Legislative Counsel's office contacted staff to request the bar either testify or submit a letter in support of LC's Office at the Legislature Counsel Committee meeting on Thursday, June 19. An organization called Justia has posted the ORS on its webpage claiming that Legislative Counsel has no copyright over the ORS. LC has asserted its copyright over the materials and demanded that Justia take it down. After discussion about whether or not LC could legally assert a copyright over the ORS, the bar agreed, at a minimum, to submit a general letter of support for the work Legislative Counsel's office performs in compiling the statutes, maintaining the headers, developing the annotations and indices, etc. as important elements of the statutes.

ACTION: PAC unanimously agreed to submit a general letter of support for the important work Legislative Counsel's Office performs in compiling the statutes, maintaining the headers, developing the annotations and indices, etc.,

Minutes
Public Member Selection Committee
April 4, 2008

Present: Bette Worcester - Chair, Robert Lehner - Vice Chair, Ward Greene, and Robert Vieira

Staff: Danielle Edwards

Absent: Gina Johnnie

Member Selection Timeline

The committee approved the following timeline:

April 9	Issue Press Release
June 20	Application deadline
As applications come in	Send reference checks
July 7	Send applications and reference checks to committee
July 7-18	Committee members review candidates in preparation for meeting
July 18	Committee meeting to select finalists <ul style="list-style-type: none">- Review interview questions- Select interview date and time
July 21-25	Schedule candidate interviews
August 8	Hold interviews
August 22	Second interview/backup day if needed
August 29	BOG candidate recommendation memo due
September 11	Board meeting <ul style="list-style-type: none">- Vote on public member candidate

Recruitment

No changes will be made to last year's recruitment plan or application process. Members of the committee expressed an interest in recruiting a public member from the business community possibly in the area of banking.

Next meeting

The committee will review interview questions and select candidates to interview at its July 18, 2008 meeting.

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OREGON STATE BAR
Client Security - 113
For the Five Months Ending May 31, 2008

Description	May 2008	YTD 2008	Budget 2008	% of Budget	May Pr Yr	YTD Pr Yr
REVENUE						
Interest	\$2,057	\$12,251	\$32,100	38.2%	\$3,192	\$16,980
Judgments	2,133	3,729	5,000	74.6%	4,080	13,250
Membership Fees	572	66,192	69,700	95.0%	820	64,800
TOTAL REVENUE	4,762	82,172	106,800	76.9%	8,092	95,030
EXPENSES						
SALARIES & BENEFITS						
Employee Salaries - Regular	3,326	12,202	29,000	42.1%	3,228	11,804
Employee Taxes & Benefits - Reg	951	3,803	8,900	42.7%	941	3,514
TOTAL SALARIES & BENEFITS	4,277	16,005	37,900	42.2%	4,169	15,318
DIRECT PROGRAM						
Claims	46,825	50,525	150,000	33.7%	0	69,671
Collection Fees	0	0	1,000	0.0%	0	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
TOTAL DIRECT PROGRAM EXPEN	46,825	50,525	152,650	33.1%	0	69,861
GENERAL & ADMINISTRATIVE						
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	12	71	250	28.4%	0	49
Professional Dues	0	0	200	0.0%	0	72
Telephone	14	53	100	53.0%	0	12
Training & Education	0	120	375	32.0%	0	0
Staff Travel & Expense	0	258	683	37.8%	0	0
TOTAL G & A	26	502	2,108	23.8%	0	163
TOTAL EXPENSE	51,128	67,032	192,658	34.8%	4,169	85,342
NET REVENUE (EXPENSE)	(46,366)	15,140	(85,858)		3,923	9,688
Indirect Cost Allocation	784	3,920	9,406		735	3,676
NET REV (EXP) AFTER ICA	(47,150)	11,220	(95,264)		3,188	6,012
Fund Balance beginning of year		712,886				
Ending Fund Balance		724,106				

CSF CLAIM HISTORY

CLAIM #	NAME	ATTORNEY	CLAIM	PENDING	AMOUNT PAID	DATE PAID	DATE DENIED W/DRAWN	UNPAID BALANCE	ASSIGNED TO	
04-10	Jensen, Skip and Diana	Carroll, Stephen CP	\$25,000.00				6/22/2007	\$0.00		
06-02	Vincent, Tami & Jordan, Shaun	Bowles, John P.	\$1,048.75		\$1,048.75	3/16/2007		\$0.00		
06-04	Casey, Laura B.	Tripp, Dennis Estate of	\$239,939.74		\$50,000.00	3/22/2007		\$0.00		
06-09	Zaragoza, Patrick	Morey, Neil	\$535.00		\$535.00	3/16/2007		\$0.00		
06-10	Skarzinskas, Regina	Feest, Glenn	\$15,227.60		\$0.00		3/16/2007	\$0.00		
06-11	Shook, Steve	Kent, Bill	\$1,150.00		\$1,150.00	3/16/2007		\$0.00		
06-12	Borden, Julia (c/o K. Chipman)	Vause, Russell E	\$6,937.13		\$6,937.13	3/29/2007		\$0.00		
06-13	Butler and Dalke Families	Doyle, Daniel A	\$3,450.00		\$10,000.00	4/4/2007		\$0.00		
06-14	Delepierre, Duane V.	Okai, Thomas	\$22,500.00		\$22,500.00	11/21/2007		\$0.00		
07-01	Robleto, Miguel	Burrows, Michelle	\$5,000.00		\$0.00		6/20/2007	\$0.00		
07-02	Jones, Dolores	Skagen, Christopher	\$73,452.00		\$0.00		3/5/2007	\$0.00		
07-03	Jones, Harold and Mary	Judy, William S	\$40,000.00		\$40,000.00	6/2/2008		\$0.00		
07-04	Casey, Kimberly & Christina	Tripp, Dennis Estate of	\$101,454.91	\$50,000.00				\$50,000.00	Alterman	
07-05	Olshove, James	Tripp, Dennis Estate of	\$2,700.00		\$2,700.00	6/2/2008		\$0.00		
07-06	Calderwood, Donald & Shirlee	Tripp, Dennis Estate of	\$18,649.26		\$6,044.00	10/11/2007		\$0.00		
07-07	Douglas, Jeremy	Dunn, Timothy	\$7,731.00		\$0.00		5/9/2008	\$0.00		
07-08	Markuson, Elizabeth	U'Ren, Matthew	\$3,750.00				2/4/2008	\$0.00		
07-09	Torres-Rio, Cirenio	Chadwick, Cheryl B	\$3,000.00	\$3,000.00				\$3,000.00	Rain	
07-10	Rothenfluch, Gerald	Knapp, Thomas E.	-\$423,123.00				5/9/2008	\$0.00		
07-11	Myers, Joel	Kent, Bill	\$750.00		\$0.00		10/13/2007	\$0.00		
07-12	Drews, Laurie R	Tombleson, David	\$750.00		\$750.00	11/21/2007		\$0.00		
07-13	Regennitter, David W.	Wetsel, Todd	\$12,000.00		\$0.00		10/13/2007	\$0.00		
07-14	Bespflug, Joni Suzanne	Wetsel, Todd	\$1,000.00		\$1,000.00	11/21/2007		\$0.00		
07-15	Jones, Kenneth Byron	Dunn, Timothy	\$1,800.00				5/9/2008	\$0.00		
07-16	Nagorski, John Jr.	White, Betty Jo	\$12,260.96		\$7,825.06	11/21/2007		\$0.00		
07-17	Cone, Ellis A.	Kent, Bill	\$365.00	\$365.00				\$365.00	Asphaug	
07-18	Bailey, Pamela Anne	Cumfer, Eric M.	\$719.77		\$719.77	5/1/2008		\$0.00	Naucler	
07-19	Kaa, Eva	Dunn, Timothy	\$1,000.00				2/22/2008	\$0.00		
07-20	Bothwick, Melody	Dunn, Timothy	\$400.00	\$400.00				\$400.00	Marshall	
07-21	Clayton, Daniel	Childs, Will	\$1,200.00	\$1,200.00	\$1,200.00	3/27/2008		\$0.00	Barrack	
07-22	Scham, Russell	Mason, Beth	\$45,428.50		\$0.00		5/9/2008	\$0.00		
07-23	Keimig, Lloyd & Ann Marie	Childs, Will	\$2,500.00		\$2,500.00	3/27/2008		\$0.00	Barrack	
07-24	Hollien, Mona Rae	Dunn, Timothy	\$700.00	\$700.00				\$700.00	Marshall	
07-25	Coyote, Ulises	Dunn, Timothy	\$4,000.00	\$4,000.00				\$4,000.00	Marshall	
07-26	Pozsgai, Frank	Dunn, Timothy	\$1,030.00	\$1,030.00				\$1,030.00	Marshall	
07-27	Roby, Rick	Paulson, Lauren	\$3,000.00	\$3,000.00				\$3,000.00	Chicoine	
07-28	Tucker, Larry & Teresa	Doyle, Stephen J	\$655.00		\$0.00		3/8/2008	\$0.00		
08-01	Jones, John Robert	Kent, Bill	\$1,000.00	\$1,000.00				\$1,000.00	Asphaug	
08-02	Gasvoda, Eric	Wetsel, Todd	\$130,305.43	\$50,000.00				\$50,000.00	Quintero	
08-03	O'Neil, Martin	McGaughey, Morgain	\$3,000.00	\$3,000.00				\$3,000.00	Foster	
08-04	Hemple, Gerald	Dunn, Dennis	\$7,000.00	\$7,000.00				\$7,000.00	Naucler	
08-05	Fowler, Vickie & Michael	Tripp, Dennis	\$4,000.00		\$2,400.00	5/27/2008		\$0.00		
08-06	Sanderson, Heidi	Hockett, Sharon	\$3,000.00	\$3,000.00				\$3,000.00	Michelsen	
08-07	Gomez, Josephine	Woodard, Eric	\$16,500.00	\$0.00			4/26/2008	\$0.00		
08-08	Story, Joanna	Dunn, Timothy	\$1,500.00	\$1,500.00				\$1,500.00	Barrack	
08-09	Moore, Terry Lynn	Miller, Jeffrey	\$1,000.00		\$1,000.00	6/2/2008		\$0.00		
08-10	Owens, Robert	Childs, Will	\$1,195.00	\$1,195.00				\$1,195.00	Barrack	
08-11	Swan, Frances	McGaughey, Morgain	\$11,035.00	\$11,035.00				\$11,035.00	Naucler	
08-12	Green, Robert & Leah	Dunn, Timothy	\$200.00	\$200.00				\$200.00	Barrack	
08-13	Hines Linda & Alan	Vance, Calvin	30,000.00	30,000.00				\$30,000.00	Alterman	
08-14	Lillard, Kevin	McGaughey, Morgain	1,250.00	1,250.00				\$1,250.00	Foster	
08-15	Johnson, Eric Lyndon	Oh, John	500.00	500.00				\$500.00	Eldred	
08-16	Wanous, Constance Dee	Miller, Jeffrey	1,700.00	1,700.00				\$1,700.00	Eldred	
08-17	Adams, William	Brown, Glenn C	5,000.00	5,000.00				\$5,000.00	Michelson	
08-18	Rhodes, Eric	Shinn, Michael R	40,000.00	40,000.00				\$40,000.00	Chicoine	
08-19	Friesen, Larry and Uhde, Denise	Smith, Robert J	1,500.00	1,500.00				\$1,500.00	Rain	
08-20	Johnson, Heidi Teeter	Miller, Jeffrey	1,800.00	1,800.00				\$1,800.00	Eldred	
08-21	Dorszynski, Robert	White, Betty Jo	26,981.35	26,981.35				\$26,981.35	Quintero	
	TOTALS		\$1,372,674.40	\$250,356.35	\$158,309.71			\$249,156.35		
	Funds available for claims and indirect costs allocation as of May 2008								\$724,106.00	
						Fund Excess		\$474,949.65		

2008 JUDGMENTS COLLECTED

Date	Attorney	Payment Received
1/7/2008	Kelley, Phillip	120.00
1/16/2008	Anunsen, Roger	50.00
1/30/2008	Anunsen, Roger	126.00
1/4/2008	Grady, Hugh	200.00
1/4/2008	Kelley, Phillip	120.00
2/22/2008	Anunsen, Roger	126.00
3/4/2008	Kelley, Phillip	120.00
3/11/2008	Martin, Thane	20.00
3/19/2008	Martin, Thane	20.00
3/24/2008	Martin, Thane	20.00
3/25/2008	Roger Anunsen	124.00
3/31/2008	Martin, Thane	20.00
4/2/2008	Kelley, Phillip	120.00
4/7/2008	Martin, Thane	20.00
4/11/2008	Correll, Jon	650.00
4/14/2008	Martin, Thane	20.00
4/30/2008	Martin, Thane	20.00
5/5/2008	Kelley, Phillip	120.00
5/6/2008	Martin, Thane	20.00
5/13/2008	Martin, Thane	20.00
5/15/2008	Bowles, John	1,089.28
5/21/2008	Martin, Thane	20.00
5/29/2008	Martin, Thane	20.00
6/2/2008	Grady, Hugh	200.00
6/2/2008	Kelley, Phillip	120.00
6/4/2008	Martin, Thane	20.00
6/6/2008	Anunsen, Roger	256.00
6/12/2008	Martin, Thane	20.00
6/24/2008	Martin, Thane	20.00
7/2/2008	Martin, Thane	20.00
7/3/2008	Kelley, Phillip	120.00
	Total	\$3,961.28

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PROPOSED 2008 HOD AGENDA ITEM

PROPOSAL TO ENCOURAGE "SUSTAINABILITY"

WHEREAS, public policy issues relating to *dependence upon foreign oil, carbon emissions,* and *sustainability,* have become a matter of public concern; and,

WHEREAS, *energy conservation* and *sustainability* have recognized benefits to Society; *NOW,* therefore be it;

THEREFORE, be it resolved that the Members of the House of Delegates recommend and encourage to the Board of implementation of policies and procedures intended to enhance *sustainability* by:

- Encouraging funding for *optional* use of *video conferencing technology* to reduce motor vehicle travel for routine Court appearances; and,
- Expanding *optional telephonic appearances* by Counsel beyond the current limited availability to Attorneys with offices more than 25 miles from Court.

Proposed HOD Agenda Item
Respectfully submitted by:

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

OSB PARALEGAL CERTIFICATION PROGRAM

WHEREAS, delivery of legal services by Oregon State Bar Members will increasingly depend upon well qualified Paralegals;

WHEREAS, Access to Justice will benefit and depend upon such assistance by well qualified Paralegals;

WHEREAS, unregulated document providers may not have adequate training or qualifications;

THEREFORE, be it resolved that the House of Delegates recommend and encourage to the Board of Governors to study the feasibility of creating an *OSB Paralegal Certification Program*.

Proposed HOD Agenda Item
Respectfully submitted by:

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

PROPOSAL TO AMEND ORS 12.020

WHEREAS, the February 2006 [Issue No. 97] of the Professional Liability Fund publication "**IN BRIEF**" recites that "*filing and service mistakes form a large percentage of the claims handled each year by the Professional Liability Fund*". Service traps generally arise from the requirement in ORS 12.020(1) & ORS 12.020(2) that, in Oregon, for an action to be deemed commenced on the date the Complaint is filed the Summons and Complaint *must be served within 60 days of filing the Complaint*. By providing that an action is deemed commenced upon the filing of the Complaint [rather than upon service of the Complaint] this cause of the documented *large percentage of claims handled each year by the PLF Fund* could be avoided through the following proposed revision to ORS 12.020.

WHEREAS, ORS 12.020 should be amended provides that an action shall be deemed commenced on the date the Complaint is filed;

THEREFORE, be it resolved that the House of Delegates recommend and encourage to the Board of Governors, OSB Legislative Council, and all appropriate OSB Committees to implement policies and procedures intended to provide that an action is deemed commenced upon the filing of the Complaint [rather than upon service of the Complaint].

Proposed HOD Agenda Item
Respectfully submitted by:

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

**PROPOSAL TO AMEND ORCP 7 TO PROVIDE
SERVICE UPON AUTOMOBILE
LIABILITY INSURANCE CARRIERS**

WHEREAS, The Professional Liability Fund often encounters unnecessary issues regarding “service of process”;

WHEREAS, service of process will be simplified, with reduced PLF claims exposure, if ORCP 7D(4) is revised so as to provide for service upon the *automobile liability insurance company that afforded coverage on the date of the subject motor vehicle accident under the Oregon Financial Responsibility Laws for the defendant(s) upon whom service is to be effectuated*;

WHEREAS, ORCP 69A(2) requires service of Summons & Complaint by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail, upon Defendant’s automobile liability insurance carrier before obtaining a Default Judgment; and,

WHEREAS, alternative service of process directly upon the Automobile Liability Insurance Company, insuring the subject Defendant to be served would materially address such service of process issues; now,

THEREFORE, be it resolved that the House of Delegates recommend and encourage the Board of Governors and appropriate OSB Committees study the benefit of alternate service upon Automobile Liability Insurance Companies insuring vehicles involved in motor vehicle accidents. insurance carriers.

Proposed HOD Agenda Item
Respectfully submitted by:

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

**ELIMINATION OF RULE PROHIBITING
POST-TRIAL CONTACT WITH JURORS**

WHEREAS, most other jurisdictions allow contact by Trial Counsel with Jurors Post-Trial;

WHEREAS, Members of the news media have unrestricted access with Jurors post-Trial;

WHEREAS, such feedback is of considerable educational value to Counsel;

WHEREAS, the benefits of such free speech permissive contact outweighs the present blanket prohibition;

THEREFORE, be it resolved that the House of Delegates recommend and encourage to the Board of Governors to seek relaxation of *UTCR 3.120 [Communication with Jurors]* so as to permit conditionally, rather than prohibit, Post-Trial contact by Counsel on condition that such contact does not badger, coerce, or harass Jurors. In other words, the House of Delegates recommends that Post-Trial communication between Counsel and Jurors shall no longer be prohibited nor be subject to the requirements set forth in *UTCR 3.120(2), 3.120(2)(a), and 3.120(2)(b)*.

Proposed HOD Agenda Item
Respectfully submitted by:

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011

RESOLUTION AND RECOMMENDATION
TO CREATE ELECTED STATE OFFICE OF
“CONSUMER INSURANCE ADVOCATE”

WHEREAS, the Oregon Financial Responsibility Statutes make automobile liability insurance *mandatory* for Oregon Consumers;

WHEREAS, Oregon Consumers bear substantial expense for the cost of premiums charged by automobile liability insurance carriers;

WHEREAS, Oregon Consumers should be informed as to both claim payment performance, as well as cost of premiums;

WHEREAS, Oregon Consumers would benefit from public competitive disclosure of pay-out ratios and claim handling performance;

WHEREAS, health insurance coverage for Oregon consumers has also become a significant expense;

WHEREAS, Consumers face difficulties in comparing coverages; claim handling performance; and actual premium costs;

WHEREAS, competitive performance reported by a State elected Insurance Advocate is therefore desirable;

THEREFORE, be it resolved that the House of Delegates recommend and encourage that the Board of Governors support the creation of a Statewide elected office of Oregon Insurance Advocate.

Proposed HOD Agenda Item
Respectfully submitted by:

DANNY LANG, OSB #79007
HOD Delegate - 2008-2011