

**OREGON STATE BAR**  
**MEETING OF THE BOARD OF GOVERNORS**  
**Schedule of Events**  
**June 12, 2009**  
**6/2/2009 7:36 AM**

**Meeting Place**      OSB Center      **Phone:**      503-620-0222  
16037 SW Upper Boones Ferry Rd.  
Tigard, OR 97281-1935

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**Friday, June 12, 2009**



- 7:30 a.m. – 8:00 a.m.      **Appointments Committee** (Johnnie, DiIaconi, Evans, Fisher, Greene, Larson, Piucci, Wright)  
Room – Columbia B
- 8:00 a.m. – 8:30 a.m.      **Access to Justice Committee** (Wright, Garcia, Johnnie, Lord, Matsumonji, Naucler, Vicira)  
Room – Columbia A
- 8:30 a.m. – 9:00 a.m.      **Joint Meeting**  
    **Member Services Committee** (Johnson, Fisher, Gaydos, Johnnie, Larson, Piucci, Wright) \*  
  
    **Policy and Governance Committee** (Evans, DiIaconi, Greene, Kent, Larson, Matsumonji, Naucler) \*\*  
    Room – Columbia B
- 9:00 a.m. – 10:00 a.m.      **Budget and Finance Committee** (Green, Evans, Garcia, Kent, Lord, Naucler) \*  
Room – Columbia A
- 9:00 a.m. – 10:00 a.m.      **Member Services Committee** (Johnson, Fisher, Gaydos, Johnnie, Larson, Piucci, Wright) \*\*  
Room – Columbia B

- 10:00 a.m. – 11:00 a.m.      **Policy and Governance Committee** (Evans, Dilaconi, Greene, Kent, Larson, Matsumonji, Naucler) \*\*  
Room – Columbia A
- 10:00 a.m. – 11:00 a.m.      **Public Affairs Committee** (Piucci, Fisher, Garcia, Gaydos, Johnnie, Johnson, Vieira) \*\* Columbia B  
Room –
- 11:00 a.m. – 12:00 a.m.      **Public Member Selection Committee** (Vieira, Garcia, Lord, Matsumonji, Naucler)  
Room – Columbia A

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

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- No Meeting                      **Appellate Screening Committee**
- No Meeting                      **Executive Director Evaluation Committee**
- 12:00 p.m. – 1:00 p.m.      **BOG Lunch with OTLA and OADC**  
Columbia B
- 1:00 p.m. – 5:00 p.m.      **Board Meeting**  
Columbia B
- 5:30 p.m. – 7:00 p.m.      **Reception with Clackamas County Bar**  
Downstairs Lobby and Columbia A

Business Attire



Casual Attire



Let's Dress Up



**Oregon State Bar**  
**Meeting of the Board of Governors**  
June 12, 2009  
**Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on June 12, 2009, and continue to the morning of June 13, 2009, 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.*

**June 12, 2009**

1. Call to Order/Finalization of the Agenda Action
2. Report of Officers

1:00 p.m.

- A. Report of the President [Mr. Gaydos]
  1. Meeting with Chief Justice Paul J. De Muniz - June 2, 2009 Inform
- B. Report of the President-elect [Ms. Evans]
  1. Miscellaneous Inform
- C. Report of the Executive Director [Ms. Schmid]
  1. Miscellaneous Inform
- D. Oregon New Lawyers Division [Mr. Williamson]
  1. ONLD Report Inform 1
  2. 2009 ONLD Master Calendar Inform 3
3. Board Members' Reports Inform

1:20 p.m.

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

4. Professional Liability Fund [Mr. Zarov]

1:40 p.m.

- A. General Update Inform
- B. Claims Inform
- C. Loss Prevention/OAAP Inform
- D. Excess Program Treaty Date Inform
- E. Financials Inform

5. Special Appearances

1:55 p.m.

- A. ABA Representatives [Judge Adrienne Nelson]
  - 1. 2009 Midyear Meeting of ABA and ABA HOD Inform 5-20

6. Rules and Ethics Opinions

2:05 p.m.

- A. Proposed Amendment to PRC 1.18 Action 21-23
  - *The committee recommends an amendment to RPC 1.18 to conform to the ABA Model Rule.*

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

2:35 p.m.

- A. Client Security Fund [Ms. Lord]
  - 1. CSF 08-41 Wilson (Lehman) Appeal Action 25-29
    - *Review the CSF Committee's denial of Joanne Lehman's claim for reimbursement for monies allegedly misappropriated by Linda J. Wilson.*
- B. Diversity Planning Task Force [Ms. Johnson]
  - 1. DPRF Recommendation Action 31-32
    - *The task force recommends that the board approve diversity functions, diversity program goals, and a new value statement for the Oregon State Bar.*

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

3:00 p.m.

A. Access to Justice Committee [Ms. Wright]

1. ABA Model Rule 6.1 Action 33-48
  - *The committee proposes adoption of ABA Model Rule 6.1, replacing the pro bono standard now contained within the bar's bylaws. Maya Crawford and David Peterson, OSB Pro Bono Committee, will join the board for discussion.*
2. Expansion of the Modest Means Program Action 49-56
  - *The committee recommends revising Modest Means Program policies regarding client eligibility and attorney fees to accommodate program expansion.*
3. Pro Se Assistance in Family Law Inform 57-58
  - *The committee is looking into development of interactive family law forms as well as instructional videos on how to complete the model forms that now exist.*
4. LRAP Update Inform
  - *Ms. Wright will update the board on the LRAP.*

B. Budget and Finance Committee [Mr. Greene]

3:15 p.m.

1. OSB Investment Policy Evaluation Inform 59

C. Policy and Governance Committee [Ms. Evans]

3:25 p.m.

1. Section Grant Applications Action 61-63
  - *The committee recommends adoption of a bylaw establishing standards for section grant applications.*
2. BOG Member Facilitation of HOD Regional Meetings Action 65-68
  - *The committee will provide information to assist BOG members as facilitators of the HOD Regional meetings.*
3. HOD Nominations Action
  - *Consider whether to repeal the HOD rule requiring ten signatures on a nominating petition.*

D. Public Affairs Committee [Mr. Piucci]

3:40 p.m.

- |     |  |        |            |
|-----|--|--------|------------|
| 1.  | Update on 2009 Legislative Session   | Inform | No Exhibit |
|     | ➤ <i>Update on political activities, legislative session, OJD budget, and OSB Law Improvement package.</i> |        |            |
| 9.  | Consent Agenda   | Action | pink       |
| 10. | Default Agenda   | Inform | blue       |
| 11. | Closed Sessions  |        |            |

4:00 p.m.

- |     |  |                   |                    |
|-----|--|-------------------|--------------------|
| A.  | Judicial Session (pursuant to ORS 192.690(1)<br>Reinstatements   | Discuss<br>Action | lavender<br>agenda |
| B.  | Executive Session (pursuant to ORS 192.660(1)(l)<br>and (h) General Counsel/UPL Report                   | Discuss<br>Action | green<br>agenda    |
| 12. | 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  
 June 12, 2009  
 Consent Agenda

9. Consent Agenda

A. Approve Minutes of Date

1. Minutes of Open Session

- |    |               |        |       |
|----|---------------|--------|-------|
| a. | April 3, 2009 | Action | 71-76 |
| b. | May 8, 2009   | Action | 77    |

2. Minutes of Closed Session

- |    |               |        |    |
|----|---------------|--------|----|
| a. | April 3, 2009 | Action | 79 |
|----|---------------|--------|----|

3. Minutes of Judicial Proceedings

- |    |               |        |       |
|----|---------------|--------|-------|
| a. | April 3, 2009 | Action | 81-83 |
|----|---------------|--------|-------|

B.	Appointments Committee	Action	Handout
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➤ *Consider various appointments to committees, councils, and, boards.*

C. Policy and Governance Committee

- |    |                                |        |  |
|----|--------------------------------|--------|--|
| 1. | Proposed Amendment to RPC 1.18 | Action |  |
|----|--------------------------------|--------|--|

D. CSF Claims Recommended for Payment

- |    |                        |         |        |       |
|----|------------------------|---------|--------|-------|
| 1. | 08-27, Dunn (Moynagh)  | \$300   | Action | 85    |
| 2. | 08-28 Oh (Algain)      | \$2,865 | Action | 85-86 |
| 3. | 08-31 Koch (Paresi)    | \$4,691 | Action | 86-87 |
| 4. | 08-38 Genna (Grady)    | \$3,600 | Action | 87    |
| 5. | 08-46 Hockett (Murphy) | \$1,435 | Action | 87-88 |

6.	09-03 Koch (Loehr)	\$1,500	Action	88
7.	Oh (Chung/Min)	\$5,125	Action	88-89
8.	Oh (Joo)	\$4,000	Action	89



**Oregon State Bar**  
**Meeting of the Board of Governors**  
 June 12, 2009  
 Default Agenda

10. **Default Agenda**
- A. **Executive Director**
    - 1. **Operations Report.** Inform
    - 2. **Status of Actions from Past Board Meetings** Inform
  - B. **Access to Justice Committee**
    - 1. **Minutes – April 3, 2009** Inform 95
    - 2. **Minutes – May 8, 2009** Inform 97-98
  - C. **Budget and Finance Committee**
    - 1. **Minutes – April 3, 2009** Inform 99
    - 2. **Minutes – May 8, 2009** Inform 101-102
  - D. **Member Services Committee**
    - 1. **Minutes – May 8, 2009** Inform 103-104
  - E. **Policy and Governance Committee**
    - 1. **Minutes – April 3, 2009** Inform 105
    - 2. **Minutes – May 8, 2009** Inform 107
  - F. **Public Affairs Committee**
    - 1. **Minutes – April 3, 2009** Inform 109
    - 2. **Minutes – May 8, 2009** Inform 111
  - G. **Public Member Selection**

1.	Minutes – March 6, 2009	Inform	113
H.	CSF Claims Report	Inform	115-116.A

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 22, 2009  
From: Ross Williamson, Oregon New Lawyers Division Chair  
Re: ONLD Report

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Since the last BOG meeting the ONLD meet twice to conduct business. In April, the Pro Bono Subcommittee announced plans to create a mentor program where experienced attorneys are paired with new lawyers to assist on pro bono cases. The idea to create this program stemmed from a survey the ONLD conducted to determine the barriers that make it difficult for new lawyers to provide more pro bono representation.

In conjunction with our April meeting in Bend, the ONLD revived the tradition from prior years of hosting an ethics CLE. This year we were able to enlist Judge Michael Sullivan and Bend attorney Bryan Gruetter to present their eighth (or was it ninth?) iteration of "Ethics by Gruetter & Sullivan." The CLE was packed with Bend-area attorneys and was well received.

May concluded the ONLD's 2009 Essay Contest sponsored by the Law Related Education Subcommittee. Participation was up this year with more than 100 high school students submitting essays. Winners were from Clackamas, Sandy and Medford.

The CLE Subcommittee has seen great turnout at the Multnomah County Brown Bag Series this year. April's Child Abuse Reporting CLE program had more than 50 attendees. Due to the great response, the subcommittee added two additional CLE programs to this year's Multnomah County series and expanded into Clackamas County by organizing two programs scheduled for this summer.

The Member Services Subcommittee hosted a reception for new admittees after the Swearing-In Ceremony in May. Twice a year the ONLD uses this event to recruit volunteers and welcome new bar members to the ONLD. One of our newest members includes Ward Greene's daughter Madeleine.

In May, the ONLD also sent a small contingent of representatives to the MBA annual awards dinner where we were able to offer our support to the MBA Young Lawyers Section. The leadership of the ONLD and MBA YLS continue their good relationship and are continuing to explore opportunities to work together to serve our mutual members in the metro area.

As chair of the ONLD, in April I attended ABA Day in Washington, D.C. along with Gerry Gaydos, Teresa Schmid, Susan Grabe, David Thornburgh, Sandy Hansberger, and Judge Ellen Rosenblum. Attending this event provided me the opportunity to promote key bar initiatives during our meetings with all seven offices of our congressional delegation. I, as well as the ONLD, appreciate the chance to participate in this event.

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## 2009 ONLD Master Calendar

Last updated May 15, 2009

<b>Date</b>	<b>Time</b>	<b>Event</b>	<b>Location</b>
May 21	Noon	CLE- Direct and Cross Examination	Multnomah County Courthouse
May 21	2:30 p.m.	Swearing In Ceremony Reception	Willamette University
June 4	Noon	CLE- Diversity	Clackamas County Courthouse
June 12	All Day	BOG meeting	OSB
June 18	Noon	CLE- Wills and Trusts	Multnomah County Courthouse
June 20	9:00 a.m.	Exec. Meeting	Newport
June 20	1:00 p.m.	Public Service Activity	Newport
July 9	Noon	CLE- Ethics	Clackamas County Courthouse
July 16	Noon	CLE- Intellectual Property	Multnomah County Courthouse
July 25	All Day	Rafting and camping trip	Deschutes River
August 6-9	Ongoing	OLIO Retreat- AAP	Mt. Bachelor Village Resort
August 18-23	Ongoing	Lane County Fair	Lane County Fair Grounds
August 21	Noon	CLE- Professionalism	Multnomah County Courthouse
August 21	5:30 p.m.?	CLE- Campaign for Equal Justice	Medford
August 22	9:00 a.m.	Exec. Meeting	Medford
August 28	All Day	BOG meeting	OSB
September 17	All Day	Constitution Day	Various classrooms
September 17	Noon	CLE- Jury Selection	Multnomah County Courthouse
Sept. 11	5:30 p.m. ?	CLE- topic TBD and social	Eugene
Sept. 12	9:00 a.m.	Exec. Meeting	Eugene
October 8	2:30 p.m.	Swearing In Ceremony Reception	Willamette University
October 15	Noon	CLE- Ethics	Multnomah County Courthouse
October 17	All Day	Joint meeting OR and WA	OSB
October 18	TBD	Reciprocity CLE	OSB
October 24	TBD	BOWLIO	Valley Lanes - Beaverton
October 25-31	Ongoing	Pro Bono Week	Various
October 30-31	All Day	BOG retreat	Gold Beach
November 6	5:30 p.m.	ONLD Annual Meeting	Portland
November 7	All Day	SuperSaturday	OSB
November 19	Noon	CLE- Land Use	Multnomah County Courthouse
December 3		OSB Awards Dinner	Benson Hotel, Portland



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## MEMORANDUM

**TO:** Oregon State Bar Board of Governors and Teresa Schmid, Executive Director of the Oregon State Bar

**FROM:** Oregon State Bar Delegates Marilyn Harbur, Christine Meadows and Adrienne Nelson

**SUBJECT:** 2009 Boston Midyear Meeting of the American Bar Association and Meeting of the House of Delegates

**DATE:** March 6, 2009

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### REPORT ON THE ABA MIDYEAR MEETING

The 70<sup>th</sup> Midyear Meeting of the American Bar Association (the "ABA") was held February 11-16, 2009, at the Sheraton Boston Hotel and Hynes Convention Center in Boston, Massachusetts. Wide varieties of programs were sponsored by committees, sections, divisions, and affiliated organizations. The House of Delegates met for a one day session and the proceedings of the ABA House of Delegates were made available via webcast. The Nominating Committee also met.

The Nominating Committee sponsored a "Meet the Candidates" Forum on Sunday, February 15, 2009. The following candidates seeking nomination at the 2010 Midyear Meeting gave speeches to the Nominating Committee and to the members of the Association present: H. William Allen of Arkansas and Wm. T. (Bill) Robinson III of Kentucky, candidates for President-Elect; Linda A. Klein of Georgia and David C. Weiner of Ohio, candidates for Chair of the House of Delegates; David S. Houghton of Nebraska, Hon. Cara Lee Neville of Minnesota and Pauline A. Weaver of California, candidates for Secretary; and Lucian T. Pera of Tennessee, candidate for Treasurer.

### THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association (the "House") met on Monday, February 16, 2009, William C. Hubbard of South Carolina, presided as Chair of the House.

The Boston Police Department Honor Guard presented the colors. The Massachusetts State Police Pipes and Drums played the bagpipes after the colors were presented. The invocation for the House was delivered by Llewelyn G. Pritchard of Washington. The Chair of the House Committee on Credentials and Admissions, C. Elisia Frazier of Georgia, welcomed the new members of the House and moved that the signed roster be approved as the permanent roster for this meeting of the House. The motion was approved.

Chair Hubbard recognized all those lawyers who had served in the House of Delegates for more than 25 years. Chair Hubbard recognized Harper Estes, president of the State Bar of Texas, on a point of personal privilege in special recognition of Gibson Gayle of Texas who is serving his 50<sup>th</sup> year of consecutive service in the House. He spoke of his example as a servant leader, great Texan and great American. Mr. Gayle was recognized by the House with a standing ovation. He expressed pride in being a lawyer because of the integrity, dedication, selfless devotion to duty and public spiritedness of members of the House.

Judy Perry Martinez of Louisiana, Chair of the Committee on Rules and Calendar provided a report on the Final Calendar for the House, including recently filed reports, as well as Informational Reports from the Board of Governors. She noted the receipt of two additional bar association reports 10C and 10D and one late report 301. She moved to consider the late filed report (301) at this meeting and the motion was approved.

She also referred to the consent calendar, and noted the deadline for removing an item from the consent calendar, as well as the limited rules for debate applicable to certain resolutions.

She moved that the Final calendar be adopted as the official order of business and that the privileges of floor to speak be granted to those individuals listed. She also moved to adopt a special rule for consideration of Recommendations 107A-G. All three motions were approved.

Ms. Martinez noted that the deadline for submission of Reports with Recommendations for the 2009 Chicago Annual Meeting is Wednesday, May 13, 2009, while the deadline for Informational Reports is Friday, June 5, 2009. The members of the House were reminded that the Drafting Committee, chaired by Gene Vance of Kentucky, is available to assist anyone in drafting resolutions prior to the filing deadline.

For more details of the House meeting, see the following two-part report of the House session. The first part of the report provides a synopsis of the speeches and reports made to the House. The second part provides a summary of the action on the recommendations presented to the House.

## **I. SPEECHES AND REPORTS MADE TO THE HOUSE OF DELEGATES**

### **Statement by the Chair of the House**

Chair Hubbard thanked the House for its dedication to the work of the House. He addressed the importance and need for the work of the Fund for Justice and Education ("FJE") and urged every House member to support it financially. He expressed the goal that there would be 100% support for the FJE by the Chicago Annual Meeting, similar to 2 years ago.



He highlighted the work of the Legal Opportunity Scholarship fund which was started in 1999. It funds 15 scholarships of \$20,000 each to minority law students. He urged the delegates to support it financially.

He discussed the obligations and responsibilities of House members to take legislative priorities to lawmakers in Washington D.C. He asked each delegate to be part of the Grass Roots Action Team and attend ABA Day on April 21-23, 2009 in Washington D.C. He also asked members to make a difference by talking to the legislators from their communities regarding justice issues.

Chair Hubbard announced there is a position open on the Committee on Scope and Correlation of Work which will be elected at the Chicago Annual Meeting. Nominations should be submitted to a member of the Committee by March 15, 2009.

Chair Hubbard reminded delegates that President-elect Lamm has established a process for presidential appointments which will close on March 2, 2009.

#### Statement by the Secretary

Hon. Bernice B. Donald of Tennessee, Secretary of the Association, moved approval of the House of Delegates Summary of Action from the 2008 Annual Meeting, which was approved by the House. On behalf of the Board of Governors, Secretary Donald presented and referred the House to Report Nos. 177 and 177B, the Board's Informational and Legislative Priorities Reports.

Deceased members of the House were named and remembered by a moment of silence. Robert T. Gonzales of Maryland was recognized on a point of personal privilege to remember M. Peter Moser of Maryland, member of the House of Delegates and former Treasurer of the ABA.

#### Statement by the ABA President

ABA President H. Thomas Wells, Jr. of Alabama greeted the House and expressed his honor to serve during the first meeting of the House of Delegates under the leadership of William Hubbard and his team. He recognized and thanked his wife Jan for her support and contributions.

President Wells reflected on the 200<sup>th</sup> anniversary of the birth of Abraham Lincoln as our greatest lawyer-president. He reminded delegates that this year's Law Day would celebrate Lincoln's legacy of liberty, thanked the Illinois State Bar Association for its gift of a bronze replica bust of Abraham Lincoln, Prairie Lawyer, and highlighted the upcoming remarks of Walter Dellinger on "America's Greatest Lawyer."

He reported on a recent Board of Governors' meeting in Birmingham, Alabama and the evolution of that city as a symbol of hope and peace in the area of civil rights. He urged the delegates to follow the example of the Association's Board of Governors and to sign the Birmingham pledge (authored by a Birmingham attorney). Signors pledge to remove prejudice and treat all people with respect.

Since his last remarks to the delegates in August 2008, he reported that the Association has continued to be faithful to the common core values of access to justice, independence of the bar and judiciary, diversity and the rule of law. But he also reflected on the changes in those intervening months. A new administration had brought new opportunities for the ABA to discuss core values and work together with the administration.

An economy that had worsened since August presents new challenges. He told the delegates that lawyers are called to lead in turbulent times. While lawyers are affected by the downturn, there is no better time to boost membership and highlight association resources available to all members.

He also said lawyers are called to make a positive difference in our society and highlighted four areas in which this was happening: Access to Justice, Independence of the Judiciary, Diversity and the Rule of Law.

**Access to Justice** – He recounted the efforts to ensure that IOLTA funds were fully insured by FDIC. He urged a renewed commitment to fundraising for legal services and access to justice. He detailed the plans for the National Pro Bono Celebration October 25-31 and ABA Day on April 21-23 as well as continuing efforts to support access to justice on the criminal side for public defenders, education for policy makers and standards for indigent defense. He reminded us that such efforts showcase our profession as one committed to improving the society we serve.

**Independence of the Judiciary** – He reviewed budget issues in the states that challenge the ability of state courts to deliver justice and described the National Summit on Fair & Impartial State Courts to be held May 7-9 in Charlotte, NC.

**Diversity** – He emphasized the shared commitment that our laws and courts must be accessible to everyone including those who have been historically ignored or mistreated, going beyond race, ethnicity and gender, to also include sexual orientation, gender identity and those with disabilities. He detailed the plans for the National Diversity Summit in June this year in Washington, D.C.

**Rule of Law** – He reported on this indispensable component of our core values and described the work of the ABA in providing legal assistance and support in 40 countries in the world.

Finally, he reminded us that we must hold our core values regardless of our practice area, regardless of our political affiliation, regardless of who our clients are, in times of war and peace, in times of prosperity and impoverishment and in times of crisis and calm. This crucial work we do allows us to answer our proud calling as lawyers and makes a difference as a profession.

#### Statement by the Treasurer.

ABA Treasurer Alice E. Richmond of Massachusetts presented a PowerPoint presentation on the budget and also referred House members to her written report.

She reviewed the long term investment accounts, dues warehouse and operating results for 2007 and 2008. She recounted that since June 2008 long term investments have lost 31% of their value or \$57 million. She discussed the significance of this loss of value as it relates to the budget. She reviewed the effect on the employee pension portfolio that will require increased contributions. Last year, \$5 million was contributed and this year may require a contribution of twice that amount or more.

She suggested that the ABA should seek to increase revenues, both dues and non-dues revenue. She highlighted that non-dues revenue in the Sections of the Association is rising while the non-dues revenue of the Association itself is flat. She will be examining what the Sections are doing to see where non-dues revenue of the Association can be increased.

She showcased the changes to the ABA Journal, both print and on-line versions and its ad revenue. She reviewed the web page, the award it has won and increased ad revenues.

Treasurer Richmond reiterated her focus on non-dues revenue and urged delegates to patronize the Association's partners services and programs. She summarized her first months in a Winston Churchill quote – "success consists of going from failure to failure without loss of enthusiasm." She said the association has a strong financial foundation in place, and she is optimistic that we will find opportunity in difficult times.

#### Statement by the Executive Director

Henry F. White Jr. of Illinois, ABA Executive Director and Chief Operating Officer spoke and focused on three areas: Communications, Finances and Membership.

Communications – A new monthly report has been developed for the Board of Governors including all ABA activities, finances and personnel. The section dealing with activities is also forwarded monthly to all entity chairs and chair-elects as well as the SOC and deans of all ABA law schools. Concurrently, a community website has been developed and hopefully its growth will enable the ABA to attract attention not only from the legal community at large but also from the general population.

Finance – Present trends suggest that the Association will conclude fiscal year 2009 with a surplus. However, fiscal year 2010 will present severe challenges as very preliminary and very conservative revenue numbers projected for fiscal year 2010 are down 10%.

Membership – The Association has commenced an unprecedented campaign for membership to instill the need for membership in the DNA of everyone associated with the ABA. The goal, with the use of outside consultants, will be to develop a plan of action creating a cohesive message emphasizing service to our members, improve our profession, eliminate bias and enhance diversity, and advance the Rule of Law.

In conclusion Mr. While advised that the ABA may look different structurally in a few years, but with the continued enthusiasm and support of its members, the ABA will maintain fidelity to its mission and goals and thrive in the future.

### Report of the Nominating Committee

The Nominating Committee met on Sunday, February 15, 2009. On behalf of the committee, James R. Silkenal of New York, Chair of the Steering Committee of the Nominating Committee, reported on the following nominations for the terms indicated:

### MEMBERS OF THE BOARD OF GOVERNORS (2009-2011)

#### District Members

- District 3: Amelia H. Boss of Pennsylvania
- District 5: Charles E. English, Sr. of Kentucky
- District 9: Frederick E. Finch of Minnesota
- District 14: Mark I. Schickman of California
- District 15: Steven C. Krane of New York
- District 16: G. Nicholas Casey, Jr. of West Virginia
- District 17: C. Timothy Hopkins of Idaho

#### Section Members-at-Large

##### Criminal Justice Section

Neal R. Sonnett of Florida

##### Section of Environment, Energy and Resources

R. Kinnan Golemon of Texas

#### Judicial Member-at-Large

Hon. Leslie Miller of Arizona

#### Minority Member-at-Large

Mary L. Smith of Illinois

#### Young Lawyer Member-at-Large

Kendyl T. Hanks of New York

### OFFICER OF THE ASSOCIATION

#### President-Elect (2009-2010)

Stephen N. Zack of Florida

## Remarks by President-Elect Nominee

Chair Hubbard recognized Stephen N. Zack, President-Elect Nominee of the American Bar Association. Mr. Zack expressed appreciation for the confidence and support of the Nominating Committee. He paid special tribute to Chesterfield Smith as his mentor, his friend and his hero who he sat next to in the House of Delegates 30 years ago. He recalled the advice that Chesterfield Smith gave him then – what the House of Delegates does is important because it is the obligation of our profession and this House to speak truth to power.

He congratulated President Wells and President-Elect Lamm on their work this year. He thanked past ABA presidents, the Florida delegation and expressed a desire to live up to the example of past ABA presidents from Florida. He also thanked his firm and particularly his spouse, Marguerite, whom the House recognized.

He remarked that these are difficult times for all Americans and the legal profession. He said we will be challenged, our freedoms will be challenged and our rights will be challenged, and these will not be hypothetical situations. We know our rights are at stake when we see attacks on the judiciary and inadequate funding for the judiciary.

He recalled the importance of hope for his grandfather, even as they left Cuba on a dark day many years ago. His grandfather told him they would never be refugees again because if America fell, there would be no place else to go. He told delegates that when we preserve justice and defend liberty in the United States, we do so for the world.

He recounted that in 1960, the Cuban Constitution was identical to the United States Constitution. This tells us that a constitution is just words unless those words are understood, the obligations are accepted and the liberties are protected. He expressed concern for the lack of public knowledge of our Constitution and Bill of Rights. He called on delegates to demand that civics be taught in our schools so that the next generation understands our government and will be ready to defend our liberty.

Finally, he mentioned a number of great liberators in the United States and throughout the world and noted they had also been great lawyers. He assured delegates that they would have been members of our Association today as we defend liberty and preserve justice every day in every way.

## Remarks on "America's Greatest Lawyer: Abraham Lincoln in Private Practice and Public Life"

Chair Hubbard introduced Walter E. Dellinger III to speak on "America's Greatest Lawyer: Abraham Lincoln in Private Practice and Public Life." Mr. Dellinger is the Douglas B. Maggs Professor of Law at Duke University and head of the appellate

practice at O'Melveny & Myers in Washington, D.C. He was acting solicitor general for the 1996-97 term of the United States Supreme Court. He argued nine cases before the Court, which were the most that had been argued by a solicitor general in a term in over 20 years.

Mr. Dellinger's thesis was that Abraham Lincoln was America's greatest lawyer and that his greatness was in significant measure due to his lawyering skills. Beginning with Mr. Lincoln's life on June 16, 1858, he detailed what Abraham Lincoln had done as a lawyer – handling more than 2000 cases, hundreds of cases in the Illinois Supreme Court and hundreds of cases in the federal courts later known as the 7<sup>th</sup> Circuit.

He recounted the techniques Abraham Lincoln used as a lawyer that he later used in public life: astonishing candor and directness, ability to persuade, dedication to accomplishment of an actual objective (as opposed to making points or showing oratory skills), the strategy of conceding points, the capacity to ignore non-essential points, reconceptualizing the issue and harmonizing deeply felt principles with personal humility and existential doubt. Mr. Dellinger asserted that no one better lived out the admonition – "hate the sin, but love the sinner" and illustrated these points with letters and events from Lincoln's life.

Mr. Dellinger detailed the speech that Mr. Lincoln gave to the state Republican party on June 16, 1858, showing how his views were different from Senator Douglas' views. What he did that day changed his life and the history of the country. He noted that Abraham Lincoln was the only person in national history to become a national figure, beginning with a speech analyzing a U.S. Supreme Court case.

After this speech, the Lincoln Douglas debates began in seven Illinois cities. Mr. Dellinger recounted the challenges facing Mr. Lincoln as he debated Mr. Douglas and the arguments he made to rebut each one. He recounted the final articulation of Lincoln's views in his 2<sup>nd</sup> inaugural speech where President Lincoln said the war would not end without ending slavery, that 100,000 men of color had fought for the union, the country had promised freedom, and that a promise made is a promise kept.

He closed by describing the state of Mr. Lincoln's circumstances on June 16, 1858 and noted that he died just over 6 years later. In that short time, he changed the world.

### Remarks on the "State of the State Courts"

Chair Hubbard introduced the Honorable Margaret H. Marshall, President of the Conference of Chief Justices and Chief Justice of the Massachusetts Supreme Judicial Court.

The Chief Justice thanked President Wells and Chair Hubbard for the opportunity to address the ABA House of Delegates. She pointed out that justice issues led to the creation of the Conference of Chief Justices sixty years ago. She pointed out that this was the first time the president of the Conference had addressed the ABA House of Delegates and she thanked President Wells for his address to the Conference of Chief Justices earlier this year. She stated it was very important for the two organizations to join together this year because a strong state court system is

critically important. Excluding bankruptcy filings, 384,000 cases were filed in the federal system. But there were 47.3 million non traffic cases filed in the state courts in 2007.

For two centuries, the country has benefited from the independence of the judiciary, but we should never take it for granted. She told the House that state courts are in a crisis and a perfect storm is coming because of 3 issues: inadequate funding, inability to provide access to all, and the single greatest threat which is politicization of the state judiciaries. She asked a question to the delegates – are we approaching the minimum level of funding below which state courts cannot efficiently operate?

She discussed the single greatest threat to judicial independency which is fairly modern and uniquely American – the flood of money coming into courtrooms by way of expensive and volatile judicial elections.

She told the House that the Conference of Chief Justices views the ABA as its staunchest ally and deeply appreciates the countless initiatives of local and state bar associations to support state courts. The Conference looks forward to the ABA's Conference on Fair and Impartial Courts scheduled for May this year.

She urged the delegates to stay the course, because as leaders, they are positioned to make a difference. She asked the House to be an advocate for merit based selections of judges and adequate compensation and asked for assistance in educating local communities.

She pointed out that lawyers possess the keys to justice and the courts and that our system depends on the equal commitment of judges and lawyers working together. She closed by telling the delegates that lawyers matter, constitutions matter, courts matter and asked the delegates to join in a campaign to remind our citizens of the importance of the judiciary.

## II. RECOMMENDATIONS VOTED ON BY THE HOUSE

A brief summary of the action taken on recommendations brought before the House follows. The recommendations are categorized by topic areas and the number of the recommendation is noted in brackets.

### AMENDMENTS TO HOUSE RULES OF PROCEDURE

[11-1] Mark L. Schickman of California moved Recommendation 11-1 amending §45.2(d) of the House Rules of Procedure to clarify that the Committee on Rules and Calendar shall ensure that reports which accompany Reports with Recommendations conform with the final language of recommendations, if revised or amended by the House of Delegates. The proposal was approved.

[11-2] Hon. Pamila J. Brown of Maryland moved Recommendation 11-2 amending §45.2 of the House Rules of Procedure to provide that, where appropriate, all recommendations

adopted by the House of Delegates which urge state legislatures, courts or bar associations to take action shall be understood to include legislatures, courts and bar associations of territories, tribes, local governments, the Commonwealth of Puerto Rico and the District of Columbia. Tom Bolt of the Virgin Islands and Robert L. Weinberg of Virginia spoke in support of the recommendation. The proposal was approved.

#### ATTORNEY-CLIENT PRIVILEGE

[301] On behalf of the Section of Litigation, David C. Weiner of Ohio moved Recommendation 301 as revised supporting the right of participants in federal proceedings to take an immediate appeal from an order that rejects a claim of attorney-client privilege and on that basis requires the production of information or materials for which the privilege has been claimed. The recommendation was approved as revised.

#### CRIMINAL JUSTICE

[101A] On behalf of the Criminal Justice Section, Stephen A. Salzburg of the District of Columbia moved Recommendation 101A urging Congress and state legislatures to re-examine and revise laws, policies and practices that require youth to register as sex offenders or be subject to community notification provisions otherwise imposed upon adult sex offenders, based upon a juvenile court adjudication. The recommendation was approved.

[101B] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Recommendation 101B as revised urging federal, state, territorial and local governments to initiate, continue and expand the use of mediation as a means to resolve criminal matters, specifically at a time prior to actual case filing. The recommendation was approved as revised.

[101C] On behalf of the Criminal Justice Section, Stephen A. Salzburg of the District of Columbia moved Recommendation 101C supporting legislation and/or administrative standards to ensure due process and access to appropriate legal assistance for persons arrested or detained in connection with immigration enforcement actions and encouraging bar associations to raise awareness of the rights available to individuals taken into custody during workplace immigration enforcement actions. The recommendation was approved.

[101D] On behalf of the Criminal Justice Section, Neal R. Sonnett of Florida moved Recommendation 101D urging federal, state, tribal, local and territorial governments to ensure that child victims of criminal conduct have prompt access to legal advice and counsel and to specialized services and protections such as those provided by child advocacy centers approved and accredited by the National Children's Alliance. The recommendation was approved.

#### ENVIRONMENTAL LAW

[103] On behalf of Section of Environment, Energy and Resources, R. Kinnan Golemon of Texas moved Recommendation 103 urging law firms and other law organizations to adopt the ABA-EPA Law Office Climate Challenge. The recommendation was approved.



## ETHICS AND PROFESSIONAL RESPONSIBILITY

[109/110] On behalf of the Standing Committee on Ethics and Professional Responsibility, Robert H. Mundheim of New York moved Recommendation 109 as revised amending Model Rule of Professional Conduct 1.10 ("Imputation of Conflicts of Interest: General Rule") to permit the screening of a lawyer who moves laterally from one private law firm to another, so that conflicts of interest that apply to the moving lawyer under Model Rule 1.9 ("Duties to Former Clients") are not imputed to all the other lawyers in the new law firm. James M. McCauley of Virginia presented the minority report in opposition to Recommendation 109.

Lawrence J. Fox of Pennsylvania rose to a point of personal privilege to pay tribute to Robert Mundheim. Mr. Fox then moved to substitute Recommendation 110 as revised for revised Recommendation 109. Recommendation 110 would amend Model Rule of Professional Conduct 1.10 ("Imputation of Conflicts of Interest: General Rule") and related Comments by adding new subsections to permit certain lawyers whose participation was not significant and who did not learn material confidential information to go to work for an adversary law firm without client consent so long as the transferring lawyer is screened and provides appropriate certification of compliance with the screen. C. Elisia Frazier of Tennessee, Robert P. Collings of Massachusetts, John T. Berry of Florida and Timothy W. Bouch of South Carolina spoke in favor of the motion to substitute. Paula E. Boggs of Washington, Albert C. Harvey of Tennessee, Abraham Charles Reich of Pennsylvania, H. Thomas Wells, Jr. of Alabama and T. Maxfield Bahner of Tennessee spoke in opposition to the motion to substitute.

Clifford E. Haines of Pennsylvania moved the previous question on the motion to substitute and the House approved the motion to close debate on the motion to substitute. The House defeated the motion to substitute Recommendation 110 for Recommendation 109.

The House proceeded to consider revised Recommendation 109. Elizabeth A. Alston of Louisiana moved to amend Recommendation 109. Diane L. Karpman of California spoke in favor of the motion to amend. Albert C. Harvey of Tennessee spoke in opposition to the motion to amend. The motion to amend Recommendation 109 was defeated.

Carolyn B. Lamm of the District of Columbia spoke in favor of Recommendation 109. Joanne A. Epps of Pennsylvania and Lawrence J. Fox of Pennsylvania spoke in opposition to Recommendation 109. The recommendation was approved as revised.

## FAMILY LAW

[106] On behalf of the Section of Family Law, Timothy B. Walker of Colorado moved Recommendation 106 opposing the enactment of federal legislation that would create a federal-question jurisdiction in child custody cases, including cases involving servicemember-parents and urging states to enact legislation prohibiting denial of child

custody to a servicemember based solely on absence due to military deployment. The recommendation was approved.

### INDIVIDUAL RIGHTS AND RESPONSIBILITIES

[108] On behalf of the Section of Individual Rights and Responsibilities, Mark D. Agrast of the District of Columbia moved Recommendation 108 supporting the enactment of legislation and the implementation of public policy to enable a United States citizen or lawful permanent resident who shares a mutual, interdependent, committed relationship with a non-citizen of the same sex to sponsor that person for permanent residence in the United States. Robert E. Juceam of New York spoke in favor of the recommendation. The recommendation was approved.

### JUDICIARY

[112] The House approved by consent Recommendation 112 as submitted by the Judicial Division urging the Office of Personnel Management as part of its mandate to select the best qualified candidates for federal administrative law judge positions, to consider judicial status in good standing as a satisfactory alternative to any requirement that candidates be active licensed attorneys in good standing.

[113] On behalf of the Standing Committee on Judicial Independence, William K. Weisenberg of Ohio moved Recommendation 113 urging state, local and territorial bar associations and the highest court of each state to establish, for those who have an interest in serving in the judiciary, a voluntary pre-selection/election program designed to provide individuals with a better appreciation of the role of the judiciary and to assist them in making a more informed decision regarding whether to pursue a judicial career. The recommendation was approved.

### LAW AND AGING

[111A] The House approved by consent Recommendation 111A as submitted by the Commission on Law and Aging encouraging the federal government to provide funding and support for training, research, exchange of information on practices, consistent collection of data, and development of state, local and territorial standards regarding adult guardianship.

[111B] On behalf of the Commission on Law and Aging, Joseph D. O'Connor, Jr. of Indiana moved Recommendation 111B as revised opposing the use of mandatory, binding, pre-dispute arbitration agreements between a long-term care facility and a resident of such facility or person acting on behalf of such resident, and opposing legislation and regulations that would authorize, encourage or enforce such agreements. David M. English of Missouri spoke in favor of the recommendation. Jonathan J. Cole of Tennessee spoke in opposition to the recommendation. The recommendation was approved as revised.

### LEGAL EDUCATION

[100] The House approved by consent Recommendation 100 as submitted by the

Standing Committee on Paralegals granting approval, reapproval and the extension of the term of approval to several paralegal education programs.

### LITIGATION

[10C] On behalf of the Ohio State Bar Association, Kathleen B. Burke of Ohio moved Recommendation 10C opposing the Sunshine in Litigation Act of 2007 (S 2449) on other legislation that would impose similar requirements of burdens for entering or modifying protective orders beyond those in Federal Civil Rule of Procedure 26(c). The recommendation was approved.

### MILITARY LAW

[114] On behalf of the Standing Committee on Legal Assistance for Military Personnel, Lora J. Livingston of Texas moved Recommendation 114 urging Congress to amend the federal Servicemembers Civil Relief Act (the SCRA) to clarify that a private right of action exists under the SCRA and to provide that a prevailing plaintiff in such an action may recover reasonable attorney's fees. James F. Williams of Washington spoke in favor of the recommendation. The recommendation was approved.

### RULE OF LAW

[10A] On behalf of the New York State Bar Association, Fernando A. Bohorquez, Jr. of New York moved Recommendation 10A as revised urging U.S. courts to grant to detainees all rights granted to habeas petitioners consistent with Federal statutory habeas criminal law principles where applicable, appropriate to the facts and circumstances of that petitioner's case. Albert C. Harvey of Tennessee moved to postpone indefinitely consideration of the recommendation. M. Joe Crosthwait, Jr. of Oklahoma and G. Judson Scott Jr. of California spoke in favor of the motion to postpone indefinitely. Neal R. Sonnett of Florida, Mark D. Agrast of the District of Columbia and Stephen A. Saltzburg of the District of Columbia spoke in opposition to the motion to postpone indefinitely. Amando Lasa-Ferrer of Puerto Rico moved the previous question on the motion to postpone indefinitely and the House approved the motion to close debate on the motion to postpone indefinitely. The motion to postpone indefinitely was defeated. The recommendation was approved as revised.

### SOCIAL SECURITY

[10B] On behalf of the Connecticut Bar Association, Livia DeFilippis Barndollar of Connecticut moved Recommendation 10B urging Congress to enact legislation amending Title 28, of the United States Code, to provide for the direct payment of attorney fees and costs to the attorney representing a prevailing party in certain Social Security Disability Insurance and Supplemental Security Income claims. David M. English of Missouri spoke in support of the recommendation. The recommendation was approved.

## SPECIALIZATION

[104] The House approved by consent Recommendation 104 as submitted by the Standing Committee on Specialization reaccrediting the Juvenile Law – Child Welfare program of the National Association of Counsel for Children in Denver, Colorado and extending accreditation of the Family Law Trial Advocacy program of the National Board of Trial Advocacy, a division of the National Board of Legal Specialty Certification of Wrentham, Massachusetts, as designated specialty certification programs for lawyers.

## STATE AND LOCAL GOVERNMENT LAW

[105] On behalf of the Section of State and Local Government Law, Kenneth W. Bond of New York withdrew Recommendation 105 urging Congress to enact and the President to sign legislation that would allocate general revenue sharing funds to the several states of the United States of America and their respective local governments and political subdivisions by applying certain standards.

## TORT TRIAL AND INSURANCE PRACTICE

[107A] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas gave an overview of Recommendations 107A-G and moved Recommendation 107A recommending federal, state and territorial governments to enact legislation with appropriate funding that would eliminate any prohibitions or restrictions on participants in the private insurance and reinsurance markets from making available broadened insurance protection for property damage arising from storms, including damage from wind, wind-driven rain and flood caused by storm surge, but excluding damage arising from other types of floods. Frank X. Neuner, Jr. of Louisiana William C. Trotter III of Mississippi and David S. Houghton of Nebraska spoke in support of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved.

[107B] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107B urging Congress to address the consequences of natural catastrophes by strengthening the financial infrastructure and developing programs that increase availability of affordable insurance in areas highly exposed to catastrophes, while not competing with the private market. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved.

[107C] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107C as revised urging the federal government to take steps to encourage capital markets to finance catastrophic risks by: a) undertaking a study through the U.S. Treasury Department to determine what changes in federal laws and regulations would reduce barriers to the issuance of catastrophe (CAT)-linked securities in the United States; and b) enacting legislation as needed to encourage the issuance of

catastrophe (CAT)-linked securities. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved as revised.

### TORT TRIAL AND INSURANCE PRACTICE (cont.)

[107D] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107D as revised urging the federal government to address the liquidity needs of individuals and businesses in the aftermath of future natural catastrophes to reduce some of the losses by residents affected by the catastrophes. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved as revised.

[107E] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107E urging state, territorial and local governments to use specific tools to mitigate losses from future mega-catastrophes to ensure the ongoing availability and affordability of insurance for natural disasters. J. Anthony Vittal of California spoke in support of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved.

[107F] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107F as revised urging the federal government to use specific tools to mitigate losses from future mega-catastrophes by influencing building codes and land-use in certain situations. William C. Trotter III of Mississippi spoke in favor of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved as revised.

[107G] On behalf of the Tort Trial and Insurance Practice Section, Hervey P. Levin of Texas moved Recommendation 107G as revised recommending state and territorial governments to adopt standards for handling residential and small business insurance claims for property damages resulting from hurricanes or storms. Frank X. Neuner, Jr. of Louisiana spoke in favor of the recommendation. Leopold Z. Sher of Louisiana spoke in opposition to the recommendation. The recommendation was approved as revised.

### UNIFORM STATE LAWS

[102A] The House approved by consent Recommendation 102A as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Unsworn Foreign Declarations Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[102B] The House approved by consent Recommendation 102B as submitted by the National Conference of Commissioners on Uniform State Laws approving the Revised Uniform Unincorporated Nonprofit Association Act (2008), promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[102C] The House approved by consent Recommendation 102C as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Common Interest Owners Bill of Rights Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[102D] The House approved by consent Recommendation 102D as submitted by the National Conference of Commissioners on Uniform State Laws approving the Uniform Common Interest Ownership Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

[102E] The House approved by consent Recommendation 102E as submitted by the National Conference of Commissioners on Uniform State Laws approving the 2008 Amendments to the Uniform Interstate Family Support Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2008, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

### VOTING RIGHTS

[10D] On behalf of the Bar Association of the District of Columbia, Robert L. Weinberg of Virginia moved Recommendation 10D urging the House and the Senate to complete enactment of legislation, such as S. 160 granting a vote to the Representative from the District of Columbia in the House of Representatives, expeditiously during the current session of Congress. The recommendation was approved.

### Closing Business

At the conclusion of the meeting of the House on Monday, February 16, Chair Hubbard thanked the House for its hard work and invited the House to a reception hosted by the Florida Bar to honor ABA President-elect Nominee Stephen N. Zack of Florida.

Robert A. Clifford of Illinois was recognized to make a presentation to delegates regarding the 2009 Chicago Annual Meeting. An appearance by Abraham Lincoln was a highlight of the presentation and included a feature on a number of famous Illinoisans, including the President of the United States.

Hon. Pamela J. Brown of Maryland moved a resolution in appreciation of the Massachusetts lawyers and judges, Special Advisor Roy A. Hammer of Massachusetts and the Massachusetts Bar Association for their work in hosting the meeting. The motion was approved.

Chair Hubbard recognized Judy Perry Martinez of Louisiana who then moved that the House adjourn *sine die*. The motion was approved.

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 21, 2009  
From: Kathleen Evans, Chair, Policy & Governance Committee  
Re: Correcting Amendment to Oregon RPC 1.18

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### Action Recommended

Approve the proposed amendment to Oregon RPC 1.18 discussed below for placement on the November 2009 HOD agenda.

### Background

In 2003 and 2004, the BOG (through the Special Legal Ethics Committee on Disciplinary Rules) drafted the Oregon Rules of Professional Conduct that were adopted by the Supreme Court and became effective January 1, 2005. By adopting the RPCs, Oregon joined 44 other "ABA Model Rules" jurisdictions.<sup>1</sup>

Since their adoption, the Oregon RPCs have been amended three times. In November 2005, the rules governing IOLTA accounts were revised at the suggestion of the Oregon Law Foundation. In December 2006, a number of mostly technical corrections were made. In 2009, the confidentiality rule was amended to allow disclosure in connection with diversion and monitoring agreements.

Recently, in the course of analyzing a member's inquiry, staff noted a discrepancy between Oregon RPC 1.18 and the ABA Model Rule on which it was based.

The rule was new to the ABA in 2002 and was designed to eliminate unnecessary disqualification based solely on a consultation with prospective client that didn't result in a representation. Previously, such situations had to be analyzed under the former client conflict rule, and a lawyer was disqualified from representing a party if the lawyer had acquired relevant confidential information from the adverse party in even a brief consultation. As a consequence, it was not uncommon for clients (on their own or at the suggestion of their desired counsel) to consult with several lawyers in a community for the express purpose of preventing them from representing the adverse party in a matter. RPC 1.18 was the cure for this problem within law firms, because it allows the lawyer who had the consultation to be screened so as not to disqualify the entire firm from representing the adverse party.

The text of Oregon's version of Rule 1.18 and the ABA Model Rule are presented side-by-side below, with the "missing" Oregon rule text underlined in the ABA rule:

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<sup>1</sup> Only two states, California and Maine, do not follow the ABA Model Rules to some extent. New York's new rules became effective on April 1, 2009.

Rule 1.18 Duties to Prospective Client	
OREGON	ABA MODEL RULE
<p>(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.</p> <p>(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.</p> <p>(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).</p> <p>(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:</p> <ol style="list-style-type: none"> <li>(1) the disqualified lawyer is timely screened from any participation in the matter; and</li> <li>(2) written notice is promptly given to the prospective client.</li> </ol>	<p>(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.</p> <p>(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.</p> <p>(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).</p> <p>(d) <u>When the lawyer has received disqualifying information as defined in paragraph (c),</u> representation is permissible if:</p> <ol style="list-style-type: none"> <li>(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:</li> <li>(2) <u>the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and</u> <ol style="list-style-type: none"> <li>(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and</li> <li>(ii) written notice is promptly given to the prospective client.</li> </ol> </li> </ol>



Minutes from the drafting committee's work do not indicate that the omission was purposeful; on the contrary, there is no indication that the committee intended to deviate from the ABA Model Rule in any way, other than to eliminate the prohibition against sharing in the fee.

The "missing" language is important to the operation of the rule, as it makes clear that screening in the prospective client situation is intended to be allowed only if the consulting lawyer doesn't delve too deeply into the prospective client's matter. The rule was not meant to allow screening from what would otherwise be a former client conflict. Without the language, the rule seems to allow anyone with whom the lawyer consults without forming a lawyer-client relationship to be characterized as a prospective client. In the situation that brought this omission to our attention, the lawyer had at least two meetings with a person who the lawyer never intended to represent but to whom the lawyer was giving some advice as a favor to a friend (the firm did employer-side labor law and the client was an employee). The lawyer suggested that the person was a "prospective client" within the meaning of the rule notwithstanding that the communications had gone well beyond the exploratory discussions that would typically occur when a person is considering hiring a lawyer.

Amending RPC 1.18 to conform to the ABA Model Rule will better ensure the protection of clients while still not creating conflicts from initial, exploratory meetings. The correction will make it easier for lawyers to understand the limits of the prospective client "exception" to the former client rule.

The proposed amendment has been discussed by the Legal Ethics Committee, which had no objections.



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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 20, 2009  
From: Sylvia E. Stevens, General Counsel  
Re: CSF No. 08-41 WILSON (Lehman)--Appeal

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### Action Recommended

Review the CSF Committee's denial of Joanne Lehman's claim for reimbursement for monies allegedly misappropriated by Linda J. Wilson.

### Background

Ms. Lehman hired Eugene attorney Linda J. Wilson in September 2006 to represent her in a dissolution of her marriage. Ms. Wilson took the case on an hourly fee basis, charging \$245 per hour. Over the course of the representation, Ms. Lehman paid \$30,000 in legal fees plus an unspecified amount for court costs and other expenses. Her case was set for trial at the end of April 2007.

During the course of the representation, Wilson was involved in an unrelated disciplinary proceeding and her suspension was to begin near the date of Ms. Lehman's trial. Wilson informed the client of this fact a couple of weeks before the trial and arranged for another lawyer in her office to complete the matter. Ms. Lehman didn't object and the matter proceeded to conclusion. She objected to fees billed by the successor lawyer, which were ultimately written off by the firm.

Ms. Lehman was unhappy with the outcome of the case. She filed a bar complaint raising concerns about Wilson's competence, failure to communicate and practicing while suspended. While the matter was under investigation by DCO, Wilson submitted a Form B resignation based on Ms. Lehman's allegations and the complaints of two other clients.

Ms. Lehman's claim to the CSF is for more than \$200,000 and includes amounts she believes she lost in the divorce due to Wilson's inadequate representation as well as "approximately \$32,202" paid to Wilson. Looking only at the fees paid, the committee concluded that Wilson performed substantial services for the client. Wilson's time records indicate that she spent 107 hours on Ms. Lehman's matter before her suspension. The committee believed that, while Wilson's conduct may have violated various RPCs, there was no evidence that she engaged in any dishonesty with regard to the fees. Moreover, Ms. Lehman's claim to unearned fees was not supported by a determination of a court or fee arbitration panel, nor supported by any accounting satisfactory to the committee, as required by CSF Rule 2.2.3.

In her request for BOG review of the CSF Committee decision, Ms. Lehman contends that Wilson was dishonest in two respects, but only one relates to money she paid

Wilson. Ms. Lehman claims that \$5000 of the third \$10,000 payment to Wilson was to be used for appraisals, but the appraisals were never done and she asks for an award of at least that \$5000. Wilson's explanation to the bar on this issue was that after depositions in the case, she determined appraisals wouldn't be necessary and the funds were used to obtain copies of the depositions. Wilson also said that Ms. Lehman was fully aware of how the "appraisal funds" were used.

Attachments:        Claimant's Request for Review  
                         CSF Investigator's Report

# Joanne Lehman

954 Noble Avenue \* Coos Bay, OR 97420

April 30, 2009

Teresa Schmid, Executive Director  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

RE: Client Security Fund Claim No. 2008-41  
Claimant: Joanne (Colton) Lehman  
Lawyer: Linda J. Wilson


Dear Executive Director,

I respectfully request a review of the denial I received from the Client Security Fund Committee. They stated they found *"no dishonesty by Ms. Wilson in connection with her receipt and retention of legal fees."* They went on to say that my complaints *"are in the nature of a fee dispute or perhaps a malpractice claim regarding the quality of Ms. Wilson's services."*

reviewing what was submitted I feel that Ms. Wilson was dishonest in a couple of instances. She met with me the evening prior to the first deposition and asked me for an additional \$10,000, stating that \$5,000 was going to be used for appraisals that needed to be done for the case and that she would be setting those funds aside for that purpose. That same evening Ms. Wilson told me that she was going to be suspended but not to worry as my case would be done and over with prior to her suspension, she was suspended the day after the first trial ended in April and I had another one scheduled for August for the personal property portion of my case. I was not able to get another lawyer after her suspension and the person she contacted was never given my files or brought up to speed on my case, which cost me additional time and money. Ms. Wilson was dishonest when she told me that the hearing set in August was to settle on my personal property, which was also not true and I have not received all of my personal property to date and can do nothing about it. If those things are not being dishonest then I am ignorant to its meaning. As far as pursuing a legal malpractice case against Ms. Wilson, I hesitant in doing that as I would have to retain another attorney who would be willing to go after someone in their own profession, something I know attorneys do not like to do. There is no doubt in my mind that there is a case in the quality of Ms. Wilson's services but I have lost enough time and money up to this point and have learned a valuable lesson.

I would appreciate the opportunity to have this reviewed and at least recovering the \$5,000 that was supposed to be used for appraisals. I asked for a complete breakdown of her fees for services and never received it and there was never a retainer or information regarding what she charged. I would be happy to provide you additional documents or explanations if necessary. Thank you for your time and consideration.

Sincerely,



Joanne Lehman

**CLIENT SECURITY FUND  
INVESTIGATION REPORT**

From: Bob Quintero  
Date: April 8, 2009  
Re: Client Security Fund Claim No. 2008-41  
Claimant: Joanne Lehman Colton  
Attorney: Linda J. Wilson

**Investigator's Recommendation**

I recommend that the Committee deny the claim in the amount of \$224,358.24. In my opinion, the claim is based (i) primarily on a lack of satisfaction with the legal services provided and (ii) secondarily on a fee dispute.

**Statement of the Claim**

Joanne Colton previously retained Attorney Linda Wilson to represent her in a divorce proceeding. There is documentation in the file that Ms. Colton paid Attorney Wilson \$30,000 to cover fees and expenses. (Ms. Colton states in her Application for Reimbursement that she paid \$32,202 in fees and expenses.) The claim for reimbursement is \$224,358.24. Ms. Colton does not really explain how this amount was computed. However, it appears to be based on what Ms. Colton believes she was entitled to receive (but did not receive) in the divorce proceeding.

**Findings and Conclusions**

1. Ms. Colton's divorce proceeding appears to have been fairly complicated and contentious. There was a fair amount of jointly owned commercial property involved, and there was also an issue regarding the validity of prenuptial agreement. There is also some documentation in the file suggesting that the husband's legal fees were also in the neighborhood of \$30,000.

2. Ms. Colton was clearly not satisfied with Ms. Wilson's legal representation. In fact, Ms. Colton filed a complaint against Ms. Wilson with the Oregon State Bar. In her complaint, Ms. Colton alleged that Ms. Wilson (i) did not provide her with competent representation, (ii) failed to adequately explain matters to her, (iii) practiced law when suspended and (iv) did not provide proper documentation regarding the legal fees charged.

3. On 3/20/08, Attorney Wilson signed a Form B Resignation. Wilson's resignation references three pending Bar complaints by former clients – one of which was Ms. Colton's complaint. (Wilson had previously served a six month suspension starting on 4/28/07 because of the neglect of a legal matter.)

4. There is documentation in the file that Ms. Colton paid Attorney Wilson \$30,000 to cover fees and expenses. The file contains fee and expense invoices from Wilson totaling \$29,272.03. As stated above, Ms. Colton states in her Application for Reimbursement that she paid \$32,202 in fees and expenses. However, there were also some fees charged and paid through Wilson's office to Attorney Michael Vergamini. (Vergamini provided some legal representation to Ms. Colton during the time Ms. Wilson was suspended.) We do not have any information on the Vergamini billings. Ms. Colton, however, has not raised any issues regarding the fees paid to Vergamini.

For the following reasons, I recommend that the Committee deny Ms. Colton's claim:

- i. While Attorney Wilson's conduct may have failed to meet various Rules of Professional Conduct, there is no evidence that she engaged in any dishonest conduct.
- ii. Attorney Wilson did, in fact, provide legal services to Ms. Colton.
- iii. Ms. Colton's claim is not supported by a determination of a court, fee arbitration panel or any accounting that she is owed a refund of a legal fee.

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 29, 2009  
From: Diversity Planning Task Force  
Re: Task Force Recommendations

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### Action Recommended

Approve the recommendations put forth by the Diversity Planning Task Force regarding a new value statement, diversity functions and diversity programmatic goals for the OSB.

#### New value statement:

The bar is committed to serving and valuing its diverse community, to advancing equality in the justice system, and to removing barriers to that system.

#### New diversity functions:

1. We are leaders helping lawyers serve a diverse community.
2. We are advocates for access to justice.

#### New diversity programmatic goals (in order of importance):

1. Identify and eliminate barriers to access to justice and high quality legal services for all Oregon residents.
2. Develop and maintain cultural competence among members of the Oregon State Bar.
3. Develop, attract and retain Oregon lawyers from underrepresented populations.
4. Recruit and retain a diverse workforce and volunteer base for the Oregon State Bar

### Background

The Task Force was created at the suggestion of BOG President, Gerry Gaydos to address the absence of any reference to diversity in the OSB's statements of its functions. Currently, the OSB's commitment to diversity is mentioned in OSB Bylaw Article 10 and under the entry for fairness under its values. These do not adequately reflect the OSB's long-standing effort to advance diversity in the profession and the legal system.

The Task Force's charge was to review the functions of the Oregon State Bar in light of Article 10 of the OSB Bylaws regarding diversity and to recommend language reflecting the OSB's commitment to diversity for inclusion in the functions of the Bar; draft programmatic goals consistent with the recommended language; present the recommended language and draft programmatic goals to the Board of Governors by June 10, 2009 for the Board of Governors' consideration for inclusion in the development of a long range plan for the Oregon State Bar.

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 28, 2009  
From: Access to Justice Committee  
Re: ABA Model Rule 6.1

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### Action Recommended

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

### Background

Members of the OSB Pro Bono Committee met with the BOG's Access to Justice Committee on May 8, 2009, to present a proposal recommending the bar replace its current pro bono aspirational standard with a modified version of ABA Model Rule 6.1.

The Pro Bono committee's recommendation is attached, along with text of the proposed rule change for Oregon, a copy of ABA Model Rule 5.1, a letter of support signed by 16 past OSB Presidents, a letter of support from law professors at each of Oregon's three law schools and a letter of support from the Chair of the Campaign for Equal Justice.

MEMORANDUM

To: Access to Justice Committee of the Board of Governors  
From: Pro Bono Committee (Bar Liaison Catherine Petrecca, ext. 355)  
Date: April 27, 2009  
Subject: Recommendation to Adopt ABA Rule 6.1 to Replace Section 13.1 of the OSB Bylaws

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**Action Recommended**

The OSB Pro Bono Committee recommends that the Access to Justice Committee forward to the BOG its recommendation that the BOG support the adoption of ABA Model Rule 6.1, as modified, into the Oregon Rules of Professional Conduct ("RPC"). The Pro Bono Committee further requests that the BOG support the change and request adoption of Rule 6.1 by the HOD and to the Oregon Supreme Court.

The Pro Bono Committee understands there may be some resistance to this proposal based on the fact that a similar proposal was made and rejected by the BOG last year. However, last year's effort was instructional for the Committee, and we have returned with a more detailed proposal. Also, this year we have developed support from various segments of the Bar and the public that were not part of last year's proposal.

**Summary**

The Pro Bono Committee recommends that the OSB replace its current pro bono aspirational standard, found in Section 13.1 of the OSB Bylaws, in favor of a modified version 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 Pro Bono Committee recommends that the BOG, HOD and the Supreme Court adopt ABA Model Rule 6.1 (2002), as modified by the Pro Bono Committee, as part of the Oregon Rules of Professional Conduct ("RPC"). A copy of the unmodified ABA Model Rule 6.1, and of the modified Rule 6.1 proposed for Oregon, are attached to this memorandum.

This proposed change would have the following primary effects:

- Relocation 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.<sup>1</sup>
- Encouraging that a "substantial majority" of those 50 hours be provided to persons of limited means or organizations that serve them, whereas Bylaws Section 13.1 calls for lawyers to handle between 20 and 40 hours, or two cases, for the poor.
- Encouraging lawyers to perform additional pro bono services via participation in activities for improving the law, the legal system and the legal profession.
- 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

The Pro Bono Committee believes that the replacement of Bylaws Section 13.1 with Rule 6.1 as part of the RPC will have the following benefits, all of which can reasonably be expected to increase pro bono legal work in the state:

- 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 some version of Rule 6.1. The others are California (voluntary bar), New York (voluntary bar), Texas, Virginia and the District of Columbia. These are all very large bars in comparison to Oregon, and only three are mandatory bars like Oregon. Moreover, while consistency is not to be admired just for consistency's sake, there are numerous concrete advantages to consistency. These include:

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<sup>1</sup> In considering this recommendation, the Access to Justice 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.

- adoption of Rule 6.1 would be consistent with the ethics programs of almost every law school in the nation, including Oregon's three law schools, which teach Model Rule 6.1 as part of their curriculum;
  - easing the transition for lawyers from other states who relocate their practice to Oregon; and
  - streamlining pro bono reporting and tracking efforts by multi-state law firms with offices in Oregon and which use Rule 6.1 (see next major bullet point).
- Improving the rate of voluntary reporting of pro bono hours to the OSB by attorneys working in law firms. 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 of Legal Professionals (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 time 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.
  - The rule change will build upon recent improvements in voluntary pro bono reporting that may be a result of the recent decision to collect pro bono reporting information with annual dues statements. It should be noted that 2008 saw the highest rate of voluntary reporting in the six years that voluntary pro bono reporting has been in place.<sup>2</sup>
  - Pro bono resources may increase. Under the proposed change, lawyers would be encouraged to both provide services and make financial contributions to pro bono and/or legal aid organizations, rather than choosing one or the other as suggested by Bylaws Section 13.1. Hopefully, more lawyers would choose to do both, thereby increasing the overall total of legal resources available to the poor.

This proposal has the support of numerous constituencies within the state, both inside and outside of the Bar. These include numerous past Bar presidents, the Campaign for Equal Justice, and the legal ethics professors of all three of Oregon's law schools. Copies of letters of support from these constituencies are attached to this memorandum.

#### **Expected Opposition**

Based on our experience with last year's effort to adopt Rule 6.1, the Pro Bono 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

<sup>2</sup> 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, 9.0% in 2007 and 15.0% in 2008.

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 some provisions of the RPC (unlike the Bylaws).

However, the history of Rule 6.1 and the ABA Model Rules of Professional Conduct 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: "[12] The responsibility set forth in this Rule is not intended to be enforced through the disciplinary process." To further address this potential concern, the Pro Bono Committee recommends that comment [12] be directly adopted as part of the text of Rule 6.1 in Oregon.

The express recognition that Rule 6.1 is wholly aspirational and therefore cannot be the basis for disciplinary action reflects the ABA's recognition that its model rules are partly obligatory and disciplinary and partly 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.<sup>3</sup>

Also, it should be recognized that in addition to Minnesota, 44 other states have already adopted Rule 6.1 in some form 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 Pro Bono Committee also does not see how the Rule could be enforced even if the Bar desired to do so, in the absence of a mandatory pro bono reporting requirement. Such a requirement presently does not exist in Oregon and the Pro Bono Committee is not advocating that one be adopted.

Perhaps the best evidence that Rule 6.1 is not designed to support disciplinary action is the fact that the Pro Bono Committee researched the issue and is not aware of a single

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<sup>3</sup> 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.

disciplinary action brought against a lawyer anywhere in the U.S. for failure to meet the aspirational standard of Rule 6.1.

Finally, the Pro Bono Committee recommends that the decision-makers on this proposal take a broader view of the RPC than strictly as disciplinary rules setting a floor for acceptable conduct, violation of which will be punished. Rather, the Rules should be seen more as a description of what the profession expects of a successful and well-respected lawyer. In this sense, all of the Rules are aspirational – they provide a road map for lawyers to follow in practicing law in an ethical and professional manner, and in a way that best serves the community that grants them the privilege of pursuing the profession.

#### Summary

The Pro Bono Committee recognizes that there is likely to be opposition to the proposed adoption of Rule 6.1, as there has been in the past. Previous opposition has centered on the allegation that this is the first step on a slippery slope to mandatory pro bono. These concerns are unfounded as the practical and constitutional safeguards are in place, or can be put into place, to insure that the standard remains wholly aspirational. The Pro Bono Committee feels that the likely benefits to pro bono service in Oregon that would result from adoption of Rule 6.1 are real, tangible and worth pursuing, and any concern over very unlikely consequences easily can be addressed through appropriate safeguards and procedures. At a minimum, the HOD should have the opportunity to consider the matter and provide its comments.

#### Attachments

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**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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Division for Legal Services

## ABA MODEL RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

### Policies - Voluntary Pro Bono Publico Service

<a href="#">ABA Model Rule 6.1</a>	<a href="#">Table of State Ethics Rules</a>	<a href="#">Standards for Pro Bono Programs</a>	<a href="#">Emeritus Attorney Rules</a>	<a href="#">Pro Bono Reporting</a>	<a href="#">CLE Credit for Doing Pro Bono</a>
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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.

#### Comment

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono

lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in pro bono programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services called for by this Rule.

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

#### Model Code Comparison

There was no counterpart of this Rule in the Disciplinary Rules of the Model Code. EC 2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer . . . Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged." EC 8-9 stated that "[t]he advancement of our legal system is of vital importance in maintaining the rule of law . . . [and] lawyers should encourage, and should aid in making, needed changes and improvements." EC 8-3 stated that "[t]hose persons unable to pay for legal services should be provided needed services."

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Updated: 11/29/2006

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April 13, 2009

Gerry Gaydos  
President, Oregon State Bar  
Gaydos Churnside & Balthrop PC  
440 E. Broadway, Suite 300  
Eugene, OR 97401

Dear Gerry:

As a Past President of the Oregon State Bar, I am writing to encourage the Board of Governors to replace the current pro bono aspirational standard found in OSB Bylaw Article 13 and to adopt ABA Model Rule 6.1 into the Oregon Rules of Professional Conduct. Below you will find the signatures of several Past Presidents of the OSB who join in this request.

First, moving the aspirational standard out of the Bylaws and into the Rules of Professional Conduct will inspire more attorneys to deliver pro bono services and will provide weight to our professional obligation to provide pro bono services. This is consistent with our existing statutory obligation of Professional Conduct set forth in ORS 9.460(4), which provides: "Duties of attorneys. An attorney shall: \* \* \* (4) never reject for any personal consideration, the cause of the defenseless or the oppressed."

Second, the move will increase the visibility of pro bono. One of the stated "Missions" of the OSB is to "serve justice by . . . increasing access to justice." The Board of Governors, as Bar leaders, should make every reasonable effort to make our members aware of his or her existing obligation to perform pro bono services. Moving the aspirational standard out of the Bylaws (an obscure document) and into the Rules of Professional Conduct (a highly visible document) is one way to do this. Currently, we are meeting only 20% of the civil legal needs of the poor in Oregon. As the BOG knows, the OSB Bylaws are reprinted in neither the OSB Membership Directory nor in West's compilation of Oregon Rules of Court. Our pro bono standard simply has been buried where few lawyers ever have a need to look.

Third, as our economy worsens, the number of people living in poverty grows, and pro bono services are increasingly needed to fill the gap in legal services. Here are some other statistics to consider. Slightly over 23% of Americans receive Bachelors degrees. Of that group, 10% earn Masters Degrees. Of that group, 10% earn doctoral degrees. Overall, only 2% of Americans have professional degrees. As lawyers, we are privileged to be some of the most highly educated people in the country. We hold the keys to the courthouse door. With our specialized skill and knowledge comes a corresponding responsibility to ensure that all people have access to the justice system. Even if moving the pro bono standard from the Bylaws into the ORPCs has the effect of causing a modest increase in the delivery of pro bono services, a substantial public benefit will result.

142754



LANDYE BENNETT  
BLUMSTEIN LLP  
ATTORNEYS

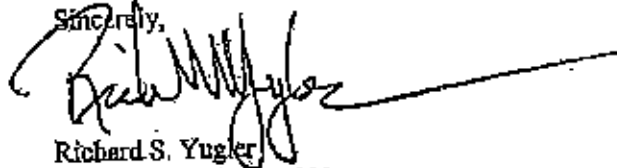
Gerry Gaydos  
April 13, 2009  
Page 2

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Fourth, adoption of ABA Model Rule 6.1 in the Rules of Professional Conduct would increase Oregon's consistency with other states. Oregon is now one of only six states that have not adopted Rule 6.1. When Oregon eliminated its Disciplinary Rules ("DRs") and replaced them with a variation of the Model Rules of Professional Conduct, among the stated reasons for doing so was the purpose of having a larger body of professional conduct jurisprudence. With the elimination of interstate boundaries to practice, and move toward reciprocal admission, there is an ever greater need for Oregon to increase consistency with the standards employed by the vast majority of attorneys nationally and regionally. It truly is ironic that ABA Model Rule 6.1 is taught in law schools, tested in the MPRE during the admissions process, but, thereafter, ignored by the Oregon State Bar.

As members of the Board of Governors, you are in a unique position to make decisions that can improve the lives of Oregon's most vulnerable citizens. Moving the aspirational standard into the Rules of Professional Conduct is just such a decision. I encourage the BOG to support this change, to recommend to the House of Delegates its passage, and to request that the Oregon Supreme Court adopt this change for 2010.

Sincerely,



Richard S. Yugler  
OSB Past President 2008

/kb

cc: Teresa Schmitt

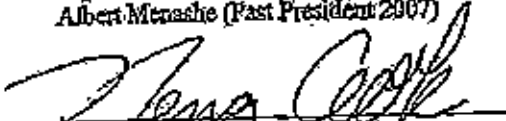
*Please see signatures on following page.*



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Alaska: 701 West Eighth Avenue, Suite 1200 • Anchorage, Alaska 99501 • Tel: 907.276-5152 • Fax: 907.276-8433  
1981 East Palmer-Wasilla Highway, Suite 220 • Wasilla, Alaska 99654 • Tel: 907.376-3955 • Fax: 907.376-5979

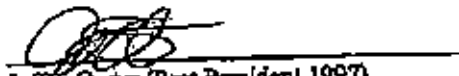
I/We support moving the pro bono aspirational standards of the Oregon State Bar from its Bylaws into the Oregon Rules of Professional Conduct, and the adoption of ABA Model Rule 6.1, for the reasons set forth in the accompanying letter of OSB Past President, Richard S. Yugler.

  
Albert Minashe (Past President 2007)

  
Nena Cook (Past President 2005)

  
Charles Williamson (Past President 2003)

  
Ed Hamden (Past President 2001)

  
Jeff S. Carter (Past President 1997)


  
William G. Wheatley (Past President 1994)

  
William E. Crow (Past President 1992)

  
Robert H. Fraser (Past President 1991)


  
Dennis Rawlinson (Past President 2006)

  
William G. Carter (Past President 2004)

  
Angel Lopez (Past President 2002)

  
Kevin K. Stever (Past President 1998)

  
Judy Slipter Henry (Past President 1995)

  
Julie Bantz (Past President 1993)

  
Dennis C. Karnopp (Past President 1996)



April 27, 2009

Dear Board of Governors Members:

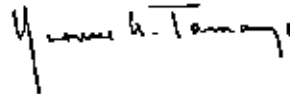
We are writing today to encourage the Oregon State Bar to replace its current pro bono aspirational standard, found in Section 13.1 of the OSB Bylaws, in favor of a modified version of the aspirational standard found in ABA Model Rule 6.1.

Both Model Rule 6.1 and Section 13.1 are currently taught at Oregon's law schools. However, since neither is contained in the Oregon Rules of Professional Conduct, the classroom may be the last time Oregon lawyers encounter the actual written standard. Adopting Model Rule 6.1 and including it in Oregon Rules of Professional Conduct would provide easy access to and raise awareness of the standard.

Thank you,



Steve Johansen  
Professor of Law  
Lewis & Clark Law School



Yvonne Tamayo  
Professor of Law  
Willamette College of Law

Tom Lininger  
Professor of Law  
University of Oregon School of Law

*Tom Lininger emailed his assent to this letter but was unable to attach an electronic signature.*

**THE LAWYERS' CAMPAIGN FOR EQUAL JUSTICE**

April 16, 2009

Board of Governors  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281

Dear OSB Board of Governors Member:

As Chair of the Board of Directors of the Campaign for Equal Justice, I am writing to encourage you to replace the current pro bono aspirational standard found in the OSB Bylaws with ABA Model Rule 6.1. Part of the Campaign's mission is to build the capacity of Oregon's legal aid programs, including pro bono programs, while working to eliminate systemic barriers to providing effective legal services. We aim to increase access to justice by increasing the availability of civil legal services to low-income Oregonians. We believe that more attorneys will be inspired to do pro bono and support legal services if the OSB adopts ABA Model Rule 6.1 into the Oregon Rules of Professional Conduct.

We are living through the biggest economic downturn since the Great Depression. Low-income Oregonians are particularly vulnerable to shifts in the economy. Clients eligible for legal aid are attempting to survive on incomes that are at or near the poverty line. They sometimes have to choose between food and staying in their homes. Paying legal fees when the need arises is not an option. As you know, Oregon's legal aid programs provide access to justice for these clients in critical areas such as domestic violence, housing, and income maintenance. In these tough economic times there are more Oregonians living in poverty, and demand for legal aid far outstrips available resources. Legal aid needs the help of Oregon lawyers now more than ever.

Legal aid is a source of hope and justice. Unfortunately, given current funding we meet less than 20% of the legal needs of the poor, and that means that many people in need will go without help. Legal aid can leverage their resources with the aid of pro bono attorneys. As a substantive matter, rule 6.1 encourages Oregon lawyers to perform pro bono work and give money to legal aid programs. Elevating the aspirational standard into our Rules of Professional Conduct will certainly give the standard more visibility. Please consider the adoption of ABA Model Rule 6.1 into Oregon's Rules of Professional Conduct.

As members of the Board of Governors you are in a unique position to make decisions that can improve the lives of Oregon's most vulnerable citizens. Moving the aspirational standard into the Rules of Professional Conduct is just such a decision.

Sincerely,



Ed Hamden, Barran Liebman  
Board Chair, Campaign for Equal Justice

**ACTIVELY PARTICIPATING**

- Richard D Adams
- Ernest C Allen
- Timothy Allen
- Robert St Arndt
- Jonathan A Auer
- Robert M Atkinson
- John Thomas A Baker
- Ernest Bandycki
- Mon David V Brewer
- Larry A Borchas
- Thomas W Brown
- Christine P Brown
- Hon Neil R Byrnes
- Timothy J Calderbank
- Harry P Caplan
- Jeff J Carter
- William G Carter
- Edward F Clark, Jr
- Linda D Clifton
- Nancy Cook
- Charles E Corrigan
- William S Cune
- William V Davidson
- Timothy J Deering
- Joseph E DeWitt
- Paul A Dixon
- Patrick M Dixon
- Michael D Dixon
- Michelle S Dwyer
- Jeffrey H Ekelund
- Paul R Elliott
- Brian J Evers
- Linda K Eversman
- Richard S Fish
- Brian Joseph Flanagan
- Arnell E Foster
- Norine S Frazier
- Hon Elizabeth Fryer
- Karen J Gans
- Gerry Gayda
- Timothy C Gearing
- Phil Gekman
- Kathy T Graham
- Ward Graham
- Ronald L Greenstein
- William S Gross
- Michael J Hagood
- Jessica A Hamilton
- Madeline J Harlan
- Edward A Harnden
- John D Hartman
- Janis B Hewitt
- Robert H Hill
- Hon Mary Jo Jones
- Hon Peter J J Ryan
- Dana G Karpis
- Raul K Kral
- Keith A Krawling
- Dean Robert Krawling
- James L Krawling
- James H Krawling, Jr
- Frank J Langille, III
- Steven D Larson
- William N Latta
- Tom M LeMay
- Reinhold T Lewis, Jr
- Eric R Lindner
- Kevin P Linn
- Neeraj H Loya
- Don H MacIntyre
- William J MacIntyre
- Daniel W McGinn
- Albert A MacIntyre
- Gregory Joseph Meyer
- Joel A Mallin
- Hon Frank Moore
- Carl R Paul
- Hon Andrew P Quinn
- William F Reilly, Jr
- George M Reilly, Jr
- Sheryl J Reilly
- Robert W Reilly
- Dean Margaret J Rice
- Scotty Reinman
- Joseph A Rice
- Steven H Rice
- Guy A Romalis
- Quinn P Robinson
- Lawrence H Robinson
- Carl A Rodich-Smith
- Lynnette B Ross
- Peter C Ruber
- George D Ryan
- Thomas G Ryan
- Kevin D Ryan
- Douglas H Ryan
- Michael B Schrock
- John L Schwalbe
- Long P Shively
- Sharon B Shively
- Yvonne L Smith
- Thomas B Sizer
- N Robert Smith
- Corey Steinhauser
- Edward J Sullivan
- Mark J Swanson
- Charles S Swanson
- Valerie Ann M Tanager
- Robert Van Ypersele
- Mark R Waite
- James T Walden
- Christopher M Walker
- Robert C Weaver, Jr
- James H Weiswood
- Richard W Dillmore Williams
- Michael S Williams
- Charles B Williams, III
- Hon Arthur W Whitton
- Kathleen Vogel
- Tom Zerk

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 28, 2009  
From: Access to Justice Committee  
Re: Expansion of the Modest Means Program

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### Action Recommended

Approve revisions to the Modest Means Program (MMP) policies regarding client eligibility and attorney fees to accommodate program expansion

### Background

At its April 2009 meeting the Access to Justice Committee requested bar staff and members of the Public Service Advisory (PSA) Committee to recommend changes to the MMP that would broaden its impact to the benefit of both clients and attorney panelists. A special meeting of the PSA Committee was called, which included several active panelists from the Modest Means Program.

Recommendations from that meeting include:

1. Work with bar sections to explore feasibility/advisability to expanding into additional areas of law, such as elder law and immigration.
2. Change the current "\$60 per hour maximum" standard for attorney fees for all clients to a tiered system based on client income and assets. The goal is to encourage more lawyers to join the MMP.
3. Increase the income ceiling for the top tier of clients so that more are eligible for the MMP.
4. Change how non-liquid assets are evaluated so that homeowners are not disqualified (or wrongly qualified) based on the uncertainty of home values, home equity, and limited access to these assets.

Implementation of the first recommendation is a long-term goal. To accomplish the other goals, the group recommends the following guidelines:

<u>Client Income</u>	<u>Hourly Rate</u>
\$60/hour	125% of FPG or below
\$80/hour	126-175% of FPG
\$100/hour	176-225% of FPG

In addition, rather than using dollar ranges for evaluating home equity, the new guidelines will ask only whether the applicant owns a home. If the answer is "yes," the client will be qualified at one tier above their income tier unless the client is already in the top tier (i.e., home ownership in itself will not disqualify a potential client from the MMP). As now, the panel attorneys will have the final say as to client eligibility, but under the new guidelines the panelists would be in a position primarily to adjust downward rather than upward.

Implementing these recommendations requires only a change to the MMP policies, not the bar's bylaws. An attachment (Modest Means Policies and Procedures) shows the current policies edited in track changes mode to show additions and deletions, along with a clean copy of the recommended new policies. The PSA Committee and staff have also included some housekeeping revisions to make MMP policies consistent with those of the Lawyer Referral Service.

I. Program

A. Overview

The Modest Means Program (MMP) is designed to make legal services available to lower income people who are unable to afford regular attorney fees.

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B. Operation

The Referral & Information Services (RIS) Administrator shall develop and revise referral procedures and shall be responsible for the operation of the program. Procedures and rules shall be consistent with the program goals and the following guidelines:

1. RIS Staff ("Staff") may not comment on the qualifications of a participating MMP Panelist Attorney ("Panelist") and may not guarantee the quality or value of legal services.
2. Staff shall not make referrals on the basis of race, sex, age, religion, sexual orientation, or national origin.
3. No more than three referrals may be made to an applicant for the same legal problem.
4. Staff may provide legal information and referrals to social service agencies for callers for whom a legal referral would not be appropriate, and may develop agency resource lists.
5. Callers complaining about possible ethical violations by Panelists shall be referred to the Oregon State Bar Client Assistance Office.

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C. Client Eligibility and Attorneys' Fees

1. To be eligible, applicant income must be less than or equal to at least one current eligibility tier of the MMP ("Tier"). Tiers are based upon set percentages of the current Federal Poverty Guidelines, with allowable adjustments based on guidelines of the Legal Services Corporation.
2. Attorneys' fee levels ("Levels") shall be set to correspond with the Tiers, after giving due consideration to the most recent edition of the Oregon State Bar Economic Survey and common billing practices for each area of law addressed by the MMP. In consultation with the Public Service Advisory Committee, Staff shall periodically adjust the Tiers and Levels. Tier and Level adjustments may be reviewed by the Board of Governors, who shall determine whether the adjustments were reasonable. The client fee for an initial consultation shall not exceed \$35. MMP attorneys are entitled to request a reduced initial retainer deposit ("Reduced Retainer"). "Reduced Retainer" shall mean an amount that is less than the amount of an initial retainer deposit requested for non-MMP cases of similar complexity and duration.

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II. Panelists

A. Eligibility

Attorneys satisfying the following requirements shall be eligible for participation in the program:

The attorney must:

1. be in private practice; and
2. be an active member of the Oregon State Bar who is in good standing; and

3. maintain malpractice coverage with the Professional Liability Fund; and
4. have no Disciplinary Proceedings pending.  
"Disciplinary Proceedings" shall include those authorized to be filed pursuant to Rule 3.4 of the Rules of Procedure.
5. Attorneys satisfying the following additional requirements shall be eligible for participation in special subject matter panels. The attorney must: a) meet standards for eligibility in the MMP; and b) meet the standards set for the specific subject matter panel.

**B. Registration**

1. Qualifying attorneys shall be accepted as Panelists upon submission of the signed registration form which includes an agreement to abide by MMP Policies and Procedures.
2. Applications for special subject matter panels shall be reviewed by Staff in accordance with eligibility guidelines set by the Board of Governors. Challenges to a Staff decision on eligibility shall be reviewed by the Public Service Advisory Committee, whose decision is final.
3. Staff shall exercise discretion in determining whether additional or duplicate registrations will be accepted.

**C. Enforcement**

1. Panelists against whom Disciplinary Proceedings have been approved for filing shall be immediately removed from MMP until those charges have been resolved. A disciplinary matter shall not be considered resolved until all matters relating to the Disciplinary Proceedings, including appeals, have been concluded and the matter is no longer pending in any form.
2. A Panelist whose status changes from "active member of the Oregon State Bar who is in good standing" shall be automatically removed from the MMP.
3. A Panelist may be removed from the program or any MMP panel if the Panelist fails to continue to maintain eligibility or otherwise violates the Rules for Panelists. Staff may temporarily remove a Panelist pending review by the Public Service Advisory Committee at its next regularly scheduled meeting. Decisions of the Public Service Advisory Committee regarding Panelist eligibility may be reviewed by the Board of Governors, who shall determine whether the Public Service Advisory Committee's decision was reasonable.

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 1. A Panelist must remain an active member of the Oregon State Bar in good standing with malpractice coverage from the Professional Liability Fund and not be the subject of a formal disciplinary proceeding.¶  
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**D. Rules for Panelists**

In order to remain eligible to receive referrals each Panelist shall:

1. Continuously be an active member of the Oregon State Bar who is in good standing with malpractice coverage from the Professional Liability Fund and have no pending Disciplinary Proceedings.
2. Charge no more than \$35 for the initial consultation with a client referred by the MMP, except that no consultation fee shall be charged where: a) such charge would conflict with a statute or rule regarding attorney's fees in a particular type of case, or b) the attorney customarily offers or advertises a free consultation to new or potential clients in a particular type of case.
3. If applicable, request and/or receive only a Reduced Retainer.

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4. Use written fee agreements for all services undertaken on behalf of MMP-referred clients beyond the initial office consultation.
5. Abide by the client service standards developed by the Oregon Bench and Bar Commission on Professionalism.
6. Refer back to MMP any client with whom the Panelist has a conflict of interest and/or any client with whom the Panelist may not personally conduct the initial interview.
7. Participate only on those panels reasonably within the Panelist's competence and, if applicable, only where the Panelist has previously submitted all necessary subject matter qualification forms and been qualified to join such special subject matter panel(s).
8. Cooperate with Staff by responding promptly to requests for information.
9. Immediately notify Staff if the Panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason.
10. Respond to all MMP follow-up notices within two weeks of receipt of same.
11. Submit any fee disputes with clients referred by MMP to the Oregon State Bar Fee Arbitration Program.

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## II. Panelists

### A. Eligibility

Attorneys satisfying the following requirements shall be eligible for participation in the program:

The attorney must:

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2. be an active member of the Oregon State Bar who is in good standing; and



3. maintain malpractice coverage with the Professional Liability Fund; and
4. have no Disciplinary Proceedings pending.  
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#### D. Rules for Panelists

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2. Charge no more than \$35 for the initial consultation with a client referred by the MMP, except that no consultation fee shall be charged where: a) such charge would conflict with a statute or rule regarding attorney's fees in a particular type of case, or b) the attorney customarily offers or advertises a free consultation to new or potential clients in a particular type of case.
3. If applicable, request and/or receive only a Reduced Retainer.

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8. Cooperate with Staff by responding promptly to requests for information.
9. Immediately notify Staff if the Panelist is unable to accept referrals for a period of time due to vacation, leave of absence, heavy caseload or any other reason.
10. Respond to all MMP follow-up notices within two weeks of receipt of same.
11. Submit any fee disputes with clients referred by MMP to the Oregon State Bar Fee Arbitration Program.



CIRCUIT COURT OF THE STATE OF OREGON

FOURTH JUDICIAL DISTRICT  
MULTNOMAH COUNTY COURTHOUSE  
1021 S.W. FOURTH AVENUE  
PORTLAND, OR 97204-1123

MAUREEN MCKNIGHT  
JUDGE

PHONE (503) 988-3986  
FAX (503) 276-0967  
maureen.mcknight@ojd.state.or.us

May 22, 2009

Terry Wright, Chair  
BOG Access to Justice Committee  
c/o Lewis & Clark Legal Clinic  
310 SW 4<sup>th</sup> Avenue, Suite 1018  
Portland, Oregon 97204

Re: Access to Justice: Interactive Forms

Dear Ms. Wright,

Thank you for the opportunity to speak with the Access to Justice Committee this month. I was very pleased to discuss with such a supportive group the status of efforts by the State Family Law Advisory Committee to address the myriad needs of family law litigants who lack lawyers.

Your committee's interest in interactive forms was particularly gratifying. The SFLAC has prioritized development of standardized, interactive forms and worked with the State Court Administrator's (OSCA) office on preliminary work to explore vendor product. The Judicial Department's efforts are stalled, however, by severe budget problems curtailing both the necessary financial investment and OSCA staff support. The SFLAC's Self-Representation Subcommittee remains committed, though, to pursuing both the "standardization" discussion with family law practitioners and to collaborating with other institutions interested in advancing the goal of web-based interfaces for document assembly.

You may be aware that the City of Portland's One-Stop Domestic Violence center is seriously considering contracting for interactive court forms in Family Abuse Prevention Act restraining order cases. As I stated at the meeting, the SFLAC is very interested in working with the Access to Justice Committee on any similar projects for electronic forms addressing "bread and butter" family law issues. Interactive court forms merge the principles of access with technological efficiency. I firmly believe our efforts here are the single most significant step we can take to maximize the benefit of Oregon eCourt for the self-represented.

Please let me know if there is any additional information I can provide. I would be happy to

continue discussions when my docket obligations did not require my early departure, as it did this month.

Very truly yours,

  
MAUREEN MCKNIGHT  
Circuit Court Judge

cc: OSB Access To Justice Committee Members: Gina Johnnie, Michelle Garcia, Karen Lord, Audrey Matsumonji, Milzi Naucier, Robert Vieira  
Kay Pulju and Judith Baker, OSB  
Teresa Schmid, OSB Executive Director  
Paula Brownhill, SFLAC Chair  
Kingsley Click, State Court Administrator  
Rebecca Orf and Brian DeMarco, OSCA Staff Counsel

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 29, 2009  
From: Ward Greene, chair, Budget & Finance Committee  
Re: OSB Investment Policy

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### Action Recommended

None required.

### Background

At its May 8 meeting, the Budget & Finance Committee "resolved to send RFP's to investment managers for the bar to consider more active management of the investment portfolio." On May 27, committee members Ward Greene and Michelle Garcia, and the bar's CFO met to develop the process. The group received and reviewed copies of the RFI and related documents the last time the bar pursued this evaluation in late 2002. The group decided the first step was to review the bar's existing policy and a draft will be reviewed at the committee meeting on June 12. In the meantime, the group will pursue names of investment manager candidates.

The bar's investment policy is included in the bar's bylaws, and a revision to the policy may be forthcoming at a later meeting.

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 21, 2009  
From: Kathleen Evans, Chair, Policy & Governance Committee  
Re: Section Grant Proposals

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### Action

Consider the Policy & Governance Committee's proposed bylaw establishing standards for section grant applications.

### Background

The Oregon State Bar Constitutional Law Section (hereafter "the CLS") has been involved for more than a year in "Sesquicentennial DVD Project" in partnership with the Classroom Law Project, the Oregon Historical Society and The Oregon Community Foundation. The goal of the project is the production of six 15-minute DVDs that detail key aspects of the history and meaning of the Oregon Constitution. The proposed title of the DVD set is "The Evolution of the Oregon Constitution: An Exercise in Democracy." A master grant application has been drafted that includes a budget for the production of the DVDs of \$217,347.00. The CLS has already submitted two grant applications and received \$10,000 toward the project.<sup>1</sup> The funds have been deposited with the OSB. (We understand that the CLS has agreed that the Oregon Community Foundation will hold and distribute any additional grant funds received.) General Counsel's Office learned of the project when the CLS asked the bar to prepare independent contractor agreements for law student researchers, to be paid from the \$10,000 grant proceeds held by the Bar.

Because sections are not independent bodies, but "integral and important part[s] of the bar,"<sup>2</sup> the Policy & Governance Committee believes that there should be guidelines in place for section grant-based projects.<sup>3</sup> The creation, reorganization or abolition of sections is within the sole discretion of the BOG. Pursuant to OSB Bylaw 15.1, sections exist in part "to provide a forum for communication and action in matters of common interest" to their members. Similar language is found in Article I (Definition and Purpose) of the Standard Section Bylaws. Article IX, Section 4 of the Standard Section Bylaws also provides that a section "serves as an education, communication and networking forum in the areas of law...for which the Board of Governors approved its establishment."

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<sup>1</sup> The grants are in the amount of \$5,000 each, one from the Multnomah Bar Foundation and the other from the Wayne Morse Center for Law and Politics.

<sup>2</sup> OSB Bylaw 15.1.

<sup>3</sup> We have not identified any legal proscription against the OSB soliciting or receiving grants, so this is purely a matter of policy.

As indicated, however, in carrying out their activities, sections do not act autonomously. The BOG approves the amount a section charges for dues and assesses each section an amount calculated to cover 50% of the bar's cost of providing administrative services to the section. (The basic administrative services include the collection of dues, processing all receipts and expenditures, preparation of periodic financial statements, and investment of section funds.) Sections are specifically prohibited from participating in political campaigns on behalf of candidates (Standard Section Bylaws Article I, Section 3), and are required to comply with the Bar's legislative policies, including adherence to the *Keller* expenditure limitations, unless the section is completely self-supported by the voluntary dues of its members and its self-generated revenues.

For the most part, consistent with the purpose for which they are created, section activities tend to be limited to the production of continuing education programs, the publication of a newsletter, and the hosting of a list serve as a discussion forum for members' substantive and procedural legal issues. At the same time, several sections engage in activities that benefit the public. For instance, the Debtor-Creditor Section operates a bankruptcy clinic for low-income clients.

We have no doubt that the CLS's project is an appropriate section activity. It is also consistent with the bar's purpose and mission. The purpose of the bar is "the advancement of the science of jurisprudence and the improvement of the administration of justice." ORS 9.080. In furtherance of its mission, one of the functions of the bar is to promote respect for the law among the general public. Bar Bylaw 1.2(B). It is also evident that CLS members have devoted a lot of time, thought and effort to create an accurate, engaging and otherwise quality end product.

Some years ago, some sections sought authority to make donations to the Campaign for Equal Justice and other organizations or individuals (at least one section wanted to make donations to benefit the child of a deceased section member). In response, the BOG adopted Bylaw 15.401:

Sections may make donations to charitable causes only with prior approval of the Executive Director. The Executive Director will allow such donations only on a showing by the prospective donee that the donation of section funds to the charitable entity is related to the purposes for which the section exists. For sections that are not entirely self-supporting, as described in Article IX, Section 5(B) of the Standard Section Bylaws, the prospective donee must also show that the donation fits within the limitations set forth in Section 12.1<sup>4</sup> of the Bar's Bylaws.

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<sup>4</sup> "Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness,



Because of the relationship of sections to the bar, the actions of the CLS in connection with seeking and using a grant are the actions of the Oregon State Bar. It is the OSB and not the CLS that is ultimately responsible for any failure to comply with the grant requirements. We have acquired only limited information about the CLS's "partnership" with the Classroom Law Project and the Oregon Historical Society. However, the grant proposal from the CLS to The Collins Foundation clearly reflects an expectation that all three groups will provide similar levels of staffing to the project. (The application was denied.) Also of concern is the fact that at least for the two grants that have been obtained by the CLS, the Bar is accountable to the grantors for the use of the funds. Similarly, if the section intends to hire an employee or independent contractor (as, for instance, a project manager), then that person will be the bar's employee. Accordingly, the project could have a fiscal impact on the Bar.

The Policy & Governance Committee recommends adoption of the following new bylaw to govern section grant activities:

#### Section 15.7 Grants

Sections may apply for grants only with prior approval of the Board of Governors. The board will allow grant applications only upon a showing that the grant activity is consistent with the section's purposes and the mission of the bar. The board may disallow any application that the board does not believe is in the best interests of the bar. The grant application must be reviewed and approved by OSB General Counsel before submission to the grant-making organization. Any grant funds received by a section shall be deposited with the bar and will be distributed only upon request of the section treasurer and in accordance with the grant specifications. The section must periodically report to OSB General Counsel regarding the status of the grant project and any reports to the granting organization must be reviewed and approved by OSB General Counsel in advance of submission.

The board should also decide whether it wants General Counsel to review the ongoing granting activities of the CLS, notwithstanding that they began before adoption of the proposed bylaw.

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efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon."

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 21, 2009  
From: Kathleen Evans, Chair, Policy & Governance Committee  
Re: BOG Member Facilitation of HOD Regional Meetings

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### Action Recommended

None. This is for your information only.

### Background

The first round of HOD regional meetings is scheduled for the week of June 22. BOG members serve as the hosts of the meeting in their region. The purpose of the first round of meetings is to alert HOD members to any agenda items that have been received, to encourage the submission of any additional items, to provide information about deadlines and assistance in submitting resolution, and to answer any questions delegates or members in the region may have.

Attached are Guidelines that the Policy & Governance Committee believes will be helpful in your facilitation of the regional meetings.

Document2

## Guidelines for Facilitators of HOD Regional Meetings

### HOD Authority

The HOD is empowered to (a) modify or rescind an action or decision of the BOG, or (b) direct the BOG to future action. The BOG is bound by the HOD vote on such issues.

The HOD may not:

- (a) invalidate payments previously made at the direction of the board;
- (b) direct, modify or rescind the BOG's decision regarding the PLF assessment; or
- (c) direct, modify or rescind any other BOG action that is subject to control, approval or review by the Supreme Court.<sup>1</sup>

### Regional Meetings

The HOD regional meetings take place twice in the summer: once before the deadline for submitting resolutions for the HOD meeting and again between the mailing of the agenda and the meeting.

The first meeting is to give HOD members and other members of the region an idea of what the BOG expects will be on the agenda, to answer any questions, and to invite the submission of appropriate resolutions.

The second meeting is for reviewing the preliminary agenda approved by the BOG, discussing the resolutions and answering any questions to assist the delegates' understanding of the pending issues.

### BOG Member Role

BOG members serve as hosts and facilitators of the regional meeting. Either the ED or GCO will also attend the meeting (in person or by telephone) to assist with explanations and background information as necessary.

Generally, the BOG member will "walk through" the agenda (at the June meetings, the agenda is very rough and consists only of items that have been submitted prior to the date of the meeting), offering a short explanation of each resolution and inquiring whether anyone in attendance has questions or comments. At the June meeting, the BOG member should also encourage the submission of additional resolutions and provide the deadline for doing so.

At the "final" pre-HOD regional meeting, the same approach is followed. The BOG member reviews items that have been submitted for the agenda and, if appropriate, explains why an item has been excluded from the agenda. It is appropriate

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<sup>1</sup> Examples include MCLE Rules, the Bar Rules of Procedure, and the Rules for Admission of Attorneys.

to encourage delegates to attend the HOD meeting to avoid the necessity (and expense) of a second meeting.

### Resolutions

Any active member may submit a resolution for the HOD meeting. It must be in writing, identify the presenter, include an estimate of the financial impact, if any, and be signed by at least 2% of all active members (currently that would be 272, based on March 2009 membership figures).

A delegate may submit a resolution without member signatures.

All resolutions must be submitted to the Executive Director not less than 45 days prior to the meeting at which the item is to be considered.

Anyone wishing help with the form of a resolution may contact General Counsel's Office.

### Schedule for 2009

HOD Meeting: ..... Friday, November 6  
Agenda distributed: ..... Friday, October 16  
2<sup>nd</sup> Round Pre-HOD Meetings: ..... tbd (October)  
BOG Adoption of Agenda: ..... tbd (Friday, September 25?)  
Deadline for Resolutions: ..... Tuesday, September 22  
1<sup>st</sup> Round Pre-HOD Meetings: ..... Week of June 22

June 2009 HOD Regional Meetings Schedule

OSB Staff	Date	Region	Time	Host
Schmid (in-person)	Monday, June 22	4	9-10	Ann Fisher 4800 SW Griffith Drive, Ste 125 Beaverton, OR 888-737-5834
Schmid (in-person)	Monday, June 22	5	Noon-1	Kellie Johnson Mult. Co. DA's Office Room 600, Mult. Co. Courthouse Portland, OR 888-737-5834
Stevens (in-person)	Tuesday, June 23	6	9-10	Gina Johnnie 693 Chemeketa St. Salem, OR 97308 888-737-5834
Stevens (in-person)	Tuesday, June 23	3	Noon-1	Mitzi Nauler Legal Aid Services of Oregon 433 4 <sup>th</sup> Ave SW Albany, OR 888-737-5834
Stevens (phone)	Wednesday, June 24	2	9-10	Gerry Gaydos 440 E. Broadway, Suite 300 Eugene, OR 888-737-5834
Stevens (phone)	Wednesday, June 24	OOS	Noon-1	Gerry Gaydos 888-737-5834
Schmid (in-person)	Thursday, June 25	1	Noon-1	Barbara DiIaconi 803 Main St., Suite 201 Klamath Falls, OR 888-737-5834

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Oregon State Bar  
Meeting of the Board of Governors  
April 3, 2009  
Open Session Minutes

The meeting was called to order by President Gerry Gaydos at 12:40 p.m. on Friday, April 3, 2009, and adjourned at 4:50 p.m. members present from the Board of Governors were Kathy Evans, Ann Fisher, Michelle Garcia, Gerry Gaydos, Ward Greene, Gina Johnnie, Chris Kent, Steve Larson, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Bob Vieira, and Terry Wright. Members of staff present were Danielle Edwards, Susan Grabe, Kay Pulju, Jeff Sapiro, Teresa Schmid, Sylvia Stevens, and Rod Wegener. Other present were Ron Bryant, Bill Carter, Tom Cave, Suzanne Chanti Jeff Crawford, Cindy Hill, Rod Lewis, Chief Judge Anita Jackson, Kevin Luby, Kandis Nunn, Laura Rackner, Jim Rice, Ross Williamson, and Ira Zarov.

Friday, April 3, 2009

1. Professional Liability Fund

A. General Update

The number of claims filed is high for this time of year but the cost for defense has been stable thus far. The PLF and the bar are looking at different ways to keep PLF coverage costs low for those members doing pro bono work. This is also something Teresa and the OSB are focusing on as part of a "member stimulus package."

B. Budget Report

The poor performance of the stock market has caused the PLF to lose a significant amount of its invested funds but this has not affected the day-to-day operations. There may be a need to raise the PLF premium in 2010 or 2011 by \$200 to \$400. The PLF recognizes that the bar will also need to raise dues in the next year or two and the two boards will do what they can to minimize the financial burden on members.

2. Report of Officers

A. President's Report

Mr. Gaydos presented a slide show he shared at the Western States Bar Conference which focused on Oregon and the bar. He also reported on his attendance at various functions including the Multnomah Bar Association's Young Lawyers Summit and his continued interest in



working with the Oregon New Lawyers Division and focus for the future.

**B. President Elect Report**

Ms. Evans reported on activities and the events she has attended on behalf of the bar. She found the Western States Bar Conference and ABA Bar Leader Institute informative and beneficial.

**C. Executive Director Report**

Ms. Schmid informed the board of various upcoming issues and events including a visit from members of the Yun Nan Province in SW China, the Supreme Court's favorable response to a "mirror reciprocity" rule, and the ABA summit on fair and impartial courts which she will attend on behalf of the OSB. Ms. Schmid provided highlights from the Western States Bar Conference including the economic recovery resources webpage on the ABA website and how other bar organizations are looking at their state's judicial selection process.

**D. ONLD Report**

Mr. Williamson reported on the ONLD's activities since the last BOG meeting and pointed out the ONLD Master Calendar which shows all upcoming events for the ONLD. The ONLD thanked Ward Greene for his participation in the Career Development and Rainmaking Dinner on April 1. Mr. Williamson also thanked Ann Fisher for her service as the BOG liaison to the ONLD.

**3. Board Members' Report**

Board members reported on meetings and events they attended since the last board meeting.

The MBA lunch was well attended and allowed both board members to interact and network. Audrey Matsumonji reported on the Diversity Section's appreciation of Ms. Schmid's contribution to enhancing the relationship between the OSB and minority bar members. Michelle Garcia reported on feedback from a member who is interested in an Access to Justice CLE on how to work with diverse clients. Mitzi Naucler reported that the Linn County Bar is electing an entire slate of new/young lawyers to the board and they are interested in working with the ONLD on an event in Linn County.

**4. Special Appearances**

Anira Jackson, Chief Judge Warm Springs Tribal Court, shared information regarding the 95 tribal courts in Oregon. She began with a review of the

history of Indian tribes' relationships with the US Government, how tribal courts came to be in Oregon, and the varying levels of tribal court jurisdiction throughout our state.

The Warm Springs Court has seen a significant raise in caseload since 2005 from 1248 cases to 2876 cases in 2008. They are considering the addition of a youth court where teenagers preside over cases involving other teens.

Unemployment on the reservation is approximately 60%. There is a significant gang issue as well as a high incidence of fetal alcohol syndrome.

A significant problem for the tribal courts is their limited access to legal research engines. Chief Judge Jackson also posed the idea of adding an Indian Law question to the Oregon bar exam.

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

E. Budget and Finance Committee

1. OSB Investment Portfolio and Policy

Mr. Greene reported on the committee's discussion regarding the best way to invest bar funds to ensure three key aspects: safety of the assets, validity of the assets and the highest possible return on the assets.

Action: Ms. Evans moved, Mr. Piucci seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for bylaw change consideration.

Action: The board unanimously passed the committee motion to amend OSB Bylaw 7.402 to add another category of approved investments. The amended bylaw reads as follows:

*Subsection 7.402 Approved Investments*

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

(a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.

(b) U.S. Treasury obligations - no percentage limitation for this issuer.

(c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.

(d) U.S. Corporate Bond or Note - Moody "A" or Standard & Poor "A" or better - each issuer limited to \$100,000.

(e) Commercial Paper - Moody "P-1" or Standard & Poor "A-1" or better -each issuer limited to \$100,000.

(f) Mutual funds that commingle one or more of the approved types of investments.

(g) Mutual funds of U.S. and foreign equities and not including individual stock ownership.

(H) Federal deposit insurance corporation accounts.

## 2. Budget Strategies

Mr. Greene informed board that the OSB is short of the aspirational reserve balance. He also emphasized the importance of the board being conscious of the bar's operating costs and continue to seek a profit from the CLE Seminars and Legal Publications Departments.

## F. Policy and Governance Committee

### 1. BOG Region Reconfiguration

The committee discussed the issues surrounding the change in BOG regions and recommended the reconfiguration be effective January 1, 2011. The new configuration will apply to the BOG election in 2010 for the new board member terms beginning January 1, 2011.

The committee also recommended that BOG members from region 1 and region 3 continue to serve out their terms. The language of ORS 9.025(5) does not disqualify them because they have not moved their offices; additionally, having them complete their terms would limit disruption and would allow all three BOG members from current first year class to remain eligible to serve as president.

The committee further recommends that the HOD election under the new regional configuration take place in 2011 with new delegates terms beginning April of 2011. Those HOD members who would automatically be changed to a different region based on the reconfiguration would also continue to serve out their terms representing the region they were elected to represent.

**Action:** The board unanimous passed the committee motion to approve each of the three committee recommendations regarding the regional reconfiguration and election of BOG and HOD members.

## 2. Reporting Period after Reinstatement

Ms. Evans reported the committee's discussion on the current MCLE procedure when a member is reinstated to active membership after a period of inactive status. The committee recommended a change to the MCLE rules to clarify that any member who did not file a compliance report for the reporting period immediately prior to their membership status change will be assigned a new reporting period.

**Action:** The board unanimous approved the committee's recommendation to change the MCLE rule 3.7 (c) (3) as follows:

"Notwithstanding Rules 3.7 (c) (1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December of the next calendar year. All subsequent reporting periods shall be three years."

## G. Public Affairs Committee

### 1. Update on 2009 Legislative Session

The legislature is focused on the budgetary issues in Oregon, including the financial impact on the court system. Bar members met with legislators during OSB Lobby Day and emphasized the BOG's areas of focus for this year: support for courts, indigent defense, legal services funding, and concerns for low-income Oregonians.

The committee recommended the creation of a task force of board members to review legislative actives during legislative years as well of on off years.

**Action:** The board unanimously approved the committees recommendation to create a legislative actives task force to review the bar's current legislative approach.

## H. Public Member Selection Committee

### 1. Public Member Recruitment

Mr. Vieira provided the board with an update on the public member recruitment process and encouraged members of the board to think of qualified candidates for the various openings in 2010.

### 6. BOG Policy on Section Grant Oversight

Staff recently learned that one of the bar sections has obtained a grant and wishes to use some of the funds to hire law students. The board was asked whether it would like to develop some policies regarding section grant requests. The board agreed that this issue should be reviewed by the Policy and Governance Committee and the Budget and Finance Committee to develop a recommendation for board action.

### 7. Consent Agenda

**Action:** Ms. Evans moved, Mr. Piucci seconded, and the board unanimously passed the consent agenda with addition of the following appointments recommended by the Appointments Committee:

State Lawyers Assistance Committee:	Bryan Welch
HOD Region 3:	Wesley Gromlich
HOD Region 6:	Claudia Pieters

### 8. Good of the Order

#### A. Advertising Task Force

The advertising task force continues to meet already and hopes to have a report with recommendations for the June board meeting.

#### B. Sustainability Task Force

The sustainability task force meet once and has meetings scheduled throughout the remainder of the year. The group is energetic and committed and is studying the possibility of making sustainability part of the bar's mission.

#### C. Comment to Oregon RPCs

Ms. Stevens reported that the Supreme Court is not interested in adopting official comment to the Oregon RPCs at this time. The reason given was that it would be a monumental task and not a good use of the court's resources at present. The Chief Justice suggested that the proposal be brought back in the future.

Oregon State Bar  
Meeting of the Board of Governors  
May 8, 2009  
Special Meeting  
Open Session Minutes

1. Budget & Finance

a. Online Legal Research Library Demonstrations Report

Mr. Wegener presented information concern the focus group review of Casemaker™ and Fast Case, a product very similar to Casemaker™. After comparing the products, the cost, and the services of both companies, the focus group recommended that the bar make a change to Fast Case when the Casemaker™ contract expires in September.

**Action:** Mr. Greene moved, Ms. Evans seconded, and the board unanimously passed a motion to negotiate a contract with Fast Case.

b. Facilities Management Agreement with Opus

Mr. Wegner presented information and answered questions concerning the committee motion to terminate the management agreement with OPUS provided the termination does not effect the Master Lease.

**Action:** The board unanimously approved the committee motion to terminate the management agreement with OPUS.

2. BOG Packet Distribution

In the interest of convenience as well as sustainability, the board agreed unanimously to receive future committee agendas and supporting documents via e-mail. The committee "packets" will be e-mailed to board members Thursday of the week prior to the committee meetings. The board will continue to receive the BOG agenda by regular mail.

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Oregon State Bar  
Meeting of the Board of Governors  
April 3, 2009  
Executive Session Minutes

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2) (f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law

1. Recommendation

A. OSB v. Oscar Nealy (UPL #07-35)

**Action:** Ms. Wright moved, Mr. Piucci seconded, and the board unanimously approved a cease and desist agreement with Nealy.

B. OSB v. Linda Fisher dba Federal Paralegal (UPL #08-41)

**Action:** Ms. Wright moved, Ms. Matsumonji seconded, and the board unanimously approved a cease and desist agreement with Ms. Fisher dba Federal Paralegal.

C. OSB v. Kathleen Boyce

**Action:** Ms. Wright moved, Mr. Piucci seconded, and the board unanimously approved a cease and desist agreement with Ms. Boyce.

B. General Counsel's Report

The board received the General Counsel's report on pending litigation and other legal matters.



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Oregon State Bar  
Meeting of the Board of Governors  
April 3, 2009  
Judicial Proceedings Minutes

Reinstatements and disciplinary proceedings are judicial Proceedings and are not public meetings (ORS 192.690). This portion of the BOG meeting is open only to board members, staff, and any other person the board may wish to include. This portion is closed to the media. The report of the final actions taken in judicial proceedings is a public record.

A. Reinstatements

1. John P. Bowles – 971497

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

2. Susanne Feigum – 991390

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

3. Steven Groh 794683

**Action:** Ms. Johnnie presented information concerning the BR 8.1 reinstatement application of Mr. Groh. Ms. Johnnie moved, Mr. Kent seconded, and the board unanimously voted to recommend to the Oregon Supreme Court that Mr. Groh be reinstated as an active member of the Oregon State Bar.

4. Kenneth H. Johnston – 953140

**Action:** Ms. Wright presented information concerning the BR 8.1 reinstatement application of Mr. Johnston to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

5. Karl W. Kime – 931335

**Action:** Ms. Evans presented information concerning the BR 8.1 reinstatement application of Mr. Kime. Ms. Evans moved, Mr. Greene seconded, and the board voted to temporarily reinstate Mr. Kime pursuant to BR 8.7. The application also will come before the board at a later meeting. Ms. Matsumonji opposed the motion.

6. Lucinda Moyano – 862519

**Action:** Mr. Kent presented information concerning the BR 8.1 reinstatement application of Ms. Moyano. Mr. Kent moved, Ms. Evans seconded, and the board unanimously voted to recommend to the Oregon Supreme Court that Ms. Moyano be reinstated as an active member of the Oregon State Bar.

7. William M. Parker – 742505

**Action:** Ms. Sapiro presented information concerning the BR 8.1 reinstatement application of Mr. Parker. Ms. Fisher moved, Ms. Matsumonji seconded, and the board voted to recommend to the Oregon Supreme Court that Mr. Parker be reinstated as an active member of the Oregon State Bar. Mr. Greene and Mr. Kent abstained.

8. Carol L. Schrader – 954046

**Action:** Ms. Lord presented information concerning the BR 8.1 reinstatement application of Ms. Schrader. Ms. Lord moved, Mr. Vieira seconded, and the board unanimously voted to temporarily reinstate Mr. Schrader pursuant to BR 8.7. The application also will come before the board at a later meeting.

9. Erica Storm – 981096

**Action:** Mr. Piucci presented information concerning the BR 8.2 reinstatement application of Ms. Storm. Ms. Evans moved, Ms. Wright seconded, and the board unanimously voted to deny Ms. Storm's application for reinstatement as an active member of the Oregon State Bar.

10. Scott Michael Weis – 955281

**Action:** Ms. Fisher presented information concerning the BR 8.1 application for reinstatement submitted by Mr. Weis to satisfy the one meeting notice requirement of Bylaw 6.103. The application will come before the board at a later meeting.

11. Steven C. Yates – 774020

**Action:** Ms. Matsumonji presented information concerning the BR 8.2 reinstatement application of Mr. Yates. Ms. Matsumonji moved, Mr. Greene seconded, and the board unanimously voted to recommend to the Oregon Supreme Court that Mr. Yates be reinstated as an active member of the Oregon State Bar with the condition that he be on a probationary status for two years.

B. Custodianship

1. Karen E. Read - 953900

**Action:** Mr. Sapiro presented information concerning Ms. Read's lack of response to Disciplinary Counsel inquiries about her failure to communicate with clients. Mr. Greene moved, Ms. Evans seconded, and the board unanimously authorized Disciplinary Counsel's Office to seek the appointment of a custodian to take possession of client files, records, and funds of Ms. Read pursuant to ORS 9.705 et seq., and to seek a temporary protective order under ORS 9.722.

C. Disciplinary Counsel's Status Report

The board received the Disciplinary Counsel's status report as presented.

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# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 12, 2009  
Memo Date: May 19, 2009  
From: Sylvia E. Stevens, General Counsel  
Re: CSF Claims Recommended for Payment

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### Action Recommended

Consider the following claims recommended for payment by the Client Security Fund:

No. 08-27 DUNN (Moynagh)	\$ 300.00
No. 08-28 OH (Algain)	2,865.00
No. 08-31 KOCH (Paresi)	4,691.00
No. 08-38 GENNA (Grady)	3,600.00
No. 08-46 HOCKETT (Murphy)	1,435.00
No. 09-03 KOCH (Lochr)	1,500.00
No. 09-09 OH (Chung/Min)	5,125.00
No. 09-10 OH (Joo)	4,000.00
TOTAL	\$23,516.00

### Discussion

#### No. 08-27 DUNN (Moynagh)--\$300

Mr. Moynagh retained Timothy Dunn on September 17, 2007 and paid a flat fee of \$300 for "a motion to reduce a felony to a misdemeanor" and also to assist the client in completing a criminal history questionnaire for employment. Dunn did not inform Mr. Moynagh that in June 2007, a special referee had recommended that Dunn be suspended pending the resolution of numerous disciplinary charges and the referee's decision was pending before the Supreme Court. On October 5, the Court ordered the suspension. There is no evidence that Dunn performed any work for the client and, in fact, the client never heard from Dunn after his initial contact in September.

The committee recommends reimbursement of the entire \$300 and a waiver of the requirement that the client have a civil judgment. This claim is for less than \$5000 and is virtually identical to several of the matters for which Dunn was ultimately disbarred.

#### No. 08-28 OH (Algain)--\$2865

Mr. Algain hired Portland attorney John Oh in November 2007 to handle an immigration matter and paid a \$1500 "nonrefundable fee." In December, Oh requested and

received another payment of \$1365, telling the client it was for application expenses that speed up the process. Oh promised to file the petition in January 2008.

In June 2008, not having received his wife's green card, Mr. Algain called Oh and learned he had moved to California several months before. When he reached Oh in California, Mr. Algain was assured that the petition had been filed and the matter was progressing. To confirm what Oh had told him, Mr. Algain contacted the Immigration Service directly and learned that no petition had been on his wife's behalf. This was followed by several phone calls between Oh and Mr. Algain in which Oh repeatedly assured Mr. Algain that the Immigration Service was mistaken and that he could provide proof of filing. Finally, Oh admitted to Mr. Algain that he had not filed anything on his behalf.

Mr. Algain filed a complaint with the Bar in July 2008. In his response, Oh admitted that he hadn't filed the Algain petition because he didn't have the money to pay the filing fee. Oh was suspended for eight months in February 2009 on charges relating to other client complaints after a full trial on the merits. The Algain complaint was consolidated with three others in a second prosecution filed in December 2008; Oh has not filed a response but the bar has not yet taken a default.

The committee concluded that Oh had not performed any legal services for which he had collected money and that the client is entitled to a full refund. The committee recommends waiving the requirement for a judgment because the claim is for less than \$5000 and is part of pending disciplinary proceedings for which it is anticipated Oh will be sanctioned.

#### No. 08-31 KOCH (Parsi)--\$4791

Rose Hubbard represented Mark Parsi in his divorce, which concluded in October 2006. Unhappy with the outcome, Mr. Parsi wanted to appeal. On her client's behalf and with his consent, Ms. Hubbard retained Jacqueline Koch. Koch quoted a fee of \$5000, which was understood by everyone to be a fixed fee for the appeal.

In January 2007 Ms. Hubbard prepared and filed the notice of appeal because Koch had not done so timely. Ms. Hubbard deducted the filing fee from the \$5000 requested by Koch, and tendered the balance of \$4791. The appeal was abated and put on the court's settlement conference docket. In February 2008, Koch and Ms. Hubbard attended an appellate settlement conference that was not successful. The appellant's brief was due on March 10, 2008; Koch obtained an extension to June 2008 but didn't file the brief and the court issued a notice of default in July 2008. Ms. Hubbard stepped in to get the default set aside and handle the appeal for Mr. Parsi.

Beginning in the summer of 2006, the bar began investigating disciplinary complaints against Koch (unrelated to this matter) and in May 2007, formal disciplinary charges were filed against her. She defaulted and the trial panel recommended a five month suspension. The bar appealed and in December 2008, the Supreme Court suspended Koch for 120 days. In the meantime, Mr. Parsi and several other of Koch's former clients filed complaints that

were approved for prosecution. In January 2009, Koch submitted her Form B resignation relating to those pending matters.

The committee concluded that Koch had not earned any of the \$4791 paid by Mr. Paresi. No judgment is required because the claim is for less than \$5000 and Koch's Form B arose in part out of her representation of Mr. Paresi.

**No. 08-38 GENNA (Grady)--\$3600**

Patrick Grady's parents hired Michael Genna in November 2006 to represent him in an extradition proceeding. Genna asked for a \$5000 retainer. There was no agreement as to Genna's hourly rate. Mr. Grady says that Genna spent about five hours in telephone conference with him, paid one visit to the jail and wrote one letter to the district attorney before essentially abandoning the case. Despite Mr. Grady's requests for an itemized statement of his time, Genna failed to deliver one. Genna submitted a Form B resignation in January 2008 while being prosecuted on three different matters involving excessive fees and improper handling of funds.

The committee concluded that this claim is eligible for reimbursement for the portion of the fee not earned by Genna. The client valued Genna's work at \$1000 and requested an award of \$4000. The committee recommends reimbursing Mr. Grady \$3600, crediting Genna \$1400 for 7 hours of work at \$200/hour. The committee also recommends waiving the requirement for a civil judgment. This claim is for less than \$5000 and is similar to the matters that led to Genna's resignation; moreover, Genna's whereabouts are currently unknown.

**No. 08-42 HOCKETT (Murphy)--\$1435**

Mr. Murphy hired Roseburg attorney Sharon Hockett in May 2005 to assist him in negotiating a parenting plan regarding his son. Hockett requested and Mr. Murphy deposited a retainer of \$1700. Over the next several months, Hockett and the client spoke over the phone about his case, and in April 2007 she sent a bill showing a balance of \$1435 on his account. In the fall of 2007, Mr. Murphy advised Hockett he was ready to move forward with legal action to establish his parental rights, but he didn't follow up until early in 2008. In December 2007, Hockett submitted a Form B resignation in the face of unrelated charges relating to failure to file income tax returns for more than 10 years, among other things. Mr. Murphy was unable to contact Hockett after her resignation and she did not respond to Mr. Murphy's request for the balance of his retainer.

The committee concluded that the claim is eligible for reimbursement. There was some question about whether Mr. Murphy had exhausted his efforts to collect from Hockett, but ultimately the committee voted to recommend waiving the requirement for a judgment, believing that collectibility is doubtful and pursuing an uncollectible judgment would be an undue burden for Mr. Murphy given the size of the claim. Moreover, the



disciplinary case that gave rise to Hockett's eventual Form B started as a neglect complaint but developed into a more complex case when it was discovered she kept virtually no records and couldn't account for client funds. This claim is for less than \$5000 and bears a strong resemblance to the case that led to Hockett's resignation.

#### No.09-03 KOCH (Loehr)--\$1500

Cindy Loehr hired Jacqueline Koch in March 2006 to handle a marital dissolution. Ms. Loehr gave Koch a \$1500 retainer. In December 2006, Koch billed Ms. Loehr for an additional \$2987, which Ms. Loehr paid.

The case was settled by agreement in October 2006. It isn't clear whose counsel was to prepare the judgment, but neither Koch nor Husband's attorney did anything before Husband's attorney resigned in April 2007. Husband's new attorney eventually submitted a form of judgment to the court in September 2007 after unsuccessfully trying to get Koch to respond regarding the remaining issues. Ms. Loehr filed a complaint against Koch, alleging a variety of concerns about the quality of the representation. Her complaint, with others, gave rise to Koch's eventual Form B resignation.

In its investigation of Ms. Loehr's complaint, DCO was able to reconstruct some of Koch's business records, which show the two payments by Ms. Loehr in March and December 2006 totaling \$4487. There is a September 2006 statement for services totaling \$2987 (\$2516 for Koch's time and \$471 for the filing fee), but with no credit for the \$1500 paid initially. The committee agreed with DCO that the billing error resulted in an overpayment by Ms. Loehr of \$1500. Despite demand, she has not been able to recover the funds from Koch.

The committee finds that the claim is eligible for reimbursement. No judgment is required because the claim is for less than \$5000 and Koch was disciplined for the same conduct.

#### No. 09-09 OH (Chung/Min)--\$5,125

Claimants Sang Chung and Seon Min hired John Oh to represent them in immigration matters in November 2007, and paid the requested fixed fee of \$2750. They heard nothing more from Oh and eventually determined he had relocated to Los Angeles. When they found him in Los Angeles, Oh apologized and promised to proceed with their case if they sent him another \$2000, which they did.

In June 2008, with no apparent progress on their legal matter, Chung and Min hired another attorney to help them determine the status of their matter and recover their papers and unearned fees from Oh. The new attorney had several e-mail contacts with Oh, in which the latter assured that the clients' petitions were ready to be filed as soon as he received \$375 for the filing fee, which the clients sent. After another period of no contact from Oh, the new attorney eventually determined that Oh had done nothing on the clients' matters. As a

result, Mr. Chung's visa expired and he had to return to Korea. Ms. Min hired new counsel to help her obtain a green card.

Mr. Chung and Ms. Min filed a complaint with the bar. Oh has not responded to Disciplinary Counsel's inquiries.

The committee concluded that the claim should be paid in full, as there is no evidence that Oh did any work in exchange for the money he received. The committee also recommends waiving the judgment requirement because the claim is only slightly more than \$5000 and is the subject of a disciplinary matter for which Oh will doubtlessly be sanctioned.

**No. 09-19 OH (Joo)--\$4,000**

Ms. Joo hired John Oh in April 2006 and deposited \$4000 as a flat fee for her immigration matter. He told her it would take some time to complete. Thereafter, Ms. Joo had difficulty making contact with Oh who she says rarely returned her calls and when he did, he assured her the matter was proceeding. Something in 2008 Ms. Joo learned that Oh had moved to California. When she called him there he again assured her he would complete the work, but he stopped returning her calls. She has tried without success to recover her papers and unearned fees from Oh. Ms. Joo filed a disciplinary complaint in March 2009. Oh is not responding to Disciplinary Counsel's inquiries.

The committee concluded that Oh did no work for Ms. Joo and that she is entitled to a full refund of the fees paid to Oh. The committee also recommended waiving the requirement for a judgment, as her claim is for less than \$5000 and Oh is certain to be disciplined for his conduct in representing her.

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Minutes  
Access to Justice Committee  
OSB Board of Governors  
April 3, 2009  
Five Pine Resort, Sisters

**Committee Members Present:** Terry Wright, Bob Vicira, Mirzi Naucner, Gina Johnnie, Karen Lord, Audrey Matsumonji, Michelle Garcia. **Also present:** Kathy Evans (OSB President-Elect), Kay Pulju (staff).

Minutes of the March 6, 2009, meeting were approved as submitted.

**1. Statewide Family Law Forms.** The Oregon Judicial Department (OJD) committee established to look into standardized forms has been suspended due to the OJD budget crisis. Chief Justice Paul De Muniz is aware of the bar's interest in moving forward with this project. The next step will be to seek comments and feedback from each circuit court's presiding judge and trial court administrator. The model family law forms are currently available on the OJD website; Pulju will forward a link to this committee's members. Evans suggested creating video instructions for completing and filing the model forms, a project that could be handled by the bar's Legal Links cable TV crew.

**2. ABA Model Rule 6.1.** The OSB Pro Bono Committee will present a recommendation that the BOG adopt this rule at its June meeting. The rule provides an aspirational standard for attorneys to perform bono service and give financial support to legal services programs. Evans questioned why the BOG was being asked to reconsider a proposal it only recently rejected. Evans explained that the BOG was concerned about placement of an aspirational standard within the disciplinary rules, which could concern members, and thought that the current standard was sufficient. Evans will ask Sylvia Stevens whether there are limits on how often and when an issue may be brought to the board.

**3. Wills for Heroes.** Evans reported on the ABA's "Wills for Heroes" program, which provides pro bono legal services for first responders. Pulju will send a link to committee members for discussion at the next meeting.

**4. OSB Modest Means Program.** Pulju referred to handouts sent with the meeting agenda that provide background on the program and outline options for expanding. The bar's Public Service Advisory Committee will meet on May 2 to discuss the options, and will report to this committee at its June 8 meeting.

**Next Meeting:** Friday, May 8, 2009, at the OSB Center in Tigard.

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Minutes  
Access to Justice Committee  
OSB Board of Governors  
May 5, 2009  
Oregon State Bar Center, Tigard

**Committee Members Present:** Terry Wright (Chair), Bob Vieira, Mitzi Naucler, Gina Johnnie, Audrey Matsumonji, Michelle Garcia. **Also present:** Gerry Gaydos (OSB President); the Hon. Maureen McKnight, Catherine Keenan and Maya Crawford (guests); Judith Baker, Catherine Petrecca and Kay Pulju (staff).

Minutes of the April 3, 2009, meeting were approved as submitted.

**1. Statewide Family Law Forms.** The Hon. Maureen McKnight and Catherine Keenan appeared as members of a subcommittee of the OJD's Statewide Family Law Advisory Committee. The subcommittee is focused on assistance to pro se litigants in family law matters, and is very interested in the development of interactive forms. McKnight and Keenan reported that judicial department staff have met with vendors, including Turbo Court, but they are not proceeding at this time due to budget constraints. Other than funding (estimated cost of \$100k), the barriers to developing such forms include questions of whether they would be mandatory or model only, whether family law practitioners would be supportive, and how to prioritize which forms are produced.

The OJD currently has model family law forms available on its website. The staff position assigned with keeping them updated is vacant and not expected to be filled. In addition, the Chief Justice has stated that courthouse facilitation programs, which use the forms and help pro se litigants complete them, will be cut if the level of budget reductions reaches 15%. Other issues are that the forms are available only in English and the printed instructions are too complicated for some users.

Naucler commented that in light of the large number of pro se litigants in Oregon's courts, the \$100,000 figure does not seem that high. Wright noted that issues with forms are a growing concern for the UPL Committee. An instructional video, provided in both English and Spanish, will be a priority for the bar. The committee would also like to see a draft business plan for how to make interactive forms possible.

**2. ABA Model Rule 6.1.** Maya Crawford appeared on behalf of the OSB Pro Bono Committee. She explained that the economic downturn and growth in Oregon's poverty population have increased legal needs among a population that was already under-served. The Pro Bono Committee believes adoption of a modified Rule 6.1 will help address unmet legal needs because it:

will be more visible to bar members, increasing awareness

- encourages a broader range of volunteer work than our current standard
- encourages financial support in addition to pro bono service
- will make our rules consistent with other states, all but six of which use the model rule
- will streamline reporting (NALP requires reporting according to the 6.1 standard)
- law schools currently teach to the 6.1 standard

Crawford further explained that adoption of the rule would in no way be a "slippery slope" to mandatory pro bono. ABA comment 12 thoroughly addresses this issue; the pro bono committee's proposal moves text from that comment into the rule for emphasis.

**ACTION:** The committee voted unanimously to recommend the rule change to the full Board of Governors.

**3. OSB Modest Means Program.** Wright reported on a meeting with the bar's Public Service Advisory Committee and active members of the Modest Means Program. The group held a lively and lengthy discussion about various ways to expand to the program. They have recommended moving to a tiered fee structure with hourly rates at \$0, \$80 or \$100 per hour based on client income. They also recommend changing how home ownership is factored so that homeowners are not disqualified, which has been an increasing issue in the current economic climate and poor real estate market. The PSA Committee will also be looking into adding new areas of law, but will work with bar sections on those recommendations.

**ACTION:** The committee directed Pulju to prepare a draft policy revision for the full board's approval.

**4. Other Business.** The board of the Legal Services Corporation, which recently met in Portland, presented Pro Bono Awards to five Oregon lawyers. The presentations and work of the recipients were inspiring, and might make a good article for the Bulletin.

**Next Meeting:** Friday, June 12, 2009, at the OSB Center in Tigard.

**Minutes**  
**Budget & Finance Committee**  
**May 8, 2009**  
**Oregon State Bar Center**  
**Tigard, Oregon**

**Present - Committee Members:** Ward Greene, chair; Kathy Evans; Mitzi Naucier; Michelle Garcia. **Other BOG Members:** Audrey Matsumonji **Staff:** Sylvia Stevens; Rod Wegener.

**1. Minutes – March 24 and April 3, 2009 Committee Meetings**

The minutes of the March 24 and April 3, 2009 meetings were approved.

**2. Financial Report – April 30, 2009**

As the April 30 statements are not final, Mr. Wegener gave an oral report of the preliminary known information. Mr. Wegener reported that, as expected, revenue is starting to decline as the year passes. Compared to last year, member fee is \$62,000 greater, program fee revenue \$9,000 greater, but investment income is \$104,000 less than 2008 after four months.

Although expenses generally are in line with budget, salaries and benefits are higher for April since there were three payroll periods in April. (This happens twice a year.) CLE Seminars and Legal Publications' net revenue is lower than 2008. The consultant engaged by the bar to review the Legal Publications program made several recommendations that are being implemented by bar staff.

**3. OSB Investment Portfolio and Policy**

A summary schedule of the bar's investment portfolio for the past four months was distributed at the meeting. After some discussion about the existing policy and the current allocation of the portfolio, the committee resolved to send RFP's to investment managers for the bar to consider more active management of the investment portfolio. The process to review responses to the RFP will be determined at a later date by the committee

**4. Facilities Management Agreement with Opus Northwest**

Mr. Wegener reported that the broker who represented the bar spoke to Thrivent Financial about the lender requiring the management agreement. The broker's initial communication with Thrivent indicated it will allow the bar to terminate the agreement. The committee resolved to terminate the management agreement with Opus Property Services LLC provided no terms of the master lease agreement with Opus Northwest change.

**5. Online Legal Research Library Contract**

The action on this topic was deferred to the special meeting of the Board of Governors following the committee meeting.

**6. Next committee meeting**

The next meeting will be prior to the June 12-13, 2009 board meeting at the bar center.



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**Minutes**  
**Budget & Finance Committee**  
**April 3, 2009**  
**Five Pines Lodge**  
**Sisters, Oregon**

**Present - Committee Members:** Ward Greene, chair Chris Kent, vice-chair; Kathy Evans; Mitzi Naucler; Michelle Garcia; Karen Lord. **Staff:** Teresa Schmid; Sylvia Stevens; Rod Wegener.

**1. Minutes – March 6 and March 24, 2009 Committee Meetings**

The minutes of the March 6, 2009 meeting were approved. The approval of the March 24 meeting minutes was deferred until the next meeting.

**2. Financial Report – February 28, 2008**

Mr. Wegener reported that even though the February 28 financial statements indicate a very positive budget variance, it is too early in the year to be too elated by the report. Some of the positive variance is due to earlier receipt of income or later payment of expenses.

The committee also reviewed the impact of credit card charges by members on the bar's operating budget. The use of cards is increasing annually, but the fees for servicing are plateauing with competition in the business and increasing volume.

The committee discussed charging a discounted fee to sections if it uses the bar center to hold a CLE. Currently sections are not charged any fee for use of the bar center. Bar staff will explore this matter.

**3. OSB Investment Portfolio and Policy**

The committee was updated on the meeting and discussions since the March 6 and 24 committee meetings. As per the direction of the committee, Mr. Wegener reported that \$3.1 million had been transferred from the LGIP to the Wells Fargo US Government Money Market Account with the intent to purchase 16 FDIC insured certificate of deposits.

It was noted that a certificate of deposit was not included in the list of approved investment instruments in the bar's bylaws, so the committee moved to add it to the list.

Mr. Kent raised the matter of the imbalance of the reserves and the funds needed for the reserves. (These reserves are the restricted fund balances, reserves stated in the bylaws, and contingencies established by the BOG). Beginning 2009, the reserve funds available were approximately \$3.2 million while the required reserves were \$3.8 million. This imbalance is due to the declining stock market and the unrealized losses in the bar's mutual fund portfolio. The committee acted on the imbalance by stating it acknowledged that amount of funds available was less than the required reserves, and will continue to monitor at its upcoming meetings.

The committee also discussed other options to manage the investment portfolio and the CFO will explore with the PLF about the bar using one of its investment managers for the bar's portfolio.

**4. Budget Strategies - Membership Fee Increase – 2010 or 2011**

The committee understood it will discuss the topic of the bar's and PLF's next fees and assessment increase during the joint board meeting. By consensus, the committee agreed that an increase in the PLF's assessment does not influence when the bar will ask for a member fee increase. Some committee members surmised that the typical bar member views the PLF assessment and bar member fee as part of the same bill.

**5. Line of Credit**

By consensus, the committee was not in favor of pursuing a line of credit at this time. If the bar has a cash flow shortage, the reserve funds should be the resource used, rather than borrow at an interest rate higher than what the bar was earning.

**6. Next committee meeting**

The next meeting will be prior to the May 8, 2009 at the bar center.

BOG Member Services Committee  
May 8, 2009  
Oregon State Bar Center  
Minutes

**Present:**

Kellie Johnson, Chair  
Ann Fisher, Vice-chair  
Gerry Gaydos, OSB President  
Steve Larson  
Steve Piucci  
Terry Wright

**Staff:**

Margaret Robinson  
Frank Garcia Jr.  
Kay Pulju  
Anna Zanolli  
Rod Wegener

**Approval of Minutes**

The Committee approved the minutes of the April meeting as written.

**Casemaker/Fastcase**

A demo session featuring both Casemaker and Fastcase resulted in good input about the two programs. The process resulted in the selection of Fastcase over Casemaker. The process was effective because it provided the opportunity to fully evaluate both products and for member input.

The Committee approved a motion to recommend Fastcase to the Board of Governors.

**Diversity/AAP Update**

Frank Garcia Jr. updated the committee on the AAP. He thanked the committee for its support during his first year as program administrator. The committee gave him a round of applause for all of the challenges he has faced during his first year. His report covered the bar exam grants, employment programs and the need to focus on the bar exam passage rate for people of color. Fundraising has begun for the 2009 OLIO Conference.

The Access to Justice Advisory Committee met with both sides of the issue represented. Other activities included pipelining, consultation with a Universal Design specialist and meeting with the Tonkin Torp Diversity Committee.

The committee again gave kudos to Frank for his work.

**Section Survey**

A draft survey to sections was provided and the group gave input. It was suggested that a comment area be added.

**Urban/Rural Split Task Force**

A member from Eastern Oregon is needed for this task force. This project will most likely involve a survey.

**HOD Election Summary**

The June agenda for the committee will have an item on it about the signature requirement for running for the HOD.

**SNAP Program**

The committee was informed about the SNAP program which is the culmination of a two year effort to allow members to set their preferences concerning communications from the bar.

Minutes  
Policy and Governance Committee  
April 3, 2009

Committee Members Present: Karhy Evans (Chair), Ward Greene, Chris Kent, Steve Larson, Audrey Matsumonji, Mirzi Naucler.  
Staff: Teresa Schmid, and Sylvia Stevens.  
Others: Gerry Gaydos.

1. Approve Minutes of March 6, 2009. The minutes were approved as submitted.
2. **BOG Regions Reconfiguration.** Ms. Stevens presented a recommendation that the new regional configuration be implemented effective January 1, 2011, with the two additional board members being elected in 2010. HOD elections in 2010 would be under the existing configuration for the meeting in 2010; the 2011 HOD elections would also follow the new configuration. Ms. Stevens also suggested that ORS 9.025(5) doesn't disqualify BOG members Naucler and DiIaconi (whose principal offices will not be in the regions from which they were elected) because it applies only when the member moves their office out of the region from which the member was elected. This was the approach taken in 1997 when BOG member (and president-elect) Kevin Strever's region changed during his term. After discussion, the committee voted unanimously to recommend that the BOG adopt the foregoing implementation plan.
3. **MCLE Rule Amendments re: Reinstated Lawyers.** Ms. Stevens presented the MCLE Committee's recommendation for amending the MCLE Rules to require that all reinstated members who did not file a compliance report during their last reporting period be assigned a short reporting period on reinstatement. After some discussion, the committee voted unanimously to recommend that the BOG forward the proposed rule amendments to the Supreme Court.

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**Minutes**  
**Policy and Governance Committee**  
**May 8, 2009**

**Committee Members Present:** Kathy Evans (Chair), Barbara DiIaconi (Vice-Chair), Ward Greene, Steve Larson, Audrey Matsumonji, Mitzi Naucler.  
**Staff:** Sylvia Stevens.  
**Others:** Gina Johnnie.

1. **Approve Minutes of April 3, 2009.** The minutes were approved as submitted.
2. **Section Grant Applications.** The committee discussed the issues surrounding sections applying for and receiving grants and agreed that procedures should be developed to limit the bar's risk and to ensure that grants are used for purposes germane to the bar's mission and the section's purpose. Staff was requested to draft a bylaw to address the committee's concerns.
3. **Membership Fee Increase.** The committee was of the view that its concerns about coordinating a fee increase with the PLF were adequately discussed at the April meeting and no further action is required.
4. **BOG Member Facilitation of HOD Regional Meetings.** The committee reviewed the handout for BOG members to use when facilitating HOD regional meetings. Ms. Evans suggested that the description of HOD authority be moved to the beginning of the document. With that change, it will be provided to BOG members in June.
5. **Possible Amendment to Oregon RPC 1.18.** Ms. Stevens explained the inadvertent failure to adopt the correct version of ABA Model Rule 1.18 and the value of the "missing" language. The committee voted unanimously to recommend that the BOG forward the amendment to the HOD.
6. **DeLaSalle High School Employment Program.** Ms. Stevens explained that the OSB had been approached to be a corporate sponsor for DeLaSalle High School's student employment program and the ED would like the BOG's reaction. While there does not appear to be any constitutional problem with participating in such a program, committee members questioned the policy of sponsoring a religious institution with member funds. The matter will be discussed with the BOG in June. The committee has no recommendation for the BOG.



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Public Affairs Committee  
April 3, 2009  
Sisters, Oregon

**Committee Members Present:** Steve Piucci, Ann Fisher, Michelle Garcia, Gerry Gaydos, Gina Johnnie, Kellie Johnson, Bob Viera. **Others in attendance:** Chris Kent. **Staff:** Teresa Schmid, Susan Grabe.

1. **Meeting minutes.** The minutes were approved.
2. **2009 Session Update.** The session is extremely difficult with legislators facing a growing deficit— currently at about \$4 billion and expected to reach \$5 billion by the May 15 revenue forecast. State Government, including the judicial system, faces reductions of up to 30% which means there will be dramatic changes in services provided and reductions in staff. (Approximately 90% of the budget is personnel once mandated payments, eg, Judge's salaries and jury payments are removed).
3. **OJD Budget.** The committee discussed the structural changes the Chief Judge of the Oregon Court of Appeals has proposed to streamline the appellate process, including allowing the court to sit in 2 judge rather than 3 judge panels, eliminating de novo review, and emphasizing Alternative Dispute Resolution programs. The Chief Justice also informed the bar that he will sign an expedited executive order for a draft UTCR to allow an expedited 6 person jury trial with limited discovery in smaller cases.
4. **Law improvement package.** Staff reported that most of the bar's package of law improvement bills has made it through the first chamber and are on the way to the second chamber for consideration.
5. **Law improvement process.** The committee discussed the law improvement process and how it operates. The group determined that it made sense to review the process and how it works during the interim versus the session. PAC will make recommendations to the board.
6. **Day at the Capitol Recap.** The OSB Day at the Capitol was successful with about 40 participants and meetings with key legislators on the judiciary and ways and means committees. Members heard from the Chief Justice, the Attorney General, Senate President and other legislators regarding the legislative process, court facilities and the court budget.
7. **ABA Lobby Day.** ABA Lobby Day in Washington, D.C., will focus on increased funding for legal services corporation and lifting the restrictions to which many.
8. **Future Conference Call Schedule.** Every other Wednesday at 4:00 pm  
5/13  
5/27  
6/10  
6/24

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Public Affairs Committee  
May 8, 2009  
Tigard, Oregon

Committee Members Present: Steve Piucci, Ann Fisher, Gerry Gaydos, Gina Johnnie, Kellie Johnson, Bob Vieira. Staff: Susan Grabe.

1. Meeting minutes. The minutes were approved.
2. 2009 Session Update. The session is extremely difficult with legislators facing a growing deficit— currently at about \$4 billion and expected to reach \$5 billion by the May 15 revenue forecast. State Government, including the judicial system, faces reductions of nearly 15%, which means there will be dramatic changes in services provided and reductions in staff. (Approximately 90% of the budget is personnel once mandated payments, eg, Judge's salaries and jury payments are removed).
3. OJD Budget reduction. The OJD released its revenue package and streamlining measures through the judiciary committees. The committee discussed the contents of the legislation and concerns were expressed about the potential impact on access to justice and unintended consequences in the future. After much discussion, the committee determined that it should send the Chief Justice a letter voicing support for the courts budget and outlining some high-level concerns with his proposals.

**ACTION:** The Public Affairs Committee agreed to send a letter to the Chief Justice regarding his package of bills to streamline the court system and increase revenue through new, increased and additional filing fees.

4. Law improvement package. Staff reported that most of the bar's package of law improvement bills have made it through the second chamber and are on the way to the governor for signature.
5. Red Flags Rule. The bar will monitor ABA discussions with the FTE regarding the 'Red Flags' Rule Requiring Creditors and Financial Institutions to Adopt Identity Theft Prevention Programs. This rule will have a Three-Month Delay of Enforcement during which time its applicability to lawyers will be determined.
6. ABA Lobby Day. ABA Lobby Day in Washington, D.C., was successful. The focus was on increased funding for legal services corporation and lifting the restrictions on certain activities, as well as reauthorization of the tax status of prepaid legal services.

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**Minutes**  
**Public Member Selection Committee**  
March 6, 2009

**Present:** Robert Vieira- Chair, Audrey Matsumonji- Vice Chair, Karen Lord, and Mitzi Naucler

**Staff:** Danielle Edwards and Frank Garcia, Jr.

**Absent:** Michelle Garcia

**Member Selection Timeline**

The committee discussed the timeline and future meeting dates. Final selection of interview days will be determined at the June 12 meeting.

**Recruitment**

In addition to the recruitment efforts focused on in 2008 the committee would also like to create a short brochure for use by BOG members when recruiting at various events and functions. The brochure will focus on the BOG position and not all public member opportunities available with the bar.

Members of the committee expressed an interest in recruiting members of the minority community. A letter and/or email will be sent to a list of contact Frank has accumulated in addition to the top 25 minority and women owned business in Oregon. Additional outreach will be facilitated with various non-profits, universities and tribal organizations.

**Next meeting**

The committee will review interview questions and select candidates to interview at its June 12, 2009, meeting.

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**2009 JUDGMENTS COLLECTED**

<b>Date</b>	<b>Attorney</b>	<b>Payment Received</b>
1/2/2009	Coover, Lewis Bryan III	73.90
2/24/2009	Anunsen, Roger	252.00
3/2/2009	Kelley, Phil	360.00
3/31/2009	Kelley, Phil	360.00
4/1/2009	Anunsen, Roger	126.00
5/1/2009	Anunsen, Roger	126.00
5/4/2009	Kelley, Phil	360.00
	<b>TOTAL</b>	<b>\$1,657.90</b>

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Three Months Ending March 31, 2009**

Description	March 2009	YTD 2009	Budget 2009	% of Budget	March Prior Year	YTD Prior Year
<b>REVENUE</b>						
Interest	\$88	\$2,176	\$16,900	12.9%	\$2,419	\$8,059
Judgments	360	1,046	5,000	20.9%	524	1,466
Membership Fees	127	67,487	70,800	95.3%	140	65,530
<b>TOTAL REVENUE</b>	<b>575</b>	<b>70,711</b>	<b>92,700</b>	<b>76.3%</b>	<b>3,083</b>	<b>75,055</b>
<b>EXPENSES</b>						
<b>SALARIES &amp; BENEFITS</b>						
Employee Salaries - Regular	2,280	6,844	29,800	23.0%	2,218	6,653
Employee Taxes & Benefits - Reg	755	2,263	8,900	25.6%	722	2,128
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>3,034</b>	<b>9,127</b>	<b>38,700</b>	<b>23.6%</b>	<b>2,939</b>	<b>8,781</b>
<b>DIRECT PROGRAM</b>						
Claims	4,615	11,815	150,000	7.9%	3,700	3,700
Collection Fees			500			
Committees			250			
Pamphlet Production			300			
Travel & Expense			1,285			
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>4,615</b>	<b>11,815</b>	<b>152,335</b>	<b>7.8%</b>	<b>3,700</b>	<b>3,700</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>						
Messenger & Delivery Services			50			
Office Supplies			100			
Photocopying			150			
Postage	18	50	250	20.0%	27	50
Professional Dues			200			
Telephone	9	35	200	17.5%	1	18
Training & Education	175	175	375	46.7%	120	120
Staff Travel & Expense			758			258
<b>TOTAL G &amp; A</b>	<b>202</b>	<b>260</b>	<b>2,083</b>	<b>12.5%</b>	<b>149</b>	<b>446</b>
<b>TOTAL EXPENSE</b>	<b>7,852</b>	<b>21,202</b>	<b>193,118</b>	<b>11.0%</b>	<b>6,788</b>	<b>12,926</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(7,277)</b>	<b>49,509</b>	<b>(100,418)</b>		<b>(3,705)</b>	<b>62,129</b>
Indirect Cost Allocation	1,086	3,258	13,032		784	2,352
<b>NET REV (EXP) AFTER ICA</b>	<b>(8,363)</b>	<b>46,251</b>	<b>(113,450)</b>		<b>(4,489)</b>	<b>59,777</b>
Fund Balance beginning of year		695,390				
<b>Ending Fund Balance</b>		<b>741,641</b>				
<b>Staff - FTE count</b>		<b>.35</b>	<b>.35</b>			

116.A