

**Board of Governors
Future Calendar of Events**

Revised August 17, 2009

BOG 2009 Meeting Schedule (tentative)

| <u>Committees Meetings at OSB Center 2009</u> | <u>Board Meeting Various Locations</u> | <u>BOG Meeting Locations</u> | <u>Special Events in Conjunction w/Meetings</u> |
|---|--|----------------------------------|---|
| September 25 | August 28-29 September 25 | OSB Center OSB Center | Board Mtg., Diversity Social Special BOG meeting to approve HOD Agenda, Past BOG Dinner |
| | October 29-31 | Gold Beach | Board Retreat, Board Mtg., Local Bar Social |
| | November 6 | OSB Center | House of Delegates |

BOG 2010 Meeting Schedule

| <u>Committees Meetings at OSB Center</u> | <u>Board Meeting Various Locations</u> | <u>BOG Meeting Locations</u> | <u>Special Events in Conjunction w/Meetings</u> |
|--|--|----------------------------------|--|
| January 15 | February 18-20 | The Oregon Gardens | Board Mtg., ONLD, Lunch w/Supreme Court, Local Bar Social, President's Reception |
| March 19 | April 23-24 | OSB Center | Board Meeting, Past BOG Dinner |
| May 14 | June 17-19 | Geiser Grand, Baker City | Board Meeting, Local Bar Social |
| July 16 | August 13-14 | Tigard | Board Meeting, Local Bar Social (tentative), approve HOD Agenda |
| September 24 | October 14-17 | Timberline Lodge | Board Retreat, Board Mtg., Local Bar Social |
| | October 29 | OSB Center | HOD Annual Meeting |

Upcoming Events of Interest

| | | | |
|---|---|--|--|
| <u>Other Events of Interest</u> Chinese Delegation Visit (1) HOD Deadline Past BOG Dinner HOD Regional Meetings Swearing In Ceremony A Supreme Sesquicentennial | August 20 September 22 September 25 Sep. 28 – Oct .2 October 8 October 9 | Chinese Delegation Visit (2) Awards Dinner Conference of Bar Leaders Bar Exam (2010) Bar Exam (2010) | November 5 December 3 January 21 February 23-24 July 27-28 |
|---|---|--|--|

| | | | | |
|--|---|--|--|--|
| <u>SPRB</u> September 18 October 16 November 21 December 18 | Conference Call Conference Call Tigard Conference Call | Feb. 9-15 Midyear Mtg. Aug. 4-9 Annual Meeting Feb. 1-7 Midyear Meeting Aug. 2-7 Annual Meeting Feb. 6-12 Midyear Meeting Aug. 8-13 Annual Meeting Aug. 7-12 Annual Meeting July 30-Aug. 4 Annual Meeting | 2011 2011 2012 2012 2012 2012 2013 2013 2013 2014 2014 2015 | NABE/NCBP/ABA Atlanta, GA NABE/NCBP/ABA Toronto, Canada NABE/NCBP/ABA New Orleans, LA NABE/NCBP/ABA Chicago, IL NABE/NCBP/ABA Dallas, TX NABE/NCBP/ABA San Francisco, CA NABE/NCBP/ABA Boston, MA NABE/NCBP/ABA Chicago, IL |
| <u>Professional Liability Fund Board</u> August October 8 December 11 | 2009 Salishan 2009 Tigard 2009 Tigard | | | |
| <u>National/Regional Meetings</u> Feb. 3-9 Midyear Mtg. Mar. 24-27 Aug. 5-10 Annual Mtg. | 2010 NABE/NCBP/ABA Orlando, FL 2010 WSBC Cancun, MX 2010 NABE/NCBP/ABA San Francisco, CA | | | |

OREGON STATE BAR
MEETING OF THE BOARD OF GOVERNORS
Schedule of Events
August 28, 2009
8/24/2009 10:41 AM

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

August 28, 2009

- 7:00 a.m. – 7:30 a.m.** **Appointments Committee** (Johnnie, DiIaconi, Evans, Fisher, Greene, Larson, Piucci, Wright)
Santiam
- 7:30 a.m. – 8:00 a.m.** **Joint Meeting – Public Affairs and Policy & Governance**
McKenzie Room
- Policy and Governance Committee** (Evans, DiIaconi, Greene, Kent, Larson, Matsumonji, Naucler) **
- Public Affairs Committee** (Piucci, Fisher, Garcia, Gaydos, Johnnie, Johnson, Vieira) **
- 8:00 a.m. – 8:30a.m.** **Public Affairs Committee** (Piucci, Fisher, Garcia, Gaydos, Johnnie, Johnson, Vieira) **
Santiam Room
- 8:00 a.m. – 9:00 a.m.** **Policy and Governance Committee** (Evans, DiIaconi, Greene, Kent, Larson, Matsumonji, Naucler) **
McKenzie Room
- 9:00 a.m. – 11:00 a.m.** **Public Affairs Review Subcommittee** (Piucci, Gaydos, Fisher, Kent, Evans, Garcia, Larson)
Santiam Room
- 11:00 a.m. – 12:00 p.m.** **Member Services Committee** (Johnson, Fisher, Gaydos, Johnnie, Larson, Piucci, Wright) *
McKenzie Room

| | |
|--------------------------------|--|
| 11:00 a.m. – 12:00 p.m. | Budget and Finance Committee (Green, Evans, Garcia, Kent, Lord, Naucler) * Santiam Room |
| 12:00 p.m. – 12:30 p.m. | Access to Justice Committee (Wright, Garcia, Johnnie, Lord, Matsumonji, Naucler, Vieira) Santiam |
| 12:30 p.m. – 1:00 p.m. | Executive Director Evaluation Committee (Naucler, DiIaconi, Evans, Gaydos, Johnson) Santiam |
| 12:00 p.m. – 1:00 p.m. | Lunch McKenzie |
| 1:00 p.m. – 5:00 p.m. | Board of Governors Meeting McKenzie |
| 5:00 p.m. – 6:30 p.m. | Diversity BBQ Side Patio or Columbia A&B depending on weather |

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

| | |
|-------------------|--|
| NO MEETING | Appellate Screening Committee |
| NO MEETING | Public Member Selection Committee |

Oregon State Bar
Meeting of the Board of Governors
 August 28, 2009
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on August 28, 2009, and continue to the morning of August 29, 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.

August 28, 2009

1:00 p.m.

- | | | | |
|----|---|--------|-------|
| 1. | Call to Order/Finalization of the Agenda | Action | |
| 2. | Report of Officers | | |
| A. | Report of the President [Mr. Gaydos] | Inform | |
| B. | Report of the President-elect [Ms. Evans] | | |
| 1. | Report of President-elect | Inform | 10-12 |
| C. | Report of the Executive Director [Ms. Schmid] | | |

1:10 p.m.

- | | | | |
|----|--|--------|-------|
| 1. | Draft of Long Range Plan | Inform | 13-73 |
| D. | Oregon New Lawyers Division [Mr. Williamson] | | |
| 1. | ONLD Report | Inform | 74 |
| 2. | ONLD Master Calendar | Inform | 75 |
| 3. | Board Members' Reports | Inform | |

1:30 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]

1:50 p.m.

- | | | | |
|----|--|--------|-------|
| A. | PLF General Update | Inform | |
| B. | Financial Picture | Inform | 76-84 |
| C. | Report on Defense Panel Training | Inform | |
| D. | Approval of PLF Policy 3.500 SUA Offsets | Action | 85-86 |

5. Special Appearances

2:10 p.m.

- | | | | |
|----|--|--------|--|
| A. | ABA House of Delegates [Marilyn Harbur, Christine Meadows] | | |
| 1. | ABA Update | Inform | |

6. Rules and Ethics Opinions

2:30 p.m.

- | | | | |
|----|---|--------|--------|
| A. | Disciplinary Counsel | | |
| 1. | Proposed Amendments to Bar Rules of Procedure | Action | 87-109 |

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

2:40 p.m.

- | | | | |
|----|--|--------|---------|
| A. | Client Security Fund [Ms. Lord] | | |
| 1. | CSF Appeals | | |
| a. | BROWN (Scott) | Action | 110-113 |
| b. | SHINN (Rhodes) | Action | 114-121 |
| c. | VANCE (Hines) | Action | 122-124 |
| B. | Workers Comp Board of Governors | | |
| 1. | Request of BOG Review of Attorney Fee Changes | Action | 125 |
| C. | Advertising Task Force [Peter Jarvis, Lawrence Wobbrock] | | |
| 1. | Report of the Advertising Task Force | Inform | 126-127 |
| 2. | Advertising Task Force Report | Inform | 128-142 |
| 3. | Advertising Task Force Minority Report | Inform | 143-156 |

| | | | |
|----|---|--------|---------|
| 4. | Advertising Task Force Marketing and Advertising Proposal | Inform | 157-159 |
| 5. | American Board of Trial Advocates Letter | Inform | 160 |
| 6. | Article | | |
| a. | <i>Case Tests Ethics of Leaving Flyer from Law Firm on Rape Victim's Windshield</i> | Inform | 161-162 |

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

3:40 p.m.

A. Access to Justice Committee [Ms. Wright]

| | | | |
|----|--|--------|--|
| 1. | Update | Inform | |
| | ➤ <i>Status report on committee activities, including ABA pro bono week and OSB public education projects.</i> | | |

B. Budget and Finance Committee [Mr. Greene]

| | | | |
|----|--|--------|---------|
| 1. | 2010 Executive Summary Budget | Inform | 163-174 |
| a. | Five-Year Forecast | Inform | 175-177 |
| 2. | Facilities Management Agreement with Opus Northwest | Action | 178 |
| 3. | Investment Policy Revision | Action | 179 |
| 4. | Printing the OSB Membership Directory | Action | 180-182 |
| 5. | Funding for Online Legal Publications Library | Action | 183-184 |
| 6. | Selection of an Auditor for Fiscal years 2008 and 2009 | Action | 185 |
| 7. | Uniform Civil and Criminal Jury Instructions | Action | 186-187 |

C. Member Services [Kellie Johnson]

| | | | |
|----|---|--------|-----|
| 1. | Approve Committee Recommendations for 2009 OSB Awards | Action | 188 |
|----|---|--------|-----|

4:40 p.m.

- D. Policy and Governance Committee [Ms. Evans]
1. BOG Nomination Signature Requirement Action 189
 - *The P&G and Members Services Committee recommend elimination of the 10 signature requirement for BOG candidates.*
 2. IOLTA Rule Changes Action 190-191
 - *The committee recommends making non-compliance with IOLTA reporting an administrative rather than disciplinary matter by amending the Bar Act and deleting provisions of RPC 1.15-2.*
 3. Bylaw Amendment--Diversity Mission Action 192-193
and Goals
 - *The committee proposes amendment of Bylaw 1.2 to incorporate the mission and goal statements developed by the Diversity Mission Task Force and adopted by the BOG in June.*
 4. Miscellaneous Bylaw Amendments Handout
 - *The committee recommends a handful of essentially "housekeeping" amendments to the bylaws.*
 5. Fee Arbitration Task Force Handout
 - *The committee recommends creation of a Fee Arbitration Task Force to study the OSB program and make recommendations for enhancements and improvements.*
 6. Proposed MCLE Rule Change Action 194-195
 - *The committee recommends amending MCLE Rule 3.2(c) to clarify the alternate-reporting-period requirement for Access to Justice Credits.*
 7. Miscellaneous Inf/Action

4:50 p.m.

- E. Public Affairs Committee [Mr. Piucci]
1. Wrap up of 2009 Legislative Session Inform No Exhibit
 - *Final status update on political activities, legislative session, OJD budget, and OSB Law Improvement package.*

| | | | |
|------------|--|---------------|-------------|
| F. | Public Member Selection [Mr. Vieira] | | |
| 1. | Public Member Recommendation for 2010 | Action | 196-203 |
| | ➤ <i>The committee conducted its interviews in July and is recommending a new public member for the boards approval.</i> | | |
| 9. | Consent Agenda | Action | pink |
| A. | Approve Minutes of Date | | |
| 1. | Minutes of Open Session | | |
| a. | November 15, 2008 – Revised | Action | 204-208 |
| b. | June 12, 2009 | Action | 209-214 |
| 2. | Minutes of Judicial Proceedings | | |
| a. | June 12, 2009 | Action | 215-216 |
| b. | July 17, 2009 | Action | 217 |
| 3. | Minutes of Closed Session | | |
| a. | June 12, 2009 | Action | 218 |
| B. | Appointments | Handout | |
| C. | CSF Claims Recommended for Payment | Handout | |
| 10. | Default Agenda | Inform | blue |
| A. | Disciplinary Counsel | | |
| 1. | Background Information Regarding Reinstatements | Inform | 219-231 |
| B. | House of Delegates Resolution | | |
| 1. | Resolution to Require Registration for Out-of-state Attorney Appearing in Arbitration Conducted within the State of Oregon | Inform | 232-233 |
| 2. | Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians | Inform | 234-235 |
| C. | Access to Justice Committee | | |
| 1. | Minutes – June 12, 2009 | Inform | 236 |
| 2. | Minutes – July 17, 2009 | Inform | 237-238 |

| | | | |
|----|--|--------|---------|
| D. | Budget and Finance Committee | | |
| 1. | Minutes – June 12, 2009 | Inform | 239-240 |
| 2. | Minutes – July 17, 2009 | Inform | 241-242 |
| E. | Member Services Committee | | |
| 1. | Minutes – June 12, 2009 Joint Meetings | Inform | 243 |
| 2. | Minutes – June 12, 2009 | Inform | 244-245 |
| 3. | Minutes – July 17, 2009 Joint Meeting | Inform | 246 |
| 4. | Minutes – July 17, 2009 | Inform | 247-248 |
| F. | Policy and Governance Committee | | |
| 1. | Minutes – June 12, 2009 | Inform | 249 |
| 2. | Minutes – July 17, 2009 | Inform | 250-251 |
| 3. | Certified Mailings for MCLE Notices | Inform | 252-253 |
| G. | Public Affairs Committee | | |
| 1. | Minutes – June 12, 2009 | Inform | 254 |
| 2. | Minutes – July 17, 2009 | Inform | 255 |
| H. | CSF Claims Report | Inform | 256-257 |

11. Closed Sessions

4:30 p.m.

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 5, 2009
From: Kathleen Evans, President-elect
Re: Report of President-elect

Activities since BOG Committee meetings on July 17th:

Traveled to Chicago on July 30th through August 1st to attend the National Conference of Bar Presidents, part of the annual ABA meeting. Gerry served as part of one of the panel discussions there, with Teresa and Rod in attendance. During the same time, I attended a panel presentation on Senior Lawyers—their needs, and our need of them. I passed along information learned to Albert Menashe, who is chairing our Senior Lawyers Task Force.

Attended OLIO in Bend on August 6th through 9th and gave the welcoming speech at the dinner on Thursday, on behalf of the BOG.

Met with the Chief Justice on August 11th, with Gerry, Teresa, and Susan.

Kathy Evans

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Affirmative Action Committee

Friends of Opportunities for Law in Oregon

Judges, Attorneys, Law Grads, Law Firm / Law School Staff & Presenters

Angela Franco Lucero • Ann Fisher • Anne Arathoon • Antonio Gonzalez • Ari Okano • Ben Eder • Bill Barton • Chris Kent • Damien Hall • Danny Lang • David Bartz, Jr. • David Blasher • David Eder • Derily Bechthold • Erin Nelson • Helen Hierschbiel • Hon. Adrienne Nelson • Hon. Angel Lopez • Hon. Cheryl Albrecht • Hon. Darleen Ortega • Hon. David Schuman • Hon. Rives Kistler • Hon. Tom Rastetter • Hon. Virginia Linder • J.B. Kim • Jeremy Aliasson • Jessica Cousineau • Kathy Evans • Kimberlee Rhodes • Kim Sugawa-Fujinaga • Kim Ybarra-Cole • Liane Richardson • Liani Reeves • Linda Meng • Lisa Umscheid • Mami Fujii • Marti McCausland • Marva Fabien • Mary Crawford • Michael Callier • Molly Allison • Nicole Commissiong • Pamela Jacklin • Roberta Phillip • Rocco Washington • Teresa Schmid • Tom Kranovich • Tom Matsuda • Trung Tu

THUDS (Upper Division Students)

Aaron Wakamatsu • Binah Yeung • Cassandra Nava • Chris Ramirez • Cynthia Lopez • Deborah Butler • Heather Lee • Jason Gershenson • Jayme Pierce • Jesus Palomares • Jill Shitamoto • Kawn Beyoud • Laura Muranaka • Lauren Charles • Lauren Peebles • Michael Hsu • Moorisha Bey-Taylor • Mubarak Abdur-Raheem • Rond Chananaudech • Terrence Green

Oregon
State
Bar

Affirmative
Action Program



THURSDAY, AUGUST 6 – 5:15 PM – 11:00 PM

5:15 – 6:15PM **Registration and Check-In**

6:00 – 6:15PM **Meeting with THUDS** (Conference Center Fireplace)
(15 minute break) Judge Ortega

6:30 – 9:30PM **Social, Dinner and 2009 Kick-off**

- ❖ Native American Welcome Dance: (West Deck)
Staff, Students, Lawyers, Judges, Guests
- ❖ Introduce and recognize attending judges (Winter's Hope)
– Frank Garcia
- ❖ Welcome on behalf of:
OSB Board of Governors – Kathy Evans
OSB – Teresa Schmid
Affirmative Action Committee – Kim Ybarra-Cole
Oregon Supreme Court – Justice Linder
OSB Affirmative Action Program – Frank Garcia
- ❖ Ice breaker – Finding Common Ground

Specialty Bars introduction – Derily Bechthold

- ❖ Oregon Chapter - National Bar Assn. – Judge Nelson
- ❖ Oregon Hispanic Bar Assn. – Kim Ybarra-Cole
- ❖ Oregon Minority Lawyers Assn. – Derily Bechthold
- ❖ MBA Equality Committee – Linda Meng
- ❖ Oregon Women Lawyers – Judge Nelson
- ❖ Diversity Section – Marva Fabien
- ❖ Oregon Gay and Lesbian Law Assn. – David Blasher
- ❖ Indian Law Section – Jeremy Aliasson
- ❖ Oregon Asian Pacific American Bar Assn. – Mami Fujii
- ❖ Oregon New Lawyers Division – Jessica Cousineau

Saturday CLEs Synopses

Dinner Keynote – Judge Nelson

9:30 – 11:00PM **OLIO IDOL Prep & THUDS Social** (Fireside Lounge)

FRIDAY, AUGUST 7 – 8:30 AM – 11:00 PM

- 8:30 – 8:55 AM **Breakfast** (West Deck/Winter’s Hope)
(5 minute break)
- 9:00 – 9:55 AM **Finding Your Pathway Through Law School** (Winter’s Hope)
(10 minute break) Judge Ortega
- 10:05 - noon **THUDS’ Experiences / Study Skills/ IRAC** (Winter’s Hope)
J.B. Kim, Frank Garcia, Mami Fujii, & Roberta Phillip
- Noon – 12:55 PM **Lunch & Keynote** (West Deck)
(10 minute break) Tom Matsuda (*Legal Aid Services of Oregon*)
- 1:05 – 1:25 PM **The Four-letter Word (Debt)** (Winter’s Hope)
(5 minute break) Tom Matsuda & Molly Allison
- 1:30 – 2:15 PM **Honor Code – Professionalism/Ethics** (Winter’s Hope)
(15 minute break) Justice Kistler, J.B. Kim, & David Bartz
- 2:30 – 4:30 PM **Cake Challenge** (West Deck)
- 4:30 – 5:00 PM **Cake Challenge Judging** – David Blasher – M. C.
Judges: Justice Linder
Justice Kistler
Mary Crawford
Kim Ybarra-Cole
- 5:00 – 6:30 PM **Free time / OLIO Idol prep**
- 6:30 – 7:15 PM **Dinner & Keynote** (Winter’s Hope)
Judge Lopez (*Multnomah County Circuit Court*)
- 7:15 – 11:00 PM **Working a Room** (Winter’s Hope)
Michael Callier Liani Reeves, Erin Nelson, & Damien Hall
- Michael Jackson Dance Party** (Winter’s Hope)
- Attorney performance**
Tom Kranovich, Michael Callier, David Blasher, Erin Nelson, Teresa Schmid, Damien Hall, Judge Ortega & Bill Barton

SATURDAY, AUGUST 8 – 8:00 AM – 11:00 PM

- 8:00 – 8:15 AM **Breakfast** (Winter’s Hope)
- 8:15 – 8:55 AM **Study Skills III** (Winter’s Hope)
(5 minute break) Jim Bailey
- 9:00 – 9:35 AM **Bar Exam & Admissions panel with OLIO ALUMS** (Winter’s Hope)
David Blasher & Erin Nelson

Thud Bar Exam Prep (Conference Room)
Justice Kistler & Rocco Washington

- 9:35 – 10:05 AM **Leveraging Your Support Network** (Winter’s Hope)
(5 minute break) Judge Albrecht & Kim Rhodes
- 10:10 – 10:45 AM **Time and Stress Management** (Winter’s Hope)
(5 minute break) Judge Rastetter & Frank Garcia
- 10:45 – 11:25 PM **Study Skills II - Legal Writing** (Winter’s Hope)
Justice Linder
- 11:30– 12:30 PM **Employment in a Nutshell** (Winter’s Hope)
Michael Callier - Moderator
- Small Firm – Tom Kranovich / Angela Lucero
Medium Firm – Kim Sugawa-Fujinaga
Large Firm – Mami Fujii
Government – Linda Meng
Public Interest – Tom Matsuda
Judicial Clerkship (trial) – Derily Bechthold
Judicial Clerkship (appellate) – Judge Ortega
- 12:30 – 1:45 PM **Lunch & Keynote** (West Deck)
(15 minute break) Judge Schuman (*Court of Appeals*)
- 2:00 – 3:10 PM **Judge / Student Ice-breaker** (East Patio)
- 3:10 – 6:30 PM **Free time / OLIO Idol prep**
- 6:30 – 7:00 PM **Judges’ Reception** (East Patio)
- 7:00 – 7:30 PM **Reception Keynote**
Justice Kistler
- 7:30 – 11:00 PM **Dinner, OLIO Idol** – (Winter’s Hope)
David Blasher - MC as Ryan Seacrest
- Judges: Erin Nelson as Randy Jackson
Judge Albrecht as Kara Dioguardi
Trung Tu as Simon Cowell
Molly Allison as Paula Abdul

SUNDAY, AUGUST 9 – 8:30 – 1:00PM

- 9:00 – 9:55 AM **Breakfast** *(5 minute break)* (Winter’s Hope)
- 10:00 – 11:00 AM **Debrief** (Winter’s Hope)
Judge Ortega
- 11:00 - Noon **Checkout**
- Noon – 1:00 PM **Lunch and depart**





OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 18, 2009
From: Teresa Schmid, Ext. 312
Re: Introduction to First Draft of the Long Range Plan

Action Recommended

Assignment to Board of Governors Committees for discussion and recommendations.

Background

The purpose of a long range plan is to enable an organization to anticipate trends in its environment and to prepare itself to take advantage of opportunities and to fortify itself against foreseeable threats. The Oregon State Bar entered 2009 in a strong financial and organizational position. It is therefore exceptionally well prepared to sustain social, demographic, and economic change. The purpose of this plan is to ensure that the Bar is strategically positioned to meet the known challenges of the next three years. Attached is a first working draft of the plan prepared by staff for the Board's information and discussion.

The plan arises organically from elements that the Bar already has in place and adds a new element, which is three-year timeline for implementation strategies. These include:

1. Functions of the Oregon State Bar: The first four of these originated from current Article 1, §1.2 of the Bylaws; the Diversity Planning Task Force recommended the addition of the last two functions in its June 2009 report to the BOG. Bylaw changes consistent with the Task Force Recommendations are before the Policy & Governance Committee for discussion at its August 28, 2009 meeting.
2. Mission Statement: This is taken verbatim from Article 1, §1.2.
3. Core Values: We have been unable to identify the original source for these value statements (excepting Diversity, which is another new contribution by the Diversity Planning Task Force). However, they have been promulgated to bar leaders and entities for a number of years in leadership orientation materials.
4. Programmatic Goals and Outcomes: These derive from the policy-driven outcomes articulated in the Program Measures that the Bar has used in the past to assess staff and organizational performance. The most recent version, the 2007 Program Measures Review, appears on the Bar's website at www.osbar.org/docs/programmeasures. Historically, the outcomes were applied retrospectively, i.e. to review past performance. The long range plan uses the outcomes prospectively, i.e. as a guide for future organizational activity to achieve

the desired outcomes. This is the third area in which the Diversity Planning Task Force provided new source materials, recommending programmatic goals to provide a wide range of diversity activities.

5. New: Operational Goals and Outcomes: These are an expansion of the outcomes that appeared in the 2007 Program Measures Review under the single category, Support Services. Because of their organizational importance, they now appear as three separate categories: Finance and Operations, Human Resources, and Governance.
6. New: Implementation Strategies: This is the three-year activity grid in which staff project the tasks and resources necessary to achieve the desired outcomes. In essence, it is the worksheet used by the staff for their departmental planning.

The Planning Process

Starting with the above sources, staff managers reviewed the Program Measures and outcomes relating to their respective departments for currency and future applicability. In some cases, outcomes were slightly modified to reorient them as goals for future activity. Each manager elicited the input of departmental staff to identify tasks and resources necessary to achieve the outcomes. The attached draft of the plan includes staff's input to date.

The plan is designed to be a living document that is regularly reviewed and modified as needed. It contemplates an annual review of the past year's activities and the addition of a new plan year, so that the organization is always working within a three-year planning window. The BOG addresses the policy-related portions of the plan, including the functions, mission, core values, and outcomes; the staff plan the activities necessary to advance the BOG's policies, in the course of which staff also identifies new policy issues for the BOG's attention. Either the BOG or staff may recommend changes the need arises. Generally, strategy is the most flexible element of the plan, as it relates to operations; outcomes are less dynamic as they arise out of policy; while functions, the mission statement, and core values are the most stable elements of the plan, as they arise from bylaws.

Generally, the BOG is primarily responsible for framing the functions, mission, core values, and goals, while staff are primarily responsible for framing outcomes and strategies.

Highlights of the Long Range Plan

The following are areas that have been identified for higher levels of activity, based on the known concerns of key constituents and the need for further development:

1. Admissions (New Goal 1): this department's activities were previously subsumed within the Program Measures for Discipline; however, because of the prospective changes in reciprocity and their impact on the organization, this has been identified
2. CLE Seminars (Goal 2): The CLE Department has already begun development of a master CLE calendar that will include CLE offerings of other providers as well as the Bar's. Strategies include the development of new section-generated content and electronic delivery models.
3. Communications (Goal 3): The Communications Department will conduct the review of the member directory and plan the phasing out of the print version while maintaining positive net revenue.
4. Referral and Information Services (Goal 13): Strategies for the Referral and Information Service will focus on public information as well as new delivery models, taking advantage of RIS Director George Wolff's recent appointment as a member of the to the ABA's Lawyer Referral and Information Committee.
5. Diversity Program (New Goal 6): This replaces a former Performance Measure titled Affirmative Action. Strategies are to be developed by staff based on the framing of outcomes by the Diversity Planning Task Force.
6. Finance and Operations (New Goal 15): Input for this goal is required from the Budget and Finance Committee. Outcomes are placeholders, pending goal finalization.
7. Human Resources (New Goal 16): This goal incorporates recommendations from the Diversity Planning Task Force for increasing diversity, as well as responding to anticipated changes in staff demographics and the employment market.

Planning Schedule

Following is a prospective schedule for the BOG's further development and adoption of the plan:

August 2009: BOG reviews initial draft and assigns to BOG committees.

September 2009: BOG committees review the plan as assigned.

October 2009: Committees report out to the BOG, which adopts the plan in principle with committee recommendations, or conducts further review.

November – December 2009: Upon BOG's adoption of the plan in principle, staff revise the strategies.

January 2010: The BOG adopts the final draft of the plan.

Issues on the Horizon

There are a number of issues that have not yet ripened into matters requiring the Bar's immediate attention, but may call for action during the life of the plan. These include:

1. Access to Justice: Federal policy is changing toward the Legal Services Corporation, which has already resulted in a funding increase and may lead to elimination of some restrictions on use of LSC funds. If this includes elimination of the restriction "tainting" the use of non-LSC funds by LSC grantees, the Bar would likely participate in efforts to consolidate and maximize legal aid resources, including IOLTA.
2. Demand for Increased Access to Bar Products and Services: the BOG and HOD will receive proposals for new low-cost access to BarBooks and free online access to uniform jury instructions. Both of these proposals would have a significant impact on non-dues revenue, but are also important resources to members that must be affordable and accessible. Decisions on these issues could impact the future development other Bar products and services.
3. Economic Recovery: If equity markets are slow to recover, the Bar may experience continuing low levels of return on its investments. In addition, if a sluggish market continues, the Bar may experience material increases in PERS rates.
4. Human Resources: Staff demographics will drive planning for the planning period. At the present time, 10% of the staff eligible to retire; within five years, that segment will increase to 18%. Planning will have to take into account and balance the needs of the members, the bar's regulatory responsibilities, the labor market, and the economy.

Oregon State Bar

Long Range Plan

2010 – 2012

Draft 08/17/09

FUNCTIONS OF THE OREGON STATE BAR

The Oregon State Bar performs the following functions as a “public” corporation – as a instrumentality of the Oregon Supreme Court.

- We are a regulatory agency providing protection to the public.
- We are a partner with the judicial system.
- We are a professional organization.
- We are a provider of assistance to the public.
- We are leaders helping lawyers serve a diverse community.
- We are advocates for access to justice.

MISSION STATEMENT

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

CORE VALUES

There are key values that guide our work. These values are important to everything we do. We use these values to shape our work and ensure that our approaches are consistent with our results. We list them without reference to priority, because they are of equal value to how we live our professional and personal lives.

- **Integrity:** Integrity is the measure of the bar's values through its actions. The bar's activities will be, in all cases, consistent with its values.
- **Diversity:** 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.
- **Leadership:** The bar will actively pursue its vision. This requires the bar and all individual members to exert leadership to advance their goals.
- **Promote the Rule of the Law:** The rule of law is the premise of the democratic form of government. The bar promotes the rule of law as the best means to resolve conflict and achieve equality. The rule of law underpins all of the programs and services the bar provides.
- **Accountability:** The bar is committed to accountability for its decisions and actions and will provide regular means of communicating its achievements to its various constituencies.
- **Excellence:** Excellence is a fundamental goal in the delivery of programs and services by the bar. Since excellence has no boundary, the bar strives for continuous improvement. The bar will benchmark its activities to organizations who exhibit "best practices" in order to assure high quality and high performance in its programs and services.

PROGRAMMATIC GOALS

1. **Admissions**– By contract, the Oregon State Bar provides staffing to the Board of Bar Examiners (BBX), a statutorily-created body independent from the Bar. Substantive admissions policy and planning is the responsibility of the BBX and the Oregon Supreme Court. The strategies set forth below therefore must take this BBX/OSB relationship into account.
 - **Outcome #1:** Oversee application process in timely manner, screening through applications for matters that require character and fitness review. (2) Administer two exams, including special accommodations. (3) Oversee grading sessions. (4) Arrange for thorough character and fitness review, including appropriate degree of investigative inquiry, and timely hearings process.
 - **Outcome #2:** Provide support to Board of Bar Examiners.

2. **Client Assistance Office** - The primary goal of the Client Assistance Office (CAO) is to promptly review and properly process complaints and inquiries about the conduct of members of the Oregon State Bar. A secondary goal is to help the public access general information and resources that address their legal concerns.
 - **Outcome #1:** Establish and maintain effective and promote intake of inquiries and complaints, dismissing or referring to DCO within 60 days in 90% of all cases.
 - **Outcome #2:** Assure the appropriate disposition of inquiries and complaints, particularly those that involve accusations of disciplinary violations with concurrence by General Counsel in at least 90% of CAO appeals. Ensure a high level of competence among CAO staff.
 - **Outcome #3:** Increase member and public awareness of and satisfaction with CAO services.
 - **Outcome #4:** Monitor and recommend technological improvements that may benefit the department and make recommendations to the Executive Director.

3. **CLE Seminars Department** - The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible.
 - **Outcome #1:** Meet the needs of members for readily accessible CLE by providing members 24/7 access to OSB CLE Seminars-branded information, services, and products.
 - **Outcome #2:** High member satisfaction with CLE curriculum, planning, and section co-sponsored seminars and activities.
 - **Outcome #3:** Provide quality educational opportunities for members that also recognize different learning styles.
 - **Outcome #4:** Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.
 - **Outcome #5:** Promote diversity of CLE speakers and planners.

4. **Communications Department** - The Communications Department works to ensure consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits member practices and to increase member awareness of and involvement in bar priorities and activities. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice system.
- **Outcome #1:** OSB members are informed about OSB priorities, programs and events, and are engaged in discussion of bar issues.
 - **Outcome #2:** Bar members are actively engaged in member communications and public education programs.
 - **Outcome #3:** Members understand and support the bar's commitment to advance diversity in the profession and the legal system.
 - **Outcome #4:** OSB promotes collegiality and professionalism throughout the bar.
 - **Outcome #5:** Oregonians appreciate the importance of an independent and adequately funded judicial system.
 - **Outcome #6:** OSB offers an array of practical, understandable legal information to help members of the public access the justice system.
 - **Outcome #7:** OSB provides exceptional customer service to both members and the public.
5. **Discipline Department** - The goal of the Disciplinary Counsel's Office (DCO) is to ensure an ethical bar, public and member confidence in the system, and a fair, efficient, and cost-effective system to discipline lawyers who violate the Oregon Rules of Professional Conduct. The office also strives to process membership status changes, pro hac vice admission applications and public records requests in a thorough and timely manner.
- **Outcome #1:** Thoroughly and promptly investigate complaints or reports of misconduct until all essential facts are known and analyzed.
 - **Outcome #2:** Promptly explore settlement after formal proceedings are authorized and, if no settlement is likely, pursue litigation to successful conclusion.
 - **Outcome #3:** Render highly effective and competent legal services, in terms of staff's knowledge of substantive and procedural law, written work product, preparedness and quality of advice or advocacy.
 - **Outcome #4:** Process inactive transfers, resignations, reinstatements, pro hac vice admission applications, requests for good standing certificates and public records requests in a timely manner.
 - **Outcome #5:** Monitor the availability of technological improvements that may benefit the program and present recommendations to the Executive Director as appropriate.
 - **Outcome #6:** Identify emerging regulatory issues and areas of change on the horizon, and initiate OSB responsive action.

6. **Diversity Program** - The function of the Diversity Program is to be leaders helping lawyers serve a diverse community and to be advocates for access to justice.
 - **Outcome #1:** Identify and eliminate barriers to access to justice and high quality legal services for all Oregon residents.
 - **Outcome #2:** Develop and maintain cultural competence among members of the Oregon State Bar.
 - **Outcome #3:** Develop, attract and retain Oregon lawyers from underrepresented populations.
 - **Outcome #4:** Recruit and retain a diverse workforce and volunteer base for the Oregon State Bar.

7. **General Counsel's Office** - General Counsel's Office primary objective is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interest of the Oregon State Bar. Secondary objectives are to administer the Client Assistance Office (see CAO program measures), the Client Security Fund and Fee Arbitration Programs effectively and efficiently, and to provide timely and accurate ethics assistance to members. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.
 - **Outcome #1:** Provide accurate and effective legal advice to protect the legal and policy interests of the Oregon State Bar; assist BOG and staff with implementation of policies and projects as directed.
 - **Outcome #2:** Maintain an efficient and effective fee arbitration process for disputes covered by the rules.
 - **Outcome #3:** Resolve CSF claims promptly in a fair and consistent manner; maintain financial health of fund.
 - **Outcome #4:** Provide leadership and assistance to the membership on issues of ethics and professional responsibility.
 - **Outcome #5:** Maintain accurate records of Disciplinary Board proceedings and contribute to the timely disposition of matters.
 - **Outcome #6:** Provide competent and prompt support to the Unlawful Practice of Law Committee in the investigation and litigation of UPL matters.
 - **Outcome #7:** Provide competent and prompt support to the State Lawyers Assistance Committee.

8. **Legal Publications Department** - The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools.
 - **Outcome #1:** Produce high quality books that meet members' needs.
 - **Outcome #2:** Make Legal Publications accessible to members and non-members in a variety of formats.
 - **Outcome #3:** Continuously improve net revenue.
 - **Outcome #4:** Adequately protect OSB's intellectual property rights.
 - **Outcome #5:** Promote diversity of Legal Publications authors.

9. **Legal Services Program** - The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to fund the integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers.
- **Outcome #1:** Develop and coordinate statewide policies that improve and expand access to legal services for low-income Oregonians
 - **Outcome #2:** Assure that standards are met and quality services are being delivered efficiently and cost effectively.
 - **Outcome #3:** Increase the amount of pro bono services by Oregon lawyers by assisting members in understanding their responsibility to provide pro bono legal services.
10. **Loan Assistance Repayment Program** - The Oregon State Bar recognizes that substantial educational debt can create a financial barrier which prevents lawyers from pursuing or continuing careers in public service law. The Oregon State Bar's program of loan repayment assistance is intended to reduce that barrier for these economically-disadvantaged lawyers, thereby making public service employment more feasible.
- **Outcome #1:** Develop and revise sound policies and guidelines for the OSB LRAP.
 - **Outcome #2:** Assist civil and criminal lawyers in paying their educational debt while working in public interest jobs in Oregon.
11. **Member Services Department** - The goal of Members Services is to provide excellent service to its internal and external customers by promoting an accountable, client-focused culture.
- **Outcome #1:** Assure that the internal and external customers of Member Services are satisfied with services received.
 - **Outcome #2:** Assure that database functions result in timely and accurate information.
 - **Outcome #3:** Assure a commitment to the concept of Universal Design in the OSB Center, products and services.
 - **Outcome #4:** Assure successful distribution and tabulation of polls and elections; maintain a working relationship with Governor's office and local bar associations in the conduct of judicial polls and appellate selection process.
 - **Outcome #5:** Assure a commitment to serving and valuing the bar's diverse community, to advancing equality in the justice system, and to removing barriers in that system.
 - **Outcome #6:** Work / Life Balance

12. **Minimum Continuing Legal Education** - Maintain and improve the competence of Oregon lawyers by ensuring their compliance with the minimum continuing legal education requirements established by the Oregon Supreme Court.

- **Outcome #1:** Assure prompt and efficient processing of compliance reports and performance of annual audit.
- **Outcome #2:** Assure that MCLE Rules, Regulations and procedures facilitate compliance by members.

13. **Public Affairs Department** - The goal of the Public Affairs Program is to apply the public policy knowledge and experience of the legal profession and program staff to the public good. This work is achieved by advising government officials, responding to issues affecting the justice system, proposing legislation for law improvement, and advocating on those matters that affect the legal profession and the public it serves.

- **Outcome #1:** Ensure successful and high quality work on public policy projects and problems, including law improvement. (Development and enactment cycles occur in alternate years and require ongoing involvement with the OSB Public Affairs Committee and numerous bar groups.)
- **Outcome #2:** Inform customer groups while encouraging participation in the governmental process.
- **Outcome #3:** Assure operational efficiency.

14. **Referral and Information Services** - Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels.

- **Outcome #1:** Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner.
- **Outcome #2:** Ensure fiscal integrity and consistent program operations.
- **Outcome #3:** Increase member and public awareness of Referral & Information Services programs.
- **Outcome #4: Adapt Services to meet both public and attorneys' needs.**

ORGANIZATIONAL GOALS

15. **Finance and Operations** –

- **Outcome #1:** Financial Integrity – Maintain the fiscal integrity and stability of the bar through monitoring the budget, reserves, and financial forecast of operations.
- **Outcome #2:** Support services – Provide serve and support to internal and external customers that is readily accessible, reliable, consistent, and high quality.
- **Outcome #3:** Project Management – Identify, implement, and manage projects which: improve processes by streamlining routine activities, eliminating redundant and processes of little value, and seeking and planning to make routines more efficient; save dollars and/or time through cost reductions or revenue generation, or reduce significantly the time to perform a task or process; or gain a significant new

learning that enhances the skills of the employees or departments.

- **Outcome #4:** Bar facilities – Maintain the bar facilities in a manner designed to enhance the value of the bar center as an asset while providing a safe, clean, and efficient workplace.

15. Human Resources – The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels.

- **Outcome #1:** Raise awareness of diversity issues among bar staff.
- **Outcome #2:** Increase diversity among pool of applicants for bar employment.
- **Outcome #3:** Conduct a full market study and staff classification review.
- **Outcome #4:** Prepare for anticipated staff retirement and succession.
- **Outcome #5:** Fulfill recruitment needs for all regular and temporary vacancies within a reasonable and appropriate amount of time to meet or exceed the needs of the hiring manager.
- **Outcome #6:** Provide training and development programs and opportunities to include organizational strategy, and personal and professional growth opportunities.
- **Outcome #7:** Manage claims experience for workers' compensation, unemployment, and employment practices liability insurance.
- **Outcome #8:** Monitor and maintain compliance with regulatory requirements related to employment and safety issues.

16. Governance –

- **Outcome #1:** Enhance communication with internal and external constituents so that all BOG members are well informed and able to participate in organizational decision-making.
- **Outcome #2:** House of Delegates
- **Outcome #3:** Planning
- **Outcome #4:** Sustainability

OSB Long Range Plan

| Admissions | | | |
|--|--|-------------|-------------|
| <p>Goal - By contract, the Oregon State Bar provides staffing to the Board of Bar Examiners (BBX), a statutorily-created body independent from the Bar. Substantive admissions policy and planning is the responsibility of the BBX and the Oregon Supreme Court. The strategies set forth below therefore must take this BBX/OSB relationship into account.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#1: (1) Oversee application process in timely manner, screening through applications for matters that require character and fitness review. (2) Administer two exams, including special accommodations. (3) Oversee grading sessions. (4) Arrange for thorough character and fitness review, including appropriate degree of investigative inquiry, and timely hearings process.</p> | <p>Continue to identify and assess discernible trends in the applicant pool, special accommodation issues and pass rate statistics so that BBX and OSB can plan for future developments in</p> | | |
| | <p>Stay abreast of developing case law interpreting recent amendments to the ADA to ensure Oregon compliance and proper assessment of risk.</p> | | |
| | <p>If approved by Supreme Court, implement expanded reciprocity rule and track applicant and admittee statistics to assess impact on BBX and OSB.</p> | | |

OSB Long Range Plan

| Admissions | | | |
|---|--|---|-------------|
| <p>Goal - By contract, the Oregon State Bar provides staffing to the Board of Bar Examiners (BBX), a statutorily-created body independent from the Bar. Substantive admissions policy and planning is the responsibility of the BBX and the Oregon Supreme Court. The strategies set forth below therefore must take this BBX/OSB relationship into account.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#2: Provide support to Board of Bar Examiners. Consistent with the directives of the Supreme Court and the BBX:</p> | Begin to test use of Multistate Essay Exam (MEE) questions. | Continue assessment of MEE question. | |
| | Adjust number of essay questions in relation to number of Multistate Performance Test (MPT) questions. | | |
| | Adjust allocation of percentages given to essay and MPT portions of the exam to reflect changes made in (b) above. | | |
| | Commence study of percentage allocation given to Multistate Bar Exam (MBE). | Complete MBE study if not done in 2010. | |

OSB Long Range Plan

| Client Assistance Office | | | |
|---|---|-------------|-------------|
| Goal - promptly review and properly process complaints and inquiries about the conduct of members of the Oregon State Bar. A secondary goal is to help the public access general information and resources that address their legal concerns. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Establish and maintain effective and promote intake of inquiries and complaints, dismissing or referring to DCO within 60 days in 90% of all cases | | | |
| #2: Assure the appropriate disposition of inquiries and complaints, particularly those that involve accusations of disciplinary violations with concurrence by General Counsel in at least 90% of CAO appeals. Ensure a high level of competence among CAO staff. | | | |
| #3: Increase member and public awareness of and satisfaction with CAO services. | <p>a) Review the Canadian “public legal health” model discussed in “Are We Missing Something?”, by Ritchie Eppink, Oregon State Bar Bulletin, June 2009.</p> <p>If any changes in policy or process are indicated, make appropriate recommendations to the SBRP and BOG as appropriate.</p> | | |

OSB Long Range Plan

| Client Assistance Office | | | |
|--|-------------|-------------|-------------|
| Goal - promptly review and properly process complaints and inquiries about the conduct of members of the Oregon State Bar. A secondary goal is to help the public access general information and resources that address their legal concerns. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #4: Monitor and recommend technological improvements that may benefit the department and make recommendations to the Executive Director. | | | |

Draft

OSB Long Range Plan

| CLE Seminars | | | |
|--|--|--|--|
| Goal - The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Meet the needs of members for readily accessible CLE by providing members 24/7 access to OSB CLE Seminars-branded information, services, and products. | Collaborate with the Member Services, MCLE, Communications, and IDT departments to develop a calendar system for CLE events taking | | |
| | | Research producing studio-only webcasts (no audience) and teleseminars (no audience) for CLE topics that are too short to financially support a full- or half- | |
| | | | Research the potential interface between social networking tools (Facebook, Twitter, etc.) and promoting OSB CLE seminars and products to members. |

OSB Long Range Plan

| CLE Seminars | | | |
|--|---|---|---|
| Goal - The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #2: High member satisfaction with CLE curriculum, planning, and section co-sponsored seminars and activities. | Collaborate with the Communications and Member Services Departments on conducting a full member survey in 2010. | | |
| | | Offer all section-cosponsored seminars as a webcast for events that have formats conducive to webcasting. | |
| | | | Develop an evaluation tool for planners of section-cosponsored seminars to rate their experience in working with the CLE Seminars Department during the seminar planning process. |

OSB Long Range Plan

| CLE Seminars | | | |
|--|---|--|--|
| Goal - The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #3: Provide quality educational opportunities for members that also recognize different learning styles. | Review seminar formats for opportunities to incorporate more participation from audience members, e.g., voting devices, quiz show formats, small discussion groups, etc | Use the ACLEA state and provincial and programming list serves to survey other CLE sponsors about non-traditional formats that have been used successfully to present CLE topics and evaluate whether or not those formats could be utilized to develop program formats for OSB members. | |
| | | | Establish curriculum criteria that meet at least two of Dr. Howard Gardner’s eight multiple intelligences. |

OSB Long Range Plan

| CLE Seminars | | | |
|--|---|---|---|
| Goal - The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible. | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#4: Continue to develop cost-efficient strategies and processes to achieve budget goals and ensure fiscal responsibility.</p> | <p>Review CLE policies and practices to determine the financial impact of providing free CLE to specified groups; revise policies and financial projections as necessary.</p> | <p>Review the formula for calculating a section's share of revenue from section cosponsored events; specifically: (1) consider the financial impact of including a charge for ICA as a direct seminar expense; (2) consider the financial impact of using a percentage basis to calculate a section's share of revenue instead of the current per capita basis; and (3) consider the financial impact of and response by sections of requiring a contribution from the section if a cosponsored seminar does not break even on direct expenses.</p> | <p>Assess the potential revenue derived by offering more individual fee-based seminar services to sections that do not cosponsor events with the CLE Seminars Department.</p> |

OSB Long Range Plan

| CLE Seminars | | | |
|--|---|---|--|
| Goal - The CLE Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #5: Promote diversity of CLE speakers and planners. | Increase the accuracy of tracking the diversity of non-member speakers and planners by developing a post-program evaluation card that includes an optional response for diversity components (gender, race/ethnicity, disability, etc.); discuss the feasibility of adding a diversity tracking component to the non-member database with the IDT Department. | | |
| | | Contact the Oregon chapters of specialty bar associations (OWLs, Hispanic Bar Association, National Bar Association, NAPABA, etc.) to discuss possible cosponsorship of CLE events. | Contact county bar associations outside the Portland metro area to discuss possible cosponsorship of CLE events. |

OSB Long Range Plan

Communications

Goal - The Communications Department works to ensure consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits member practices and to increase member awareness of and involvement in bar priorities and activities. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice

| Outcome | 2010 | 2011 | 2012 |
|--|--|--|--|
| #1: OSB members are informed about OSB priorities, programs and events, and are engaged in discussion of bar issues. | Establish an internal marketing communications group to create shared strategies. | | |
| | Develop a plan for increased use of social networking and other methods for improving two-way communications between the organization and its members. | Implement plan for increased two-way communication. | |
| | | | Conduct a comprehensive audit of the bar's communications vehicles for effectiveness and efficiency. |
| #2: Bar members are actively engaged in member communications and public education programs. | Implement plan for regular promotion of varied volunteer opportunities. | | |
| | Conduct a full member survey to assess member needs and expectations. | | |
| | | Recruit and train lawyers to update public education materials online as changes occur in the law. | Review efforts to increase member involvement in public legal education. |

OSB Long Range Plan

Communications

Goal - The Communications Department works to ensure consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits member practices and to increase member awareness of and involvement in bar priorities and activities. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice

| Outcome | 2010 | 2011 | 2012 |
|--|--|---|---|
| #3: Members understand and support the bar's commitment to advance diversity in the profession and the legal system. | Identify and work to remove barriers to productive communication among members of diverse backgrounds. | | |
| | | Develop and implement plan to engage members of diverse communities in all member and public communications activities. | Conduct member survey to assess progress. |
| #4: OSB promotes collegiality and professionalism throughout the bar. | Develop a proposal for theme-based annual events to promote member involvement and discussion of bar priorities. | Conduct first theme-based annual event. | Conduct second theme-based annual event. |
| #5: Oregonians appreciate the importance of an independent and adequately funded judicial system. | Increase media coverage and other outreach on issues of judicial selection and judicial independence. | | |
| | | Increase media coverage and other outreach on importance of adequate funding for the judicial system. | |
| | | | Conduct public survey on views of lawyers and the justice system. |

OSB Long Range Plan

Communications

Goal - The Communications Department works to ensure consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits member practices and to increase member awareness of and involvement in bar priorities and activities. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice

| Outcome | 2010 | 2011 | 2012 |
|--|--|---|--|
| #6: OSB offers an array of practical, understandable legal information to help members of the public access the justice system. | Develop and implement an oversight plan to ensure the OSB website is up-to-date and accessible. | Implement direct feedback loop for website users. | |
| | Secure grantwriting expertise in support of the bar's access to justice efforts. | | |
| | Include a below-the-line item for OSB investment in use and development of electronic forms, as appropriate pursuant to OJD directives for e-courts. | | |
| | | Translate key public information materials into other languages to reflect community needs and recognize cultural differences. | Make family law forms available in languages other than English. |
| | | Train lawyers on best practices for coaching pro se litigants. | |
| | | Develop and implement interactive forms for basic family law matters, including a below-the-line item for OSB investment in form development. | Develop and implement interactive forms for additional family law matters. |
| | | | Conduct public survey on awareness of OSB resources. |

OSB Long Range Plan

Communications

Goal - The Communications Department works to ensure consistent and effective delivery of OSB priority messages to members and the public. For member communications, the primary goals are to provide information that benefits member practices and to increase member awareness of and involvement in bar priorities and activities. For public communications, the primary goals are to promote public confidence in the justice system, respect for the rule of law, and an understanding of the importance of Oregon lawyers to an efficient, accessible justice

| Outcome | 2010 | 2011 | 2012 |
|---|--|--|--|
| #7: OSB provides exceptional customer service to both members and the public. | Promote and monitor the impact of communication preferences set by members online. | | |
| | Analyze telephone traffic and propose customer service improvements. | Develop a Call Center model for handling incoming calls, including guidelines for responsiveness and identification of staffing and capital needs. | Establish Call Center for incoming calls; monitor results. |

OSB Long Range Plan

| Discipline | | | |
|--|--|--|--|
| Goal - The goal of the Disciplinary Counsel’s Office (DCO) is to ensure an ethical bar, public and member confidence in the system, and a fair, efficient, and cost-effective system to discipline lawyers who violate the Oregon Rules of Professional Conduct. The office also strives to process membership status changes, pro hac vice admission applications and public records requests in a thorough and timely manner. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Thoroughly and promptly investigate complaints or reports of misconduct until all essential facts are known and analyzed. | Assist SPRB in concluding study of random trust account audit programs and, if approved by SPRB, develop rules to present to BOG and Supreme Court. | Implement random trust account audit program if approved by SPRB, BOG and Supreme Court. | Continue to assess investigative resources and capabilities. |
| | Present to SPRB and BOG legislation to eliminate LPRC committee structure, retaining some individual volunteer investigators as needed. | Present to 2011 Legislature a bill to eliminate LPRC committee structure. | |
| | Prepare for HOD review the proposal to remove annual IOLTA filing compliance from Rules of Professional Conduct and insert instead into ORS Chapter 9 for administrative, rather than disciplinary, enforcement. | Present to 2011 Legislature a bill to insert annual IOLTA filing requirement into ORS Chapter 9. | |
| | Study impact of mirror reciprocity, if approved by Supreme Court, on complaint statistics and investigative demands. | | |

OSB Long Range Plan

| Discipline | | | |
|--|---|--|--|
| Goal - The goal of the Disciplinary Counsel’s Office (DCO) is to ensure an ethical bar, public and member confidence in the system, and a fair, efficient, and cost-effective system to discipline lawyers who violate the Oregon Rules of Professional Conduct. The office also strives to process membership status changes, pro hac vice admission applications and public records requests in a thorough and timely manner. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #2: Promptly explore settlement after formal proceedings are authorized and, if no settlement is likely, pursue litigation to successful conclusion. | Continue to assess use and effectiveness of existing diversion program, with plan to expand or enhance the program if it can be shown to advance public protection. | Implement any enhancements of diversion program if approved by SPRB, BOG and, if necessary, Supreme Court. | |
| | Revisit with SPRB and BOG a proposal to reduce reliance on volunteer adjudicators. | Implement restructuring of Disciplinary Board if SPRB and BOG decide to reduce reliance on volunteer adjudicators. | |
| | | | Continue to assess the functionality of adjudicative |
| #3: Render highly effective and competent legal services, in terms of staff’s knowledge of substantive and procedural law, written work product, preparedness and quality of advice or advocacy. | Continue to assess quality of legal services rendered by Disciplinary Counsel staff in disciplinary, reinstatement or related matters. | | |

OSB Long Range Plan

| Discipline | | | |
|---|--|------|------|
| <p>Goal - The goal of the Disciplinary Counsel’s Office (DCO) is to ensure an ethical bar, public and member confidence in the system, and a fair, efficient, and cost-effective system to discipline lawyers who violate the Oregon Rules of Professional Conduct. The office also strives to process membership status changes, pro hac vice admission applications and public records requests in a thorough and timely manner.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#4: Process inactive transfers, resignations, reinstatements, pro hac vice admission applications, requests for good standing certificates and public records requests in a timely manner.</p> | <p>Complete study of <i>pro hac vice</i> equivalent for out-of-state lawyers appearing in Oregon arbitrations and mediations. Prepare implementing rules if regulation in this area is deemed necessary and appropriate.</p> | | |
| | <p>Evaluate whether there are methods to streamline the reinstatement process for applicants, the BOG and the Supreme Court.</p> | | |
| | <p>Assess whether existing statutes and rules regarding custodianships are sufficient for purposes of protecting client files and funds.</p> | | |

OSB Long Range Plan

| Discipline | | | |
|---|--|---|-------------|
| <p>Goal - The goal of the Disciplinary Counsel’s Office (DCO) is to ensure an ethical bar, public and member confidence in the system, and a fair, efficient, and cost-effective system to discipline lawyers who violate the Oregon Rules of Professional Conduct. The office also strives to process membership status changes, pro hac vice admission applications and public records requests in a thorough and timely manner.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#5: Monitor the availability of technological improvements that may benefit the program and present recommendations to the Executive Director as appropriate.</p> | <p>Complete the major scanning/records retention project involving all disciplinary records by year’s end.</p> | | |
| | <p>Continue to work with IDT on the overhaul of the discipline database and case-tracking system.</p> | <p>With one plus year’s experience, make refinements in discipline database and case-tracking system.</p> | |
| <p>#6: Identify emerging regulatory issues and areas of change on the horizon, and initiate OSB responsive action.</p> | <p>In connection with possible expanded diversion program (see Outcome #2 above) or as a stand-alone objective, assess the viability and utility of starting an ethics school and/or client trust account school for segments of the bar population. Develop curriculum if appropriate and draft rules or operational guidelines if necessary.</p> | <p>Consider the impact of globalization of the legal profession and what that will mean for Oregon lawyer regulation.</p> | |

OSB Long Range Plan

| Diversity | | | |
|---|------|------|------|
| Goal - Be leaders helping lawyers serve a diverse community and to be advocates for access to justice. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #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. | | | |

OSB Long Range Plan

| General Counsel's Office | | | | |
|---|---|--|-------------|--|
| <p>Goal - General Counsel's Office primary objective is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interest of the Oregon State Bar. Secondary objectives are to administer the Client Assistance Office (see CAO program measures), the Client Security Fund and Fee Arbitration Programs effectively and efficiently, and to provide timely and accurate ethics assistance to members. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.</p> | | | | |
| Outcome | 2010 | 2011 | 2012 | |
| <p>#1: Provide accurate and effective legal advice to protect the legal and policy interests of the Oregon State Bar; assist BOG and staff with implementation of policies and projects as directed.</p> | Identify strategies to enhance low-cost representation of the bar on non-disciplinary legal matters. | | | |
| | Coordinate the implementation of any adopted recommendations of the Sustainability Task Force. | | | |
| | Coordinate the implementation of any adopted recommendations of the Senior Lawyers Task Force. | | | |
| | Review the dues hardship waiver policy to identify other appropriate criteria beyond physical disability. | | | |
| | Continue working on the digital memo bank for litigation and other legal issues. | | | |
| | | Coordinate the implementation of new BOG regions; work with Member Services and DCO to implement BOG, HOD, SPRB, LPRC and DB changes necessitated by regional reconfiguration. | | |
| | | Assist Public Affairs with Bar Act legislation to eliminate HOD and BOG nomination signature requirements and add new IOLTA compliance provisions. | | |

OSB Long Range Plan

| General Counsel's Office | | | |
|---|---|--|------|
| <p>Goal - General Counsel's Office primary objective is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interest of the Oregon State Bar. Secondary objectives are to administer the Client Assistance Office (see CAO program measures), the Client Security Fund and Fee Arbitration Programs effectively and efficiently, and to provide timely and accurate ethics assistance to members. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| #2: Maintain an efficient and effective fee arbitration process for disputes covered by the rules. | Review the fee arbitration program for more efficient and effective ways to address client needs and increase utilization. Identify any related rule changes for review by BOG. | | |
| | | | |
| #3: Resolve CSF claims promptly in a fair and consistent manner; maintain financial health of fund. | Review the reserve policy to ensure the fund is adequately reserved. | | |
| | Identify strategies to enhance public and member knowledge about the fund. | | |
| | Review and assess the committee structure and consider whether longer terms would result in more efficient and consistent results. | | |
| | | Coordinate with DCO and others to consider whether the bar should develop a streamlined mechanism for taking control of LTAs in appropriate cases. | |
| | | Identify other causes of claims and develop strategies for addressing them with the membership. | |

OSB Long Range Plan

| General Counsel's Office | | | |
|---|---|--|------|
| <p>Goal - General Counsel's Office primary objective is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interest of the Oregon State Bar. Secondary objectives are to administer the Client Assistance Office (see CAO program measures), the Client Security Fund and Fee Arbitration Programs effectively and efficiently, and to provide timely and accurate ethics assistance to members. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#4: Provide leadership and assistance to the membership on issues of ethics and professional responsibility.</p> | Develop and present a new RPC on unauthorized disclosure. | | |
| | Coordinate the membership "comment period" on the recommendations of the Advertising Task Force. | | |
| | Prepare amendment of RPC 1.15-2 regarding failure to certify IOLTA compliance. | | |
| | Identify issues of concern to members (possibly through a survey) and develop programs or articles to address them. | | |
| | | Appoint a task force to study the report of the ABA Ethics 20/20 Commission and recommend any changes to the Oregon RPCs or other regulations. | |
| | | Renew request to Supreme Court to adopt official comment to the Oregon RPCs. | |
| | | Review temporary practice experience to determine if additional requirements are appropriate. | |

OSB Long Range Plan

| General Counsel's Office | | | |
|---|---|--|------|
| <p>Goal - General Counsel's Office primary objective is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interest of the Oregon State Bar. Secondary objectives are to administer the Client Assistance Office (see CAO program measures), the Client Security Fund and Fee Arbitration Programs effectively and efficiently, and to provide timely and accurate ethics assistance to members. The office is also a general resource for questions from the public and others about the role of the bar, the regulation of the profession and related issues.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#5: Maintain accurate records of Disciplinary Board proceedings and contribute to the timely disposition of matters.</p> | Continue working toward fully electronic filing. | | |
| | Coordinate with DCO to identify any rule changes that would enhance or clarify the DB | Work with DCO on any proposal for professional DB members. | |
| | Develop strategies for recruiting qualified volunteers. | | |
| <p>#6: Provide competent and prompt support to the Unlawful Practice of Law Committee in the investigation and litigation of UPL matters.</p> | Consider changes to UPL rules regarding "admonitions." | | |
| | Identify strategies to enhance volunteer or low-cost representation on UPL matters. | | |
| | Work with Communications to develop a program for reaching out to Spanish-speaking citizens regarding notario practice. | | |
| <p>#7: Provide competent and prompt support to the State Lawyers Assistance Committee.</p> | Identify appropriate methods to implement remaining task force recommendations. | | |
| | Identify strategies for increasing member awareness and utilization of SLAC. | | |

OSB Long Range Plan

| Legal Publications | | | |
|--|--|--|---|
| Goal - The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Produce high quality books that meet members' needs. | Implement new project management systems that were researched and developed in 2009. | Complete training on project management systems implemented in 2010 and evaluate need for modifications or additions to systems. | Review data collected with project management systems and make process adjustments as necessary. Communicate process adjustments to editorial boards and authors. |
| | Evaluate cost/benefit of having used contract editors in 2009, and evaluate in-house editing resources to determine whether they are being fully utilized. Consider development of plan for using contract law clerks. | Implement changes to editing process based on evaluation of editing resources. | Continue to evaluate editing resources and make adjustments as necessary. |
| | Review and implement 2009 ACLEA Guide to Best Practices in Legal Publishing as deemed appropriate. | | |
| | Explore the use of focus groups or other means of gathering information regarding members' resource needs. | Begin development of new titles based on focus group or other information sources regarding members' resource needs. | Assess success of new titles developed based on focus group or other information. |

OSB Long Range Plan

| Legal Publications | | | |
|--|---|---|---|
| Goal - The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #2: Make Legal Publications accessible to members and non-members in a variety of formats. | Begin implementing XML system to facilitate BarBooks™ updating, per-chapter sales, and potential for other delivery methods without requiring significant additional labor. | Evaluate XML processes and make adjustments as necessary. | |
| | Review current pricing policies for BarBooks™ and develop pilot program for practice area or “pick your five” mini-library pricing. This goal is dependent on the outcome of the Sole and Small Firm Practitioners Section push for a switch to the universal access model for BarBooks™. | Evaluate success of BarBooks™ mini-library offerings. | Evaluate potential for integrating CLE Seminar handbooks into BarBooks™ online library. |
| | Design and execute pilot program for BarBooks™ discounts for SSFP Section. | Evaluate success of BarBooks™ pilot program re: discounts | |
| | Evaluate potential titles or mini-publications that would be of interest to non-members, and means of promoting those titles to non-members, such as selling through Amazon.com or other online vendors. | Implement plan for promoting titles to non-members. | |

OSB Long Range Plan

| Legal Publications | | | |
|--|--|--|---|
| Goal - The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #3: Continuously improve net revenue. | Plan more small titles. Break up multi-volume books into smaller titles. | Evaluate success of smaller titles released in 2010. | |
| | Develop new online Bookstore that allows for more ways to sell books, chapters, and BarBooks™. | Evaluate success of online Bookstore sales of individual chapters | |
| | Evaluate current marketing strategies and develop new marketing plan for print books and for BarBooks™. Involve internal marketing communications group. | Implement new marketing strategies developed in 2010, including those that capitalize on new online Bookstore design. For example, offering online specials and coupons that can be used at the Bookstore. | Evaluate and adjust pricing of print books and BarBooks™ online library as necessary to accommodate any increases in costs. |
| #4: Adequately protect OSB's intellectual property rights. | Monitor Google Books class action settlement progress. File claims as deemed appropriate in consultation with General Counsel's Office. | | |
| | Review Volunteer Copyright Agreement and modify as necessary. | | |
| | | Review End User License Agreement for BarBooks™ and modify as necessary. | |

OSB Long Range Plan

| Legal Publications | | | |
|--|--|-----------------------------------|--|
| Goal - The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #5: Promote diversity of Legal Publications authors. | Meet with Diversity Administrator to develop a diversity plan designed to promote diversity of authors and editorial boards, as well as promoting diversity issues in publication content. | Implement plan developed in 2010. | Evaluate success of plan implemented in 2011, and adjust as appropriate with input from Diversity Administrator. |
| | Solicit input from Affirmative Action Committee on how the Legal Publications Department can best promote diversity. | | |
| | Begin development of new titles addressing diversity issues. | | |

OSB Long Range Plan

| Legal Services | | | |
|---|--|---|-------------|
| <p>Goal - The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to fund the integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#1: Develop and coordinate statewide policies that improve and expand access to legal services for low-income Oregonians.</p> | <p>Work with legal aid to disburse the second half (\$500,000 if received) of the \$1 million general fund appropriation awarded in 2009.</p> | | |
| | <p>Start collecting the abandoned property from lawyer trust accounts. Work with legal aid to develop policies for distribution to programs. Raise awareness with the Oregon lawyers that abandoned lawyer trust account funds are distributed to legal aid.</p> | <p>Assess the revenue received from abandoned property in lawyer trust accounts to project ongoing revenue.</p> | |
| | <p>In collaboration with providers and the Campaign for Equal Justice, develop a plan to determine the configuration of legal aid services that would be in the best interest of Oregon clients if the federal restrictions are lifted from LSC funding.</p> | <p>Assist legal aid with implementing the reconfiguration plan.</p> | |
| | <p>Review IOLTA rate comparability in cooperation with the OLF board. Provide funds for a feasibility study with the result delivered to the OLF board to review and analyze.</p> | <p>Implement IOLTA rate comparability if determined to be in the best interest of stakeholders.</p> | |

OSB Long Range Plan

| Legal Services | | | |
|---|---|---|-------------|
| <p>Goal - The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to fund the integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#2: Assure that standards are met and quality services are being delivered efficiently and cost effectively.</p> | <p>Modify the LSP annual reporting and evaluation system to better align with regulatory and policy goals and with the current ABA Standards for Providers of Civil Legal Services for the Poor. Process the first round of reports produced by the revised system and synthesize the information to produce a comprehensive overview report on services and achievements of the organizations funded by the LSP.</p> | <p>Use the comprehensive report on services and achievements to promote legal aid to funders including the Oregon Legislature. Develop a system to conduct comprehensive desk reviews of providers on a revolving 3-4 year cycle.</p> | |

OSB Long Range Plan

| Legal Services | | | |
|---|--|--|---|
| <p>Goal - The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to fund the integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#3: Increase the amount of pro bono services by Oregon lawyers by assisting members in understanding their responsibility to provide pro bono legal services.</p> | <p>If Rule 6.1 passes HOD, take Rule to Supreme Court. If it passes Supreme Court, create marketing plan to let members know of new Rule. If it doesn't pass, continued evaluation of viability of new rule vs. changes to current by-law.</p> | | |
| | <p>Enact changes to 13.201 (OSB Pro Bono Certified Programs) to expand ability for programs to become certified. Create marketing plan to inform agencies and attorneys of revised rule. Engage in outreach to existing agencies to consider becoming certified. Evaluate what types of new organizations should be created to fill geographic and practice-area needs, to fulfill both needs of low-income Oregonians and interests of both practicing and Active Pro Bono attorneys.</p> | <p>Continue to engage in outreach to existing agencies to consider becoming certified. Continue to evaluate needs of low-income Oregonians and practicing lawyers to determine need for new certified programs. Evaluate success of by-law change and whether it needs refinement.</p> | <p>Continue to evaluate success of by-law change. Continue to evaluate geographic and practice area saturation by certified programs.</p> |

OSB Long Range Plan

| Legal Services | | | |
|---|--|--|--|
| <p>Goal - The goal of the Legal Services Program is to use filing fee revenues collected under ORS 21.480 and other funds granted from the Oregon Legislature to fund the integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The Legal Services Program includes increasing access to civil legal services by increasing the amount of pro bono services by Oregon lawyers.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| #3: Continued | Evaluate rules and regulations governing pro bono practice and services to determine changes that could or should be made. | Continue to evaluate rules and regulations governing pro bono practice and services to determine changes that could or should be made. | Continue to evaluate rules and regulations governing pro bono practice and services to determine changes that could or should be made. |
| | Evaluate success of Pro Bono Fair, Pro Bono Week and other promotional and recognition activities to determine success. Continue to engage in those activities that both promote pro bono work to attorneys and promote attorneys who engage in pro bono work. | Continue to evaluate success of Pro Bono Fair, Pro Bono Week and other promotional and recognition activities to determine success. | Continue to evaluate success of Pro Bono Fair, Pro Bono Week and other promotional and recognition activities to determine success. |
| | Support new web-based program to match up law students to do volunteer research work for pro bono attorneys. Evaluate success of program. | | |
| | Evaluate success of voluntary reporting and engage in new ways of encouraging reporting. | Continue to Evaluate success of voluntary reporting and engage in new ways of encouraging reporting. | Continue to evaluate success of voluntary reporting and engage in new ways of encouraging reporting. |

OSB Long Range Plan

| Loan Repayment Assistance Program | | | |
|---|--|--|--|
| Goal - The Oregon State Bar recognizes that substantial educational debt can create a financial barrier which prevents lawyers from pursuing or continuing careers in public service law. The Oregon State Bar’s program of loan repayment assistance is intended to reduce that barrier for these economically-disadvantaged lawyers, thereby making public service employment more feasible. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Develop and revise sound policies and guidelines for the OSB LRAP. | Review 2009 applications and participants to see impact made by awards. Continue to review application process, selection process and repayment process to ensure that Member dues are used most effectively in selecting the best participants. | Review 2010 applications and participants to see impact made by awards. Continue to review application process, selection process and repayment process to ensure that Member dues are used most effectively in selecting the best participants. | Review 2011 applications and participants to see impact made by awards. Continue to review application process, selection process and repayment process to ensure that Member dues are used most effectively in selecting the best participants. |
| #2: Assist civil and criminal lawyers in paying their educational debt while working in public interest jobs in Oregon. | Review impact of the Federal College Cost Reduction and Access Act on debt payment of public interest lawyers. Evaluate possible increase in Member dues used to support the LRAP. | Continue to review impact of the FCCRAA on debt repayment of public interest lawyers. Consider request for increase in Member dues to be used for the LRAP fund. | Continue to review impact of the FCCRAA on debt payment of public interest lawyers |

OSB Long Range Plan

| Minimum Continuing Legal Education | | | |
|--|--|---|--|
| Goal - Maintain and improve the competence of Oregon lawyers by ensuring their compliance with the minimum continuing legal education requirements established by the Oregon Supreme Court. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Assure prompt and efficient processing of compliance reports and performance of annual audit. | Explore feasibility of writing a computer program that allows bar members and program sponsors to post attendance information directly to transcripts via the OSB website. | Work with IT Department to write and test a computer program that allows bar members and program sponsors to post attendance information directly to transcripts via the OSB website. | Implement procedures for attendance posting by members and sponsors. |
| | Explore feasibility of writing a computer program that allows members to file compliance reports electronically. | Work with IT Department to write and test a computer program that allows members to file compliance reports electronically. | Implement procedures for filing compliance reports electronically. |
| #2: Assure that MCLE Rules, Regulations and procedures facilitate compliance by members. | Explore self-study CLE rule with MCLE Committee and BOG; draft a pro forma plan for implementation. | Implement self-study if approved. | |
| | Coordinate implementation of proposed rule amendments regarding teaching and legal research/writing credit | | |
| | Implement any changes adopted by HOD in 2009. | | |

OSB Long Range Plan

| Member Services | | | |
|--|---|---|--|
| Goal - To provide excellent service to its internal and external customers by promoting an accountable, client-focused culture. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Assure that the internal and external customers of Member Services are satisfied with services received. | Local bar survey. | Implement change based on the local bar survey. | |
| | Specialty bar survey. | | |
| | Encourage ONLD to increase outreach to new admittees. | | |
| | Set diversity goals for bar leadership, including committees and section executive committees. | Develop a list of diversity-based speakers utilizing the information from the CLE Seminars CLE Activity Report. | |
| | Review Leadership College mission and functions with the BOG Member Services Committee, Leadership College Board, make recommendations. | | |
| | Analyze the report and recommendations from the Senior Lawyer Task Force. | | |
| | Analyze the report and recommendations from the Urban/Rural Split Task Force. | Implement selected recommendations of the Urban/Rural Task Force. | |
| | Analyze the 2009 section survey results to determine changes in services and policies. | | |
| | | Create a workplace leadership award based on work/life balance criteria, in conjunction with the BOG Member Services Committee. | |
| | | Implement selected recommendations of the Senior Lawyer Task Force. | |
| | | | Less staff-intensive ONLD programming. |

OSB Long Range Plan

| Member Services | | | |
|--|---|---|-------------|
| Goal - To provide excellent service to its internal and external customers by promoting an accountable, client-focused culture. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #2: Assure that database functions result in timely and accurate information. | Obtain in Member Services the full version of Adobe. | | |
| | Establish OSB administered list serves. | | |
| | Create a uniform standard for searchable section newsletters. | | |
| | All section and committee meeting notices sent electronically only. | | |
| | Electronic distribution of input on services surveys. | | |
| | Post survey results on web site – non-personnel only. | | |
| | | Ability to create logo templates for broadcast e-mails. | |
| | | Increase self-identification in database. | |
| | | ONLD CLE session online registration for all ONLD programs. | |
| | | Fastcase training for sections. | |
| | | Develop “best practices” for electronic communications for members. | |

OSB Long Range Plan

| Member Services | | | |
|---|---|---|---|
| Goal - To provide excellent service to its internal and external customers by promoting an accountable, client-focused culture. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #3: Assure a commitment to the concept of Universal Design in the OSB Center, products and services. | Analyze the OSB Center Universal Design audit and determine costs for the recommendations. | Assure that concepts of Universal Design are utilized in any remodel of the OSB Center as well as in any new products and services. | Assure that concepts of Universal Design are utilized in any remodel of the OSB Center as well as in any new products and services. |
| | | Analyze report from the Sustainability Task Force. | |
| #4: Assure successful distribution and tabulation of polls and elections; maintain a working relationship with Governor's office and local bar associations in the conduct of judicial polls and appellate selection | Work with SNAP in the elections process. | | |
| | | Establish working relationship with the new Governor's staff. | |
| #5: Assure a commitment to serving and valuing the bar's diverse community, to advancing equality in the justice system, and to removing barriers in that system. | Set diversity goals for bar leadership, including committee and section executive committees. | | |
| | Include a breakout session for specialty bars at the Conference for Bar Leaders. | Provide diversity awareness session at the Conference of Bar Leaders. | |
| | | Implement change based on the specialty bar survey. | |
| | | Develop a list of diversity-based speakers utilizing information from the CLE Seminars CLE Activity Report. | |
| #6: Work / Life Balance | Create a workplace leadership award based on work/life balance criteria. | | |
| | Encourage mandatory vacations (not linked to billable hours) that are technology-free. | | |

OSB Long Range Plan

| Public Affairs | | | |
|---|--|--|--|
| <p>Goal - To apply the public policy knowledge and experience of the legal profession and program staff to the public good. This work is achieved by advising government officials, responding to issues affecting the justice system, proposing legislation for law improvement, and advocating on those matters that affect the legal profession and the public it serves.</p> | | | |
| <p>#1: Ensure successful and high quality work on public policy projects and problems, including law improvement. (Development and enactment cycles occur in alternate years and require ongoing involvement with the OSB Public Affairs Committee and numerous bar groups.)</p> | <p>Implement recommendations of PA Review subcommittee re: mission and function of program.</p> | | |
| | <p>Work with bar groups to develop LIP package.</p> | <p>Enact LIP package legislation.</p> | |
| | <p>Facilitate member involvement in policy/legislative workgroups. eg: bail system, construction liens, eCourt, court fees, uniform acts, Oregon Law Commission workgroups.</p> | <p>Develop strategy and manage policy issues during session.</p> | |
| | <p>Develop bar priorities.</p> | <p>Develop strategy to ensure successful resolution of bar priorities. eg: funding courts, legal services, indigent defense.</p> | |
| | <p>Partner with OJD re: development of eFiling and ECM systems; facilitate feedback and communication strategy.</p> | | |
| | <p>Develop strategy to respond to pending initiatives. eg: jury nullifications, repeal of corporate income tax and wealthy tax, cap on attorney fees, judicial stabilization fund.</p> | <p>Implement strategy.</p> | |
| | | | |

OSB Long Range Plan

| Public Affairs | | | |
|---|---|--|--|
| <p>Goal - To apply the public policy knowledge and experience of the legal profession and program staff to the public good. This work is achieved by advising government officials, responding to issues affecting the justice system, proposing legislation for law improvement, and advocating on those matters that affect the legal profession and the public it serves.</p> | | | |
| #1 Continued | Engage in current political issues as designated by BOG/PAC. eg: Red Flags, Legal Services funding restrictions, 2011 session issues. | Manage legislative session strategy on key issues. | |
| | Facilitate development of Water Task Force report and recommendations. | Implement task force recommendations. | |
| | Pursue change to MCLE rule 5.2 re: CLE credit for lawyer-legislators of 2 credits for each "full" month of service. | Implement and communicate recommendation. | |
| #2: Inform customer groups while encouraging participation in the governmental process. | Improve electronic communication via Capitol Insider. | | |
| | Continue outreach to bar groups re: legislative issues. | | |
| | Review legislation highlights publication and seminar process and execution; develop recommendations for improvements. | Implement changes. | |
| | Outreach to judicial system stakeholders. | | |
| | Review and refine grassroots system for 2011. | Implement changes. | |
| #3: Assure operational efficiency. | Review access database and modify as necessary in preparation for 2011. | Implement database changes. | |

OSB Long Range Plan

| Referral and Information Services | | | |
|--|---|--|--|
| Goal - Referral and Information Services (RIS) is designed to increase the public’s ability to access the justice system, as well as benefit bar members who serve on its panels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Maintain customer satisfaction by ensuring that client requests are handled in a prompt, courteous, and efficient manner. | Evaluate all existing and potential technological alternatives and advancements for public to receive routine information, program referrals, and/or follow-up on program referrals, including analysis of computer programs. | | |
| | Develop cost-effective, prioritized, phased plan to maximize efficient use of assets and resources (“Technology Resource Plan”). | Continue implementation of Technology Resource Plan, with any necessary modifications. | Revise and report on any necessary changes to Technology Resource Plan. |
| | Conduct caller/online-user satisfaction surveys. | | |
| | | Identify and conduct cost/benefit analysis of any increase in space, resource, and asset requirements necessary to ensure that client requests are handled in a prompt, courteous, and efficient manner. | Recommend to the BOG any space, resource, and asset improvements identified as necessary to ensure client requests are handled in a prompt, courteous, and efficient manner. |

OSB Long Range Plan

| Referral and Information Services | | | |
|--|--|---|--|
| Goal - Referral and Information Services (RIS) is designed to increase the public’s ability to access the justice system, as well as benefit bar members who serve on its panels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #2: Ensure fiscal integrity and consistent program operations. | Conduct a study of national Lawyer Referral & Information Services funding models, including arrangement of an ABA/LRIS Program of Assistance and Review (PAR) site visit and consultation, and interviews with stakeholders, interested parties, opponents and proponents of potential models, and experts. | Recommend to the BOG a new business model for RIS, including all policy, rule, and statutory changes necessary to implement same. | Implement changes, if any, to RIS business model adopted by the BOG. |

Draft

OSB Long Range Plan

| Referral and Information Services | | | |
|--|---|--|---|
| Goal - Referral and Information Services (RIS) is designed to increase the public’s ability to access the justice system, as well as benefit bar members who serve on its panels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #3: Increase member and public awareness of Referral & Information Services programs. | Increase public and attorney online traffic to and awareness of Referral & Information Services | | |
| | Develop and implement multi-year Modest Means Program grass-roots public relations publicity campaign. | | Continue implementation and monitor impact of Modest Means Program, Problem Solvers, and Lawyer to Lawyer multi-year campaigns. |
| | Develop and implement multi-year Problem Solvers grass-roots public relations publicity campaign and Problem Solvers attorney recruiting campaign, especially to non-PLF-covered attorneys. | | Continue implementation and monitor impact of Modest Means Program, Problem Solvers, and Lawyer to Lawyer multi-year campaigns. |
| | Develop structured plan for consistent and ongoing feedback from attorneys and users of Referral & Information Services programs (“Feedback Plan”). | Implement Feedback Plan. | Analyze and evaluate results of Feedback Plan and implement any necessary changes. |
| | | Develop and implement multi-year Lawyer to Lawyer resource attorney registration and registration update campaign. | Continue implementation and monitor impact of Modest Means Program, Problem Solvers, and Lawyer to Lawyer multi-year |

OSB Long Range Plan

| Referral and Information Services | | | |
|--|---|---|---|
| Goal - Referral and Information Services (RIS) is designed to increase the public’s ability to access the justice system, as well as benefit bar members who serve on its panels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #4: Adapt Services to meet both public and attorneys’ needs. | Implement changes in Modest Means Program adopted by the BOG in 2009. | Monitor impact of changes to Modest Means Program. | Assess needed changes to Modest Means Program, if any, and report to BOG. |
| | Conduct focus groups with existing Modest Means Attorneys to assess existing program policies and procedures. | Review Modest Means Program for further modifications as indicated. | Monitor impact of Modest Means Program, Problem Solvers, and Lawyer to Lawyer multi-year campaigns. |
| | Develop Feedback Plan (see above). | Implement Feedback Plan. | Analyze and evaluate results of Feedback Plan and implement any necessary changes. |
| | Evaluate and report on possible subject matter expansion of Modest Means Program. | Review Modest Means Program for further modifications as indicated. | |
| | Complete conversion of Problem Solvers Program to independent database. | | |
| | | Evaluate and report on ABA/YLD FEMA referral program readiness and develop and implement any further modifications. | |

OSB Long Range Plan

| Finance and Operations | | | |
|---|---|----------------------------|------|
| Goal - | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#1: Financial Integrity – Maintain the fiscal integrity and stability of the bar through monitoring the budget, reserves, and financial forecast of operations.</p> | a) Place a BOG item on the HOD agenda for dues increase in 2011 | a) Implement dues increase | |
| | b) Adopt a plan for replenishing current reserves. | | |
| | c) Membership categories | | |
| | d) Non-dues revenue | | |
| | e) Retained earnings goals | | |
| | f) ICA formula | | |
| | g) Audit schedule | | |
| <p>#2: Support services – Provide serve and support to internal and external customers that is readily accessible, reliable, consistent, and high quality.</p> | | | |
| <p>#3: Project Management – Identify, implement, and manage projects which: improve processes by streamlining routine activities, eliminating redundant and processes of little value, and seeking and planning to make routines more efficient; save dollars and/or time through cost reductions or revenue generation, or reduce significantly the time to perform a task or process; or gain a significant new learning that enhances the skills of the employees or departments.</p> | a) Adopt a full-spectrum Disaster Recovery Plan. | | |

OSB Long Range Plan

| Finance and Operations | | | |
|---|---|--|------|
| Goal - | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#4: Bar facilities – Maintain the bar facilities in a manner designed to enhance the value of the bar center as an asset while providing a safe, clean, and efficient workplace.</p> | a) Consider new reserves for Fanno Creek balloon payment in | a) Analyze optimum used for Fanno Creek space, including | |
| | b) Capital budget/technology needs | | |
| | c) Engage a consultant to conduct a technology audit; identify possible capital investments required to meet organizational needs and priorities; revise capital budget; set phases for investment. | | |
| | d) Prepare pro forma business plans for alternative uses of unleased space at Fanno Creek | | |
| | e) Implement recommendations from the 2009 Universal Design Audit conducted at the request of the Disability Law Section. | | |

OSB Long Range Plan

| Human Resources | | | |
|---|---|--|--|
| Goal - The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Raise awareness of diversity issues among bar staff. | Continue work with the Diversity Program Administrator for training bar staff with the goal of increased awareness. | Evaluate effectiveness of plan and impact on bar staff. | Continue implementation of training plan and evaluation of training effectiveness. |
| | Continue implementation of the training plan. | Continue implementation of training plan. | |
| | Increase diversity education for Human Resources (HR) Manager through attendance at the Society for Human Resources Management annual diversity | Identify strategy for further diversity education and development of HR Manager. | |
| | | Identify and begin to address organizational issues that run contrary to an inclusive work environment. | Continue to identify and address organizational issues that run contrary to an inclusive work environment. |
| #2: Increase diversity among pool of applicants for bar employment. | Continue HR Manager's community involvement as bar's employment representative. | Continue HR Manager's community involvement as bar's employment representative. | Continue HR Manager's community involvement as bar's employment representative. |
| | Identify additional organizations to be notified of professional and non-professional open positions. | Evaluate and identify additional organizations to be notified of professional and non-professional open positions. | Evaluate and identify additional organizations to be notified of professional and non-professional open positions. |
| | Research and evaluate opportunities to increase diversity among the pool of applicants. | Implement plans to increase diversity among the pool of applicants. | |
| | Continue to monitor diversity statistics of bar staff. | Review and revise diversity statistics of bar staff. | Review and revise diversity statistics of bar staff. |

OSB Long Range Plan

| Human Resources | | | |
|---|---|---|---|
| Goal - The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #3: Conduct a full market study and staff classification review. | Define a bar compensation philosophy and propose to BOG. | | |
| | Complete market study with outside consultant. | | |
| | Build salary grades and salary ranges with outside consultant. | Continue implementation of salary grades and salary ranges if approved. | Maintain salary grades and ranges with compensation philosophy as guidance. |
| | Prepare budget impact analysis with outside consultant. | | |
| | Decide on implementation, communication, training plan. | Continue implementation of communication and training plan. | |
| | | Prepare salary budget recommendation for 2012 with increased knowledge and information. | Prepare salary budget recommendation for 2013 with increased knowledge and information. |
| #4: Prepare for anticipated staff retirement and succession. | Identify employees eligible for full retirement for upcoming five-year period in one-year increments and include probability of retirement. | Identify employees eligible for full retirement for upcoming five-year period in one-year increments and include probability of retirement. | Identify employees eligible for full retirement for upcoming five-year period in one-year increments and include probability of retirement. |
| | Work with relevant managers to identify need to fill position or other restructuring opportunities or possible internal candidates who may be mentored. | Work with relevant managers to identify need to fill position or other restructuring opportunities or possible internal candidates who may be mentored. | Work with relevant managers to identify need to fill position or other restructuring opportunities or possible internal candidates who may be mentored. |
| | Work with all managers and supervisors to identify employees | Work with all managers and supervisors to identify employees | Work with all managers and supervisors to identify employees |

OSB Long Range Plan

| Human Resources | | | |
|--|---|---|---|
| <p>Goal - The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels.</p> | | | |
| Outcome | 2010 | 2011 | 2012 |
| <p>#5: Fulfill recruitment needs for all regular and temporary vacancies within a reasonable and appropriate amount of time to meet or exceed the needs of the hiring manager.</p> | | Evaluate for implementation any suggestions for process improvement. | Evaluate for implementation any suggestions for process improvement. |
| | Monitor the length of time from the date recruitment started to the date an offer is accepted. | Monitor the length of time from the date recruitment started to the date an offer is accepted. | Monitor the length of time from the date recruitment started to the date an offer is accepted. |
| | Monitor the retention rate of new hires. | Monitor the retention rate of new hires. | Monitor the retention rate of new hires. |
| | Conduct exit interviews to obtain information related to reasons for leaving, feedback about the hiring process and onboarding procedures, and suggestions for process improvement. | Conduct exit interviews to obtain information related to reasons for leaving, feedback about the hiring process and onboarding procedures, and suggestions for process improvement. | Conduct exit interviews to obtain information related to reasons for leaving, feedback about the hiring process and onboarding procedures, and suggestions for process improvement. |
| <p>#6: Provide training and development programs and opportunities to include organizational strategy, and personal and professional growth opportunities.</p> | Identify any unfulfilled training needs and research available resources. | Identify any unfulfilled training needs and research available resources. | Identify any unfulfilled training needs and research available resources. |
| | Offer seminars to staff and make available information about outside training opportunities. | Offer seminars to staff and make available information about outside training opportunities. | Offer seminars to staff and make available information about outside training opportunities. |
| | Monitor seminars offered and cost of seminar. | Monitor seminars offered and cost of seminar. | Monitor seminars offered and cost of seminar. |
| | Work with managers or staff with individual training requests and needs. | Work with managers or staff with individual training requests and needs. | Work with managers or staff with individual training requests and needs. |

OSB Long Range Plan

| Human Resources | | | |
|---|---|---|---|
| Goal - The goal of the Human Resources Department is to maintain compliance with all state and federal regulations related to human resources and safety issues; maintain a skilled, qualified, professional, productive, and diverse workforce as required to meet the service demands of the organization and make a positive impact on service areas; manage a comprehensive and cost effective benefit program; and create and enhance training options at all staff levels. | | | |
| Outcome | 2010 | 2011 | 2012 |
| #7: Manage claims experience for workers' compensation, unemployment, and employment practices liability insurance. | Provide management training to managers and supervisors. | Provide management training to managers and supervisors. | Provide management training to managers and supervisors. |
| | Provide leadership to the Safety Committee as they work to provide a safe work environment. | Provide leadership to the Safety Committee as they work to provide a safe work environment. | Provide leadership to the Safety Committee as they work to provide a safe work environment. |
| | Provide compliance training and safety training to relevant staff. | Provide compliance training and safety training to relevant staff. | Provide compliance training and safety training to relevant staff. |
| | Review claims for possible improvement or training needs. | Review claims for possible improvement or training needs. | Review claims for possible improvement or training needs. |
| #8: Monitor and maintain compliance with regulatory requirements related to employment and safety issues. | Maintain a current Employee Handbook. | Maintain a current Employee Handbook. | Maintain a current Employee Handbook. |
| | Review and identify policies to be written or revised. | Review and identify policies to be written or revised. | Review and identify policies to be written or revised. |
| | Maintain a current Employee Security Handbook. | Maintain a current Employee Security Handbook. | Maintain a current Employee Security Handbook. |

OSB Long Range Plan

| Governance | | | |
|--|---|---|------|
| Goal - | | | |
| Outcome | 2010 | 2011 | 2012 |
| #1: Enhance communication with internal and external constituents so that all BOG members are well informed and able to participate in organizational decision-making. | | | |
| #2: House of Delegates | Review HOD history and purpose. | Implement recommendations for changes to HOD, if any. | |
| #3: Planning | Assign BOG members to a committee or subcommittee to participate in planning. | | |
| #4: Sustainability | Analyze the 2009 report and recommendations Sustainability Task Force (anticipated in October 2009) for feasibility and implementation. | | |

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 3, 2009
From: Ross Williamson, Oregon New Lawyers Division Chair
Re: ONLD Report

On June 20 the ONLD meet in Newport for an executive committee meeting. The agenda was packed with items to discuss including a recap of the ABA Young Lawyers meeting in New Orleans, an upcoming deadline for ONLD awards and the launch of a new professionalism resources page on the ONLD website.

During June's meeting, the ONLD appointed Ashlee Sorber to the executive committee and selected a new subcommittee chair for the Law Related Education Subcommittee, Karen Clevering. The executive committee also voted to donate \$1000 to the AAP to sponsor OLIO, BOWLIO and the Employment Retreat. Four executive committee members are scheduled to attend OLIO to continue to build the bond between the AAP and ONLD in addition to the donation.

After the June meeting the executive committee volunteered at a new children's development center in Toledo. During the public service project, the ONLD assisted with cleaning, assembling furniture and hanging furnishings. After the public service project, a bonfire social was held with local bar members in the area.

The CLE Subcommittee's recent expansion into Clackamas County had a tough start with only four attendees at the first CLE program in June. By July however, attendance was much higher for an ethics CLE program at the courthouse in Oregon City. In addition to these two CLE programs, the subcommittee also sponsored an intellectual property CLE in Multnomah County with speaker Greg Maurer.

In July, the Member Services Subcommittee hosted a rafting event on the Deschutes river. With nearly 50 ONLD members in attendance the event was a success.

August brings the OLIO retreat and two CLE programs, one in Portland and one in Medford. The CLE in Medford will be presented by Maya Crawford and all proceeds will be donated to the Campaign For Equal Justice. A social with local attorneys is also scheduled in conjunction with the executive committee meeting and CLE program in Medford.

For a week at the end of August, the ONLD also has a fair booth at the Lane County Fair. The booth displays information about the bar's Lawyer Referral Service and provides the public with informative brochures and other free materials to encourage people to learn about the bar and the legal system.

2009 ONLD Master Calendar

Last updated August 1, 2009

| <u>Date</u> | <u>Time</u> | <u>Event</u> | <u>Location</u> |
|-------------------|------------------|---|-----------------------------|
| 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 | University Club - Medford |
| August 22 | 9:00 a.m. | Exec. Meeting | Medford |
| August 28 | All Day | BOG meeting | OSB |
| August 28 | 5:00 p.m. | Diversity Social | 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 17 | 5:45 p.m. | Social with CLE attendees and WSBA | OSB |
| October 17 & 18 | All Day | 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 |

Bold indicates an update since the last version

2008 ANNUAL REPORT

Oregon
State
Bar

PROFESSIONAL LIABILITY FUND

www.osbplf.org

Malpractice Prevention Education for Oregon Lawyers



By Ira R. Zarov
*PLF Chief Executive
Officer*

After three consecutive years of positive performance and excellent claim results in 2008, overall results for the year were compromised by the downturn in investments. In calendar year 2008, the PLF Primary and Excess Programs ended with a loss of \$7.5 million. PLF investments lost approximately 20.6% in the course of the year and are responsible for the 2008 loss. This loss follows 2007's net income of \$5.7 million, 2006's net income of \$1.7 million, and net income of \$2.3 million in 2005. By comparison, the PLF suffered losses of \$600,000 in 2003 and \$6.5 million in 2002.

Although the 2008 loss is large, it does not compromise the fiscal integrity of the PLF. The results are unique because the loss comes despite excellent claim results for the year. Our latest actuarial report resulted in a decrease in claim liabilities of \$1,329,625. That adjustment primarily reflects a decrease in the predicted severity of 2007 claims. Most often, claim results, rather than investment results, are the most critical factor in the PLF's fiscal picture. Even in these difficult financial times, the decrease in liabilities is an encouraging result that better represents the fiscal health of the PLF than the outlier investment results—results that fall a historic three standard deviations from the norm.

As noted, the PLF investment loss was just over 20.6%. This was much less than

the losses experienced by equity markets and is a product of the PLF's conservative and disciplined asset allocation policies. The investment policies require that the PLF portfolio be diverse and that investments in a particular category are rebalanced on a regular basis to ensure that the benefits of the policies are realized. The policies are reviewed annually by the PLF Board of Directors (BOD) with the help of a highly respected investment advisory firm. In addition, the PLF Investment Committee meets once a year with each of representatives of the investment firms chosen to manage PLF funds.

Continued on page 6

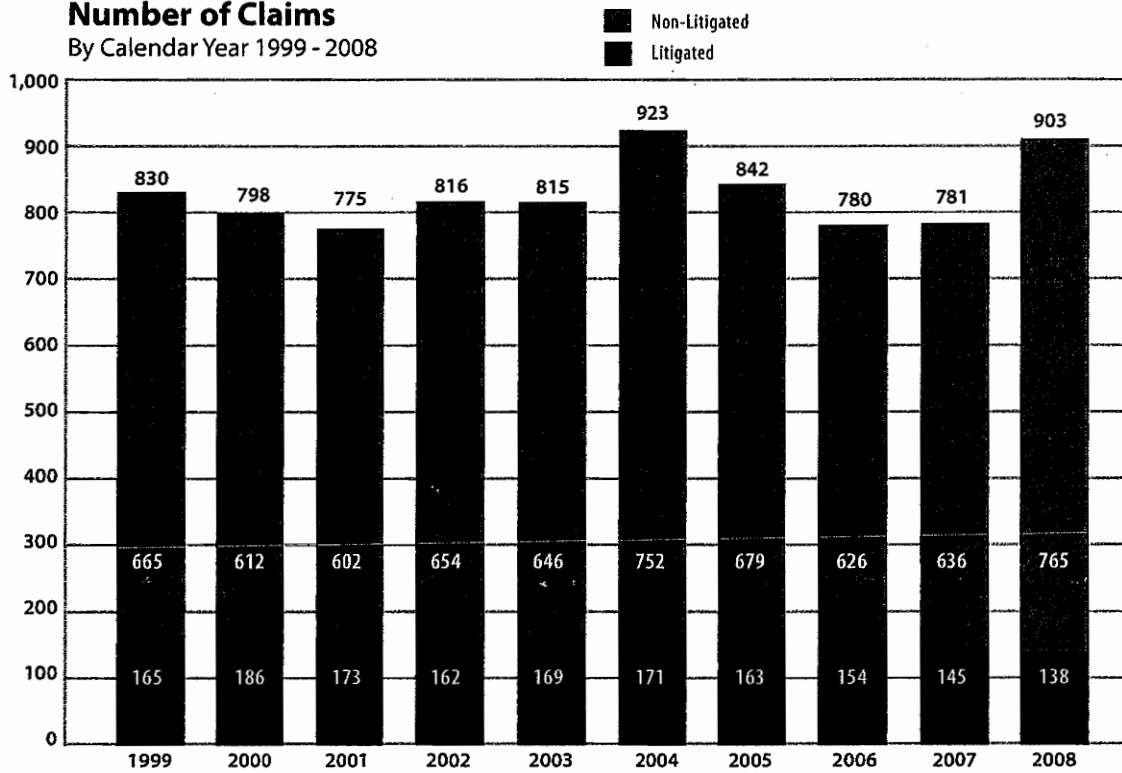
PLF Statistics

1994 – 2009

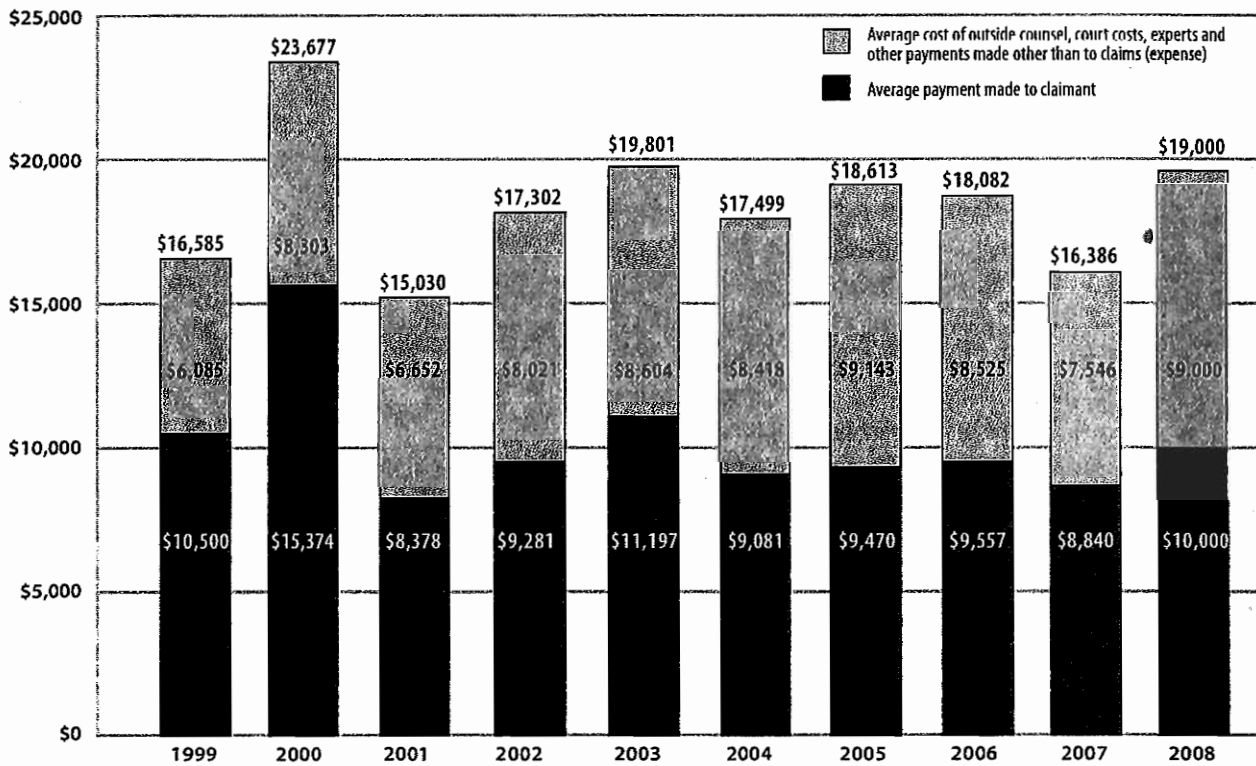
| | Assessments | Claims |
|------|-------------|--------|
| 1994 | \$2100 | 681 |
| 1995 | \$2100 | 825 |
| 1996 | \$2100 | 721 |
| 1997 | \$2200 | 769 |
| 1998 | \$2100 | 761 |
| 1999 | \$1900 | 830 |
| 2000 | \$1800 | 798 |
| 2001 | \$1800 | 775 |
| 2002 | \$2200 | 816 |
| 2003 | \$2600 | 815 |
| 2004 | \$2600 | 923 |
| 2005 | \$3000 | 842 |
| 2006 | \$3000 | 780 |
| 2007 | \$3200 | 781 |
| 2008 | \$3200 | 903 |
| 2009 | \$3200 | 884* |

* Projected

Number of Claims
By Calendar Year 1999 - 2008



Average Cost per Claim
By Year of Reporting



Summary Financial Statements (Unaudited)

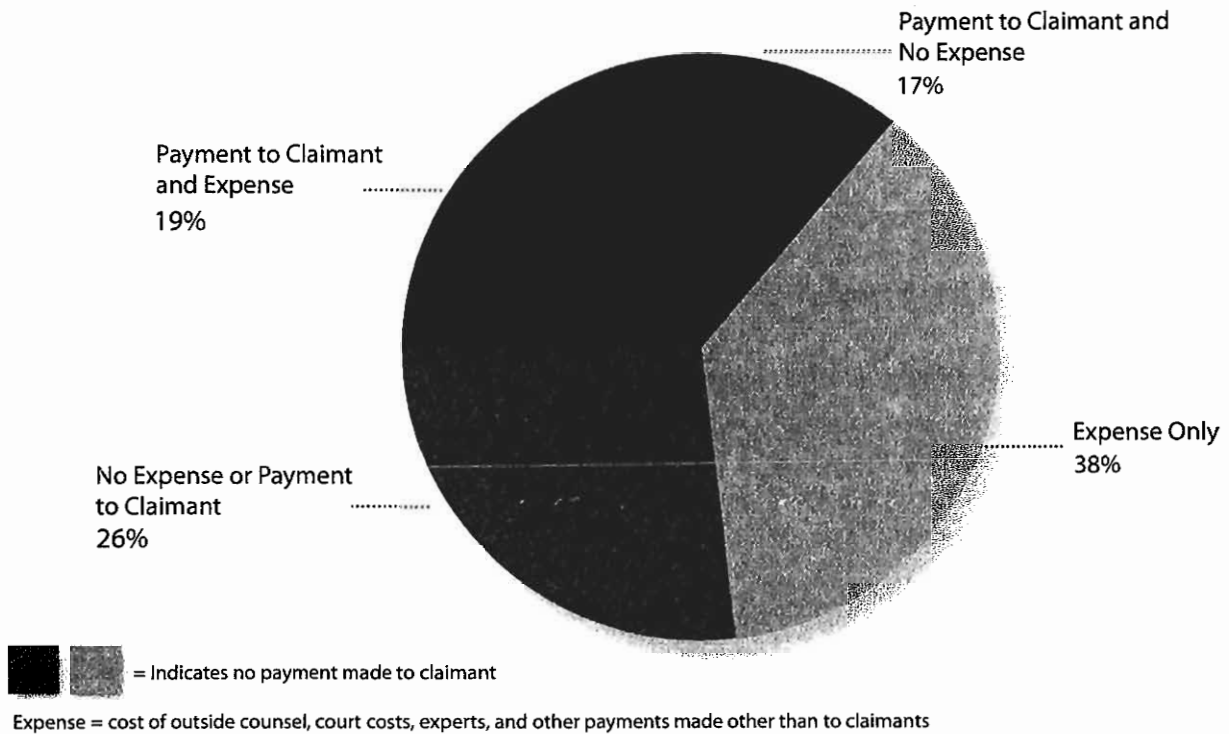
(Primary and Excess Programs Combined)

| | <u>12/31/2008</u> | <u>12/31/2007</u> |
|--|--|---------------------|
| ASSETS | | |
| Cash and Investments at Market | \$26,634,265 | \$34,684,948 |
| Other Assets | <u>1,675,293</u> | <u>701,092</u> |
| TOTAL ASSETS | \$28,309,558 | \$35,386,040 |
| LIABILITIES AND FUND EQUITY | | |
| Estimated Liabilities for Claim | | |
| Settlements and Defense Costs | \$29,100,000 | \$28,500,000 |
| Other Liabilities | 504,465 | 702,994 |
| Fund Equity | <u>(1,294,907)</u> | <u>6,183,046</u> |
| TOTAL LIABILITIES AND FUND EQUITY | \$28,309,558 | \$35,386,040 |
| | | |
| | For the Year Ending December 31 | |
| | 2008 | 2007 |
| REVENUE | | |
| Assessments | \$21,592,781 | \$21,224,537 |
| Investment and Other Income | <u>(6,735,196)</u> | <u>5,361,429</u> |
| TOTAL REVENUE | \$14,857,585 | \$26,585,966 |
| EXPENSE | | |
| Administrative | \$6,250,148 | \$5,935,824 |
| Provision for Settlements | 8,636,655 | 7,228,538 |
| Provision for Defense Costs | <u>7,448,735</u> | <u>7,786,928</u> |
| TOTAL EXPENSE | \$22,335,538 | \$20,951,290 |
| NET INCOME | (\$7,477,953) | \$5,634,676 |

These statements have been adjusted to remove prepaid assessments: e.g., payments of the 2009 assessment received in December of 2008. A complete copy of the December 31, 2007, audit report is available on request.

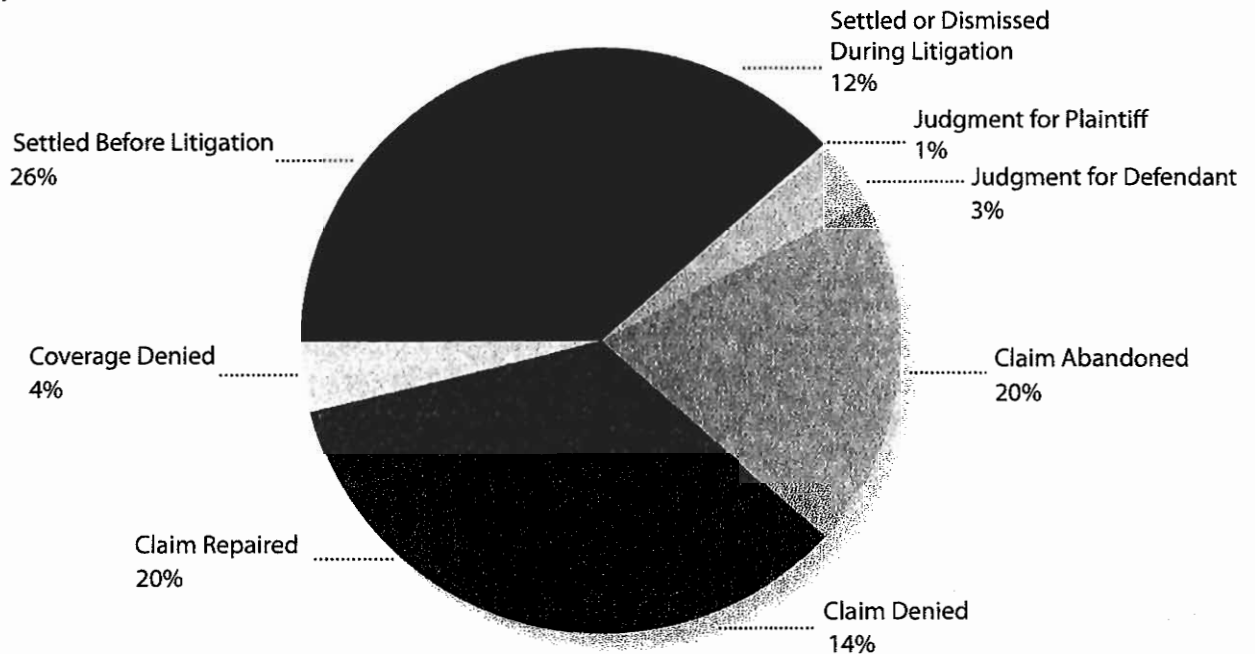
Closed Claims

January 1, 1999 – December 31, 2008



Disposition of Closed Claims

January 1, 1999 – December 31, 2008



Cost of Closed Claims by Area of Law

January 1, 1999 to December 31, 2008

| AREA OF LAW | PERCENT INDEMNITY PAID | INDEMNITY PAID | PERCENT EXPENSES PAID | EXPENSES PAID | TOTAL PAID |
|--|------------------------------|---------------------|-----------------------------|---------------------|----------------------|
| Business Transactions / Commercial Law | 14% | \$9,561,955 | 21% | \$9,632,830 | \$19,194,785 |
| Personal Injury | 19% | \$13,152,574 | 12% | \$5,803,611 | \$18,956,185 |
| Real Estate | 16% | \$11,185,641 | 13% | \$6,110,951 | \$17,296,592 |
| Domestic Relations / Family Law | 11% | \$7,362,205 | 10% | \$4,628,268 | \$11,990,473 |
| Estate Planning & Estate Tax | 10% | \$6,696,260 | 9% | \$4,270,052 | \$10,966,312 |
| Bankruptcy & Debtor-Creditor | 10% | \$6,946,418 | 9% | \$4,065,790 | \$11,012,208 |
| Workers Compensation / Admiralty | 4% | \$2,460,876 | 2% | \$900,746 | \$3,361,622 |
| Criminal | 1% | \$858,367 | 3% | \$1,342,401 | \$2,200,768 |
| Securities | 2% | \$1,123,148 | 2% | \$1,095,122 | \$2,218,270 |
| Tax | 1% | \$749,239 | 2% | \$1,119,405 | \$1,868,644 |
| Other | <u>12%</u> | <u>\$8,778,469</u> | <u>17%</u> | <u>\$7,969,112</u> | <u>\$16,747,581</u> |
| | 100% | \$68,875,152 | 100% | \$46,938,288 | \$115,813,440 |

Frequency of Claims by Area of Law

January 1, 1999 to December 31, 2008

| AREA OF LAW | | |
|--|-------------|--------------|
| Personal Injury | 17% | 1,294 |
| Domestic Relations / Family Law | 16% | 1,180 |
| Bankruptcy & Debtor-Creditor | 12% | 915 |
| Real Estate | 11% | 843 |
| Business Transactions / Commercial Law | 10% | 769 |
| Estate Planning & Estate Tax | 10% | 719 |
| Criminal | 7% | 492 |
| Workers Compensation / Admiralty | 3% | 221 |
| Tax | 1% | 52 |
| Securities | 1% | 52 |
| Other | <u>12%</u> | <u>912</u> |
| | 100% | 7,449 |

In 2008, the PLF had 903 new claims. This is a significant increase over the 781 new claims in 2007 and the 780 new claims in 2006. Although high, the 2008 new claim number is within the actuaries' predicted frequency and is comparable to the 842 new claims in 2005 and the 923 claims in 2004. Just as there was no clearly ascertainable reason for the decrease in claims in 2006 and 2007, there is no obvious reason for the increase in claims in 2008. As of March 1, 2009, the extrapolated claim count for 2009 is 884.

THE 2010 PRIMARY PROGRAM ASSESSMENT

As covered parties are aware, the 2009 Primary Program assessment was maintained at the 2008 rate of \$3,200. This is the third year in a row that the assessment has remained at \$3,200. Even in ordinary times, it is very difficult to predict whether the assessment is likely to increase; the current economic downturn makes that prediction still more difficult. Nonetheless, in recognition of unavoidable economic stresses on lawyers and law firms in this environment, the PLF Board of Directors is committed to making every effort to maintain the assessment at its current rate.

As the process of determining the assessment proceeds, a positive factor will be the PLF's strong 2005-2007 performance that has provided an invaluable reserve. The reserve can now be used to offset the negative results caused by the increased claims frequency and the economic downturn. And although the PLF's 2008 fiscal results are disappointing, other positive trends will be part of the decision-making equation – among them the positive 2007 claim results and the apparent stabilization of defense costs, as seen in the past several actuary reports. That said, there are very real competing negative factors as well, including the erosion of the reserve, a continuation of a high frequency rate, and indications of increasing claim severity. These factors are consistent with the expectation that difficult economic times result in increases in the frequency and severity of legal malpractice cases. The 2010 assessment will be determined midyear 2009, when more is known about overall claim development.

HOW IS THE PLF DOING WITH CLAIMS HANDLING?

Historically, covered parties who returned the PLF claims-handling evaluation form have been overwhelmingly satisfied with the performance of the PLF claims department. That result was replicated in 2008.

The claims-handling evaluation form asks whether covered parties were satisfied, very satisfied, or not satisfied. In 2008, the PLF received 384 responses (47%). The responses gave high ratings to both claims attorneys and defense counsel.

The performance of claims attorneys was particularly noteworthy, with 8.6% of respondents stating that they were satisfied with how their claim was handled and 90.4% stating that they were very satisfied – remarkable numbers. Combining these numbers, the evaluations indicated that covered parties who responded were either satisfied or very satisfied with the performance of claims attorneys 99% of the time.

Covered parties' satisfaction with defense counsel was also very high. Among the 219 covered parties who responded to the questionnaire about defense counsel, 10% were satisfied, 87.7% were very satisfied, and 2.3% were unsatisfied. (The fewer responses regarding defense counsel reflect the fact that many cases are handled by the PLF claims attorneys without being assigned out.)

WHAT IS THE PLF DOING IN THE AREAS OF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE?

The PLF continues to provide free and confidential personal and practice management assistance to Oregon lawyers. These services include legal education, on-site practice management assistance (through the PLF's Practice Management Advisor Program), and personal assistance (through the Oregon Attorney Assistance Program).

Personal and practice management assistance seminars in 2008 included programs on software updates, conflict-of-interest systems, trust accounting, setting up a sole practice, time management, confidentiality in the law office, technology tips, contract lawyering, and

practice management. In addition, we continue to offer free audio and video programs (currently 39 programs are available), publications (*In Brief* and *In Sight*), over 271 practice aids, and the following handbooks: *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* (2006), *A Guide to Setting Up and Running Your Law Office* (2005), *A Guide to Setting Up and Using Your Lawyer Trust Account* (2005), and *Oregon Statutory Time Limitations* (2003). Our practice aids and handbooks are all available free of charge. You can download them at www.osbplf.org, or call the Professional Liability Fund at 503-639-6911 or 800-452-1639.

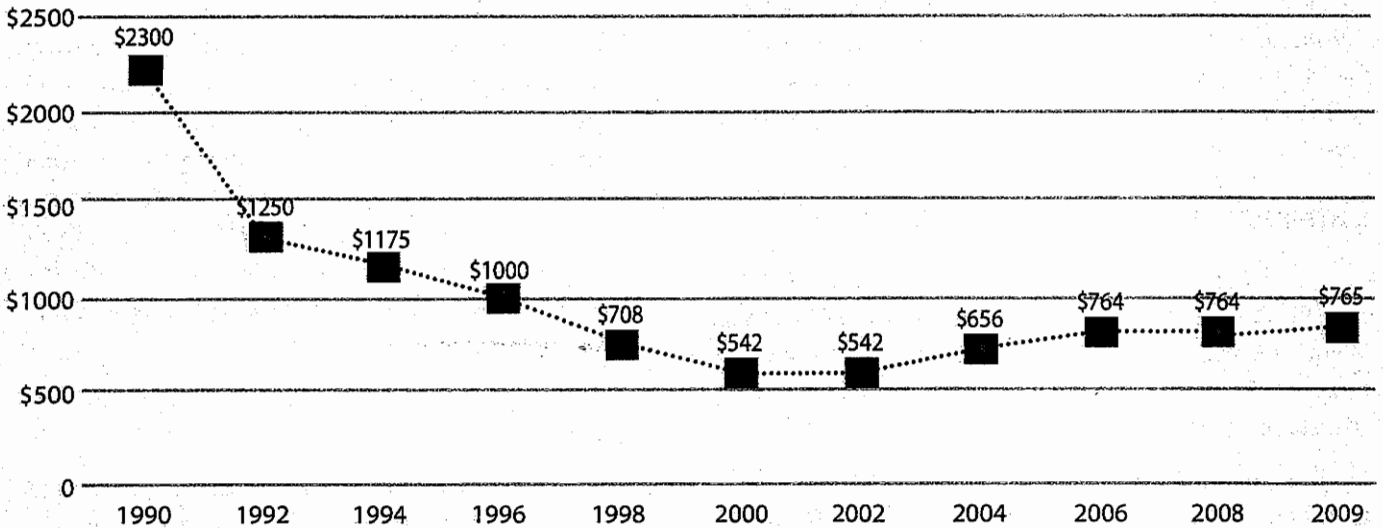
During 2008, the PLF presented video replays of the following programs: QuickBooks 2007 Tips; Microsoft Outlook 2007 Tips; Corel WordPerfect X3 Tips; Mi-

crosoft Word 2007 Tips; Recognizing and Representing Clients with Mental Health Impairments; Managing Stress Caused by Technology; Time Management; Stress Management; Professionalism and the Legal Profession; and The Re-Styled Federal Rules of Civil Procedure. These video replays were presented in Astoria, Bend, Coos Bay, Eugene, Grants Pass, Klamath Falls, La Grande, Medford, Newport, Pendleton, Redmond, Roseburg, Salem, and Vale, Oregon.

Practice Management Advisor Program. Our practice management advisors, Dee Crocker, Beverly Michaelis, and Sheila Blackford, answer practice management questions and provide information about effective systems for conflicts of interest, mail handling, billing, trust accounting, general accounting, time management, client relations, file management, and soft-

Cost of Excess Coverage

By Calendar Year 1990 - 2009



Graph shows cost of \$700,000 excess coverage above primary PLF limits.

Figures are the cost per attorney of \$700,000 PLF excess coverage above the primary limits. Figures for 1995 to 2009 do not include the continuity credit granted to firms for each year of continuous excess coverage with the PLF. Figures are not adjusted for inflation.

ware. In a recent survey about our practice management advisors, 100% of those who responded said they would recommend the PLF's practice management advisor services to others. In addition, 100% said they were either satisfied or very satisfied with how promptly their phone calls were returned, follow-up, how they were treated, how helpful the information was, the practice management advisor's ability to explain information clearly, and the overall level of service. In 2008, the practice management advisors presented live programs in Coos Bay, Eugene, Medford, Portland, Roseburg, and Salem, Oregon.

Oregon Attorney Assistance Program. The Oregon Attorney Assistance Program (OAAP) attorney counselors, Meloney Crawford Chadwick, Shari R. Gregory, Mike Long, and Douglas Querin, continue to provide assistance with alcohol and chemical dependency; burn-out; career change and satisfaction; depression, anxiety, and other mental health issues; stress management; and time management. In 2008, the OAAP sponsored addiction support groups, lawyers-in-transition meetings, career workshops, a depression support group, a support group for lawyers going through divorce, an Inner Peace workshop, a support group for chronic health issues, a women's support group, and a grief support group. In addition, the OAAP attorney counselors assisted over 742 lawyers with personal issues in 2008, including alcoholism, drug addiction, career satisfaction, retirement, and mental health issues.

CHANGES TO THE COVERAGE PLAN

In 2008, other than editorial changes, the PLF BOD and OSB Board of Governors approved three changes to the Coverage Plan. None of the changes represent changes in PLF policy but are simply clarifications of the Coverage Plan.

The definition of "damages," Section I.8. was changed. Previously, the damages definition excluded "non-economic loss." The change recognizes that non-economic damages might flow from legal malpractice claims in a very limited category of cases. For example, non-economic damages have been paid when the client of a criminal lawyer is incarcerated because of the Covered Party's malpractice.

The revised section states:

SECTION I.

8. "DAMAGES" means money to be paid as compensation for harm or loss. It does not refer to fines, penalties, punitive or exemplary damages, or equitable relief such as restitution, disgorgement, rescission, injunctions, accountings or damages and relief otherwise excluded by this Plan.

Changes were also made to the Comments to the Contract Obligation Exclusion, Section V. 20. The comments clarify that although coverage is provided to attorneys acting pursuant to Section III.3 (i.e., as a named personal representative, administrator, conservator, executor, guardian, or trustee except BUSINESS TRUSTEE), if the attorney is required to sign a bond or any surety, guaranty, warranty, joint control, or similar agreement while carrying out one of these special capacities, Exclusion 20.a does not apply, but Exclusion 20.b, 20.c, or 20.d may be applicable.

The full exclusion states:

20. This Plan does not apply to any CLAIM:

a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;

b. Any costs connected to ORS 20.160 or similar statute or rule;

c. For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or

d. Claims in contract based upon an alleged promise to obtain a certain outcome or result.

Section IX.1.h – the part of the Plan that specifies the subrogation rights of the PLF when the Covered Party has a right against a third party – has been moved and is now Section IX.2. The wording has been revised to strengthen the requirement that the Covered Party must assist in bringing such a claim.

Section IX.2 states:

To the extent the PLF makes any payment under this Plan, it will be subrogated to any COVERED PARTY's rights against third parties to recover all or part of these sums. When requested, every COVERED PARTY must assist the PLF in bringing any subrogation or similar claim. The PLF's subrogation or similar rights will not be asserted against any non-attorney employee of YOURS or YOUR law firm except for CLAIMS arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

EXCESS PROGRAM

The PLF Excess Program rates and participation remained stable. In 2008, 717 firms with a total of 2,584 lawyers purchased PLF excess coverage.

A few minor changes were made for the 2009 PLF Excess Coverage Plan this year. These changes follow changes made to the PLF 2009 Primary Claims Made Plan.

In addition, an option for firms that do not meet standard underwriting criteria was added to the PLF Excess Program policies. These firms may now be eligible to purchase non-standard excess coverage.

As in the past, the PLF Excess Program is entirely reinsured and financially independent from the PLF's mandatory Primary Coverage Program. Because of the success of the PLF's Excess Program, we are able to negotiate very favorable reinsurance rates. That savings is passed on to Oregon lawyers in lower excess coverage rates. We continue to offer continuity credits of 2% for each year of participation (up to 20%).

CHANGES IN PLF BYLAWS AND POLICIES

Other than the Excess Program policies discussed above, the PLF made no substantive changes to its policy.

FORECAST FOR THE FUTURE

The current economic uncertainties added to the many other factors that underlie predictions – projections of income, projections of the number of claims, defense expenses related to claims, and indemnity paid on claims – make predicting the 2010 assessment substantially more difficult than in past years. As noted earlier, in recognition of the difficult economic environment, the Board of Directors is committed to maintaining the assessment at \$3,200 if reasonably possible. Consistent with that goal, the BOD will carefully monitor developments over the next several months as it awaits the midyear actuary report.

If you have questions or suggestions about the PLF, please contact me.

Ira R. Zarov
Professional Liability Fund
Chief Executive Officer
503-639-6911 or 800-452-1639
iraz@osbplf.org

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 27 – 29, 2009
Memo Date: August 10, 2009
From: Ira Zarov, CEO PLF
Re: SUA Offsets

Action Recommended

Approve the following changes to **PLF Policy 3.500: Plan for Special Underwriting Assessment.**

3.500 PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

(C)(1) Reductions to Indemnity and Expense: For the purposes of SUA, the value of outstanding amounts owed by another but not yet collected will be determined by the PLF staff at the time the SUA is allocated. The PLF will set the value of such potential sources of reimbursement for claims expenses based on the likelihood of collection. The PLF may discount the value of the source of offset, allow full value of the source of offset, or decline to provide any discount. The amount of the credit determined by the PLF will be treated as reductions to the indemnity and expense paid by the PLF on behalf of a Covered Party and will be deducted in determining the Base Amount. Reinsurance payments will not be treated as reductions to indemnity.

Deleted: Net amounts actually received by the PLF (net of collection costs and not including interest or any increase in value)

Deleted: The value of non-cash reductions will be determined by the PLF Board of Directors.

(2) Covered parties will be notified of the PLF's decision as to the amount allowed for any third party source of repayment and can appeal that decision by letter submitted to the PLF CEO within 14 days of receiving notification of the PLF action. The PLF CEO will notify the covered party of a final decision prior to the final computation of any SUA assessment.

Background

In instances where a third party might have an obligation to repay the PLF for expenditures made on behalf of a covered party, either in full or in part, the PLF must re-compute the SUA whenever payments from the obligated source are made. Historically, repayments to the PLF in such cases have been sporadic, difficult to predict, can occur far after a SUA has been assessed and even fully paid, and most often involve small amounts. The recalculations are complicated to make as well.

In response to these difficulties, when there is a source of repayment for a SUA assessed against a covered party, the PLF will assess the likelihood of repayment and reduce the obligation to a reasonable value that would then be used as an

offset when determining a covered party's SUA. This amount would not be adjusted regardless of subsequent payments or non-payments. If the attorney disagrees with the PLF valuation, he or she can appeal.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28-29, 2009
Memo Date: July 27, 2009
From: Jeffrey Sapiro, Disciplinary Counsel, Ext. 319
Re: Proposed Amendments to Bar Rules of Procedure

Action Recommended

Adopt various amendments to the Bar Rules of Procedure (BRs) and submit them to the Supreme Court for approval.

Background

Periodically, staff presents to the Board of Governors proposed amendments to the rules of procedure applicable in disciplinary and reinstatement matters. Amendments arise from experience with problematic rules, the identification of outdated provisions, the need to correct heretofore unnoticed errors in existing rules, and similar circumstances. Attached to this memo are the amendments presently recommended.

ORS 9.542(1) provides that the board has the authority to adopt BRs, subject to the approval of the Supreme Court. Amendments approved by the board will be transmitted to the court for its consideration. BR amendments do not require review or approval of the House of Delegates.

Discussion

The text of the proposed amendments is shown on the following pages, with deleted text ~~stricken~~ and new text underlined. The amendments are summarized below:

BR 1.1(b) and (i): Throughout the BRs, there are vestiges of provisions that at one time applied to contested admissions proceedings. However, those proceedings are now governed by the Rules for Admission (RFAs) and handled by the Board of Bar Examiners. Therefore, staff is recommending that the outdated provisions be deleted at various spots in the BRs.

BR 1.3: Outdated admission provision.

BR 1.10(f): Provides clear authority to e-file with the Supreme Court.

BR 2.1(d) and (f): Outdated admission provisions.

BR 2.2: Outdated admission provision.

BR 2.4(g): Outdated admission provision.

BR 2.4(h): Permits trial panels to convene the parties pre-trial to discuss issues that will facilitate an efficient hearing. This authority may be inherent already, but the Disciplinary Board requested express authority.

BR 2.4(i)(2)(a): Deletes the requirement to serve a copy of a trial panel opinion on the State Court Administrator. Court staff has advised that, unless a trial panel opinion is appealed by one of the parties, the court no longer wishes to receive these opinions.

BR 2.6(f)(2): Housekeeping amendment.

BR 2.10(a) and (c): Recognize that diversion may be offered to a lawyer even after a formal complaint has been filed.

BR 2.10(d)(4): Currently, a term of diversion is limited to 24 months. However, the rules permit the SPRB to amend a diversion agreement to add new complaints that come to the bar's attention at a later date. The amendment makes clear that the 24 month durational limit starts at the time of the last matter added to the diversion agreement.

BR 3.1(g) and (h): Amends the temporary suspension rule to permit the appointment of a custodian of the suspended lawyer's files. Also permits the prevailing party in a BR 3.1 proceeding to seek the recovery of costs. Similar provisions already exist for disability proceedings filed under BR 3.2.

BR 3.4(e): Housekeeping amendment.

BR 5.8(a): Corrects inference in existing rule that all three trial panel members must file an order of default; amendment specifies that trial panel chairperson may file the order.

BR 6.1(a): Deletes outdated provisions that governed pre-1996 cases.

BR 6.1(b): Outdated admission provision.

BR 7.1: Outdated admission provision.

BR 8.1(d), 8.2(c), 8.2(d), 8.3(b), 8.4(a), 8.4(b): Increases reinstatement application fees, which have not been adjusted in over 20 years. Investigative costs have increased and, while existing fees still cover out-of-pocket expenses, they do not offset in any significant way staff time in processing applications.

BR 8.5(a): Housekeeping amendment.

BR 8.14: Deletes reference to Active Emeritus status, which no longer exists, and corrects errors in existing rule.

BR 10.2: Outdated admission provision.

BR 10.5: Outdated admission provision.

BR 10.6: Outdated admission provision.

BR 10.7(b): Outdated admission provision.

BR 12.2: Outdated admission provision.

BR 12.5: Outdated admission provision.

JDS

Rules of Procedure

Title 1 — General Provisions

Rule 1.1 Definitions.

In these rules, unless the context or subject matter requires otherwise:

- (a) “Accused” means an attorney charged with misconduct by the Bar in a formal complaint.
- (b) “Applicant” means an applicant for admission to practice law in Oregon or an applicant for reinstatement to the practice of law in Oregon, as the case may be.
- (c) “Attorney” means a person who has been admitted to the practice of law in Oregon.
- (d) “Bar” means Oregon State Bar created by the Bar Act.
- (e) “Bar Act” means ORS Chapter 9.
- (f) “Bar Counsel” means counsel appointed by the SPRB or the Board to represent the Bar.
- (g) “BBX” means Board of Bar Examiners appointed by the Supreme Court.
- (h) “Board” means Board of Governors of the Bar.
- (i) “Contested Admission” means a proceeding in which the Bar BBX is objecting to the admission of an applicant to the practice of law ~~upon recommendation of the BBX~~ after a character review proceeding.
- (j) “Contested Reinstatement” means a proceeding in which the Bar is objecting to the reinstatement of an attorney or a former attorney to the practice of law.
- (k) “Disciplinary Board” means the board appointed by the Supreme Court to hear and decide disciplinary and contested reinstatement proceedings pursuant to these rules.
- (l) “Disciplinary Board Clerk” means the person or persons designated in General Counsel’s Office of the Bar to receive and maintain records of disciplinary and reinstatement proceedings on behalf of the Disciplinary Board.
- (m) “Disciplinary Counsel” means disciplinary counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist disciplinary counsel.
- (n) “Disciplinary Proceeding” means a proceeding in which the Bar is charging an attorney with misconduct in a formal complaint.
- (o) “Examiner” means a member of the BBX.
- (p) “Executive Director” means the chief administrative employee of the Bar.
- (q) “Formal Complaint” means the instrument used to charge an attorney with misconduct.
- (r) “LPRC” means a local professional responsibility committee appointed by the Board.
- (s) “Misconduct” means any conduct which may or does subject an attorney to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court.
- (t) “State Court Administrator” means the person who holds the office created pursuant to ORS 8.110.

- (u) "Supreme Court" and "court" mean Supreme Court of Oregon.
- (v) "SPRB" means State Professional Responsibility Board created by the Board.
- (w) "Trial Panel" means a three-member panel of the Disciplinary Board.

* * * * *

Rule 1.3 Nature Of Proceedings.

~~Contested admission, d~~ Disciplinary, and contested reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant's conduct should preclude the applicant from being ~~admitted to the Bar, or from being~~ reinstated to membership in the Bar.

* * * * *

Rule 1.10 Filing.

(a) Any pleading or document to be filed with the Disciplinary Board Clerk shall be delivered in person to the Disciplinary Board Clerk, Oregon State Bar, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail to the Disciplinary Board Clerk, Oregon State Bar, P. O. Box 231935, Tigard, Oregon 97281-1935. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563. Any pleading or document to be filed with the State Chair of the Disciplinary Board, a regional chair or a trial panel chair shall be delivered to the intended recipient at his or her last designated business or residence address on file with the Bar.

(b) Filing by mail shall be complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.

(c) If filing is not done as provided in subsection (b) of this rule, the filing shall not be timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.

(d) A copy of any pleading or document filed under these Rules must also be served by the party or attorney delivering it on other parties to the case. All service copies must include a certificate showing the date of filing. "Parties" for the purposes of this rule shall be the accused or applicant, or his or her attorney if the accused or applicant is represented, Disciplinary Counsel, and Bar Counsel.

(e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledgement of service by the person served or be in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who has made service.

(f) Any pleading or document to be filed with the Supreme Court pursuant to these rules of procedure may be filed electronically, rather than conventionally by paper, provided the filing complies with ORAP 16.

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Title 2 — Structure and Duties

Rule 2.1 Qualifications of Counsel.

(a) Definition of Accused. Notwithstanding BR 1.1(a), for the purposes of this rule, "accused" means an attorney who is the subject of an allegation of misconduct that is under investigation by the Bar, or who has been charged with misconduct by the Bar in a formal complaint.

(b) Bar Counsel. Any attorney admitted to practice law at least three years in Oregon may serve as Bar Counsel unless the attorney:

- (1) currently represents an accused or applicant;
- (2) is a current member of the Disciplinary Board, or has a firm member currently serving on the Disciplinary Board;
- (3) served as a member of the Disciplinary Board at a time when the formal complaint against the accused was filed.

(c) Counsel for Accused. Any attorney admitted to practice law in Oregon may represent an accused unless the attorney:

- (1) is a current member of the Board or the SPRB;
- (2) served as a member of the Board or the SPRB at a time when the allegations about which the accused seeks representation were under investigation by the Bar or were authorized to be charged in a formal complaint;
- (3) is a current member of an LPRC that investigated allegations about which the accused seeks representation;
- (4) served as a member of an LPRC that investigated allegations about which the accused seeks representation, at a time when such investigation was undertaken;
- (5) currently is serving as Bar Counsel;
- (6) is a current member of the Disciplinary Board, or has a firm member currently serving on the Disciplinary Board;
- (7) served as a member of the Disciplinary Board at a time when the formal complaint against the accused was filed.

(d) Counsel for Applicant. Any attorney admitted to practice law in Oregon may represent an applicant unless the attorney:

- (1) is a current member of the Board, the BBX, or the SPRB;
- (2) served as a member of the Board, the BBX, or the SPRB at a time when the investigation of the admission or reinstatement application was conducted by the BBX or the Bar;
- (3) currently is serving as Bar Counsel;
- (4) is a current member of the Disciplinary Board, or has a firm member currently serving on the Disciplinary Board;
- (5) served as a member of the Disciplinary Board at a time when the statement of objections against the applicant was filed.

(e) Vicarious Disqualification. The disqualifications contained in BR 2.1(b), (c) and (d) shall also apply to firm members of the disqualified attorney's firm.

(f) Exceptions to Vicarious Disqualification.

- (1) Notwithstanding BR 2.1(b), (c) and (d), an attorney may serve as Bar Counsel or represent an accused or applicant even though a firm member is currently serving on the Disciplinary Board, provided the firm member recuses himself or herself from participation as a trial panel member, regional chairperson or state chairperson in any matter in which a member of the firm is Bar Counsel or counsel for an accused or applicant.

(2) Subject to the provisions of RPC 1.7, and notwithstanding the provisions of BR 2.1(b), (c) and (d), an attorney may serve as Bar Counsel or represent an accused or applicant even though a firm member is currently serving as Bar Counsel or representing an accused or applicant, provided firm members are not opposing counsel in the same proceeding.

(3) Notwithstanding BR 2.1(b), (c) and (d), an attorney in a Board member's firm may represent an accused ~~or applicant for admission~~ provided the Board member is screened from any form of participation or representation in the matter. In order to ensure such screening:

(A) The Board member shall prepare and file an affidavit with the Executive Director attesting that, during the period his or her firm is representing an accused ~~or applicant for admission~~, the Board member will not participate in any manner in the matter or the representation and will not discuss the matter or representation with any other firm member;

(B) The Board member's firm shall also prepare and file an affidavit with the Executive Director attesting that all firm members are aware of the requirement that the Board member be screened from participation in or discussion of the matter or representation;

(C) The Board member and firm shall also prepare, at the request of the Executive Director, a compliance affidavit describing the Board member's and the firm's actual compliance with these undertakings;

(D) The affidavits required under subsections (A) and (B) of this rule shall be filed with the Executive Director no later than 14 days following the acceptance by a Board member's firm of an accused ~~or applicant for admission~~ as a client, or the date the Board member becomes a member of the Board.

Rule 2.2 Investigators.

Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of admission and reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

* * * * *

Rule 2.4 Disciplinary Board.

(a) Composition. A disciplinary board shall be appointed by the Supreme Court. The Disciplinary Board shall consist of a state chairperson, 6 regional chairpersons, and 6 additional members for each Board region except for Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, and Region 6 which shall have 11 additional members. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board shall be resident attorneys admitted to practice in Oregon at least 3 years. Except for the state chairperson who shall be an at-large appointee, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of 2 attorneys and 1 public member, except as provided in BR 2.4(f)(3). The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.

(b) Term.

(1) Disciplinary Board members shall serve terms of 3 years and may be reappointed. State and regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the Supreme Court.

(2) Notwithstanding BR 2.4(a), the powers, jurisdiction and authority of Disciplinary Board members shall continue beyond the expiration of their appointment or after their relocation to another region for the time

required to complete the cases assigned to them during their term of appointment or prior to their relocation, and until a replacement appointment has been made by the Supreme Court. The state chairperson and the regional chairpersons shall serve until a replacement appointment has been made by the Supreme Court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor who shall serve the unexpired term of the member who is replaced.

(d) Disqualifications and Suspension of Service.

(1) The disqualifications contained in the Code of Judicial Conduct shall apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board, the SPRB, or an LPRC shall not serve on the Disciplinary Board during the member's term of office. This disqualification shall also preclude an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board, the SPRB or an LPRC.

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to subject matter considered by the Board, the SPRB or an LPRC while a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board, the SPRB or an LPRC.

(3) A member of the Disciplinary Board against whom charges of misconduct have been approved for filing by the SPRB is suspended from service on the Disciplinary Board until the charges filed against the member have been resolved by final decision or order. If a Disciplinary Board member is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service on the Disciplinary Board until the member is once again authorized to practice law. For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, the determination by the SPRB to admonish an attorney pursuant to BR 2.6(c)(1)(B) or BR 2.6(d)(1)(B) which admonition is thereafter refused by the attorney, authorization by the SPRB to notify the Supreme Court of a criminal conviction pursuant to BR 3.4(a), and authorization by the SPRB to notify the Supreme Court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

(e) Duties of State Chairperson.

(1) The state chairperson shall coordinate and supervise the activities of the Disciplinary Board, including the monitoring of timely preparation and filing of trial panel opinions.

(2) The state chairperson shall not be required to, but may, serve on trial panels during his or her term of office.

(3) The state chairperson shall resolve all challenges to the qualifications of regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings.

(4) Upon receipt of written notice from Disciplinary Counsel of service of a statement of objections, the state chairperson shall appoint a trial panel and trial panel chairperson from an appropriate region. The state chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(5) The state chairperson shall appoint a member of the Disciplinary Board to conduct pre-hearing conferences as provided in BR 4.6.

(6) The state chairperson may appoint Disciplinary Board members from any region to serve on trial panels or to conduct pre-hearing conferences as may be necessary to resolve the matters submitted to the Disciplinary Board for consideration.

(7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the state chairperson shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel of service of a formal complaint, the regional chairperson shall appoint a trial panel from the members of the regional panel and a chairperson thereof. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the accused of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(2) Except as provided in BR 2.4(e)(3), the regional chairperson shall rule on all challenges to the qualifications of members of the trial panels in his or her region under BR 2.4(g).

(3) Upon the stipulation of the Bar and an accused, the regional chairperson shall appoint one attorney member from the regional panel to serve as the sole adjudicator in a disciplinary proceeding. In such case, the member appointed shall have the same duties and authority under these rules as a three member trial panel.

(4) The regional chairperson may serve on trial panels during his or her term of office.

(5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.

(g) Challenges. The Bar and an accused or applicant shall be entitled to one peremptory challenge and an unlimited number of challenges for cause as may arise under the Code of Judicial Conduct or these rules. Any such challenges shall be filed in writing within seven days of written notice of an appointment of a trial panel with the Disciplinary Board Clerk, with copies to the regional chairperson for disciplinary proceedings or to the state chairperson for contested admission and reinstatement proceedings or for challenges to a regional chairperson. Challenges for cause shall state the reason for the challenge. The written ruling on a challenge shall be filed with the Disciplinary Board Clerk, and the regional chairperson or the state chairperson, as the case may be, shall serve copies of the ruling on all parties. These provisions shall apply to all substitute appointments, except that neither the Bar nor an accused or applicant shall have more than 1 peremptory challenge. The Bar and an accused or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson may convene the parties or their counsel prior to the hearing to discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The trial panel chairperson may thereafter issue an order regarding agreements or rulings made at such a pre-hearing meeting. The trial panel chairperson shall convene the hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.

(i) Duties of Trial Panel.

(1) Trial. It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.

(2)

(a) Opinions.

The trial panel shall render a written opinion signed by the concurring members of the trial panel. A dissenting member shall note the dissent and may file a dissenting opinion attached to the majority opinion of the trial panel. The majority opinion shall include specific findings of fact, conclusions and a disposition. The trial panel chairperson shall file the original opinion with the Disciplinary Board Clerk, and serve copies on the parties and the State Court Administrator. It shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the trial panel chairperson pursuant to BR 4.8, whichever is later.

(b) Extensions of Time to File Opinions. If additional time is required by the trial panel to render its opinion, the trial panel chairperson may file a request for an extension of time with the Disciplinary Board Clerk and serve a copy on the state chairperson prior to the expiration of the applicable 28 day period. Disciplinary Counsel, Bar Counsel, and the accused or applicant shall be given written notice of such request. The state chairperson shall file a written decision on the extension request with the Disciplinary Board Clerk and shall serve copies on all parties.

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file such record with the Disciplinary Board Clerk.

(4) Notice. The Disciplinary Board Clerk shall promptly notify the parties of receipt of the opinion from the trial panel.

(j) Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the Supreme Court. The reporter service shall be distributed to all state and county law libraries and members of the Disciplinary Board.

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court contested admission, contested reinstatement and disciplinary decisions and summaries of all Disciplinary Board decisions not reviewed by the Supreme Court.

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Rule 2.6 Investigations

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(f) Approval of Charges.

(1) If the SPRB determines that a formal complaint should be filed against an attorney, or if an attorney rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. The attorney and the complainant shall be notified in writing by Disciplinary Counsel of such action.

(2) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that no further action on a complaint or allegation of misconduct be taken by the Bar if one or more of the following circumstances exist: the attorney is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon; other disciplinary proceedings are pending that are likely to result in the attorney's disbarment; other disciplinary charges are authorized or pending and the anticipated sanction, should the Bar prevail on those charges, is not likely to be affected by a guilty finding in the new matter or on an additional charge; or formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings. An exercise of discretion under this rule to take no further action on

a complaint or allegation of misconduct shall not preclude further consideration or proceedings by the SPRB on such complaint or allegation in the future.

(3) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a complaint or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising its discretion under this rule include, but are not limited to: the attorney's mental state; whether the misconduct is an isolated event or part of a pattern of misconduct; the potential or actual injury caused by the attorney's misconduct; whether the attorney fully cooperated in the investigation of the misconduct; and whether the attorney previously was admonished or disciplined for misconduct. Misconduct that adversely reflects on the attorney's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

* * * * *

Rule 2.10 Diversion.

(a) Diversion by SPRB. As an alternative to issuing an admonition, ~~or~~ approving the filing of a formal complaint against an attorney, or prosecuting a formal complaint that has been filed, the SPRB may authorize Disciplinary Counsel to enter into a diversion agreement in which the attorney agrees to participate in a remedial program as set forth in the agreement. Subject to the provisions of this rule, the SPRB has the discretion to determine whether to authorize diversion of a complaint or allegation of misconduct. An attorney does not have a right to have a complaint or allegation of misconduct diverted under this rule.

(b) Diversion Eligibility. The SPRB may consider diversion of a complaint or allegation of misconduct if:

- (1) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor involving moral turpitude or a felony under Oregon law;
- (2) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence, or a lack of training, education or other similar circumstance; and
- (3) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(c) Offer of Diversion.

- (1) If, after investigation by Disciplinary Counsel or an LPRC, the SPRB determines that an attorney may have committed misconduct and that the matter is appropriate for diversion under this rule, the SPRB, through Disciplinary Counsel, may offer a diversion agreement to the attorney. The attorney shall have 30 days from the date diversion is offered to accept and enter into the diversion agreement. Disciplinary Counsel may grant an extension of time to the attorney for good cause shown.
- (2) An attorney may decline to enter into a diversion agreement, in which case the complaint or allegation of misconduct shall be referred back to the SPRB for review pursuant to Rule 2.6 or, if a formal complaint has been filed, proceed to hearing.

(d) Diversion Agreement.

- (1) A diversion agreement shall require the attorney to participate in a specified remedial program to address the apparent cause of the misconduct. Such a remedial program may include, but is not limited to: appointment of a diversion supervisor; assistance or training in law office management; chemical dependency treatment; counseling or peer support meetings; oversight by an experienced practicing attorney; voluntary limitation of areas of practice for the period of the diversion agreement; restitution; or a prescribed course of continuing legal education. The attorney shall bear the costs of a remedial program.

(2) A diversion agreement further shall require the attorney to stipulate to a set of facts concerning the complaint or allegation of misconduct being diverted, and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the stipulated facts shall be deemed true in any subsequent disciplinary proceeding.

(3) A diversion agreement may be amended at any time with the consent of the SPRB and the attorney. The SPRB is not obligated to amend a diversion agreement to incorporate additional complaints or allegations of misconduct made against the attorney subsequent to the date of the original agreement.

(4) The term of a diversion agreement shall be no more than 24 months following the date of the last amendment to the agreement.

(5) In a diversion agreement, the attorney shall agree that a diversion supervisor, treatment provider or any other person to whom the attorney has been referred pursuant to the remedial program specified in the agreement shall report to Disciplinary Counsel any failure by the attorney to comply with the terms of the agreement.

(6) A diversion agreement prepared by Disciplinary Counsel and signed by an attorney is not effective until approved by the SPRB. If approved by the SPRB, Disciplinary Counsel shall notify the complainant and the attorney in writing.

(e) Compliance and Disposition.

(1) If it appears to Disciplinary Counsel that an attorney has failed to comply with the terms of a diversion agreement, Disciplinary Counsel shall inform the SPRB. If the SPRB determines that the allegation of noncompliance, if true, warrants the termination of the diversion agreement, the SPRB shall provide the attorney an opportunity to be heard, through written submission, concerning the alleged noncompliance. Thereafter, the SPRB shall determine whether to terminate the diversion agreement and, if so, take action deemed appropriate under BR 2.6.

(2) If an attorney fulfills the terms of a diversion agreement, Disciplinary Counsel thereafter shall dismiss the complaint or allegation of misconduct with written notice to the complainant and the attorney. The dismissal of a complaint or allegation of misconduct after diversion shall not be considered a prior disciplinary offense in any subsequent proceeding against the attorney.

(f) Public Records Status. The Bar will treat records relating to a complaint or allegation of misconduct diverted under this rule, a diversion agreement, or a remedial program as official records of the Bar, subject to the Oregon Public Records Law, and any applicable exemption thereunder.

Title 3 — Special Proceedings

Rule 3.1 Temporary Suspension During Pendency Of Disciplinary Proceedings.

(a) Petition for Temporary Suspension. If it appears to the SPRB, upon the affirmative vote of two-thirds of its membership, that the continuation of the practice of law by an attorney during the pendency of disciplinary proceedings will, or is likely to, result in substantial harm to any person or the public at large, Disciplinary Counsel shall directly, or through Bar Counsel, petition the Supreme Court on behalf of the Bar for an order suspending the attorney from practice until further order of the court. A petition under this rule may be filed by the Bar at any time after the SPRB has approved the filing of a formal complaint by the Bar against the attorney.

(b) Contents of Petition; Service; Answer by Attorney. A petition to the Supreme Court for the suspension of an attorney under this rule shall set forth the acts and violations of the rules of professional conduct or statutes submitted by the Bar as grounds for the attorney's suspension. The petition shall have attached as an exhibit a copy of the Bar's formal complaint against the attorney, if one has been filed by the Bar. The petition may be supported by documents or affidavits. A copy of the petition, along with a notice to answer, shall be served on the attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons. The attorney shall file an answer to the Bar's petition with the Supreme Court within 14 days of service. The

attorney shall mail a copy of the answer to Disciplinary Counsel and Bar Counsel, if any, and file proof of mailing with the court.

(c) Hearing, answer filed. Upon the filing of the attorney's answer, the court shall hold a hearing on the Bar's petition. The hearing date shall be set by the court and notice thereof shall be mailed to Disciplinary Counsel, Bar Counsel and the attorney by the State Court Administrator.

(d) Hearing, default. The failure of the attorney to answer the Bar's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the Bar's petition. The court shall then enter the order provided in BR 3.1(e) either upon the record before it, or at the discretion of the court, after a hearing ordered by the court.

(e) Order of Court. The court, after the hearing provided in BR 3.1(c) or upon the record or after the hearing provided in 3.1(d), shall enter an appropriate order. If the court grants the Bar's petition, an effective date for the attorney's suspension shall be stated therein. The suspension shall remain in effect until further order of the court.

(f) Duties upon Suspension. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(g) Immediate Suspension; Restrictions on Trust Account; Other Orders. The court may enter such other orders as it deems appropriate to protect the interests of the suspended attorney, the suspended attorney's clients and the public including, but not limited to:

(1) an order for the immediate suspension of the attorney prior to the hearing required by BR 3.1(c), in which event the hearing on the Bar's petition shall be held no later than 60 days following the attorney's suspension and the order of the court contemplated by BR 3.1(e) shall be entered no later than 30 days after the hearing. The time limitations in this subsection of the rule shall not apply if the attorney is in default;

(2) an order which, when served upon a financial institution, shall serve as an injunction prohibiting withdrawals from the attorney's trust account or accounts except in accordance with restrictions set forth in the court's order;

(3) an order appointing an attorney as custodian to take possession of and inventory the files of the suspended attorney and take such further action as necessary to protect the interests of the suspended attorney's clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(h) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as far as practicable.

(i) Accelerated Proceedings Following Temporary Suspension. When an attorney has been temporarily suspended by order of the court under BR 3.1(e), the complaint by the Bar shall thereafter proceed and be determined as an accelerated case, without unnecessary delay. Unless extended by stipulation of the Bar and the attorney, and approved by the court, the further order of the court contemplated by BR 3.1(e) shall be entered not later than 270 days following the entry of the order of temporary suspension, subject to continuance for an additional period not to exceed 90 days upon motion filed by the Bar, served upon the attorney, and granted by the Supreme Court.

(j) Termination of Temporary Suspension. In the event the further order of the court contemplated by BR 3.1(e) is not entered within the time provided by BR 3.1(h), the order of temporary suspension shall automatically terminate without prejudice to any pending or further disciplinary proceeding against the attorney.

* * * * *

Rule 3.4 Conviction Of Attorneys.

(a) Referral of Convictions to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been convicted in any jurisdiction of an offense that is a misdemeanor which may involve moral turpitude or is a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States. Disciplinary Counsel shall file a copy of the documents which show the conviction and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney. A "conviction" for the purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty.

(b) Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.

(c) Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.

(d) Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(e) Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. The referral shall be made in writing to the Disciplinary Board Clerk, with copies to Disciplinary Counsel and the attorney. Upon receipt of notice of a referral of a conviction matter to the Disciplinary Board, Disciplinary Counsel ~~may appoint Bar Counsel to~~ shall file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.

(f) Independent Charges; Consolidated Proceedings. The SPRB may cause disciplinary charges to be filed against the attorney independent of the fact of the attorney's conviction. In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.

(g) Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).

(i) Relief From Suspension. If an attorney's conviction is reversed on appeal, and such reversal has become a final order not subject to further appeal or review, or the attorney has been granted a new trial which order has become final, a suspension or discipline previously ordered shall be vacated upon the court's receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal or the granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

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Title 5 — Disciplinary Hearing Procedure

Rule 5.8 Default.

(a) Failure to Answer or Appear. If an accused lawyer fails to resign or file an answer to a formal complaint within the time allowed by these rules, or if an accused lawyer fails to appear at a hearing set pursuant to BR 2.4(h), the trial panel chairperson, or the regional chairperson if a trial panel has not been appointed, may file with the Disciplinary Board Clerk an order finding the accused in default under this rule. Copies of the order shall be served on the parties. The trial panel shall thereafter deem the allegations in the formal complaint to be true. The trial panel shall thereafter proceed to render its written opinion based on the formal complaint, or at the discretion of the trial panel, after considering evidence or legal authority limited to the issue of sanction. Following entry of an order of default, the accused shall not be entitled to further notice in the disciplinary proceeding under consideration, except as may be required by these rules or by statute. The trial panel shall not, absent good cause, continue or delay proceedings due to an accused's failure to answer or appear.

(b) Setting Aside Default. At any time prior to a trial panel rendering its written opinion, the trial panel may set aside an order of default upon a showing by the accused that the accused's failure to resign, answer or appear timely was the result of mistake, inadvertence, surprise or excusable neglect. After a trial panel opinion is rendered, a motion to set aside an order of default must be filed with the Supreme Court.

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Title 6 — Sanctions And Other Remedies

Rule 6.1 Sanctions.

(a) Disciplinary Proceedings. The dispositions or sanctions in disciplinary proceedings are

- (i) dismissal of any charge or all charges;
- (ii) public reprimand;
- (iii) ~~suspension for periods from 30 days to three years in disciplinary proceedings commenced by formal complaint before January 1, 1996;~~
- (iv) ~~suspension for periods from 30 days to five years in disciplinary proceedings commenced by formal complaint after December 31, 1995;~~
- (v) ~~(iv)~~ a suspension for any period designated in BR 6.1(a)(iii) or ~~BR 6.1(a)(iv)~~ which may be stayed in whole or in part on the condition that designated probationary terms are met; or
- (vi) ~~(v)~~ disbarment.

In conjunction with a disposition or sanction referred to in this rule, an accused may be required to make restitution of some or all of the money, property or fees received by the accused in the representation of a client, or reimbursement to the Client Security Fund.

(b) ~~Contested Admission Proceedings. In contested admission cases a determination shall be made whether the applicant shall be~~

- ~~(i) denied admission;~~
- ~~(ii) admitted conditionally, subject to probationary terms; or~~
- ~~(iii) admitted unconditionally.~~

(e) Contested Reinstatement Proceedings. In contested reinstatement cases a determination shall be made whether the applicant shall be

- (i) denied reinstatement;
- (ii) reinstated conditionally, subject to probationary terms; or
- (iii) reinstated unconditionally.

(d) (c) Time Period Before Application and Reapplication. The court may require an applicant whose admission or reinstatement has been denied to wait a period of time designated by the court before reapplying for admission or reinstatement.

(e) (d) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years has elapsed from the effective date of his or her disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

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Title 7 — ~~Contested Admission~~ [Reserved for expansion]

~~Rule 7.1 Petition To Review Adverse Recommendation.~~

~~An applicant who passed the Bar examination, but on other grounds was not recommended for admission, or was conditionally recommended may file a petition for review as provided in the Rules for Admission. The Rules for Admission shall govern the procedure on review. Title 10 of these rules shall also apply where applicable.~~

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Title 8 — Reinstatement

Rule 8.1 Reinstatement — Formal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

- (i) resigned under Form A of these rules more than five years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
- (ii) resigned under Form B of these rules prior to January 1, 1996; or
- (iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or
- (iv) been suspended for misconduct for a period of more than six months; or
- (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
- (vi) been enrolled voluntarily as an inactive member for more than five years; or
- (vii) been involuntarily enrolled as an inactive member; or
- (viii) been suspended for any reason and has remained in that status more than five years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than three years or has been enrolled voluntarily or involuntarily as an inactive member for more than five years must show that the applicant has the requisite learning and ability to practice law in this state. The Board may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation or inactive status in this state; and whether the applicant has participated in continuing legal education activities during the period of suspension or inactive status in this state.

(d) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of ~~\$400~~ \$500.

Rule 8.2 Reinstatement — Informal Application Required.

(a) Applicants. Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for five years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive member for five years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of five years prior to the date of application for reinstatement,

may be reinstated by the Executive Director by filing an informal application for reinstatement with the Bar and compliance with the Rules of Procedure in effect at the time of such application. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension or resignation. Reinstatements to inactive status shall not be allowed under this rule except for those applicants who were inactive and are seeking reinstatement to inactive status after a financial suspension. No applicant shall resume the practice of law in this state or active or inactive membership status unless all the requirements of this rule are met.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay at the time the application for reinstatement is filed, an application fee of ~~\$200~~ \$250.

(d) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act, Code of Professional Responsibility or Rules of Professional Conduct;

shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of ~~\$400~~ \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the informal application and any information gathered in the investigation of the application that the applicant for reinstatement has made the showing required by BR 8.2(b), the Board shall reinstate the applicant. If the Board determines that the applicant has not made the showing required by BR 8.2(b), the Board shall deny the application for reinstatement. The Board also may determine that an application filed under BR 8.2 be granted conditionally. The Board shall file an adverse recommendation or a recommendation of conditional reinstatement with the Supreme Court under BR 8.7.

(g) Suspension of Application. If the Executive Director or the Board, as the case may be, determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation or inactive status, the Executive Director or the Board, as the case may be, may direct Disciplinary Counsel to secure additional information concerning the applicant's conduct and defer consideration of the application for reinstatement.

Rule 8.3 Reinstatement — Compliance Affidavit.

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of ~~\$200~~ \$250.

Rule 8.4 Reinstatement — Financial Matters.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon payment of the following sums to the Bar:

- (i) all applicable assessments, fees and penalties owed by the member to the Bar, and
- (ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, a reinstatement fee of ~~\$50~~ \$100; or
- (iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, a reinstatement fee of ~~\$75~~ \$100; or
- (iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, a reinstatement fee of ~~\$100~~ \$200.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of ~~\$400~~ \$500 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

Rule 8.5 Reinstatement — Noncompliance With Minimum Continuing Legal Education Requirement.

(a) Applicants. Subject to the provisions of BR ~~9-5~~ 8.1(a)(viii), any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules may seek reinstatement ~~at any time~~ subsequent to the date of the applicant's suspension by meeting the following conditions:

- (i) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and MCLE Rule 8.2. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.
- (ii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

* * * * *

Rule 8.14 Reinstatement and Transfer--Active Pro Bono and Active Emeritus Status.

(a) Reinstatement from Inactive Status. An applicant who has been enrolled voluntarily as an inactive member and who has not engaged in any of the conduct described in BR 8.2(e) (d) may be reinstated by the Executive Director to Active Pro Bono or Active Emeritus status. The Executive Director may deny the application for reinstatement for the reasons set forth in BR 8.2(d), in which event the applicant ~~could~~ may be reinstated only upon successful compliance with all of the provisions of BR 8.2. The application for reinstatement to Active Pro Bono status shall be on a form prepared by the Bar for such purpose. No fee is required.

(b) Transfer to Regular Active Status. An applicant who has been on Active Pro Bono ~~or Active Emeritus~~ status for a period of five years or less and who desires to be eligible to practice law without restriction may be transferred to regular active status by the ~~Board of Governors~~ Executive Director in the manner provided in and subject to the requirements of BR 8.2. An applicant who has been on Active Pro Bono ~~or Active Emeritus~~ status for a period of more than five years may be transferred to regular active status only upon formal application pursuant to BR 8.1.

* * * * *

Title 10 — Review By Supreme Court

* * * * *

Rule 10.2 Contested Admission And Reinstatement Proceeding.

Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, the applicant and the State Court Administrator. ~~Upon the conclusion of a character review proceeding conducted by the BBX, the BBX shall file its decision, accompanied by the record, with the State Court Administrator.~~ Each such admissions and reinstatement matter shall be reviewed by the Supreme Court.

* * * * *

Rule 10.5 Procedure In Supreme Court.

(a) Petition. No later than 28 days after the court's written notice to Disciplinary Counsel, Bar Counsel and the accused or applicant of receipt of the record, a petition asking the court to adopt, modify or reject, in whole or in part, the decision of the trial panel shall be filed with the court.

(b) Moving Party. The petition shall be filed by the accused or applicant if the trial panel made a finding of misconduct against the accused or recommended ~~against the reinstatement of the applicant or if the BBX recommended that an applicant be denied admission~~ reinstatement or be conditionally ~~admitted~~ reinstated; otherwise, the Bar shall file the petition.

(c) Briefs. A petition filed under this rule shall be accompanied by a brief. The format of the opening brief and the timing and format of answering briefs and reply briefs shall be governed by the applicable Rules of Appellate Procedure of the Supreme Court. The failure of the Bar or an accused or applicant to file a petition or brief does not prevent the opposing litigant from filing a brief. Answering briefs are not limited to issues addressed in petitions or opening briefs, and may urge the adoption, modification or rejection in whole or in part of any decision of the trial panel ~~or the BBX~~.

(d) Oral Argument. The Rules of Appellate Procedure of the Supreme Court relative to oral argument shall apply in ~~contested admission~~, disciplinary and contested reinstatement proceedings. The moving party under BR 10.5(b) shall be considered the appellant.

Rule 10.6 Nature Of Review.

The court shall consider each matter de novo upon the record and may adopt, modify or reject the decision of the trial panel ~~or the BBX~~ in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel ~~or the BBX~~ without opinion, the opinion of the trial panel ~~or the BBX~~ shall stand as a statement of the decision of the court in the matter but not as the opinion of the court.

Rule 10.7 Costs And Disbursements.

(a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions or other depositions admitted into evidence; (3) expenses of the hearing transcript, including the

cost of a copy of the transcript if a copy has been provided by the Bar to an accused without charge; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05. Lawyer fees are not recoverable costs and disbursements either at the hearing or on appeal nor are prevailing party fees recoverable by any party.

(b) Allowance of Costs and Disbursements. In any ~~contested admission~~, discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the court or Disciplinary Board. An accused or applicant prevails when the charges against the accused are dismissed in their entirety or the applicant is unconditionally ~~admitted or~~ reinstated to the practice of law in Oregon. The bar shall be considered to have prevailed in all other cases.

(c) Recovery After Offer of Settlement. An accused may, at any time up to 14 days prior to hearing, serve upon Bar Counsel and Disciplinary Counsel an offer by the accused to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the written offer by an accused to enter into a stipulation for discipline or no contest plea is rejected by the SPRB, and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or of the court imposing a sanction no greater than that to which the accused was willing to plea no contest or stipulate based on the charges the accused was willing to concede or admit, the Bar shall not recover and the accused shall recover actual and necessary costs and disbursements incurred after the date the accused's offer was rejected by the SPRB.

(d) Procedure for Recovery and Collection. The procedure set forth in the Rules of Appellate Procedure of the Supreme Court regarding the filing of cost bills and objections thereto shall be followed except that in matters involving final decisions of the Disciplinary Board cost bills and objections thereto shall be resolved by the state chairperson of the Disciplinary Board. The cost bill and objections thereto shall be filed with the Disciplinary Board Clerk with proof of service on the state chairperson of the Disciplinary Board and the other party and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536.

* * * * *

Title 12 — Forms

* * * * *

Rule 12.2 Notice to Answer.

A copy of the formal complaint (statement of objections), accompanied by a notice to answer it within a designated time, shall be served on the accused (applicant). Such notice shall be in substantially the following form:

(Heading as in complaint/statement of objections)

NOTICE TO ANSWER

You are hereby notified that a formal complaint against you (~~statement of objections to your admission~~) (statement of objections to your reinstatement) has been filed by the Oregon State Bar, a copy of which formal complaint (statement of objections) is attached hereto and served upon you herewith. You are further notified that you may file with the Disciplinary Board Clerk, with a service copy to Disciplinary Counsel, your verified answer within fourteen (14) days from the date of service of this notice upon you. In case of your default in so answering, the formal complaint (statement of objections) shall be heard and such further proceedings had as the law and the facts shall warrant.

(The following paragraph shall be used in a disciplinary proceeding only:)

You are further notified that an attorney accused of misconduct may, in lieu of filing an answer, elect to file with Disciplinary Counsel of the Oregon State Bar, a written resignation from membership in the Oregon State

Bar. Such a resignation must comply with BR 9.1 and be in the form set forth in BR 12.7. You should consult an attorney of your choice for further information about resignation.

The address of the Oregon State Bar is 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail at P. O. Box 231935, Tigard, Oregon 97281-1935.

DATED this ___ day of ___, 20__.

OREGON STATE BAR
By:
Disciplinary Counsel

* * * * *

Rule 12.5 Statement Of Objections To Reinstatement.

In a contested ~~admission~~ reinstatement proceeding, the statement of objections shall be in substantially the following form:

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

| | | |
|-------------------------|---|---------------|
| In The Matter Of The |) | |
| Application of |) | STATEMENT |
| _____ |) | OF |
| For Reinstatement as |) | OBJECTIONS |
| an Active Member |) | TO |
| of the Oregon State Bar |) | REINSTATEMENT |

The Oregon State Bar objects to the qualifications of the Applicant for reinstatement on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Governors, that he [she] has the good moral character or general fitness required for readmission to practice law in Oregon, that his [her] readmission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, _____ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Governors to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for reinstatement as an active member of the Oregon State Bar be denied.

DATED this ___ day of ___, 20__.

OREGON STATE BAR
By:
Disciplinary Counsel

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: June 22, 2009
From: Sylvia E. Stevens, General Counsel
Re: CSF Claim No. 09-01 BROWN (Scott)—Request for Review

Action Recommended

Consider the claimant's request for the BOG to review the CSF Committee's denial of her claim for reimbursement.

Background

At its meeting on June 6, 2009, the CSF Committee considered the claim of Kim Scott for fees paid to Glenn Brown. The Committee concluded that Brown performed services and there was no evidence that he misappropriated the fees. On June 19, 2009, Ms. Scott submitted a timely request for BOG review of the Committee's decision.

Ms. Scott hired Glenn Brown on March 21, 2006 to represent her in connection with trademarking her business name and logo. She paid him \$1700 in advance on that date.

There is some dispute about the scope of his work for that fee. In her CSF Application and in her disciplinary complaint, Ms. Scott contends that the \$1700 would cover the preparation and filing of the applications as well as any necessary follow-up to complete the process. She believed she would be charged additional fees only if there were "time-consuming and unforeseen" developments. Brown's engagement letter, however,¹ which was signed by Ms. Scott as "read, understood and agreed to," states that he "agreed to prepare and file the applications for \$1700" and that his hourly rate for "additional work" was \$225.

The next day (March 22, 2006), Brown received and forwarded to Ms. Scott a confirmation of filing from the USPTO. On October 12, Brown sent Ms. Scott a copy of a September 8 notice from the USPTO refusing the registration because the proposed logo as submitted was determined to be "a decorative or ornamental feature" not suitable for registration and because her business name included the word "Designs," which is considered merely descriptive. Ms. Scott contacted Brown a few days later expressing her disappointment with the USPTO's responses and requesting his help in moving the applications forward. Brown replied by e-mail that he would prepare a response to the USPTO and keep her posted.

Ms. Scott heard nothing from Brown for several months, despite sending him many e-mails. Finally, in August 2007 he responded and they met. He admitted he had not done

¹ Curiously, his letter is dated January 22, 2002, but signed by Ms. Scott on March 21, 2006.

any more work on her application, but promised to do so. He apparently did not tell her that her response was due within six months of receiving the USPTO's rejection.

Bar records indicate that in the fall of 2007, Brown stopped responding to clients and in November 2007, his voicemail was full. It is believed he closed his office at about that time. Also in November 2007, Brown's clients began to complain to the bar.

The next communication Ms. Scott had from Brown was his March 10, 2008 letter informing her he was "scaling back" his practice and would not be able to help her further. He returned her file and encouraged her to hire another lawyer. She immediately responded demanding a refund of the \$1700 she had paid, but she got not response.

Brown was suspended in April 2008 for failure to pay his PLF fees and in June 2008 for not comply with his MCLE requirements. Also in June, the Supreme Court suspended him temporarily, pending the outcome of three pending disciplinary cases involving complaints of 16 clients, including Ms. Scott. He was accused of neglect, failure to maintain client funds in trust, failure to account for client funds, failure to cooperate, dishonesty and misrepresentation. Brown submitted a Form B resignation in November 2008, which was accepted by the court and effective in December 2008.

In June 2009, the BOG approved awards to five of Brown's former clients. The Committee's decision to deny this claim was based on its determination that the \$1700 fee covered the preparation and filing of the applications, which Brown completed. The rejection of her application was not because of his failure to properly prepare or file her applications. The Committee recognized that Brown likely violated his obligations under the RPCs by not communicating promptly with Ms. Scott and not taking the additional steps she asked him to do to cure the deficiencies in her applications, but concluded it did not constitute dishonesty within the meaning of the CSF Rules. The Committee also concluded that any issue about whether Scott was entitled to a refund of some of the \$1700 was a fee dispute.

In her request for review, Ms. Scott reiterates her contention that the \$1700 fee was intended to cover everything that Brown needed to do to complete her registration process, that her application was deemed abandoned, and that she will need to start again with a new lawyer. (The Committee considered this possibility, but rejected it based on its understanding that an application can be "revived" for a modest fee, provided there has been no intervening application to register the same mark.)

Attachment: Claimant's Request for Review



GRIFFIN LAW GROUP

4231 SW Pendleton St.
Portland, OR 97221
Tel. 503.244.3264
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psgriffin law@comcast.net

June 18, 2009

Via facsimile transmission and first class mail

Oregon State Bar
16037 SW Upper Boones Ferry Rd.
P.O. Box 231935
Tigard, OR 97281-1935

Attn: Teresa Schmid, Executive Director

Re: Request for Review, CSF Rule 4.10.1
Client Security Fund Claim No. 2009-01
Claimant: Kim Scott
Lawyer: Glenn C. Brown

Dear Ms. Schmid:

Please allow this letter respond to Ms. Stevens' letter of June 8, 2009, wherein she indicated that the Client Security Fund ("CSF") had rejected Ms. Scott's claim. This letter further serves as a request for review under Client Security Fund Rule 4.10.1.

The CSF predicates its rejection of the claim on a lack of evidence of misappropriation of fees. However, this finding appears to be unsupported in this case where attorney Brown was working for Ms. Scott under an advance pay, fixed fee agreement of \$1,700.00, which included the duty that Brown complete the trademark application. The trademark application was not completed and is no longer valid for resubmission. Ms. Scott must now pay another \$1,700 (or more) to another attorney to reapply to the United States Trademark and Patent Office.

Brown's conduct, under a fixed fee agreement, supports a determination pursuant to CSF Rule 2.2.1, which provides that:

In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, dishonest conduct shall include a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee.

CSF Rule 2.2.1 (emphasis added)

By taking a fixed fee advanced payment, not completing the work and then refusing to refund Ms. Scott's fee payment, attorney Brown's conduct is misappropriation and dishonest conduct *per se*, under CSF Rule 2.2.1.

Likewise, under CSF Rule 2.6.3, Scott's claim of dishonest conduct and misappropriation is also supported by attorney's Brown's resignation. A finding of dishonest conduct is supported when:

2.6.3 In the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended or reprimanded in disciplinary proceedings, *or the lawyer resigned from the Bar.*

CSF Rule 2.6.3 (emphasis added).

For these reasons, Ms. Scott request the Board reverse its earlier determination and now pay this claim.

Thank you for your review of this matter.

THE GRIFFIN LAW GROUP

Sincerely,



Philip S. Griffin

Cc: Sylvia Stevens
Kim Scott

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
From: Sylvia E. Stevens, General Counsel
Re: CSF Claim No. 08-18 SHINN (Rhodes) Appeal

Action Recommended

Consider claimant Eric Rhodes' request for BOG review of the CSF Committee's denial of his claim.

Background

The CSF Committee considered Mr. Rhodes' claim in April 2009 and denied it on the ground that the claimant had no remaining interest in the funds misappropriated by the lawyer. Mr. Rhodes, through his attorney, timely appealed the CSF Committee's decision to the BOG. The CSF Committee will be reviewing the additional information provided in connection with the appeal at its meeting on August 22 and the BOG will be updated on the Committee's position. The issue on appeal is whether Rhodes is entitled to reimbursement of the funds misappropriated by Shinn or whether the victim of Shinn's dishonesty was Rhodes' medical providers.

Rhodes was severely injured in an automobile accident and incurred considerable medical debt. He hired Portland attorney Michael Shinn to represent him in his personal injury claims. While those claims were pending, Rhodes filed bankruptcy. The trustee abandoned the personal injury claim as an asset of the estate based on his understanding that there would be no net funds for unsecured creditors from Rhodes' injury claim recovery after payment of Shinn's fee, Rhodes' statutory exemption, and payment of the outstanding "medical liens."¹ Thereafter, Shinn recovered a total of \$75,000 for Rhodes, from which he paid himself \$25,000 and disbursed \$10,000 to Rhodes for his statutory exemption. The disbursement letter indicated that Shinn would distribute the remaining \$40,000 to Rhodes' medical lienholders.

Rhodes filed a complaint with the bar in February 2007. Rhodes alleged that after recovering the settlement funds, Shinn stopped communicating with him, had not completed the case, had not distributed any additional funds, and had not taken steps to settle the medical debts. Shinn responded that Rhodes disputed his continuing responsibility for the medical debts and refused to authorize Shinn to pay any of them; Shinn also claimed to have had difficulty making contact with the various providers to get agreement for a reduced payment. There is some evidence that Shinn did little or nothing to resolve the

¹ Both Shinn and the bankruptcy trustee used the phrase "medical liens," although there is no evidence that any of the medical providers perfected their liens prior to the filing of the bankruptcy.

outstanding medical obligations and he has never accounted for the money that was to be used to settle those obligations.

The bar initiated formal disciplinary proceedings against Shinn in early 2008 based on the complaints of Rhodes and other clients. The bar sought interim suspension in early 2009, but the Supreme Court denied the special master's recommendation, ordering in mid-June 2009 only that Shinn have the bar's prior approval before disbursing any funds from his trust account. Within a few weeks, Shinn had violated that order and on July 8 the court entered an order suspending Shinn from practice pending the outcome of the disciplinary case. The disciplinary trial was held during the week of July 20 but no trial panel opinion has yet been received.

There are several documents in DCO's file in which Rhodes clearly acknowledges that Shinn has "ripped off" the doctors and hospitals that treated him, and that his reason for filing the disciplinary complaint was to ensure that Shinn paid the providers. At some point in the process, however, Rhodes came to believe that the remaining medical providers had lost their lien rights and that the funds misappropriated by Shinn belonged to him. See his April 28, 2009 request for review, attached.

Upon receiving his request for review, Rhodes' lawyer was asked to provide information on the status of the outstanding medical bills. He was also asked to provide a legal analysis explaining why the statutory medical liens are no longer valid. On July 24, 2009, Rhodes' lawyer reported that Rhodes is being pursued by two creditors who are owed a total of \$24,893.89. He also mentions that St. Charles Hospital has never been paid, but that its \$60,000 lien was satisfied.² On August 4, 2009, Rhodes' lawyer supplemented that information with a report that a \$21,000 lien to St. Vincent was in error and was considered satisfied by the hospital.

The relevant provisions of ORS Chapter 87 are as follows:

87.555 Hospital and physician lien. (1)...whenever any person receives hospitalization or medical treatment on account of any injury, and the person...claims damages from the person causing the injury, then the hospital or any physician...who treats the injured person in the hospital or who provides medical services shall have a lien upon any sum awarded the injured person...by judgment or award or obtained by a settlement or compromise to the extent of the amount due the hospital and the physician for the reasonable value of such medical treatment rendered prior to the date of judgment, award, settlement or compromise....

* * *

87.565 Notice of lien required. (1) In order to perfect a lien under ORS 87.555 (1), a hospital, an owner or operator of a hospital or a physician shall:

(a) Not later than 30 days after the discharge of the patient from the hospital, file a notice of lien substantially in the form prescribed in ORS 87.570, containing a

² Note that the lien was filed after Rhodes filed bankruptcy; as such it was likely void and in violation of the automatic stay; the satisfaction was likely filed to reverse that action.

statement of the amount claimed, with the recording officer of the county wherein such hospital is located; and

(b) Prior to the date of judgment, award, settlement or compromise, serve a certified copy of the notice of lien by registered or certified mail upon:

(A) The person alleged to be responsible for causing the injury and from whom damages are or may be claimed or to the last-known address of the person; or

(B) The insurance carrier that has insured the person alleged to be responsible, if such insurance carrier is known.

* * *

87.581 Liability of person or insurer to hospital and physician; conditions; deadline for filing claim. (1) A person or insurer shall be liable to a hospital and physician for the reasonable value of hospitalization services and medical treatment rendered out of the moneys due under any payment, award, judgment, settlement or compromise, after paying the attorney fees, costs and expenses incurred in connection therewith, or the proportion of that amount as determined under ORS 87.555 (3), if the person or insurer:

(a) Has received a notice of lien that complies with ORS 87.565;

(b) Has not paid the hospital and physician the reasonable value of hospitalization services and medical treatment that the hospital and physician rendered; and

(c) Pays moneys to the injured person, the heirs or personal representative of the injured person, the attorney for the injured person or for the heirs or personal representative of the injured person, or a person not claiming a valid lien under ORS 87.555, as compensation for the injury suffered or as payment for the costs of hospitalization services or medical treatment incurred by the injured person.

(2) An action arising under subsection (1) of this section shall be commenced within 180 days after the date of payment under subsection (1)(c) of this section. [1999 c.146 §7 (enacted in lieu of 87.580)]

* * *

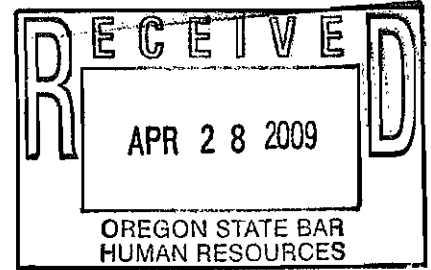
The CSF Committee concluded, based in part on the bankruptcy trustee's action, that the liens created by ORS 87.555 existed upon the provision of services and were valid as against the settlement funds recovered by Shinn even if they weren't perfected pursuant to ORS 87.565. The Committee was also persuaded that Rhodes essentially abandoned any claim to the settlement proceeds in excess of his \$10,000 statutory exemption when he filed for bankruptcy protection. That some of the lienholders filed their notices too late, or even that they deem the liens satisfied, does not alter the fact that they weren't paid.

Attachments: June 22, 2009 Request for Review
 June 24, 2009 Supplemental Information
 August 4, 2009 Supplemental Information

DANIEL SNYDER

ATTORNEY AT LAW
1000 SW BROADWAY SUITE 2400
PORTLAND, OREGON 97205

TELEPHONE (503) 241-3617 • FAX (503) 241-2249 • EMAIL dansnyder@qwestoffice.net



April 28, 2009

**CERTIFIED MAIL/RETURN
RECEIPT REQUESTED**

Teresa Schmid
Executive Director
Oregon State Bar
16037 SW Upper Boones Ferry Road
P.O. Box 231935
Tigard, OR 97281-1935

Re: REQUEST FOR REVIEW

Client Security Fund Claim No. 2008-18

My Client/Claimant : Eric Rhodes
Attorney : Michael R. Shinn

Dear Ms. Schmid:

This letter is to request review by the Oregon State Bar Board of Governors of the Client Security Fund's (CSF) decision in claim number 2008-18. The Fund denied my client Eric Rhodes's claim for relief despite their finding that his former attorney, Michael Shinn, misappropriated funds from Mr. Rhodes's personal injury settlement.

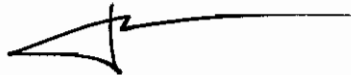
For your convenience, I am providing a summary of the relevant facts in this claim. Mr. Rhodes was severely injured in a car accident in 2004 from which he incurred significant medical bills. Mr. Rhodes medical costs were so great that he was forced to file for Bankruptcy. In the bankruptcy proceedings, Mr. Rhodes listed as an asset any future funds collected in regard to his car accident. In 2005, he hired attorney Michael Shinn to represent him in his claims arising from the accident. Mr. Rhodes signed a standard contingency fee agreement in which Mr. Shinn would collect 1/3 of any funds recovered on behalf of Mr. Rhodes. See Exhibit A, Retainer Agreement. Mr. Shinn further agreed to use the remaining settlement funds (less the \$10,000 bankruptcy exemption due to Mr. Rhodes) to satisfy Mr. Rhodes medical liens. Any money remaining was to be disbursed to Mr. Rhodes. See Exhibit B, Declaration of Eric Rhodes.

Mr. Shinn collected \$75,000 in settlement funds on Mr. Rhodes behalf, which he deposited into his trust account. Mr. Shinn deducted his attorney fees and disbursed \$10,000 to Mr. Rhodes. Mr. Shinn did not disburse any further funds to satisfy Mr. Rhodes's medical liens, but instead converted the funds for his own use. Mr. Rhodes, after multiple failed attempts to get an accounting from Mr. Shinn, filed a complaint with the Oregon State Bar, requested relief from the Client Security Fund, and filed a lawsuit against Mr. Shinn to recover these funds. All of Mr. Rhodes's medical liens have been satisfied with the exception of one lien remaining with Providence St. Vincent Medical Center in the amount of \$15,911.10.

The CSF found that Mr. Shinn converted the funds from Mr. Rhodes's settlement, but denied Mr. Rhodes's claim concluding that he "suffered no loss because all the proceeds net of attorney fees and Mr. Rhodes' [sic] \$10,000 bankruptcy exemption were owed to medical providers pursuant to ORS 87.555." That conclusion is erroneous. Mr. Rhodes suffered a loss when Mr. Shinn failed to satisfy his medical liens and pay out the remaining funds to my client. Mr. Rhodes is financially unable to satisfy the remaining medical lien without collecting the funds stolen by Mr. Shinn. Furthermore, the only remaining lien totals less than the amount of money converted, and thus, my client has suffered a loss of that remainder to which he was entitled pursuant to the original agreement with Mr. Shinn.

My client respectfully requests your review in this matter. If anything further is needed, or you have any questions, please feel free to contact me. Thank you for your time and consideration.

Sincerely,



Daniel Snyder

DS:dlc

Enclosures

cc: Eric Rhodes (via email)
Sylvia Stevens (via email)

Z:\Document\CURRENT\QR\Rhodes_Eric\rhodesericcsf(at3).wpd

DANIEL SNYDER

ATTORNEY AT LAW
1000 SW BROADWAY SUITE 2400
PORTLAND, OREGON 97205

TELEPHONE (503) 241-3617 • FAX (503) 241-2249 • EMAIL dansnyder@qwestoffice.net

August 7, 2009

Via E-mail: sstevens@osbar.org

Sylvia E. Stevens
General Counsel
Oregon State Bar
PO Box 1935
Tigard, OR 97281-1935

Re: *Client Security Fund*
My Client/Claimant : Eric Rhodes
Attorney : Michael R. Shinn

Dear Sylvia:

This letter is to further discuss the claim made by Eric Rhodes with the Client Security Fund. Since my prior correspondence, we have obtained further information about the remaining lien filed by Providence St. Vincent Medical Center concerning Mr. Rhodes.

After speaking with representatives from Providence St. Vincent Medical Center, it appears that the lien from Providence St. Vincent Medical Center that was filed April 1, 2009 for \$21,263.01 was filed in error. Public records show the lien is not satisfied. However, Providence's internal records list the lien as being satisfied and they are currently working on entering a satisfaction with the Washington County records office. If we are notified the satisfaction has been entered, I will in turn notify you.

Sorry for any confusion this may have caused. Thank you for your consideration of this matter.

Sincerely,

/s/ Daniel Snyder

Daniel Snyder

DS:dlc

cc: Eric Rhodes (via email)
Z:\CURRENT\QR\RHODES_ERIC\CORRESPONDENCE\RHODESERICCSF(AT2).WPD

DANIEL SNYDER

ATTORNEY AT LAW
1000 SW BROADWAY SUITE 2400
PORTLAND, OREGON 97205

TELEPHONE (503) 241-3617 • FAX (503) 241-2249 • EMAIL dansnyder@qwestoffice.net

July 24, 2009

Via E-mail: sstevens@osbar.org

Sylvia E. Stevens
General Counsel
Oregon State Bar
PO Box 1935
Tigard, OR 97281-1935

Re: *Client Security Fund*
My Client/Claimant : Eric Rhodes
Attorney : Michael R. Shinn

Dear Sylvia:

This letter is to further discuss the claim made by Eric Rhodes with the Client Security Fund. Since my prior correspondence, we have obtained further information about the various liens filed by hospitals concerning Mr. Rhodes.

Mr. Rhodes had no private health insurance. Mr. Rhodes did receive some Personal Injury Protection (PIP) benefits connected with his status as a passenger in a motor vehicle which paid some of the bills.

It appears that the billing with St. Charles Medical Center and the billings for Providence St. Vincent Hospital were never paid. Providence continues to pursue Mr. Rhodes for \$21,263.01. It appears he also owes Bend Memorial Clinic \$3,630.88.

1. St. Charles Medical Center (Cascade Healthcare Community). The lien was filed on March 26, 2007 for \$60,004 by Cascade Healthcare Community. It appears that none of the bill was paid for by insurance. However, the bill was listed as satisfied by St. Charles Medical Center on June 26, 2007.
2. **Bend Memorial Clinic. This was not a lien. The Clinic charged \$3,630.88. The bill went to collection. It appears it was never paid.**
3. The Legacy Emanuel Hospital lien was filed October 21, 2004 for \$1,224. This lien was satisfied on November 2, 2004 because Unitrin paid the bill on November 1, 2004 in full.

4. The Neuromusculoskeletal Center lien was filed on September 4, 2004 for \$1,408 and was satisfied for \$1,408 on March 7, 2005. It is unclear whether or not it was paid.
5. The Legacy Meridian park Hospital lien was filed November 1, 2004 for \$4,884.95 and was satisfied on March 15, 2006 because Unitrin paid the bill in full on November 15, 2004.
6. The Legacy Meridian Park Hospital lien was filed November 24, 2004 for \$1,068 for a November 18, 2004 CT Scan and was satisfied on March 15, 2006 when a credit was applied.
7. The Legacy Meridian Park Hospital lien was filed December 7, 2004 for \$1,550.85 for a November 26, 2004 emergency room visit. It was satisfied on March 15, 2006 when a credit was applied.
8. The Legacy Meridian Park Hospital lien was filed January 3, 2005 for \$1,068 for a December 27, 2004 CT Scan. It was satisfied on March 15, 2006 when a credit was applied.
9. **A third lien from Providence St. Vincent Medical Center lien was filed April 1, 2009 for \$21,263.01. It is outstanding. This is a combination of two prior liens that were satisfied and now restated as one lien.**

Enclosed are copies of the liens, satisfaction of liens, and medical bills

Sincerely,

/s/ Daniel Snyder

Daniel Snyder

DS:dlc

Enclosures

cc: Eric Rhodes (via email)

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
From: Sylvia E. Stevens, General Counsel
Re: CSF Claim No. 08-13 VANCE (Hines) Appeal

Action Recommended

Consider the request of Linda Hines for review of the CSF Committee's denial of her claim for reimbursement.

Background

The CSF Committee first considered this claim in January 2009 and denied it because it appeared to be a fee dispute. Hines made a timely request for review by the BOG. The CSF committee reviewed the claim again in April 2009 to consider the additional information submitted by Hines, and again denied it. Anticipating that the matter would be reviewed by the BOG in June, and because both Hines and Vance had submitted more documents, the committee considered Hines' claim a third time at its June meeting; again the claim was denied. At the request of Hines (and over the objections of Vance), presentation of this appeal to the BOG was deferred from the June to the August BOG meeting to allow Hines to submit even more material. None has been received as of August 12, 2009.

Hines' claim¹ for reimbursement is for \$30,000 in fees she claims Vance didn't earn. Vance responds that his fees for representing Hines in her various matters exceed \$67,000, that he did not act dishonestly, and that he owes her nothing. CSF Rule 2.2.3 allows reimbursement of a legal fee only if:

- (i) the lawyer provided no legal services to the client in the engagement; or
- (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or
- (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee.

It is not clear when Vance began to represent Hines, but she had legal matters in both Alaska and Oregon that he helped her with. In 1999, Vance undertook to defend Hines from a contractor's claim for payment and to assert counterclaims for mold injuries allegedly resulting from defective construction work. Vance charged hourly for his services. In March

¹ Hines' husband was also a client and a claimant here, but all correspondence has come from Hines, so for simplicity she is referred to as the claimant.

or April of 2001, Vance requested a retainer to cover his fees for taking the mold case to trial. The parties disagree about what was ultimately agreed to in this regard, notwithstanding rigorous negotiation and four draft agreements prepared by Vance. In her claim for reimbursement, Hines claims that Vance accepted \$30,000 as a “flat fee” to complete the case through trial. Vance argues that the \$30,000 was a “guaranteed minimum and that he would receive the remainder of his fees on resolution of the case.

The fee agreement is not a model of clarity. In one of the “whereas” clauses it states that Vance is willing to handle the case on a fixed fee basis, “with the condition that his fees shall be limited to the sum of \$30, 000 unless Client recovers attorney fees in excess of \$30,000 after trial.” The first paragraph of the “agreements” provides for a “fixed/contingent fee,” and provides that Vance will be entitled to an attorney fee award in excess of \$30,000 or to his actual attorney fees if the case settles prior to trial for more than \$250,000. Although Hines initialed next to the “fixed/contingent” paragraph and signed the agreement, Vance never signed the agreement because he disagreed with a change Hines had made to another part of it. Nevertheless, Hines paid the \$30,000.

Over the ensuing months, the relationship between Vance and Hines deteriorated. At some point she stopped taking his calls and he withdrew from the representation with the court’s permission in September 2002. Hines engaged new counsel, the case was postponed and ultimately resolved in September 2003.

In 2004, Hines filed a bar complaint against Vance alleging he had charged an excessive fee and failed to refund the unearned portion. The SPRB authorized prosecution on an excessive fee charge, despite DCO’s contrary recommendation. Disciplinary counsel negotiated a stipulation with Vance that obligated him to refund \$7451 as the unearned portion of the \$30,000. The State Chair of the Disciplinary Board refused to approve the stipulation, however, because he did not believe the stated facts supported a conclusion that the fee was clearly excessive. On the contrary, he stated his view that “this matter strikes me as nothing more than a civil dispute that has no business in the disciplinary system.” Thereafter, with the assistance of Justice Edwin Peterson as mediator, the bar agreed to a “no contest plea” pursuant to which Vance would accept to a public reprimand on the condition that he would not be required to refund anything to Hines. The no contest plea was entered in April 2006.

In addition to her disciplinary complaint, Hines filed two civil suits against Vance in which, among other things, she has tried to recover the \$30,000. Her Clackamas County Circuit Court case was dismissed on Vance’s motion and he was awarded costs and a prevailing party fee totaling \$414. She filed suit in Alaska alleging malpractice and other claims (at least one of which encompassed her request for a refund of the \$30,000 fee on the mold case). The court dismissed all but one of her malpractice-related claims on Vance’s motion for summary judgment. The remaining case was settled when Hines accepted Vance’s offer of judgment. He was ultimately awarded approximately \$37,000 in attorney fees for defending Hines’ claims.

The CSF Committee concluded that this was a fee dispute and not eligible for reimbursement from the Fund. The committee agreed with the Disciplinary Board chair that the ambiguity in the fee agreement was not of itself evidence that the \$30,000 was a fixed fee to complete the trial. Even assuming it was a fixed fee, Hines has failed (despite repeated requests) to suggest an amount that she believes was unearned that should have been refunded.² Additionally, the committee considered that any debt Vance owes Hines is offset by the amounts of his judgments against her.³ A final consideration was the outcome of Vance's disciplinary case. Although the SPRB apparently believed that a refund was due to Hines, it ultimately approved a settlement that expressly did not require Vance to make a refund, adding further support to the conclusion that this is a fee dispute and not a case of improper conduct by Vance. Lastly, Vance has argued that the bar has already spoken on this issue and it is unfair for the CSF to later obligate him for a refund by reaching a contrary result.

² Hines has provided a large volume of duplicative and largely unhelpful information and has difficulty focusing on the issue before the CSF; she attributes her tardiness in providing material to her mold-related illnesses, although the Alaska court's opinion reflects a definite skepticism on that point.

³ Vance also cites the court decisions dismissing Hines' claims for a refund, but they have all been decided based on her failure to present evidence on her own behalf.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
From: Sylvia E. Stevens, General Counsel
Re: Workers' Compensation Board Proposed Amendments re: Attorney Fees

Action Recommended

Consider the Workers' Compensation Board's proposed amendments regarding attorney fees in various areas.

Background

The Workers' Compensation Board is proposing amendments to its attorney fee rules to implement recent statutory changes. The attached notice contains a full description of the changes and the reasons therefore. In summary, the changes will:

- Increase from \$2000 to \$3000 the maximum fee assessed for a carrier's unreasonable delay or refusal to pay compensation or unreasonably delay in accepting or denying a claim, and provide for annual adjustment of the maximum attorney fee award by the percentage increase in the "average weekly wage defined in ORS 656.211, if any."
- Increase from \$1000 to \$2500 the maximum fee (absent a showing of extraordinary circumstances) for a claimant's attorney's appearance and active and meaningful participation in finally prevailing against a responsibility denial, and provide for annual adjustment of the maximum by the percentage increase in the "average weekly wage defined in ORS 656.211, if any."
- Require payment by the carrier of a reasonable fee to a claimant's attorney if the ALJ or WCB find, through the assistance of the attorney, that an order rescinding a notice of disclosure should not be reversed or the compensation awarded by a reconsideration order under ORS 656.268 should not be reduced or disallowed.
- Authorizing an award of a reasonable attorney fee if, on the carrier's request, an ALJ or the WCB finally determine that a claim should be classified as disabling.

The amendments would apply to all claims for which an order is issued on or after January 1, 2010.

The proposed amendments were forwarded to the OSB Workers' Compensation Section for its comments on July 27, 2009.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
From: Sylvia E. Stevens, General Counsel
Re: Report of the Advertising Task Force

Action Recommended

Consider the report and recommendations of the Advertising Task Force regarding amendments to the Oregon Rules of Professional Conduct.

Background

The Advertising Task Force submits its report for the BOG's consideration. As indicated in the report, the Task Force recommends sweeping changes in Oregon's RPCs relating to Information About Legal Services based on its conclusions about the reach of Article I, Section 8 of the Oregon Constitution. However, the Task Force also recommends that the BOG distribute the report and recommendations to the membership for a "comment period" before deciding whether to submit them to the House of Delegates.

The Advertising Task Force was formed in late 2007 at the request of the Supreme Court, which asked that the task force review the Oregon RPCs not only with respect to whether they conform to federal and state constitutional limits, but also with respect to whether they strike the proper balance between the rights of lawyers and protection of the public. The Criminal Law, Consumer Law, Solo & Small Firm Practice Sections; the Oregon Trial Lawyers Association; and the Oregon Association of Defense Counsel were invited to nominate representatives to the task force, which was chaired by Peter Jarvis. In addition to members from those groups, the task force included a law professor, a member of the Legal Ethics Committee, and a member of the Supreme Court.

The group began meeting in January 2008. The first meeting was devoted to a wide-ranging discussion of the state of lawyer advertising, historical concerns, and recent developments in advertising regulation. Thereafter, the group reviewed the ABA Model Rules on advertising and solicitation, together with the rules in other jurisdictions. Finally, the task force spent considerable time reviewing a broad array of policy and constitutional issues.

The ultimate conclusion of the task force is that most of ORPC 7.1 through 7.5 would not withstand scrutiny under Oregon's constitutional analysis, which severely limits restrictions on commercial speech. Based on that conclusion, the task force developed a proposal for reducing the current regulatory scheme to two rules (see attached).

The first new rule is a straightforward and simple prohibition against any communications that is false or misleading about the lawyer or law firm's qualifications or services. It also prohibits coercion or duress in communicating about services.

The second rule addresses law firm names. While the task force believes the content of this rule is encompassed in the basic prohibition against false or misleading communications, it concluded that retaining some guidelines would be helpful to practitioners.¹

The report submitted herewith is the report of the majority of the task force. It is accompanied by the Minority Report of task force member Larry Wobbrock and a law journal article he wants the BOG to see. While the majority declined to respond to the minority report, the chair and this author take exception to Mr. Wobbrock's description of the Washington, DC experience. In several conversations with bar counsel in Washington, DC, we have not heard anything to indicate negative or undesirable consequences as a result of the change in the DC rules. On the contrary, Washington, DC bar counsel have reported that the rule changes have had no noticeable impact on the conduct of their lawyers.

Supporters of both the majority and minority viewpoints will be at the BOG's meeting to present their respective positions.

Attachments: Report of the Advertising Task Force (Majority)
Advertising Task Force Minority Report
New Jersey Law Journal 7/29/09 article
Letter from OTLA
Letter from American Board of Trial Advocates

¹ In the course of the committee's discussions, it was suggested that much of what is in the current rules could be retained as official comment, either as part of the adoption of the revised advertising rules or in connection with the development of comment for the entire ORPC. As the BOG may recall, the Supreme Court recently declined to support the adoption of comment, at least at the present time.

Oregon State Bar

Report of the Advertising Task Force

Presented to the OSB Board of Governors

August 28, 2009

I. Introduction and Summary

When Oregon replaced the *former* Oregon Code of Professional Conduct (the DRs) with the Oregon Rules of Professional Conduct (the RPCs), effective January 1, 2005, the Oregon State Bar House of Delegates proposed and the Oregon Supreme Court required no changes to Oregon's disciplinary advertising and solicitation rules.¹ Consequently, former DR 2-101 through 2-105 were renumbered RPC 7.1 through 7.5 but the substance of these rules remained unchanged.²

In the course of its review of the draft RPCs, Oregon Supreme Court noted concerns about whether former DR 2-104(A)(1)/then-proposed new RPC 7.3(a) infringed on the free speech guarantees contained in the First Amendment to the United States Constitution or Article I, Section 8 of the Oregon Constitution.³ Later, in response a successful challenge to several of New York's lawyer advertising rules,⁴ the Oregon Supreme Court requested that the Bar appoint a Task Force to review the Oregon RPCs, not only with respect to federal and state constitutionality but also with respect to whether the rules strike a wise balance in terms of the public policies sought to be served.

This Report is the work product of the nine-member Advertising Task Force appointed by the Oregon State Bar Board of Governors in response to the Oregon Supreme Court's suggestions (the "Task Force").⁵ As is explained further below, eight of the nine Task Force members (the "Majority") have concluded that the present Oregon RPCs do not strike a proper balance, either in terms of state constitutional law or in terms of public policy. We therefore propose that present Oregon RPC 7.1 through 7.5 (the "Current Rules") be replaced by the revised proposed revised rules attached hereto as Exhibit B (the "Proposed Rules").

The Proposed Rules are different from the Current Rules in a number of respects. For example:

The Majority believes that the principal purpose to be served by limitations on lawyer advertising and solicitation is an assurance that lawyer advertising and solicitation be truthful and not misleading. By contrast, attempts to protect some groups of lawyers against potential competition, attempts to regulate what appears to be in good taste or attempts to

¹ Amendments to the Oregon RPCs require formal approval by both the Oregon State Bar House of Delegates and the Oregon Supreme Court.

² Exhibit A hereto is a copy of current Oregon RPC 7.1 through 7.5.

³ Article I, Section 8 of the Oregon Constitution provides that "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

⁴ See *Alexander v. Cabill*, 2007 WL 2120024 (NDNY 2007), appeal pending.

⁵ The Task Force members are Peter Jarvis (Chair), Mark Cogan, Hon. Robert Durham, Guy Greco, Steve Johansen, Gregory Lusby, Velda Rogers, Lawrence Wobbrock and Pamela Yee. Oregon State Bar General Counsel Sylvia Stevens acted as Bar staff liaison.

keep members of the public ignorant of their potential rights are not proper purposes for such limitations.

The Majority also believes, however, that the present prohibitions involving duress or harassment and prohibitions against further contacts of individuals who have made known a desire not to be contacted are appropriate and should be continued.

The Proposed Rules focus much more clearly on the need for lawyer advertising and solicitation to be truthful and not misleading. Thus, the “laundry list” of specific prohibitions contained in Current RPC 7.1(a) has been eliminated due to an overlapping series of concerns about whether the list as written supported this objective or was even helpful to attorneys. The Majority believes that this list should be replaced by an extended Bar-sponsored commentary which will, among other things, allow a more nuanced assessment of advertising and solicitation issues than is possible within the limits of black-letter RPCs.

The Majority believes that Article I, Section 8 of the Oregon Constitution prevents the blanket prohibition against in-person or real-time electronic solicitation of clients by lawyers or their agents or employees that is presently contained in RPC 7.3. The Majority also believes that this blanket unduly restricts much behavior that is entirely appropriate and in the public interest.

The Majority considered whether the blanket prohibition on in-person or real-time electronic solicitation of clients should be wholly abandoned or, perhaps, retained solely as to personal injury, wrongful death and consumer matters, as distinct from business matters. Although the Majority concluded that the blanket prohibition should be repealed as to both personal and business matters, we note this potential distinction could appeal to some members of the Bar.

The Majority believes that a 30-day waiting period on in-person or real-time electronic solicitations, which is not a part of the Current Rules, would not be considered a reasonable time, place and manner limitation within the meaning of Article I, Section 8.

The Majority should not be understood to say that its Proposed Rules must be accepted or rejected on an “all or nothing” basis. For example, and by way of illustration only, changes could conceivably be made to include limitations on the days or hours at which in-person or real-time electronic solicitation of clients. Similarly, changes could conceivably be made to limit the extent to which non-lawyers may engage in in-person or real-time electronic solicitation on behalf of lawyers.

It will not do for Bar members to stand still or to rage against the tide as the world around us evolves. We therefore look forward to the opportunity to discuss this Report with the Board of Governors and with the larger Bar membership.

II. Constitutional Protection of Free Speech

The Task Force spent a great deal of time studying constitutional protections of and limitations on attorney speech. What we provide in this section is not an extensively detailed presentation but rather an overview of the reasons why the Majority (eight of nine of the Task Force members) believes that significant changes are necessary.

A. Federal Constitutional Free Speech Protections⁶

The day is long since past when anyone can credibly assert that lawyer advertising or solicitations by mail or email can all be prohibited. “Commercial speech” that is truthful and not misleading is unquestionably protected by the First Amendment to the United States Constitution. *See e.g., Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 417 US 626 (1985)(state may not prohibit non-deceptive illustrations in advertising); *Shapero v. Kentucky Bar Ass’n*, 486 US 466 (1988)(state may not prohibit non-deceptive direct mailing). As a matter of federal First Amendment case law, the only permissible restrictions on advertising or solicitation that is truthful and not misleading are reasonable restrictions on the time, place and manner or means by which advertising and solicitation may occur. *See generally*, Maureen Callahan VanderMay, “Marketing, Advertising and Solicitation,” THE ETHICAL OREGON LAWYER §§ 2.1 *et. seq.* (Oregon CLE 2006).

Under the First Amendment, a state may regulate lawyer advertising if that regulation satisfies the three-part test for regulation of commercial speech generally. *Florida Bar v. Went For It, Inc.*, 515 US 618 (1995), citing *Central Hudson Gas & Electric v. Public Serv. Comm. Of New York*, 447 US 557 (1980). The test requires first, that the state assert a substantial interest in support of its regulation; second, that the restriction on speech “directly and materially advances that interest”: and third, that the regulation be “narrowly drawn.” *Central Hudson*, 447 US at 624. In *Went For It*, the court applied the *Central Hudson* test in upholding a state regulation that created a 30-day “blackout period” on direct mail solicitation following an accident or disaster. *Went For It*, 515 US at 625-32. The court found the state had an interest in protecting victims and their loved ones against unwanted solicitation by lawyers when the lawyers had no prior professional or close personal relationship with the lawyers and when a significant motive for the lawyers’ contact with the client was personal gain for the lawyers. The court further found that the Florida’s extensive study of lawyer advertising demonstrated that the regulation advanced the state interest and that the 30-day blackout was reasonably narrowly drawn. *Id.* at 632-34.

By contrast, the court struck down as unreasonable a limitation that prohibited certified public accountants from making cold calls in business matters. *Edenfield v. Fane*, 507 US 761 (1993). In addition, several lower court have held that when a particular set of legal circumstances requires that a potential client take action in less than 30 days (*e.g.*, with respect to criminal and traffic law defendants who may well need particularly prompt

⁶ Although, as a jurisprudential matter, we would ordinarily consider state constitutional provisions before turning to their federal counterparts, we believe that for purposes of this report, it makes sense first to discuss the narrower federal protections on speech before turning to the broader state protections.

assistance), a 30-day blackout cannot be imposed. *See, e.g., Ficker v. Curran*, 119 F3d 1150 (4th Cir 1997).

There are still unanswered questions concerning the scope of federal free speech protection. Some of these questions stem from the fact that under the First Amendment, commercial speech is entitled to less protection than political speech. *See, e.g., Central Hudson, supra*. For example, one can readily assert that under *Edenfield v. Fane*, a prohibition on in-person or real-time electronic client solicitation in business matters would not pass muster—at least absent the kind of study that the Florida Bar submitted on behalf of its 30-day waiting period. The Majority found it unnecessary to reach a conclusion on this issue as a matter of federal First Amendment law because, in our view, the state constitutional protection of lawyer speech is clearly greater than the First Amendment protection.

B. State Constitutional Free Speech Protections

Article I, Section 8 of the Oregon Constitution, which has been a part of the state constitution since 1859, provides that:

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

A long line of Oregon cases has held that the state constitution provides greater protection to speech than the federal First Amendment. The Oregon Supreme Court has held, for example, that the state constitution protects commercial speech to the same degree that it protects political speech. *See, e.g., Moser v. Frohnmayer*, 315 Or 372, 376, 845 P2d 1284 (1993). If, in other words, the state cannot prevent certain kinds of speech by political actors (*e.g.*, all types and forms of door-to-door or telephone canvassing), it cannot prevent the same kinds of speech by commercial actors, including but not limited to lawyers.

The Oregon Supreme Court applies its own three step approach to free speech analysis under Article I, Section 8.

First, the Oregon Supreme Court distinguishes between laws that focus on restricting the *content* of speech and laws that focus on restricting *results or effects* of speech. *See, e.g., State v. Plowman*, 314 Or 157, 163, 838 P2d 558 (1992) (summarizing *State v. Robertson*, 293 Or 402, 649 P2d 569 (1982)). Laws that focus on the *content* of speech violate Article I Section 8 unless they fall within a well-established historical exception. Thus, a content-based restriction is prohibited unless: “the scope of the restraint is wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach. Examples are perjury, solicitation or verbal assistance in crime, some forms of theft, forgery, and fraud, and their contemporary variants.” *Robertson, supra*, 293 Or. at 412. For example, the state was unable to establish that 19th century prohibitions on public nudity were sufficient to establish an historical exception for the regulation of live sex shows. *State v. Ciancanelli*, 339 Or 282, 321-22, 121 P3d 613, 634-35 (2005); *see also, Zackheim v. Forbes*, 134 Or App 548, 550 (1995) (historical

prohibition on access to public records insufficient to establish historical exception for limiting the *use* of public records). The requirement for a historical exception to justify an express limitation on the content of speech is particularly significant as to lawyer advertising and solicitation for one simple reason. In and before 1859, and indeed for some time thereafter, advertising and solicitation by Oregon lawyers and non-Oregon lawyers was not prohibited. For the most part, those limitations did not take hold until the early 20th Century.

Second, when a law focuses on forbidden results but expressly prohibits forms of speech used to achieve those results, the court will analyze the law for potential overbreadth. *See e.g. State v. Moyle*, 299 Or 691, 705 P2d 740 (1985) (harassment statute upheld where statute required unambiguous and genuine threat to person or property that causes actual alarm); *State v. Garcias*, 296 Or 688, 679 P2d 1254 (1984) (menacing statute upheld). This limitation is significant as to lawyer advertising and solicitation because the present blanket prohibition against in-person or real-time electronic solicitation prohibits not only communications that may be untruthful or misleading or that may involve duress or harassment but also many other communications that would not involve any such concerns. We also are aware of no empirical justification for the view that lawyers who engage in some or all forms of advertising or solicitation will necessarily be less honest, less competent or less diligent than their non-advertising and non-soliciting colleagues.

Third, reasonable restrictions—as distinct from outright prohibitions, on the time, place or manner of speech—may be upheld. *See, e.g., Outdoor Media Dimensions, Inc. v. Dept. Of Transportation*, 340 Or 275,288-89, 132 P2d 5, 12 (2006) (content-neutral permit and fee requirements for highway signs permissible under this category); *City of Hillsboro v. Purcell*, 306 Or 547, 761 P2d 510 (1988) (ordinance banning all door-to-door solicitation unconstitutionally overbroad, though reasonable limitations would be permitted). In other words, laws that restrict speech, but do not prohibit it entirely, may be constitutional if sufficiently narrowly tailored to meet specific, clearly expressed and permissible objectives. In *In re Lasswell*, 296 Or 121, 673 P2d 855 (1983), for example, the court upheld the constitutionality of Oregon’s former rule limiting pretrial publicity as applied to lawyers involved in a case, but only as long as a “serious and imminent threat” to a fair trial could be shown. At the same time, the court noted that it would be impermissible to restrict the expression of lawyers merely because they were lawyers. *Id.* at 125. By definition, a wholesale ban on in-person or real-time electronic solicitation is not a reasonable restriction on time, place or manner. For much the same reason, the Majority also believes that a 30-day waiting period on in-person or real-time electronic solicitations would not be a reasonable time, place and manner limitation within the meaning of Article I, Section 8. If nothing else, there are times when a potential client may choose to or have to act in less than 30 days and in which a delay of notification could prove harmful.

C. From the General to the Specific

In addition to reviewing the larger question of the present blanket prohibition on in-person and real-time electronic solicitation, the Task Force also went line-by-line through the Current Rules. As we did so, we became concerned that the “laundry list” of prohibitions contained in current Oregon RPC 7.1(a) contained many items that were either overbroad (in that they prohibited speech that did not have any of the proscribed effects) or ambiguous (in that they did not, in our view, give sufficiently clear or nuanced guidance as to what is or is not allowed).

We therefore considered revising the list on a subsection by subsection basis but ultimately concluded that it would be extremely difficult, in the context of black-letter rules, to rewrite those prohibitions that we believed were worth keeping in a succinct and sufficiently helpful manner. The Majority therefore proposes instead the preparation of a set of comments that will address the issues raised in current RPC 7.1(a) and additional issues in a way that will provide guidance to practicing lawyers and to the Bar in its disciplinary capacity. Although the Oregon Supreme Court has, in the past, expressed little interest in adopting either the Official Comments to the ABA Model Rules or a set of such comments modified to fit Oregon’s disciplinary experience, we would not expect the court to object to the publication of these kinds of comments any more than it objects to the publication of other CLE materials.

The reader will note that the Proposed Rules also contain a number of other changes. For example, the simplification of the prohibitions on lawyer advertising and solicitation make it possible to simplify the regulation of firm names and to eliminate the presently existing special set of exemptions that applied to prepaid legal services plans.

III. Additional Information and Considerations

In summary, the Majority concluded that state, if not also federal, free speech considerations required a substantial revision of the Current Rules. The Majority also concluded, however, that this sort of revision makes public policy sense. Of course, the promotion of free speech is itself a considerable public policy goal that should not lightly be overridden. This is not, however, our only public policy consideration. For example:

We believe that much public good can be and is accomplished by lawyer-initiated communications with potential or prospective clients. Restrictions on such communications therefore be no broader than they need to be.

We believe that most Oregonians, if not also most non-Oregonians with whom Oregon lawyers are likely to come into contact, can do a perfectly good job most of the time to protect themselves against dishonest or abusive solicitation efforts..

We observed that very few bar complaints alleging more than technical violations have been filed against Oregon lawyers in recent years.

The changes that we have proposed with respect to in-person and real-time electronic solicitation are not unprecedented. The District of Columbia abandoned most ethics rule based prohibitions on in-person or real-time solicitation in 1997. More recently, the State of Maine has adopted a version of ABA Model Rule 7.3 that permits in-person solicitation of commercial clients.

The Current Rules already contain exceptions for solicitation of current clients (whether the subject of the solicitation is related or unrelated to the work being done), former clients (again whether the subject of the solicitation is related or unrelated to prior work) or solicitation of attorneys (including but not limited to in-house counsel for business entities). The fact that these means of solicitation appear not to create any undue difficulties is consistent with the Majority's view that there is nothing inherently wrongful or inappropriate with in-person or real time electronic solicitation.

IV. Concluding Remarks

The Majority therefore recommends adoption of the Proposed Rules in the form attached hereto as Exhibit B.

Exhibit A

Current Oregon Rules of Professional Conduct

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;

(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;

(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;

(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;

(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly influence any court or other public body or office;

(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;

(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;

(8) states or implies that one or more persons depicted in the communication are current clients

or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;

(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;

(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.

(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.

RULE 7.2 ADVERTISING

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

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

RULE 7.4 [RESERVED]

RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with Rule 7.1 and other applicable Rules.

(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the

name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

RULE 7.6 [RESERVED]

Exhibit B
Advertising Task Force
Proposed Oregon Rules of Professional Conduct

INFORMATION ABOUT LEGAL SERVICES

**RULE 7.1 COMMUNICATION CONCERNING
A LAWYER'S SERVICES**

(a) In communicating about potential or continuing employment of the lawyer or the lawyer's firm, a lawyer shall not:

(1) affirmatively or by omission make a knowingly false or misleading statement of material fact or law including but not limited to statements about the identity, experience, abilities, certifications, results that may be expected or achieved, actual or proposed terms of employment, licenses held or areas of practice of the lawyer, the lawyer's firm or any other lawyers or firms; or

(2) knowingly coerce or harass any person.

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is a solicitation for professional employment.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name, city and state in which the office of the lawyer or law firm whose services are being offered is located.

RULE 7.2 [RESERVED]

RULE 7.3 [RESERVED]

RULE 7.4 [RESERVED]

RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable

legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

RULE 7.6 [RESERVED]

Exhibit C

Advertising Task Force

Proposed Oregon Rules of Professional Conduct

(New material is underlined; material to be deleted is bracketed in [*italics*])

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

(a) In communicating about potential or continuing employment of the lawyer or the lawyer's firm, a lawyer shall not:

(1) affirmatively or by omission make a knowingly false or misleading statement of material fact or law including but not limited to statements about the identity, experience, abilities, certifications, results that may be expected or achieved, actual or proposed terms of employment, licenses held or areas of practice of the lawyer, the lawyer's firm or any other lawyers or firms; or

(2) knowingly coerce or harass any person.

[A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;

(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;

(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;

(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;

(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly

influence any court or other public body or office;

(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients;

(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;

(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;

(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;

(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.]

(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement or solicitation of professional

employment unless it is apparent from the context that it is an advertisement.

(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name, [and post office box or street address of] city and state in which the office of the lawyer or law firm whose services are being offered is located.

[(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.]

RULE 7.2 [ADVERTISING] RESERVED

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

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.]

RULE 7.3 [DIRECT CONTACT WITH PROSPECTIVE CLIENTS] RESERVED

[(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

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(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from

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(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(c) A lawyer in private practice:

(1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm;

(2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and

(3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.]

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

RULE 7.6 [RESERVED]

OREGON STATE BAR: TASK FORCE ON MARKETING AND ADVERTISING

MINORITY REPORT BY LAWRENCE WOBROCK, ATTORNEY AT LAW¹

SUMMARY AND INTRODUCTION

The majority of the Oregon State Bar Task Force on Lawyer Advertising expressly proposes to sweep away virtually all of Chapter 7 in the Oregon Rules of Professional Conduct, and by implication ORS 9.500, 9.505, 9.510, 9.515, and 9.520. The core basis for this proposal is the majority's opinion that RPC Chapter 7 violates Article I Section 8 of the Oregon Constitution. In other words, eight members of the Bar determine a momentous issue of constitutional law and request that the Board of Bar Governors ratify their opinion and sponsor its adoption by the Supreme Court sitting in its legislative capacity. This is not the way issues of constitutional law are decided, and I strongly dissent from the Majority Report. Issues of constitutional law are properly decided when opposing advocates litigate a fact specific issue. Our constitution is not properly interpreted and applied by private volunteer committees free from the rigor, strictures, and jurisprudential requirements governing courts. For this reason alone, the Board of Bar Governors should reject the Majority Report.

The majority also offers its highly partisan policy opinion to support its recommendation. As set forth in detail below, the majority's policy opinion is subject to intense dispute, and when compared with the opinions of the bars of other states, turns out to be a radical minority opinion. I do not object to the concept of "modernization" of law, but I must dissent when eight volunteer members of the bar decide important issues of policy and clothe their opinion in constitutional rhetoric. Again, I recommend that the Board of Bar Governors decline to accept the majority's position.

Contrary to the inference found on page two of the Majority Report, attached, the purpose of this Minority Report is not to argue for limitations on lawyer advertising and solicitation to "protect against potential competition" (indeed, some Oregon Trial Lawyer Association members, a group of which I am a proud member, vigorously advertise), not to "regulate good taste", and not to keep members of the public "ignorant of their potential rights." Instead, this Minority Report is offered to explain the prejudicial and negative impact on the civil justice system in Oregon which necessarily follows from adoption of the Majority Report. Furthermore, this Minority Report is firmly rooted in competing constitutional provisions, for "Justice shall be administered, openly and without purchase completely and without delay..." Or. Con., Art. I, Sec.

¹ I was appointed a member of this Task Force by the President of the Oregon Trial Lawyers Association. Submission of this "Minority Report" has been approved by the Oregon Trial Lawyers Association at its Board of Director's meeting of June 29, 2009.

10. Likewise, “The right to Trial by Jury shall remain inviolate.” Or. Con., Art. I, Sec. 17.

I. THE PROBABLE EFFECTS OF THE MAJORITY REPORT

A) What Has Happened in Other Jurisdictions and What Will Happen Here

Make no mistake about it: the Majority Report, if adopted, would have the following effect on Oregon law and practice.

- 1) It will permit direct solicitation of cases by lawyers who have no prior relationship with a potential client or the client’s family and who were not requested to consult with the client. “Cold calls” to prospective clients would become a common occurrence.

Unqualified direct solicitation in one jurisdiction has resulted in rampant citizen abuse including solicitation of motor vehicle accident victims at their homes at 6:00 a.m. (See pg 4, Washington D.C., *infra*).

- 2) It will permit solicitation of clients in hospitals, while accident victims are being treated.
- 3) It will permit Oregon lawyers to employ paid runners to solicit clients. Once authorized, it will be nearly impossible to regulate such a practice when only the soliciting runner and the targeted “client” will ever know what was said in these encounters.
- 4) It will permit lawyers to present dramatizations, using actors in television and radio ads, to portray fictionalized versions of themselves, clients, and judges without clearly identifying the dramatization as advertisement and solicitation.
- 5) It will permit lawyers to display results obtained in cases and compare those results to the results of other lawyers on billboards and in other communications.

Before the Oregon State Bar Board of Governors eliminates reasonable restrictions on advertising and solicitation in favor of a subjective and prejudicial “misleading, harassing, or with duress” standard, the Board of Governors should recognize that the majority acknowledges it was charged by the Oregon Supreme Court to review the Rules of Professional Conduct (RPCs) on advertising and solicitation “*both with respect to constitutionality and with respect to whether the rules strike a wise balance in terms of public policies sought to be served.*” (Pg 1, Report of the Oregon State Bar Advertising Task Force, hereinafter referred to as the “Majority Report”).²

²Part of the differing views may stem from that charge. From the outset, the committee may have been exclusively focused on constitutionally based free speech provisions, without considering the equally important constitutional civil justice protections that should not be ignored.

Now, without more than a passing comment on public policy, the majority concludes existing rules are unconstitutional and then ignores the impact repeal of existing rules will have. Indeed, there is much evidence to demonstrate the severe negative impact that unregulated advertisement and solicitation has on the public's image of lawyers and the resulting negative effect it has upon the administration of justice (*See*, RPC 8.4 (a) (4)). It is the opinion of the author of this Minority Report, and of the Oregon Trial Lawyer's Association, that the current RPCs and statutes place reasonable restrictions on solicitation of clients. Existing restrictions are reasonable "time, place and manner" limitations consistent with constitutional free speech guarantees. Furthermore, it is the opinion of the author of this Minority Report, and of the Oregon Trial Lawyer's Association, that the proposals of the Majority Report represent unnecessary and bad public policy choices that will harm both the bar and the citizens of Oregon.

Lawyers represent clients. Ultimately, it is the client who suffers immediate and unalterable harm when the public and, every prospective juror, believes that the civil justice system is nothing more than the home for unscrupulous and avaricious lawyers whose primary motives are self-interest and greed.

II. THE PAST, THE PRESENT, AND THE FUTURE

A) The Past and Present in Oregon

The Oregon State Bar had received literally hundreds of complaints concerning direct mail solicitation. While I retain some of that evidence, the OSB unfortunately has not. The documented abuses in Oregon were genuine. Solicitation letters included motor vehicle crash reports sent to deceased victim's families. Solicitations were often received even before the deceased's funeral. At times, the crash reports contained graphic verbal depictions of a crash scene and of a victim's injuries. Surviving family members were shocked, angry and dismayed to receive such letters. Family members complained to the Bar. Some of the public complaints to the Bar stated:

"I am appalled by the ambulance chasing nature of this solicitation. Are there no ethics set down by the Bar to regulate this form of promotion?"

* * *

"In my personal opinion, physicians and attorneys are two professions which I have always honored and respected. I never dreamed I would see the day when these professions would stoop so low with form letters to enlarge their practice and interests. Could this be why insurance rates and medical costs are so prohibitive? I hope that others have spoken out in response to your solicitations. It is shameful."

* * *

“My brother was injured in an automobile accident. This accident occurred on the 8th of February, 1988. As of this date, my brother remains in a comatose condition at Emanuel Hospital in Portland. I am requesting, on behalf of my brother and family, a review of this very much unappreciated and unethical conduct.”

The Oregon State Bar reports few complaints are received today. This may be because many accident victims believe complaining will do no good. On the other hand, after receiving six to ten solicitations (as is now common) from different lawyers, the recipients may conclude the solicitations “must be legal.” In either event, the recipients often think, as did the earlier recipients of one or two solicitation letters, that there is something tragically and seriously wrong with lawyers and the legal system because it allows such a practice. These complaints provide evidence of actual harm to both the administration of justice and the right to trial by jury. Eliminating all advertising rules will promote an anything-goes approach. Such an environment would do tangible damage to the open administration of justice. It would also poison jurors’ views regarding legitimate claims. The right to trial by jury would be negatively effected based on conduct of lawyers and runners promoting and soliciting cases.

When this practice first started, the Oregon State Bar, with the support of the Oregon Trial Lawyers Association, promulgated the predecessor to current RPC 7.1 (b). Consistent with the current American Bar Association rule, RPC 7.1 (b) requires that any unsolicited communication must “be clearly and conspicuously identified as an advertisement.” The majority’s proposal would continue this requirement.

B) What Has Occurred in Other Jurisdictions?

The recent experience in Washington D.C. is instructive. Lawyers, elected officials, and the public have seen the negative impact caused by the repeal proposed by the majority. In 2005, the Washington D.C. Bar modified RPC 7. It eliminated prohibitions against in-person solicitation and also eliminated prohibitions against employment of “runners” by lawyers. By 2007, such significant abuses had occurred that the Washington D.C. Bar amended Rule 7.1 (b) with the following comment:

“Rule 7.1 Communications Concerning Lawyer Services. We are recommending two sets of changes to Rule 7.1. First, we recommend the repeal of the District’s unique option that permits lawyers to pay third-parties for referrals [“runners”]. We are persuaded by the rule’s review committee’s research that there has been significant harassment of accident victims by ‘runners’ paid by lawyers to obtain new clients. The committee also recommended a redefinition of abusive solicitation to include ‘coercion, duress, or harassment’ rather than ‘undue influence’ the term in the current rule.”

Ultimately, that change was not sufficient and the governing body of Washington, D.C.,

the “D.C. Council”, was compelled to pass The White Collar Insurance Fraud Amendment Act of 2006. (D.C. Code Sections 22-3225.01 et seq., and 5-113.06). The Act provides:

“it [is] unlawful for a practitioner, either directly or through a paid intermediary, to solicit for financial gain a client, patient or customer within 21 days of a motor vehicle accident with the intent to seek benefits under a contract of insurance or assert a claim against an insured, a government entity, or insurer on behalf of any person arising out of the accident.”

The Act further restricted release of motor vehicle accident reports maintained by the Metropolitan Police Department for 21 days of the accident date. There are exceptions for release during the restricted period to certain individuals, such as counsel of record.

The 2006 law was quickly challenged by a lawyer that employed “runners” and who claimed that the act violated his federally protected free speech rights. On cross motions for Summary Judgment, the court disagreed with the plaintiff-soliciting lawyer and found the Act constitutional. In the process, the D.C. Superior Court determined that the purpose of the Act

“was intended to address the perceived problem of revictimization of motor vehicle accident victims by persons aggressively soliciting them as clients, patients or consumers in the immediate aftermath of an accident.”

See, Bergman v. District of Columbia, et al., D.C. Superior Court, D.C. Docket No. 06 CA 7992 (2008).

The D.C. court, based its decision on the U.S. Supreme Court cases of *Florida Bar v. Went for It Inc.*, 515 US 618 (1995) and *Ohralik v. Ohio State Bar Association*, 436 US 447 (1978). Consistent with the holdings of *Central Hudson Gas v. Public Service Commission of New York*, 447 US 557 (1980), the court upheld the constitutionality restrictions against in-person solicitation for 21 days and use of runners. The court agreed with the D.C. Council, that such restrictions were permissible due to concerns for the:

“privacy of accident victims and the importance of protecting them from harassment by runners and others, including lawyers, soliciting them in the immediate aftermath of an accident.” *Bergman v. D.C. Sup. Ct.*, D.C. Docket No. 06 CA 7992 (2008), at pg 6-7.

The court further declared protecting:

“accident victims from coercive solicitation tactics at a time when they are especially vulnerable” is a legitimate state interest. *Bergman, supra*, at pg 7.

The bill was described as a “consumer protection measure.” *Id.* The court specifically found, consistent with *Went for It*, such a rule was justified in part to address

“the negative public perception of the legal profession arising from aggressive solicitation of accident victims.” *Bergman, supra*, p 7, Fn 6.

The District of Columbia Superior Court did not undertake any study regarding the effects of lawyer advertising upon the administration of justice. Instead, the Court relied upon Florida bar studies presented in *Went for It* where the U.S. Supreme Court analyzed the Florida data and determined it supported a reasonable 30 day restriction on direct mail solicitation. The restriction was held to be a constitutional reasonable time, place and manner restriction, under the three-part *Central Hudson* test.

The Washington D.C. Superior Court relied, in part, on *Ohralik, supra*. The Oregon State Bar Board of Governor’s should be mindful of *Ohralik’s* teaching. In *Ohralik*, the U.S. Supreme Court stated:

“A lawyer’s procurement of remunerative employment is a subject only marginally affected with First Amendment concerns. It falls within the state’s proper sphere of economic and professional regulation. [Citation omitted]. While entitled to some constitutional protection, appellant’s conduct is subject to regulation in furtherance of important state interests. 436 US at 459.

In addition to its general interest in protecting consumers and regulating commercial transactions, the state bears a special responsibility for maintaining standards among members of the licensed professions.” [Citations omitted].

“The interest of the States in regulating lawyers is especially great, since lawyers are essential to the primary governmental function of administering justice and have historically been ‘officers of the courts.’” [Citation omitted]. While lawyers act, in part, as ‘self-employed businessmen’, they also act as ‘trusted agents of their clients’ and ‘as assistants to the court in search of a just solution to disputes.

...

The substantive evils of solicitation have been stated over the years in sweeping terms: stirring up litigation, assertion of fraudulent claims, debasing the legal profession, and potential harm to the solicited client in the form of overreaching, overcharging, underrepresentation, and misrepresentation.” 436 US at 460-462.

Lawyer Ohralik was accused of unethical conduct for directly soliciting two teenage accident victims within 24 hours of a head-on collision. He argued that “nothing less than actual harm proved to the solicited individual would be a sufficiently important state interest to justify disciplining” him. The Court responded to Ohralik’s argument stating:

“The rules prohibiting solicitation are prophylactic measures whose objective is the prevention of harm before it occurs. The rules were applied in this case to discipline a

lawyer for soliciting employment for pecuniary gain under circumstances likely to result in the adverse consequences the state seeks to avert. In such a situation, which is inherently conducive to overreaching and other forms of misconduct, the state has a strong interest in adopting and enforcing rules of conduct designed to protect the public from harmful solicitation by lawyers it has licensed.”

The Court further stated:

“...it hardly need be said that the potential for overreaching is significantly greater [than an ordinary product-consumer transaction] when a lawyer, a professional trained in the art of persuasion, personally solicits an unsophisticated, injured or distressed layperson. Such an individual may place his trust in a lawyer, regardless of the latter’s qualification or the individual’s actual need for legal representation, simply in response to persuasion under circumstances conducive to uninformed acquiescence.” 436 US at 464-465.

...

“Under such circumstances, it is not unreasonable for the state to presume that in-person solicitation by a lawyer, more often than not, will be injurious to the person solicited.” 436 US at 466.

In *Bergman v. District of Columbia*, supra, the “soliciting” lawyer argued the negative Florida impact studies and perceived harm articulated were speculative. The Washington D.C. Superior Court disagreed. The Act addressed concrete harms documented by the Council from a variety of sources including the D.C. Trial Lawyers Association. The court determined the restrictions at issue were not aimed at the *content* of speech, but at its secondary effects. Like the Florida Bar’s 30 day restrictions on direct mail advertising, the D.C. law reduced the negative public perception of the legal profession resulting from aggressive solicitation of accident victims.

Public polling research conducted by our neighboring Washington State Trial Lawyer Association in 2005 revealed that 84% of respondents received their impressions of trial lawyers primarily from advertisements. The same research revealed the public held a largely negative impression of plaintiffs attorneys as a consequence of the advertisements. Focus group research shows that television advertisements create a public perception that lawyers are attempting to drum up business without regard for the merits of the case. That public perception further perpetuates the popular “frivolous lawsuit” myth.

It has been my experience (after 32 plus years of trial practice), that the public’s suspicion, cynicism, and outright disdain for plaintiffs, their lawyers, and the civil justice system has never been greater. These people are all potential jurors. Repealing reasonable, yet important, restrictions upon solicitations at hospitals, aggressive comparative advertising between lawyers, and allowing for the first time in the state’s history the use of “runners,” will not improve this negative public perception. This real data demonstrates the negative impact on the civil justice system. The majority analysis simply ignores this impact. It also demonstrates the actual harm to the competing constitutional rights of open administration of justice and right

to trial by jury.

The Oregon Supreme Court disciplines lawyers as an exercise of public trust. *In re Albright*, 274 Or 815, 820, 549 P2d 527 (1976). “If the Bar is to retain the confidence of the public it serves, the performance of the members of the Bar must be such as to deserve trust and confidence.” *Id.*

A fundamental principle of lawyer ethics rules is that they set a floor for conduct, below which an attorney may be called to answer and pay with loss of the privilege of practicing law. We are taught in law school that our professional conduct should conform to standards far higher than the ethics rules prescribe, not simply to avoid loss of our licenses, but to instill in the public a sense of trust and confidence in the legal system. Public loss of that trust and confidence invites disdain for the rule of law, for fair dealing and acceptance of personal responsibility for our conduct. In other words, conduct that undermines public trust in the legal profession is conduct prejudicial to the administration of justice. See, RPC 8.4(a)(4).

This is not mere hyperbole. One court finding a lawyer guilty of conduct prejudicial to the administration of justice stated:

“The purpose of disciplinary proceedings is to protect the public and preserve public confidence in the legal system, not to punish the errant attorney. . . .(citations omitted)

A court has the duty, since attorneys are its officers, to insist upon the maintenance of the integrity of the bar and to prevent transgressions of an individual lawyer *from bringing its image into disrepute*. Disciplinary procedures have been established for this purpose, not for punishment, but rather as a catharsis for the profession *and a prophylactic for the public.*”

Attorney Grievance Commission of Maryland v. Childress, 364 Md. 48, 770 A.2d 685 (Md. Ct. of Appeals 2001)

The evidence reviewed by the US Supreme Court in *Went for It* and the Washington D.C. Supreme Court in *Bergman* makes it abundantly clear that lawyers who engage in predatory advertising and solicitation cause the public to disdain the legal profession and system. Plaintiff’s lawyers are considered “ambulance chasers” and “carrion eaters” who profit from the misery and misfortune of others and who fight one another for the opportunity to do so. What perception could be more “prejudicial to the administration of justice”? The Board should be vigilant to ensure such negative stereotypes are not promoted.

C) Other Related Legislation

Federal law prohibits debt collectors from making early morning or late evening phone calls. State insurance codes and administrative rules in some jurisdictions prohibit similar contacts by insurance adjusters. Federal law restricts lawyer solicitation of cases arising out of

train wrecks (The Rail Passenger Disaster Family Assistance Act of 2001) and airplane crashes (The Aviation Disaster Family Assistance Act of 1996).

The Oregon Legislature was asked to consider two bills relevant to the majority's recommendation. As introduced, HB 2369 would prohibit an insurer from entering into a settlement agreement within 60 days of the "accident." HB 2369 was subsequently amended to permit a settling party 5 days to rescind a settlement signed within 60 days of an accident. HB 2369 passed this session. Another bill, SB 13, would exempt police department accident reports from public records laws to prevent solicitation of accident victims under existing law through the use of these reports.³ Both bills were introduced as consumer protection bills (and not by any attorney organization such as OTLA). Both bills evidence consumer frustration with "solicitation" by both sides in potential litigation so soon after an injury has occurred. The Oregon State Bar should be mindful of the public's desires in that regard, and not ignore them.

III. QUESTIONS POSED TO THIS COMMITTEE

According to the Majority Report, the charge of this Task Force was to "review the Oregon RPCs on advertising and solicitation both with respect to constitutionality and with respect to whether the rules strike a wise balance in terms of the public policy sought to be served." (Majority Report, page 1, emphasis added). The Majority Report concludes the existing RPCs are facially unconstitutional and ignores any public policy analysis. However, it appears the existing RPCs may very well survive a constitutional challenge and good public policy supports reasonable advertisement and solicitation restrictions.

IV. CONSTITUTIONALITY UNDER U.S. AND OREGON CONSTITUTIONS OF THE CURRENT RPCs

The current RPCs give specific unambiguous guidance as to what advertisement and solicitation conduct is not permitted. The majority's proposal would replace 95% of Rule 7 (See Exhibit B to Majority Report), with three basic admonitions: Thou shalt not misrepresent, coerce or harass. The entirety of Rules 7.1, 7.2, and 7.3 will be replaced with a new Rule 7.1 which contains only that single admonition. No guidance is offered by the Rule. No specific prohibitions are announced. The majority says, on the one hand, the current RPCs 7.1A 1-12 are a "laundry list" of unethical practices that are, in reality, unconstitutional under the Oregon Constitution. At the same time, they suggest specific prohibitions be replaced with a bar sponsored "commentary that will allow a more nuanced assessment of advertising and solicitation issues than is possible within the limits of black letter RPCs."

However, if the majority's interpretation as to the constitutionality of the "laundry list" prohibition is incorrect, then what is to be gained by their repeal? Moreover, guidelines for permissible conduct will be left to case law development resulting from prosecution and bar

³ SB 13 remained in Senate Judiciary Committee on adjournment.

discipline and related constitutional litigation. The rules should inform lawyers about what is and is not permissible with regard to advertising and solicitation, rather than leave practitioners speculating about permissible conduct. The current RPCs 7.1 (a) 1-12 accomplish exactly that goal.

A) U.S. Constitution, First Amendment

Under *Went for It*, supra, *Ohralik*, supra, and the analysis contained in *Central Hudson*, supra, a 30 day moratorium on direct mail solicitation and other forms of restricted marketing have been approved by the United States Supreme Court. Oregon's current RPC prohibitions on certain forms of advertising, solicitation and promotion would also survive constitutional challenge under the First Amendment of U.S. Constitution. The majority concedes this point. (See, paragraph II a, pg 3-4).

B) Oregon Constitution, Article I, Section Eight

The majority concludes existing RPC 7 is unconstitutional under Article I, Section 8 of the Oregon Constitution. That conclusion should not be viewed without challenge or debate. Under the methodology of *State v. Robertson*, 293 Or 402 (1982) for example, reasonable minds may differ on what is "speech" and what is "the effects of speech". In the recent case of *State v. Moyer*, 225 Or App 81, 200 P3d 619 (2009) (rev. allowed, 364 Or 157 (2009), the Court of Appeals, hearing the case, en banc, split 6-4 on whether an election law restricted "speech" or "the effects of speech." The *Moyer* majority found the statute prohibiting "bundling of contributions" to be constitutional because the prohibition was directed at "the effects of speech." The four dissenting judges found the statute unconstitutional because they concluded the requirements of the election laws infringed on "speech." As recently as January 2009, it can be seen that classifying a statute (or rule) a prohibition on "speech" or "the effects of speech" is not as easily accomplished, as the majority here would conclude.⁴

The majority's proposal also eliminates any reasonable restrictions on solicitation or the use of "runners" to solicit cases, by arguing such reasonable restrictions prohibit "speech." However, as noted in *Moyer*, supra, applying the framework of *State v. Robertson* ("speech" versus "effects of speech"):

"... has proven somewhat more challenging to the courts. In particular, the line between a first category regulation (one that targets the content of speech) and a second category regulation (one that targets only the harmful effects of speech) have proved somewhat elusive." *State v. Moyer*, 225 Or App 81, 89 (2009).

⁴ Historically, advertisement and solicitation have not tended to benefit the public or the lawyer in the same way as in the sale of merchandise. Advertising was believed to increase litigation, a purpose against public policy. Drinker Legal Ethics, Columbia University Press, (1953) at 211-212.

Similarly, the RPCs regulating in-person solicitation and the use of runners, which the majority concludes are “clearly speech”, can easily be classified as a constitutional regulation targeting a harmful “effect of speech.” A negative public perception of lawyers has a corresponding “prejudicial effect upon the administration of justice.” (See RPC 8.4 (a) (4)) and other constitutional protections, including the open administration of justice and right to a jury trial.

Certainly restrictions on *ex parte* contact with judges (RPC 3.5 (b)), restrictions on contact with represented parties (RPC 4.2) and restrictions on talking to jurors (UTCRC 3.120) to name a few, all restrain a lawyer’s “free expression.” However, no one seriously is contending such prohibitions are unconstitutional. Such restrictions are viewed as furthering a state interest in the effective and fair administration of justice.

The majority may contend the more stringent Oregon Constitution, Article I, Section 8 protections require a demonstration of *actual* coercion, harassment or misrepresentation, and not the *prospective risk* of such conduct in order to constitutionally restrict face-to-face solicitation by lawyers with prospective clients and the use of runners to solicit clients. However, if one categorizes the goal of restrictions against face-to-face solicitation or the use of runners to perform such solicitation on behalf of the lawyer as an effort to regulate “the effect of such speech”, then the words of the US Supreme Court in *Ohrlik* apply as well to the First Amendment as they do under Oregon’s Constitution, Article I, Section 8, analysis:

“Although it is argued that personal solicitation is valuable because it may apprise a victim of misfortune of his legal rights, the very plight of that person not only makes him more vulnerable to influence, but also may make advice all the more intrusive. Thus, under these adverse conditions, the overtures of the uninvited lawyers may distress the solicited individual simply because of their obtrusiveness and the invasion of the individual’s privacy, even when no other harm materializes.”

Under such circumstances, it is not unreasonable for the state to presume that in-person solicitation by lawyers more often than not will be injurious to the person solicited.

The efficacy of the state’s effort to prevent such harm to prospective clients would be substantially diminished if, having proved a solicitation in circumstances like those in this case, the state were required in addition to prove actual injury. Unlike the advertising in *Bates* [*Bates v. State Bar of Arizona*, 433 US 350 (1977)] in-person solicitation is not visible, or otherwise open to public scrutiny. Often there is no witness other than the lawyer and the layperson whom he has solicited, rendering it difficult or impossible to obtain reliable proof of what actually took place. This would be especially true if the layperson were so distressed at the time of the solicitation that he could not recall specific details at a later date. If the appellant’s view were sustained, in-person solicitation would be virtually immune to effective oversight and regulation by the state or by the legal profession, in contravention of the state’s strong interest in regulating members of the bar in an effective, objective, and self-enforcing manner. It is, therefore, not unreasonable, or

violative of the Constitution, for a state to respond with what, in effect, is a prophylactic rule.” 436 US 466-467.

The Comments to Model ABA Rule 7.3 regarding Direct Contact with Prospective Clients emphasizes the dangers recognized in *Ohralik*. The Comment states:

“[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client’s judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.8(c) are not applicable in those situations. ...”

If the existing RPCs are classified as category two (“effects of speech”) “...the Oregon

Constitution, Article I, Section 8 does not prohibit reasonable time, place and manner regulation of speech imposed for reasons apart from the message of the speech.” *Outdoor Media Dimensions Inc., v. Dept. of Transportation*, 340 Or 275 at 294 (2006).⁵ In such a case, the U.S. Constitution’s First Amendment time, place and manner advertising restrictions, constitutionally upheld by the US Supreme Court in *Went for It*, and *Ohralik*, supra, would survive constitutional analysis under Oregon’s Article I Section 8 “effects of speech” analysis.

Today, there is no advertisement and solicitation problem in Oregon. Indeed, the majority’s proposal appears to be a solution in search of a problem. By their own admission, and from evidence heard before the Committee, the Bar Disciplinary Counsel has been presented with very few cases, if any, related to lawyer advertising. Given the serious prejudice that could affect the administration of justice through wholesale abandonment of the current RPCs regarding advertising and solicitation, the majority’s recommendation should not be considered without **significant** debate and analysis.

V. CONSTITUTIONAL CONSIDERATIONS VS. BROAD PUBLIC POLICY CONCERNS

The majority offers its Majority Report in the form of a “discussion draft, [which] should not be understood to be solely and exclusively based upon constitutional free expression considerations unrelated to broader public policy concerns.” (Majority Report, pg 1, paragraph 3, “Additional Information and Considerations”). At the same time, the majority concludes existing law should be repealed mostly, if not exclusively, based on its Oregon Constitutional analysis.

The majority’s analysis, however, approves continuing the requirements in RPC 7.1 (b) and (c) that mandate direct mail solicitations be “clearly and conspicuously identified as an advertisement” and “clearly identify the name and address of the lawyer or law firm” who is soliciting the client. The majority’s constitutional analysis also could “conceivably include limitations of the times of day in which in-person solicitation could occur or a very brief post-accident waiting period.” (Majority Report at pg 5.) It is difficult to reconcile the majority’s strict interpretation of the Oregon Constitution Article I, Section 8, protection if both direct mail and in-person solicitation are “speech” within the terms of *State v. Robertson* and not the “effects of speech.” This analysis is nothing more than the majority’s balancing of its “good taste” in an arbitrary application of the Oregon Constitution. The Oregon Constitution can restrict advertisement and solicitation or it cannot. If, on the other hand, the majority is seeking to:

“... review the Oregon RPCs on advertising and solicitation, both with respect to constitutionality and respect to whether the rules strike a wise balance in terms of the public policy sought to be served” (see Majority Report at page 2)

⁵ The 1992 OSB Report of the Advertising Task Force, at page 11, agreed concluding “Time, place and manner regulations, focusing on the harmful effects of speech rather than on the content of speech, are constitutionally valid.” See *City of Hillsboro v. Purcell*, supra, 306 Or at 554.

including the current prohibitions found in RPC 7.1 (a) 1 to 12, the rules currently strike a wise balance, and are not an effort to impose “good taste.” The balance may be, indeed, in the eye of the beholder. The majority has no more qualification to strike a “wise balance” in terms of the public policies sought to be served than anyone else, including this Board of Bar Governors.

The Majority Report argues that eliminating the current RPCs is supported by “good public policy” because individuals now acquire information in vastly different ways in this “modern era” with the use of the internet. The technology evolution “public policy” argument misses the mark. The motivation for prohibiting unwanted solicitation following physical and emotional loss was never based on *how* the information was transmitted. Rather, it was based on a long-held belief that such contact by any means is inappropriate. That time honored belief remains true today, despite technological changes. The underlying purpose for restricting inappropriate conduct is no more a relic today than it was when rules regulating inappropriate contact were first enacted. Instead of eliminating such rules based on evolving technology, the committee should endeavor to protect the public against unwelcome intrusions in this “modern era.” The frequent criticism and derision leveled against the legal profession should not be encouraged because unwanted solicitation or the use of “runners” may be constitutionally permitted. Today, on behalf of the public it serves, the legal profession should strive for no less than what was historically viewed as **common decency**.

If the majority indeed seeks to strike a “wise balance” and bases its recommendation upon “broader public policy concerns,” they have ignored the truly negative effects of unfettered lawyer advertising and solicitation that will certainly occur in Oregon if their suggestions are adopted. The negative consequences of this kind of lawyer advertising and solicitation have been documented in other jurisdictions. The prejudicial effect upon the administration of justice (see, RPC 8.4 (a) (4)) should not be ignored. It is not “a wise balance” nor “good public policy” to do so.

The Board should decline to adopt the recommendation of the Task Force on Marketing and Advertising.

August 10, 2009

OSB Board of Bar Governors
c/o Sylvia Stevens
16037 SW Upper Boones Ferry Rd
PO Box 231935
Tigard OR 97281

RE: TASK FORCE ON MARKETING AND ADVERTISING PROPOSAL

Dear Governors:

I am a relatively "new" member of the Oregon State Bar and, as such, serve as an outgoing chairperson of the Oregon Trial Lawyers Association's New Lawyer Committee. I am joined in writing this letter by my co-chair, Ms. Kimberly Tucker, and my replacement incoming co-chair, Ms. Elizabeth Welch.

OTLA's New Lawyer Committee hereby supports and joins in the decision of OTLA's Board of Governors to approve Larry Wobbrock's dissenting opinion. In addition, we feel strongly that the perspective and views of newer trial lawyers should be considered before any decisions regarding the rules governing lawyer marketing and advertising are made.

As with OTLA's general membership, our newer members specialize in various areas of law including torts, civil rights, social security claims, and workers' compensation claims. The purpose of the New Lawyer committee is to address the professional and practical needs of these members. Each year it produces ten to twenty hours of OSB approved CLE seminars and provides a support network that includes a mentor-mentee program and regular social events. Service on this committee allows a unique insight into the needs and concerns of newer trial lawyers.

Each of us has decided to become a trial lawyer because we wish to serve Oregonians who need the help of our civil justice system. These are most often individuals of limited financial means that have recently experienced a life altering event. Our task is to be the most benefit we can to these clients and their families while also working to promote fairness and equity within the civil justice system.

It is an understatement to say that the views and recommendations of the majority of the Task Force on Marketing and Advertising come as a complete shock. We, as developing trial lawyers, are fearful that dispensing with the prohibitions and guidelines contained within Chapter 7 of the Oregon Rules of Professional Conduct will have the unintended effect of limiting access to justice for Oregonians while making it ever more difficult for new lawyers to gain the experience needed to effectively assist injured parties.

Already, injured parties often receive mailed solicitations just days after a reported event such as an automobile crash. This, and lawyer advertising in general, leads to a mistrust of lawyers by those in greatest need of assistance in dealing with denied insurance claims, wage loss claims, and all forms of unlawful discrimination. Injured parties often delay seeking representation to their detriment because some lawyers have presented as too self-interested. In our opinion, more aggressive lawyer advertising will only aggravate this problem.

One of the most critical challenges faced by developing trial lawyers is preserving the integrity and dignity of the civil jury trial. We are officers of the court, taking the OSB's professionalism guidelines that hang in each Circuit courtroom very seriously. That is because, among other reasons, the public's perception of trial lawyers is a determining factor in whether Oregonians have access to unbiased juries.

Many of us have had the experience of standing before a panel of potential jurors, asking them questions about their biases regarding the parties to the suit and the underlying factual issues. Without fail, we quickly learn that the singular most difficult challenge that potential jurors face when deciding whether they can be fair is their inherent distrust of trial lawyers and plaintiffs.

The root of this bias comes to the surface quickly. Potential jurors admit to being adversely influenced by lawyer advertising on national and regional television as well as other forms of media. They cite to "greedy" lawyers as the reason why the jury system is "broken" or "corrupt". Reciting the word "ambulance chaser" draws chuckles from potential jurors only because it was firmly in mind when they first heard the general facts of case at issue.

Discussions with jurors after trial (when facilitated by the trial judge) reveal that these biases often persist through deliberations. Jurors admit that, in spite of their willingness to fairly compensate an injured party, the persistent challenge they faced was an instinct not to trust their lawyer. Without doubt, this bias is partially born from and greatly reinforced by aggressive lawyer marketing.

Mandatory arbitration rules and the increasing costs have made it difficult for new lawyers to gain the trial skills needed to effectively serve their clients. Abolishing professionalism and ethics rules regarding lawyer marketing and advertising will likely drive more Oregonians from seeking help from the civil justice system, making civil jury trials even rarer. This will further expand a void in the Oregon legal community – a lack of young lawyers capable of effectively trying a civil case before a jury.

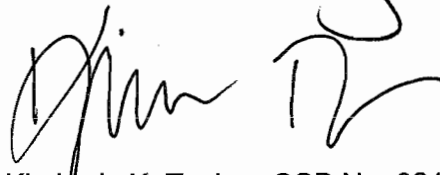
Finally, we do not feel that the current rules have unfairly benefitted more experienced trial lawyers. The rules do not create a barrier to market entry in terms of our wanting to become sound legal practitioners and successful trial lawyers. What we need is greater trial experience, not the ability to advertise or solicit clients more aggressively.

We support Mr. Wobbrock's dissenting opinion and hope that you will decide against a change to the rules governing lawyer marketing and advertising. Please consider the effect that a change would have on injured parties and potential jurors across Oregon. Also, please consider the legacy young lawyers in Oregon will inherit if the proposed changes occur. Were a mistake made, we fear a great difficulty in trying to "put the genie back in the bottle". Once more aggressive lawyer advertising and solicitation of injured parties begins further damage to the public's perception of civil jury trials and plaintiffs will have been done.

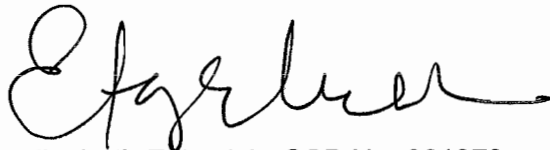
Very truly yours,



Keith Dozier, OSB No. 012478



Kimberly K. Tucker, OSB No. 021060



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D. Lawrence Wobbrock

August 13, 2009

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

Re: Advertising Task Force

Dear Ms. Stevens:

The Board of Directors of the Oregon Chapter of the American Board of Trial Advocates has reviewed the Majority and Minority reports of the Advertising Task Force. Our Board strongly endorses the Minority report and urges that the Majority report be rejected.

ABOTA is a national organization dedicated to the preservation of the right to trial by jury, support and improvement of the courts, and the development and training of competent trial counsel, with the goal of assuring proper representation of all parties in litigation. Qualifications of members are carefully scrutinized by the national organization and require members to have substantial trial experience. The organization strives to have a balance of members from the plaintiffs and defense bar.

ABOTA supports freedom of expression as a constitutional right worthy of protection, but recognizes that there are other competing constitutional and public policy concerns involved in the issues presented by the Majority and Minority reports. These include the right to trial by jury and the right to a fair trial. Also at issue, and of great significance, are regard for the public good, the reputation of our legal system and those who practice in that system and the protection of potential litigants.

It is our belief that the current RPC, Chapter 7, strikes a fair balance between those competing interests. We are not aware of any present challenge to or need for change in the current rules. The changes proposed by the Majority report would have an immediate negative impact on members of our society when those persons and their families are in vulnerable situations.

Very truly yours,


James H. Gidley

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Case Tests Ethics of Leaving Flyer From Law Firm on Rape Victim's Windshield

Mary Pat Gallagher
07-29-2009

New Jersey's Committee on Attorney Advertising held a hearing Monday to decide whether legal ethics rules were violated by the placing of a lawyer's advertising leaflet on the windshield of a rape victim's car.

The victim, known in court papers as K.D., claims an orange flyer from Fred Zemel's Newark, N.J., firm appeared on her car on or about Feb. 19, 2007 -- two months after the sexual assault occurred. It touted the firm's services to anyone who had been the victim of "rape and assault in your building or apartment." No other car parked nearby had such a flyer on it, leading K.D. to assume the flyer was directed at her, she says.

In a formal complaint stemming from a grievance lodged by K.D.'s lawyer, the committee charges Fred Zemel with violating Rule of Professional Conduct 7.3(b)(5), which prohibits unsolicited direct contact with a prospective client except by a mailing that must include certain notices and disclosures, and RPC 7.3(b)(1), which bars communicating with someone whose physical, emotional or mental state might impair the decision to hire a lawyer.

On Dec. 14, 2006, K.D. was sexually assaulted during an inspection of her federally subsidized apartment, while one of her children was home. Albert Foster, a Newark Housing Authority employee since 1993, turned himself in to the Essex County Prosecutor's Office in January 2007. He was charged with second-degree sexual assault and second-degree official misconduct. He pleaded guilty to the charges and was sentenced to concurrent terms of nine years for official misconduct and seven years for the sexual assault.

K.D. sued the Newark Housing Authority last December in state court, alleging it knew of prior sexual attacks by Foster and covered them up.

Though most news accounts identified K.D. only by her initials, her name was disclosed on television, says Richard Pompelio, whose firm, [Pompelio Foreman & Gray](#) in Whippany, N.J., represents K.D. in the tort claims case. K.D. was referred to the firm by the Newark Rape Crisis Center.



Pompelio's law partner, David Gray, says K.D. called him about the flyer, "upset and crying," thinking Zemel's firm must have investigated her and feeling her privacy had been violated. Gray says he felt obligated to report what he saw as an egregious ethics infraction.

The matter, *Committee on Attorney Advertising v. Zemel*, CAA Docket No. 14-2007, was heard Monday by Hackensack, N.J., solo Cynthia Cappell, the chairwoman; Sheryl Mintz Goski of Herold Law in Warren, N.J.; and Elizabeth Fuerst, the public member.

Zemel testified at the hearing, as did Dozier, Gray and K.D.

Zemel, in his answer filed July 10, denied that he deliberately targeted K.D. or that he even knew about her case, where she lived or whether she had a motor vehicle.

He admitted that he "did cause a Mr. Dozier, who was employed by a company other than Respondent's law practice to generally circulate flyers" but said he gave him Dozier no directions about specific areas in which to do so.

He says his lack of intent to target K.D. is shown by the fact that "similar flyers had been circulated in the same format long prior to the alleged crime."

Zemel also denies that the flyers constituted a direct contact and noted that when distributed, more than 60 days had passed since the rape and more than 30 days since the first newspaper accounts were published.

Zemel's attorney, S.M. Chris Franzblau, of Franzblau Dratch in Livingston, N.J., says, "there was absolutely no evidence presented that Mr. Zemel or any member of the Zemel law firm ever contacted the complainant or ever attempted to contact the complainant and never made any inquiry about the complainant's identity, address, car ownership or otherwise. The only evidence presented was that an advertisement was placed on a windshield owned by the complainant while parked on the public street in Newark, New Jersey."

The ethics presenter, Lambertville, N.J., solo William Flahive, declines comment.

Zemel, a graduate of Touro College's Jacob D. Fuchsberg Law Center who was admitted to the New Jersey bar in 1987, has no disciplinary history,

The ethics complaint, filed on Oct. 9, 2008, originally named as the respondent Zemel's sister, Margo Zemel, a Newark solo who once practiced with Fred as Zemel & Zemel. Fred Zemel says that when the complaint arrived naming his sister, "we sent a letter saying she was not with the law firm." The complaint was amended in June.

After the attack on K.D. was reported, four other female tenants of federally subsidized housing came forward with claims of groping and other criminal sexual contact by Foster in 2004 and 2005. Their charges were subsumed in the K.D. plea, according to Assistant Essex County Prosecutor Walter Dirkin. Gray says the other women will testify for K.D. in the civil suit.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 14, 2009
From: Ward Greene, chair, Budget & Finance Committee
Re: 2010 Executive Summary Budget

Action Recommended

Approve the 2010 Executive Summary budget.

Background

The Budget & Finance Committee reviewed the first draft of the 2010 Executive Summary budget on July 17 and the following report is an outcome of the charges by the committee. The committee directed a break-even budget for 2010 and the report and forecasts achieve that; however, there are assumptions and percentage changes that will be refined during the preparation of the line item budgets by the program/department managers.

There are numerous items (Section 6 of the report) that the committee will consider again at its August 28 meeting. The board should provide direction for including or excluding the items in the 2010 budget, and prioritizing those items that remain.

2010
EXECUTIVE SUMMARY
BUDGET

Report to the Board of Governors
August 28, 2009

C **ONTENTS**

1. Purpose of the Executive Summary Budget
2. Summary of 2009, 2008 and 2007 Budgets
3. Schedule of Member Fee Changes
4. General Overview for 2010
5. Assumptions for Developing 2010 Budget and Five-year Forecast
6. Program, Policy, and Operational Considerations for 2010
7. Fanno Creek Place
8. Operating and Capital Reserve and Other Contingency Funds
9. Client Security Fund
10. Recommendations of the Board of Governors
 - Exhibit A – 2010 Budget and Five-Year Forecast
 - Exhibit B – Printing the OSB Membership Directory
 - Exhibit C – Funding for Online Legal Publications Library

1 PURPOSE

The purpose of the Executive Summary budget is a “first look” at the 2010 budget and to identify and evaluate the fiscal implications on the next and subsequent year’s budgets and forecast for:

- new or revised policy approved by the board;
- planning or recommendations of the Policy & Governance Committee or other committees;
- new programs or modifications to current programming;
- the member fee for the next year;
- the impact of financial decisions today on future budgets.

The Budget & Finance Committee met July 17 to review the first draft of the 2010 summary budget. That budget was developed on anticipated trends, percentage increases, and forecasts using the 2009 budget as a base. The recommendations of the committee are incorporated into this report.

This summary budget does not incorporate any additions or deletions from current programming and operations. Bar staff managers will begin the preparation of their respective line item budgets later this month. These budgets are reviewed by the Executive Director and CFO and that consolidated budget is distributed to the committee for review at its special October 9 meeting. After the committee’s review, the board takes final action on the 2010 budget at the October 31 meeting.

2 SUMMARY OF 2009, 2008, AND 2007 BUDGETS

Before we look at 2010, here’s a summary of the last three years and any significant additions, deletions, or changes from the previous year.

| 2009 |
|---|
| <ul style="list-style-type: none">o The operation budget projects a Net Revenue of \$246,236.o It is expected that non-dues revenue will decline in the second half of the year and the net revenue will be smaller.o The Fanno Creek Place budget has a Net Expense of \$733,737 and adjusting to a cash basis, the negative cash flow is \$399,591. The actual outcome should align with the budget |
| Additions, Deletions, Changes |
| <ol style="list-style-type: none">1. <i>inclusion of LRAP’s administrative budget in general fund - \$9,100 to \$9,500</i>2. <i>one new FTE for operations or technology officer, manager level - \$130,000.</i> This later was changed to the position beginning mid-year. |

2008

Financially 2008 undoubtedly was the worst year ever for the bar. The reasons were:

- a) the operating funds had a net expense of \$19,691 when the budget was a Net Revenue of \$421,605;
- b) Fanno Creek Place had a Net Expense of \$1,110,071 compared to a budgeted Net Expense of \$648,323 due to the delay in the purchase of the building; and
- c) the unrealized loss on the mutual fund portfolio was \$1,196,660.

The outcome of these negative numbers dropped the funds available for the Operating and Capital Reserves by approximately \$2.1 million from the \$2.6 million available beginning 2008. Fortunately, at the beginning of 2008, the funds available were \$1.7 million in excess of the reserve requirements.

Additions, Deletions, Changes

1. *Futures Conference - \$25,000*
2. *Mileage for House of Delegate Members - \$27,000*
3. *Fanno Creek Place account established*

2007

The Net Revenue in 2007 was \$10,610, which was significantly below the budgeted net revenue of \$412,035. The reasons for the variance:

- o the bar becoming a tenant and paying rent after the old building was sold mid-year;
- o Seminars and Publications revenue falling well short of their budgets.

Additions, Deletions, Changes

1. *Economic Survey - \$15,000*
2. *Increased Fees(\$25.00) for OSB Lawyer Referral Service panels*
3. *Futures Conference - \$25,000 (was deferred to 2008)*
4. *Increased cost of BOG meetings - \$24,500*
5. *Overlap of new and retiring Admissions Administrator - \$28,400*
6. *Grants to the Campaign for Equal Justice and the Classroom Law Project Increased*

3 SCHEDULE OF MEMBER FEE CHANGES

Although there is no member fee increase projected for 2010, here is the schedule of fee increases for this twenty-year cycle. The next fee increase is forecast for 2011.

| YEAR | FEE CHANGE | PURPOSE FOR CHANGE |
|------|-------------------|--|
| 1992 | none | |
| 1993 | \$36.00 | Active member increase for general operations |
| 1994 | (\$10.00) | CSF assessment decreased \$10.00 |
| 1995 | (\$10.00) | CSF assessment decreased \$10.00 |
| 1996 | none | |
| 1997 | \$20.00 | CSF assessment increased \$20.00 |
| 1998 | \$40.00 | Active member increase for general operations (\$50.00); CSF assessment decreased \$10.00 |
| 1999 | none | |
| 2000 | none | |
| 2001 | \$50.00 | Active member increase for general operations |
| 2002 | \$30.00 | Increase for Inactive membership only; last increase for this membership had been in 1989. |
| 2003 | \$16.00 | \$15.00 dedicated for Casemaker; \$11.00 for CAO; CSF assessment decreased \$10.00 |
| 2004 | none | |
| 2005 | none | |
| 2006 | \$50.00 | Active member increase for general operations; \$5.00 of increase dedicated to LRAP |
| 2007 | none | |
| 2008 | none | |
| 2009 | none | |
| 2010 | none projected | May increase if CSF Committee requests an assessment increase and BOG approves. |
| 2011 | \$50.00 projected | Active member increase for general operations |

4 GENERAL OVERVIEW FOR 2010

➤ **Operations**

The summary budget presented to the Budget & Finance Committee projected a Net Expense for 2010 of \$158,492. However, the committee directed that the budget be break-even in 2010. Thus, to reach that objective various arbitrary adjustments were made to revenue and expense. Those adjustments are explained in the next Section “Assumptions for Developing ...” The result of those adjustments is a Net Revenue of \$7,660 (see the last line on page 1, Exhibit A). This is only a target amount and will be different once the final 2010 budget is approved.

This 2010 summary budget presented here is approximately \$110,000 less revenue and \$130,000 more in expenses than the 2009 budget.

No member fee increase is included in the 2010 budget; although a \$50,000 fee increase is included in the 2011 forecast.

Section 6 identifies various programs and activities to be considered for inclusion in the 2010 budget, but are not factored into this summary budget.

➤ **Fanno Creek Place**

The projected Net Expense for Fanno Creek Place is \$733,311 and the net cash flow is \$398,516 (page 2, Exhibit A). This is consistent with past forecasts.

➤ **The Purpose of Exhibit A**

Exhibit A is the summarized 2010 budget and the five-year forecast for operations, Fanno Creek Place, and reserves. Looking at the bottom line in each category:

- a. the operation budget is in the black for the five year-period (page 1);
- b. Fanno Creek Place operates as expected with some six month vacancies in 2013 and 2014 (page 2);
- c. the reserves remain below the established levels through 2011 and turn positive by 2012 (page 3).

5 ASSUMPTIONS FOR DEVELOPING 2010 BUDGET AND FIVE-YEAR FORECAST

The 2010 budget and the forecasts for bar operations is prepared with these assumptions:

Member Fees

Member fee revenue consistently has increased 2% to 2.5% for the past few years, and 2.25% increase is projected for 2010. A \$50.00 member fee increase is included in the 2011 forecast to stem the net expenses that would continue without the fee increase.

Program Fees

The two largest Program Fee revenue sources are decreased from the 2009 budget, as it has been several years since those budgets were attained. CLE Seminars is decreased to 90% of the 2009 budget and Publications to 82%. These have been the average with which these activities attained their budgets for the past five years.

The other program fee activities increase 2% to 3% year over year as programs like Admissions and MCLE consistently have generated a net revenue. The 2010 budget includes an increase of 5% since the Supreme Court has granted an increase of \$100 to the bar exam application beginning with the 2010 exams.

Investment Income

The current interest rate earned on the bar's short-term invested funds is the lowest in memory, even falling below 1%. Rates are expected to increase over the next five years, and are conservatively forecast to climb to 3%.

Salaries & Benefits

The 2010 salary pool is 3% and that amount is extended throughout the five-year forecast. This is lower than the 4% or 5% that had been in past years' budgets and forecasts. Additionally, in the forecast the salaries budget is adjusted each year for projected retirements of senior bar staff in the next five years.

Taxes & Benefits are calculated as a percentage of salaries. The rate for 2010 and half of 2011 are slightly lower as PERS rates dropped July 1, 2009. However, those rates increase beginning with the second half of 2011 through 2015 as PERS has forecast much higher employer rates beginning July 1, 2011.

Direct Program and General & Administrative Expense

For the purpose of this summary budget, these costs are decreased 2% to reach the breakeven budget. However, this will change as the overall expense budget (including

personnel) is developed. These costs are not really known until the line item budgets are prepared, and will fluctuate with the addition or deletion of programs or operations.

The FUNDS AVAILABLE schedule (page 3, Exhibit A) is prepared to convert from accrual accounting to a cash basis so actual cash and investments available can be compared with the reserve requirements. This schedule adjusts for depreciation, which is a non-cash expense and capital purchases, which are projected to remain relatively small for the next five years.

Change in Investment Portfolio FMV

A key to returning to a positive reserve balance is for the mutual fund portfolio to return to its level it was in late 2007 when it was \$3.2 million. The schedule projects that to happen by 2015 – an eight-year span. This means the portfolio would grow an average of 7.5% a year.

6 PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2010

The items in this section are changes or continuation in the 2010 budget for which the board should authorize, not authorize, or prioritize. In some cases the dollar amount listed is simply a placeholder number. If any expenditure is included in the 2010 budget, an existing activity of similar cost must be eliminated; new or additional revenue raised; or the budget deficit is increased.

❖ Additions to the Budget

These are changes that will be included in the 2010 budget. Fortunately, all increase revenue or are an expenses decrease.

1. *Increase the bar exam application by \$100.*

The Supreme Court has approved the application cost to \$625.00. The last increase in the application fee was for 2000.

2. *Increase the service charge to sections by \$1.00 to \$1.50 from the existing \$5.25.*

The last increase was three years ago. The long-time practice is to charge the sections one-half the cost of the services provided by the bar (primarily staff time). Each \$1.00 increase adds approximately \$18,000 in revenue to the general fund. The schedule to determine the estimated cost still is in development.

3. *Conversion from Casemaker to Fastcase – \$99,000*

The bar has executed a contract with Fastcase to replace the Casemaker online legal research library by September 24, 2009. The annual subscription for Fastcase is \$99,000, which is less than the annual cost of \$135,888 for Casemaker.

❖ Carryover from Prior Budgets

These items are grants to legal related organizations that have been in the bar's budget for several years.

4. *Grant to Campaign for Equal Justice - \$45,000*

The first commitment of \$50,000 was made in 2001. For 2007, 2008, and 2009 the grant was \$45,000.

5. *Grant to Classroom Law Project - \$20,000*

The first commitment of \$20,000 was made in 1999, and has been that amount every year except 2006 when the grant was reduced to \$10,000.

6. *Council on Court Procedures - \$4,000*

The bar has committed \$4,000 per year since 1994.

❖ New Programs/Activities to Consider – Value vs. Cost

7. *Discontinue Printed Membership Directory - \$ varies*

See Exhibit B

8. *Funding for Legal Publications – Printed and BarBooks - \$ unknown*

See Exhibit C. A resolution probably will come before the House of Delegates for the annual membership fee to include an amount for all active members to pay for the online distribution of the bar's Legal Publications library to all active members.

9. *Funding for Law Foundation Feasibility Study - \$6,500*

Here is a request from Judith Baker, Executive Director of the Oregon Law Foundation.

“The Oregon Law Foundation is asking the Oregon State Bar to fund a feasibility study to assess the impact and desirability of amending the IOLTA rule to include an interest rate comparability requirement. Under comparability, IOLTA accounts are paid the highest interest rate or dividend generally available at a bank to its other customers when IOLTA accounts meet the same minimum balance or other qualification. The study would forecast and compare the net IOLTA revenue to be generated with and without an interest rate comparability provision in Oregon's IOLTA Rule. The cost of the study is \$6,500.

Although the foundation realizes the importance of understanding how a rate comparability requirement would impact IOLTA revenue we are respectfully requesting that the bar consider funding the cost of the study. The reasons are two-fold. First, the bar will play an important part in understanding and implementing a possible modification to the IOLTA rule. Second, the foundation's revenue has been

greatly impacted by the current economic downturn with a loss of 66% of IOLTA income. Incurring the expense of the study at this point competes with revenue used to fund grantees.”

10. *Create a reserve for public affairs activities - \$30,000*

This reserve is for public affairs activities to respond to ballot measure, the referendum process, and outreach. (The bar has paid for similar activities in the past from the general contingency fund (\$25,000).)

11. *Greater use of outside counsel - \$30,000*

The need to use more outside counsel when volunteers not available, especially for UPL cases.

❖ **Operational Projects to be included as Budget Permits**

12. *PERS Contingency - \$ to be determined*

The information PERS is making available about employer contribution rates for the two-year cycle beginning July 1, 2011 is very gloomy. With the two-year cycle beginning July 1, 2009, the bar is paying rates of 8.01% and 8.79% of Tier I/II and OPSRP members respectively. Those rates are lower than the rates the bar had been paying for the two-year cycle just ended. The current rates were determined in part by the healthy performance of the PERS portfolio for the year ended 2007.

The next cycle will be more depressing since PERS (and other portfolios) will not have recovered from the disastrous 2008. Based on that performance, and even if there continues to be improvement during 2009, PERS is forecasting the contribution rates to approximate 16%, 17% for the period beginning July 1, 2011. These rates would double the rate the bar currently is paying now and add as much as \$250,000 to \$300,000 annually to the operating budget. These increases have been factored into the forecasts beginning mid 2011.

13. *Other Considerations*

In the development of the operations budget, managers will consider the following expenditures and evaluate if the new expenditure adds value to the program activity or replaces expenditure in a budget line item: contract services to revise employee classification system, technology audit, Legal Publications management software, and a new Lawyer Referral Assistant position

❖ **Existing Programs of Budget Interest**

14. *Cost of the House of Delegates - \$32,800*

The amount in the 2009 budget is \$20,800 for the event and \$12,000 for reimbursement of delegates' travel.

15. *Leadership College* - \$58,000

The college has been offered for three years and the attendees have increased to the present thirty-three. If the number of participants were limited to create a more intimate college (probably twenty), the cost reduction would approximate \$15,000 to \$20,000.

16. *Board of Governors Meetings*

Holding a meeting at the bar center instead of an offsite location reduces expense by approximately \$5,000 to \$10,000 a meeting.

❖ **Operational Matters for Consideration**

17. *Salary Pool*

The executive directors of the bar and the PLF tentatively have set the 2010 salary merit pool at 3%. The pool in the 2009 budget was 3%. Each 1% increase equals \$67,200 in salaries, taxes, and benefits.

Additionally, in the forecast the salaries budget is reduced each year for the next five years for expected retirements by senior bar staff. Currently, there are seventeen employees who could retire now or within five years with full retirement benefits.

7 FANNO CREEK PLACE

The 2010 budget for Fanno Creek Place is prepared with these assumptions:

- a. The bar receives a full year's rent from all tenants.
- b. Operating costs increase minimally.
- c. The annual debt service (principal and interest) for the third year of the mortgage is \$891,535 (\$755,839 interest and \$178,469 principal).
- d. Depreciation is a large non-cash expense of \$513,264.
- e. The net cash flow is a negative \$399,000, which is in line with the forecasts leading to the development of the building.

8 OPERATING AND CAPITAL RESERVES AND OTHER CONTINGENCY FUNDS

The *Operating Reserve* policy is fixed at \$500,000 since the approval of the Executive Summary Budget in 1999.

The *Capital Reserve* is based on the expected equipment and capital improvement needs of the bar in the future. Moving to a new building reduced the amount needed in this fund initially. The estimated reserve in 2010, and the next few years is \$650,000, which is

\$350,000 for building and furniture replacement costs and \$300,000 for technology related capital purchases.

The Other Reserves, Fund Balances, and Contingencies

All other reserves, fund balances, and contingencies – fund balances for Affirmative Action, CSF, Legal Services, LRAP, and sections and the legal fees, landlord, and PERS contingencies - are not factored into this budget summary and forecasts. The accumulated total of these reserves (excluding the operating and capital reserve) is \$3.1 million. This sum is not included in these schedules as those dollars are set aside and fully funded.

9 CLIENT SECURITY FUND

The Client Security Fund assessment has been \$5.00 since 2003. The assessment has been low since the claims paid have been low. However, the CSF Committee foresees a trend of more claims and will consider an increase in the assessment at its August 22 meeting.

10 RECOMMENDATIONS OF THE BOARD OF GOVERNORS

The board's action or direction on the following sections of the summary budget:

1. No changes in the general membership fee (\$447.00) and the Affirmative Action Program assessment (\$30.00). Any change in the Client Security Fund assessment (\$5.00) will be made after the CSF Committee recommendation.
2. Approve, disapprove, or prioritize program or policy considerations for 2010 (Section 6).
3. Guidance to bar staff budget preparers for 2010 budget.

2010 Budget

Five-Year Forecast

Fanno Creek Place

| Fanno Creek Place | BUDGET | BUDGET | F O R E C A S T | | | | |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| REVENUE | | | | | | | |
| RENTAL INCOME | | | | | | | |
| PLF | \$476,500 | \$483,648 | \$490,903 | \$498,267 | \$505,741 | \$513,327 | \$521,027 |
| Opus Master Lease (includes Zip Realty) | 163,389 | 175,059 | 177,658 | 180,323 | 90,387 | 180,323 | 185,733 |
| 20/20 | 174,435 | 176,615 | 181,913 | 187,371 | 176,909 | 112,579 | 190,181 |
| OLF | 25,344 | 26,100 | 26,900 | 27,700 | 28,500 | 29,400 | 30,300 |
| Meeting Rooms | 34,000 | 20,000 | 24,000 | 28,000 | 30,000 | 36,000 | 36,000 |
| REIMBURSEMENTS | | | | | | | |
| TI Payback | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Operating Expense Pass-through | 0 | 0 | 4,220 | 4,300 | 4,400 | 4,500 | 4,600 |
| INTEREST | 14,600 | 14,600 | 11,300 | 14,600 | 16,000 | 16,500 | 4,000 |
| TOTAL REVENUE | 888,268 | 896,022 | 916,894 | 940,561 | 851,937 | 892,629 | 971,841 |
| EXPENDITURES | | | | | | | |
| OPERATING EXPENSE | | | | | | | |
| Salaries & Benefits | 96,600 | 99,500 | 102,500 | 105,600 | 108,800 | 112,100 | 115,500 |
| OSB | 168,500 | 171,870 | 176,200 | 180,600 | 185,100 | 189,700 | 194,400 |
| Tenants | 164,000 | 167,280 | 171,500 | 175,800 | 180,200 | 184,700 | 189,300 |
| Opus Management Fee | 53,500 | 53,800 | 54,600 | 55,400 | 4,700 | | |
| Rent | | | | | | | |
| Depreciation | 513,264 | 513,264 | 513,264 | 513,264 | 513,264 | 513,264 | 523,264 |
| Other | 29,380 | 29,380 | 29,814 | 500 | 500 | 500 | 5,000 |
| DEBT SERVICE | | | | | | | |
| Interest | 766,190 | 755,839 | 744,850 | 733,185 | 720,901 | 707,655 | 693,699 |
| Principal | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| ICA to Operations | (158,429) | (161,600) | (164,800) | (168,900) | (172,300) | (176,600) | (181,900) |
| TOTAL EXPENSES | 1,633,005 | 1,629,333 | 1,627,928 | 1,595,449 | 1,541,165 | 1,531,319 | 1,539,263 |
| NET REVENUE/(EXPENSE) - FC Place | (\$744,737) | (\$733,311) | (\$711,034) | (\$654,888) | (\$689,228) | (\$638,690) | (\$567,422) |
| ACCRUAL TO CASH ADJUSTMENT | | | | | | | |
| SOURCES OF FUNDS | | | | | | | |
| Depreciation Expense | 513,264 | 513,264 | 513,264 | 513,264 | 513,264 | 513,264 | 523,264 |
| Landlord Contingency | | | | | | | 400,000 |
| USES OF FUNDS | | | | | | | |
| Principal Pmts - Mortgage | (168,118) | (178,469) | (189,458) | (201,123) | (213,507) | (226,653) | (240,609) |
| NET CASH FLOW - FC Place | (\$399,591) | (\$398,516) | (\$387,228) | (\$342,747) | (\$389,471) | (\$352,079) | \$115,233 |

Funds Available/Reserve Requirement

| | BUDGET | BUDGET | F O R E C A S T | | | | |
|---|--------------------|--------------------|------------------------|--------------------|--------------------|--------------------|--------------------|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| FUNDS AVAILABLE | | | | | | | |
| Funds Available - Beginning of Year | \$520,000 | \$706,893 | \$749,437 | \$1,104,737 | \$1,224,502 | \$1,330,081 | \$1,360,767 |
| SOURCES OF FUNDS | | | | | | | |
| Net Revenue/(Expense) from operations | 246,236 | 7,660 | 433,228 | 198,913 | 167,149 | 64,666 | 23,866 |
| Depreciation Expense | 260,548 | 260,000 | 262,600 | 265,200 | 267,900 | 270,600 | 273,300 |
| Provision for Bad Debts | 19,500 | 19,500 | 19,000 | 19,000 | 19,000 | 19,000 | 19,000 |
| Change in Investment Portfolio MV | 155,000 | 146,000 | 179,000 | 169,000 | 207,000 | 195,000 | 239,000 |
| Allocation of PERS Reserve | 105,000 | 114,000 | | | | | |
| USES OF FUNDS | | | | | | | |
| Capital Expenditures | (51,500) | (55,000) | (50,000) | (50,000) | (50,000) | (50,000) | (50,000) |
| Capital Reserve Expenditures | (20,000) | (20,000) | (40,000) | (75,000) | (50,000) | (50,000) | (75,000) |
| Capital Expenditures - New Building | (20,000) | (20,000) | (50,000) | (50,000) | (50,000) | (50,000) | (50,000) |
| Capital Reserve Expenditures - New Building | | | | | | | (400,000) |
| Landlord Contingency Interest | (8,300) | (11,100) | (11,300) | (14,600) | (16,000) | (16,500) | (4,000) |
| Net Cash Flow - Fanno Creek Place | (399,591) | (398,516) | (387,228) | (342,747) | (389,471) | (352,079) | 115,233 |
| AMENDED in 2009 | | | | | | | |
| Change in Investment Portfolio MV | | | | | | | |
| Projected lower Net Revenue | (100,000) | | | | | | |
| CHANGE IN FUNDS AVAILABLE | 186,893 | 42,544 | 355,300 | 119,765 | 105,579 | 30,686 | 91,399 |
| Funds Available - End of Year | \$706,893 | \$749,437 | \$1,104,737 | \$1,224,502 | \$1,330,081 | \$1,360,767 | \$1,452,166 |
| RESERVE REQUIREMENT | | | | | | | |
| Operating Reserve | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 | 500,000 |
| Capital Reserve | 650,000 | 650,000 | 650,000 | 650,000 | 700,000 | 700,000 | 750,000 |
| Total - Reserve Requirement | \$1,150,000 | \$1,150,000 | \$1,150,000 | \$1,150,000 | \$1,200,000 | \$1,200,000 | \$1,250,000 |
| RESERVE VARIANCE | | | | | | | |
| Over/(Under) Reserve Requirement | (443,107) | (400,563) | (45,263) | \$74,502 | \$130,081 | \$160,767 | \$202,166 |
| Reconciliation Cash to Accrual | BUDGET | BUDGET | F O R E C A S T | | | | |
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| NET REVENUE/(EXPENSE) - Operations | 246,236 | 7,660 | 433,228 | 198,913 | 167,149 | 64,666 | 23,866 |
| NET REVENUE/(EXPENSE) - FC Place | (744,737) | (733,311) | (711,034) | (654,888) | (689,228) | (638,690) | (567,422) |
| NET REVENUE/(EXPENSE) - OSB | (498,501) | (725,651) | (277,806) | (455,976) | (522,078) | (574,025) | (543,556) |

Operations

August-09

| Proposed Fee increase for Year → | | \$0 | \$50 | \$0 | \$0 | \$0 | \$0 |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Operations | BUDGET | BUDGET | F O R E C A S T | | | | |
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| REVENUE | | | | | | | |
| MEMBER FEES | | | | | | | |
| General Fund | \$6,457,600 | \$6,603,000 | \$7,418,000 | \$7,585,000 | \$7,775,000 | \$7,950,000 | \$8,149,000 |
| PROGRAM FEES: | | | | | | | |
| CLE - Seminars | 1,502,725 | 1,352,453 | 1,352,453 | 1,365,977 | 1,386,467 | 1,407,264 | 1,428,373 |
| CLE - Publications | 1,084,410 | 889,216 | 889,216 | 898,108 | 898,108 | 907,089 | 907,089 |
| All Other Programs | 1,695,316 | 1,780,082 | 1,815,683 | 1,851,997 | 1,889,037 | 1,936,263 | 1,974,988 |
| Total Program Fees | 4,282,451 | 4,021,751 | 4,057,352 | 4,116,082 | 4,173,612 | 4,250,616 | 4,310,450 |
| OTHER INCOME | | | | | | | |
| Investment Income | 151,800 | 158,000 | 178,000 | 199,000 | 223,000 | 225,000 | 251,000 |
| Other | 18,000 | 18,000 | 18,540 | 19,282 | 20,053 | 20,855 | 21,689 |
| TOTAL REVENUE | 10,909,851 | 10,800,751 | 11,671,892 | 11,919,364 | 12,191,665 | 12,446,471 | 12,732,139 |
| EXPENDITURES | | | | | | | |
| SALARIES & BENEFITS | | | | | | | |
| Salaries - Regular | 5,188,300 | 5,343,949 | 5,481,700 | 5,623,600 | 5,769,700 | 5,969,600 | 6,126,100 |
| Benefits - Regular | 1,539,300 | 1,547,608 | 1,799,094 | 2,068,360 | 2,122,096 | 2,201,588 | 2,234,801 |
| Salaries - Temp | 55,100 | 60,000 | 50,000 | 30,000 | 50,000 | 30,000 | 50,000 |
| Taxes - Temp | 2,810 | 5,400 | 4,500 | 2,700 | 4,500 | 2,700 | 4,500 |
| Total Salaries & Benefits | 6,785,510 | 6,956,957 | 7,335,294 | 7,724,660 | 7,946,296 | 8,203,888 | 8,415,401 |
| <i>% of Total Revenue</i> | <i>62.2%</i> | <i>64.4%</i> | <i>62.8%</i> | <i>64.8%</i> | <i>65.2%</i> | <i>65.9%</i> | <i>66.1%</i> |
| DIRECT PROGRAM: | | | | | | | |
| CLE - Programs | 665,780 | 665,780 | 672,438 | 685,887 | 699,604 | 713,596 | 727,868 |
| CLE - Publications | 232,880 | 232,880 | 235,209 | 239,913 | 244,711 | 249,605 | 254,598 |
| All Other Programs | 2,383,841 | 2,336,164 | 2,382,887 | 2,442,460 | 2,491,309 | 2,553,592 | 2,630,199 |
| Total Direct Program | 3,282,501 | 3,234,824 | 3,290,534 | 3,368,259 | 3,435,624 | 3,516,793 | 3,612,665 |
| GENERAL & ADMIN | 570,604 | 576,310 | 587,836 | 602,532 | 617,595 | 636,123 | 655,207 |
| CONTINGENCY | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 |
| TOTAL EXPENSES | 10,663,615 | 10,793,091 | 11,238,664 | 11,720,451 | 12,024,515 | 12,381,805 | 12,708,273 |
| NET REVENUE/(EXPENSE) - OPERATIONS | \$246,236 | \$7,660 | \$433,228 | \$198,913 | \$167,149 | \$64,666 | \$23,866 |

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 14, 2009
From: Ward Greene, chair, Budget & Finance Committee
Re: Facilities Management Agreement with Opus Northwest

Action Recommended

Continue the facilities management agreement with Opus Northwest by reversing the action of the May 8, 2009 meeting and consent to the assignment of the agreement to Opus Property Services, LLC.

Background

An April 20, 2009 letter to the bar led to action by the Board of Governors to accept Opus Northwest Management offer to terminate the facilities management agreement between the bar and Opus (BOG minutes, May 8, 2009). The board's action was predicated on the fact that no terms of the other agreements between the bar and Opus would be affected, specifically the lease conditions under the master lease continue.

However, after a series of letters and meetings with Opus representative and bar representatives Ward Greene and David Weiner, the Budget & Finance Committee resolved to recommend to the board that the facilities agreement not be terminated and the bar consent to the assignment of the agreement to the newly-formed Opus Property Services, LLC. The committee's recommendation was based on the costs incurred to negotiate any settlement of the terms of the various agreements and eliminate the risk of the bar losing the rental income from Opus under the terms of the master lease.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 14, 2009
From: Ward Greene, chair, Budget & Finance Committee
Re: OSB Investment Policy & Portfolio

Action Recommended

Approve revised language in bylaw 7.402.

Background

The Budget & Finance Committee has been reviewing the bar's investment policy for the past few committee meetings and presently a sub-committee is working on revisions to the policy. The sub-committee anticipates presenting a draft of the revisions to the entire Budget & Finance Committee at its August 28 meeting. Once the committee recommends the policy changes, it will send a RFP to several local investment managers asking for responses to actively manage the bar's investment portfolio. The current thinking is that two managers will be selected and each manages half the bar's portfolio. The committee met via conference call with PLF personnel to discuss the possibility of integrating the bar's portfolio with the PLF's, but the committee agreed this was not in the best interests of the bar.

The April 3 minutes include a revision to the investment policy in the OSB bylaws at 7.402. The minutes state an addition to the approved investments as "federal deposit insurance corporation accounts." This language is not the most descriptive of the investments instruments intended and corrected language will be presented by the Budget & Finance Committee.

Memo - Budget & Finance Committee

Date: August 14, 2009
 To: Budget & Finance Committee; Member Services Committee
 From: Rod Wegener, Ext. 313
 Re: Printing the OSB Membership Directory

At the July 17 meeting of the Budget & Finance Committee, during the June 30, 2009 financial report, I stated that the sales of the Membership Directory were down dramatically from 2008. Sales of the directory have been declining (five years ago, sales in 2004 were \$70,455 and ten years ago were \$111,363) since the bar has offered the directory information on the bar's web site. However, sales of the directory are only one component of developing, selling, and distributing the directory, and this memo provides more comprehensive information about those activities.

Every active and inactive member and every new admittee receive a copy of the directory as part of their membership fee.

Financial Statements for the Membership Directory

In spite of the drop off in directory sales in 2009, the printed directory still generates a net revenue for the bar's operating budget.

| | 2009 | 2009 | 2008 |
|--------------------|----------------|---------------|---------------|
| <u>Revenue</u> | Six Mos Actual | BUDGET | Actual |
| Advertising | \$ 117,175 | \$ 115,600 | \$ 110,309 |
| Sales | <u>32,900</u> | <u>59,000</u> | <u>58,275</u> |
| Total Revenue | 150,075 | 174,600 | 168,584 |
| <u>Expenses</u> | | | |
| Commissions | 35,010 | 35,000 | 33,256 |
| Printing | 62,870 | 67,500 | 61,212 |
| Distribution | <u>25,437</u> | <u>20,400</u> | <u>30,750</u> |
| Total Expenses | 123,317 | 122,900 | 125,218 |
| Net Revenue | \$ 26,758 | \$ 51,700 | \$ 43,366 |

The financial statements do not include staff salaries and minimal administrative costs. The department in which the directory is included also produces print and electronic materials for numerous sections, county bars, and local bar groups.

The development of the contents of the directory is generated by numerous staff. The most time-consuming task is daily maintenance of the names and addresses to assure the latest information is in the printed directory. Although less time would be consumed if there were no print directory, the maintenance activity remains integral to the production of the online directory.

Sales of the Directory

Members and non-members purchase additional copies of the directory, primarily for non-attorney staff. In 2008, 1,588 directories were sold; through the end of July 2009, 1,253 have been sold. In the last five months of the year, there will be an insignificant number of sales as well as insignificant related expense.

In researching the difference in sales from 2008, there have been dramatic drop off in sales from law firms. A total of 58 firms and government agencies that purchased at least one directory in 2008, have not purchased any directories in 2009. This totals 415 directories. Also, two firms which purchased 137 directories in 2008 only purchased 38 in 2009.

Components of the Printed Directory

The directory is composed of three major content areas:

- o blue pages (84 pages) - OSB administrative and contact information, dates and deadlines, selected rules and regulations, and the PLF Claims Made Plan.
- o white pages (304 pages in 2009; up from 278 in 2005) - alphabetical and geographical list of all bar members and Oregon firms with 2 or more members.
- o yellow pages (about 40 pages) - paid advertising in *Attorney's Guide to Products & Services* (designed like the telephone Yellow Pages). These listings also appear on the bar's website under "Member Resources/ Products & Services" for no additional charge. Go to <http://www.osbar.org/adirectory/directoc.html>

Popularity of the Directory

From the bar's Communications Director: The bar conducted a comprehensive member survey in 2004 using the research company Moore Information. The survey consisted of 300 phone interviews of members, systematically selected to form a representative sample of the membership to produce a margin of error of +/- 6%. One section of the survey asked members to rate the performance of 19 different bar programs and services. The top-rated service was the Membership Directory, with 90% rating it excellent/good and just 2% fair/poor. The second most highly rated program (CLE seminars) was considered excellent/good by 70% of respondents.

The next comprehensive member survey will be conducted in 2010 or 2011.

Advertising

Advertising revenue for the directory and the Bulletin is generated through an agreement with LLM Publications, Inc. Printed directory advertisers are provided with a free display in the online Products and Services Directory. Advertisers can purchase a highlighted ad in the web guide for an additional charge. Advertising revenue has increased an average of 4% for the past five years.

Options to the Current Printed Directory

There are various options for the “directory of the future” and could involve one or parts of the following options.

- **Create an OSB Deskbook as part of the *Bulletin***—This deskbook would include the blue and yellow pages and bundled with the first *Bulletin* issue in January. (Such a deskbook is common in other bar associations.) The deskbook also would be sold as a separate product to members and the public.
- **Convert the Directory to digital delivery** – The member could download from the bar's website and print any or all portion of the directory with the assurance that the data is current the day of eth download. The bar would not print a directory.
- **Eliminate printing a directory** – All current content already is available on the bar’s web site, but could be presented and formatted for easier access by the member. Although substantial costs would be eliminated, the value of the *Products & Services Directory* would be enhanced to continue to create and increase advertising revenue. A “google-like” access to advertisers could be created.
- **Make the directory available on a CD** — The disk would include the membership listings in a spreadsheet or text format. The disk could be in lieu of the printed directory, or sold for a nominal fee and made available in addition to the printed directory.
- **Model the Directory after the traditional phone book** – The content would remain the same, but the print and postage costs would be less with lower paper quality and possibly eliminating full color printing (black and white only). The impact on advertising revenue would need to be studied. A copy would be sent to all members and additional copies sold.
- **Change the delivery method to firms and government offices** – This is strictly a cost-cutting measure and will be evaluated before the distribution of the 2010 directory. Instead of postal delivery to individual members, the directory would be delivered in bulk with a distribution list to firms and agencies with more than a certain number of members.

Memo - Budget & Finance Committee

Date: August 14, 2009

To: Budget & Finance; Policy & Governance; and Member Services Committees

From: Rod Wegener, Ext. 313

Re: Funding for Online Legal Publications Library

The Board of Governors soon will address two related issues regarding funding for and distribution of the Legal Publications library. There have been or will be two unrelated proposals from two bar groups that propose making parts or the entire legal publications library available on line to all members of the active bar.

PROPOSAL 1 - Included with this memo is a letter from the chairs of the Civil and Criminal Jury Instructions Committees and a memo from Linda Kruschke, the Legal Publications Manager, addressing the statements in that letter. Essentially the committees want the two sets of jury instructions to be made available on the bar's web site at no cost or a nominal fee to members or the public. Ms. Kruschke's response includes the position that this "free" information will eliminate over \$60,000 of revenue annually from the Legal Publications budget.

PROPOSAL 2 - Unrelated to this request is a resolution which likely will come from the Sole & Small Firm Practitioners Section to the House of Delegates to fund BarBooks by making it available to all active members and be funded by an addition to the annual membership fee.

This proposal is not a new idea. A BOG resolution to make an online publications library with a \$70 assessment for all active members came before the HOD in 2004. The resolution was debated at length and the action was to place the idea of Legal Publications online for an advisory vote of the full membership. The vote turnout was very low (summary is in 2005 HOD agenda) and at the 2005 HOD meeting, the action was to "direct the BOD to explore a subscription model for putting CLE Publications online." That action led to the formation of the CLE Publications Task Force, whose report was on the May 2006 BOG agenda. That report led to the development of BarBooks as it exists today.

The SSFP Executive Committee has discussed the BarBooks subscription model at several of its meetings and is unhappiest about the annual single subscription cost to a solo at \$395 and a member at a large firm paying \$40 to \$50 per member. (A firm of 100 to 150 attorneys pays a subscription of \$4,995.) To counter this perceived inequity, the section expects to present a resolution to the HOD that all active members be assessed a sum (to be determined, but probably \$70 to \$80) and all members receive "universal access" to BarBooks. The section also adds that the availability of the library to all members is a member benefit that provides for a more informed, knowledgeable attorney.

SUMMARY - Both groups make the argument that the availability of the information online is better access to justice and the information electronically and

searchable is the need in the real-time, digital age. Both resolutions have financial implications for the bar's operating budget.

If the Jury Instructions resolution is approved, the Legal Publications budget deficit will increase by another approximately \$60,000 annually.

If an assessment to all members was added to the membership fee, a substantial budget deficit would be resolved. The amount of the assessment would be the amount necessary to fund the complete operations of Legal Publications (including Jury Instructions) annually and would eliminate the deficits that have occurred for the past several years, where revenue has fallen short of the overall costs of the activity.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 14, 2009
From: Ward Greene, chair, Budget & Finance Committee
Re: Selection of an Auditor for the OSB 2008 and 2009 Financial Statements

Action Recommended

The Budget & Finance Committee will either have a recommendation for a selection of the auditor for the bar's financial statements for 2008 and 2009, or will decide to distribute an RFP to auditing firms.

Background

For the past several years, the bar's financial statements have been audited every two years and the report is for a two-year period. The bar's bylaws state at Subsection 7.101 Audit of the Books: *The books of account of the Bar must be audited at least biennially, unless otherwise directed by the Board.* The statements have been audited in two-year blocks to minimize the cost of the audit.

The 2006 and 2007 statements were audited by Moss Adams after the firm was selected by the bar's review of responses to its RFP. The Budget & Finance Committee will decide at its August 28 meeting whether to grant the audit to Moss Adams for another two-year period or send the audit to bid through the RFP process again. The bar's CFO and Controller will have met with Moss Adams prior to the committee meeting to gather information about its performance of the 2008 and 2009 audit.

The committee also will discuss the value of an audit every year.

OREGON STATE BAR

Policy and Governance Committee Agenda

Budget and Finance Committee Agenda

Member Services Committee Agenda

Meeting Date: August 27-29, 2009
Memo Date: August 11, 2009
From: Linda Kruschke, Ext. 415
Re: Uniform Civil and Criminal Jury Instructions

Action Recommended

Consider proposal of the Uniform Civil and Criminal Jury Instructions Committees to post uniform jury instructions online at no cost to members and the public.

Background

The Uniform Civil Jury Instructions Committee has submitted a request that the Board of Governors consider posting the Uniform Civil Jury Instructions on the bar's web site free of charge. The Uniform Criminal Jury Instructions Committee has opted to join in that request. Attached is a letter from the UCJI and UCrJI Committees.

Posting the Uniform Jury Instructions online for free will likely have a financial impact on the Legal Publications Department. Currently, two staff members of the Legal Publications Department are liaisons to the UCJI and UCrJI, providing editing, research, and cite checking services necessary for the publication of these two books. In addition, Legal Publications staff is responsible for production of these books, the corresponding forms on CD, and the BarBooks™ version of the instructions.

In 2008, the UCJI and UCrJI publications generate combined revenue of \$92,978 for the Legal Publications Department. In 2009 to date, these two publications have generated combined revenue of \$50,449 out of a budgeted sum of \$66,100. The UCJI supplement is scheduled for release in early December 2009, and will generate significant additional revenue for the 2009 budget year. A revision of the UCrJI is scheduled for 2010, which would warrant an increase in the budgeted revenue under the current system.

Past sales of the *Oregon Ethics Opinions*, which are currently available for free online, suggest that not all potential sales of the UCJI and UCrJI will be lost if they are posted online for free. However, there will certainly be a significant decrease in revenue if bar members can download the instructions for free rather than purchasing them from the OSB Legal Publications Department. There would be no corresponding decrease in the Legal Publications Department resources necessary to produce the books.

The primary concern of the two jury instructions committees is the timeliness of availability of the instructions. This concern could be addressed by posting the instructions as they are approved to the BarBooks™ online library where they are already included.

The committees are also concerned that the use in of jury instructions for trials is essential for bar members. However, not all bar members practice in an area of law that requires them to use jury instructions. If the bar absorbs the cost of producing jury instructions, as the committees suggest, then those attorneys who do not need to go to trial as part of their practice would be subsidizing the cost of practice for those who do.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 19, 2009
From: Member Services Committee
Re: OSB Award Nominations for 2009

Action Recommended

Approve the slate of nominees selected by the BOG Member Services Committee.

Background

The Member Services Committee recommends the following award recipients for 2009:

Membership Service: Trudy Allen, Christopher Cline

Public Service: Hon. Nan Waller, Bruce Rubin

Affirmative Action: J. B. Kim, Dennis Karnopp

Public Leadership: Tualatin Valley Community Television (Dave Slay)

Wallace P. Carson Jr., Award for Judicial Excellence: Hon. Ann Aiken

Award of Merit: David Frohnmayer

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
From: Kathleen Evans, Chair, Policy & Governance Committee and
Kellie Johnson, Chair, Member Services Committee
Re: Signature Requirement for BOG Nominations

Action Recommended

Consider the recommendation of the Policy & Governance and Member Services Committees that candidates for the BOG not be required to submit petitions signed by ten active members.

Background

It has long been a requirement that candidates for BOG positions be nominated by at least 10 active members in the prospective candidate's region.¹ A similar requirement was established for House of Delegates candidates in 1996. In June, at the joint request of the Policy & Governance and Member Services Committees, the BOG voted unanimously to eliminate the 10-signature requirement for HOD candidates. Consideration of whether to eliminate the 10-signature requirement for BOG candidates was deferred until July, so that input could be solicited from the Urban/Rural Task Force.

The two committees met in July on this issue. Ann Fisher reported that she had discussed this issue with the Task Force, which supported the notion of eliminating the 10 signature requirement. Several people mentioned the difficulty lawyers in rural areas or even small firms have in obtaining the signatures. Others questioned whether the 10-signature requirement has any validity as an indicator of a candidate's qualifications or future performance. After discussion, the committees voted unanimously to recommend elimination of the 10-signature requirement for BOG candidates.

As with the HOD signature requirement, this will require a statutory change that won't be acted on by the legislature until the 2011 session. Without an emergency clause, the changes would not be effective for the HOD elections held in April of 2011 (for terms beginning on election) or the BOG elections that will be held in October (for terms beginning January 1, 2012).

¹ **9.040 Election of governors; rules; vacancies.** (1) The election of governors shall be held annually on a date set by the board of governors. Nomination shall be by petition signed by at least 10 members entitled to vote for such nominee. Election shall be by ballot. Nominating petitions must be filed with the executive director of the bar. The board shall establish a deadline for filing nominating petitions.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 29, 2009
From: Kathleen Evans, Chair, Policy & Governance Committee
Re: IOLTA Certification

Action Recommended

Approve proposed statutory language and an RPC amendment to change IOLTA certification from a disciplinary to an administration matter.

Background

Oregon lawyers who hold client funds are required to maintain them in an interest-bearing Lawyer Trust Account. If the amount of the funds or the anticipated period for which they will be held is such that the funds cannot earn “net interest” for the client, the funds are subject to the Interest on Lawyer Trust Account program and must be held in a pooled account (the IOLTA account) from which the interest is paid to the Oregon Law Foundation.

Since 2006, lawyers have been required to certify annually that they are in compliance with the rules governing IOLTA accounts:

RPC 1.15-2(m): Every lawyer shall certify annually on a form and by a due date prescribed by the Oregon State Bar that the lawyer is in compliance with Rule 1.15-1 and this rule. Between annual certifications, a lawyer establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of establishing the account, on a form approved by the Oregon Law Foundation.

That language was part of a package of changes to the trust accounting rules approved by the HOD in 2005 that were intended, in part, to clarify the IOLTA requirements and put them all in a single place where lawyers were likely to find them. An unforeseen consequence of adopting RPC 1.15-2(m) was that making non-compliance a disciplinary matter increased the workload of DCO with, in Disciplinary Counsel’s opinion, “little gain.” (In 2009, approximately 400 lawyers had failed to file certificates of compliance, necessitating the opening of a disciplinary file in each case; most will likely resolve in an admonition or reprimand.)

Disciplinary Counsel suggested that the IOLTA compliance requirement should be handled like bar dues and PLF payments, where a failure to comply results in an administrative suspension rather than discipline and reinstatement is approved by the Executive Director upon proof of compliance and payment of requisite fees. The Policy & Governance Committee recommends that DCO’s suggestion be implemented.

Substituting an administrative for a disciplinary sanction will require the addition of new language to ORS Chapter 9 (the Bar Act). If a bill is submitted and passed in the 2011

legislative session, it would be effective at the beginning of 2012. We would also need to seek repeal of RPC 1.15-2(m). Because that is an amendment to an existing rule, HOD approval would be needed before the amendment could be submitted to the Supreme Court. Finally, the BOG will also need to develop and propose to the Supreme Court amendments to the Bar Rules of Procedure relating to reinstatement after the administrative suspension.

Following is proposed statutory language for submission to the 2011 legislature:

Proposed ORS 9.201 Trust account certification; effect of failure to file certificate; reinstatement.

(1) Every active member shall certify annually on a form and by a due date prescribed by the Oregon State Bar whether the member maintains a lawyer trust account in Oregon and, if so, disclose the financial institution and account number for each such account.

(2) Any member who does not file the certificate required in subsection (1) shall, after 60 days' written notice of the default, be suspended from membership in the bar. The notice of default shall be sent by the executive director, by registered or certified mail, to the member in default at the last-known post-office address of the member. Failure to file the certificate within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the member in default. The names of all members suspended from membership under this subsection shall be certified by the executive director to the State Court Administrator and to each of the judges of the Court of Appeals, circuit and tax courts of the state.

(3) A member suspended for failing to file a trust account certification shall be reinstated only on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees or contributions.

The RPC change will be simple, merely eliminating RPC 1.15-2(m) and renumbering the final paragraph in the rule. Language for the Bar Rules of Procedure has not yet been drafted by staff.

Finally, the Committee recommends presenting the RPC 1.15-2 change to the HOD in 2010, in advance of the 2011 legislature's action on the proposed new statute. The HOD would be asked to approve the RPC change if the legislature adopts the new statute. This will give the BOG a chance to gauge the members' support for the change and avoid an awkward situation if, after the legislation is approved, the HOD balks at changing the RPC.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
From: Kathleen Evans, Chair, Policy & Governance Committee
Re: Amendment to OSB Bylaws—Diversity Mission

Action Recommended

Consider the recommendation of the Policy and Governance Committee to amend OSB Bylaw

Background

In June, the BOG received and the report of the Diversity Mission Task Force and adopted its recommendations for a new value statement, new functions and new diversity programmatic goals reflecting the OSB's commitment to diversity:

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

The value statement and programmatic goals will be expressed in long range plan. The diversity functions should be incorporated into the OSB bylaws along with the other functions of the bar. In addition to adding the new functions, the committee suggests minor modification of the existing language for consistency:

Section 1.2 Purposes

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

The ~~Bar fulfills that mission through the following~~ functions:

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

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

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

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

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

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

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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 7, 2009
From: Policy & Governance Committee, Kathy Evans, Chair
Re: Proposed amendment to MCLE Rule 3.2(c)

Action Recommended

Approve the proposed amendment to MCLE Rule 3.2(c)

Background

After lengthy discussions at the June 12 and August 7 meetings, the MCLE Committee recommends amending MCLE Rule 3.2(c) as follows:

3.2 Active Members.

* * *

(c) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule 5.5(b). For purposes of this rule, the first reporting period that ~~may~~ shall be skipped will be the one ending on December 31, 2009.

At the June 12 meeting of the MCLE Committee, bar member Stephen Mountainspring asked the MCLE Committee to review staff's interpretation of the above-referenced rule.

In correspondence with the MCLE Administrator earlier this year, Mr. Mountainspring indicated that he does not want to skip the 12/31/2009 reporting period; he wants to skip the 12/31/2012 reporting period. It was explained to him that he is not prohibited from claiming any access to justice credits during the 12/31/2009 reporting period and any that he completes will count toward his minimum requirement of 45 credits. However, access to justice credits are not required for the 12/31/2009 reporting period and he may skip completing any a/j credits during this reporting period if he chooses.

Pursuant to MCLE Regulations 3.300(a) and 6.100, which are set forth below, any access to justice credits that he completes during the 12/31/2009 reporting period will not carry over as access to justice credits and he will be required to complete 3.0 A/J credits during the 12/31/2012 reporting period.

3.300 Application of Credits.

(a) Legal ethics and access to justice credits in excess of the minimum required can be applied to the general or practical skills requirement.

6.100 Carry Over Credit. No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse education credit must be earned in each reporting period. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

Based on the information provided in MCLE Rule 3.2(c), the schedule for the required completion of access to justice credits is as follows:

Three-year reporting period ending:

| | |
|------------|--------------------------|
| 12/31/2009 | A/J credits not required |
| 12/31/2010 | A/J credits not required |
| 12/31/2011 | A/J credits not required |
| 12/31/2012 | 3.0 A/J credits required |
| 12/31/2013 | 3.0 A/J credits required |
| 12/31/2014 | 3.0 A/J credits required |
| 12/31/2015 | A/J credits not required |
| 12/31/2016 | A/J credits not required |
| 12/31/2017 | A/J credits not required |

As you can see from the schedule, which was reviewed by the Board of Governors in February 2008 and by the Oregon Supreme Court in March 2008, the access to justice credit requirement may not be skipped for the 2012, 2013 and 2014 reporting periods. It was not intended that each bar member decide the reporting period in which he or she completes the access to justice credit requirement.

At the June 12 meeting, the MCLE Committee agreed that, due to the current permissive language in Rule 3.2(c), Mr. Mountainspring could complete his access to justice credits in 2009 and not report any a/j credits in 2012. This decision was conditional and contingent upon review of the documents submitted to the Court in late February 2008.

After reviewing the documents and schedule submitted to the Court, the Committee voted (four in favor and one abstention) at the August 7 meeting to amend Rule 3.2(c) and replace the word "may" with "shall" in order to avoid any future confusion.

If the proposed rule amendment is approved by the Supreme Court, Mr. Mountainspring will be required to complete his access to justice credits according to the schedule submitted to the court in early 2008.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 11, 2009
From: Robert Vieira, Public Member Selection Committee Chair
Re: Board of Governors Public Member Recommendation

Action Recommended

Appoint Maureen Claire O'Connor as Public Member to the Board of Governors for a four-year term.

Background

The Public Member Selection Committee conducted interviews on July 16. Based on those interviews and the information provided by the candidates, the committee recommends the appointment of Maureen Claire O'Connor. Ms. O'Connor is an instructor at Portland State University; her application and resume are attached for your review.

Should Ms. O'Connor not accept the appointment, the committee recommends JoAnn Jackson of Portland. Ms. Jackson's application also attached for your review.

Each of the 11 candidates interviewed for the seat on the BOG were impressive. The committee recommends that the candidates not selected for the BOG be appointed to serve the bar in another capacity. Those candidates include:

Juliana Andrade
Daniel Griffith
JoAnn Jackson
Ronald Johnson
Ryan Mattingly
Bryne Moore
Philip Paquin
Paresh Patel
Claudia Pieters
Ralph Reid Jr.

Oregon State Bar Public Member Application

Oregon
State
Bar

Name: (First, Middle, Last)
Maureen Claire O'Connor

Residence Address: (number, street, city, state, zip)
3800 NE 23rd Avenue
Portland Oregon 97212

Residence Phone:
503-281-1397

County: Multnomah

Office Phone:
503-725-4728

Office Address: (number, street, city, state, zip)
Portland State School of Business
631 SW Harrison #693, Portland, OR 97207

E-Mail Address:
maureeno@sba.pdx.edu

County: Multnomah

Office Mailing Address: (if different)
Portland State School of Business
P.O. Box 751, Portland, Oregon 97207

Occupation: (and job title, if any)

County: Multnomah

Instructor, PSU School of Business

College and Post-Graduate Education:

| School | Location | Dates | Degrees |
|-------------------------|--------------------|-------------|---------|
| Northwestern University | Evanston, Illinois | 1974-78 | BA |
| University of Oregon | Eugene, Oregon | 1980-81, 83 | MS |

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

| Dates (from/to) | Employer and Position Held | Address |
|-----------------|---|------------------|
| 1999-Present | Instructor, PSU School of Business | see above |
| 2007-2009 | Major Gifts Officer, Portland State School of Business | |
| 2003-2007 | Assistant Dean for Student Affairs, Portland State School of Business | |
| 1999-2003 | Director, Student Services, Portland State School of Business | |
| 1995-1999 | Maureen O'Connor Marketing Communications | Portland, Oregon |

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

| Dates (from/to) | Organization and Position Held | Address |
|-----------------|---|------------------|
| 1996-2000 | Board member, Third Angle New Music Ensemble | Portland, Oregon |
| 1999-present | Multiple university committees, Portland State University | |

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

In my role as Assistant Dean for the School of Business, I frequently dealt with issues of acceptable conduct and conflict on the part of students and faculty. Since we are a professional school, chartered with educating the next generation of business professionals, I found it an essential part of my job to assess behavior, policies and standards of the school, its faculty and students, and to determine what changes or consequences were necessary.

I am interested in this role since it deals with many of the same issues -- standards, conduct, transparency, fairness and ethical responsibility -- at the professional level. Accountability and the public trust are essential for a functioning system of laws that advocates for and protects the rights of individuals and organizations, and I view the work of the Board of Governors as an important self-governing mechanism designed to address accountability and the public trust.

Similarly, in my role as a private citizen, I am strongly interested in improving access to justice and the legal system for all members of society, regardless of background or socioeconomic status. Equal access to the law helps ensure security and stability for individuals and the communities in which they live.

Miscellaneous:

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

Yes No

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

Yes No

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

Opportunities:

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

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

Committees:

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

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

| Name | Address | Phone |
|---------------------|------------------------------|--------------|
| Scott Dawson, Ph.D. | Dean, PSU School of Business | 503-725-3721 |

| Name | Address | Phone |
|----------------------|--|--------------|
| Darrell Brown, Ph.D. | Associate Dean, PSU School of Business | 503-725-3096 |

| Name | Address | Phone |
|---------------------------------------|--|--------------|
| Chris Riley, Strategic Communications | Apple Computers, Cupertino, California | 408-550-3953 |

| Applicant's Signature | Today's Date |
|---|--------------|
|  | May 19, 2009 |

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

through Steve Piucci

Application deadline is May 22, 2009. Return applications to Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935

Maureen O'Connor

3800 NE 23rd Ave.
Portland, Oregon 97212
503-281-1397; maureen_claire@comcast.net

Work Experience

12/98 - present

Instructor, Portland State University School of Business

Teach undergraduate and graduate level marketing and advertising classes.

9/07 - present

Major Gifts Officer

Portland State University School of Business

Responsible for cultivating and securing major gifts in support of the school's faculty, students and its major \$30 million capital project, the new School of Business building. Responsible for qualifying 40-50 new prospects annually.

7/03 - 9/07

Assistant Dean for Student Affairs

Portland State University School of Business

Responsible for all student services through the School of Business, serving nearly 3,000 undergraduate business majors. Major areas of responsibility:

Marketing Communications: Responsible for all marketing communications, including communications to students, employers and general public. Led a repositioning campaign for the School, resulting in redefining the SBA brand as Oregon's Leading Business School, expressed through new collateral, website and advertising.

Management: Oversee all services leading to successful academic experience for undergraduate business majors, including orientations, academic and career advising, recruitment and retention, student leadership, scholarships, and events. Manage staff of 10 with budget of \$400,000.

Strategic Planning: Serve on School management team with Dean, Associate Dean, Director of External Relations and Director of MBA Programs to establish goals and strategies to become a nationally-renowned business school. Provide leadership to faculty and management to develop budget strategies, curriculum and operations improvements, and student satisfaction initiatives.

Operations: Oversee daily management of class scheduling, part-time faculty support, classroom renovations, liaison with University departments (admissions, research, campus planning, budget and finance, registrar, academic affairs, international student affairs).

12/98 - 7/03

Director, Student Services

Portland State University School of Business

Oversee all functions of SBA Student Services Office, including managing staff of seven, all student advising, admissions, and degree awards, as well as student communications and support services.

7/94 – 7/99

Maureen O'Connor Marketing Communications, Principal

Strategic Planning, Thinking and Research - Wieden & Kennedy

- Coordinated, analyzed and distilled 1998 World Cup research project in 11 countries, resulting in strategic brief and video presentation to Nike.
- Principal creative researcher, investigating creative department's selection of concept for Microsoft's successful "Lusk" image advertising.

Adjunct Professor and Writer, Portland State University School of Business

- Developed marketing and advertising for Portland State University alternative degree completion program.
- Served as adjunct professor of marketing, teaching marketing strategy and basic marketing to upper division business students (Spring 1998)

Marketing Strategist and Project Coordinator – Oregon Symphony

- Served as project coordinator for Nerve Endings concert series, in charge of research, marketing and advertising strategy for experimental concerts targeting 19-39 year-olds.
- Developed and implemented marketing strategies to increase single

Fundraising Consultant

Develop annual giving plans, cultivate donors, analyze giving climate and write grants for non-profit organizations including Oregon Symphony, Classroom Law Project, Guide Dogs for the Blind and Oregon Museum of Science and Industry.

Public Relations Consultant

Communications strategy, writing, media relations, project management and event planning for HealthFirst, Portland Brewing Company, WPH Architecture, InSync Partners and others.

10/92 - 7/94

Marketing/Development Consultant – Oregon Symphony

Responsible for marketing and advertising projects, as well as all foundation and government grants, raising approximately \$200,000 annually. Acted as interim marketing manager during transition period 10/92 to 3/93, handling annual subscription campaign.

4/85 - 7/94

**Public Relations and Advertising Account Manager
Knoll, Dodge and Partners, Inc.**

Primary clients included Willamette Industries, Northwest Natural Gas, Warn Industries, Emanuel Hospital, Viking Industries, Oregon Symphony, and others.

Education

1980-81, 1983

University of Oregon, M.S. in Journalism.

Primary concentration in print journalism, secondary concentration in advertising.

1974 – 1978

Northwestern University, B.A. in Speech.

Major in Communications, minor in English. Broad liberal arts background.

Oregon State Bar Public Member Application

Oregon
State
Bar

Name: (First, Middle, Last)

JoAnn Jackson

Residence Address: (number, street, city, state, zip)

6404 NE 41st Avenue, Portland, OR 97211

Residence Phone:

503-287-0934

Office Phone:

County: Multnomah

Office Address: (number, street, city, state, zip)

E-Mail Address:

joanntwitty@msn.com

County:

Office Mailing Address: (if different)

Occupation: (and job title, if any)

County:

College and Post-Graduate Education:

| School | Location | Dates | Degrees |
|---------------------------|--------------|-------------------------------|---------|
| Concordia University | Portland, OR | February 2006 - December 2007 | MBA |
| Concordia University | Portland, OR | Graduated December 2005 | BS |
| Portland State University | Portland, OR | Undergraduate courses | |

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

| Dates (from/to) | Employer and Position Held | Address |
|-----------------|--|-----------------------------------|
| 7/2006-current | Consultant, Mediator and Coach | 6404 NE 41st Ave, Portland, OR |
| 11/1994-07/2006 | American Red Cross, Director & Manager | 3131 N Vancouver Ave, Portland OR |

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

| Dates (from/to) | Organization and Position Held | Address |
|-----------------|---|-----------------|
| 1/2009-current | City of Portland, Auditor's Office-Citizen Review | Portland, OR |
| 2000-2005 | Oregon Mediation Association (OMA) | State of Oregon |

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

I have lived in Oregon most of my life, and have been educated here and raised a family here. I value the state, and support its legal environments — all of which are a part of the liveability in the state. Maintaining that liveability status includes a variety of state attributes and conditions, but also includes the involvement of citizen volunteers in support of a fair and balanced oversight of the professional, and legal judicial system.

My background in management, business consulting, dispute resolution and mediation have provided me with skills and experience in working with people of all diversities and differences. Both my education and work experiences have contributed to my ability to openly review information, analyze situations, collaborate with others and come to reasonable conclusions based on the information researched and/or provided. In addition, I am comfortable working within environments that include specific guidelines, rules and measurements, city and state regulations, governing oversight entities, and legal adherences.

Overall, I believe that I am well suited to serve as a public volunteer member of the Oregon State Bar. And, I would appreciate an opportunity to serve in this capacity. It is indeed a valued service.

JoAnn Jackson

Miscellaneous:

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

Yes No

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

Yes No

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

Opportunities:

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

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

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

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

| Name | Address | Phone |
|------------------|--|-------|
| Laurel Singer | 5606 SE Lincoln Street, Portland, OR 97215 | |
| Mary Forst | 1555-H NW Ferry Road, Portland, OR 97231 | |
| Barbara Anderson | 2121 SW Edgewood Road, Portland, OR 97201 | |

Applicant's Signature:  Today's Date: 05/19/2009

Where did you learn about the public member opportunities available at the Oregon State Bar?
 Barbara Anderson (above)

Application deadline is May 22, 2009. Return applications to Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935

Oregon State Bar
Meeting of the Board of Governors

November 15, 2008

Open Session Minutes

Revised June 25, 2009

The meeting was called to order by President Rick Yugler at 12:45 p.m. on Saturday, November 15, 2008, and was adjourned at 5:15 p.m. Members present from the Board of Governors were Kathy Evans, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, Kellie Johnson, Gina Johnnie, Christopher Kent, Karen Lord, Audrey Matsumonji, Stephen Piucci, Carol Skerjanec, Bette Worcester, Terry Wright, and Rick Yugler. Board members-elect present were Steve Larson, Mitzi Naucler and Karen Lord. OSB staff present was Karen Garst, Teresa Schmid, Sylvia Stevens, Jeff Sapiro, Rod Wegener, Susan Grabe, Danielle Edwards, and Teresa Wenzel. Present from the PLF were Jeff Crawford, Ira Zarov, and Ron Bryant. Also present were Ross Williamson and Willard Chi from the ONLD.

1. Work Session - Finance and Operations

Mr. Wegener, Oregon State Bar CFO, present information concerning the bar's Finance and Operations Department, including a listing of F&O staff members, and a review of the department's responsibility for accounting, information technology and design, and facilities management. Mr. Wegener reminded the BOG that the OSB is now a landlord, with attendant opportunities and obligations. He also identified issues for F&O in, which include selection of auditors, creating a five-year forecast, reviewing the investment portfolio, and reviewing the bar's reserve and policies.

2. Report of Officers

A. Nominating Committee

1. Nomination of Kathy Evans as President-elect

Motion: The Nominating Committee presented Kathy Evans as its recommendation for President-elect and the board unanimously approved the recommendation.

B. Swearing in of New Board Members

Mitzi Naucler, Karen Lord and Steve Larson were sworn in as new board members. Ms. Lord's term commenced immediately, as she is replacing Mr. Lehner. The terms of Ms. Naucler and Mr. Larson will begin on January 1, 2009.

C. Report of the President

Mr. Yugler thanked the board for moving forward on the House of Delegates meeting, which was a success. Activities in which he had participated included speaking at investitures, meeting with students. He will be Master of Ceremonies at the awards banquet in December.

1. Meeting with Chief Justice Paul J. De Muniz

Discussion with the Chief Justice on October 30, 2008, included the Admissions Task Force Report and reciprocity admission; the suggestion of creating a water court, which is not presently supported by the Chief Justice; public funding for judicial elections, which the Chief Justice opposes; the Chief Justice's continued concern about how judges are selected; and possible legislative changes such as lengthening judicial terms.

D. Report of the President-elect

1. Miscellaneous

Mr. Gaydos encouraged the board to review the Chief Justice's strategic plan. He informed the board that Frank Garcia is doing a great job with the Affirmative Action Program and he encouraged board members to attend the Urban League Luncheon, which occurs yearly. He thanked board members who attended the law school events supporting the Affirmative Action Program and Ms. Fisher for attending the PLF practical skills luncheon. He informed the board that he is pleased to follow Mr. Yugler as president of the bar.

E. Report of the Executive Director

1. Miscellaneous

Ms. Garst reported on a letter submitted by Mr. Danny Lang asking the board to reconsider the quorum requirements for the HOD, but the board took no action on the ground that the question was resolved by the vote at the HOD meeting on November 7. Ms. Garst asked the board members to submit their committee preferences before the retreat ended.

F. Oregon New Lawyers Division

1. Report of Chair

Mr. Chi added the following information to his written report: He attended the HOD meeting; the ONLD attended the PLF's Learning the Ropes seminar; ONLD had its annual meeting; and participated in BOWLIO. Mr. Chi thanked the board for making him feel welcome and thanked Ms. Fisher for her time as BOG liaison to the ONLD.

Ross Williamson, the chair-elect of the ONLD, introduced himself and gave the board a summary of proposed activities in 2009 including meeting with the BOG in Salem and Ashland; working with Frank Garcia to link public groups to the Affirmative Action Program and the ONLD; working with Multnomah Bar Association's young lawyers; meeting with Washington's state bar, Clark

County's bar, Washington state's executive committees, and Washington's young lawyers; participating in the Access to Justice Advisory Committee through its new seat in that group; and planning a second rafting trip.

3. Board Members' Reports

The board members reported that this is a slow time of year and many of the sections and other groups are not meeting. Activities in which the board members participated included section meetings, dinners/receptions, the House of Delegates meeting, BOWLIO, PLF Learning the Ropes, Ms. Garst's retirement party, local bar meetings, fund raising for Campaign for Equal Justice, PLF Board of Directors meeting, a national women lawyer's conference (Kellie Johnson was a speaker), the Chief Justice's advisory committee, the Futures Conference, and Affirmative Action Committee meeting.

4. Professional Liability Fund

Mr. Bryant reported that the PLF paid more than 900 claims in 2008 and, although the number of claims is high, the severity of the claims remained low and the PLF budget remains on target for 2008, with sufficient reserves to cover any revenue shortfall. Other PLF development reported by Mr. Bryant: a new lawyer was hired and is doing well; in the third quarter, the OAAP was accessed by 220 attorneys and the number is 500 which is up from 2007; new officers for 2009 are Jim Rice chair-elect, Ron Bryant vice-chair, and Kandis Nunn secretary/treasurer. Finally, Mr. Bryant explained that the PLF submitted only one name to the Board of Governors for appointment to the PLF board because (a) the person is highly qualified and (b) the other two candidates, also highly qualified, had conflicts.

Mr. Crawford presented information concerning the PLF Excess, Pro Bono, and Claims Made Plans. He also informed the board that reinsurance renewal rates for the 2009 have not been set yet, but are expected to remain about the same as 2008. The PLF will approve the excess rates at its December meeting, but requests the BOG approve them now because the BOG will not meet again before the end of 2008.

- A. Approval of Revisions to PLF Claims Made Plan
- B. Approval of Revisions to PLF Excess Plan
- C. Approval of Revisions to PLF Pro Bono Plan

Motion: Ms. Skerjanec moved, Ms. Johnson second, and the board unanimously passed the motion to approve the PLF Excess, Pro Bono, and Claims Made Plans.

- D. Approval of PLF Excess Rates

Motion: Ms. Worcester moved. Ms. Johnson seconded, and the board unanimously passed the motion to approve the excess rates subject to their approval by the PLF Board of Directors.

5. Special Appearances

A. Admissions Task Force Report

The board continued its consideration of the Admissions Task Force Report, which had been tabled at its last meeting. The board discussed whether to accept the report or send it back to the task force for further study of how the different parts of the bar exam should be weighted and the role of the Board of Bar Examiners, the Supreme Court, and Board of Governors in the process.

Motion: Ms. Skerjanec moved, Ms. Wright seconded and the board passed the motion to forward the report to the Policy and Governance Committee with directions to look into the issue further and come back to the board with a recommendation. Ms. Johnson opposed the motion.

Mr. Yugler will send a letter to the task force members thanking them for their time and effort.

6. OSB Committees, Task Forces, and Study Groups

A. Ethics Opinion

1. Propose Formal Ethics Opinion

Ms. Stevens presented information and answered questions concerning the proposed formal ethics opinion on employment negotiations by government lawyers and judges with the DOJ.

Motion: Mr. Gaydos moved and Ms. Johnson seconded a motion to accept the formal ethics opinion. After discussion, the motion was withdrawn.

Discussion focused on whether the term “negotiate” was sufficiently defined in the opinion and whether there should be some reference to any constitutional or other limitations on a judge’s employment negotiations during the term of office.

Motion: Mr. Gaydos moved, Ms. Johnson seconded, and the board unanimously passed the motion to send the proposed ethics opinion back to the committee with comments and asking for more clarity.

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

A. Access to Justice Committee

1. Update

Ms. Wright reported that bar members will receive an e-mail encouraging them to report 2008 *pro bono* hours and that the 2009 dues statement will include a form for attorneys to report their *pro bono* hours. There will be a place on the

2009 form to report donations to low-income legal services organizations, but not the amount. This will provide data on organizations, in addition to the Campaign for Equal Justice, receiving support from the legal community.

B. Budget and Finance Committee

1. 2009 OSB Budget

Mr. Wegener reported that due to the downturn in the financial markets; the bar's financial situation is not where it was predicted to be at this point. The cost of the new building and the tenant leases are right on target, but investments have taken a big hit. He presented the proposed 2009 Budget to the board, together with options for reducing the anticipated deficit: seeking a dues increase in 2010 instead of 2011; removing \$250,000 in expenses through reductions to various line items; increasing dues in 2011 *and* adjusting the 2009 budget downward; seeking a \$50 increase in 2010 and a smaller amount each year thereafter until the budget is balanced; or any combination of those options. The board had a lively discussion of various ways to bring the budget into line for 2009 and beyond, emphasizing the need to assure members that every possible cost saving had been implemented before asking them for more money.

Motion: Mr. Kent moved, Mr. Gaydos seconded, and the board unanimously passed a motion instructing Ms. Garst to identify \$236,000 in adjustments to the 2009 budget for the board to consider at a special meeting in December at a time and date to be determined.

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

The meeting was called to order by President Gerry Gaydos at 1:00 p.m. on Friday, June 12, 2009 and adjourned at 4:50 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Michelle Garcia, Gerry Gaydos, Ward Greene, Gina Johnnie, Kellie Johnson, Chris Kent, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. Staff members present were Teresa Schmid, Sylvia Stevens, Margaret Robinson, Frank Garcia, Emily Yip, Jeff Sapiro, Susan Grabe, Rod Wegener, Judith Baker, Kay Pulju, Katherine Petrecca, George Wolff, and Teresa Wenzel. Present from the PLF were Ron Bryant, Ira Zarov, and Tom Cave. Also present were Lauren Paulson, Ross Williamson (ONLD), Judge Adrienne Nelson, David Peterson (Pro Bono Committee), and Maya Crawford (Campaign for Equal Justice).

1. Report of Officers

A. Report of the President

Mr. Gaydos waived his oral report to allow additional time for Mr. Paulson and Judge Nelson to make their presentations.

B. Report of the President-elect

Ms. Evans updated the board on her attendance at the Northwest Bars Conference, the Western States Bar Conference, the ABA Midyear Meeting, the Lane County Spring Bash, and the PLF board of directors meeting; and reported that, along with Mr. Gaydos and Ms. Grabe, she has been keeping an eye on the budgeting process at the legislature.

C. Report of the Executive Director

Ms. Schmid highlighted issues included in her written report: (1) There will be a delegation of lawyers visiting the bar from China. (2) Member comments from the Eastern Oregon tour included the desire that HOD meetings be held in Portland rather than at the coast, the need for the bar to become more aggressive in find ways to reach attorneys through technology such as video conferencing, and concerns about how the downturn in the economy is affecting clients' access to justice. She reported that (3) the Washington State Bar Association has moved to paperless board agendas and that the OSB hopes to be paperless by October. (4) To help reduce the budget, bar staff has been taking on jobs previously done by contract workers, Human Resources is evaluating salaries to see that they are inline with corporate salaries in the area, and changes in Legal Pubs should lead to additional savings by providing more books and services to members electronically. (5) The Member Stimulus Package includes a new webpage, podcasts and videos that members can easily share, and new guidelines for

the Model Means Program. (6) Regulatory Services and the Client Assistance Office are evaluating the system for monitoring probation and diversion to determine if it can be used more often and effectively. (7) The OSB building has received an Energy Star rating and a recent universal design audit of the bar building resulted in a very favorable report. (8) The BBX intends to change the composition of the bar exam to include an additional MPE question and standardized essay questions; the changes should be implemented by February 2012.

D. Oregon New Lawyers Division

1. ONLD Report

Mr. Williamson highlighted his written report adding that Jessica Cousineau is the chair-elect of the ONLD and will begin attending meetings with him to become acquainted with the board before her term as chair begins.

2. Board Members' Reports

Board members waived their reports to allow more time for Mr. Paulson and Judge Nelson to make presentations.

3. Professional Liability Fund

A. General Update

Mr. Zarov informed the board that in 2008 the PLF had an increase of 10% in cases for an all-time high of 958 cases and that the cases are becoming increasingly complicated due to the economy.

B. Claims

There were about 100 more claims in 2008 and they were more severe than 2007.

C. Loss Prevention/OAAP

OAAP/PMA staff is very busy but doing well. They have updated three handbooks, and produced two well-attended CLEs.

D. Excess Program Treaty Date

The PLF Board of Directors will be reviewing its excess plan and will have it ready for BOG review in October.

E. Financials

Mr. Cave indicated that although the PLF has suffered significant investment losses in 2008, the financial situation has rallied and 2009 returns look positive. Because it appears claims will be fewer and smaller than in 2008, 2009 is expected to be a good, or

at the very least a better, year. Mr. Bryant indicated the PLF changed auditors and received a very clean audit for 2008.

4. Special Appearances

A. Judicial Evaluation

Lauren Paulson presented his proposal for judicial evaluations. He pointed out the importance for attorneys of having a general idea of how judges rule so they will be able to better advise and defend their clients. He presented a brief history of the BOG's actions regarding judicial evaluation and presented materials containing various websites supporting his views, which he felt might be of concern to the board. He concluded by encouraging the board to pursue judicial evaluations.

B. ABA Representatives

Ms. Harbur and Judge Nelson presented a written summary of the actions of the ABA House of Delegates at its February 2009 meeting.

C. Diversity Training

Judge Adrienne Nelson facilitated a diversity training session, "Walk of Privilege," with the board and staff. After the exercise, the board met and discussed its perceptions of the questions and how the process and the questions effected them personally. Board members found it an enlightening and moving experience.

5. Rules and Ethics Opinions

A. Proposed Amendment to RPC 1.18

Action: The board passed the committee motion to approve the addition of the following language to amend Oregon RPC 1.18(d) as follows. Ms. Wright abstained.

(d) When the lawyer has received disqualifying information as defined in paragraph (c), [R]representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

([1] 2) 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

(i) the disqualified lawyer is timely screened from any participation in the matter; and

([2] ii) written notice is promptly given to the prospective client.

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

A. Client Security Fund

1. CSF 08-41 Wilson (Lehman) Appeal

Ms. Lord presented information concerning CSF 08-41 Wilson (Lehman).

Action: Ms. Naucner moved, Ms. Evans seconded, and the board unanimously passed the motion to deny payment in CSF Claim No. 08-41 Wilson (Lehman).

B. Diversity Planning Task Force

1. DPRF Recommendation

Action: The board unanimously passed the committee motion to approve the recommendation of the Diversity Planning Task Force regarding a new value statement, diversity function, and diversity programmatic goals.

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

A. Access to Justice Committee

1. ABA Model Rule 6.1

Maya Crawford and David Peterson spoke in support of the Access to Justice Committee's proposal to add ABA Model Rule 6.1 to Oregon RPCs. Ms. Crawford presented background on the rule and the need for pro bono services in Oregon where the percentage of the population below the poverty level averages 19%, increasing to 50% in Washington, Clackamas, and Deschutes Counties. The economic decline has added to an increase in domestic violence and foreclosures and there are only 100 legal aid attorneys to serve 100,000 individuals. She pointed out the agenda exhibit showing past bar presidents' support for the rule and informed the board that only six states do not have the rule.

Mr. Peterson told the board that moving the aspirational standard to the RPCs would encourage all bar members to provide pro bono service; it would bring Oregon inline with other states; all three law schools in Oregon already use the rule; it would standardize the rule with other states and make it easier for lawyers that relocate; and it would streamline the pro bono reporting process. He emphasized that the standard would not be a requirement and language has

been included in the rule to make it clear that lawyers would no be subject to discipline for failing to meet the aspirational standard.

Action: The board passed the committee motion to present the addition of ABA Model Rule 6.1 to the House of Delegates. Yes, 7 (Gaydos, Johnson, Lord, Matsumonji, Naucler, Vieira, Wright); no, 6 (DiIaconi, Evans, Fisher, Johnnie, Kent, Piucci); and abstaining, 2 (Garcia, Greene).

2. Expansion of the Modest Means Program

Action: The board unanimously passed the committee motion to approve the revisions to the Modest Means Program policies regarding client eligibility and attorney fees to accommodate program expansion.

B. Budget and Finance Committee

1. OSB Investment Policy Evaluation

Mr. Greene updated the board on the review of the investment policy by Mr. Wegener and Ms. Garcia. Mr. Wegener is in the process of preparing the 2010 budget. He should have it completed for the October board meeting and no increase to dues is anticipated.

C. Policy and Governance Committee

1. Section Grant Applications

Action: Ms. Johnson moved, Ms. Wright seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for amending the OSB Bylaws.

Action: The board unanimously passed the committee motion to adopt 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 interest 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.

2. HOD Nominations

Action: The board unanimously passed the joint motion of the Member Services Committee and Policy and Governance Committees to introduce a bill in the 2011 legislative session to eliminate the provision in ORS 9.152(1) requiring ten signatures on the petition for a HOD candidacy.

The board briefly considered whether also to repeal the Board of Governors' signature requirement, but deferred further discussion until the August meeting.

D. Member Services Committee

Frank Garcia introduced the Affirmative Action Coordinator, Emily Yip. Ms. Yip graduated from law school in Wisconsin. She is licensed to practice law in Wisconsin, California, and Oregon, where she recently passed the bar.

E. Public Affairs Committee

1. Update on 2009 Legislative Session

Mr. Piucci presented the committee's recommendation that the OSB support House Bill 2335, which will defer implementation of Measure 57 and prevent a 17% cut to various public safety budgets, including the judiciary's budget.

Action: The board passed the committee motion to support House Bill 2335 with Ms. Johnson abstaining.

8. Consent Agenda

Action: Ms. Wright moved, Ms. Garcia seconded, and the board unanimously passed the motion to approve the consent agenda without change.

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

Mr. Greene thanked Mr. Gaydos for allowing him the opportunity to speak at the swearing in ceremony.

**Oregon State Bar
Board of Governors Meeting
June 12, 2009
Judicial Proceedings Agenda**

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

A. Reinstatements

1. Jeffrey Cancilla – 920135

Action: Mr. Greene presented information concerning the BR 8.1 and BR 8.7 reinstatement applications of Mr. Cancilla. Mr. Greene moved, Ms. Fisher seconded, and the board passed the motion to reinstate temporarily Mr. Cancilla pursuant to 8.7 and to forward a favorable recommendation to the Oregon Supreme Court that he be reinstated as an active member of the Oregon State Bar. Ms. Matsumonji and Ms. Wright opposed and Ms. Johnson abstained on that part of the motion that called for temporary reinstatement.

2. Lawrence Lee Epstein – 790386

Action: Ms. Wright presented information concerning the BR 8.1 reinstatement application of Mr. Epstein. Ms. Wright moved, Mr. Kent seconded, and the board passed the motion to recommend to the Supreme Court that Mr. Epstein's reinstatement be denied. Ms. Johnson and Mr. Piucci abstained.

3. Kathleen Eymann-Bradbury – 792202

Action: Mr. Sapiro presented information concerning the BR 8.1 and BR 8.7 reinstatement applications of Ms. Eymann-Bradbury. Ms. Fisher moved, Ms. Johnson seconded, and the board unanimously passed the motion to reinstate temporarily Ms. Eymann-Bradbury pursuant to 8.7 effective upon her completion of 25 hours of MCLE credit.

4. Susanne Marie Feigum – 991390

Action: Mr. Vieira presented information concerning the BR 8.1 and BR 8.7 reinstatement applications of Ms. Feigum. Mr. Vieira moved, Ms. Johnson seconded, and the board unanimously passed the motion to reinstate temporarily Ms. Feigum pursuant to 8.7 and to forward a favorable recommendation to the Oregon Supreme Court that she be reinstated as an active member of the Oregon State Bar.

5. Kenneth Howard Johnston – 953140

Action: Ms. Johnson presented information concerning the BR 8.1 reinstatement application of Mr. Johnston. Ms. Johnson moved, Ms. Wright seconded, and the board passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Johnston be reinstated as an active member of the Oregon State Bar effective upon completion of 25 MCLE credits. Ms. Fisher abstained.

6. 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 unanimously passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Mr. Kime be reinstated as an active member of the Oregon State Bar, the recommendation to be sent the court two weeks after notice of his reinstatement is published in the *Bulletin*.

7. Richard Rappaport – 773118

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

8. Carol Schrader – 954046

Action: Mr. Sapiro presented information concerning the BR 8.1 reinstatement application of Ms. Schrader. Mr. Greene moved, Ms. Evans seconded, and the board passed the motion to forward a favorable recommendation to the Oregon Supreme Court that Ms. Schrader be reinstated as an active member of the Oregon State Bar. Ms. Wright abstained.

9. Scott Michael Weis – 955281

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

B. Disciplinary Counsel's Report

Mr. Sapiro updated the board advising that there may be media coverage concerning a case involving Michael Shinn.

Oregon State Bar
Meeting of the Board of Governors
July 17, 2009
Special Meeting
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.

July 17, 2009

- A. Reinstatements
 - 1. Nancy J. Meserow – 820895

Action: Mr. Sapiro presented information concerning the BR 8.7 reinstatement application of Ms. Meserow. Mr. Puicci moved, Ms. Johnson seconded, and the board passed the motion to reinstate temporarily Ms. Meserow pursuant to BR 8.7. Ms. Wright abstained.

**Oregon State Bar
Board of Governors Meeting
June 12, 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. Pending UPL Litigation

1. OSB v. Layne Barlow (UPL #08-28)

The BOG voted unanimously to withdraw its prior authorization to prosecute Mr. Barlow for contempt.

2. OSB v. Cheryl Saunders (UPL #08-12)

The BOG voted unanimously to seek an injunction against Ms. Saunders to prevent further violations of ORS 9.160.

B. Pending UPL Litigation

The board received General Counsel's report on pending UPL litigation.

C. General Counsel's Report

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28-29, 2009
Memo Date: August 3, 2009
From: Jeffrey Sapiro, Disciplinary Counsel, Ext. 319
Re: Background Information Regarding Reinstatements

Action Recommended

No action is necessary. This memo is provided for information only.

Background

During the July committee meetings, some board members expressed a desire for background information about the role the Board of Governors plays in reviewing reinstatement applications and the standards that apply to such review.

In the past, Disciplinary Counsel staff has provided information about the reinstatement process either in new board member orientation sessions or to the full board as part of a work session at a board meeting. Our records indicate we last did this in February 2008, for the full board. Attached are a few pages from that presentation (dealing only with reinstatements; the presentation covered many other topics) that may help fill the information gap until we next are scheduled to appear at an orientation or work session.

Also attached is a chart recently prepared for the Policy & Governance Committee summarizing those reinstatement decisions made by the Board of Governors since January 2008, that involved the question of whether to require some accelerated course of CLE as a condition of reinstatement. P & G is looking into that issue, but the chart may help other board members recall what has been done in the recent past, as you look at future applications.

Feel free to contact me with any questions.

JDS

Reinstatements

- BR 8.1 – long term “non-active” or disciplinary – BOG sees these
- BR 8.2 – short term “non-active”
- BR 8.3 – short term disciplinary
- BR 8.4 – short term financial
- BR 8.5 – MCLE suspension
- BR 8.7 – temporary – BOG sees these

BR 8.1 reinstatement

- Who?
 - Form A resignation or inactive status transfer more than 5 years ago
 - Disciplinary suspension of more than 6 months
- Roughly 30 of these applications in 2007
- Character and fitness scrutiny
- BOG makes recommendation to Supreme Court
- Adverse recommendation triggers contested proceeding

BR 8.2 reinstatement

- Who?
 - Form A resignation or inactive transfer within last 5 years
 - Financial suspension more than 6 months ago but less than 5 years ago
- Roughly 90 of these in 2007
- Less rigorous character and fitness inquiry
- Executive Director reinstates unless question about character and fitness
- If question, BOG makes decision

BR 8.3 reinstatement

- Who?
 - Disciplinary suspensions of less than 6 months
- 15 of these in 2007
- Automatic upon filing compliance affidavit and paying fee
- No opportunity for OSB to inquire or contest

BR 8.4 reinstatement

- Who?
 - Financial suspensions (OSB or PLF assessment) within last 6 months
- 43 of these in 2007
- Executive Director takes final action

BR 8.5 reinstatement

- Who?
 - Suspension for noncompliance with MCLE
- 9 of these in 2007
- Executive Director makes recommendation to Supreme Court
- Court takes final action

BR 8.7 reinstatement

- Who?
 - Temporary reinstatement while BR 8.1 or BR 8.2 application is pending
 - Necessity often created by job or job offer
- Decision is made by BOG
- Duration is limited to 4 months

BR 8.1 Standards for Reinstatement

- Good moral character and general fitness to practice law
- Current knowledge of the law
- Burden of proof is on applicant
- Issue of reinstatement after disciplinary suspensions of fixed duration
- Is absence of further misconduct enough?
- Factors considered by Supreme Court

**BR 8.1 Reinstatements
BOG Action re: CLE Conditions**

| Meeting Date | Applicant Name | OSB Status | Experience/ Employment | CLE Conditions |
|----------------------|--------------------------|-------------------|---|-----------------------|
| June 2009 | Jeffrey Cancilla | Inactive 10 yrs | Continuous practice in other states | None |
| | Kathleen Eymann-Bradbury | Inactive 11 yrs | Lobbyist, presided over APA hearings | 25 CLE credits |
| | Susanne Feigum | \$ susp 7 yrs | Assisted with spouse's business | 45 CLE credits |
| | Kenneth Johnston | Inactive 6 yrs | BPA account executive; contract administration | 25 CLE credits |
| | Karl Kime | Inactive 16 yrs | Continuous practice in other states | None |
| | Carol Schrader | Inactive 8 yrs | DOJ Crime Victim Services Director; legal research and CLE speaking | None |
| | Scott Weis | Inactive 12 yrs | Continuous corp. counsel and practice in other states | None |
| April 2009 | Steven Groh | Form A 18 yrs | ALJ '88 – '07 | None |
| | Lucinda Moyano | Inactive 9 yrs | Com. volunteer, energy consulting | 45 CLE credits |
| | William Parker | Disc. susp. 9 yrs | Continuous legal research and writing employment | None |
| February 2009 | Alice Diffely | Inactive 16 yrs | Com. volunteer, small business | 45 CLE credits |

| | | | | |
|----------------------|-------------------|-----------------|---|----------------|
| | Tamara Herdener | Inactive 7 yrs | Continuous military lawyer | None |
| | Rachel Kirtner | Inactive 8 yrs | Practice in other state last four years | None |
| | Dover Norris-York | Form A 6 yrs | Limited paralegal work | 45 CLE credits |
| | Steven Novick | Inactive 7 yrs | Various policy, legislative and political positions | None |
| | Sandra Oster | Inactive 6 yrs | Science writer and editor | 45 CLE credits |
| | Nelson Page | Inactive 30 yrs | Continuous practice in other state | None |
| | Jocelyn Soriano | Inactive 7 yrs | Continuous practice in other state | None |
| | Annette Talbott | Inactive 8 yrs | BOLI deputy commissioner; legislative staffer | None |
| | | | | |
| November 2008 | Kathleen Bertero | Inactive 13 yrs | Seven yrs paralegal employment | None |
| | Robert Foster | Inactive 7 yrs | Continuous employment by US DOJ in other state | None |
| | Alice Gaut | Pro bono 7 yrs | Limited pro bono volunteer | 45 CLE credits |
| | Janet Neuman | Inactive 10 yrs | Full-time law professor | None |
| | Jan Perkins | Inactive 8 yrs | Document reviewer and translator | 45 CLE credits |
| | Stacy Rutledge | Inactive 8 yrs | Recent LLM degree | None |
| | Susan Teppola | Inactive 21 yrs | ALJ for past 20 yrs | None |
| | Alissa Weaver | Pro bono 6 yrs | Consistent lawyer volunteer past 6 yrs; some CLE | None |

| | | | | |
|-----------------------|-----------------|--|--|----------------|
| | Grant Yoakum | Inactive 6 yrs | Bank trust officer; 40 CLE credits | None |
| | David Young | Inactive 9 yrs | Compliance officer with investment firm; on-going CLE & training | None |
| | | | | |
| September 2008 | Karen Feil | Form A 3 yrs; inactive prior to that 5 yrs | Title officer, paralegal | 25 CLE credits |
| | Timothy Haynes | Inactive 11 yrs | Continuous practice in other state | None |
| | Teresa Hogan | Inactive 7 yrs | ALJ for past 16 yrs | None |
| | Michael Taylor | Inactive 6 yrs | Stay at home dad | 45 CLE credits |
| | | | | |
| July 2008 | Steven Johnson | Disc. susp. 2 yrs | Continuous practice in other state | None |
| | Sandra Westin | Inactive 7 yrs | Continuous practice in other state | None |
| | | | | |
| May 2008 | Sean Cee | Inactive 14 yrs | Practice in other state past year | None |
| | Robert Conratt | Inactive 14 yrs | Real estate consulting; 45 CLE credits | None |
| | Kaarin Forester | Inactive 9 yrs | Continuous practice in other state | None |
| | Shawn Gordon | Inactive 6 yrs | Military lawyer past 6 yrs; LLM degree | None |
| | Lisa Henderson | Inactive 9 yrs | Continuous practice in other state | None |
| | Michael Hudson | Inactive 17 yrs | Financial analyst | 45 CLE credits |
| | Mark Siegel | Inactive 9 yrs | Teacher; stay at home dad | 45 CLE credits |

| | | | | |
|----------------------|-------------------|----------------------------------|---|----------------|
| | Michael Smith | Inactive 16 yrs | Continuous practice in other state | None |
| February 2008 | Valeri Aitchison | Inactive 6 yrs | Family law mediator; some CLE training | 25 CLE credits |
| | Leonard Bergstein | Inactive 16 yrs | Lobbyist; political and administrative law consultant | None |
| | John Griffith | Inactive 8 yrs; then Form A 1 yr | Loan officer; bankruptcy and foreclosure specialist; 15 CLE credits | 30 CLE credits |
| | Teresa Kaiser | Inactive 22 yrs | Director of admin. agencies | 45 CLE credits |
| | Robert Noggle | Inactive 7 yrs | Title officer; §1031 specialist; some CLE & training | 30 CLE credits |
| | Shana Pavithran | Disc. susp. 6 yrs | Frequent pro bono volunteer past 2 yrs; 45 CLE credits | None |

Resolution to Require Registration for Out-of-State Attorney Appearing in Arbitration Conducted within the State of Oregon

Whereas, the regulation for the practice of law by a foreign attorney in Oregon are defined by three sources: 1.) ORS 9.241 - Practice of law by attorneys license in other jurisdiction; rules; fees; 2.) Oregon Uniform Trial Court Rules 3.170 - Association of out-of-state counsel (*pro hac vice*); and 3.) Oregon Rule of Professional Conduct 5.5,

Whereas, Model Rule of Professional Conduct 5.5 – Unauthorized Practice of Law; Multijurisdictional Practice of Law was adopted by the ABA in 2004 and by Oregon on January 1, 2005 may permit out of state attorneys to represent a party in an ADR proceeding under certain “temporary” conditions (among them where the forum does not require *pro hac vice* admission),

Whereas, “temporary” is a subjective and ambiguous term,

Whereas, said rules do not contemplate ORS 36.670 and other international laws and treaties which permit parties in Arbitration to appoint anyone, including out-of-state attorneys, to represent a party in an Arbitration proceeding,

Whereas, Arbitration is often a substitute to the traditional jury trial,

Whereas, Arbitration has the potential of becoming more costly, time consuming and rule oriented, and may detract from a person’s inherent rights and liberty,

Whereas, the Oregon State Bar wishes to preserve the integrity of professionalism, promote professionalism and protect the public trust in the legal system, therefore be it

Resolved, That the House of Delegates recommends and encourages the Board of Governors to study and implement a program whereby out-of-state attorneys appearing in Oregon in an Arbitration pursuant to contract or ORS 36.670 register with the Oregon State Bar prior to any hearing the matter in which the out-of-state attorney is appearing; provide a certificate of good standing from the state or country in which the out-of-state attorney is admitted to practice and certificate of insurance,

Further, be it resolved, That the registration program collect a reasonable fee from out-of-state attorneys applying to appear in Arbitration in Oregon.

*Presenter Michelle L. H. Ing,
Region 6, House of Delegates*

Background

Arbitration clauses have become the backdoor to the traditional notions of who may practice law in Oregon. Increasing number of arbitration clauses in contracts permit a party to select any person to represent that party in an arbitration proceeding. While in many commercial cases it may make sense for a party to select a knowledgeable employee or principle in a corporation to appear on behalf of a party, a party may also select an attorney who may be experienced in the area whether or not that attorney is licensed to practice law in the state of Oregon. Often such agreements affect the interest of citizens of the state of Oregon, particularly if the clause or rule provides the arbitration must take place within the state of Oregon.

The effect is ADR rules and the Uniform Arbitration Act permit out-of-state lawyers to represent clients in Oregon which often affect Oregon residents and citizens thereby bypassing any requirements to apply to the court or administrative body for *pro hac vice*. Traditionally, no records are kept in arbitration and the potential for abuse and misconduct remains unchecked.

The creation of a registration process for out-of-state attorneys to register with the bar will provide the bar with the means to monitor and track the number of appearances by out-of-state attorneys and collect the information needed to determine whether or not additional action need be addressed by the Oregon State Bar. Collection of a reasonable fee should deter any cost which will be incurred by the bar to implement and maintain such a program.

HOD RESOLUTION NO. ____
Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians

Whereas, providing equal access to justice and high quality legal representation to all Oregonians is central to the mission of the Oregon State Bar;

Whereas, equal access to justice plays an important role in the perception of fairness of the justice system;

Whereas, programs providing civil legal services to low income Oregonians are a fundamental component of the Bar's effort to provide such access;

Whereas, legal aid programs in Oregon are currently able to meet less than 20% of the legal needs of Oregon's poor;

Whereas, federal funding for Oregon's civil legal services programs is substantially less than it was in 1980 and there have been severe restrictions imposed on the work that programs, receiving LSC funding, may undertake on behalf of their clients;

Whereas, assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system.

Resolved, that the Oregon State Bar;

- (1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for civil legal services programs for low-income Oregonians.
- (2) Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation.
- (3) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by establishing goals of a 100% participation rate by members of the House of Delegates and of a 50% contribution rate by all lawyers.
- (4) Actively participate in and support the fundraising efforts of those non-profit low-income legal service providers in Oregon that are not supported by the Campaign for Equal Justice.
- (5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program.
- (6) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

**BACKGROUND INFORMATION RELATING TO PROPOSED HOD RESOLUTION
IN SUPPORT OF LEGAL AID FUNDING**

“The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.” Section 1.2 of the Oregon State Bar Bylaws. One of the four main functions of the Bar is to be, “A provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all * * *.” *Id.*

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolution No. 8 in 2008, No. 12 in 2007, No. 14 in 2006, No. 7 in 2005, BOG Resolution No. 7 in 2002, BOG Resolution No. 6 in 1999, BOG Resolution No. 3 in 1997, and Delegate Resolution No. 11 in 1996). The 2009 resolution is identical to the one being passed in 2008.

The legal services organizations in Oregon were established by the State and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by State and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distribute filing fees for civil legal services and provide methods for evaluating the legal services programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

In a comprehensive assessment of legal needs study, which was commissioned by the Oregon State Bar, the Office of the Governor, and the Oregon Judicial Department found that equal access to justice plays an important role in the perception of fairness of the justice system. *The State of Access to Justice in Oregon* (2000). Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. The study also concluded that individuals who have access to a legal aid lawyer have a much-improved view of the legal system compared with those who do not have such access. A fall 2005 study by the national Legal Services Corporation confirms that in Oregon we are continuing to meet less than 20% of the legal needs of low-income Oregonians. Legal Services Corporation, “Documenting the Justice Gap in America: The unmet Civil Legal Needs of the Low-Income Americans” (Fall 2005). Although we have made great strides in increasing lawyer contributions to legal aid, there remains a significant deficit in providing access to justice to low-income Oregonians.

Currently, only about 20% of lawyers contribute to the Campaign for Equal Justice. The Campaign supports statewide legal aid programs in Oregon which have offices in 19 different Oregon communities. The offices focus on the most critical areas of need for low-income clients. About 40% of legal aid’s cases involve family law issues relating to domestic violence.

Minutes
Access to Justice Committee
OSB Board of Governors
June 12, 2009
Oregon State Bar Center, Tigard

Committee Members Present: Terry Wright (Chair), Gina Johnnie, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Robert Vieira. **Staff present:** Judith Baker, Catherine Petrecca, Kay Pulju, Teresa Schmid

Minutes of the May 8 meeting were approved as submitted.

1. ABA Pro Bono Week. Cathy Petrecca reported that the OSB will participate in the ABA's national pro bono event this October. The bar will once again host a pro bono fair, which will coincide with a veterans' law CLE in Salem and publicity statewide for Oregon's pro bono initiatives.

2. Assistance to pro se litigants in family law matters. Terry Wright noted a thank-you letter from the Hon. Maureen McKnight, who presented at the last committee meeting. Committee members identified the following priorities for the bar's efforts in this area:

- train lawyers on best practices for coaching pro se litigants
- make sure that the current OJD family law forms are kept current
- ask the Chief Justice to require all circuit courts to accept the model forms
- explore grant possibilities for development of the forms
- draft a business plan for self-supporting or profitable provision of forms

3. ABA Model Rule 6.1. The committee's recommendation to forward the rule change to the HOD is on the current BOG agenda.

4. OSB Modest Means Program. The committee's recommendations for expansion of this program are on the current BOG agenda.

5. Loan Repayment Assistance Program. Because of the BOG's decision to cover the program's administrative costs, more dedicated bar fees were available to distribute as grants. Six awards were made, which is double what the committee expected. In an annual review of LRAP rules, the LRAP Committee is discussing issues related to repayment of grant money in the event a recipient changes employment to a non-qualifying position.

Next Meeting: Friday, July 17, 2009, at the OSB Center in Tigard.

Minutes
Access to Justice Committee
OSB Board of Governors
July 17, 2009
Oregon State Bar Center, Tigard

Committee Members Present: Terry Wright (Chair), Mitzi Naucler, Audrey Matsumonji, Karen Lord, Robert Vieira. **Staff present:** Judith Baker, Kay Pulju, Teresa Schmid.

Minutes of the June meeting were approved as submitted.

1. Family Law Forms Update. The Oregon Judicial Department no longer has a staff person dedicated to updating the existing forms. Teresa Schmid will discuss options with Chief Justice De Muniz at their next regular meeting. The OSB is moving forward with plans to produce instructional videos for using the forms, but may reconsider if there is no plan to update the forms in future.

2. Pro Bono Week. National Pro Bono week is October 25-31 this year. The OSB, Multnomah Bar Association and Legal Aid Services of Oregon are local co-sponsors. Planned activities include: the Campaign for Equal Justice's Laff-Off fundraiser on October 23; the annual pro bono fair and awards dinner on October 27; a CLE on assistance to the military on October 28; "Ask a Lawyer" events in Multnomah County; and likely more CLEs in different counties around the state.

3. ABA Model Rule 6.1. After discussion, the committee recommended making the proposed adoption of 6.1 a discussion topic on the new member forum.

4. Legislation regarding Access to Justice. Judith Baker reported that the Oregon legislature approved \$1 million in new funding for legal aid, with half payable this year and the other half in 2010. While common in other states, Oregon does not have a tradition of support to legal aid from the state's general fund. Also on the state level, beginning in 2010 unclaimed property in IOLTA accounts will revert to the bar's Legal Services Program rather than to the common school fund. On the federal level there are indications that at least some of the client service restrictions imposed on Legal Service Corporation-funded programs may be lifted this year, which could lead to changes in how Oregon's programs are structured.

5. Modest Means Program. Staff are working on a rollout plan to announce program changes to panelists, other bar members, and the many service providers who refer potential clients to the program. Conversion to the new tiered system is scheduled for September.

5. Other Business. Committee members discussed a HOD resolution calling for limited appearances by supervised paralegals in landlord/tenant matters. Terry Wright mentioned a recent presentation of awards by the Legal Services Corporation to outstanding pro bono lawyers in Oregon.

Next Meeting: Friday, August 28, 2009, at the OSB Center in Tigard.

Minutes
Budget & Finance Committee
June 12, 2009
Oregon State Bar Center
Tigard, Oregon

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

1. Minutes – May 8, 2009 Committee Meetings

The minutes of the May 8, 2009 meetings were approved.

2. Financial Report – April 30, 2009

The April 30 report had been sent prior to the meeting to the board. In the April report, Mr. Wegener pointed out the sources of interest and investment income in the bar's operating budget and the revised revenue numbers for Legal Publications.

Mr. Wegener reported the May statements will be forthcoming in a few days. The May report will be similar to the April report, that is, no major variances and a small net expense. Both are typical for these months. In discussion of the 2010 budget, the committee expressed concern that the financial difficulties for PERS could cause added expense to the bar's budget in the upcoming years, even though PERS has reported that the employer's premium for the bar will be lower in the two-year period beginning July 1, 2009. However, if rates do increase, the committee may consider expanding the existing contingency for the bar's cost for PERS. Mr. Wegener stated he would provide an update on the PERS rates at the next meeting.

The committee briefly discussed the salary pool for the 2010 budget recognizing that it probably will be the largest variance in the next year's budget. Ms. Stevens also reported that the CSF Committee will be discussing an increase in the CSF assessment for 2010, since claims appear to be increasing due to the poor economy.

3. OSB Investment Portfolio and Policy

The committee discussed the next steps in the review of the investment policy and the intent to send a RFP to local investment managers. Mr. Wegener indicated he shared with Sean Ealy of RV Kuhns the names Mr. Greene and Ms. Garcia surfaced at a May 27 meeting, and Mr. Ealy believed all were good candidates for receiving the RFP. Mr. Wegener will send the list of names to the committee.

Subsequent to the meeting, the committee agreed to have a conference call with PLF staff to learn more about the PLF investment policy and determine if patterning after the PLF policy or commingling bar investments with PLF investments was a practical solution before distributing a RFP.

4. Facilities Management Agreement with Opus Northwest

The committee agreed that the bar should still seek to terminate the facilities agreement even though Opus stated the termination letter was sent to the bar in mistake. Mr. Greene will meet with David Weiner to explore the options for the bar to terminate the agreement without affecting the terms of the master lease.

5. Online Legal Research Library Contract

Mr. Wegener said a revised agreement has been sent to Fastcase and Ms. Stevens and he expect to discuss the terms with Fastcase in the next few days.

4. Development of 2010 OSB Budget

The executive summary of the 2010 budget will be on the next committee meeting agenda. Since the last board meeting in 2009 at which the board approves the 2010 budget is earlier this year and would require staff managers to prepare the line item budgets much earlier, the committee agreed to hold a special committee meeting at 1:00pm on Friday, October 9 to review the 2010 budget.

6. Next committee meeting

The next meeting will be July 17, 2009 at the bar center.

Minutes
Budget & Finance Committee
July 17, 2009
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Ward Greene, chair; Chris Kent; Kathy Evans; Mitzi Naucler; Karen Lord. **Others:** Ann Fisher; Gerry Gaydos **Staff:** Teresa Schmid; Sylvia Stevens; Rod Wegener.

1. Minutes – June 12, 2009 Committee Meetings

The minutes of the June 12, 2009 meetings were approved.

2. Financial Report – June 30, 2009

Mr. Wegener reported the June 30 statements are positive and similar to the financial report a year ago, but remained cautious for the balance of 2009 since the net revenue dropped dramatically in the last six months of 2008. The anticipated net revenue for 2009 will be something less than the budgeted \$249,000 net revenue. Some mid-year highlights were that Admissions, MCLE, and the Bulletin all were ahead of their budgets and the first two probably will exceed their bottom line by year end.

When Mr. Wegener reported that sales of the membership directory are \$32,900 lower than a year ago, the committee discussed whether the directory should be printed and distributed to all members in the future. The opinion generally was that the bar should discontinue printing the directory. Mr. Wegener will include more data on the membership directory at the next meeting.

Mr. Wegener shared some information from PERS about the potential changes in the employer's contribution rate for PERS. Beginning July 1, 2009, the rate the bar pays for the next two years will be lower than the past two-year period. That rate was based on PERS fiscal year performance for 2007, which was positive. However, since then its performance has been much poorer. The PERS board has the authority to change the rates, but that is highly unlikely as the term parallels the State's budget cycle. Beginning July 1, 2011, the rate is expected to increase to 6% (currently the rate is slightly over 2%). Based on this discussion, the committee resolved not to terminate the PERS Contingency, and consider expanding it during the 2010 budget development.

3. OSB Investment Portfolio and Policy

The committee agreed not to pattern the bar's investment policy after the PLF's, not to commingle the bar's invested dollars with the PLF's nor have its long-term investments managed by a manager engaged by the PLF. The committee then agreed to send a RFP to various investment mangers. The consensus was that the bar would use two managers with each to manage half the bar's portfolio. Before the RFPs are distributed a subcommittee of Mr. Kent, Ms. Garcia, Ms. Lord, and Mr. Wegener will review the existing policy and

submit any revisions to the entire committee at the next meeting. The committee agreed that if the revised policy includes an investment committee role, the Budget & Finance Committee will assume that role.

4. Facilities Management Agreement with Opus Northwest

Mr. Greene reported on the communication with Opus Northwest about the termination of the facilities agreement and the disagreement whether the termination of the facilities agreement terminates the master lease. Letters between the parties had been shared with the committee. The committee resolved not to pursue the termination of the facilities agreement and recommended to continue the facilities agreement with Opus to alleviate the risk of Opus terminating the master lease. This recommendation is to come before the full Board of Governors since the board acted to terminate the facilities agreement at its special meeting on May 8.

4. 2010 OSB Executive Summary Budget

The executive summary budget reported a net expense of \$158,000 for 2010 based on anticipated trends, percentages, and assumptions. Upon review of the report the committee directed Mr. Wegener that the budget for 2010 should break-even. The committee again reaffirmed an earlier position not to pursue a line of credit for the bar.

5. Selection of Auditors for Audit of 2008-2009 Financial Statements

The committee instructed Mr. Wegener to meet with Moss Adams to discuss the audit fee if Moss Adams performed the audit for 2008 and 2009 fiscal years. He also is to ask Moss Adams to provide an estimate for an audit every year. With this information the committee will decide to select Moss Adams or send RFPs to other auditor candidates.

5. Online Legal Research Library Contract

No new information to report.

6. Next committee meeting

The next meeting will be August 28, 2009 at the bar center prior to the Board of Governors meeting. The committee was reminded it will hold a special committee meeting at 1:00pm on Friday, October 9 to review the budget report after bar staff managers have prepared the line item budgets.

BOG Member Services Committee and Policy and Governance Committee
June 12, 2009
Oregon State Bar Center
Minutes

Present:

Barbara DiIaconi
Kathy Evans
Ann Fisher
Gerry Gaydos
Ward Greene
Gina Johnnie
Kellie Johnson
Christopher Kent
Mitzi Naucler
Audrey Matsumonji
Steve Piucci
Terry Wright

Staff:

Margaret Robinson
Teresa Schmid
Frank Garcia Jr.
Kay Pulju
Sylvia Stevens
Danielle Edwards

HOD Election Requirements

The Member Services and Policy and Governance Committees meet to discuss the 10 signature requirement for HOD candidates. After much discussion regarding the requirement and the purpose the two committees voted to eliminate the requirement for candidates to obtain 10 signatures on their nominating petition for election to the HOD. This will require a change in Oregon statutes after the full BOG votes on the issue.

Discussion continued regarding the 10 signature requirement for BOG election candidates but members of both committees tabled the issue for further discussion until after the Rural/Urban Split Task Force has an opportunity to discuss the matter.

BOG Member Services Committee
June 12, 2009
Oregon State Bar Center
Minutes

Present:

Kellie Johnson, Chair
Ann Fisher, Vice-chair
Gerry Gaydos, OSB President
Gina Johnnie
Audrey Matsumonji
Steve Piucci
Terry Wright

Staff:

Margaret Robinson
Teresa Schmid
Frank Garcia Jr.
Kay Pulju
Danielle Edwards

Approval of Minutes

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

Diversity/AAP Update

Frank Garcia Jr. updated the committee on current AAP activities and events. His report covered fundraising efforts for the 2009 OLIO conference, bar exam preparation classes offered around the state, Breakfast for Champions, and a synopsis of the Access to Justice Advisory Committee meetings.

Section Survey

The survey went out to all section members and more than 120 responses have been received thus far. Preliminary results indicate that the sections struggle most with providing affordable and quality CLE programming. The Committee asked that the survey be sent to the Oregon New Lawyers Division Executive Committee.

Urban/Rural Split Task Force

Currently there are 12 members on the task force. The focus will be on how to make the bar more relevant. Comments from the section survey will go to the task force for consideration.

Request from Beecher Carlson

Beecher Carlson (formerly JBL&K) submitted a proposal to the bar requesting that MetLife Personal Group Insurance be added to the insurance coverage available to members through Beecher Carlson. The committee discussed the proposal and the idea of affinity and membership programs then voted to approve the proposal. The committee

would like to look further into affinity and member benefit programs for future discussion. Teresa Schmid discussed her views and indicated that this has already been worked into her long-range plan.

Leadership College

The committee discussed the current model used for the College and requested information from other bars regarding their leadership programs. Ideas mentioned included the possibility of charging tuition or having scholarships to reduce the budgetary impact the college has on the bar's budget. The committee felt that the advisory board needed to be kept "fresh" by ensuring that long-term members be rotated off rather than reappointed. The committee asked that a joint meeting be scheduled between members of the Member Services Committee and a few representatives of the LCAB to discuss the College's mission.

BOG Member Services Committee and Policy and Governance Committee
July 17, 2009
Oregon State Bar Center
Minutes

Present:

Barbara DiIaconi
Kathy Evans
Ann Fisher
Gerry Gaydos
Ward Greene
Gina Johnnie
Kellie Johnson
Christopher Kent
Steve Larson
Mitzi Naucler
Audrey Matsumonji
Steve Piucci
Terry Wright

Staff:

Margaret Robinson
Teresa Schmid
Sylvia Stevens
Danielle Edwards

BOG Election Requirements

The Member Services and Policy and Governance Committees meet to discuss the 10 signature nominating petition requirement for HOD candidates in June. A vote was conducted at that time to eliminate the 10 signature requirement for HOD election candidates. It was decided that the committees would wait to discuss the 10 signature requirement of BOG election candidates until after the Rural/Urban Split Task Force considered the topic.

After a report by Ann Fisher, BOG member on the Rural/Urban Split Task Force, members of the Member Services and Policy and Governance Committees discussed the need for the 10 signature nominating petition for BOG candidates. A motion was made and passed to abolish the 10 signature requirement for BOG election candidates. This change will not take effect until 2011 since a statutory change is required.

After further discussion members of the two committees voted to abolish the 10 signature nomination petition requirement for the American Bar Association HOD election candidates unless the ABA requires this procedure. Sylvia was asked to check with the ABA regarding their requirements for election candidates.

BOG Member Services Committee
July 17, 2009, Oregon State Bar Center
Minutes

Present:

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

Staff:

Margaret Robinson
Frank Garcia Jr.
Kay Pulju
Danielle Edwards

Approval of Minutes

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

Diversity/AAP Update

Frank Garcia Jr. updated the committee on current AAP activities and events. His report covered fundraising efforts for the 2009 OLIO conference and planning efforts for upcoming programs and events such as the Judicial Mentorship Program, BOG Diversity Social, Yunnan lawyer delegation visit, and program planning for a Leadership College session on housing discrimination.

Section Survey

Preliminary survey results were reviewed by the committee in June. Kay provided the final survey results and provided a synopsis of the responses. The committee decided to continue to discuss the possibility of online streaming of CLE programs on the bar's website at the next meeting.

Urban/Rural Split Task Force

There are 22 members on the task force with offices throughout the state. Ann presented a list of the issues the task force would like to address ranging from mileage reimbursement for service on bar groups to the importance and convenience of video conferencing. The committee will continue to get updates from Ann on the task forces ideas but thought a list of video conferencing locations on the bar's website would be a useful tool for many bar members.

Membership Directory Advertising and Printing

The committee would like to discuss printing and advertisements in the bar membership directory at the next meeting.

Leadership College

The committee deferred discussion of the Leadership College until the next meeting.

Minutes
Policy and Governance Committee
June 12, 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 May 8, 2009.** The minutes were approved as submitted.
- 2. Section Grant Applications.** The committee reviewed and the draft language for a new bylaw 15.7 and voted to recommend its adoption to the BOG.
- 3. BOG Member Facilitation of HOD Regional Meetings.** The committee reviewed and approved for distribution to the BOG the revised handout for BOG members to use when facilitating HOD regional meetings.
- 4. Proposed Amendment to RPC 1.18.** Ms. Stevens reported that the LEC has no objection to amending RPC 1.18 to conform to the ABA Model Rule (with the exception of the requirement that the screened lawyer not participate in fees from the case). The committee voted to recommend that the BOG put the amendment on the November 2009 HOD agenda.
- 5. IOLTA Certification.** Ms. Stevens presented the suggestion that IOLTA certification be an administrative rather than a disciplinary matter so that failure to certify accounts will result in an administrative suspension rather than a disciplinary proceeding. She pointed out that this will require a statutory change as well as an amendment to the RPCs. The committee requested that staff draft statutory language as well as the correlating RPC amendment. The issue will be presented to the BOG in August.
- 6. Electronic Agendas.** Ms. Evans reported that the Washington State Bar has moved to electronic agendas for BOG matters, which has resulted in a significant cost change. She encouraged the OSB to make the same change. Discussion followed about the hardware and software that would be required, as well as the need for training. Staff was asked to explore those issues and report further.

Minutes
BOG Policy and Governance Committee

July 17, 2009

Oregon State Bar Center

Chair – Kathleen Evans

Vice Chair – Barbara Dilaconi

Ward Greene

Chris Kent

Steve Larson

Audrey Matsumonji

Mitzi Naucler

All committee members were present; also in attendance were Teresa Schmid, Sylvia Stevens, and Jeff Sapiro.

OLD BUSINESS

1. Approval of prior meeting minutes. The minutes of the June 12, 2009 meeting were approved.

2. Signature Requirement for BOG Nominations (Joint with Member Services). In a joint meeting with the Member Services Committee, it was unanimously agreed to recommend to the BOG that the 10-signature requirement for BOG candidates be eliminated. This will require a statutory change by the 2011 legislature, so would not be effective until the 2012 BOG elections for terms beginning in 2013.

3. IOLTA Certification Changes. The committee approved the draft statutory and RPC amendment changes as set forth in Ms. Evans' memo to the BOG for August.

NEW BUSINESS

4. CLE/Ethics Courses for Reinstated Members. Ms. Evans brought this issue to the committee. The discussion about other states' "ethics schools" during the NW Bars Conference interested her; she is also concerned about the inconsistency of the BOG's conditions for reinstatement. The following points were made during the ensuing discussion: it is important to distinguish between lawyers seeking reinstatement after discipline and those who are voluntarily inactive; the PLF Learning the Ropes course might be a reasonable requirement for lawyers inactive for five or more years; there should be an emphasis on Oregon law and practice; could a matrix be developed that affords discretion but provides a guideline; new BOG members (and particularly public members) have little understanding of the reinstatement standards and MCLE requirements; the bar needs to be cautious about utilizing scarce resources to create an ethics school if satisfactory alternatives are available; the burden should be on disciplined lawyers to identify courses and pay for an "ethics school" requirement. Jeff Sapiro pointed out that 45 hours of CLE was generally required of lawyers seeking reinstatement after being away from the law for 10 years; when a lawyer has some "law-related" work during a lengthy period of inactive status, determining the appropriate pre-reinstatement is more difficult. Staff was asked to prepare information on various ethics school models, about the Learning the Ropes program, and a general outline of reinstatement training for the BOG.

5. Judicial Performance Evaluations. The committee discussed a recent request to re-visit the idea of judicial performance evaluations, notwithstanding the prior indication of opposition to the idea from the Chief Justice. One member questioned why the decision is left to those who will be the subject of the evaluation, especially if the purpose is to help the public in their selection of judges. Another member asked whether this was a solution in search of a problem, to which the response was that the bar shouldn't wait for a problem to arise if this is generally a good idea. There was lengthy discussion about whether evaluations are pointless when we don't have a merit selection system for choosing judges in Oregon. Another point made was that evaluations will have limited value if a poorly-rated judge remains on the bench. Several committee members indicated a strong ambivalence about the issue. For the August, meeting, Ms. Schmid will put together information on the Washington system and others.

Notarized Signatures on Resignation Forms. Ms. Schmid explained that a member seeking to change to inactive status recently had difficulty finding a notary, leading her to wonder whether allowing Form A resignations on a "penalty of perjury" basis would be sufficient. Several committee members commented that resignation is a serious step and needs the formality of a notarized signature. There was also a strong sense that eliminating the requirement creates opportunities for mischief. There was a general consensus that notaries aren't hard to find and that this is not an onerous requirement. There was no motion for change.

6. Fee Arbitration Task Force. This issue will be deferred until the August meeting.

7. Diversity in the OSB Mission. Ms. Schmid pointed out that the Diversity Planning Task Force recommendations include two additions to the bar's functions as set out in the bylaws. Staff was asked to draft a bylaw change for the committee to review in August and pass on to the BOG.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 28, 2009
Memo Date: August 10, 2009
From: Policy & Governance Committee, Kathy Evans, Chair
Re: Certified Mailings for MCLE Notices

Action Recommended

None. This is for informational purposes only.

Background

At the June 12 meeting, the MCLE Committee reviewed staff's request to delete the phrase "by certified mail" in MCLE Rules 7.4(b) and 8.1(c)(1).

MCLE Rule 7.4(b) currently reads as follows:

7.4 Noncompliance.

* * *

(b) Notice. In the event of a finding of noncompliance, the MCLE Administrator shall serve, by certified mail, a written notice of noncompliance on the affected active member. The notice shall state the nature of the noncompliance and shall summarize the applicable rules regarding noncompliance and its consequences.

The MCLE office mails approximately 400 Notices of Noncompliance each year to members who are not in compliance with the MCLE rules. The notices, which are mailed via certified mail pursuant to MCLE Rule 7.4(b), notify the member that he or she has 63 days in which to cure the noncompliance. After the 63rd day, a letter is sent to the Oregon Supreme Court recommending that these individuals be suspended for failure to comply with the MCLE rules.

The Notices of Noncompliance are mailed at a cost of over \$5 each. Since staff follows through with the suspension process even if the Return Receipt Card is not received, the historical rationale for using certified mail is unclear. Moreover, bar members are required to keep the bar apprised of a current mailing address. Therefore, it was suggested to delete the phrase "by certified mail" in Rule 7.4(b). In addition to the postage savings, other resources, such as staff time, would be saved by not having to prepare 400+ certified notices and matching up the return receipt cards when they are returned.

Postage charges for the MCLE Department were \$422 in January 2009, \$2,520 in February 2009 and \$363 in March 2009. The Notices of Noncompliance were mailed in February.

The copy of the letter to the Oregon Supreme Court recommending suspension, which is sent after the 63 day period granted to cure the noncompliance, is sent to

approximately 40-50 members each year. This letter is also sent via certified mail pursuant to MCLE Rule 8.1(c)(1), which is set forth below. Here, too, staff proceeds even without proof of receipt. For the reasons discussed above, there seems to be little reason to incur the expense of certified mail when the suspension isn't dependent upon it. It was suggested that the "by certified mail" phrase be deleted from this rule, also.

8.1 Review.

* * *

(c) Suspension Recommendation of the MCLE Administrator. A recommendation for suspension pursuant to Rule 7.6 shall be subject to the following procedures:

(1) A copy of the MCLE Administrator's recommendation to the Supreme Court that a member be suspended from membership in the bar shall be sent by certified mail to the member. Within 14 days of the date of the mailing, the member recommended for suspension may file with the State Court Administrator and the MCLE Administrator a petition for review of the recommended suspension. The petition shall set forth a concise statement of each reason asserted for review of the MCLE Administrator's recommendation and may be accompanied by one or more supporting affidavits.

Staff asked MCLE administrators in other states how they send the first notice of noncompliance. Many send the first notice via regular mail or e-mail in order to save time and money.

Also, the copy of the Order of Suspension that is mailed by the Court is sent via regular, not certified, mail. Therefore, staff believes that sending any MCLE notices via regular mail to the member's last known address should also be sufficient.

At the June 12 MCLE Committee meeting, a member pointed out that mail could be sent certified without requesting the return receipt. The committee asked staff to investigate various alternatives for mailing the notices and report back to the committee at its next meeting.

At the August 10 MCLE Committee meeting, after reviewing various alternatives for mailing notices (delivery confirmation, signature confirmation, certified mail with no return receipt requested), the Committee agreed that MCLE staff no longer need to send these notices "Return Receipt Requested." No rule amendments are necessary because the rules simply say "via certified mail" and do not require the return receipt.

This change in procedure will save the MCLE Department approximately \$1000 each year in postage costs.

OSB Public Affairs Committee
June 12, 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. **OJD Budget reductions.** Numerous issues are at play right now and have become interconnected. HB 2287 would increase filing fees in an attempt to backfill public safety budget, including the courts and indigent defense, council on court procedures and the Oregon Law Commission. The highly controversial phase-in of Measure 57 would also backfill the public safety budget, with an emphasis on the courts, corrections, Oregon Youth Authority and state police. Nonetheless, it appears that the courts will be able to manage a 10% cut, if necessary, without closing its doors. It looks likely that there will be some limited money for court facilities as well as the continuation of eCourt progress to improve efficiencies within the courts.
3. **SB 818 re cultural competency.** PAC discussed the opinion piece by Gerry Gaydos that appeared in the Statesman Journal. The committee reiterated its interest in working together with the proponents to address concerns raised in the proposed cultural competency legislation.
4. **Law Improvement Package.** All but three of the bar's package of law improvement proposals have made it through the process and will be signed into law.
5. **Bills of interest.** The committee reviewed the bills of interest list.
6. **Legislation Highlights publication and seminar.** The committee discussed the importance of informing bar members of changes to the statutes as a result of legislative change in a timely manner. Concerns were expressed regarding publication of the ORS. Whether Legislative Counsel's office will receive more staff and funding is unclear at this time. Committee members expressed interest. This uncertainty underscores the need for the bar to make its publication and seminar widely available and to ensure that members are aware of changes that affect their area of practice.


OSB Public Affairs Committee
July 17, 2009
Tigard, Oregon

Committee Members Present: Steve Piucci, Ann Fisher, Michelle Garcia, Gerry Gaydos, Gina Johnnie, Kellie Johnson. **Staff:** Susan Grabe.

1. **2009 Session review.** The committee reviewed the final results of the legislative session including the final judicial department budget, filing fee increases and the phase-in of Measure 57 which will result in a revenue savings that will backfill Public Safety services (Oregon Youth Authority and police operations). The court received money to continue its eCourt operations as well as money for limited improvements to court facilities as part of the local stimulus package.
2. **FTC Red Flags Rule.** The bar sent a letter to the FTC with copies to our entire congressional delegation expressing concern about the application of the Fair and Accurate Credit Transactions Act of 2003 to lawyers. Implementation of the rule has been delayed pending further consideration as to whether it should apply to lawyers, doctors and other professionals. The ABA is fully engaged and opposed to the inclusion of lawyers in the definition of “creditor”.
3. **Legislation Highlights publication and seminar.** Although this has been a joint project in the past, Public Affairs will assume responsibility for the publication and the CLE since most of the background work is already part of the departmental function. Staff will increase coordination with the PLF to address relevant practice issues for bar members.
4. **Response to Unjust Criticism of the Judiciary.** PAC discussed the template in place already to address criticism of the judiciary. Other mechanisms in place to provide more information about judges discussed included expanding the use of the existing OSB judicial survey to include all judges (not just those involved in an election) and maintaining the information on the bar’s webpage as a standing item, not just during the election cycle. Another topic discussed was reviving the Judicial Administration speakers’ bureau “Strong Courts Build Strong Communities” to increase outreach in the local communities.
5. **Public Affairs Review.** The subcommittee would like to meet in conjunction with the other regularly scheduled board committees for a two hour time slot.

OREGON STATE BAR
Client Security - 113
For the Six Months Ending June 30, 2009

| Description | June 2009 | YTD 2009 | Budget 2009 | % of Budget | June Prior Year | YTD Prior Year |
|--------------------------------------|-----------------|-----------------|------------------|----------------|--------------------|-------------------|
| REVENUE | | | | | | |
| Interest | \$24 | \$2,255 | \$16,900 | 13.3% | \$1,927 | \$14,178 |
| Judgments | 360 | 1,998 | 5,000 | 40.0% | 636 | 4,365 |
| Membership Fees | 670 | 68,332 | 70,800 | 96.5% | 265 | 66,457 |
| TOTAL REVENUE | 1,054 | 72,584 | 92,700 | 78.3% | 2,828 | 85,001 |
| EXPENSES | | | | | | |
| SALARIES & BENEFITS | | | | | | |
| Employee Salaries - Regular | 2,249 | 14,743 | 29,800 | 49.5% | 2,218 | 14,419 |
| Employee Taxes & Benefits - Reg | 782 | 4,811 | 8,900 | 54.1% | 753 | 4,556 |
| TOTAL SALARIES & BENEFITS | 3,031 | 19,554 | 38,700 | 50.5% | 2,970 | 18,976 |
| DIRECT PROGRAM | | | | | | |
| Claims | 57,590 | 69,405 | 150,000 | 46.3% | | 50,525 |
| Collection Fees | | | 500 | | | |
| Committees | | 45 | 250 | 18.0% | | |
| Pamphlet Production | | | 300 | | | |
| Travel & Expense | | | 1,285 | | | |
| TOTAL DIRECT PROGRAM EXPENSE | 57,590 | 69,450 | 152,335 | 45.6% | | 50,525 |
| GENERAL & ADMINISTRATIVE | | | | | | |
| Messenger & Delivery Services | | | 50 | | | |
| Office Supplies | | | 100 | | | |
| Photocopying | | | 150 | | | |
| Postage | 50 | 129 | 250 | 51.7% | 16 | 87 |
| Professional Dues | | | 200 | | | |
| Telephone | 30 | 69 | 200 | 34.7% | 1 | 54 |
| Training & Education | | 350 | 375 | 93.3% | | 120 |
| Staff Travel & Expense | 10 | 221 | 758 | 29.1% | 6 | 264 |
| TOTAL G & A | 90 | 769 | 2,083 | 36.9% | 23 | 525 |
| TOTAL EXPENSE | 60,711 | 89,773 | 193,118 | 46.5% | 2,993 | 70,026 |
| NET REVENUE (EXPENSE) | (59,657) | (17,188) | (100,418) | | (166) | 14,975 |
| Indirect Cost Allocation | 1,086 | 6,516 | 13,032 | | 784 | 4,704 |
| NET REV (EXP) AFTER ICA | (60,743) | (23,704) | (113,450) | | (950) | 10,271 |
| Fund Balance beginning of year | | 695,390 | | | | |
| Ending Fund Balance | | 671,686 | | | | |
| Staff - FTE count | | .35 | .35 | | | |



Oregon State Bar President
Gerry Gaydos
and
OSB Board of Governors

Cordially invite you to a
Diversity Social and BBQ

Oregon State Bar Center
16037 SW Upper Boones Ferry Road
Tigard, OR 97281

Friday, August 28, 2009
5:00 p.m. - 6:30 p.m.

Oregon State Bar
Affirmative
Action Program

Please RSVP before Monday, August 24, 2009.
You may respond to Teresa Wenzel by phone
503-431-6386 or by e-mail twenzel@osbar.org