



**OREGON STATE BAR
MEETING OF THE BOARD OF GOVERNORS
Schedule of Events
October 29 – November 1, 2009
10/20/2009 2:15 PM**

Tu Tu' Tun Lodge
96550 North Bank Rogue
Gold Beach, OR 97444
<http://www.tututun.com/>

Phone: 800-864-6357

Thursday, October 29, 2009

Attire***: Casual all day.

- | | |
|-----------------------|---|
| 7:00 a.m. (tentative) | Bus Departs Tigard – Oregon State Bar Center |
| 7:45 a.m. (tentative) | Bus Departs Salem – Denny’s Parking Lot (Exit 253) |
| 3:00 p.m. – 5:30 p.m. | New BOG Orientation
See BOG Orientation Agenda for Details
River House |
| 6:15 p.m. – 7:30 p.m. | Dinner
Dining Room |

There will be a Halloween team costume contest. The board and guests will be divided into teams and each team will come up with costumes/a costume. You can come prepared with costume-building materials or rely on materials, which will be provided. Let your imagination be your guide!



Friday, October 30, 2009

Attire***:	Casual for board meeting and Business Casual for dinner.
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7:00 a.m. – 8:00 a.m.	Breakfast Dining Room
8:00 a.m. – 9:00 a.m.	Budget and Finance Committee (Green, Evans, Garcia, Kent, Lord, Naucler) * Library
9:00 a.m. – 10:00 a.m.	Policy and Governance Committee (Evans, DiIaconi, Greene, Kent, Larson, Matsumonji, Naucler) ** River House
9:00 a.m. 9:30 a.m.	Public Affairs Committee (Piucci, Fisher, Garcia, Gaydos, Johnnie, Johnson, Vieira) ** Library
9:30 a.m. – 10:00 a.m.	Access to Justice Committee (Wright, Garcia, Johnnie, Lord, Matsumonji, Naucler, Vieira) Open Area in Lodge
10:00 a.m. – 10:30 a.m.	Appointments Committee (Johnnie, DiIaconi, Evans, Fisher, Greene, Larson, Piucci, Wright) Library
10:30 a.m. – 12:00 a.m.	Board Meeting River House
12:00 p.m. – 1:00 p.m.	Lunch Lodge Dining Room
1:00 p.m. – 3:00 p.m.	Board Meeting River House
3:00 p.m. – 6:00 p.m.	Free Time
6:00 p.m. – 8:00 p.m.	Local Bar Reception and Dinner Lodge Open Area and Dining Room

Saturday, October 31, 2009

Attire***: Casual for Strategic Planning and Evening Casual for reception/dinner.
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7:00 a.m. – 8:30 a.m.	Breakfast Lodge Dining Room
8:30 a.m. – 3:00 p.m.	Strategic Planning See BOG Strategic Planning Agenda for Details Lodge Open Area
3:00 p.m. – 6:00 p.m.	Free Time
6:00 p.m. – 8:00 p.m.	Goodbye and Welcome Dinner Lodge Dining Room

Sunday, November 1, 2009

Attire***: Casual all day.

9:00 a.m. – 10:00 a.m. **Breakfast**

10:00 a.m. **Bus Departure for “Points North”**

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

NO MEETING Appellate Screening Committee

NO MEETING Executive Director Evaluation Committee

NO MEETING Member Services Committee

NO MEETING Public Member Selection Committee

*****Attire:**

Business Casual: Working office attire, no ties necessary.

Casual: Denim and sneakers acceptable.

Evening Casual: “Dining-out” attire – no jewels and furs necessary.

State Bar
Meeting of the Board of Governors
October 30, 2009
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 10:30 a.m. on October 30, 2009, and will continue to the morning of October 31, 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.

Friday, October 30, 2009

1. **Call to Order/Finalization of the Agenda** Action
2. **Nominating Committee**

10:30 a.m.

- A. **Nomination of Steve Piucci as President-elect** Action

3. Report of Officers

10:35 a.m.

- A. **Report of the President [Mr. Gaydos]**
 1. **Miscellaneous** Inform 1-5

10:45 a.m.

- B. **Report of the President-elect [Ms. Evans]**
 1. **Miscellaneous** Inform 6

10:55 a.m.

- C. **Report of the Executive Director [Ms. Schmid]**
 1. **E.D. Report** Inform

11:05 a.m.

- D. **Oregon New Lawyers Division [Mr. Williamson and Ms. Cousineau]**
 1. **ONLD Report** Inform 7
 2. **ONLD Master Calendar** Inform 8

11:15 a.m.

4. Board Members' Reports

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

A. Proposed HOD Resolution [Chris Kent]

1. Veteran's Day Resolution Action 9

➤ *This resolution is intended to offer thanks and condolences to all who have sacrificed. This applies to all living veterans, to those who are presently serving, and to the families of those who have lost loved ones.*

11:35 a.m.

5. Professional Liability Fund [Mr. Zarov]

A. General Update

1. Officers for 2010 Handout

B. 2010 Pro Bono Coverage Plan Changes

1. PLF Policy 3.800 Action 10-14

C. Primary Plan Retroactive Dates

1. PLF Policy 3.100 Claims Made Plan and Retroactive Date Action 15-16

D. Primary and Excess Coverage Plan Action 17-21

E. Claims Made Plan Action 22-60

F. Claims Made Excess Plan Action 61-89

G. Pro Bono Claims Made Master Plan Action 90-125

H. Excess Rates 2010 Action 126-127

I. Changes to 2010 Policy Manual 128-129

1. 7.250(C) Action 130

2. 7.300 (A) (8) Action 131

3. 7.300 (C) (2) (a) –(j) Action 132

4. 7.350 (A) (2) (B) (C) Action 133

5.	7.400 (A)	Action	135
6.	7.700 (A) (B)(E)(4)	Action	136-137
J.	2010 PLF Assessment and Budget	Action	139-154

6. Special Appearances

1:00 p.m.

A. Sustainability Task Force [Mr. Roy, Mr. Kabeiseman, Mr. Kennedy]

1.	Sustainability Task Force Report	Action	Handout
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- *The chair and two task force members will present the report and recommendations of the task force.*

1:10 p.m.

B. Sole & Small Firm Practitioners Session [Mr. Browning, Mr. Phinney]

1.	Resolution	Action	155-156
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- *The SSFP will make a presentation regarding BarBooks pricing. The board will make its decision later in the meeting. (see Budget and Finance 9.E.3.).*

7. Rules and Ethics Opinions

1:20 p.m.

A. Proposed Ethics Opinion

1.	Formal Opinion Request No. 07-03	Action	157-162
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- *The Legal Ethics Committee recommends adoption of a formal the opinion to address the obligations of a lawyer whose client has filed a bar complaint.*

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

1:30 p.m.

A. Client Security Fund [Ms. Lord]

1. Request for Review of Claim Denial

a.	No. 2009-28 MURPHY (Hubler)	Action	163-176
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- *Consider claimant Billie Hubler's request for review of the CSF Committee's denial of her claim for fees paid to Lynn Murphy.*

b. No. 2009-25 DOUGLAS (Ulle) Action 177-186

➤ *Consider claimant's request for review of the CSF Committee's recommended award amount.*

1:40 p.m.

B. Senior Lawyers Task Force [Ms. Stevens]

1. Senior Lawyers Task Force Report Action 187-194

➤ *The task force report and recommendation are submitted for the board's consideration.*

1:50 p.m.

C. Urban /Rural Task Force [Ms. Fisher]

1. Update Inform No Exhibit

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

2:00 p.m.

A. Access to Justice Committee [Ms. Wright]

1. Access to Civil Legal Services Task Force Action 195-197

➤ *Establish a task force to identify the best structure to provide basic access to civil legal services to low income clients throughout Oregon in light of potential changes to Legal Services Corporation rules. Appoint Gerry Gaydos to chair the task force.*

2. Legal Services Program Appropriations Action Handout

➤ *Approve appropriations through the Legal Service Program for general fund allocations from the 2009 legislative session.*

2:10 p.m.

B. Member Services Committee [Ms. Johnson]

1. Approve Election Dates for 2010 Action 198

2:15 p.m.

C. Policy and Governance Committee [Ms. Evans]

1. Miscellaneous Housekeeping Bylaw Amendments
Action 199-201
 - *The committee recommends adoption of several housekeeping amendments to the bylaws.*

2. Revised Committee Assignments
Action Handout
 - *SLAC has proposed a revision to its assignment (charge).*

3. Proposed Amendments to Bylaw 13.01
Action 202-210
 - *The Access to Justice Committee recommends amending Bylaw 13.201 to allow greater flexibility in certifying pro bono programs.*

4. Anonymous Payments to the CSF
Action 211-212
 - *The CSF is seeking direction on accepting anonymous payments (“donations”?) from lawyers who “may” owe the Fund.*

5. Housekeeping MCLE Rule Amendments
Action 213
 - *The MCLE Administrator requests approval of two housekeeping corrections.*

6. Sunsetting the Joint OSB/CPA Committee
Action 214
 - *The committee recommends sunsetting the Joint OSB/CPA Committee as requested by its chair.*

2:45 p.m.

D. Public Affairs Committee [Mr. Piucci]

1. Public Affairs Update
Inform No Exhibit
 - *Update on Legislative Interim activities.*

2:50 p.m.

E. Budget and Finance Committee [Mr. Greene]

1. 2010 OSB Budget
Action 215-230
 - *The committee is recommending approval of the 2010 OSB budget.*

- | | | | |
|----|--|--------|------------|
| 2. | OSB Investment Policy and Portfolio | Inform | No Exhibit |
| | ➤ <i>The committee is in the process of revising the bar's investment policy and is interviewing investment firms on November 5 to explore engaging one or two firms to manage the bar's investment portfolio.</i> | | |
| 3. | Request from Sole & Small Firm Practitioners Section on BarBooks | Action | 231-236 |
| | ➤ <i>The Sole & Small Firm Practitioners Section executive committee is presenting a request to create special pricing for members of the SSFP Section.</i> | | |

Executive Session

- | | | | |
|----|---|--------|-----|
| 4. | Facilities Management Agreement
(closed pursuant to ORS 192.660(2)(e) and (h)) | Action | 237 |
| | ➤ <i>The committee will report on the status of the agreement.</i> | | |
| F. | Executive Director Evaluation Committee [Ms. Naucler] | | |
| 1. | Executive Director Performance Review
(closed pursuant to ORS 192.660(1)(i)) | | |

Open Session

- | | | | |
|----|---|--------|--|
| 2. | Executive Director Contract and Salary Recommendation | Action | |
|----|---|--------|--|

3:25 p.m.

10. Closed Sessions

- | | | | |
|----|---|-------------------|--------------------|
| 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 |

3:40 p.m.

11. Consent Agenda

- | | | | |
|----|---------------------|--------|---------|
| A. | Appointments | Action | pink |
| 1. | Various Appointment | Action | 238-242 |

- B. Approve Minutes
 - 1. Minutes of Open Session
 - a. August 28, 2009 Action 243-249
 - b. September 25, 2009 Action 250
 - 2. Minutes of Judicial Proceedings
 - a. August 28, 2009 Action 251-525
 - 3. Minutes of Executive Session
 - a. August 28, 2009 Action 253
 - 4. Client Security Fund
 - a. No. 08-25 OKAI (Brewer) \$16,976.50 Action 254-255
 - b. No. 09-08 SHINN (Cousin) \$20,000.00 Action 255-256
 - c. No. 09-32 SHINN (Doblie) \$21,074.21 Action 256
 - d. No. 09-12 HORTON (Continental Express) \$24,500.00 Action 256-257
 - e. No. 09-09 COULTER (Warren) \$200.00 Action 257
 - f. No. 09-33 COULTER (Puderbaugh) \$500.00 Action 257-258
 - g. No. 09-36 COULTER (Christensen) \$368.00 Action 258
 - h. No. 09-23 DOUGLAS (Johnson) \$4,750.00 Action 258-259
 - i. No. 09-02 DUNN (Fishler) \$1,500.00 Action 259-260

12. Default Agenda Inform blue

- A. President
 - 1. Proclamation from the Governor Inform 261
- B. Access to Justice Committee
 - 1. Minutes of August 28, 2009 Inform 262
 - 2. Minutes of September 25, 2009 Inform 263

C.	Budget and Finance Committee		
1.	Minutes of August 28, 2009	Inform	264-266
2.	Minutes of September 25, 2009	Inform	267
D.	Member Services Committee		
1.	Minutes of August 28, 2009	Inform	268
2.	Minutes of September 25, 2009	Inform	269-270
E.	Public Affairs Committee		
1.	Minutes August 28, 2009	Inform	271
2.	Public Affairs Subcommittee		
a.	Minutes August 28, 2009	Inform	272
F.	Policy and Governance Committee		
1.	Minutes of August 28, 2009	Inform	273-274
2.	Minutes of September 25, 2009	Inform	275
G.	Miscellaneous Information		
1.	OSB General e-Court Distribution	Inform	276-303
2.	Chief Judge Brewer's e-Court Memo	Inform	304-305
3.	2009 e-Court Newsletter	Inform	306-309
4.	Steve Piucci's Letter of Acceptance	Inform	310-311
H.	CSF Claims Report	Inform	312-314
13.	Good of the Order (Non-action comments, information and notice of need for possible future board action)		

PRESIDENT'S REPORT
Updated 10/19/2009

<u>Date:</u>	<u>Purpose:</u>
12/4/2008	Met with Frank Garcia and representatives of Oregon Women Lawyers. Later in the afternoon met with Akira Heshiki of the Oregon Women Minority Lawyer's Association and Judge Janice Wilson. Attended the OSB Awards Dinner.
12/11/2008	Attended PLF Meeting at Bar Center. Met with Frank Garcia, Margaret Robinson, Kim Ybarra-Cole and Teresa Schmid regarding AAC issues, then attended PLF dinner.
12/16/2008	Met with Chief Justice DeMuniz, Susan Grabe, Rick Hugler and Teresa Schmid. Drove to Portland to participate in the Oregon State Bar Leadership Program and Legislative Tips Program.
1/9/2009	Attended committee meetings.
1/10/2009	Attended Affirmative Action and Diversity section planning meeting.
1/15/2009	Met for breakfast with Teresa Schmid, Kim Ybarra-Cole and Phyllis Lee regarding Affirmative Action Committee. Met with DeMuniz, then spoke at OMLA quarterly meeting. Met with Teresa Schmid, Anna Zannoli, Karen Lee and Kay Pulju regarding CLE issues and effective use of the Internet.
1/22/2009	Attended the Marion County awards and pro bono banquet.
1/28/2009	Attended the OMLA open house at Governor's mansion.
2/10 – 2/16/2009	Attended NABE/NCBP/ABA convention in Boston, Mass.
2/19/2009	Attended Uniting to Understand Racism awards dinner in Portland.
2/20/2009	Attended Jackson County Bar Campaign for Equal Justice dinner in Medford.
2/24/2009	Attended reception for Judge Ann Aiken at University of Oregon law school to celebrate her appointment as Chief Judge of US District Court.
2/27/2009	Drove to Newport, Oregon to participate in sustainability CLE and social hour with Lincoln County lawyers. Teresa Schmid also attended.

3/3/2009	Drove to Portland to attend the CEJ annual awards luncheon at Governor Hotel. Later met with Akira Heshiki of Oregon Women Lawyers, Teresa Schmid, Kim Ybarra-Cole and Judge Janice Wilson.
3/5/2009	Attended Multnomah County Bar Association Young Lawyer's Summit.
3/6/2009	Had breakfast with Ann Fisher to discuss Urban Rural task force. Attended committee meetings at Bar Center. Met with representatives of OWLs, including Susan O'Toole and Linda Tomasi. Attended BOG committee meetings.
3/11/09	Met with Steve Pucci, Susan Grabe, Chief Justice DeMuniz and representatives of the various Oregon trial bar organizations.
3/13/09	Attended the Professionals in Commission meeting at the Oregon State Bar and the OWLS Robert Diaz awards dinner at the Governor Hotel.
3/14/09	Attended and judged the finals of the high school mock trial competition which was won by West Linn High School. West Salem High School placed second, Lincoln High School third and St. Mary's Academy placed fourth.
03/23/09	Drove to Salem and returned. The purpose of this was a meeting with the Chief Justice.
3/25-3/30/09	Attended the Western States Bar Conference.
4/2 – 4/4/09	Drove from Eugene to Sisters and returned for BOG meetings and a reception for the Central Oregon counties
4/8/09	Drove from Eugene to Albany and returned for a Lane County Bar luncheon.
4/10 – 4/11/09	Drove from Eugene to Medford and returned to meet with the Jackson County Bar.
4/13/09	Drove from Eugene to Roseburg to attend the Douglas County Bar luncheon.
4/16/09	Drove from Eugene to Salem to again meet with the Chief Justice.
4/17/09	Drove from Eugene to Portland and returned to attend the OTLA/OADC/OSB luncheon and meet past presidents at the Bar Center.

5/6/2009	On May 6, 2009, I traveled to Salem to meet with Steve Pucci, Susan Grabe and representatives of Oregon Trial Lawyers Association, the Oregon Association of Defense Counsel and several lobbyists. I then returned to Eugene.
5/7/2009	I traveled to Portland for the Multnomah Bar Association dinner, spent the night and then attended Board of Governor's committee meetings on May 8, 2009. I then returned to Eugene.
5/11 – 14/2009	My wife Jill and I, Theresa Schmid and her mother went on the Eastern Oregon Tour for the State Bar. We traveled to Pendleton, La Grande, Enterprise, Joseph, Baker City, Ontario, Veil, Burns, Heins and Bend. I returned to Portland to deliver Theresa Schmid and her mother to their home. I then traveled to Eugene and returned to Portland the next day for a Breakfast of Champions event at the Oregon State Bar.
5/18/2009	I drove to Portland for a dinner with the Northwest Bar Presidents and Bar Executives, spent the night in Portland and then drove the next morning to Salem for a meeting of the Justice Systems Revenue Options Group. After that meeting I returned to Portland for the Northwest Bar President's meeting. I spent the night in Portland on May 18, 2009 for the dinner so I could attend the Northwest Bar President's meeting on May 19, 2009. I then returned to Eugene.
5/20/2009	I drove to Salem for the Justice System's Revenue Options Work Group and returned to Eugene.
5/21/2009	I drove to Salem to attend the Justice System's Revenue Options Work Group, have lunch with the Supreme Court, and then attended the swearing in ceremony for new admittees. I then returned to Eugene.
6/2/2009	Travel to Salem for meeting with Chief Justice; return to Eugene.
6/4 – 6/6/2009	Travel to Coos Bay for meeting with Coos County Bar and then to Gold Beach for PLF meetings; return to Eugene.
6/10/2009	Travel to McMinnville for meeting with County Bar; return to Eugene.
6/11 – 6/12/2009	Travel to Portland to meet with Teresa Schmidt and Karen Lee; spend night and then attend BOG meetings and reception on 6/12; return to Eugene.
6/24 – 6/25/2009	Travel to Klamath Falls to meet with County Bar; return to Eugene.
6/29/2009	Travel to Portland to attend International Law Section at Home and Abroad Diverse Cultures in the Business of Law to support Frank Garcia Jr. and determine how the diversity message was being carried to the Section; return to Eugene.

7/02/2009	Travel to McMinnville to attend and speak at the investiture of Judge Cynthia Easterday; return to Eugene.
7/29 – 8/2/2009	Travel to Chicago to attend ABA-NCB-NABE conference; return to Eugene.
8/11/2009	Travel to Salem to meet with Chief Justice DeMuniz; return to Eugene.
8/14/2009	Travel to Portland to attend Oregon Hispanic Bar Association Reception for Angel Lopez; return to Eugene.
8/16 – 8/18/2009	Travel to attend Columbia County Bar visit on 8/17/2009; travel to Portland to meet with Senator Merkley, Susan Grabe and Steve Piucci; travel to Astoria to attend Clatsop County Bar visit on 8/18/2009; return to Eugene.
8/20/2009	Travel to Bar Center to meet with Chinese Delegation, participate in investiture of Judges Angel Lopez and David Rees; stayed the night in Portland and then attended committee meeting for Professionalism Award, participated in Professionalism introductory program for first year law students at Lewis & Clark, attended Professionalism Committee meeting; return to Eugene.
8/27–8/28/20089	Travel to Bar Center to meet with Margaret Robinson and Christine Kennedy; pickup Teresa Schmid and drive to The Dalles and return to Portland; return to Eugene.
9/2/2009	Travel to Portland for Campaign for Equal Justice Bus Tour; return to Eugene.
9/10/2009	Travel to Portland to attend the first meeting of the Convocation for Equality at the Bullivant firm; return to Eugene.
9/22/2009	Travel to Salem to meet with Chief Justice De Munez and Susan Grabe regarding communication on the new filing and other fees; return to Eugene.
9/24/2009	Travel to Portland to attend the Oregon Pacific Asian Bar Association Meeting which was attended by a past president of the California State Bar. Lodging at the Hotel Monaco, which was where the BOG Alumni dinner was held on September 25, 2009. I attended the BOG Alumni dinner and BOG meetings at the BOG center. Return to Eugene.
9/30/2009	Travel to Salem for the Campaign for Equal Justice meeting and a meeting with Cathy Evans and Teresa Schmid; return to Eugene.
10/06/2009	Travel to Portland to participate in the investiture of Judge Karen Immergut; return to Eugene.
10/8/2009	Travel to Salem to participate in the admission ceremony for new Oregon lawyers; return to Eugene.

10/9/2009	Travel to the Bar Center for a PLF meeting and a meeting with Teresa Schmid; return to Eugene.
10/12/2009	Travel to Salem for the monthly meeting with Chief Justice De Muniz; return to Eugene.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30, 2009
Memo Date: October 19, 2009
From: Kathleen Evans, President-elect
Re: Report of President-elect

- Participated in a teleconference with the PLF on the adoption of its budget on September 23rd.
- Attended the Oregon Asian Pacific American Bar Association informal social and talk with Holly Fujie, immediate past President of the State Bar of California.
- Attended the Past BOG dinner, following our committee meetings on September 25th.
- Attended the Marion County Bar Association Campaign for Equal Justice fund-raising luncheon on September 30th and had the pleasure of introducing keynote speaker, the Honorable Martha Walters.
- Met and worked with Gerry and Teresa on various transition issues.
- Attended the PLF Board Meeting at the Bar Center on October 9th.
- Attended the Budget and Finance Committee work session on the 2010 budget on October 9th.
- Worked with the Executive Director Evaluation Committee.
- Conducted the Region 6 HOD meeting on October 20th.
- Attended the CEJ LAF-OFF fund-raising event in Portland on October 23rd.

Kathy Evans

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 31, 2009
Memo Date: October 15, 2009
From: Ross Williamson, Oregon New Lawyers Division Chair
Re: ONLD Report

Since the last BOG meeting the ONLD conducted two business meetings, one in September and another in October. During these two meetings we approved the 2010 Executive Committee slate, announced ONLD award winners for 2009, discussed next year's budget and the HOD resolution to add ABA Model Rule 6.1 into the ORPCs.

In conjunction with the September meeting in Eugene, we conducted a CLE program and social. Two members of our Executive Committee conducted the CLE program which covered the prosecution and defense of DUIIs. More than 35 law students attended the event along with members of the legal community from Eugene and the surrounding area.

October's meeting was held at the bar center and was followed by a joint meeting with the Multnomah Bar Association Young Lawyers Section and the Washington State Bar Association Young Lawyer's Division. The joint meeting focused on providing each group with ideas on how to improve current programming to benefit members. In addition to the joint meeting, the ONLD hosted a reciprocity CLE program for Oregon attorneys interested in practicing in Washington. Following Saturday's programming, a social was held with the CLE attendees and members of the other boards.

During the month of October, the ONLD also hosted a reception for new bar members following the swearing-in ceremony at Willamette University. With almost 400 new members admitted this fall, the ONLD now makes up more than 28% of the bar's active membership. Several members of the Executive Committee also participated in the AAP's BOWLIO event in late October.

November brings the ONLD's annual meeting in Portland and our full-day CLE program, SuperSaturday. With three programming tracks and 15 one-hour CLE programs this event is a popular one for our members. Planning is also under way for an event in December where the ONLD hopes to get feedback from members on what they believe the future holds for the practice of law and how the ONLD can help get us there.

2009 ONLD Master Calendar

Last updated October 1, 2009

Date	Time	Event	Location
October 8	Noon	Swearing In Ceremony Reception	Willamette University
October 13	Noon	Law School Panel Presentation	Lewis & Clark 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 22	Noon	Law School Panel Presentation	U of O Law School
October 24	TBD	BOWLIO	Valley Lanes - Beaverton
October 27		Pro Bono Fair/Ceremony	Oregon Historical Society
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
TBD	TBD	ONLD Futures Conference	Eugene

Bold indicates an update since the last version

BOARD OF BAR GOVERNORS' RESOLUTION REGARDING VETERANS DAY REMEMBRANCE

WHEREAS, military service is vital to the perpetuation of freedom and the rule of law;

WHEREAS, thousands of Oregonians have served in the military, and many have given their lives;

RESOLVED, that the Oregon State Bar hereby extends its gratitude to all those who have served, and are serving, in the military and further offers the most sincere condolences to the families and loved ones of those who have died serving their country.

BACKGROUND

The mission of the Bar is to serve justice and promote the rule of law. Active duty military service members, the guard, and reservists, all embody the American tradition of a citizen soldier. We literally would not have our freedom, much less the rule of law, without generations of sacrifice by these citizens. This resolution is simply intended to offer thanks and condolences to all who have sacrificed. This applies to all living veterans, to those who are presently serving, and to the families of those who have lost loved ones.

In honor of Veterans Day, November 11, 2009, The Board of Bar Governors would like to say thank you and pause for a moment to offer sympathy to the families of those who have suffered.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 29-31, 2009

Memo Date: October 8, 2009

From: *Ira Zarov* Ira Zarov – PLF CEO

Re: PLF Policy 3.800

Action Recommended

Approve changes to PLF Policy 3.800, Coverage of Pro Bono Programs.

The current relevant part of PLF Policy 3.800 now states:

(A) The PLF will provide professional liability coverage without charge for claims made against PLF-exempt Oregon attorneys arising from their work for OSB certified pro bono programs under the specific provisions of this policy. This policy may be amended or rescinded at any time.

(B) As used in this policy:

(1) The words “Pro Bono Coverage” mean the PLF coverage provided to a Pro Bono Program through a PLF Master Plan pursuant to this policy.

(2) The words “Pro Bono Program” mean an organized program which has been certified by the Oregon State Bar as an OSB Pro Bono Program under Bar Bylaw 13.201(a)(1), (2) or (5).

The proposed new Policy states:

(A) The PLF will provide professional liability coverage without charge for claims made against PLF-exempt Oregon attorneys arising from their work for OSB certified pro bono programs under the specific provisions of this policy.

Deleted: malpractice

Deleted: This policy may be amended or rescinded at any time.

(B) As used in this policy:

(1) The words “Pro Bono Coverage” mean the PLF coverage provided to a Pro Bono Program through a PLF Master Plan pursuant to this policy.

(2) The words “Pro Bono Program” mean an organized program which has been certified by the Oregon State Bar as an OSB Pro Bono Program under Bar Bylaw 13.201 **and does not present an unacceptably high risk of professional liability claims,**

Deleted: (a)(1), (2) or (5).

Deleted: ¶

Background

The recommended change brings the PLF Pro Bono coverage consistent with OSB efforts to increase the pro bono opportunities for Oregon lawyers, especially those exempt from PLF coverage. The attached memorandum of September 17 from Jeff Crawford to the OSB Access to Justice Committee and September 21 from Mr. Crawford to the PLF Board of Directors provide further background.

Attachment

Ira R. Zarov
Chief Executive Officer

MEMORANDUM (Includes Revision from BOD 10/9/09)

Board of Directors
and Officers

TO: PLF Board of Directors

James G. Rice
Portland
Chairperson

DATE: *Andy* September 21, 2009

FROM: *Andy* Jeff Crawford, Director of Admin/Excess Program

Ronald L. Bryant
Redmond
Vice Chairperson

RE: PLF Policy 3.800, Coverage for Pro Bono Program

Kandis Brewer Nunn
Portland
Public Member
Secretary-Treas.

The PLF provides special coverage to Oregon State Bar certified Pro Bono programs for volunteer lawyers who are otherwise exempt from mandatory PLF coverage. Traditionally, covered programs have served low-income clients and the coverage has been issued without charge. More details about the history of the program can be read in the attached OSB Pro Bono Committee memo of September 18, 2009, and my September 17, 2009 memo to the OSB Access to Justice Committee

Rodney E. Lewis, Jr.
Portland

Suzanne Bradley Chanti
Eugene

The OSB is making a concerted effort to increase the pro bono opportunities for Oregon lawyers, especially those exempt from PLF coverage. Because the certified programs are the largest source of pro bono opportunities for PLF-exempt lawyers, attention has focused on rewriting the certification criteria to be sure that all programs meeting the OSB's pro bono values are able to obtain PLF coverage. The current certification rules have barred suitable programs from certification and contemplate certifying programs which are not appropriate for PLF coverage. The new version will bring certification and eligibility for PLF coverage into line.

Frederick C. Ruby
Salem

William G. Carter
Medford

Tim Martinez
Salem
Public Member

Laura E. Rackner
Portland

The OSB committees are bringing forward proposed changes to OSB Bylaw 13.201 (attached to the Pro Bono Committee memo). We are proposing corresponding changes to PLF Policy 3.800. Our changes would allow for PLF coverage for all certified programs but add an underwriting provision in the event that a high-risk program is certified and the PLF feels the risk threatens the underwriting integrity of the program as a whole. Also, we are working with Bar staff to create a combined certification and PLF coverage application.

3.800 COVERAGE FOR PRO BONO PROGRAMS

(A) The PLF will provide ~~professional liability~~ coverage without charge for claims made against PLF-exempt Oregon attorneys arising from their work for OSB certified pro bono programs under the specific provisions of this policy.

Deleted: malpractice

Deleted: This policy may be amended or rescinded at any time.

(B) As used in this policy:

(1) The words "Pro Bono Coverage" mean the PLF coverage provided to a Pro Bono Program through a PLF Master Plan pursuant to this policy.

(2) The words "Pro Bono Program" mean an organized program which has been certified by the Oregon State Bar as an OSB Pro Bono Program under Bar Bylaw 13.201 and does not present an unacceptably high risk of ~~professional liability claims~~.

Deleted: (a)(1), (2) or (5).

Deleted: malpractice

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M E M O R A N D U M

TO: OSB Access to Justice Committee

FROM: Jeff Crawford, Director of Administration

DATE: September 17, 2009

RE: PLF Coverage for Pro Bono Programs
Certified Under Bylaw 13.201

As the Pro Bono Committee's September 18, 2009 memo explains, the PLF has been an integral part of the effort to mobilize volunteer lawyers to help the most underserved in our communities. The partnership between the OSB, PLF and certified programs has been very successful over the years. By providing coverage for lawyers exempt from ordinary PLF coverage, the pool of volunteers is greatly increased. And, we have been able to provide the coverage at no charge to the volunteer lawyers and certified programs.

One of the most important goals of the Pro Bono Committee's revision of the pro bono certification criteria under Bylaw 13.201, has been to ensure that all certified programs will be eligible for free PLF coverage. In the past, some programs could be certified, but did not meet the criteria for free PLF coverage. As proposed, the new Bylaw 13.201 fits within the spirit of the PLF coverage criteria and the intent is that all certifiable programs will be eligible for free PLF coverage.

In tandem with your committee's work, PLF staff will propose corresponding changes to the PLF bylaws and policies to the PLF Board of Directors and the Bar Board of Governors. Also, PLF and OSB staff will be looking at the possibility of a combined certification and PLF application to streamline the process for eligible programs.


Another important issue is the integration of the Active Pro Bono membership status into the OSB pro bono certification process and availability of PLF pro bono coverage. By ensuring that all programs certified by the OSB are eligible for PLF pro bono coverage, Active Pro Bono attorneys will be free to volunteer for any certified program without concerns about whether the work is properly covered. The result of these efforts will be more opportunities for lawyers to provide pro bono services at a time when they are needed more than ever.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 29-31, 2009

Memo Date: October 8, 2009

From: Ira Zarov, PLF CEO 

Re: PLF Policy 3.100 – Claims Made Plan & Retroactive Date

Action Recommended

Approve proposed changes to PLF Policy 3.100(c). The change resets the retroactive date for an attorney who leaves the practice of law in the course of a year but returns that year, to the date the attorney returns to practice.

The proposed changes are:

Current PLF Policy 3.100(C) states as follows:

- (C) If an attorney terminates his or her PLF primary coverage prior to the end of a Plan Year, but returns to PLF primary coverage at a later date during the same Plan Year, the attorney will receive the same Retroactive Date as before upon returning to primary coverage. In all other cases, an attorney with any break in continuous PLF primary coverage will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the attorney's new period of PLF primary coverage commenced.

The new Policy 3.100(C):

- (C) If an attorney terminates his or her PLF primary coverage, **the attorney** ~~prior to the end of a Plan Year, but returns to PLF primary coverage at a later date during the same Plan Year, the attorney will receive the same Retroactive Date as before upon returning to primary coverage. In all other cases, an attorney with any break in continuous PLF primary coverage will receive a new Retroactive Date upon returning to PLF primary coverage, which is the date on which the attorney's new period of PLF primary coverage commenced.~~


Background

Currently when an attorney discontinues PLF coverage in the course of the year and returns during the same calendar year the attorney does not get a new retroactive date but instead has the same retroactive date as if the attorney never left PLF coverage.

The change would treat attorneys who leave and return to PLF coverage during the same calendar year the same as attorneys who leave and return to the PLF coverage during different calendar years.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 29-31, 2009
Memo Date: October 5, 2009
From: Ira Zarov, PLF CEO 
Re: 2010 Primary and Excess Plan

Action Recommended

Approve changes to the 2010 Primary and Excess Plans and approve the final Primary and Excess Plans.

Specific changes are to Section IV.b(1). This section clarifies the coverage year to which the claim will be assigned. The second, to section V.4 makes clear that the exclusions include not only punitive damages but also statutorily enhance damages.

If approval of the two changes is given, PLF and OSB policies require approval of the full plans.

Background

Section IV.b(1)

The year a claim is assigned to can be an important issue because of the \$300,000 limitation in Primary Plan coverage and, if a covered party has excess cover, the limit of the Excess Plan. Claims that are assigned an incorrect year can cause the covered party to have insufficient coverage for that year, or from the PLF perspective, claims assigned to an incorrect year can mean that too much coverage is made available to the covered party.

The revised Section IV.b.(1) seeks to make the determination of when a claim is made more objective and expands the definition of when a claim is made to include when an arbitration or ADR proceeding is formally initiated or when the "the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM." The Comments have also been changed to be consistent with the new definition.

Section V.4.

Exclusion V.4 is designed to limit statutorily enhanced damages. As previously worded, Exclusion V.4. did not clearly exclude such damages. An example of such damages are the treble damages included when a successful claim for

financial elder abuse is made. It was not the intent of the Plan to cover damages of this nature because they are predicated on intentional acts.

The Plan changes are attached.

Attachments

Professional Liability Fund

MEMORANDUM

Ira R. Zarov
Chief Executive Officer

To: PLF Board of Directors

Board of Directors
and Officers

From: Jeff Crawford, Director of Excess Program

Robert C. Cannon
Salem
Chairperson

Date: July 30, 2009

James G. Rice
Portland
Vice Chairperson

RE: Proposed Changes to 2010 PLF Claims Made and Excess Plans
(October 9, 2009 PLF Board of Directors Meeting)

Kandis Brewer Nunn
Portland
Public Member
Secretary-Treas.

The Coverage Committee met on July 29, 2009, to discuss various proposed changes to the 2010 PLF Primary & Excess Plans. The Committee unanimously approved the proposed changes.

Rodney E. Lewis, Jr.
Portland

The first proposed change concerns the notice of claims provision of the PLF Claims Made Plan. It clarifies what plan year would apply when a covered party notifies the PLF of a claim.

Ronald L. Bryant
Redmond

Section IV.b(1) would be revised as follows (changes in italics and bold):

Suzanne Bradley Chanti
Eugene

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

Frederick C. Ruby
Salem

(1) ~~A CLAIM will be deemed to have been made at the earliest of:~~
The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:

William G. Carter
Medford

(a) ~~When a SUIT is filed or formally initiated;~~
When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated; or

Tim Martinez
Salem
Public Member

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

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

When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or

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

COMMENTS

When Claim First Made; ~~SAME OR RELATED CLAIMS~~. Subsection 1.b(1) of this section is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection b(1)(c) adopts an objective, reasonable person standard to determine when the PLF's knowledge of facts or circumstances can rise to the level of a CLAIM for purpose of triggering an applicable COVERAGE PERIOD. This subsection is based solely on the objective nature of information received by the PLF. Covered Parties should thus be aware that any information or knowledge they may have that is not transmitted to the PLF is irrelevant to any determination made under this subsection.

If facts or circumstances meet the requirements of subsection b(1)(c), then any subsequent CLAIM that constitutes a SAME OR RELATED CLAIM under Section I.10 will relate back to the COVERAGE PERIOD at the time the original notice of information was provided to the PLF.

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

The second proposed change is to limit statutorily enhanced damages. It was brought to our attention that the Plan may not be clear that any enhanced damages would be excluded under the Plan. This proposed change would explicitly state that these types of statutorily enhanced damages are excluded. Under Section V.4 (Exclusions from Coverage, under both the Primary and Excess Plans), the proposed change is (changes in bold and italics):

4. This Plan does not apply to:
 - a. The part of any CLAIM seeking punitive, ~~or~~ exemplary *or statutorily enhanced* damages; or
 - b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions on the COVERED PARTY or others imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct and/or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.

Under the Primary Plan only, the Comments section would change as follows:

COMMENTS

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

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

OREGON STATE BAR

PROFESSIONAL LIABILITY FUND

2010 CLAIMS MADE PLAN

January 1, 2010

2010 CLAIMS MADE PLAN

**Table of Contents
Coverage Guide**

	<u>Page</u>
INTERPRETATION OF THIS PLAN	1
SECTION I –DEFINITIONS	
1. Business Trustee	2
2. Claim.....	2
3. Claims Expense.....	2
4. Claims Expense Allowance	3
5. Coverage Period.....	3
6. Covered Activity.....	3
7. Covered Party.....	3
8. Damages.....	3
9. Excess Claims Expense.....	3
10. Investment Advice	3
11. Law Entity.....	4
12. Plan Year.....	4
13. PLF.....	4
14. Same or Related Claims.....	4
15. Suit	6
16. You and Your.....	6
SECTION II – WHO IS A COVERED PARTY.....	6
SECTION III – WHAT IS A COVERED ACTIVITY	7
1. Your Conduct.....	7
2. Conduct of Others	7
3. Your Conduct in a Special Capacity.....	8
SECTION IV – GRANT OF COVERAGE.....	10
1. Indemnity	10
2. Defense	10
SECTION V – EXCLUSIONS FROM COVERAGE	12
1. Fraudulent Claim Exclusion	12
2. Wrongful Conduct Exclusion	12
3. Disciplinary Proceedings Exclusion	13
4. Punitive Damages and Cost Award Exclusions.....	13
5. Business Role Exclusion.....	14
6. Ownership Interest Exclusion.....	14

7. Partner and Employee Exclusion	14
8. ORPC 1.8 Exclusion	15
9. Investment Advice Exclusion	17
10. Law Practice Business Activities Exclusion.....	18
11. Family Member and Ownership Exclusion	19
12. Benefit Plan Fiduciary Exclusion	19
13. Notary Exclusion	19
14. Government Activity Exclusion	19
15. House Counsel Exclusion	20
16. General Tortious Conduct Exclusions	20
17. Unlawful Harassment and Discrimination Exclusion.....	21
18. Patent Exclusion.....	22
19. SUA Exclusion.....	22
20. Contractual Obligation Exclusion.....	22
21. Bankruptcy Trustee Exclusion.....	23
SECTION VI – LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE	23
1. Limits for This Plan	23
a. Coverage Limits.....	23
b. Claims Expense Allowance Limits.....	23
c. No Consequential Damages.....	24
2. Limits Involving Same or Related Claims Under Multiple Plans	24
SECTION VII – NOTICE OF CLAIMS	25
SECTION VIII – COVERAGE DETERMINATIONS.....	26
SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY	27
SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES	28
SECTION XI – SUPPLEMENTAL ASSESSMENTS.....	29
SECTION XII – RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE	29
SECTION XIII – WAIVER AND ESTOPPEL.....	30
SECTION XIV – AUTOMATIC EXTENDED CLAIMS REPORTING PERIOD.....	30
SECTION XV - ASSIGNMENT.....	31
EXHIBIT A – FORM ORPC 1	32
PLAN FOR SPECIAL UNDERWRITING ASSESSMENT	35

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

2010 CLAIMS MADE PLAN

NOTICE

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

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

INTERPRETATION OF THIS PLAN

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

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

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

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

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

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

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

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

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

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

SECTION I — DEFINITIONS

Throughout this Plan, when appearing in capital letters:

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

COMMENTS

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

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

2. "CLAIM" means a demand for DAMAGES or written notice to a COVERED PARTY of an intent to hold a COVERED PARTY liable as a result of a COVERED ACTIVITY, if such notice might reasonably be expected to result in an assertion of a right to DAMAGES.
3. "CLAIMS EXPENSE" means:
 - a. Fees charged by any attorney designated by the PLF;

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

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

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

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

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

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

8. "DAMAGES" means money 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.

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

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

- a.** Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;
- b.** Managing any investment;
- c.** Buying or selling any investment for another;
- d.** (1) Acting as a broker for a borrower or lender, or

(2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;
- e.** Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;
- f.** Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or

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

COMMENTS

SAME OR RELATED CLAIMS. Each PLF Plan sets a maximum limit of coverage per year. This limit defines the PLF's total maximum obligation under the terms of each Plan issued by the PLF. However, absent additional Plan provisions, numerous circumstances could arise in which the PLF, as issuer of other PLF Plans, would be liable beyond the limits specified in one individual Plan. For example, Plans issued to the same attorney in different PLAN YEARS might apply. Or, Plans issued to

different attorneys might all apply. In some circumstances, the PLF intends to extend a separate limit under each Plan. In other circumstances, when the CLAIMS are related, the PLF does not so intend. Because the concept of "relatedness" is broad and factually based, there is no one definition or rule that will apply to every situation. The PLF has therefore elected to explain its intent by listing certain circumstances in which only one limit is available regardless of the number of Plans that may apply. See Subsections 14.a to 14.f above.

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

Example No. 2: Attorney A writes a tax opinion for an investment offering, and Attorneys B and C, with a different law firm, assemble the offering circular. Investors 1 and 2 bring CLAIMS in 2008 and Investor 3 brings a CLAIM in 2009 relating to the offering. No CLAIM is asserted prior to 2008. Only one Limit of Coverage applies to all CLAIMS. This is because the CLAIMS arise out of the same transaction or occurrence, or series of transactions or occurrences. See Subsection 14.b above. CLAIMS by investors in the same or similar investments will almost always be related. However, because the CLAIMS in this example are made against COVERED PARTIES in two different firms, up to two CLAIMS EXPENSE ALLOWANCES may potentially apply. See Section VI.2. Note also that, under these facts, all CLAIMS against Attorneys A, B, and C are treated as having been first made in 2008, pursuant to Section IV.1.b(2). This could result in available limits having been exhausted before a CLAIM is eventually made against a particular COVERED PARTY. The timing of making CLAIMS does not increase the available limits.

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

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

Example No. 5: Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents

Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. Although the different acts by different lawyers at different times could legitimately be viewed as separate and unconnected, the claimant in this example attempts to tie them together as part of an alleged overall scheme or operation. The CLAIMS are related because the claimants have made them so. See Subsection 14.c above. This will often be the case in securities CLAIMS. As long as such allegations remain in the case, only one limit will be available, even if alternative CLAIMS are also alleged. In this example, although there is only one Limit of Coverage available for all CLAIMS, depending on the circumstances, multiple CLAIMS EXPENSE ALLOWANCES might be available. See Section VI.2.

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

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

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

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

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

SECTION II — WHO IS A COVERED PARTY

1. The following are COVERED PARTIES:

a. YOU.

b. In the event of YOUR death, adjudicated incapacity, or bankruptcy, YOUR

conservator, guardian, trustee in bankruptcy, or legal or personal representative, but only when acting in such capacity.

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

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

SECTION III — WHAT IS A COVERED ACTIVITY

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

[YOUR CONDUCT]

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

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

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

- (1) YOUR principal office was located in the state of Oregon;
- (2) YOU were licensed to practice law in the state of Oregon; and
- (3) Such activity occurred after any Retroactive Date shown in the Declarations.

[CONDUCT OF OTHERS]

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

a. The act, error, or omission causing YOUR liability:

- (1) Arose while YOU were licensed to practice law in the state of Oregon;
- (2) Arose while YOUR principal office was located in the state of Oregon; and
- (3) Occurred after any Retroactive Date shown in the Declarations.

b. The act, error, or omission, if committed by YOU, would constitute the rendering of

professional services in YOUR capacity as an attorney in private practice.

c. The act, error, or omission was not committed by an attorney who at the time of the act, error, or omission:

- (1) Maintained his or her principal office outside the state of Oregon; or
- (2) Maintained his or her principal office within the state of Oregon and either:
 - (a) Claimed exemption from participation in the Professional Liability Fund, or
 - (b) Was not an active member of the Oregon State Bar.

[YOUR CONDUCT IN A SPECIAL CAPACITY]

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

COMMENTS

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

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

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

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

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

"BUSINESS TRUSTEE" as used in this section is defined in Section I.

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

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

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

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

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

SECTION IV — GRANT OF COVERAGE

1. Indemnity.

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

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

(1) The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:

- (a) When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated; or
- (b) When notice of a CLAIM is received by any COVERED PARTY or by the PLF; or
- (c) When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or
- (d) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

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

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

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

2. Defense.

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

settle, designate defense attorneys, and otherwise conduct the defense or repair of any CLAIM.

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

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

COMMENTS

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

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

When Claim First Made. *Subsection 1.b(1) of this section is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection b(1)(c) adopts an objective, reasonable person standard to determine when the PLF's knowledge of facts or circumstances can rise to the level of a CLAIM for the purpose of triggering an applicable COVERAGE PERIOD. This subsection is based solely on the objective nature of information received by the PLF. Covered Parties should thus be aware that any information or knowledge they may have that is not transmitted to the PLF is irrelevant to any determination made under this subsection.*

If facts or circumstances meet the requirements of subsection b(1)(c), then any subsequent CLAIM that constitutes a SAME OR RELATED CLAIM under Section 1.14 will relate back to the COVERAGE PERIOD at the time the original notice of information was provided to the PLF.

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

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

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

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

SECTION V — EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

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

COMMENTS

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

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

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

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

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

4. This Plan does not apply to:

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

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

COMMENTS

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

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

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

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

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

[BUSINESS ACTIVITY EXCLUSIONS]

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

COMMENTS

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

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

a. In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;

b. In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or

c. That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

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

COMMENTS

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

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

a. YOUR present, former, or prospective partner, employer, or employee; or

b. A present, former, or prospective officer, director, or employee of a professional corporation in which YOU were a shareholder,

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

COMMENTS

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

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

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

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

COMMENTS

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

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

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

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

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

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

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

RULE 1.0(g)

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

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

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

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

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

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

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

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

COMMENTS

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

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

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

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

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

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

10. This Plan does not apply to any CLAIM:

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

COMMENTS

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

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

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

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

Example No. 3: Attorney C writes a demand letter to Client for unpaid fees, then files a lawsuit

for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b, there is no coverage for the CLAIM. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

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

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

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

COMMENT

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

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

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

[GOVERNMENT ACTIVITY EXCLUSION]

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

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

COMMENTS

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

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

[HOUSE COUNSEL EXCLUSION]

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

COMMENTS

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

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

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

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

COMMENTS

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

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

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

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

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

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

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

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

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

COMMENTS

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

[PATENT EXCLUSION]

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

[SUA EXCLUSION]

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

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Plan does not apply to any CLAIM:

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

COMMENTS

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

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

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

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

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

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

[BANKRUPTCY TRUSTEE EXCLUSION]

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

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

1. Limits for This Plan

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

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

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

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

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

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

COMMENTS

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

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

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

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

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

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

SECTION VII — NOTICE OF CLAIMS

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

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

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

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

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

SECTION VIII — COVERAGE DETERMINATIONS

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

COMMENTS

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

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

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

1. As a condition of coverage under this Plan, the COVERED PARTY will, without charge to the PLF, cooperate with the PLF and will:
 - a. Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
 - b. Attend and testify when requested by the PLF;
 - c. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;
 - d. Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
 - e. Submit to arbitration of any CLAIM when requested by the PLF;
 - f. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
 - g. Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
 - h. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.
2. 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.
3. The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.
4. In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:
 - a. Agrees to the PLF's proposal, or
 - b. Objects to the PLF's proposal.

The written response must be made by the COVERED PARTY as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to

unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. A response objecting to the settlement relieves the PLF of any duty to settle that might otherwise exist.

COMMENTS

Subsection 4 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.

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

SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

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

COMMENTS

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

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

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

SECTION XI — SUPPLEMENTAL ASSESSMENTS

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

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

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

If the COVERED PARTY has valid and collectible insurance coverage or other obligation to indemnify that also applies to any loss or CLAIM covered by this Plan, the PLF will not be liable under the Plan until the limits of the COVERED PARTY'S insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the CLAIMS EXPENSE ALLOWANCE and Limits of Coverage of this Plan.

COMMENTS

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

SECTION XIII — WAIVER AND ESTOPPEL

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

SECTION XIV — AUTOMATIC EXTENDED CLAIMS REPORTING PERIOD

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

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

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

COMMENTS

Subsection 1 sets forth YOUR right to extend the reporting period in which a CLAIM must be made. The granting of YOUR rights hereunder does not establish a new or increased CLAIMS EXPENSE ALLOWANCE or Limits of Coverage, but instead merely extends the reporting period under this Plan which will apply to all covered CLAIMS made against YOU during the extended reporting period. The terms and conditions of this Plan will continue to apply to all CLAIMS that may be made

against YOU during the extended reporting period. This extended CLAIMS reporting period is subject to other limitations and requirements, which are available from the PLF on request.

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

Example No. 1: Attorney A obtains regular PLF coverage in 2009 with a CLAIMS EXPENSE ALLOWANCE of \$50,000 and Limits of Coverage of \$300,000. One CLAIM is asserted in 2009 for which a total of \$200,000 is paid in indemnity and expense (including the entire \$50,000 CLAIMS EXPENSE ALLOWANCE). The remaining Limits of Coverage under the 2009 Plan are \$150,000. Attorney A leaves the private practice of law on December 31, 2009 and obtains extended reporting coverage at no charge. The 2009 Plan will apply to all CLAIMS made in 2010 or later years, and only \$150,000 in Limits of Coverage (the balance left under Attorney A's 2009 Plan) is available for all CLAIMS made in 2010 or later years. There is no remaining CLAIMS EXPENSE ALLOWANCE for any new CLAIMS.

Example No. 2: Attorney B obtains regular PLF coverage in 2009, but leaves private practice on March 31, 2009 and obtains a prorated refund of her 2009 assessment. Attorney B will automatically obtain extended reporting coverage under her 2009 Plan as of April 1, 2009. Attorney B returns to PLF coverage on October 1, 2009. Her extended reporting coverage terminates as of that date, and she will not receive new Limits of Coverage or CLAIMS EXPENSE ALLOWANCE. If a CLAIM is made against her in November 2009, her 2009 Plan will cover the CLAIM whether it arises from an alleged error occurring before April 1, 2009 or on or after October 1, 2009.

SECTION XV — ASSIGNMENT

The interest hereunder of any COVERED PARTY is not assignable.

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

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

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

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

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

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

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

Very truly yours,

[Attorney Name and Signature]

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

[Client's Signature]

[Date]

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

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

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

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

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

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

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

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

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

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

ORPC 1.0 Terminology

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

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

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

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

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

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

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

PLF Policy 3.500 -- PLAN FOR SPECIAL UNDERWRITING ASSESSMENT

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

(B) Special Underwriting Assessment:

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

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

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

(D) Allocation and Vicarious Liability:

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

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

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

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

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

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

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

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

(F) **Petition for Review:**

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

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

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

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

OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 CLAIMS MADE EXCESS PLAN

January 1, 2010

2010 CLAIMS MADE EXCESS PLAN

Table of Contents
Coverage Guide

	<u>Page</u>
INTERPRETATION OF THIS EXCESS PLAN.....	1
SECTION 1 – DEFINITIONS.....	2
SECTION II – WHO IS A COVERED PARTY.....	3
SECTION III – WHAT IS A COVERED ACTIVITY.....	5
SECTION IV – GRANT OF COVERAGE:	
1. Indemnity.....	6
2. Defense.....	9
SECTION V – EXCLUSIONS FROM COVERAGE.....	10
SECTION VI – LIMITS OF COVERAGE AND DEDUCTIBLE:	
1. Limits of Coverage.....	15
2. Deductible.....	15
SECTION VII – NOTICE OF CLAIMS.....	16
SECTION VIII – COVERAGE DETERMINATIONS.....	17
SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY.....	18
SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES.....	18
SECTION XI – SUPPLEMENTAL ASSESSMENTS.....	19
SECTION XII – RELATION OF THE PLF’S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE.....	20
SECTION XIII – WAIVER AND ESTOPPEL.....	20
SECTION XIV – EXTENDED REPORTING COVERAGE.....	20

	<u>Page</u>
SECTION XV – ASSIGNMENT.....	22
SECTION XVI – OTHER CONDITIONS:	
1. Application.....	22
2. Cancellation.....	22
3. Termination.....	23
EXHIBIT A – FORM ORPC 1.....	24

OREGON STATE BAR PROFESSIONAL LIABILITY FUND

CLAIMS MADE EXCESS PLAN

Effective January 1, 2010

THIS IS A CLAIMS MADE EXCESS PLAN –PLEASE READ CAREFULLY

NOTICE

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

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

INTERPRETATION OF THIS EXCESS PLAN

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

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

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

COMMENTS

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

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

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

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

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

SECTION I – DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION II – WHO IS A COVERED PARTY

The following are COVERED PARTIES:

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

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

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

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

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

COMMENTS

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

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

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

SECTION III – WHAT IS A COVERED ACTIVITY

The following are COVERED ACTIVITIES:

[COVERED PARTY'S CONDUCT]

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

[CONDUCT OF OTHERS]

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

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

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

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

[COVERED PARTY'S CONDUCT IN A SPECIAL CAPACITY]

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

COMMENTS

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

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

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

SECTION IV – GRANT OF COVERAGE

1. Indemnity.

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

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

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

(1) during the COVERAGE PERIOD, or

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

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

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

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

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

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

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

COMMENTS

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

When Claim First Made; Multiple Claims. *Except as specifically provided, this Excess Plan does not cover CLAIMS made prior to the COVERAGE PERIOD. The Excess Plan is intended to follow the terms of the PLF CLAIMS MADE PLAN*

with respect to when a CLAIM is first made and with respect to the treatment of multiple CLAIMS. See Section I.8, IV.1(b)(2), and VI.2, and related Comments and Examples in the PLF PLAN. However, because of the exception in Subsection I.b. in this Excess Plan, CLAIMS made during the COVERAGE PERIOD will not relate back to previously made CLAIMS that were made against other attorneys or firms, as long as THE FIRM did not reasonably know that a CLAIM would be made under this Excess Plan.

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

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

Example: Law firm maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year, and could report it as a suspense matter or incident report to Carrier X at that time and obtain coverage under the firm's excess policy. The firm does not report the potential claim to Carrier X in Year 1. The firm obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 Excess Plan with the PLF. This is true whether or not Carrier X provides coverage for the claim.

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

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

2. Defense

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

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

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

SECTION V – EXCLUSIONS FROM COVERAGE

COMMENTS

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

[WRONGFUL CONDUCT EXCLUSIONS]

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

[BUSINESS ACTIVITY EXCLUSIONS]

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

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

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

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

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

- a. THE FIRM'S present, former, or prospective partner, employer, or employee, or
- b. A present, former, or prospective officer, director, or employee of a professional corporation in which any COVERED PARTY was a shareholder,

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

8. This Excess Plan does not apply to any CLAIM based upon or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which any COVERED PARTY participated with a client unless disclosure in the form of Disclosure Form ORPC 1, attached as Exhibit A to this Excess Plan, has been properly executed prior to the occurrence giving rise to the CLAIM and either:

- a. A copy of the executed disclosure form is forwarded to the PLF within ten (10) calendar days of execution, or
- b. If delivery of a copy of the disclosure form to the PLF within ten (10) calendar days of execution would violate ORPC 1.6, ORS 9.460(3), or any other rule governing client confidences and secrets, the COVERED PARTY may instead send the PLF an alternative letter stating: (1) the name of the client with whom the COVERED PARTY is participating in a business transaction; (2) that the COVERED PARTY has provided the client with a disclosure letter pursuant to the requirements of ORPC 1.0(g) and 1.8(a) or their equivalents;

(3) the date of the disclosure letter; and (4) that providing the PLF with a copy of the disclosure letter at the present time would violate applicable rules governing client confidences and secrets. This alternative letter must be delivered to the PLF within ten (10) calendar days of execution of the disclosure letter.

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

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

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

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

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

COMMENTS

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

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

13. This Excess Plan does not apply to any CLAIM arising out of any witnessing of a signature

or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of THE FIRM'S employee and no COVERED PARTY has actual knowledge of such act.

[GOVERNMENT ACTIVITY EXCUSION]

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

[HOUSE COUNSEL EXCLUSION]

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

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

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

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

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

[PATENT EXCLUSION]

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

[SUA EXCLUSION]

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

[CONTRACTUAL OBLIGATION EXCLUSION]

20. This Plan does not apply to any CLAIM:

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

[BANKRUPTCY TRUSTEE EXCLUSION]

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

[OFFICE SHARING EXCLUSION]

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

[EXCLUDED ATTORNEY EXCLUSION]

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

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

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

[EXCLUDED FIRM EXCLUSION]

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

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

(1) An EXCLUDED FIRM, or

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

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

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

SECTION VI – LIMITS OF COVERAGE AND DEDUCTIBLE

1. Limits of Coverage

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

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

2. Deductible

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

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

COMMENTS

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

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

SECTION VII – NOTICE OF CLAIMS

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

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

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

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

SECTION VIII – COVERAGE DETERMINATIONS

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

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

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

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

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

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

COMMENTS

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

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

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

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

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

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

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

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

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

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

COMMENTS

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

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

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

SECTION XI – SUPPLEMENTAL ASSESSMENTS

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

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

COMMENTS

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

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

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

COMMENTS

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

SECTION XIII – WAIVER AND ESTOPPEL

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

SECTION XIV – EXTENDED REPORTING COVERAGE

THE FIRM becomes eligible to purchase extended reporting coverage after 24 months of continuous excess coverage with the PLF. Upon termination or cancellation of this Excess Plan by either THE FIRM or the PLF, THE FIRM, if qualified, has the right to purchase extended reporting coverage for one of the following periods for an additional assessment equal to the

percent shown below of the assessment levied against THE FIRM for this Excess Plan (as calculated on an annual basis).

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

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

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

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

COMMENTS

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

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

Example: Same facts as prior example, except the claim which is made against THE FIRM in March of Year 3 is based upon an alleged error of a firm member

occurring in January of Year 2. Because the alleged error occurred after the end of the COVERAGE PERIOD for the Year 1 Excess Plan, the claim does not fall within the terms of the extended reporting coverage and so there is no coverage for the claim under THE FIRM'S Year 1 Excess Plan.

SECTION XV – ASSIGNMENT

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

SECTION XVI – OTHER CONDITIONS

1. Application

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

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

2. Cancellation

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

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

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

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

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

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

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

3. Termination

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

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

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

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

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

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

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

I enclose an article "Business Deals Can Cause Problems," which contains additional information.

If you do decide to consent, please sign and date the enclosed extra copy of this letter in the space provided below and return it to me.

*Very truly yours,
[Attorney Name and Signature]*

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

[Client's Signature]

[Date]

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

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

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

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

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

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

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

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

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

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

ORPC 1.0 Terminology

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

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

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

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

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

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

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

OREGON STATE BAR

PROFESSIONAL LIABILITY FUND

2010 PRO BONO PROGRAM

CLAIMS MADE MASTER PLAN

January 1, 2010

**2010 PRO BONO PROGRAM
CLAIMS MADE MASTER PLAN**

**Table of Contents
Coverage Guide**

	<u>Page</u>
INTERPRETATION OF THIS MASTER PLAN	1
SECTION I –DEFINITIONS	
1. Business Trustee	1
2. Claim.....	2
3. Claims Expense.....	2
4. Claims Expense Allowance	2
5. Coverage Period.....	2
6. Covered Activity.....	2
7. Covered Party.....	2
8. Damages.....	2
9. Excess Claims Expense.....	2
10. Investment Advice	2
11. Law Entity.....	3
12. Master Plan Year.....	3
13. PLF.....	3
14. Same or Related Claims.....	3
15. Suit.....	6
16. You and Your.....	6
17. Pro Bono Program.....	6
18. Volunteer Attorney	6
 SECTION II – WHO IS A COVERED PARTY.....	 6
 SECTION III – WHAT IS A COVERED ACTIVITY	 7
1. Volunteer Attorney’s Conduct.....	7
2. Conduct of Others	7
3. Volunteer Attorney’s Conduct in a Special Capacity	8
 SECTION IV – GRANT OF COVERAGE	 9
1. Indemnity	9
2. Defense	10
 SECTION V – EXCLUSIONS FROM COVERAGE	 11
1. Wrongful Conduct Exclusions.....	11
2. Business Activity Exclusions.....	13
3. Personal Relationship and Benefits Exclusions	17
4. Government Activity Exclusion	19
5. House Counsel Exclusion	19
6. General Tortious Conduct Exclusions	19
7. Patent Exclusion.....	21

8. SUA Exclusion.....	21
9. Contractual Obligation Exclusion.....	21
10. Bankruptcy Trustee Exclusion.....	22
SECTION VI – LIMITS OF COVERAGE AND CLAIMS EXPENSE ALLOWANCE.....	23
1. Limits for This Master Plan.....	23
a. Coverage Limits.....	23
b. Claims Expense Allowance Limits.....	23
c. No Consequential Damages.....	23
2. Limits Involving Same or Related Claims Under Multiple Master Plans.....	24
SECTION VII – NOTICE OF CLAIMS.....	25
SECTION VIII – COVERAGE DETERMINATIONS.....	25
SECTION IX – ASSISTANCE, COOPERATION, AND DUTIES OF COVERED PARTY.....	26
SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES.....	28
SECTION XI – RELATION OF PRO BONO MASTER PLAN COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE.....	29
SECTION XII – WAIVER AND ESTOPPEL.....	29
SECTION XIII – ASSIGNMENT.....	30
SECTION XIV – TERMINATION.....	30
EXHIBIT A – FORM ORPC 1.....	31

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND**

**2010 PRO BONO PROGRAM
CLAIMS MADE MASTER PLAN**

NOTICE

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

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

INTERPRETATION OF THIS MASTER PLAN

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

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

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

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

SECTION I — DEFINITIONS

Throughout this Master Plan, when appearing in capital letters:

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

COMMENTS

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

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

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

3. "CLAIMS EXPENSE" means:

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

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

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

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

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

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

8. "DAMAGES" means money 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.

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

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

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

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

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

COMMENTS

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

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

Example No. 2: Attorney A writes a tax opinion for an investment offering, and Attorneys B and C with a different law firm assemble the offering circular. Investors 1 and 2 bring CLAIMS in 2008 and Investor 3 brings a CLAIM in 2009 relating to the offering. No CLAIM is asserted prior to 2008. Only one Limit of Coverage applies to all CLAIMS. This is because the CLAIMS arise out of the same transaction or occurrence, or series of transactions or occurrences. See Subsection 14.b. above. CLAIMS by investors in the same or similar investments will almost always be related. However, because the CLAIMS in this example are made against COVERED PARTIES in two different firms, up to two CLAIMS EXPENSE ALLOWANCES may potentially apply. See Section VI.2. Note also that, under these facts, all CLAIMS against Attorneys A, B, and C are treated as having been first made in 2008, pursuant to Section IV.1.b.(2). This could result in available limits having been exhausted before a CLAIM is eventually made against a particular COVERED PARTY. The timing of making CLAIMS does not increase the available limits.

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

Example No. 4: An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel A, its ERISA lawyer B, the owner, his attorney C, and the plans' former

attorney D, contending there were improprieties in the due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All CLAIMS are related. They arise out of the same transactions or occurrences and therefore are related under Subsection 14.b. For the exception in Subsection 14.b. to apply, all three elements must be satisfied. The exception does not apply because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Finally, even if the exception in Subsection 14.b. did apply, the CLAIMS would still be related under Subsection 14.d. because they involve one loss. Although the CLAIMS are related, if all four attorneys' firms are sued, depending on the circumstances, up to four total CLAIMS EXPENSE ALLOWANCES might be available under Section VI.2.

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

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

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

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

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

SECTION II — WHO IS A COVERED PARTY

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

COMMENTS

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

SECTION III — WHAT IS A COVERED ACTIVITY

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

[VOLUNTEER ATTORNEY'S CONDUCT]

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

[CONDUCT OF OTHERS]

2. Any act, error or omission committed by a person for whom a VOLUNTEER ATTORNEY is legally liable in the VOLUNTEER ATTORNEY'S capacity as an attorney while providing legal services to clients through YOU; provided each of the following criteria is satisfied:
 - a. The act, error, or omission causing the VOLUNTEER ATTORNEY'S liability:
 - (1) Occurred while the VOLUNTEER ATTORNEY was providing services to a client served by YOU and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU, and
 - (2) Occurred after any Retroactive Date shown in the Declarations to this Master Plan.
 - b. The act, error, or omission, if committed by the VOLUNTEER ATTORNEY, would constitute a COVERED ACTIVITY under this Master Plan.

[VOLUNTEER ATTORNEY'S CONDUCT IN A SPECIAL CAPACITY]

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

- a. The VOLUNTEER ATTORNEY was providing services to a client served by YOU and was acting within the scope of duties assigned to the VOLUNTEER ATTORNEY by YOU.
- b. Such activity occurred after any Retroactive Date shown in the Declarations to this Master Plan.

COMMENTS

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

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

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

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

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

Special Capacity. *Subsection 3 provides limited coverage for VOLUNTEER ATTORNEY acts as a personal representative, administrator, conservator, executor, guardian, or trustee. However, not all acts in a special capacity are covered under this Master Plan. Attorneys acting in a special capacity described in Subsection 3 of Section III may subject themselves to claims from third parties that are beyond the coverage provided by this Master Plan. For example, in acting as a conservator or personal representative, an attorney may engage in certain business activities, such as terminating an employee or signing a contract. If such actions result in a claim by the terminated employee or the other party to the contract, the estate or corpus should respond to such claims in the first instance, and*

should protect the attorney in the process. Attorneys engaged in these activities should obtain appropriate commercial general liability, errors and omissions, or other commercial coverage. The claim will not be covered under Subsection 3 of Section III.

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

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

SECTION IV – GRANT OF COVERAGE

1. Indemnity.

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

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

(1) The applicable COVERAGE PERIOD for a CLAIM will be the earliest of:

- (a) When a lawsuit is filed or an arbitration or ADR proceeding is formally initiated; or
- (b) When notice of a CLAIM is received by any COVERED PARTY or by the PLF; or
- (c) When the PLF first becomes aware of facts or circumstances that reasonably could be expected to be the basis of a CLAIM; or
- (d) When a claimant intends to make a CLAIM but defers assertion of the CLAIM for the purpose of obtaining coverage under a later COVERAGE PERIOD and the COVERED PARTY knows or should know that the COVERED ACTIVITY that is the basis of the CLAIM could result in a CLAIM.

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

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

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

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

2. Defense.

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

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

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

COMMENTS

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

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

When Claim First Made Subsection 1.b.(1) of this section is intended to make clear that the earliest of the several events listed determines when the CLAIM is first made. Subsection b(1)(c) adopts an objective, reasonable person standard to determine when the PLF's knowledge of facts or circumstances can rise to the level of a CLAIM for the purpose of triggering an applicable COVERAGE PERIOD. This subsection is based solely on the objective nature of information

received by the PLF. Covered Parties should thus be aware that any information or knowledge they may have that is not transmitted to the PLF is irrelevant to any determination made under this subsection.

If facts or circumstances meet the requirements of subsection b(1)(c), then any subsequent CLAIM that constitutes a SAME OR RELATED CLAIM under Section I.14 will relate back to the COVERAGE PERIOD at the time the original notice of information was provided to the PLF.

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

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

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

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

SECTION V – EXCLUSIONS FROM COVERAGE

[WRONGFUL CONDUCT EXCLUSIONS]

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

COMMENTS

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

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

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

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

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

4. This Master Plan does not apply to:

a. That part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages;
or

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

COMMENTS

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

Subsection a. of Exclusion 4 applies to direct actions for punitive, exemplary or enhanced damages. It excludes coverage for that part of any CLAIM asserting such damages. In addition, such

CLAIMS do not involve covered DAMAGES as defined in this Master Plan. If YOU are sued for punitive damages, YOU are not covered for that exposure. Similarly, YOU are not covered to the extent compensatory damages are doubled, trebled or otherwise enhanced.

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

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

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

[BUSINESS ACTIVITY EXCLUSIONS]

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

COMMENTS

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

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

a. In which a COVERED PARTY has an ownership interest, or in which a COVERED PARTY had an ownership interest at the time of the alleged acts, errors, or omissions on which the CLAIM is based;

b. In which a COVERED PARTY is a general partner, managing member, or employee, or in which a COVERED PARTY was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the CLAIM is based; or

- c. That is controlled, operated, or managed by a COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by a COVERED PARTY at the time of the alleged acts, errors, or omissions on which the CLAIM is based.

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

COMMENTS

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

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

COMMENTS

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

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- 8. This Master Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) in which a COVERED PARTY participates with a client unless disclosure in the form of Disclosure Form ORPC 1 (attached as Exhibit A to this Master Plan) has been properly executed prior to the occurrence giving rise to the CLAIM and either:
 - a. A copy of the executed disclosure form is forwarded to the PLF within 10 calendar days of execution, or

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

COMMENTS

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

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

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

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

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

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

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

RULE 1.0(g)

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

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

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

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

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

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

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

COMMENTS

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

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

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

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

[PERSONAL RELATIONSHIP AND BENEFITS EXCLUSIONS]

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

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

COMMENTS

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

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

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

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

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

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

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

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

COMMENTS

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

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

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

[GOVERNMENT ACTIVITY EXCLUSION]

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

a. As a public official or an employee of a governmental body, subdivision, or agency; or

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

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

[HOUSE COUNSEL EXCLUSION]

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

COMMENTS

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

[GENERAL TORTIOUS CONDUCT EXCLUSIONS]

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

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

COMMENTS

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

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

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

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

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

Example No. 3: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C for Client. After conclusion of handling of the legal matter, the documents are lost or destroyed. Client makes a CLAIM for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this CLAIM, as loss of the documents did not adversely affect any professional services because the

professional services had been completed. Again, coverage for loss of the property (documents) itself can be obtained through commercial general liability or other insurance or through a valuable papers endorsement to such coverage.

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

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

COMMENTS

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

[PATENT EXCLUSION]

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

[SUA EXCLUSION]

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

[CONTRACTUAL OBLIGATION EXCLUSION]

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

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

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

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

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

COMMENTS

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

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

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

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

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

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

[BANKRUPTCY TRUSTEE EXCLUSION]

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

COMMENTS

Activities by a volunteer lawyer which are outside of the scope of activities assigned to the lawyer by the pro bono program for which the lawyer has volunteered do not constitute a COVERED ACTIVITY under this Master Plan and will also be excluded by this exclusion. The term "PRO BONO PROGRAM" as used in this exclusion is defined at SECTION I – DEFINITIONS.

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

SECTION VI – LIMITS OF COVERAGE AND
CLAIMS EXPENSE ALLOWANCE

1. **Limits for This Master Plan**

- a. **Coverage Limits.** The PLF's maximum liability under this Master Plan is \$300,000 DAMAGES and EXCESS CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the PLF's Limit of Coverage.
- b. **Claims Expense Allowance Limits.** In addition to the Limit of Coverage stated in SECTION VI.1.a. above, there is a single CLAIMS EXPENSE ALLOWANCE of \$50,000 for CLAIMS EXPENSE for all CLAIMS first made during the COVERAGE PERIOD (and during any extended reporting period granted under SECTION XIV). The making of multiple CLAIMS or CLAIMS against more than one COVERED PARTY will not increase the CLAIMS EXPENSE ALLOWANCE. In the event CLAIMS EXPENSE exceeds the CLAIMS EXPENSE ALLOWANCE, the Limit of Coverage will be reduced by the amount of EXCESS CLAIMS EXPENSE incurred. The CLAIMS EXPENSE ALLOWANCE is not available to pay DAMAGES or settlements.
- c. **No Consequential Damages.** No person or entity may recover any damages for breach of any provision in this Master Plan except those specifically provided for in this Master Plan.

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

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

COMMENTS

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

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

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

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

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

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

SECTION VII - NOTICE OF CLAIMS

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

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

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

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

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

SECTION VIII – COVERAGE DETERMINATIONS

1. This Master Plan is governed by the laws of the state of Oregon, regardless of any conflict-of-

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

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

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

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

COMMENTS

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

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

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

1. As a condition of coverage under this Master Plan, the COVERED PARTY will, without

charge to the PLF, cooperate with the PLF and will:

- a. Provide to the PLF, within 30 days after written request, sworn statements providing full disclosure concerning any CLAIM or any aspect thereof;
 - b. Attend and testify when requested by the PLF;
 - c. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any CLAIM against the COVERED PARTY;
 - d. Execute authorizations, documents, papers, loan receipts, releases, or waivers when so requested by the PLF;
 - e. Submit to arbitration of any CLAIM when requested by the PLF;
 - f. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all CLAIMS;
 - g. Not communicate with any person other than the PLF or an insurer for the COVERED PARTY regarding any CLAIM that has been made against the COVERED PARTY, after notice to the COVERED PARTY of such CLAIM, without the PLF's written consent;
 - h. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any CLAIM against the COVERED PARTY.
2. 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.
3. The COVERED PARTY may not, except at his or her own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a CLAIM.
4. In the event the PLF proposes in writing a settlement to be funded by the PLF but subject to the COVERED PARTY's being obligated to reimburse the PLF if it is later determined that the Master Plan did not cover all or part of the CLAIM settled, the COVERED PARTY must advise the PLF in writing that the COVERED PARTY:
- a. Agrees to the PLF's proposal, or
 - b. Objects to the PLF's proposal.

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

response objecting to the settlement relieves the PLF of any duty to settle that might otherwise exist.

COMMENTS

Subsection 4 addresses a problem that arises only when the determination of coverage prior to trial or settlement of the underlying claim is impracticable either because litigation of the coverage issue is not possible, permissible, or advisable, or because a pending trial date or time limit demand presents too short a period for resolution of the coverage issue prior to settlement or trial. In these circumstances, to avoid any argument that the PLF is acting as a volunteer, the PLF needs specific advice from the COVERED PARTY (or anyone claiming through the COVERED PARTY) either unequivocally agreeing that the PLF may proceed with the proposed settlement (i.e., waiving the volunteer argument) or unequivocally objecting to the proposed settlement (i.e., waiving any right to contend that the PLF has a duty to settle). While the PLF recognizes the requirement of an unequivocal response in some circumstances forces the COVERED PARTY (or anyone claiming through the COVERED PARTY) to make a difficult judgment, the exigencies of the situation require an unequivocal response so the PLF will know whether it can proceed with settlement without forfeiting its right to reimbursement to the extent the CLAIM is not covered.

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

SECTION X — ACTIONS BETWEEN THE PLF AND COVERED PARTIES

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

COMMENTS

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

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

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

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

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

COMMENTS

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

SECTION XII – WAIVER AND ESTOPPEL

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

SECTION XIII — ASSIGNMENT

The interest hereunder of any COVERED PARTY is not assignable.

SECTION XIV – TERMINATION

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

EXHIBIT A -- FORM ORPC 1

Dear [Client]:

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

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

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

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

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

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

Very truly yours,

[Attorney Name and Signature]

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

[Client's Signature]

[Date]

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

BUSINESS DEALS CAN CAUSE PROBLEMS (Complying With ORPC 1.8(a))
By Jeffrey D. Sapiro, Disciplinary Counsel, Oregon State Bar

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

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

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

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

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

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

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

ORPC 1.0 Terminology

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

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

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

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

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

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

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

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30, 2009
Memo Date: October 5, 2009
From: Ira Zarov – CEO Professional Liability Fund
Re: 2010 Excess Rates



Action Recommended

The PLF BOD requests that the current rates for Excess Coverage be approved as setout in the accompanying attachment.

Background

In addition to its primary coverage the PLF provides optional excess coverage to Oregon attorneys. The excess coverage is completely reinsured. Rates are determined through negotiations between the PLF and the excess reinsurers, usually Lloyds of London syndicates. Each year's rates are based on the ongoing PLF experience and predicted future trends, as well as in-person discussions between representatives of the PLF and reinsurers. This year the discussions were held in May in Miami, Florida.

As a result of those discussions and an analysis of relevant factors, primarily the experience of the excess program over the past two years, a rate increase for 2010 has been requested. There is a 10% increase for coverage between \$700,000 and \$1,700,000. As a result of the method of calculation for limits above \$2,000,000, the increases differ slightly but are in a similar range. Increases for out of state attorney excess coverage are smaller. (A comparison between 2009 and 2010 excess rates is attached.)

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

2010 EXCESS RATES

----- CLASS 1 -----

Coverage Level	2009 Rates	2010 Rates	Change
\$700,000	\$802	\$882	9.98%
\$1,700,000	\$1,494	\$1,644	10.04%
\$2,700,000	\$2,172	\$2,391	10.08%
\$3,700,000	\$2,497	\$2,749	10.09%
\$4,700,000	\$2,705	\$2,978	10.09%
\$9,700,000	\$4,396	\$5,006	13.88%

----- CLASS 2 -----

Coverage Level	2009 Rates	2010 Rates	Change
\$700,000	\$1,445	\$1,589	9.97%
\$1,700,000	\$2,570	\$2,827	10.00%
\$2,700,000	\$3,673	\$4,040	9.99%
\$3,700,000	\$4,202	\$4,622	10.00%
\$4,700,000	\$4,539	\$4,994	10.02%
\$9,700,000	\$7,150	\$8,288	15.92%

----- OUT OF STATE CLASS 1 -----

Coverage Level	2009 Rates	2010 Rates	Change
\$700,000	\$4,002	\$4,082	2.00%
\$1,700,000	\$4,694	\$4,844	3.20%
\$2,700,000	\$5,372	\$5,591	4.08%
\$3,700,000	\$5,697	\$5,949	4.42%
\$4,700,000	\$5,905	\$6,178	4.62%
\$9,700,000	\$7,596	\$8,206	8.03%

----- OUT OF STATE CLASS 2 -----

Coverage Level	2009 Rates	2010 Rates	Change
\$700,000	\$4,645	\$4,789	3.10%
\$1,700,000	\$5,770	\$6,027	4.45%
\$2,700,000	\$6,873	\$7,240	5.34%
\$3,700,000	\$7,402	\$7,822	5.67%
\$4,700,000	\$7,739	\$8,194	5.88%
\$9,700,000	\$10,350	\$11,488	11.00%

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 29-31, 2009

Memo Date: October 5, 2009

From: Ira Zarov, CEO, Professional Liability Fund

Re: Changes to PLF Policy Manual Chapter 7 - Pro Bono Coverage

Action Recommended

Approve changes to Excess Coverage Program as follows:

Approve changes to PLF Policy 7.250 that allows the PLF to charge additional rates to high risk practices.

Approve changes to PLF Policy 7.300 (C) (2) (a) that redefines what may be considered securities practice.

Approve changes to PLF policy 7.350 that makes grammatical changes to the section and substitutes the words "Higher Risk" for "Class 2."

Approve changes to PLF Policy 7.700 which allows former firm attorneys to obtain information about the excess coverage of the firms they have left.

Approve changes to PLF Policy 7.700 (E) that clarifies that firms will be charged for excess coverage for non-Oregon or out-of-state attorneys at a rate equal to the primary plus the rate charged for excess coverage to other attorneys in the firm.

Background

These changes are designed for a number of purposes. The changes to 7.250 allow the PLF to charge higher rates to high risk practices. This is consistent with general underwriting principles and protects the PLF excess program from covering risks that are not supported by the ordinary pricing.

The changes to PLF Policy 7.300 (C) (2) are the result of a comprehensive examination of the types of security practice that Oregon attorneys engage in. Because higher rates are charged for securities work, properly identifying the universe of securities work is consistent with general underwriting principles.

The changes to 7.350 are not substantive and are made to ensure consistency between underwriting standards and the rest of the section.

The changes to 7.700 are important to make certain that attorneys who leave a firm, and who wish to make certain that they have excess coverage for work done at the former firm, can discover if the firm has extended its excess coverage.

The changes to 7.700 (E) are a clarification of current practices.

Attachments

CHAPTER 7 - EXCESS COVERAGE PROGRAM

7.250 APPLICATION AND UNDERWRITING

(A) The PLF may require firms seeking excess coverage to complete an application form designated by the PLF. The PLF may request additional relevant information at any stage of the underwriting process. Firms will be underwritten based upon this application, such other information as the PLF deems relevant, and the underwriting guidelines established in sections 7.300 and 7.350. Because the information requested from firms is personal, sensitive, confidential, and relates to litigation matters, applications and other underwriting materials will be exempt from disclosure under the Public Records Law, ORS 192.410 et seq. Because meetings of the Excess Committee are for the purpose of considering and discussing the information contained in the applications submitted by firms as well as the confidential claims information maintained by the PLF, the meetings of the Excess Committee will be held in executive session under the Public Meetings Law, ORS 192.610 et seq., pursuant to the provisions of ORS 192.660 (1)(f) and other applicable sections.

(B) No final decisions or action on an application will be made by the Excess Committee. The committee's function is limited to review and discussion of applications, and all final decisions or action on applications will be taken by the chief executive officer or the chief executive officer's designee with a right of appeal to the PLF Board of Directors.

(C) For underwriting purposes the PLF may limit the excess coverage offered to a firm in such areas as, but not limited to, imposition of a retroactive date as to a firm or individual members; imposition of an exclusion as to claims from particular claimants, transactions, events, or subject matters; imposition of an exclusion as to claims from business entities in which the firm, firm members, or their families have an ownership or management interest or for which they serve as an officer or director; and other coverage limitations. For underwriting purposes the PLF may impose additional requirements as a condition to obtaining coverage including, but not limited to, *higher assessment rates*, additional surcharges, ~~for coverage~~ or a requirement that the firm or firm members undertake specified education or personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04)

(D) In order to ensure the integrity and quality of the underwriting process and to maintain the viability of the excess program, the individual underwriting decisions of the PLF will be final and will not be reviewed by the Board of Governors.

(E) Excess plans are underwritten and issued on an annual basis and are not renewable.

(F) No information from the Oregon Attorney Assistance Program or the PLF's other assistance programs will be obtained or used in the underwriting process unless both the applicant firm and affected firm member(s) request that it be considered. See PLF Policy 6.300.

(BOD 2/18/94; BOG 3/12/94; BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD as rev. 11/21/97; BOD 8/16/02; BOG 10/3/02; BOD 8/27/04; BOG 10/13/04)



7.300 APPLICATIONS ACCEPTABLE FOR UNDERWRITING

(A) Applications will be accepted for underwriting if all of the following criteria are met:

(1) No claim has been made against any firm member during the prior five calendar years in which the total of expense plus indemnity paid equals or exceeds \$100,000;

(2) No firm member has any open claim for which the total of PLF expense and indemnity reserves equals or exceeds \$100,000;

(3) No firm member has any open claim reserved at less than \$100,000 with potential damages which equal or exceed \$100,000;

(4) No firm member has two or more claims made during the prior five calendar years for which any indemnity was paid;

(5) No firm member has two or more open claims pending;

(6) No firm member has any claim made since July 1, 1978 for which the indemnity paid equals or exceeds applicable PLF indemnity limits;

(7) No present member maintains his or her principal office as defined in ORS 9.080(2)(c) outside the state of Oregon or is not a member of the Oregon State Bar.

(8) Neither the firm nor any member practices in any ~~Class-2~~ **Higher Risk** Practice Area, and neither the firm nor a predecessor firm, nor any present or former member of the firm or a predecessor firm, has practiced in any ~~Class-2~~ **Higher Risk** Practice Area during the prior three calendar years; and

(9) Neither the firm nor any firm member provides an answer on the application which is different from answers approved by the PLF Board of Directors as indicating good practices or acceptable levels of risk.

(10) In the course of underwriting, no information becomes known to the PLF that indicates that the firm presents an unacceptable risk of excess claims.

(B) As used in these policies, "firm member" includes any partner, associate, professional corporation, professional corporation shareholder, and of-counsel attorney of the firm or a predecessor firm for whom excess liability coverage is being sought.

(C) As used in these policies, ~~Class-2~~ **Higher Risk** Practice Areas include:

(1) Living Trust Law, which is defined as preparation of living trusts and related documents in connection with mass or general advertising and marketing of the service to the general public.

(2) Securities Law, which is defined as:

~~(a) — The preparation of any part of a prospectus, offering circular, or disclosure statement (including a tax opinion) which is required by law in connection with the issuance, sale, or transfer of a security.~~

~~(b) — Involvement in the direct sale to an individual purchaser of any security for which a prospectus, offering circular, or disclosure statement is required by law.~~

~~(c) — Providing services to a seller or underwriter in connection with the initial issuance of a security which is required to be registered under state or federal law.~~

~~(d) Acting as bond counsel or special counsel in connection with the issuance of a security.~~

(a) The preparation of any part of a subscription document, prospectus, offering circular, disclosure statement, or tax opinion in connection with the issuance, offer, sale, or transfer of a security.

(b) Providing services to a seller or underwriter relating to the offer or sale of a security which is required to be registered under state or federal law.

(c) Providing services to an issuer or other seller relating to the offer or sale of a security which is exempt from federal or state registration requirements.

(d) Providing services relating to the preparation or filing of periodic and special reports (e.g., Form 10-K, 10-Q or 8-K filings) with the Securities and Exchange Commission.

(e) Advising clients regarding reporting obligations under the securities laws.

(f) Providing advice to clients under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940.

(g) Providing advice to clients on broker-dealer or investment adviser compliance.

(h) Advising unregistered broker-dealers (i.e. "finders") on transactions where they receive compensation for assisting with an offering of a security.

(i) Acting as bond counsel or special counsel in connection with the issuance of a security.

(j) Involvement in the direct sale to an individual purchaser of any security. (This category is intended to measure potential "seller" liability under state and federal securities laws, such as Section 12 of the Securities Act of 1933 or ORS 59.115 (1)).

(BOD 10/2/91, BOG 11/8/91; BOD 9/23/92, 12/4/92, BOG 11/13/92; BOD 9/24/93, BOG 11/19/93; BOD 8/15/97; BOG 9/25/97; BOD 10/9/98; BOG 11/15/98; BOD 8/16/02; BOG 10/2-3/02)



7.350 ADDITIONAL UNDERWRITING BASES FOR ACCEPTANCE

(A) An application that is not accepted for underwriting under the criteria listed in Section 7.300 (A) may nevertheless be accepted for underwriting if the PLF determines that one or more of the following provisions apply as appropriate:

(1) Prior claims against a firm member causing a failure under criteria 7.300(A)(1)-(6) do not indicate a greater than average likelihood of future claims, either because of the nature of the claims, changes in the firm's or the firm members' practice, or for other reasons;

(2) Despite a failure under 7.300(A)(8), the firm and its members have adequate skills and ability to engage in ~~Class-2~~ **Higher Risk** Practice Areas without posing an unacceptable risk of excess claims and previous work by the firm, predecessor firm, firm member, or former member in ~~Class-2~~ **Higher Risk** Practice Areas does not pose an unacceptable risk of excess claims;

(3) Notwithstanding a failure of 7.300(A)(9) because any answer on the application is different from answers approved by the Board as indicating good practices or acceptable levels of risk, the firm or firm member has taken adequate steps to eliminate any unacceptable level of risk, the answer on the application has been satisfactorily explained to the PLF so that it no longer indicates an unacceptable level of risk, or refers the firm for personal or practice management assistance that is likely to mitigate any unacceptable level of risk;

(BOD 8/27/04; BOG 10/13/04)

(4) Despite a failure of 7.300(A)(7), the excess program is able to offer coverage to the firm based upon the underwriting standards stated in Section 7.300(A) and reinsurance requirements that allow the PLF to extend to any firm member who maintains his or her principal office as defined in ORS 9.080(2) (c) outside the state of Oregon or to a non-Oregon attorney whose principal office is in Oregon; and

(5) The firm has presented a response to a failure under Section 7.300(A)(10) which, in the opinion of the PLF, indicates that the firm does not present an unacceptable risk of excess claims and no other underwriting criteria prohibits coverage.

The PLF may request additional information from the applicant to determine whether or not the additional criteria stated in this section are met.

(B) In addition to the bases for acceptance listed in 7.350(A), the PLF may accept an application that has failed any of the criteria under Section 7.300(A) if the PLF is convinced, after considering all relevant underwriting criteria and information, including any additional information provided by the firm and any *assessment rate adjustment*, condition or restrictions imposed under Section 7.250(C), that the firm does not present an unacceptable risk of excess claims.

(C) If the PLF determines that an application is unlikely to be accepted for underwriting under the applicable criteria of Sections 7.300 and 7.350, the PLF will notify the applicant of its likely decision and the reasons therefor. The applicant will be offered an opportunity (1) to present additional information to the PLF to demonstrate why its application meets the criteria for acceptance, (2) to withdraw its application, or (3) to have its application rejected

by the PLF. The PLF will thereafter notify the applicant of its final underwriting decision and the reasons therefor.

(D) If a firm has not been accepted for underwriting in a given year, the firm will not be considered for underwriting in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(E) If in a given year the PLF has offered excess coverage to a firm on the basis of any special coverage or practice limitations, restrictions, or conditions, those same limitations, restrictions, or conditions will apply to any offers of excess coverage in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(BOD 10/2/91, BOG 11/8/91; BOD 9/23/92, BOG 11/13/92; BOD 9/24/93, BOG 11/19/93; BOD 10/3/97, BOG 11/15/97; BOD 8/16/02, BOG 10/2-3/02; BOD 10/28/03; BOG 11/15/03)

7.400 EXCESS COVERAGE ASSESSMENT RATES

(A) The assessment *rates* for excess coverage will be established by the Board of Governors upon the recommendation of the PLF Board of Directors. The assessment may include debits or credits for firms based on prior claims, practice specialties, the extension of prior acts coverage (waiver of retroactive date), and other factors.

(B) The Board may establish requirements and procedures concerning the payment of excess coverage assessments including, but not limited to, payment due dates, cancellation for non-payment, and financing of assessments.

(C) The excess program may be assessable against the program participants, including firm members. Supplemental assessments will be made if required according to the terms of the excess coverage plan.

(BOD 12/6/91, BOG 3/13/92; BOD 9/23/92, BOG 11/13/92)

7.450 REINSURANCE

The Professional Liability Fund may obtain such reinsurance for the excess program as it deems appropriate and economically advantageous. The Board of Directors will be provided a formal reinsurance security report at least annually concerning the reinsurers participating in the excess program.

(BOD 9/24/93, BOG 11/19/93; BOD 6/30/97; BOG 7/26/97)

7.500 REPORTS

On a quarterly basis, the chief executive officer will report to the Board of Directors concerning the status of claims with excess liability potential and will furnish such additional information as the Board of Directors may request.



7.700 ADDITIONAL EXCESS PROGRAM RULES

~~(A) Cost of Excess Coverage: Firms will be charged for excess coverage at rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors.~~

~~For firms which practice in any Class 2 Practice Area, the assessment charged will be equal to the total of (1) the Class 2 Rate multiplied by the number of current attorneys in the firm who practiced during the previous three years any amount of time in Class 2 Practice Areas, plus (2) the Class 1 multiplied by the remaining number of current attorneys in the firm.~~

(A) Excess Coverage Inquiries: Former firm attorneys may inquiry in writing regarding their former law firm's excess coverage status. Information provided may include whether the former attorney's firm had or has excess coverage, the coverage period (and applicable coverage limits, if any), and whether the former attorney is listed on the firm's coverage documents.

(B) Of Counsel: There is no charge for attorneys who: (1) are over 65 years of age, (2) are in an "Of Counsel" relationship with the firm, (3) who practice no more than 250 hours per year, and (4) do not practice in any Class 2 *Higher Risk* Practice Area.

(C) Coverage Limits and Primary Coverage: A firm which obtains excess coverage from the PLF must obtain the same amount of excess coverage for each member of the firm. Excess coverage will not be extended to any firm which includes any attorney who does not maintain current primary PLF coverage unless the firm obtains coverage for the attorney under the provisions of Section (E) below. Firms will not be offered excess coverage limits over \$1.7 million unless they have maintained excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage. Firms may be offered coverage excess coverage over \$1.7 million without having had excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage if the firm does not present an unacceptable level of risk and the firm can demonstrate that the reason for the limits increase is due solely to client coverage requirements (See Section (P) below regarding coverage limits restrictions at the \$9.7 million level).

(D) Prior Acts Coverage/Retroactive Date:

(1) The retroactive date applicable to claims made under the excess coverage plan will be the same retroactive date that applies under the applicable primary PLF Claims Made Plan or Plans or the firm's retroactive date, whichever date is more recent.

(2) The PLF may give a credit to firms with recent excess coverage retroactive dates according to the following schedule:

Period between Firm Retroactive Date and Start of Coverage Period

Excess Assessment Credit

0 months to 18 months	50 percent
Over 18 months to 30 months	30 percent
Over 30 months to 42 months	15 percent
Over 42 months	No credit

The PLF may choose not to offer the credit to a firm for the underwriting considerations stated at Policies 7.250 and 7.350.



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

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

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

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

(2) The PLF may establish conditions, terms, and rates for coverage for firms with non-Oregon attorneys and/or out-of-state branches, including additional endorsements and exclusions. The PLF may offer "drop-down" coverage for the firm for any firm members not covered by the PLF primary fund, subject to such deductibles or self-insured retentions as the PLF may establish.

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

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

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

(BOD 10/21/05; BOG 11/19/05; BOD 6/27/08; BOG 7/18/08)


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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 29-31, 2009

Memo Date: October 5, 2009

From: Ira Zarov – PLF CEO 

Re: Assessment and Budget

Action Recommended

Approve the 2010 Budget and Assessment.

Background

On an annual basis, the BOG approves the PLF budget and the assessment for the coming year. This year, the recommendation is to maintain the assessment at \$3,200. The assessment is set based on the actuary report and budget. The attached materials contain the proposed budget and recommendations concerning the assessment. (The BOG approves only the budget and assessment. The claim liability information is to provide the BOG with a fuller picture of the basis for the assessment.)

The highlights of the budget include the addition of a claims secretary beginning in January 2010 and a 3% salary pool.

Attachment


Ira R. Zarov
Chief Executive Officer

September 23, 2009

To: Oregon State Bar Board of Governors

From: Ira Zarov, PLF Chief Executive Officer
R. Thomas Cave, PLF Chief Financial Officer

Re: 2010 PLF Budget and 2010 PLF Primary Assessment



I. Recommended Action

At the September 23, 2009 meeting of the Professional Liability Fund Board of Directors, the BOD approved the proposed 2010 PLF Budget and set the 2010 Primary Program assessment at \$3,200. According to Board of Governor Policies, PLF budgets and assessments are subject to Board of Governor approval. Accordingly, we recommend the following actions:

1. Approve the 2010 PLF budget as attached. This budget uses a 2010 salary pool recommendation of 3.0 percent. This recommendation has been made after consultation with Teresa Schmid.
2. Approve the 2010 PLF Primary Program assessment of \$3,200. If this amount is approved, the 2010 Primary Program assessment will be the same as the preceding three years.

II. 2010 PLF Budget

Number of Covered Attorneys

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. These statistics illustrate the growth in the number of lawyers covered by each program, and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" units. We currently project 6,795 full-pay attorneys for 2009. Our estimate for 2010 assumes growth of 1.5 percent from our 2009 projection which translates to 6,897 full-pay attorneys.

Although the Excess Program covers firms, the budget lists the total number of attorneys covered by the Excess Program. Participation in the Excess Program has not grown during 2008 and 2009. There was some competition from commercial carriers. While there were some new firms seeking coverage, several other firms or individuals “retired” and purchased extended reporting coverage or “tail coverage”. There are some indications that one competitive carrier will not be as active in 2010. We currently project 2009 excess program participation at 2,590 lawyers and expect 2010 participation to grow at 2 percent to 2,642 lawyers. If you include the other providers of excess insurance such as ALAS, more than 50% of the practicing lawyers in Oregon have excess insurance.

Full-time Employee Statistics (Staff Positions)

We have included "full-time equivalent" or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department:

	<u>2009 Projections</u>	<u>2010 Budget</u>
Administration	8.88 FTE	9.13 FTE
Claims	18.25 FTE	19.00 FTE
Loss Prevention (includes OAAP)	12.28 FTE	11.83 FTE
Accounting	4.90 FTE	4.90 FTE
Excess	<u>1.00 FTE</u>	<u>1.00 FTE</u>
Total	45.31 FTE	45.86 FTE

We continue to have a number of permanent positions staffed at part-time levels for both 2009 and 2010. Some staff members work from 20 to 36 hours per week. These part-time arrangements fit the needs of both the employee and the PLF. Part-time and temporary employees are the reason for much of the fractional FTE’s.

Administration changes involve the paperless office implementation. In April, 2009, the PLF hired a document management assistant. This permanent position will be staffed for all of 2010.

Changes in claims involve clerical positions. The PLF has added one claim attorney position during 2008 and an additional position at the start of 2009 without adding to clerical staff. This budget proposes an additional new claims secretary position.

The 2009 loss prevention department projections included some extra clerical staff used to cover the costs of closing down offices where lawyers suddenly left the practice of law because of death or other reasons. Those costs have not been included in the 2010 budget.

Allocation of Costs between the Excess and Primary Programs

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. These allocations are reviewed and adjusted each year. The Excess Program also pays for some direct costs, including printing and reinsurance travel.

Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. The current allocation includes percentages of salaries and benefits for individuals specifically working on the Excess Program. After review of current work duties, some adjustments were made to the 2010 percentages.

Besides specific individual allocations, fourteen percent of the costs of general claims personnel and twelve percent of all loss prevention personnel are allocated to the Excess Program. The total 2010 allocation of salary, benefits and overhead is about 18.66 percent of total administrative operating expense. (The 2009 allocation was 18.22 percent.)

The Excess Program added its only full-time position in the fall of 2007. All salary and benefit costs for this position are charged to the Excess Program. In practice, we have found that this position does work for the claims and loss prevention departments in addition to the Excess Program duties. As a result, the allocations of loss prevention and claim costs to the Excess Program were reduced for the 2009 and 2010 budgets. This change effectively reallocates a portion of the Excess Program position costs to the Primary Program to reflect the position's mixed duties.

Primary Program Revenue

Projected assessment revenue for 2009 is based upon the \$3,200 basic assessment paid by an estimated 6,795 attorneys. The budget for assessment revenue for 2010 is based upon a \$3,200 assessment and 6,897 full-pay attorneys. Primary Program revenue also includes our forecast for SUA collections of \$161,113 for 2009 and \$164,000 for 2010.

The investment environment was extremely poor for all of 2008 and the first two months of 2009. There has been a substantial recovery since early March for all asset categories except commercial real estate. The investment return for the Primary Program was about \$2.7 million for the first seven months of 2009. Our investment return projections for the remainder of 2009 and for 2010 began with the July 31, 2009 market value of all current investments. Investment revenue was calculated from July forward using the rates of return for the different asset categories recommended by R. V. Kuhns & Associates, Inc. (3.5% for the short-term cash flow bond fund, 5.25% for intermediate bonds, 8.25% for domestic equities, 8.85% for foreign equities, 8.0% for hedge fund of funds, and 7.0% for absolute return). We anticipate some additional 2009 declines in commercial real estate followed by returns of 7.0% for 2010. These rates of return are lower than

historical figures but reflect the current reduced expectations of our investment consultants. The overall combined expected rate of return for 2010 is about 6.6 percent.

Primary Program Claims Expense

For any given year, claim expense includes two factors – (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of costs for claims pending at the beginning of the year. Most years, factor 1 (new claims) is much larger and much more important than factor 2. However, problems would develop the effects of factor 2 were never considered, particularly if there were consistent patterns of adjustments. The “indicated average claim cost” in the actuarial report calculates an amount for factor 1. The report also discusses the possibility of adding a margin to the indicated costs. Adding a margin could cover additional claims costs from adverse development of pending claims (factor 2) or other possible negative economic events such as poor investment returns. We have included margins in the past several years to good effect.

We have experienced an increase in the frequency of new claims during 2008 and 2009. We currently project 950 new claims for 2009 at a cost of \$19,000 per claim which is the current recommendation for new claim average costs made by the actuaries.

The 2009 budget included nearly \$1.6 million for adverse development or actuarial increases to estimates in liabilities for claims pending at the start of the year. The adjustment recommended in the June 30, 2009 was the opposite of our expectations. This report showed positive rather than adverse development and recommended a downward adjustment of about \$909,000 to estimates for pending claims. While 2008 claims are more expensive than anticipated, the estimates for 2007 and earlier claim years were significantly reduced and those reductions more than offset the increases for 2008. However, we continue to have concerns about the effects on a poor economy on claims and despite the favorable June adjustment we feel it is prudent to project an adverse adjustment of \$400,000 for the second half of 2009.

Primary Program new claims expense for 2010 was calculated using figures from the actuarial rate study. The study assumed a frequency rate of 13.5 percent, 6,897 covered attorneys and an average claim cost of \$19,500. Multiplying these three numbers together gets a 2010 budget for claims expense of \$18,156,353.

We have also added a margin of \$100 per covered lawyer to cover adverse development of claims pending at the start of 2010. If pending claims do not develop adversely, this margin could offset even greater 2010 claims frequency or cover other negative economic events. The pending claims budget is equal to \$690,000 (\$100 times the estimated 6,897 covered attorneys, rounded). The concept of using a margin will be discussed again in the staff recommendation section regarding the 2010 assessment.

Salary Pool for 2010

The total dollar amount that is available for staff salary increases in a given year is calculated by multiplying the salary pool percentage increase by the current employee salary levels. The salary pool is the only source available for cost of living *and* merit increases. Although there is no policy requiring them, the PLF and OSB historically provide increases to staff that are generally consistent with cost-of-living adjustments.

After consultation with Teresa Schmid, a three percent salary pool increase is recommended for 2010. The salary pool is used to adjust salaries for inflation, to allow normal changes in classifications, and when appropriate to provide a management tool to reward exceptional work. As a point of reference, one percent in the salary pool represents \$35,910 in PLF salary expense and \$12,211 in PLF benefit costs.

Because all salary reclassifications can not be accomplished within the three percent salary pool allocation, we are also requesting \$26,000, an additional 0.24% of the total salary pool, for potential salary reclassification. Salary reclassifications generally occur in two circumstances, when a person hired at a lower salary classification achieves the higher competency required for the new classification, or when there is a necessity to change job requirements. The bulk of the salary reclassification amount reflects either the reclassification of relatively recently hired exempt employees or addresses an historical lack of parity between the salaries of employees in positions with equivalent responsibilities. (Exempt positions are generally professional positions and are not subject to wage and hour requirements.) Salaries for entry level hires for exempt positions are significantly lower than experienced staff. As new staff members become proficient, they are reclassified and their salaries are adjusted appropriately. As the board is aware, several new claims attorneys and a OAAP professional have been hired in recent years. (The major reclassification usually occurs after approximately three years, although the process of salary adjustment often occurs over a longer time period.)

The 2009 budget that was approved by the Board of Directors and Board of Governors in September, 2008 included a five percent salary pool. Because of the severe economic declines experienced during the last quarter of 2008, only three percent was used. As a result, the 2009 projections for salaries are about \$72,000 less than budget.

The salary for the PLF's CEO position is currently under review. The 2009 salary projections and 2010 salary budget do not include any amounts for CEO salary adjustments other than the three percent salary pool that was applied to all PLF positions. This budget assumes that any adjustment will be charged to the contingency item on page 1 of the budget. The anticipated costs of salary consultants have already been included in the 2009 projections for this item.

Benefit Expense

Projected benefit cost for 2009 is about \$120,000 under budget. The major reason for this is a significant reduction in the employer cost of PERS. The employer contribution rate varies depending upon how long an employee has been covered by PERS. Prior to July 1, the PLF paid between 12.49 percent and 13.98 percent of employee salary to PERS. As of July, the rates changed to 8.01 percent and 8.79 percent. This was a drop of nearly 5 percent of salary. The 2010 budget was prepared using the current low rates. The current PERS rates are expected to stay in place until July 1, 2011. There are some indications that there may be a significant increase in PERS rates at that time.

The costs of many other employee benefits are directly tied to salary levels. The cost of medical insurance continues to rise faster than salary levels. Starting in October, 2009 a new premium tax of one percent will be added to all medical insurance plans to help fund coverage for uninsured Oregonians. Although medical insurance rates are difficult to predict, we have included a 10 percent increase for this portion of the 2010 benefit budget.

Capital Budget Items

The 2008 column of the capital budget schedule (page 8) shows the large one-time costs relating to moving into the new Bar Center.

The PLF continues to implement a document management system and the paperless office. The capital budget schedule includes the cost of copiers / scanners, hardware and software related to this project.

The 2009 projections and 2010 budget also anticipate continued replacement of aging personal computers through the office. These changes include larger computer monitors to allow better viewing of documents in a paperless setting.

Other Primary Operating Expenses

The PLF has defense panel meetings every other year. The 2009 budget projections (page 6) include the costs of this year's meeting. Defense panel members pay for their own lodging and meal expenses. The PLF does pay the cost of speakers, supplies, and staff lodging and meals. The next defense panel meeting will be in 2011.

For many years, the PLF Primary Program has included a contingency budget item. For 2010, we included a contingency budget of equal to 2 percent of operating costs (\$131,273). As was discussed earlier, any costs relating to adjustments to the CEO's salary will be charged to that item.

Total Operating Expenses and the Assessment Contribution to Operating Expenses

Page one of the budget shows projected 2009 Primary Program operating costs to be about \$235,340 under the 2009 budget (3.6%). The savings are the primarily the result of salary increases at 3 rather than 5 percent and the lower costs of PERS.

The 2010 Primary Program operating budget is 0.32% lower than the 2009 budget and 3.38% greater than the 2009 projections. The reason for the increase from projections is the 3 percent salary increase, the new claims secretary position and higher costs of medical insurance.

Excess Program Budget

The major focus of this process is on the Primary Program and the effects of the budget on the 2010 Primary Program assessment. We do include a budget for the Excess Program (page 8). As we discussed earlier, we project slight growth in attorneys covered by the Excess Program.

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess assessment that the PLF gets to keep and are based upon a percentage of the assessment (premium) charged. Most of the excess assessment is turned over to reinsurers who cover the costs of resolving excess claims. We currently project ceding commission of \$790,000 for 2009. It is difficult to predict 2010 ceding commissions without knowing 2010 rates and the levels of coverage selected by the insured. While we do not expect significant growth in participation, we do estimate a three percent increase in ceding commission.

After three or four years from the start of a given plan year, the two reinsurance treaties covering the first \$5 million provide for profit commissions if excess claim payments are low. If there are subsequent adverse developments, prior profit commissions are returned to the reinsurance companies. In recent years, excess claims have increased and it is quite difficult to predict profit commissions in advance. As a result, no profit commissions have been included in the 2009 projections or 2010 budget.

Excess investment earnings were calculated using the same method described in the Primary Program revenue section.

The major expenses for the Excess Program are salary, benefits, and allocations from the Primary Program that were discussed in an earlier section.

III. Actuarial Rate Study for 2010

This is the fourteenth time we have received a rate study from our actuaries to assist us in establishing the annual assessment. The attached rate study focuses on the estimate of the cost of 2010 claims. It relies heavily on the analysis contained in the actuaries' claim liability study as of June 30, 2009. The methodology used in that study is discussed by separate memorandum. The rate

study only calculates the cost of new 2010 claims. It does not consider adjustments to pending claims, investment results, or administrative operating costs.

The actuaries estimate the 2010 claim cost per attorney using two different methods. The first method (shown on Exhibit 1) uses regression analysis to determine the trends in the cost of claims. Regression analysis is a statistical technique used to fit a straight line to number of points on a graph. It is very difficult to choose an appropriate trend. Because of the small amount and volatility of data, different ranges of PLF claim years produce very different trend numbers. The selection of the starting and ending points is very significant. For the PLF, including a low starting point such as 1987 or a very high ending point such as 2000 skews the straight line upward. Because of these problems, the actuaries do not favor using this technique to predict future claim costs.

The second method (Exhibit 2) involves selection of expected claim frequency and claim severity (average cost). Claims frequency is defined as the number of claims divided by the number of covered attorneys. For the indicated amount, the actuaries have used a 2010 claims frequency rate of 13.5 percent and \$19,500 as the average cost per claim (severity).

We feel both the frequency and severity choices are reasonable. The frequency choice is appropriate given the past two years. While \$19,500 is higher severity than most claim years, we feel that it is reasonable given increased severity experienced during 2008 and the poor economy. The actuaries prefer the result found with this second method. Their indicated average claim cost is \$2,633 per attorney. This amount would only cover the estimated funds needed for 2010 new claims.

It is necessary to calculate a provision for operating expenses not covered by non-assessment revenue. As can be seen in the budget, the estimate of non-assessment revenue does not cover the budget for operating expenses. The 2010 shortfall is about \$439 per lawyer assuming 6,897 full-pay lawyers.

The actuaries discuss the possibility of having a margin (additional amount) in the calculated assessment. On pages 8 and 9 of their report, the actuaries list pros and cons for having a margin in the assessment.

IV. Staff Recommendations

If you add the operating expense portion of \$439 per lawyer to the actuaries' indicated claim cost of \$2,633, you would have an assessment of \$3,072. We feel that it is appropriate to include a margin of \$100 per attorney for adverse development of pending claims. If claims do not develop adversely, this margin could help the PLF make progress toward its goal of \$12 million of positive combined Primary and Excess Program retained earnings.

PLF Goal No. 1 requires that the PLF "provide the required professional liability coverage at the least possible assessment consistent with a sound financial condition." Although, we currently are projecting net income of nearly \$2.8 million for the Primary Program for 2009, the program had

substantial losses in 2008 and the poor economy could lead to increased claim frequency and severity in the future. Practicing lawyers have also felt the effects of the poor economy. Given all of these factors, the PLF staff feels that there should be no change in the current Primary Program assessment level. Accordingly, we recommend setting the 2010 Primary Program assessment at \$3,200.

If you have any questions, please contact us.

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 PRIMARY PROGRAM BUDGET
Approved by PLF Board of Directors on September 23, 2009**

	<u>2007 ACTUAL</u>	<u>2008 ACTUAL</u>	<u>2009 BUDGET</u>	<u>2009 PROJECTIONS</u>	<u>2010 BUDGET</u>
<u>Revenue</u>					
Assessments including SUA	\$21,224,537	\$21,592,781	\$22,246,000	\$21,904,295	\$22,234,000
Installment Service Charge	304,774	309,604	313,000	333,900	339,000
Investments and Other	<u>3,728,332</u>	<u>(7,034,566)</u>	<u>2,311,647</u>	<u>3,380,640</u>	<u>2,099,556</u>
Total Revenue	<u>\$25,257,643</u>	<u>\$14,867,819</u>	<u>\$24,870,647</u>	<u>\$25,618,835</u>	<u>\$24,672,556</u>
<u>Expenses</u>					
Provision for Claims					
New Claims	\$14,520,846	\$17,526,950	\$17,428,719	\$18,050,000	\$18,156,353
Pending Claims	<u>\$494,620</u>	<u>(\$1,441,560)</u>	<u>\$1,552,000</u>	<u>(\$500,000)</u>	<u>\$690,000</u>
Total Provision for Claims	<u>\$15,015,466</u>	<u>\$16,085,390</u>	<u>\$18,980,719</u>	<u>\$17,550,000</u>	<u>\$18,846,353</u>
Expense from Operations					
Administration	\$1,764,118	\$1,761,493	\$1,919,061	\$1,934,675	\$1,946,373
Accounting	474,866	501,569	552,520	534,831	539,816
Loss Prevention	1,648,511	1,699,410	1,843,975	1,690,747	1,787,128
Claims	<u>1,901,522</u>	<u>1,900,729</u>	<u>2,269,073</u>	<u>2,189,036</u>	<u>2,290,352</u>
Total Operating Expense	\$5,789,017	\$5,863,201	\$6,584,629	\$6,349,289	\$6,563,669
Contingency	0	94,802	132,085	6,000	131,273
Depreciation	104,407	139,874	182,400	188,000	191,000
Allocated to Excess Program	<u>(1,284,281)</u>	<u>(1,196,155)</u>	<u>(1,235,837)</u>	<u>(1,235,837)</u>	<u>(1,257,082)</u>
Total Expenses	<u>\$19,624,609</u>	<u>\$20,987,112</u>	<u>\$24,643,996</u>	<u>\$22,857,452</u>	<u>\$24,475,213</u>
Net Income (Loss)	<u>\$5,633,034</u>	<u>(\$6,119,293)</u>	<u>\$226,651</u>	<u>\$2,761,383</u>	<u>\$197,344</u>
Number of Full Pay Attorneys	6,577	6,694	6,768	6,795	6,897

CHANGE IN OPERATING EXPENSES:

Decrease from 2009 Budget -0.32%

Increase from 2009 Projections 3.38%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 PRIMARY PROGRAM BUDGET
CONDENSED STATEMENT OF OPERATING EXPENSE
Approved by PLF Board of Directors on September 23, 2009**

	<u>2007</u> <u>ACTUAL</u>	<u>2008</u> <u>ACTUAL</u>	<u>2009</u> <u>BUDGET</u>	<u>2009</u> <u>PROJECTIONS</u>	<u>2010</u> <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$3,254,626	\$3,344,850	\$3,724,635	\$3,652,893	\$3,791,586
Benefits and Payroll Taxes	971,210	1,004,012	1,179,802	1,059,602	1,067,982
Professional Services	275,558	272,272	261,500	324,700	292,300
Early Termination of Lease	0	(86,196)	0	0	0
Auto, Travel & Training	74,150	99,936	90,450	83,850	87,450
Office Rent	503,520	490,270	500,325	476,500	490,000
Office Expense	151,224	182,798	171,200	164,700	179,200
Telephone (Administration)	27,610	19,967	28,000	29,000	34,000
L P Programs	419,818	438,240	501,890	431,600	508,800
Defense Panel Program	15,338	0	16,900	17,399	0
Insurance	59,667	60,191	64,427	62,745	64,001
Library	21,136	20,167	28,500	25,500	27,500
Memberships & Subscriptions	14,061	14,940	15,800	15,800	15,800
Interest & Bank Charges	1,099	1,754	1,200	5,000	5,000
Other	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
 Total Operating Expenses	 <u>\$5,789,017</u>	 <u>\$5,863,201</u>	 <u>\$6,584,629</u>	 <u>\$6,349,289</u>	 <u>\$6,563,619</u>
 Allocated to Excess Program	 <u>(\$1,258,047)</u>	 <u>(\$1,155,334)</u>	 <u>(\$1,202,476)</u>	 <u>(\$1,202,476)</u>	 <u>(\$1,221,441)</u>
 Full Time Employees (See Explanation)	 41.17	 41.71	 43.93	 44.31	 44.86
 Number of Full Pay Attorneys	 6,577	 6,694	 6,768	 6,795	 6,897
 Non-personnel Expenses	 \$1,563,181	 \$1,514,339	 \$1,680,192	 \$1,636,794	 \$1,704,051
Allocated to Excess Program	(\$324,929)	(\$317,456)	(\$307,307)	(\$307,307)	(\$317,976)
Total Non-personnel Expenses	<u>1,238,252</u>	<u>1,196,883</u>	<u>1,372,885</u>	<u>1,329,487</u>	<u>1,386,075</u>

CHANGE IN OPERATING EXPENSES:

Decrease from 2009 Budget -0.32%

Increase from 2009 Projections 3.38%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 PRIMARY PROGRAM BUDGET
ADMINISTRATION**

Approved by PLF Board of Directors on September 23, 2009

	<u>2007</u> <u>ACTUAL</u>	<u>2008</u> <u>ACTUAL</u>	<u>2009</u> <u>BUDGET</u>	<u>2009</u> <u>PROJECTIONS</u>	<u>2010</u> <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$540,091	\$568,559	\$641,808	\$626,468	\$637,191
Benefits and Payroll Taxes	140,749	173,410	181,351	177,262	176,631
Staff Travel	12,656	25,840	15,050	16,500	15,350
Board of Directors Travel	36,066	37,400	36,200	36,500	36,000
Training	9,314	5,807	10,000	5,000	7,500
Investment Services	21,420	24,276	25,500	26,000	28,000
Legal Services	7,333	13,769	16,000	18,000	18,000
Actuarial Services	14,164	17,063	17,000	17,000	17,500
Information Services	64,931	73,866	100,000	97,500	103,500
Offsite System Backup	4,988	14,149	18,000	20,000	20,000
Microfilm and Scanning Services	18,452	16,098	20,000	85,000	30,000
Other Professional Services	25,289	50,260	40,000	35,500	39,500
Professional Services - Relocation	103,781	40,791	0	0	0
Pro Services - Medicare Reporting	0	0	0	3,000	12,000
Early Termination of Lease	0	(86,196)	0	0	0
Office Rent	503,520	490,270	500,325	476,500	490,000
Equipment Rent & Maint.	42,878	36,641	49,000	40,000	43,000
Dues and Memberships	14,061	14,940	15,800	15,800	15,800
Office Supplies	61,134	82,789	65,000	70,000	80,000
Insurance	59,667	60,191	64,427	62,745	64,001
Telephone	27,610	19,967	28,000	29,000	34,000
Printing	9,457	21,544	15,000	12,000	13,000
Postage & Delivery	37,555	39,029	41,200	40,700	41,200
NABRICO - Assoc. of Bar Co.s	7,703	16,481	17,200	17,200	17,200
Bank Charges & Interest	1,099	1,754	1,200	5,000	5,000
Repairs	200	2,795	1,000	2,000	2,000
Miscellaneous	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Operating Expenses	<u>\$1,764,118</u>	<u>\$1,761,493</u>	<u>\$1,919,061</u>	<u>\$1,934,675</u>	<u>\$1,946,373</u>
Allocated to Excess Program	<u>(\$450,978)</u>	<u>(\$437,368)</u>	<u>(\$450,185)</u>	<u>(\$450,185)</u>	<u>(\$472,598)</u>
Administration Full Time Employees	7.34	6.61	9.03	8.88	9.13

CHANGE IN OPERATING EXPENSES:

Increase from 2009 Budget	1.42%
Increase from 2009 Projections	0.60%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 PRIMARY PROGRAM BUDGET
ACCOUNTING**

Approved by PLF Board of Directors on September 23, 2009

	<u>2007</u> <u>ACTUAL</u>	<u>2008</u> <u>ACTUAL</u>	<u>2009</u> <u>BUDGET</u>	<u>2009</u> <u>PROJECTIONS</u>	<u>2010</u> <u>BUDGET</u>
<u>Expenses</u>					
Salaries	\$358,692	\$372,516	\$398,370	\$397,664	\$402,420
Benefits and Payroll Taxes	100,502	106,460	127,150	113,817	112,196
Travel	197	78	400	150	400
Financial Audit	15,200	22,000	25,000	22,700	23,800
Training	<u>275</u>	<u>515</u>	<u>1,600</u>	<u>500</u>	<u>1,000</u>
 Total Operating Expenses	 <u>\$474,866</u>	 <u>\$501,569</u>	 <u>\$552,520</u>	 <u>\$534,831</u>	 <u>\$539,816</u>
 Allocated to Excess Program	 <u>(\$120,522)</u>	 <u>(\$118,083)</u>	 <u>(\$121,609)</u>	 <u>(\$121,609)</u>	 <u>(\$120,166)</u>
 Accounting Full Time Employees	 4.90	 4.90	 4.90	 4.90	 4.90

CHANGE IN OPERATING EXPENSES:

Decrease from 2009 Budget	-2.30%
Increase from 2009 Projections	0.93%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 PRIMARY PROGRAM BUDGET
LOSS PREVENTION (Includes OAAP)
Approved by PLF Board of Directors on September 23, 2009**

<u>Expenses</u>	<u>2007 ACTUAL</u>	<u>2008 ACTUAL</u>	<u>2009 BUDGET</u>	<u>2009 PROJECTIONS</u>	<u>2010 BUDGET</u>
Salaries	\$924,874	\$958,847	\$1,011,744	\$971,189	\$994,632
Benefits and Payroll Taxes	303,819	302,323	330,341	287,958	283,646
In Brief	67,286	64,756	60,000	60,500	62,000
PLF Handbooks	8,075	(20)	45,000	6,500	45,000
Library	0	18	250	500	500
Videotape	5,662	9,079	15,000	9,100	10,000
Audiotapes	10,411	18,856	5,000	15,000	16,000
Web Distribution of Programs	7,455	13,065	7,000	8,000	8,250
Program Promotion	42,309	54,593	52,000	40,000	42,000
Expense of Closing Offices	8,858	13,989	9,200	13,000	13,500
Sole Practitioner Coordinators	0	0	0	0	0
Facilities	48,688	41,836	70,000	50,000	60,000
Speaker Expense	12,224	1,730	6,000	10,000	10,000
Accreditation Fees	815	670	1,600	900	1,200
Beepers & Confidential Phone	3,642	3,930	3,600	4,000	4,200
Expert Assistance	14,510	19,380	20,000	19,000	20,000
Bad Debts from Loans	1,500	3,650	0	500	0
Memberships & Subscriptions	10,482	10,421	10,945	10,750	11,850
Travel	35,059	38,298	36,045	29,900	38,550
Training	31,185	21,896	38,200	30,950	40,700
Downtown Office	104,473	113,380	114,850	115,500	117,100
Miscellaneous	<u>7,184</u>	<u>8,713</u>	<u>7,200</u>	<u>7,500</u>	<u>8,000</u>
 Total Operating Expenses	 <u>\$1,648,511</u>	 <u>\$1,699,410</u>	 <u>\$1,843,975</u>	 <u>\$1,690,747</u>	 <u>\$1,787,128</u>
 Allocated to Excess Program	 <u>(\$300,700)</u>	 <u>(\$251,197)</u>	 <u>(\$252,606)</u>	 <u>(\$252,606)</u>	 <u>(\$248,096)</u>
 L P Depart Full Time Employees (Includes OAAP)	 12.13	 13.90	 12.00	 12.28	 11.83
 CHANGE IN OPERATING EXPENSES:					
Decrease from 2009 Budget					-3.08%
Increase from 2009 Projections					5.70%

**OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
2010 PRIMARY PROGRAM BUDGET
CLAIMS DEPARTMENT**

Approved by PLF Board of Directors on September 23, 2009

	<u>2007 ACTUAL</u>	<u>2008 ACTUAL</u>	<u>2009 BUDGET</u>	<u>2009 PROJECTIONS</u>	<u>2010 BUDGET</u>
<u>Expenses</u>					
Salaries	\$1,430,969	\$1,444,928	\$1,672,713	\$1,657,572	\$1,757,343
Benefits and Payroll Taxes	426,140	421,819	540,960	480,565	495,509
Claims Audit	0	0	0	0	0
Training	6,236	11,062	8,000	6,000	8,000
Travel	1,703	2,753	2,000	2,000	2,000
Library & Information Systems	21,136	20,167	28,500	25,500	27,500
Defense Panel Program	<u>15,338</u>	<u>0</u>	<u>16,900</u>	<u>17,399</u>	<u>0</u>
Total Operating Expenses	<u>\$1,901,522</u>	<u>\$1,900,729</u>	<u>\$2,269,073</u>	<u>\$2,189,036</u>	<u>\$2,290,352</u>
Allocated to Excess Program	<u>(\$385,847)</u>	<u>(\$348,686)</u>	<u>(\$378,076)</u>	<u>(\$378,076)</u>	<u>(\$380,581)</u>
Claims Depart Full Time Employees	16.80	16.30	18.00	18.25	19.00
CHANGE IN OPERATING EXPENSES:					
Increase from 2009 Budget		0.94%			
Increase from 2009 Projections		4.63%			

**RESOLUTION OF THE
EXECUTIVE COMMITTEE OF THE
SOLE AND SMALL FIRM PRACTITIONERS SECTION
OF THE OREGON STATE BAR REGARDING TREATMENT
OF THE SECTION AS AN “OFFICE SHARE
GROUP” WITH RESPECT
TO THE PURCHASE OF BARBOOKS™ ON
BEHALF OF SECTION MEMBERS**

At the Executive Committee Meeting of the Sole and Small Firm Practitioners Section of the Oregon State Bar held on Saturday, October 10, 2009, by motion duly made, seconded, and unanimously adopted, the Section Executive Committee resolved as follows:

WHEREAS, The adequate, efficient, and economical dissemination of law materials (and specifically the written CLEs) being necessary to the education of the Members of the Oregon State Bar, both for the protection of the public and for the professional practice of law, and

WHEREAS, The Sole and Small Firm Practitioners Section is not as concerned with the substantive aspects of the law as it is with the unique information and practice challenges facing sole and small firm practitioners, and

WHEREAS, Even though often separated geographically, Members of the Section have much in common with lawyers located in an “office share” arrangement,

NOW, THEREFORE, Be it resolved that:

1. Until such time as a universal access model for the dissemination of BarBooks is adopted by the Oregon State Bar, the Section shall be treated as an Office Share Group with not less than 150 attorneys, and the provision of BarBooks to the Section shall be lump-sum priced accordingly.
2. The Section shall remit to the Bar the sum of \$4,995 for such number of users and, should the number of Section Members desiring to use BarBooks exceed 150 Members and support staff, the Section shall remit to the Bar the further sum of \$295 for each additional 10 users, which prices are as set out for an Office Share Group for the 2010 subscription year for BarBooks.

3. Such group treatment and the availability of access to BarBooks shall be limited to persons who are either Members of the Section or support staff of such Members.
4. The annual subscription period for such Group subscription shall run from March 1 of each calendar year, beginning in 2010.
5. The Section shall charge each user not more than \$40 per subscription. Less than a full year subscription as part of the Group shall not be prorated as to any user under the Section's group subscription.
6. The amounts paid by any Member for such BarBooks subscriptions shall be in addition to the Section's annual member dues and no subscription shall be included in any waiver of the Section dues for any complimentary membership.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 31, 2009
From: Sylvia E. Stevens, General Counsel
Re: New Formal Ethics Opinion

Action Recommended

Approve the attached as a new formal ethics opinion, as recommended by the Legal Ethics Committee.

Background

The Legal Ethics Committee drafted the attached opinion to address the obligations of a lawyer whose client has filed a bar complaint. The question arises frequently, particularly in indigent defense representations, and bedevils lawyers and courts who believe that the filing of such a complaint creates an automatic and unresolvable conflict that mandates withdrawal. Accordingly, the Legal Ethics Committee believes the opinion will provide helpful guidance to practitioners.

The opinion answers the question in the context of a complaint filed shortly before a pending trial, but the analysis applies equally to any representation. The opinion focuses on RPC 1.7(a)(2), pursuant to which a conflict exists when there is a “significant risk” that the lawyer’s representation of a client will be “materially limited” by, among other things, a personal interest of the lawyer.

The opinion makes clear that if the lawyer believes the client’s actions will materially limit the manner in which the lawyer represents the client, a conflict exists. The conflict can be waived if the lawyer reasonably believes that competent and diligent representation can nevertheless be provided and the client gives informed consent, confirmed in writing.

On the other hand, if the lawyer does not believe that the client’s filing of a complaint will have any effect on the ongoing representation, then no conflict exists under the rule and neither client consent nor withdrawal are required.

The opinion draws heavily from the decisions in two recent cases, *In re Knappenberger* and *In re Obert*. In each of those cases, the court emphasized that there is no *per se* conflict when a lawyer has committed an error in representing the client. On the contrary, at least while the lawyer is attempting to rectify the error, the interests of the lawyer and client are entirely aligned. At the same time, the court recognized that the stronger the merits of the potential claim, the more likely is the risk that the lawyer’s independence of judgment will be impaired. The committee believes the lesson of those two cases, as regards the possibility of a conflict with one’s own client, apply as well in the context of a disciplinary complaint.

DRAFT FORMAL OPINION
Inquiry No. 07-03

Conflict of Interest: Current Clients
Filing of Bar Complaint; Withdrawal

Facts:

Lawyer represents Client in a matter set for trial. One week before trial is scheduled to begin, Client files a Bar complaint, but does not discharge Lawyer. The complaint alleges Lawyer failed to interview key witnesses, and failed to return Client's phone calls to discuss trial strategy. Lawyer does not believe the witnesses identified by Client will be able to provide admissible testimony, but is willing to interview them in the time remaining before trial. Lawyer further believes that he has made reasonable efforts to respond to Client's inquiries and to keep Client informed.

Question:

Must Lawyer seek to withdraw from further representation once Client has filed a Bar complaint against Lawyer?

Conclusion:

No, qualified.

Discussion:

Oregon RPC 1.16 provides, in part:

(a) Except as stated in paragraph (c), a lawyer * * * shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) * * * * *; or

(3) the lawyer is discharged.

(c) a lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Because Lawyer has not been discharged, ORPC 1.16(a)(3) does not require withdrawal. However, Lawyer should consider whether the filing of a Bar complaint creates a conflict of interest under ORPC 1.7, such that continued representation would potentially result in a violation of the Rules. If so, withdrawal would likely be required by ORPC 1.16(a)(1).¹

Oregon RPC 1.7 provides in part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) * * * * *;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) * * * * *.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.

Under ORPC 1.7(a)(2), Lawyer has a conflict of interest if there is a "significant risk" that Lawyer's representation will be "materially limited" by a "personal interest" of Lawyer. Under the facts presented, the potentially limiting interest would presumably be Lawyer's desire to avoid discipline by the Bar. It is also possible that Client's filing of a bar complaint could create such personal resentment that it would compromise Lawyer's ability to effectively represent Client. Regardless of the specific personal interest involved, if it creates a substantial risk that Lawyer's representation would be materially limited, Lawyer may continue the representation only with Client's informed consent, confirmed in writing. Moreover, Lawyer may seek Client's consent only if Lawyer reasonably believes that competent and diligent representation can be provided to Client

¹ Any resignation triggered by a conflict or termination by the client is governed by UTCR 3.140.

notwithstanding the conflict. ORPC 1.7(b)(1). If consent is not available or is not given, then ORPC 1.16(a)(1) would require Lawyer to withdraw from further representation or if before a tribunal, seek to withdraw subject to RCP 1.16(c).

On the other hand, if there is no substantial risk that Lawyer's representation of Client would not be materially limited, there is no conflict under RPC 1.7(a)(2) and the representation could continue without the need for the Client's informed consent.

While it is apparent that the filing of a disciplinary complaint could raise concerns on a case-by-case basis, it does not appear to create a *per se* conflict of interest. Though the Oregon Supreme Court has not directly addressed this issue, a pending Bar complaint is in many ways analogous to a potential claim of legal malpractice, which the Court has addressed in this context. *E.g., In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004); *In re Obert*, 336 Or 640, 89 P3d 1173 (2004). In the case of both the malpractice claim and the bar complaint, the lawyer's and the client's respective interests in the outcome are clearly adverse. Thus, the cases discussing a lawyer's obligations in the face of a potential malpractice claim are at least instructive in this context.

In *Knappenberger, supra*, the Court considered whether the accused violated former DR 5-101(A)(1)² when he continued to represent a client after having made a procedural error on appeal, and without both disclosing the error and obtaining the client's consent to continue. 337 Or at 21. The State Bar argued that the potential claim of malpractice that arose from that error reasonably might have impaired the accused's exercise of his professional judgment, thereby triggering the duty to obtain consent following full disclosure before continuing representation. 337 Or at 27.

The Court rejected the Bar's *per se* approach, reasoning that not every error, and thus not every potential malpractice claim, could be presumed to affect or be reasonably likely to affect the lawyer's professional judgment in a way that implicated the rule or its requirements of disclosure and consent. 337 Or at 26.³ Rather, the Court held, it must be

² DR 5-101(A)(1), the predecessor to ORPC 1.7(a)(2), provided in part:

"(A) Except with the consent of the lawyer's client after full disclosure,

"(1) a lawyer shall not accept or continue employment if the exercise of the lawyer's professional judgment on behalf of the lawyer's client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests. * * *"

"Full disclosure" as used in this rule also required that the disclosure and request for consent be confirmed in writing. DR 10-101(B)(2).

³ The Court in *Knappenberger, supra*, 337 Or at 28, further noted:

Many errors by a lawyer may involve a low risk of harm to the client or low risk of ultimate liability for the lawyer, thereby vitiating the danger that the lawyer's own interests will endanger his or her exercise of professional judgment on behalf of the client. Even if the risk of some harm to the client is high, the actual effect of that harm may be minimal, or, if an error does occur, it may be remedied with little or no harm to

shown “by clear and convincing evidence that the lawyer's error, and the pending or potential liability arising from that error, will or reasonably may affect the lawyer's professional judgment. That conclusion will depend on the facts and circumstances of each case.” *Id.*⁴

Although it has repeatedly rejected a *per se* approach, the Supreme Court has clearly suggested that at some point a potential malpractice claim might cause the interests of lawyer and client to diverge, thereby implicating ORPC 1.7. See *Knappenberger, supra; In re Obert, supra*. The Court has not provided explicit guidance as to where that threshold lies. However, the discussion excerpted above indicates that the stronger the potential claim, with its correspondingly greater risk of harm to the lawyer’s own interests, the more significant risk there is that the claim will impair the lawyer’s ability to represent his or her client. Of course, a potential claim could motivate a lawyer to seek to correct an error before its harmful effects are realized, thereby further aligning lawyer’s and client’s interests. See *State v. Taylor*, 207 Or App 649, 665, n. 6 (2006).⁵ But evidence that an attorney has recommended a course of action that would serve to conceal that error is likely to result in a finding of conflict. See *Knappenberger, supra*, 337 Or at 26 (accused lawyer conceded violation of DR 5-101(A) when he missed filing deadline for post-conviction relief, then suggested claim was weak due to matters beyond his control, such that voluntary dismissal to limit client’s losses might be best course of action).

Like a malpractice claim, the filing of a Bar complaint carries with it the potential for public embarrassment, damage to a lawyer’s professional reputation, and significant financial loss. However, in regard to Client’s concerns with Lawyer’s failure to interview certain witnesses, those risks appear to be minimal. Lawyer is aware of

the client. In those circumstances, it is possible for a lawyer to continue to exercise his or her professional judgment on behalf of the client without placing the quality of representation at risk. See *In re Hopp*, 291 Or 697, 634 P2d 238 (1981) (finding no DR 5-101(A) violation when accused had incidental financial or proprietary interest in outcome of litigation). It simply does not follow, then, that any error made during the course of a lawyer's representation will or *reasonably* may affect his or her professional judgment in a way that requires consent after disclosure under DR 5-101(A).

⁴ The court has not indicated clearly whether the existence of a substantial risk of material limitation should be evaluated subjectively (by what the lawyer believes) or objectively (by what a “reasonable lawyer” would believe in the same circumstances). In *Knappenberger, supra*, the accused lawyer denied having a self-interest conflict on one of the charges because he didn’t believe his error would make him liable to his client. In evaluating whether the accused’s judgment might have been affected, the court noted that “the Bar does not assert that the accused’s opinion was unreasonable or that it would have been evident to a reasonable lawyer at that time that [the accused’s client] had a viable malpractice claim.” By contrast, in *In re Schenk*, 345 Or 350, 363-364, 194 P3d 804 (2008), the court found a self-interest conflict by comparing the way a “disinterested lawyer” would have acted in the same circumstances.

⁵ This formal opinion addresses only counsel’s potential obligations under the Oregon Rules of Professional Conduct when a client files a bar complaint in the course of representation. In a criminal case involving an indigent defendant, the trial court has the further obligation of ensuring that the accused has been appointed constitutionally adequate counsel. A court that “knows or reasonably should know from the record before it that appointed counsel may have a conflict of interest [is] obligated to inquire about the potential conflict.” *State v. Taylor*, 207 Or App at 664 (citations omitted).

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Client's desire to have additional witnesses contacted, but also is presumably in a far better position to assess whether those witnesses would be permitted to testify at trial. As a result, Lawyer's potential exposure to Bar sanctions is probably not great. Lawyer also is willing to address Client's concerns, and appears able to do so without delaying trial or otherwise prejudicing Client's case. Thus there is no apparent motive for Lawyer to act contrary to Client's best interest, and consequently one could reasonably conclude that there was no significant risk that Lawyer's representation will be materially limited. See *In re Obert, supra*, 336 Or at 648 (under DR 5-101(A), there must be some *reasonable* likelihood that lawyer's judgment will be affected before a conflict will be found). It follows that there is little risk that Lawyer would be found in violation of ORPC 1.7 for failing to either withdraw or obtain Client's informed consent, at least not in the absence of some clear indication that Lawyer acted to protect Lawyer's, and not Client's, best interests.

The client communication issue is more problematic. Oregon RPC 1.4⁶ governs Lawyer's duties to communicate and explain⁷. Despite Lawyer's belief that Client's complaint is unfounded, the question of whether communication has been adequate is arguably more subjective than the witness issue. Lawyer is not in as good a position to predict the outcome of the disciplinary proceeding. Even on the basis of the limited facts provided, Lawyer's potential liability would appear greater. Lawyer's trial strategy has the potential to affect the outcome of Client's case in a way that the witness issue could not, and reasonable minds could differ as to whether Lawyer's efforts to communicate and explain this strategy met the requirements of RPC 1.4.

Given the Supreme Court's reluctance to assume that a lawyer's representation is or is likely to be adversely affected in such circumstances, it is unlikely that even this second allegation would necessarily trigger ORPC 1.7. However, a cautious lawyer may nonetheless choose to avoid such questions by obtaining the client's informed consent, confirmed in writing.

⁶ Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

⁷ "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given. RPC 1.0(g). "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. RPC 1.0(b).

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30, 2009
From: Sylvia E. Stevens, General Counsel
Re: Request for Review CSF Claim No. 2009-28 MURPHY (Hubler)

Action Recommended

Consider claimant Billie Hubler's request for review of the CSF Committee's denial of her claim for fees paid to Lynn Murphy.

Background

In early March 2009, L. Billie Hubler submitted a claim for reimbursement from the Client Security Fund of \$13,000 paid to attorney Lynn Murphy. At its meeting on August 22, 2009, the CSF voted unanimously to deny the claim, concluding that there was no evidence of dishonesty by Murphy. At best, the committee found, there was a dispute over the reasonableness of Murphy's fees. Ms. Hubler was informed of the committee's decision on August 24, 2009.

In her letter of September 3, 2009, Ms. Hubler indicates her unhappiness with the committee's decision and asks that the bar "turn over, once again and read my papers...I request you find [Ms. Murphy] negligent and a liar. I request at least a return of the last \$3,000 although she did no work for the \$10,000 previous dollars....I appeal to you."

Prior to 2007, Hubler had been living in Connecticut with and caring for her elderly mother. Two of Hubler's brothers live in Connecticut and a third (Craig) lives in Portland. The brothers became concerned about Mother's deteriorating dementia in early 2007; they conferred and agreed that Mother could get cheaper and better care in a facility in Portland; moreover, Craig had her power of attorney and handled her financial affairs. After moving Mother to Portland, Craig initiated a conservatorship/guardianship proceeding, seeking to have himself appointed conservator and guardian for Mother.

Billie Hubler objected strenuously to what happened to Mother and denied Mother's need for skilled residential care. In the spring of 2008, after attempting to defeat the conservatorship on her own, Hubler hired Lynn Murphy to help her. In June 2008, the parties negotiated a settlement by which Craig would be conservator and an professional guardian would be appointed.

Almost immediately after the June 2008 hearing, problems developed. Craig accused Hubler of interfering with Mother's care and endangering Mother and others at the facility. Hubler also continued to fight with Craig over Hubler's right to continue in possession of Mother's home in Connecticut. When the parties couldn't work things out between themselves, Craig sought a restraining order to prohibit Hubler from visiting Mother. On August 25, 2008, Hubler and Murphy entered into an agreement for "Restraining Order

only.” On September 8, 2008, another agreement was signed for “Replace Guardian” and Hubler deposited additional fees with Murphy. Two weeks later, Hubler wrote to Murphy terminating her representation “in all matters” and demanding a refund of the last fees paid. Hubler continues to seek removal of the guardian and termination of her brother’s conservatorship over Mother.

Hubler’s records are incomplete and unclear, but the CSF investigator was able to determine that between May 28 and July 2, 2008, Murphy expended 43.8 hours at \$150/hour and advanced costs of \$257.94, for a total debit of \$6,827.94. Although Hubler says she paid Murphy \$10,000 during that period, the investigator was able to confirm payments of only \$6,505.02 (he suggests that the figure may be overstated by \$2000). Hubler contends that she paid Murphy another \$3,000 in September 2008; disciplinary counsel’s investigation shows it was \$2,000. There are no records to verify the actual amount of services billed by Murphy or the actual amount of fees paid by Hubler.¹

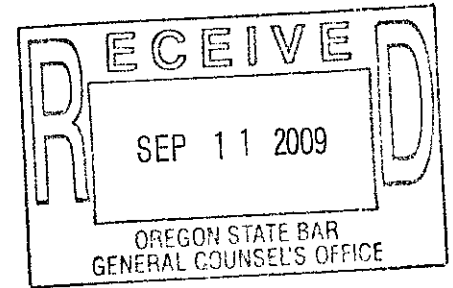
From the CSF’s perspective, the discrepancies in the amounts charged and paid were irrelevant because it found sufficient evidence that Murphy performed legal services for Hubler throughout the representation. Opposing counsel confirmed that Murphy worked hard, was prepared, “did a fine job,” and made the most of what she had to work with. His estimates of the value of Murphy’s work are consistent with the fees charged. The committee found no evidence of dishonesty by Murphy. Hubler has submitted some documentation with her request for BOG review, but it consists entirely of pleadings she has filed with the probate court over the last several months.

Attachments: Request for Review
CSF Investigator’s Report
DCO Complaint Summary (public portion)

¹ Murphy did not respond to the CSF investigator’s inquiries. She has been similarly nonresponsive to the three disciplinary matters pending against her.

September 3, 2009

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



Re: Case #09-63 – Lynn Murphy (l. Billie Hubler)

Gentlemen:

Your refusal to back me up here, as i have seen in so many other poor peoples requests made to you in such anguish and hope, prove to me the 'fable' that the Legal System in these United States is just and fare, even if you can pay for representation. I no longer can pay properly and will soon be selling my body in order to get my mother out from under your Hellish board.

After all the proof I sent in to you, if you can not know that this woman did not properly represent me, then your system is truly foul.

I have heard of another case brought to you, where the girl was 'sexually taken' by her lawyer and you did not reprimand the situation of an overbearing mad degenerate man.

Your Oregon legal system is a sham. This woman took me for everything then most likely accepted a bribe on top of turning in my mother to custody of your State to the tune of \$5,000 per month fee. In the least, you should return to me \$3,000.00 where this woman, Murphy took my cash and looked me in the eye and said, she would begin to get rid of the guardian she helped put onto my mother. Lynn never lifted a finger after August 2008 and this time she did not even bother to bill me, on top of the fact she did not even respond to you and all you pleading to her in this regard.

I have read the other three cases that have come up against Lynn Murphy and can only say, 'Shame on you, on your system of blindness, on your old-boy credence'. Shame on you for not helping us, and for not helping a woman who is being held, in your system, against her will. My mother is being drugged into oblivion because she is too cute and lively to keep locked-down all day long in a place not equipped to properly take care of her.

I am sending to you, along with this request, the completed paperwork against this guardian. All lynn had to do was send it into court and she never even did that. I also handed Lynn Murphy \$3,000.00 in September 2008 on the streets of Oregon in complete confidence. I signed yet another retainer for that woman. She wrote them up like candy. No work came from her and now i see she had no reason to worry. I work for my money, very hard, I trusted this woman and she failed us greatly.

I ask that you turn over, once again and read my papers sent to you. I request you find her negligent and a liar. I request at least a return of the last \$3,000.00 although she did no work for the \$10,000 previous dollars.

Because:

- 1 - Lynn Murphy never put up any argument against the conservator and his lawyer,
- 2 - and assigned an incompetent guardian over my dear mom,
- 3 - and never even answered you regarding these matters,

she should be 'spanked' and you should grant me the full \$13,000.00 so I may continue my legal quest to help my very own flesh and blood out of the Hell she is in.

There are three other clients of Lynn Murphys' whom have had the exact same experiences and you deny any compensation. Shame on you.

Should I have had children I would make them Lawyers, so their lives would not be ruined by other lawyers.

I am enclosing to you: pictures of my mother: this is a real person, in a real, bad situation, with no one properly representing her who can fight the system because all lawyers know how bad it is. You only perpetuate this truth when you 'could care less'. If you do not reprimand Lynn Murphy, a woman whom is still out there conning other naive persons to whom she assures 'she will help' you help your own cause not in the least. Lynn Murphy is nothing but a con-artist and you are right behind her in so doing if you do not change this situation.

Pictures in Group #1 - My mom, when I'm with her.
Pictures in Group #2 - My mom, in your State of hell.

You have had \$300,000.00 dollars of revenue come into this State since my mother's kidnapping and arrival, against her will. Do you not think your pathetic State has had quiet enough of a Connecticut girls money, a *real* working woman whom only begs to return to her home daily. Whom only cares to be with her children whom she has not been with for three plus years since she was put in this lock-down facility with illegals doing anything they want to with her! Is that the way you would want your mother to end her days.....In hell.

Your system has made two women homeless and very, very sad.
Is this what you want to be noted for.
I appeal to you,

L. Billie Hubler
6837 SW Ashdale Drive
Portland, Or. 97223
(203) 981-7007

**CLIENT SECURITY FUND
INVESTIGATIVE REPORT**

FROM: Max S. Taggart, II, OSB#68162
DATE: August 19, 2009
CLAIM NO.: 09-28
CLAIMANT: L. Billie Hubler
LAWYER: Lynn M. Murphy
OSB No.: 980832

INVESTIGATOR'S RECOMMENDATION

Deny the Claim, without prejudice to Claimant's ability to refile an Amended Application before the expiration of the time limitation setforth in Fund Rule 2.8.

STATEMENT OF THE CLAIM

L. Billie Hubler retained Lynn M. Murphy to represent her in a guardianship/conservatorship matter in Washington County, the protected person being her mother and the petitioner in the proceeding being her brother. Ms. Hubler's Application states her claim is for \$13,000.00, but also states "Lynn literally stole away with \$3,000.00, knowingly." and says as to the remaining \$10,000.00 "that previous \$10,000.00 was spent on my case which we lost due to her negligence, over booking, lack of preparation, lack of listing to me***."

FINDINGS AND CONCLUSIONS

1. Ms. Hubler's mother had been living with Ms. Hubler in Connecticut in a residence which apparently had been the home of the mother and her deceased father, the title to which is vested in a Trustee under a Trust Agreement. Ms. Hubler has three brothers, one of whom lives in the Portland Metropolitan Area and the other two live in Connecticut. The brothers became concerned about their mother's deteriorating dementia (severe Alzheimer type) and the need for residential skilled care. The brothers, without the concurrence of Ms. Hubler, moved their mother to Oregon because they concluded residential skilled care in Oregon would be superior in quality and cheaper than that available in Connecticut. The brother living in Oregon (Craig) placed his mother in a residential facility (Autumn Hills) and began the mentioned guardianship/conservatorship proceeding in Washington County in which he was represented by Beaverton attorney Kelly Ford. The proceeding began in 2007 and though a general judgment has been entered, the matter will likely be active for the foreseeable future. During the first approximate year, Ms. Hubler

CLIENT SECURITY FUND INVESTIGATIVE REPORT (Claim No. 09-28) --1--

represented herself but retained Ms. Murphy sometime in 2008; the records provided indicate Ms. Hubler may claim the attorney-client relationship began in February, 2008, but Ms. Murphy's first billed hour was on May 28, 2008, and resolution of the difference is not relevant to this matter.

2. Ms. Murphy's billings provided by Ms. Hubler reflect that between May 28, 2008 and July 2, 2008, Ms. Murphy expended 43.8 hours at \$150.00 per hour and advanced costs in the amount of \$257.94, for a total debit of \$6,827.94. Documents provided by Ms. Hubler reflect payments by her on May 29, June 13 and August 5, 2008 in the amount of \$1,000.00 each, but a difficult to decipher ledger presumably prepared by Ms. Murphy may reflect payments by Ms. Hubler on May 28 in the amount of \$2,000.00, May 29 in the amount of \$1,000.00, June 13 in the amount of \$1,000.00 and July 3 in the amount of \$1,505.02. Reconciling as best one can these conflicting records in a manner most favorable to Ms. Hubler, it appears she made total payments of \$6,505.02. However, \$2,000.00 of those potential credits maybe the result of an entry error on the part of Ms. Murphy. In any event, from the documentation which has been provided, the payments by Ms. Hubler are less than the amount of earned, billed fees and costs advanced by Ms. Murphy.

3. I spoke with Kelly Ford about Ms. Murphy's performance as a lawyer on behalf of client Ms. Hubler. Mr. Ford stated he had not previously known Ms. Murphy, but that she worked hard, worked up her case and was prepared, negotiated hard, "did a fine job" and made the most of what she had to work with. It should be noted that notwithstanding the customary expense for services of the type Mr. Ford provided to Craig Hubler, Craig Hubler was awarded attorney fees by the Probate Court exceeding \$18,000 as the proceeding was contentious. My discussions with Mr. Ford included contemplation of what he felt might be appropriate fees for the work he knew or believed Ms. Murphy performed, and Mr. Ford's estimates are consistent with the amount stated in the preceding paragraph.

4. The attorney-client relationship between Ms. Murphy and Ms. Hubler ended sometime in the Summer of 2008, the exact date not being developed by the provided records; the records suggest the relationship likely ended shortly following the date Ms. Murphy last provided billed services. The records also suggests that in July or August, 2008, something may have occurred which may have reestablished the professional relationship from Ms. Hubler's perspective. Though the position of Ms. Hubler is that she paid \$3,000.00 to "renew" the retainer, there are no documents evidencing payments by Ms. Hubler other than those previously mentioned. If Ms. Hubler did pay additional funds to "renew" the retainer, the file does not contain billings, time records or other evidence indicating Ms. Murphy did anything to earn, in whole or in part, the renewed retainer.

5. Ms. Murphy's office telephone published in the current Membership Directory is no longer active. I telephoned the number which Ms. Hubler provided for Ms. Murphy in the Application and left a voice mail which has not been answered. Mr. Ford provided an email address for Ms. Murphy and a message has been sent to her without a response other than the auto response which stated Ms. Murphy was out of the office this week. The Discipline Office has provided a

copy of a complaint filed with that office by Ms. Hubler regarding her relationship with Ms. Murphy. There are several pending matters in that office, none of which have been resolved. Discipline states Ms. Murphy has not been responsive to the customary communications from that office regarding the pending matters. I do not anticipate a response from Ms. Murphy to my voice and email messages.

6. Ms. Murphy is an Oregon lawyer maintaining an office in Oregon, may be in active practice and at this point is neither disbarred nor suspended. Ms. Murphy has neither been convicted of a crime nor has a judgment been taken against her with respect to the described events. The Application and the materials provided with that Application, together with the information obtained during the investigation, do not evidence dishonest conduct. Rather, those materials and information evidence client dissatisfaction with the outcome of legal proceedings in which the client was handicapped by the absence of independent facts supporting her position and desires.

CLIENT SECURITY FUND RULES
(Summary of Sections 1 & 2)

Section 1. Definitions

- | | | |
|-----|----------------------|---|
| 1.3 | “Lawyer”: | An active member of OSB maintaining an office in Oregon. |
| 1.4 | “Client”: | The person or entity, at the time of the act(s) complained of, had an established attorney-client relationship with the lawyer. |
| 1.5 | “Claimant”: | One who files a claim with the Fund. |
| 1.6 | “Dishonest Conduct”: | A lawyer’s willful act against a client’s interest by defalcation, by embezzlement or by other wrongful taking. |

Section 2. Reimbursable Losses.

A loss of money or other property of the client is eligible for reimbursement if:

- | | |
|-------|---|
| 2.1 | Claim is made by the client or client’s representative. |
| 2.2 | The loss was caused by the lawyer’s dishonest conduct. |
| 2.2.1 | In a loss resulting from a lawyer’s refusal or failure to refund an unearned fee, “dishonest conduct” includes a lawyer’s false promise to provide services to a client in exchange for advance payment of a fee. |
| 2.2.2 | Failure to perform or complete a legal engagement does not, in itself, evidence a false promise or dishonest conduct. |
| 2.2.3 | Reimbursement of a fee will be allowed only if: |
| (i) | The lawyer provided no legal services to client, or |
| (ii) | The legal services which the lawyer provided were minimal or insignificant, |

- (iii) The claim is supported by a determination of a court, fee arbitration panel or an accounting acceptable to the Committee which establishes client is owed a refund of a fee.
- 2.2.4 If client is provided equivalent services by another lawyer without cost to client, the fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.
- 2.3 The loss was not covered by bond, surety agreement or insurance contract, including losses to which a bonding agent, surety or insurer is subrogated.
- 2.4 The loss was not to a financial institution covered by a "banker's blanket bond" or similar contract.
- 2.5 The loss arose from and was because of:
 - 2.5.1 An established lawyer-client relationship, or
 - 2.5.2 The failure to account for money or property entrusted to the lawyer in connection with the lawyer's practice of law or while acting as a fiduciary in a matter related to the lawyer's practice of law.
- 2.6 As a result of the dishonest conduct, either:
 - 2.6.1 The lawyer was found guilty of a crime,
 - 2.6.2 A civil judgment was entered which remains unsatisfied, or
 - 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.
- 2.7 A good faith effort has been made by claimant to collect the amount claimed.
- 2.8 The claim was filed within two years after: (a) the date of the lawyer's conviction or in the case of a claim of loss of \$5,000.00 or less, the date of the lawyer's disbarment, suspension, reprimand or resignation from the Bar, (b) the date a judgment is obtained against the lawyer, or (c) the date claimant knew or should have known in the exercise of reasonable diligence of the loss. No claim can be reimbursed if submitted more than six (6) years after the date of loss.
- 2.9 An approved claim shall not include attorney's fees, interest on a judgment, prejudgment interest, any reimbursement of expenses of a claimant in attempting to make a recovery or prevailing party costs authorized by statute, except that a claim may include the claimant's actual expense awarded for court costs.
- 2.10 No attorney's fees shall be paid directly from the Fund for service rendered by an attorney in preparing or presenting a claim to the Fund.
- 2.11 In case of extreme hardship or unusual circumstance, the Committee, in its sole discretion, may recommend payment of a claim which would otherwise be denied due to noncompliance with one or more of the rules.

COMPLAINT SUMMARY

TO: State Professional Responsibility Board

FROM: Stacy J. Hankin, Assistant Disciplinary Counsel

RE: LYNN MURPHY, Portland (Bar No. 980832) **Status:** Active
Complainant: L. Billie Hubler (April 23, 2009)

DATE: June 23, 2009

OVERVIEW

L. Billie Hubler asserts that Lynn Murphy failed to provide her with competent representation, neglected her legal matter, failed to adequately communicate with her, and then failed to properly withdraw when she was terminated.

PERSONS INVOLVED

<u>Lynn Murphy</u>	Accused Attorney
<u>L. Billie Hubler</u>	Complainant
<u>Kelly Ford</u>	Opposing lawyer
<u>Craig Hubler</u>	Ford's client and Complainant's brother
<u>Elizabeth Hubler</u>	Complainant's mother
<u>Cheryl Feuerstein</u>	Court-appointed interim and permanent guardian

RULES IMPLICATED

- | | |
|---|---------------|
| 1. Failing to provide competent representation | RPC 1.1 |
| 2. Neglecting a legal matter | RPC 1.3 |
| 3. Failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information | RPC 1.4(a) |
| 4. Failing to provide timely notice of withdrawal | RPC 1.16-1(c) |
| 5. Failing to properly withdraw | RPC 1.16-1(d) |
| 6. Knowingly failing to respond in a Bar investigation | RPC 8.1(a)(2) |

BACKGROUND INFORMATION

For many years, L. Billie Hubler, (hereinafter “Hubler”) lived with and cared for her mother, Elizabeth Hubler. They lived in the family home located in Connecticut. Sometime in 2006, Hubler’s brothers were visiting Hubler and her mother. During that visit, the brothers decided that their mother was not capable of living in the house and that she needed professional care. Craig Hubler, one of the brothers, lived in Oregon and, a few years before, mother had granted him a power of attorney. In August 2006, mother was moved to Oregon and placed in a care facility.

In March 2007, Kelly Ford (hereinafter, “Ford”), on behalf of Craig Hubler, filed a petition to be appointed mother’s guardian. Hubler objected to the petition on the grounds that mother did not need a guardian. In May 2008, Hubler filed a cross-petition asking the court to appoint her as mother’s guardian. A hearing to consider the petition and cross-petition was scheduled for June 27, 2008.

SUMMARY OF COMPLAINT

In February 2008, Hubler retained Lynn Murphy (hereinafter, “Murphy”) to represent her in the guardianship matter. Hubler contends that Murphy did not adequately pursue or complete the representation. Murphy did not win and Hubler believes that Murphy was on her brother’s side. For example, Ford filed a hearing memorandum that contained a number of false allegations about Hubler. Murphy did not file a memorandum on Hubler’s behalf and did nothing to rebut the false accusations made by Ford. Hubler contends that even though she instructed Murphy not to allow the appointment of a guardian, Murphy allowed the appointment anyway. After the matter went to hearing on June 27, 2008, Hubler instructed Murphy not to sign any papers. Despite that instruction, Murphy signed papers that prevented Hubler from pursuing the guardianship.

Hubler contends that Murphy was to write up an agreement that the house in Connecticut belonged to Hubler. Murphy never prepared that agreement.

Hubler also asserts that Murphy failed to communicate with her between February 2008, and May 2008, and during the four days before the June 27, 2008, hearing.

Finally, Hubler contends that when she terminated Murphy in September 2008, Murphy failed to withdraw, and failed to return the \$2,000.00 Hubler had deposited on September 8, 2008, and her file materials.

SUMMARY OF RESPONSE

Murphy has not responded to the Bar's inquiries.

TIMELINE

Based upon the documents provided by Hubler, the following timeline is helpful to understand this matter:

- 5/28/08 Initial consult between Murphy and Hubler.
- 5/28/08 Hourly fee and retainer agreement for "Elizabeth Hubler; Review legal options, including guardianship, conservator, declaratory judgment".
- 6/27/08 Scheduled hearing. Instead, parties recited settlement on the record.
- 6/30/08 Letter from Murphy to Hubler regarding recent e-mails. Murphy says she resigns and will notify the court and Ford. She promises to send a final bill that will include preparation for the hearing and the hearing.
- 7/14/08 Letter from Murphy to Hubler regarding adjustment to billing statement with \$3,322.92 now due. Murphy needs check to replenish account as most of work regarding guardianship is done. Recommends that Hubler retain another lawyer to pursue missing funds, trusts and inappropriate use of funds by her brother. They will meet tomorrow to review records from care facility.
- 7/17/08 Order appointing Cheryl Feuerstein (hereinafter, "Feuerstein") as interim guardian.
- 7/21/08 Hubler files motion to re-establish Elizabeth Hubler to her home in the State of Connecticut.
- 7/31/08 Ford files petition for attorney fees.
- 8/4/08 Order appointing Feuerstein as permanent guardian.
- 8/11/08 Letter from Michael Schmidt, on behalf of Feuerstein, imposing limitations on Hubler and her brothers with regard to visiting and caring for their mother.
- 8/18/08 Hubler files objection to attorney fees.
- 8/19/08 Hubler files objection to appointment of interim guardian.

- 8/25/08 Hourly fee and retainer agreement for “Restraining Order only”.
- 9/8/08 Hourly fee and retainer agreement for “Replace Guardian for Elizabeth Hubler”. Hubler deposits \$2,000.00 with Murphy.
- 9/10/08 Letter from Murphy to Hubler enclosing letter from Schmidt explaining how visitation restrictions have benefited her mother.
- 9/17/08 Letter from Hubler to Murphy terminating her in all matters, asking for a refund of the \$2,000 retainer deposited on September 8, 2008, and asking for return of file materials.
- 10/22/08 Court grants motion to strike Hubler’s objection to attorney fees and grants Ford \$18,120.00 in attorney fees.
- 2/27/09 E-mail from Hubler to Murphy asking for Murphy’s notes on the agreement with Ford.
- 3/5/09 E-mail from Murphy to Hubler promising to send notes.
- 3/11/09 Order removing Murphy as Hubler’s lawyer.
- 3/19/09 Murphy files a motion to withdraw.

ADDITIONAL INVESTIGATION

1. Conversation with opposing counsel Kelly Ford.

Staff spoke with opposing counsel Kelly Ford (hereinafter, “Ford”) who represented Hubler’s brother. His client and the other brothers visited mother and Hubler at the home in Connecticut. All of the siblings, except Hubler, believed the situation was not safe for their mother. They could see that mother was developing dementia and having significant difficulties. They considered care facilities in Connecticut and Oregon. In the end, based upon cost and quality, they chose the care facility in Oregon. At that time Ford’s client had control over mother’s finances by virtue of a power of attorney.

In challenging the guardianship, Hubler initially asked the court for an order requiring her mother be returned to Connecticut and appointing her guardian. In the proceeding, three separate visitor’s reports were prepared.¹ The first one concluded that

¹ In guardianship proceedings, the court appoints a visitor to evaluate whether a guardianship is appropriate and whether the petitioner is an appropriate guardian.

mother needed a guardian and that Craig Hubler was an appropriate candidate. Ford does not recall the conclusions reached in the second visitor's report. The third visitor's report concluded that a guardianship was appropriate, but that Hubler was not an appropriate candidate. The report specifically found that Hubler's presence in the care facility for extended periods, and her insistence on actively controlling her mother's care, resulted in disruption in the care regime and, in some instances, was dangerous to mother.

For the first year, Hubler represented herself. Murphy came on the scene shortly before the June 27, 2008, hearing. Ford communicated with Murphy a number of times. She understood the legal and factual issues.

On the day of the scheduled hearing, the parties requested time to see whether they could resolve the matter. Judge Cobb granted that request and the parties spent four hours negotiating the terms of the settlement. About halfway through that process Ford thought the case would resolve but only with a lot of additional effort. Then, new issues arose. There was a lot of distrust between his client and Hubler. However, eventually they were able to resolve all issues.

Under the settlement, Craig Hubler would remain the conservator. Neither Craig Hubler nor Hubler would be appointed guardian. Instead, the parties agreed to the appointment of a professional interim and then permanent guardian. The parties would mutually choose the professional guardian. The settlement was recited into the record and, with Murphy's input, the court signed orders appointing Feuerstein as interim and then permanent guardian.

Almost immediately after the matter was settled, Hubler took steps to undermine the settlement. A big issue with Ford's client and the care facility was Hubler's conduct when she visited mother. According to Ford, Hubler was obstructive, interfered in her mother's care, and endangered her mother and others at the facility. In the guardianship proceeding, Ford wanted his client appointed guardian and wanted the court to give his client authority to limit the frequency and extent of Hubler's visits.

Ford believes that Murphy did a good job for Hubler. In his opinion, the court was never going to appoint Hubler as guardian. The best result for Hubler was the appointment of someone other than Ford's client. Murphy achieved that result.

2. Review of cd from June 27, 2008, hearing

Staff also listened to a cd of the June 27, 2008, hearing before Judge Cobb. Present at the hearing were Murphy, Hubler, Hubler's brother and Ford. A lawyer for the care facility was also present. Ford, with comments from Murphy, recited the terms of

the settlement. Murphy raised ownership and occupancy of the house in Connecticut, but Judge Cobb made it clear that the issue was not before her.

Once the details of the settlement were placed on the record and clarified by some questions from Judge Cobb, she asked Craig Hubler and Hubler whether they agreed with the settlement. Hubler said she did not. Because of Hubler's response, there was a break in the proceeding at which time Murphy and Hubler left the courtroom for a period. When they came back, Hubler then agreed to the settlement and specifically confirmed that she understood that the agreement would be binding on her.

ETHICS ANALYSIS

(redacted)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30, 2009
From: Sylvia E. Stevens, General Counsel
Re: CSF Claim No. 09-25 DOUGLAS (Ulle)

Action Recommended

Consider the claimant's request for review of his award from the Client Security Fund.

Background

At its August 13, 2009 meeting, the CSF voted to recommend an award to Kris Ulle of \$2000. The recommendation was approved by the BOG at its August 28, 2009 meeting. Mr. Ulle was advised of the BOG's decision on September 1, 2009. On October 19, 2009, we received his request for further consideration of the amount awarded.¹

The pertinent portion of my report on the August 28, 2009 consent agenda is attached. As indicated therein, the CSF Committee concluded that Douglas had performed some services before his death and credited Douglas with \$2000 of the \$4000 paid by Ulle.

In his request for reconsideration, Ulle disputes the amount of work that Douglas did before his death. The file reviewed by the CSF investigator consists almost entirely of 2-3 inches of Ulle's records, many of which Douglas obtained from the Dept. of Revenue. The committee assumed that Douglas reviewed those documents.

CSF Rule 2.2.3 allows reimbursement of a legal fee paid to the lawyer only if:

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

¹ Ordinarily, Mr. Ulle would have received a letter following the CSF Committee meeting informing him of its recommendation. Because of the short time between the CSF meeting and the BOG meeting at which the recommendation was presented, Mr. Ulle did not receive notice of the decision on his claim until after the BOG had acted. It is unusual, but not prohibited by the CSF Rules, for a successful claimant to challenge the amount of an award.

The Committee did not find that Douglas's services were minimal or insignificant, merely preparatory to the ultimate goal of making an Offer in Compromise for the client. There has been no independent determination of the amount that should be refunded to Ulle and the Committee's determination is admittedly arbitrary.

Attachments: Excerpt of August 28, 2009 Consent Agenda memo
 October 11, 2009 correspondence from Kris Ulle.

client that the additional response was required nor did he do anything on his own. In January and February 2008, the USPTO sent Brown notices of abandonment on both applications. Again, Brown failed to inform the client, who contacted the USPTO directly in February after not hearing from Brown for some time. She paid the additional fees required to revive her applications, and was ultimately able to get one of the trademarks registered.

The committee concluded that Brown's services were of some value to the client and recommends payment in the amount of \$656.25. No judgment is required in this case because the claim is for less than \$5000 and Brown's conduct in this case was part of the basis for his Form B resignation.

No. 09-25 DOUGLAS (Ulle) \$2,000

Gerald Douglas was a well-regarded IRS attorney for 23 years before opening a private practice in 2003 limited exclusively to helping taxpayers resolve issues with the IRS. He died on February 6, 2009. At the time of his death he had several clients with ongoing matters who, upon contacting his office, were referred to the OSB for help. Within a few days, his brother Donald stepped in to help wind up Gerald's affairs.

According to Don Douglas, for most of his life Gerald had an inoperable benign mass on his spinal cord that affected his mobility and caused considerable discomfort and fatigue. Nevertheless, and although his condition deteriorated as he aged, his death on February 6 was unexpected and unplanned. Gerald lived with his mother and teenaged daughter; there will probably not be a probate because Gerald's estate is insolvent. Don asserts that his brother was an excellent attorney, that most of his clients were in dire straits when they hired him, and that he was generally able to obtain good results for them. He has no explanation for why Gerald had no trust account or why his business account had no funds.

Don Douglas has been very cooperative with the CSF and has made his brother's files available to the extent possible. According to the CSF investigator, however, the files are not as helpful as they could be and there are some gaps in information.

Mr. Ulle paid Gerald Douglas in June 2007 and paid \$4000 in advance for Douglas' assistance in negotiating workouts with the IRS and the Oregon Dept. of Revenue. Douglas' file in this case includes notes from his initial interview with the client and several faxes between Douglas and the taxing authorities. According to Douglas' secretary, delays were caused by the need to acquire additional information not previously provided by the client.

As with the other Douglas claims, the committee had difficulty finding any dishonesty, other than in the estate's inability to refund the unearned portion of the fees advanced by the clients. Nevertheless, the committee recommends reimbursing Ulle \$2000, half of the fees he paid, because there is clear evidence that Douglas performed services for the client prior to his death, even though he had not completed the project. Because Douglas is deceased and his estate is insolvent, the committee also recommends waiving the requirement for a civil judgment.

OCTOBER 11, 2009

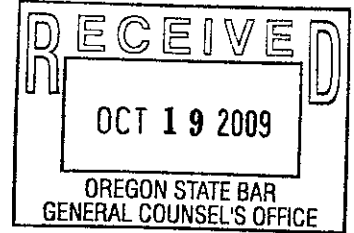
TERESA SCHMID

D.S.B. DIRECTOR

16037 S.W. UPPER BOONES FERRY RD.

P.O. Box 231935

TIGARD, OR 97281-1935 (ATTN: SYLVIA STEVENS)



RE: CLIENT SECURITY FUND CLAIM No. 2009-25
LAWYER: ESTATE OF GERALD DOUGLAS

DEAR Ms. SCHMID,

RECENTLY, I RECEIVED NOTIFICATION OF THE CLIENT SECURITY FUND COMMITTEE'S RECOMMENDATION FOR REIMBURSEMENT OF \$2000⁰⁰. THIS WAS A PORTION OF THE \$4000⁰⁰ ORIGINALLY PAID TO GERALD ('GERRY') DOUGLAS FOR THE LOSS CAUSED BY HIM IN CONNECTION WITH HIS AGREEMENT TO RESOLVE MY STATE AND FEDERAL TAX ISSUES. THIS LETTER IS BEING WRITTEN AS AN APPEAL TO THAT DECISION.

AFTER RECEIVING THIS NOTIFICATION I ATTEMPTED TO CONTACT SYLVIA STEVENS, CASSANDRA STICH AND TWO OTHER PEOPLE BUT DISCOVERED THEY WERE ALL UNAVAILABLE. I FOLLOWED UP ONE WEEK LATER AND SPOKE WITH CASSANDRA WHO ANSWERED MANY OF MY QUESTIONS AND HAD SOME SOUND ADVICE IN THE MATTER. SHORTLY AFTERWARD, I DISCUSSED THE COMMITTEE'S DECISION WITH SYLVIA STEVENS. I EXPLAINED WHAT HAD TRANSPIRED BETWEEN GERRY DOUGLAS AND MYSELF AND WHY I FELT ENTITLED TO A FULL REIMBURSEMENT. SHE EXPLAINED THE BOARD MEETS AT THE END OF OCTOBER AND THAT I SHOULD SUBMIT MY APPEAL BY THE MIDDLE OF OCTOBER. ALSO, DURING THIS CONVERSATION I WAS INFORMED THAT IT WAS HER UNDERSTANDING THAT CLIENT

SECURITY FUND COMMITTEE MEMBER CONNIE SWENSON HAD SPOKEN TO ME AS PART OF HER INVESTIGATION INTO THIS MATTER. IN FACT, THE ONLY PERSON TO CONTACT ME WAS SYLVIA STEVENS HERSELF IN A VOICEMAIL MESSAGE, TO ASK ME TO SEND IN ANY DOCUMENTATION I MAY HAVE SHOWING I MADE PAYMENTS TO GERRY. UNFORTUNATELY, THIS COULD NOT HAVE HAPPENED AT A WORSE TIME. I WAS IN THE PROCESS OF MOVING AND ALL MY IMPORTANT DOCUMENTS, PAPERWORK, ETC. HAD ALREADY BEEN BOXED UP AND SEALED. I HAVE REOPENED MANY OF THE BOXES AND FOUND SOME OF THE DOCUMENTS SHE REQUESTED, WHICH I HAVE INCLUDED.

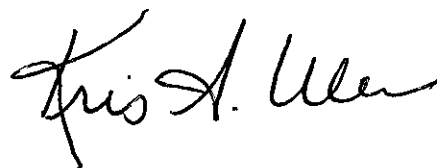
IT WAS MY UNDERSTANDING THAT GERRY HAD PREPARED AND SUBMITTED A SETTLEMENT OFFER TO THE IRS IN DECEMBER OF 2008. ON FEBRUARY 27, 2009 I CALLED GERRY TO CHECK ON THE STATUS OF THE OFFER. HIS SECRETARY TOLD ME THAT GERRY HAD PASSED AWAY AT THE BEGINNING OF THE MONTH BUT THAT HE DID FILE THE OFFER WITH THE IRS. BASED ON GERRY'S FILE ON MY CASE AND A CALL TO THE IRS THIS WAS NOT BOURNE OUT. APPARENTLY, HIS HEALTH HAD FAILED TO THE POINT HE WAS UNABLE TO PREPARE ANYTHING IN THAT REGARD BUT I WAS NOT INFORMED. IT IS MY UNDERSTANDING THE STANDARD RATE FOR AN ATTORNEY'S SERVICES ARE \$250⁰⁰ PER HOUR. IT IS DIFFICULT TO BELIEVE THAT GERRY ACTUALLY PERFORMED EIGHT HOURS OF WORK ON MY CASE. IT SHOULD BE OBVIOUS THAT, BASED ON THE YELLOW HIGHLIGHTED LETTER FROM GERRY HEREIN, AT \$250⁰⁰ PER HOUR GERRY WOULD HAVE FAR EXCEEDED THE \$5000⁰⁰ FLAT FEE WE HAD AGREED UPON TO HANDLE THE CASE IN ITS ENTIRETY.

IT IS NOT MY INTENTION TO PURPOSELY DISCREDIT GERRY. I'M SURE HIS INTENTIONS WERE HONEST AND SINCERE BUT PERHAPS,

BASED ON HIS CONDITION, HE WAS SIMPLY UNABLE TO FULFILL HIS CONTRACTUAL AGREEMENT WHICH I PAID MOST OF IN ADVANCE. IT IS UNFORTUNATE THAT ANY WORK HE MAY HAVE PERFORMED WAS OF LITTLE VALUE TO ME IN THIS CASE.

IF YOU HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION PLEASE CONTACT ME AT: (503) 701-4091.

SINCERELY,

A handwritten signature in cursive script that reads "Kris S. Ullé". The signature is written in black ink and is positioned below the word "SINCERELY,".

KRIS S. ULLE
11102 SE 282ND AVE.
BORING, OR 97009

September 1, 2009

Kris Ulle
11102 SE 282nd Ave
Boring, OR 97009

Re: Client Security Fund Claim No. 2009-25
Lawyer: Estate of Gerald Douglas

Dear Mr. Ulle:

At its meeting on August 28, the Oregon State Bar Board of Governors approved the recommendation of the Client Security Fund that you be reimbursed in the amount of \$2,000 for the loss caused by Gerald Douglas. The Client Security Fund Committee concluded that Mr. Douglas performed several hours of work on the case.

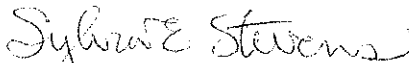
CSF Rule 5.1.1 requires, as a condition of payment from the Fund, that the claimant execute an assignment of all such claims to the extent of the amount reimbursed. Enclosed is an Assignment of Claim for your signature. Please note that you must sign the Assignment in the presence of a notary public.

Also enclosed is an IRS Form W-9 requesting your Social Security Number. We inform the IRS of all payments from the Fund and you will receive a Form 1099-MISC next January reflecting your award. You should consult with your tax advisor whether you need to report the award as income or otherwise. Your Social Security Number will be used only for IRS reporting and will not be part of the public record of this matter.

When we have received the completed W-9 and the notarized Assignment from you, we will transmit our check to reimburse your loss.

Please feel free to contact me if you have any questions.

Sincerely,



Sylvia E. Stevens
General Counsel

Ext. 359, Fax: (503) 598-6959

Email: [sstevens@osbar.org](mailto:ssstevens@osbar.org)

SES:cs

cc: Don Douglas for Estate of Gerald Douglas
Susan Alterman, CSF Committee Chair

My understanding is that you will work with your father in completing and filing your Federal and Oregon income tax returns for the taxable years 2001-2004. Please send me copies of these tax returns after they are completed. Once these tax returns are filed, we can work with the taxing agencies in implementing your collection remedies.

The last matter concerns my fee. The law regarding offers in compromise with the IRS changed last year, making it very difficult to qualify for an offer. This process is somewhat complicated, time intensive, and very frustrating. Only those who persevere have any chance of success. For these reasons, I will prepare and negotiate an offer in compromise with the IRS, including all administrative appeals, for a one-time, flat fee of \$5,000.00. Also, included in this fee, is whatever collection remedy I can negotiate for you with the Oregon Department of Revenue.


If this arrangement is acceptable, please sign and date the enclosed engagement agreement, which sets forth the terms and conditions for my legal services. When you were in my office last Friday, you gave me a check for \$1,000.00, as a retainer for my services. I have enclosed an invoice for your records, which reflects your \$1,000.00 payment and the balance of my fees.

Thank you for your confidence in me and for your cooperation and assistance in these matters. I look forward to helping you and I will do the best I can to get the IRS and the Oregon Department of Revenue to accept favorable resolutions of your tax liabilities. For your information, I have enclosed a short biographical, which sets forth my background and experience.

If you have any questions, please call me at (503) 885-1975.

Enclosures:
As stated

Sincerely,


Gerald W. Douglas
Attorney at Law

Gerald W. Douglas, P.C.
 Attorney at Law
 18861 SW Martinazzi, Suite 207-A
 Tualatin OR 97062
 Tel: (503) 885-1975 Fax: (503) 885-2168

June 9, 2007

Kris Ulle
 11102 SE 282nd Ave.
 Boring OR 97009

In re: Legal Fees

For Professional Services Rendered:

To prepare and negotiate an offer in compromise with the IRS. To negotiate installment payment plan with Oregon Department of Revenue.

Total Fee	\$	5,000.00
Prior Balance	\$	0.00
Received on Account	\$	1,000.00
<hr/>		
Amount Due	\$	4,000.00

Protect Your Duplicate Checks Store your duplicate checks in your check box.

Track your expenses...

- Clothing
- Credit Card
- Entertainment
- Food
- Utilities
- Insurance
- Transportation
- Mortgage
- Other: _____

TAX-DEDUCTIBLE ITEM

3385

3/14/08

Gerrard DeWitts Pe
Two Thousand And No/100

THOUSAND

BALANCE FORWARD	
THIS ITEM	2000.00
BALANCE	
DEPOSIT	
OTHER	
BALANCE FORWARD	



For enhanced security, your name and account number do not appear on this copy.

NOT NEGOTIABLE

Oregon State Bar

Report of the
Senior Lawyers Task Force

presented to the
Board of Governors
October 31, 2009

I. Introduction

In April 2007, the National Organization of Bar Counsel/Association of Professional Responsibility Lawyers Joint Committee on Aging issued its Final Report. The two national organizations, representing disciplinary prosecutors and defense counsel respectively, shared concerns about the impact on the profession of increased numbers of aging lawyers remaining in practice. They also recognized the value that experienced and able senior lawyers make to the profession. Their recommendations fell into three broad categories: planning for retirement and practice transfer, encouraging and supporting senior lawyers in practice, responding to age-impaired lawyers.

In 2009, OSB President Gerry Gaydos appointed a Senior Lawyers Task Force to study and make recommendations on those same issues as they relate to the practice of law in Oregon. Task Force appointments were designed to capture a wide spectrum of perspectives. Members came from a range of practice areas, age groups, law firm sizes and geographical areas: Dady Blake, Portland; Bobby Bouneff, Portland; Walter Cauble, Grants Pass; Barbara Fishleder, PLF; Robert Fraser, Eugene; Vicki Hansen, OSB; Dennis Karnopp, Bend; Michael Long, PLF; S. Jane Patterson, Gresham; Andrew Schpak, Portland; Albert Menashe, Portland (Chair); Richard Sly, Portland; W. Scott Phinney, Lake Oswego; and William Crow, Portland.

At its first meeting, the Task Force discussed at considerable length how the practice of law has been and will continue to be transformed by the “baby boom” generation (generally characterized as those born between 1945 and 1960). Just as that generation swelled the ranks of lawyers in the 1970’s, its retirement is anticipated to have a significant effect on the work force. That is not going to happen suddenly or at once. Rather, members of the cohort are expected to practice well beyond the traditional age of retirement, postponing the “elder boom” of retirement for several years. The principal reasons seem to be (1) improvements in health care that have extended professional work lives, (2) the strong desire among many “boomers” to contribute meaningfully to society, and (3) economic necessity due to insufficient savings or pensions to support them in retirement.

The Task Force acknowledged the value that the “baby boomers” have made and will continue to make to the profession and to the public. There is widespread concern, however, that a large number of senior lawyers will continue to practice, without adequate support or assistance, past the point at which their health and abilities require a change. There is also concern that existing lawyer regulatory systems are not equipped to address the pressures that large numbers of aging lawyers will bring. The goal of the Task Force was to identify alternative strategies to assist senior lawyers in addressing age-related deficits and risks, while harnessing their strengths and experiences, that will allow for dignified withdrawal from professional life while maintaining the quality of law practice expected by the public.

Following the lead of the NOBC/APRL study, the Task Force established subcommittees to examine and develop recommendations in the following areas: Encouragement and Support of Senior Lawyers in Practice, Responding to Age-Related Impairment, and Law Practice Transfer. Each subcommittee met several times. Their developing ideas were discussed by the Task Force in four plenary sessions over six months. The final recommendations were approved unanimously by the Task Force.

II. Summary of Recommendations

The Task Force believes its recommendations represent practical and effective responses to the issues it was assigned to study and that implementation of the recommendations will enable the OSB to address the challenges created by an aging lawyer population with dignity and respect, while continuing to ensure adequate protection of the public.

A. Encouragement and Support of Senior Lawyers in Practice

- R1. Establish a Senior Lawyers Division
- R2. Encourage the Development of CLEs, Pro Bono Opportunities, Social Events and other programs specific to the interests and needs of aging lawyers.
- R3. Create Mentoring and “Reverse Mentoring” Programs
- R4. Prepare and distribute a Resource Packet to Lawyers 55 and older.

B. Responding to Age-Related Impairments

- R5. Educate members about age-related cognitive impairment.
- R6. Provide assistance to lawyers suffering from age-related cognitive impairment that maintains their sense of dignity while protecting their clients.
 - a. Identify resources statewide to assessing cognitive function.
 - b. Promote existing OSB resources for assistance with age-related cognitive impairment.
 - c. Continue to study the coordination between the regulatory and assistance arms of the OSB for identifying the best approach for addressing complaints about age-related impairments.
 - d. Enhance the use of involuntary transfer to inactive status or custodianships in appropriate cases.
- R7. Create a category of membership for retired senior lawyers.

C. Practice Transfer

- R8. Develop and implement a voluntary transfer system involving designated assisting attorneys.
- R9. Modify the ORS Chapter 9 custodianship process to make it more efficient, to address Lawyer Trust Accounts, and to provide immunity for custodians.
- R10. Develop a funding mechanism to cover the bar’s costs in the event of an involuntary transfer, including the cost of compensating a custodian if necessary.

III. Task Force Recommendations

A. Encouragement and Support of Senior Lawyers in Practice

R1. Establish a Senior Lawyers Division

The Task Force considers this the most important of its recommendations, not in small part because a division could implement several of the other recommendations in this report. As envisioned by the Task Force, every OSB member would automatically become a member of the Senior Lawyers Division (SLD)¹ upon reaching age 55. The SLD would be similar to the ONLD, providing resources for lawyers nearing the end of, rather than just starting out in, the practice of law.

The SLD would be charged with identifying and coordinating opportunities for senior lawyers to share their expertise and knowledge through activities including the delivery of pro bono and civic service and mentorship.

The division would organize educational and social opportunities targeting senior lawyers including CLEs, networking and social activities, retirement and financial planning seminars, and career transition counseling.

The division could also act as the voice of senior lawyers within the OSB and develop a greater sense of community among senior lawyers. Like the ONLD, the SLD would have a liaison to the BOG.

The Task Force realizes that the OSB would need to subsidize a Senior Lawyers Division but believes that the cost would not be significant and is well worth the investment.

R2. Encourage the Development of CLEs, Social Events and other programs specific to the interests and needs of aging lawyers.

If the BOG elects not to create the SLD, the BOG should encourage OSB committees and sections to develop educational and social opportunities targeting senior lawyers, including CLEs, pro bono opportunities, networking and social activities, and other support programs. In addition to career transitioning and retirement planning programs, programs could focus on new technologies, e-filing and practice models.

R3. Create Mentoring and “Reverse Mentoring” Programs

Here, too, if the SLD is not established, the OSB should develop its own mentoring programs or collaborate with existing programs to promote participation by senior lawyers. Three types of mentoring are envisioned: (a) the first type of mentoring is “traditional mentoring,” in which senior lawyers offer mentoring to newer lawyers on subjects including professionalism, career development and the practice of law; (b) the second type of mentoring is “reverse mentoring,” in which younger lawyers offer assistance to senior lawyers on topics including office technology, e-filing, electronic communications and newer practice models; (c) the third type of

¹ The Task Force was not of a single mind about the name of the division. A proposed alternative was “Seasoned Lawyers Division.”

mentoring is “peer to peer mentoring,” in which lawyers are matched with other based strictly on requests made and interests identified on the sign-up form.

R4. Prepare and distribute a Resource Packet to lawyers aged 55 and older.

There is already a considerable amount of helpful material to assist lawyers in planning for later life. The Task Force believes that a packet of available materials should be distributed to every OSB member upon reaching age 55. Examples of available materials are “Lawyers at Midlife: Laying the Groundwork for the Road Ahead,” co-authored by Mike Long of the PLF; and “Planning Ahead: A guide to Protecting Your Clients’ Interests in the Event of your Disability or Death,” by Barbara Fishleder of the PLF. Other material on financial and retirement planning could be identified and obtained to include in the resource packet. Materials should also be available online. Again, this is something the SLD could do. The PLF may be willing to share the cost of making the materials available.

B. Responding to Age-Related Impairments

R5. Educate members about age-related cognitive impairment.

Written materials and links to online resources should be developed to help bar members (including judges) recognize age-related cognitive impairment. The material could be available on the OSB web site. Gathering this information and establishing the “resource library” could be a project for the Senior Lawyers Division.

R6. Provide assistance to lawyers suffering from age-related cognitive impairment that maintains their sense of dignity while protecting their clients.

This recommendation has several subparts, but the overarching theme is that responding to lawyer with age-related cognitive impairment should begin wherever possible with the least-intrusive approach.

- a. Identify resources statewide to assessing cognitive function.

The root causes of a lawyer’s difficulties are not always apparent. The bar should work with the PLF and others to identify local and statewide professional resources for determining whether a lawyer suffers from an age-related impairment, the extent of the impairment and the level of cognitive functioning.

- b. Promote existing OSB resources for assistance with age-related cognitive impairment.

Existing OSB resources (OAAP & SLAC) should be promoted to law firms and others who might refer an impaired lawyer. If the lawyer is amenable to addressing the situation, the OAAP can offer assistance that is entirely confidential and has no risk of professional sanction. Lawyers who are unwilling or unable to recognize that they might be impaired can be referred to SLAC for a mandatory assessment and program of remediation to the extent possible. While failure to cooperate with SLAC can subject a lawyer to discipline, with few exceptions lawyers referred to SLAC do cooperate and come to appreciate the value of the assistance they receive. Either of these approaches would allow a

lawyer to retire from practice gracefully while retaining an appropriate level of participation in professional activities.

- c. Continue to study the coordination between the regulatory and assistance arms of the OSB for identifying the best approach for addressing complaints about age-related impairments.

Age-related cognitive impairments may result in bar complaints against lawyers that do not need to be addressed through the disciplinary system. While it is crucial to maintain the integrity of the disciplinary system and the public protection it affords, the bar should take steps to develop a protocol for determining if the situation can be addressed by referral to SLAC, through a monitored diversion arrangement, or by involuntary transfer to inactive status.

- d. Enhance the use of involuntary transfer to inactive status or custodianships in appropriate cases.

The bar should consider amending BR 3.2 (Involuntary transfer to inactive status) to ensure it gives the bar the requisite authority to seek an involuntary transfer based on age-related impairment. The bar should also examine whether the process could be used more often to address concerns and complaints arising from age-related impairments. As discussed above, the Task Force believes that disciplinary action should be undertaken only as a last resort in cases of serious misconduct; involuntary transfer to inactive status may be as undesirable to the affected lawyer, but does not carry the stigma of discipline.

R7. Create a category of membership for retired senior lawyers.

Until recently, the bar had a membership category of “Active Emeritus” for lawyers who had been members for 40 years. They paid the equivalent to of inactive status dues, were not required to complete the MCLE requirements of active members, and their practice of law was limited to pro bono services for certified programs or volunteering in bar disciplinary matters. “Active Emeritus” status was combined with “Active Pro Bono” status in 2008, in an effort to simplify the membership categories and emphasize pro bono service. Lawyers can opt for “Active Pro Bono” status regardless of the number of years of practice and may, but are not required, to perform pro bono services or to volunteer in bar disciplinary matters. Although there were only 36 Active Emeritus members in 2008, several of them expressed unhappiness at losing that status in favor of the more generic Active Pro Bono.

The Task Force recommends re-establishing a special membership category for senior lawyers who have retired from practice. “Senior Status” or a similar name would be available only to lawyers over age 55 who are completely retired from practice. Dues could be set at the Inactive member level (dues go to \$0 once a lawyer has been a member for 50 years), and like Active Pro Bono and Inactive members, the Senior Status members would not be required to complete MCLE credits. This new membership category would allow eligible lawyers to retain their status as bar members and would acknowledge their years of experience and service, but would free them from the obligation of Active status.

C. Practice Transfer

R8. Develop and implement a voluntary transfer system involving designated assisting attorneys.

Baby boomers are often described as the “forever young” generation that refuses to grow old. One consequence of that attitude is that boomers are not very good at contemplating or planning for age-related events such as retirement, disability and death. For several years, the PLF has encouraged lawyers to make advance provisions for those eventualities, particularly those who are in solo practice, by arranging for an “assisting attorney” to coordinate the winding up of the lawyer’s practice in the event of a sudden incapacity or death.

The Task Force believes that planning for the transfer of one’s practice is sufficiently important that the bar should establish a registry of designated assisting attorneys.² The Task Force has not fleshed out all the details of such a program, but recommends it as a project for the Senior Lawyers Division. Issues to be resolved include whether the registration requirement should be in statutory; whether there should be a fee associated with the registration and, if so, how much; how to enable access to the affected lawyer’s trust accounts; immunity for the assisting attorneys; whether to require out-of-state members to participate; whether there should be a mandatory training for assisting attorneys; and what should be done if the designated assisting attorney is unable or unwilling to serve when needed.

R9. Modify the ORS Chapter 9 custodianship process to make it more efficient, to address Lawyer Trust Accounts, and to provide immunity for custodians.

Regardless of whether the bar adopts a registration program for assisting attorneys, the Task Force recommends modification of the custodianship procedure in ORS Chapter 9 so that it will be an easier and more effective resource.

The statutes (ORS 9.705 to 9.755) authorize the circuit courts to take jurisdiction over the practice of an attorney who “without good reason has ceased to devote or is incapable of devoting time and attention...to the law practice of the attorney.” Upon taking jurisdiction, the court must appoint one or more members of the bar as custodians of the affected attorney’s practice.

As written, the statute requires that the BOG petition the court to assume jurisdiction over the affected lawyer’s practice. The Task Force believes the authority to initiate a custodianship should be given to the Executive Director to avoid unnecessary delay. (The petition can be filed only after the affected attorney fails to respond “adequately” within seven days to an inquiry from the bar regarding the alleged failure of the attorney to “serve and protect” the interests of a client.)

Moreover, while the court takes jurisdiction over the “clients’ trust funds,” the appointed custodians do not appear to have authority to distribute funds from trust to the clients. The Task Force recommends adding language that will allow the custodian to access the trust account and return funds to clients as appropriate.

² They are referred to in other jurisdictions as “inventory”, “successor” or “caretaker counsel.”

The Task Force also recommends that the statutory scheme be amended to provide immunity for the custodians from civil or criminal liability for actions taken in good faith and in compliance with the Rules of Professional Conduct.

R10. Develop a funding mechanism to cover the bar's costs in the event of an involuntary transfer, including the cost of compensating a custodian if necessary.

The Task Force recognizes that serving as custodian or “transfer attorney” for another lawyer, whether voluntarily or by court appointment, is a considerable demand on a lawyer’s time. The custodianship statutes allow the court to award reasonable compensation in the form of a judgment against the affected attorney or the attorney’s estate. A voluntary agreement may also provide for compensation. However, there will undoubtedly be cases where there are no funds available for that purpose. Accordingly, the Task Force recommends that the bar develop a funding mechanism to cover those situations.

One possible approach would be through a fee collected in conjunction with periodic registration of an assisting attorney (see above). Lawyers who fail to designate someone could be assessed a higher fee based on the risk that the bar will have to bear the burden of winding up their practices. There are other ways to raise the necessary funds. The BOG could allocate a portion of member dues every year into a dedicated fund. Profits from Senior Lawyer Division activities could be dedicated to that purpose. Recommending a funding mechanism could be another good project for a Senior Lawyers Division.

IV. Conclusion

Senior lawyers are valued members of the bar and of the profession. We will all lose if the knowledge, experience and commitment to volunteerism is not passed on to younger generations of lawyers. The Task Force recommendations are designed to harness those attributes and develop opportunities for sharing them with others; to enable them to make meaningful contributions to the profession during their later years; to assist them in transitioning into retirement; and to address age-related cognitive impairment with dignity and respect while ensuring protection of the public. The Task Force is pleased to present this outline plan for action with a strong recommendation to the Board of Governors to create a Senior Lawyers Division charged with refining and implementing the ideas expressed herein.

Respectfully submitted,



Albert Menashe, Chair
Senior Lawyers Task Force

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30, 2009
Memo Date: October 16, 2009
From: Access to Justice Committee
Re: Civil Legal Services Task Force

Action Recommended

The Access to Justice Committee is recommending that the BOG adopt a resolution appointing OSB President, Gerry Gaydos, to serve as the chair of a new OSB Civil Legal Services Task Force.

Background

Reasons for Prior Planning Task Force. In the summer of 1995, Oregon faced a crisis in its delivery of civil legal services to low-income residents. Congress was considering legislation which would reduce federal funding by 35% from 1995 levels and impose severe restrictions on the activities of all nonprofit corporations receiving any LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients. In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force in 1995. Stating that “the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people in our state,” the OSB gave the Task Force the general charge to “*develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.*” She appointed Stephen Walters, Hon. David Brewer, Hon. Neil Bryant, Edward Clark, Michael Haglund, Hon. Jack Landau, James Massey, Katherine McDowell, Katherine O’Neil, Lawrence Rew and Martha Walters.

The OSB Civil Legal Services Task Force Final Report, dated May 1996, adopted a clearly articulated mission, equal justice values, and core capacities that guided the legal aid programs since that time as they restructured delivery systems, merged corporations and created new corporations to better serve low income clients statewide. The mission, values and core capacities were incorporated into the Standards and Guidelines that the OSB Legal Services Program uses to fund an integrated, statewide system of legal services in Oregon.

Oregon now has five nonprofit corporations providing free civil legal services to low income people through a comprehensive collaborative system designed to provide relatively equal access to civil legal services regardless of the low income person’s location or status within the context of the severe federal restrictions that were imposed by Congress in 1996. Oregon Law Center (OLC), Lane County Legal Aid and Advocacy Center (LCLAC),

Center for Nonprofit Legal Services (CNPLS) and Columbia County Legal Aid (CCLA, an independent pro bono referral service) are not bound by federal restrictions. Legal Aid Services of Oregon (LASO) receives federal money from the Legal Services Corporation and is bound by the severe federal restrictions that control activities funded by federal, state, local and private money. OLC and LASO are statewide. LCLAC serves low income clients in Lane County. LASO also has an office in Lane County. CNPLS serves low income clients in Jackson County. OLC and LASO have side-by-side offices in Portland, Salem and Woodburn. The current structure was designed to provide the full range of services while complying with the federal restrictions.

Likely Changes that Warrant Further Planning by a New Task Force. In 2009, the new administration called for repeal of the severe federal restrictions on LSC money. The FY 2010 appropriations bill adopted by the House of Representatives would repeal the restriction on attorney fees. The FY 2010 appropriations bill adopted by the Senate Appropriations Committee would repeal the federal restriction on state, local and private money, permitting programs to consider significant structural changes to better serve clients. The differences between the House and Senate versions will be ironed out in the conference committee that will meet shortly after the Senate adopts the appropriations bill, which is scheduled to occur in September 2009. In addition, there is a freestanding reauthorization bill (SB 718), which is not related to the appropriations process, that would also remove some federal restrictions. It is co-sponsored by Senator Harkin (IA) and Senator Merkley (OR).

If the federal restrictions on state and local money are removed, Oregon will have an opportunity to restructure the delivery system to improve services to clients. A Task Force could work to identify the best structure to provide basic access to civil legal services to low income clients throughout Oregon and to create a plan for implementing changes in an appropriate manner to minimize disruption and maximize service. Although Congress has not acted yet, there is a reasonable chance that it will occur within a year, which will have immediate and substantial consequences to Oregon's legal services delivery system. In order to be well positioned as a state to implement changes to benefit low income clients as soon as possible after the law changes, advance plans should be in place to initiate the Task Force process.

The Board of Governors should adopt a resolution appointing the current OSB President, Gerry Gaydos, to serve as the chair of a new OSB Civil Legal Services Task Force and directing him to work in collaboration with Paul J. De Muniz, the Chief Justice of the Oregon Supreme Court, to appoint a diverse group similar the 2005 Task Force, as soon as practicable after learning that Congress is likely to repeal the severe federal restrictions that regulate state, local and private money. The Task Force should be charged to reaffirm or improve the mission, equal justice values, and core capacities that were adopted by the final report of the OSB Civil Legal Services Task Force in 1996 and apply those standards to *“develop a plan for civil legal services in Oregon for 2010 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.”* The legal services programs strongly support the mission statement,

equal justice values and core capacities adopted by the OSB Civil Legal Services Task Force in 1996 and have used these to guide the programs since that time. In the event that Congress has not taken action toward removing the restrictions by the time set for the last Board of Governors' meeting in 2010, Gerry Gaydos should report back to the Board to report on the status and seek further guidance.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 29, 2009
Memo Date: September 8, 2009
From: Kellie Johnson, Member Services Committee Chair
Re: 2010 BOG and OSB/ABA HOD Election Dates

Action Recommended

Approve the 2010 election dates as provided in ORS 9.040, 9.042 and 9.152 as well as OSB Bylaws 9.1 and 5.1.

Background

OSB and ABA HOD Election

Nominating petitions due	Friday, March 19, 2010
Ballots sent	Thursday, April 1, 2010
Election (ballots due)	Monday, April 19, 2010 (3 rd Monday in April)
Delegates assume office	Tuesday, April 20, 2010

BOG Election

Nominating petitions due	Tuesday, May 11, 2010 (<i>160 days before election</i>)
Challenges due	Thursday, June 10, 2010 (<i>30 days from 5/12</i>)
BOG decision on challenges	Thursday, June 24, 2010 (<i>14 days from 6/11</i>)
Petition for SC review	Friday, July 9, 2010 (<i>15 days from 6/25</i>)
Final SC decision	Friday, September 24, 2010 (<i>10 days before ballots are sent</i>)
Ballots sent	October 4, 2010 (<i>1st Monday in October</i>)
Election	October 18, 2010 (<i>3rd Monday in October</i>)
Board Members Assume Office	January 1, 2011

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 31, 2009
From: Kathleen Evans, Chair, Policy & Governance Committee
Re: Miscellaneous Bylaw Changes

Action Recommended

Consider the following bylaw changes recommended by the Policy & Governance Committee.

Background

Staff recently discovered that the bar's old address is still in OSB Bylaw 23.601. Since the correction requires a bylaw amendment, suggestions were solicited from managers for any other bylaw changes that might be desired or necessary. As a result, the Policy & Governance Committee considered and approved five proposed amendments at its August meeting.

1. OSB Address in Bylaw 23.601:

This correction was missed when the bar moved to the new OSB Center in January 2008.

Article 23 Professional Liability Fund

* * *

Subsection 23.601 Appeals by Members

(a) Review by the Professional Liability Fund Board of Directors

The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:

* * *

(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:

"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of this letter. The Executive Director's address is [PO Box 231935, Tigard, OR 97281-1935](#). A request for Board of Governors review constitutes and evidences

Deleted: 5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035

your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."

2. Hardship Exemptions

Bylaw 6.5 allows for hardship exemptions from dues payment:

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Executive Director may exempt or waive payment of annual membership fees and assessments of an active or inactive member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested.

While staff endeavors to be consistent in our application of this exemption, it is often difficult without some standard for what constitutes "extreme financial hardship." Staff also sometimes struggles with what is a qualifying "disability." (There is no dues exemption or reduction merely for financial hardship; to qualify under Bylaw 6.5, the member must have both a financial hardship and a disability.) Policy & Governance believes that requiring some documentation on both points will be helpful:

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Executive Director may exempt or waive payment of annual membership fees and assessments of an active or inactive member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

3. Check Signatures

Bylaw 7.103 requires two signature on cash disbursements of \$10,000 or more and identifies who may sign in such cases. The list includes the accounting manager, but our internal controls no longer permit the accounting manager to sign checks. Additionally, other authorized signers include the Deputy Executive Director, a position that the OSB has not had since 2006, and the Senior Assistant General Counsel, a position that has been renamed. The bylaw should be amended accordingly:

Subsection 7.103 Check Signatures

Disbursements of \$10,000 or more require two of the following signatures: (One from each group or group one alone) Group One: Executive Director and Chief Financial Officer. Group Two: ~~General Counsel~~ or Deputy General Counsel.

4. Expense Reimbursement General Policy

- Deleted:** Cash d
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- Deleted:** and Senior Assistant
- Deleted:** Cash disbursements less than \$10,000 require one signature from Group One above.
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Bylaw 7.500 sets out the general policy for expense reimbursements. Over time, as the volume of reimbursements has increased, timeliness has become an issue, both for ensuring timely payment of bills and for expense forecasting. Steps have been taken internally to ensure timely staff submissions, but the internal policies are not supported by the bylaw. The bylaw language also offers no mechanism to enforce timely submission of reimbursement requests from BOG members and other volunteers. The following changes are recommended:

Subsection 7.500 General Policy

Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors. ~~Requests for expense reimbursement must be received in the Accounting Department not later than 30 days after the expense has been incurred. If an expense reimbursement form is submitted more than 30 days after the expense is incurred, it must be accompanied by an explanation for the delay. The Chief Financial Officer may deny any late-submitted request for which the justification is deemed insufficient. A person whose request for reimbursement is denied may request that the Executive Director review the decision.~~ Supporting documentation in the form of original receipts or copies of original receipts must be submitted with all requests for reimbursement of expenses while acting on official bar business.

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5. Meal Reimbursements

The main proposed change is to make it clear that meal reimbursement requests must be supported by itemized receipts. The other change is to clarify that the Bar will pay for or reimburse attendance at official OSB functions and other law-related dinners that staff or volunteers are expected to attend.

7.501 Eligible Expenses

* * *

(d) Meals:

Reimbursement for meals will be made at actual cost of the meal, provided that ~~the expense is supported by itemized receipts and~~ meets the standard of reasonableness. A request for reimbursement for meals without receipts will be reimbursed according to the rates published under the Federal Travel Regulations as put out by the U.S. General Service Administration for federal government travel. Meals purchased for members of the Bar or other persons in the course of official bar business will be reimbursed at actual cost with submission of ~~itemized~~ receipts and an explanation provided it meets the standard of reasonableness. Official dinners ~~of the Bar or law-related groups which staff, BOG member or volunteers,~~ and their spouses or guests are expected to attend will be paid for by the Bar and, if not, will be eligible for reimbursement.

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OREGON STATE BAR

Access to Justice Committee Agenda

Meeting Date: September 25, 2009
Memo Date: September 18, 2009
From: Pro Bono Committee (Bar Liaison Catherine Petrecca, Ext. 355)
Re: Proposed Changes to Bylaw 13.201

Action Recommended

The Pro Bono Committee recommends that the ATJ Committee support changing Bylaw 13.201 (regarding Certified Pro Bono Programs) and forward that recommendation to the BOG and the Supreme Court.

Background

Summary

The Pro Bono Committee recommends that a new version of bylaw 13.201 replace the existing version for two conjoined reasons:

- The new version of 13.201 will give the OSB Executive Director greater leeway to certify new pro bono programs.
- The existence of more certified programs (both geographically and substantively) will allow more attorneys to engage in pro bono activities which will allow more low-income Oregonians to receive legal services.

The newly-worded bylaw changes the language to a more general description of the nature of programs that can become certified, rather than listing specific types of programs. It remains the same in all other material aspects.

OSB Pro Bono Certification Program History

In January 1992, in an attempt to encourage attorneys to engage in pro bono service and to help meet the legal needs of the poor, the Bar started the pro bono certification program. To become a “Certified” Pro Bono Program, an organization was required to have as its purpose the provision of direct legal representation to low-income Oregonians, could not provide compensation to participating attorneys, and was required to meet certain quality control standards. The benefit to the certified programs was (and remains) free PLF coverage of pro bono attorneys, a heightened presence in OSB publications and a monopoly on Active Pro Bono members (plus a practical monopoly on other classes of lawyers, such as government lawyers or non-practicing lawyers). The benefit to OSB members was free PLF coverage and

the assurance that the entity through which they volunteered followed some quality control measures. At that time, eight organizations became certified. They were:

Multnomah Bar Association Volunteer Lawyers Project
Marion-Polk Legal Aid Volunteer Lawyer Project
Lane County Legal Aid Pro Bono Program
Oregon Legal Services Private Bar Involvement Program
Multnomah County Senior Law Project
Oregon Lawyers for Children
St. Andrew Legal Clinic
Center for Nonprofit Legal Services

Over the years, the certified program bylaw language was expanded to allow specific additional programs to become certified. Those programs included Bar-sponsored programs such as the Military Assistance Panel and the Problem Solvers Program, immigration work and programs designed to assist Older Americans.

Current Impact of Bylaw 13.201

Fourteen active programs are certified. They are:

- Catholic Charities Immigration Legal Services (Portland)
- Catholic Charities El Programa Hispano (Gresham)
- Center for Non-profit Legal Services (Medford)
- Columbia County Legal Aid Program (St. Helens)
- Community Development Law Center (Portland)
- Immigration Counseling Service (Portland)
- Lane County Legal Aid and Advocacy Center Senior Law Services (Eugene)
- Legal Aid Services of Oregon and the Oregon Law Center (Various locations)
- Lewis and Clark Legal Clinic (Portland)
- Lewis and Clark Small Business Legal Clinic (Portland)
- Oregon Advocacy Center (Portland)
- OSB Military Assistance Panel (Tigard)
- OSB Problem Solvers Program (Tigard)
- St. Andrews Legal Clinic (Portland, Hillsboro and Oregon City)

Note that, with the exception of the LASO and OLC offices, the certified programs exist only along the I-5 Corridor, and largely in the Portland Metro area.

Currently, one program is seeking certification, but is unable to meet the requirements of the current bylaw. Attorney Ron Sikes has been working with the OSB Pro Bono Coordinator to gain certification for the U.S. District Court Pro Bono Program, designed to

provide free legal services to parties in federal civil cases who, in the opinion of the Court, require them and are qualified to receive them. Although the program meets the spirit and intent of the rule, it does not meet the current requirements of Bylaw 13.201 and cannot be certified.

All Active Pro Bono members of the Bar are required to volunteer their services through a Certified Program. Some Bar members who are currently Active Pro Bono or considering changing to that status have expressed to Bar staff their interest in having more Certified Programs through which to volunteer. Those members have expressed interest in having both more geographic availability of programs, and a wider substantive choice of programs. The proposed changes to 13.201 will allow the flexibility to bring existing programs into the Certified Program fold to allow more APB members to practice near where they live and in areas of interest to them. This will allow more attorneys to help meet the growing needs of low-income Oregonians.

Summary

Adoption of a new bylaw 13.201 will likely lead to both increased pro bono service by attorneys in Oregon and increased legal services provided to low income Oregonians. With assistance by staff at the bar, additional programs can become certified throughout the state of Oregon.

Attachments

Attached to this memo are:

- 1.) The proposed bylaw in an unmarked copy;
- 2.) The current bylaw marked up with the proposed changes;
- 3.) A copy of the current bylaw;
- 4.) A copy of the application by the U.S. District Court Pro Bono Program;
- 5.) A letter from the PLF in support of the changes.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Executive Director determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

(a) Purpose:

The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:

- (1) Persons of limited means.
- (2) Underserved populations with special legal needs.
- (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.

(b) Compensation:

The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.

(c) Fees:

The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

(d) Quality Control:

The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate

matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.

(e) Diversity:

The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.

(f) Professional Liability Coverage

The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Section 13.2 Program Certification

Subsection 13.200 Procedure

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Executive Director determines whether a program is eligible for certification and this determination is final.

Subsection 13.201 Criteria

(a) Purpose:

The pro bono program must be ~~one of the following:~~

~~(1) A program incorporated with nonprofit status that has as its primary purpose providing legal services to low-income clients where clients are not charged more than a nominal administrative fee as a condition of receiving services.~~

~~(2) A program incorporated with nonprofit status that has as one of its purposes providing legal services to clients who are served by programs funded under the Older Americans Act.~~

~~(3) A court-sponsored mediation program where the purpose of the program is to improve access to justice. (4) An incorporated, nonprofit sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization that provides law-related educational programs to students-, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:~~

(1) Persons of limited means.

(2) Underserved populations with special legal needs.

(3) (5) A non-profit or bar-sponsored program whose purpose is to provide free legal services to an Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved ~~population~~ populations with special legal needs.

(b) Compensation:

The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.

(c) Fees:

The pro bono program must ~~not charge fees, except nominal~~ deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees, ~~to clients as a condition of receiving services are allowed.~~ Donations from clients, whether encouraged or not, are not considered fees. The pro bono program ~~must have a policy that prohibits~~ should prohibit or limit the handling of ~~and provides for the referral of~~ cases that are clearly fee-generating, and provide for the referral of such cases.

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The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.

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Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who ~~help~~ meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Document comparison by Workshare Professional on Wednesday, August 26, 2009 10:49:20 AM

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Document 1 ID	file://C:/aa/CompareOrMerge/old.doc
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Insertions	14
Deletions	13
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	27

Professional Liability Fund

Ira R. Zarov
Chief Executive Officer

MEMORANDUM

Board of Directors
and Officers

Robert C. Cannon
Salem
Chairperson

James G. Rice
Portland
Vice Chairperson

Kandis Brewer Nunn
Portland
Public Member
Secretary-Treas.

Rodney E. Lewis, Jr.
Portland

Ronald L. Bryant
Redmond

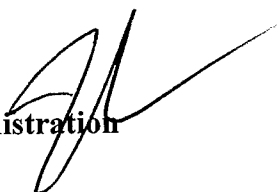
Suzanne Bradley Chanti
Eugene

Frederick C. Ruby
Salem

William G. Carter
Medford

Tim Martinez
Salem
Public Member

TO: OSB Access to Justice Committee

FROM: Jeff Crawford, Director of Administration 

DATE: September 17, 2009

RE: PLF Coverage for Pro Bono Programs
Certified Under Bylaw 13.201

As the Pro Bono Committee's September 18, 2009 memo explains, the PLF has been an integral part of the effort to mobilize volunteer lawyers to help the most underserved in our communities. The partnership between the OSB, PLF and certified programs has been very successful over the years. By providing coverage for lawyers exempt from ordinary PLF coverage, the pool of volunteers is greatly increased. And, we have been able to provide the coverage at no charge to the volunteer lawyers and certified programs.

One of the most important goals of the Pro Bono Committee's revision of the pro bono certification criteria under Bylaw 13.201, has been to ensure that all certified programs will be eligible for free PLF coverage. In the past, some programs could be certified, but did not meet the criteria for free PLF coverage. As proposed, the new Bylaw 13.201 fits within the spirit of the PLF coverage criteria and the intent is that all certifiable programs will be eligible for free PLF coverage.

In tandem with your committee's work, PLF staff will propose corresponding changes to the PLF bylaws and policies to the PLF Board of Directors and the Bar Board of Governors. Also, PLF and OSB staff will be looking at the possibility of a combined certification and PLF application to streamline the process for eligible programs.

Another important issue is the integration of the Active Pro Bono membership status into the OSB pro bono certification process and availability of PLF pro bono coverage. By ensuring that all programs certified by the OSB are eligible for PLF pro bono coverage, Active Pro Bono attorneys will be free to volunteer for any certified program without concerns about whether the work is properly covered. The result of these efforts will be more opportunities for lawyers to provide pro bono services at a time when they are needed more than ever.

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: October 30, 2009
From: Sylvia E. Stevens, General Counsel
Re: Anonymous Payments to the Client Security Fund

Action Recommended

The Client Security Fund requests guidance from the Board of Governors regarding accepting anonymous payments to the Fund.

Background

The Client Security Fund recently received a letter from the Hinshaw & Culbertson firm tendering \$2500 with the statement that “some or all of this amount may be due to the Client Security Fund.” The firm declined to identify its client or the “genesis of the payment.”

In a subsequent conversation, the firm would not confirm whether the money was tendered on behalf of a lawyer who had misappropriated client funds. Rather, it was suggested that the money might well have come from a recipient of an award from the fund who was obligated (by statutory subrogation and formal assignment) to reimburse the Fund. At the same time, it was argued that if the Fund made demand against a defalcating lawyer after making an award to the lawyer’s client, the lawyer could present a copy of the check as proof that the obligation had been satisfied in advance.

Not comfortable accepting the funds under those circumstances, I returned the check to Hinshaw & Culbertson pending further guidance from the BOG.

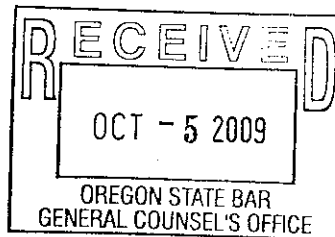
The CSF Committee discussed the subject at its meeting on October 12. While loathe to reject “donations” to the Fund (especially at a time that the member assessment was being increased), the Committee was equally loathe to accept such payments with conditions. The Committee had difficulty with the idea of lawyers making “advance payments” against defalcations from clients. Moreover, if the lawyer is able to reimburse the client, it is better done directly rather than making the client pursue a claim through the Fund.

After a lively discussion, the Committee was in unanimous agreement that only unrestricted and unconditional “donations” should be allowed. It seeks further guidance from the BOG. If the BOG approves the receipt of voluntary payments, with or without conditions, the committee suggests it be charged with drafting a rule to memorialize the BOG’s position.

HINSHAW

& CULBERTSON LLP

Dayna E. Underhill
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ATTORNEYS AT LAW

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Portland, OR 97205-3000

503-243-3243
503-243-3240 (fax)
www.hinshawlaw.com

October 1, 2009

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

Re: Client Security Fund Payment

Dear Ms. Stevens:

Enclosed you will find a check in the amount of \$2,500 made payable to the Client Security Fund. Pursuant to Oregon Rule of Professional Conduct 1.6, we respectfully decline to reveal the identity of our client or the genesis of the payment other than to state that some or all of this amount may be due to the Client Security Fund.

Very truly yours,

HINSHAW & CULBERTSON LLP

A handwritten signature in cursive script, appearing to read "Dayna E. Underhill".

Dayna E. Underhill

DEU:hg
Enclosure

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: October 30, 2009
From: Denise Cline, MCLE Administrator
Re: Proposed amendments to MCLE Rule 3.6 and Regulation 3.500

Action Recommended

Approve the proposed amendments to MCLE Rule 3.6 and Regulation 3.500.

Background

1) MCLE Rule 3.6 currently reads as follows:

3.6 Active Pro Bono and Active Emeritus. Members who are in Active Pro Bono or Active Emeritus status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.

At its November 15, 2008 meeting, the Board of Governors approved changing bylaws 6.100 and 6.101, which eliminated the *active emeritus* category and broadened eligibility for *active pro bono* membership.

Since the *active emeritus* status has been eliminated, MCLE Rule 3.6 should be amended as follows:

3.6 Active Pro Bono and ~~Active Emeritus.~~ Members who are in Active Pro Bono ~~or Active Emeritus~~ status pursuant to OSB Bylaw 6.101 are exempt from compliance with these Rules.

2) MCLE Regulation 3.500 currently reads as follows:

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule 3.8(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive status, suspension, disbarment or resignation, but no credits obtained during the member's inactive status, suspension, disbarment or resignation shall be carried over into the next reporting period.

When the MCLE Rules were amended in March 2008, Rule 3.8 became 3.7. However, the reference to Rule 3.8 in the above-mentioned regulation was never corrected. Since there is no longer a Rule 3.8, MCLE Regulation 3.500 should be amended as follows:

3.500 Reporting Period Upon Reinstatement. A member who returns to active membership status as contemplated under MCLE Rule ~~3.8~~3.7(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive status, suspension, disbarment or resignation, but no credits obtained during the member's inactive status, suspension, disbarment or resignation shall be carried over into the next reporting period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 31, 2009
From: Kathleen Evans, Chair, Policy & Governance Committee
Re: Sunsetting the OSB/OSCPA Joint Committee

Action Recommended

Consider the Committee's recommendation to sunset the OSB/OSCPA Joint Committee

Background

At its meeting on September 25, 2009, the Policy & Governance Committee discussed the recommendation of the Chair of OSB/OSCPA Joint Committee (the "Joint Committee") that the Joint Committee be sunsetted. The Chair, David Shawcross, offered the following reasons for his recommendation:

- Access to technology, such as websites for both organizations, e-mail, Twitter, Linked In, Facebook, etc., has made the Joint Committee obsolete.
- There has been a serious lack of commitment from the members of both sides of the Joint Committee. The bar's liaison concurs that there has been a lack of participation for the last five years. This does not benefit the bar or its members.
- The OSCPAs has already downgraded the group from a committee to a project group.
- A majority of the Joint Committee members who responded to Mr. Shawcross's inquiry agreed with his recommendation.

Based on the Joint Committee's own assessment, Policy & Governance could see no reason for continuing a committee that appears to have outlived its usefulness.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30, 2009
Memo Date: October 16, 2009
From: Ward Greene, chair, Budget & Finance Committee
Re: 2010 OSB Budget

Action Recommended

Approve the 2010 OSB budget.

Background

At its October 9 meeting, the Budget & Finance Committee reviewed the report for the 2010 OSB budget. This report was based on the bar staff development of the line item budgets for all program and departments.

The attached report is the report reviewed by the committee and integrates the actions and recommendations of the committee. The report approved by the committee indicates a \$160,978 net revenue for bar's general operation in 2010.

C **ONTENTS**

1. Purpose of this Report
2. General Overview for 2010
3. Summary of 2010 Revenue and Expense Categories
4. Highlights of Dollar Changes in Program/Departments Budgets
5. Program, Policy, and Operational Considerations for 2010
6. Fanno Creek Place
7. Five-Year Forecast
8. Operating and Capital Reserve and Other Contingency Funds
9. Client Security Fund
10. Summary of Recommendations to the Board of Governors
 - Exhibit A – Budget Summary by Program
 - Exhibit B – Changes in Budget by Program/Department
 - Exhibit C – Five-Year Forecast

1 **PURPOSE OF THIS REPORT**

On October 9, the Budget & Finance Committee reviewed the first report of the 2010 Oregon State Bar budget as prepared by the bar staff managers. That report was a summarized version of the line by line budgets prepared by each department or program manager.

This report is similar to the report reviewed by the committee except it adds the recommendations of the committee and updates as a result of its action. The recommendations (in a green colored box) are interspersed throughout the report and summarized at the end of the report.

The report is presented to the board for approval of the 2010 budget.

The detail program and department budgets are not included with this report, but are available by request, and will be available at the board meeting.

2 GENERAL OVERVIEW FOR 2010

➤ Operations

The objective for the 2010 budget was to beak-even. This normally would be a challenge in the last year of a five-year budget cycle. Historically, that year's budget is a net expense (aka, deficit, loss, in the red) and leads to a member fee increase the next year. That objective for 2010 potentially is more challenging since 2008 was a terrible year financially for the bar and the 2009 budget probably will have a net revenue lower than the budget.

**The 2010 budget summarized in this report
has a General Fund Net Revenue of \$160,978.**

This amount can be found in the far right column of the TOTAL OPERATIONS line on Exhibit A. The 2010 budget has \$26,000 less revenue and \$64,000 more in expenses than the 2009 budget, and is the second consecutive year of a budget lower than the previous year.

No member fee increase is included in the 2010 budget; although a \$50.00 fee increase is included in the 2011 forecast.

The \$160,978 Net Revenue is achieved with a small increase in expenditures, even after including a 3% salary pool. The increase in all expenditures of \$64,326 has to be the smallest in many years, and was achieved by adding some new services without jeopardizing the existing level of service and benefits to bar members.

Overall, of the eighteen program or departments, nine either had no increase in expenses or were lower than the 2009 budget. Much of the decrease can be achieved due to the increasing use of technology to decrease costs as evidenced by the increase in all indirect costs by only \$4,219 (2/10 of 1%) – and this is after salary increases.

These decreases are demonstrated in other program and department areas as well by decreases in cost or less usage of paper and office supplies, internal and external printing, postage; decreasing costs of technology with staff in the IDT Department assuming duties previously performed by contract programmer; stable or lower costs for data and telephonic services and communication; decreasing need for external storage of files; less advertising for vacant positions with a stable workforce; and capital or supplies needed to function at full capacity in the new bar center has already been purchased.

➤ Fanno Creek Place

The Net Expense for Fanno Creek Place is \$700,693 and the net cash flow is \$380,360 (page 2, Exhibit C). The net expense is lower than the executive summary forecast as operation costs are lower than projected as staff has a better understanding of the functions of the building components and through better budgeting now that more historical data is available.

3 SUMMARY OF 2010 REVENUE AND EXPENSE CATEGORIES

❖ Member Fee Revenue

Due to new member growth, Member Fee revenue is projected to increase by 2.5% in 2010. That revenue increase would even be higher except that revenue from “late fees” is reduced to the level of early 2009, when fewer members paid after the deadline than in previous years.

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 Fee Revenue

Overall Program Fee revenue is projected to decline by \$141,000 as the two largest non-dues revenue sources – CLE Seminars and Legal Publications – estimate revenue at \$130,000 and \$144,000 less than 2009. These reductions put the revenue at sums more consistent with the historical performance of the past several years. The reductions in Seminars and Publications are offset by a 14.5% revenue increase for Admissions and 17.5% increase for MCLE.

❖ Other Income

Investment income is projected to be \$37,000 lower than 2009 due to the lower interest rate return on the bar’s short-term funds i.e. the membership fee payments in the early part of the year. The rate paid on those funds has been under 1% since late May and is not projected to increase much or quickly during 2010.

❖ Salaries, Taxes & Benefits

The 2010 salary pool is 3%, the same as the 2009 pool. However, the overall increase in salaries, taxes and benefits is only 2.1% even though existing staff will receive a 3% increase. The budget dollar increase is lower due to the removal of an unfilled manager position, the full 3% pool was not distributed in 2009, and the Taxes & Benefits rate declining from 29.7% to 29.2% of salaries.

Taxes & Benefits are calculated as a percentage of salaries. The drop in the percentage for 2010 is due to lower PERS rates which dropped with the two-year cycle beginning July 1, 2009.

❖ Direct Program Expenses

All Direct Program and General & Administrative expenses decline \$97,000 from the 2009 budget. Even though this is a significant decline, there were some substantive additions (described in Section 5) to Direct Program expense.

4 HIGHLIGHTS OF DOLLAR CHANGES IN PROGRAM/DEPARTMENT BUDGETS

The significance of Exhibit B “Changes in Budget by Program/Department” will be presented with a brief oral summary by the CFO of the year-over-year changes at the committee meeting.

The exhibit compares the revenue and expense of the 2009 and 2010 budgets. The “change” column is the difference between 2009 and 2010. The “Change Variance” is the difference in the change in revenue and expense. Thus, if the number in the “Change Variance” column is positive (e.g., the first on the list, Admissions), that means that the activity is projected to add positive cash flow to the bar from 2009 to 2010. A negative number means the activity is using more funds from this year to the next.

5 PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2010

The items in this section are changes or continuation in the 2010 budget and include any action taken by the committee.

Changes to the Budget Already Implemented

These are changes already incorporated into the 2010 budget as they are operational matters which were consummated within the past few months. Fortunately, all increase revenue or decrease an expense.

1. *Increase the bar exam application by \$100.*

The Supreme Court has approved the application cost to \$625.00. This increase is the reason for the large increase in Admissions revenue.

2. *Increase the service charge to sections by \$1.25 to \$6.50.*

The long-time practice has been to charge the sections one-half the cost of the services provided by the bar (primarily staff time). The last increase was three years ago. This increase added \$24,600 in revenue to the general fund.

3. *Conversion from Casemaker to Fastcase*

The bar contract with Fastcase replaced the Casemaker online legal research library on September 21, 2009. The first-year annual subscription for Fastcase is \$99,000,

which in 2010, is \$37,950 less than the amount if the bar had continued with Casemaker.

Carryover Activities from Prior Budgets Included in the Budget Subject to Committee Approval

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.

Recommendation of Budget & Finance Committee	The grants to the Campaign for Equal Justice and the Classroom Law Project will remain in the 2010 budget. The discussion focused on whether the bar should be granting funds to not-for-profit organizations even though they are related to the legal profession.
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New Programs/Activities Included in the Budget Subject to Committee Approval

- 7. *Ethics School – Net Expense of \$27,000*

Recommendation of Budget & Finance Committee	The Funding for the ethics school was approved, but the Discipline Department is asked to consider folding the duties of the director of the program into existing department personnel, or contracting for the services.
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- 8. *Reduce Participants in Leadership College – decrease expenses \$16,800*

The college has been offered for three years and the attendees have increased to the present thirty-three. The 2010 budget includes dropping the number of participants to 15 to create a more intimate college and thereby reduce the cost by \$16,800.

9. *Create a reserve for public affairs activities – increase expenses \$30,000*

A reserve of \$30,000 for public affairs activities to respond to ballot measure, the referendum process, and outreach was included in the Public Affairs expense budget. The bar has paid for similar activities in the past from the general contingency fund.

Recommendation of Budget & Finance Committee	<i>The \$30,000 reserve for public affairs activities was not approved. Although the committee believed the board would support such activities that may come before the board, the committee surmised that the existing general contingency could fund the activity.</i>
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10. *PERS Contingency*

At its September meeting, the committee recommended expanding and extending the contingency for the bar's employer contributions to PERS due to the expected significant increase in the employer's rate with the two-year cycle beginning July 1, 2011. The information shared by PERS, and also reported in a recent *Oregonian* article, state the increase "will increase by an average of 8.4 percentage points." Although this is a state-wide rate, and the bar's rate typically has been slightly lower than the state-wide rate, the quoted rate is about double what the bar is paying during the current two-year cycle.

The "Funds Available/Reserve Requirement" sets aside \$192,000 in 2010 and half that amount in 2011 for an addition to the PERS contingency. This amount is approximately double what the bar will pay in 2010. It is not included in the operation budget as it is not an external payment, but an amount to be set aside in an internal reserve. The actual payments are factored into the forecasts beginning mid 2011.

Recommendation of Budget & Finance Committee	<i>Thirty-five thousand dollars was added to the existing PERS Contingency. The monthly decreasing of the existing contingency is to discontinue. The existing contingency is \$157,000 and the additional \$35,000 will increase the contingency to \$192,000, which is the estimated amount of a year's cost increase if the employer's rate doubles beginning mid 2011. The committee will continue to evaluate the need for changes to the contingency as more information from PERS becomes available.</i>
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Requests not Included in 2010 Budget and Subject to Review by the Committee

4. *Funding for Law Foundation Feasibility Study - \$7,000*

The Oregon Law Foundation requested \$7,000 to fund a feasibility study to assess the impact and desirability of amending the IOLTA rule to include an interest rate comparability requirement.

Recommendation of Budget & Finance Committee	Funding for the comparability study for the OLF was not approved. The committee suggests the Policy & Governance Committee may want to discuss if such a study is necessary as the results are presumably known.
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Existing Programs/ Activities for Future Consideration

5. *Cost of the House of Delegates*

The amount in the 2009 budget for the House of Delegates is \$30,800 (including reimbursement of delegates' travel). The amount in the 2010 budget is \$18,000 since the meeting is at the bar center and meeting costs and travel reimbursement are less.

6. *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, and the 2010 budget includes lower cost for the meetings.

7. *Printed Membership Directory*

A survey of members will be performed in 2010 to determine the value of the printed directory. There have been several options considered for making the directory all or partially in electronic format only.

8. *BarBooks*

The anticipated resolution to fund BarBooks with an increase to the annual active membership fee is not on the House of Delegates agenda. Instead, the Sole & Small Firm Practitioners Section has sent a request to the board to change the current subscription pricing system to create a lower cost for solos and small firms and create a more equitable subscription with large firms. The request is included on the October 30 agenda of the Budget & Finance Committee meeting.

The topic also is included on the board's October 31 strategic planning agenda

6 FANNO CREEK PLACE

The 2010 budget for Fanno Creek Place is a \$700,693 Net Expense. Budget highlights are:

- a. The bar receives a full year's rent from all tenants (PLF, 20/20 Laser Clinic, and Opus Northwest (under the Master Lease). Opus carries the lease with Zip Realty, which will be assigned to the bar with the expiration of the master lease in January 2013.
- b. Operating costs are running less than the 2009 budget, which was prepared with industry standards. With actual expense, the current costs are below those standards.
- 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 \$498,502.
- e. The net cash flow is a negative \$380,360, which is in line with the forecasts leading to the development of the building.
- f. Bar staff will begin a more proactive marketing of the conference center and meeting rooms to unrelated parties.

7 FIVE YEAR FORECAST

Exhibit C 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 has a net revenue throughout 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 in 2010 and turn positive by 2011 if a fee increase is approved (page 3).

The FUNDS AVAILABLE schedule (page 3, Exhibit C) 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, capital purchases, and others.

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

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.

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.

Recommendation of Budget & Finance Committee	<i>The committee instructed the bar's CFO to review the contents and amount of the capital reserve to assure it adequately defines the bar's capital reserve policy.</i>
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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 – remain in force. With the Operating and Capital Reserves, collectively all such reserves and contingencies could be underfunded by \$533,000 by the end of 2010.

9 CLIENT SECURITY FUND

At the recommendation of the Client Security Fund Committee, the Client Security Fund assessment is increased by \$10.00 to \$15.00 for 2010. The board approved the increase with the approval of the HOD agenda at its September 25 special meeting.

The assessment has been \$5.00 since 2003. The assessment has been low since the claims paid have been low and the fund balance exceeded the committee's required reserve. However, there has been a net expense in four of the last five years (including 2009) and the CSF Committee foresees a trend of more claims, which will place its reserve level in jeopardy. The added \$10.00 raises an additional \$145,300 in revenue.

10

RECOMMENDATIONS OF THE BUDGET & FINANCE COMMITTEE

Here is a summary of the actions of the Budget & Finance Committee (taken from the minutes of the October 9 committee meeting):

- The grants to the Campaign for Equal Justice and the Classroom Law Project will remain in the 2010 budget. The discussion focused on whether the bar should be granting funds to not-for-profit organizations even though they are related to the legal profession.
- Funding for the ethics school was approved, but the Discipline Department is asked to consider folding the duties of the director of the program into existing department personnel, or contracting for the services.
- The \$30,000 reserve for public affairs activities was not approved. Although the committee believed the board would support such activities that may come before the board, the committee surmised that the existing general contingency could fund the activity.
- Thirty-five thousand dollars was added to the existing PERS Contingency. The monthly decreasing of the existing contingency is to discontinue. The existing contingency is \$157,000 and the additional \$35,000 will increase the contingency to \$192,000, which is the estimated amount of a year's cost increase if the employer's rate doubles beginning mid 2011. The committee will continue to evaluate the need for changes to the contingency as more information from PERS becomes available.
- Funding for the comparability study for the OLF was not approved. The committee suggests the Policy & Governance Committee may want to discuss if such a study is necessary as the results are presumably known.
- The other items in the report were approved as presented.

OREGON STATE BAR

Budget Summary by Program

2010

<i>Department / Program</i>	<i>Revenues</i>	<i>Sal & Benefits</i>	<i>Direct Program</i>	<i>Gen & Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$731,595	\$286,800	\$237,280	\$41,395	\$565,475	\$158,461	\$7,659
Bulletin	\$548,778	\$164,300	\$315,420	\$4,742	\$484,462	\$47,187	\$17,129
CLE Seminars	\$1,372,895	\$454,100	\$621,850	\$23,975	\$1,099,925	\$399,909	(\$126,939)
Client Assistance Office	\$0	\$460,756	\$0	\$19,748	\$480,503	\$117,165	(\$597,668)
Communications	\$18,950	\$443,000	\$49,875	\$9,397	\$502,272	\$118,176	(\$601,498)
Disciplinary Counsel	\$93,000	\$1,532,794	\$118,600	\$77,601	\$1,728,995	\$388,439	(\$2,024,434)
General Counsel	\$2,770	\$327,700	\$70,700	\$19,874	\$418,274	\$59,407	(\$474,911)
Governance (BOG)	\$0	\$313,200	\$196,700	\$41,700	\$551,600	\$80,176	(\$631,776)
Legal Publications	\$940,358	\$565,900	\$225,995	\$34,857	\$826,752	\$331,428	(\$217,822)
Loan Repayment Assistance Progr	\$71,200	\$0	\$95,000	\$0	\$95,000	\$0	(\$23,800)
MCLE	\$300,900	\$138,396	\$900	\$14,506	\$153,802	\$55,407	\$91,691
Member Services	\$0	\$280,500	\$67,100	\$41,409	\$389,009	\$116,417	(\$505,426)
New Lawyers Division	\$4,000	\$50,100	\$82,800	\$10,780	\$143,680	\$26,440	(\$166,120)
Production Services	\$170,300	\$68,100	\$127,150	\$0	\$195,250	\$34,242	(\$59,192)
Public Affairs	\$0	\$395,500	\$6,900	\$34,813	\$437,213	\$69,319	(\$506,532)
Referral & Information Services	\$129,943	\$292,500	\$38,550	\$13,522	\$344,572	\$96,154	(\$310,783)
Special Projects	\$0	\$7,700	\$174,850	\$350	\$182,900	\$0	(\$182,900)
TOTAL PROGRAMS	\$4,384,689	\$5,781,346	\$2,429,670	\$388,668	\$8,599,684	\$2,098,327	(\$6,313,322)
ALLOCATIONS:							
Finance & Operations	\$6,499,300	\$1,164,140	\$1,223,341	\$107,850	\$2,495,331	(\$1,999,631)	\$6,003,600
Less: Dept Charges/Offsets			(\$495,700)		(\$495,700)		\$495,700
Oregon State Bar Center	\$0	\$0	\$36,140	\$3,600	\$39,740	(\$39,740)	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
TOTAL OPERATIONS	\$10,883,989	\$6,945,486	\$3,218,451	\$500,118	\$10,664,055	\$58,956	\$160,978
Fanno Creek Place	\$884,333	\$98,700	\$1,621,751	\$23,004	\$1,743,455	(\$158,429)	(\$700,693)
TOTAL GENERAL FUND	\$11,768,322	\$7,044,186	\$4,840,202	\$523,122	\$12,407,511	(\$99,473)	(\$539,715)
DESIGNATED FUNDS:							
Affirmative Action Program	\$505,611	\$221,900	\$193,061	\$19,610	\$434,571	\$61,055	\$9,986
Client Security Fund	\$227,400	\$40,400	\$151,900	\$1,980	\$194,280	\$13,055	\$20,065
Legal Services	\$5,695,000	\$81,600	\$5,627,500	\$5,323	\$5,714,423	\$25,363	(\$44,786)
TOTAL ALL FUNDS	\$18,196,333	\$7,388,086	\$10,812,663	\$550,035	\$18,750,784	\$0	(\$554,451)

Exhibit A

Changes in Budget by Program/Department 2009 vs 2010

Program/Department	Revenue			Expenses			Change Variance
	2009	2010	Change	2009	2010	Change	
Admissions	\$638,850	\$731,595	\$92,745	\$529,622	\$565,475	\$35,853	\$56,892
Bulletin	550,630	548,778	(1,852)	485,399	484,462	(937)	(915)
CLE Seminars	1,502,725	1,372,895	(129,830)	1,129,935	1,099,925	(30,010)	(99,820)
Client Assistance Office	-	-	-	470,688	480,503	9,815	(9,815)
Communications	22,850	18,950	(3,900)	468,566	502,272	33,706	(37,606)
Disciplinary Counsel	80,000	93,000	13,000	1,620,529	1,728,995	108,466	(95,466)
General Counsel	2,450	2,770	320	416,418	418,274	1,856	(1,536)
Governance (BOG)	-	-	-	563,100	551,600	(11,500)	11,500
Legal Publications	1,084,410	940,358	(144,052)	848,947	826,752	(22,195)	(121,857)
Loan Repayment Assist Prog	70,800	71,200	400	95,000	95,000	0	400
MCLE	256,000	300,900	44,900	150,916	153,802	2,886	42,014
Member Services	-	-	-	458,292	389,009	(69,283)	69,283
New Lawyers Division	4,000	4,000	0	113,380	143,680	30,300	(30,300)
Production Services	186,600	170,300	(16,300)	202,800	195,250	(7,550)	(8,750)
Public Affairs	-	-	-	436,827	437,213	386	(386)
Referral & Info Services	126,336	129,943	3,607	333,433	344,572	11,139	(7,532)
Special Projects	-	-	-	215,725	182,900	(32,825)	32,825
Finance & Operations	6,384,200	6,499,300	115,100	2,193,581	2,197,800	4,219	110,881
Contingency	-	-	-	25,000	25,000	0	0
Totals	\$10,909,851	\$10,883,989	(\$25,862)	\$10,758,158	\$10,822,484	\$64,326	(\$90,188)
Fanno Creek Place	\$ 899,939	\$ 884,333	(\$15,606)	\$ 1,633,005	\$ 1,585,026	(\$47,979)	\$32,373
Affirmative Action Program	498,225	505,611	7,386	432,979	434,571	1,592	5,794
Client Security Fund	92,700	227,400	134,700	193,018	194,280	1,262	133,438
Legal Services	4,828,000	5,695,000	867,000	4,809,821	5,714,423	904,602	(37,602)
Totals - All Funds	\$17,228,715	\$18,196,333	\$967,618	\$17,826,981	\$18,750,784	\$923,803	\$43,815

Operations

October-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
REVENUE							
MEMBER FEES							
General Fund	\$6,457,600	\$6,619,000	\$7,434,000	\$7,601,000	\$7,791,000	\$7,966,000	\$8,165,000
PROGRAM FEES:							
CLE - Seminars	1,502,725	1,372,895	1,372,895	1,386,624	1,407,423	1,428,535	1,449,963
CLE - Publications	1,084,410	940,358	940,358	949,762	949,762	959,259	959,259
All Other Programs	1,695,316	1,821,436	1,857,865	1,895,022	1,932,922	1,981,246	2,020,870
Total Program Fees	4,282,451	4,134,689	4,171,118	4,231,408	4,290,107	4,369,039	4,430,092
OTHER INCOME							
Investment Income	151,800	114,400	178,000	199,000	223,000	226,000	251,000
Other	18,000	15,900	16,400	17,100	17,800	18,500	19,200
TOTAL REVENUE	10,909,851	10,883,989	11,799,518	12,048,508	12,321,907	12,579,539	12,865,292
EXPENDITURES							
SALARIES & BENEFITS							
Salaries - Regular	5,188,300	5,300,800	5,437,200	5,577,700	5,722,400	5,920,800	6,075,800
Benefits - Regular	1,539,300	1,545,200	1,784,489	2,051,478	2,104,699	2,183,591	2,216,452
Salaries - Temp	55,100	91,155	50,000	30,000	50,000	30,000	50,000
Taxes - Temp	2,810	8,332	4,500	2,700	4,500	2,700	4,500
Total Salaries & Benefits	6,785,510	6,945,487	7,276,189	7,661,878	7,881,599	8,137,091	8,346,752
<i>% of Total Revenue</i>	62.2%	63.8%	61.7%	63.6%	64.0%	64.7%	64.9%
DIRECT PROGRAM:							
CLE - Programs	665,780	621,850	628,069	640,630	653,442	666,511	679,842
CLE - Publications	232,880	225,995	228,255	232,820	237,476	242,226	247,070
All Other Programs	2,383,841	2,345,606	2,392,518	2,452,331	2,501,378	2,563,912	2,640,830
Total Direct Program	3,282,501	3,193,451	3,248,842	3,325,781	3,392,297	3,472,649	3,567,742
GENERAL & ADMIN	570,604	559,073	570,254	584,511	599,124	617,097	635,610
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
TOTAL EXPENSES	10,663,615	10,723,011	11,120,285	11,597,170	11,898,019	12,251,838	12,575,104
NET REVENUE/(EXPENSE) - OPERATIONS	\$246,236	\$160,978	\$679,233	\$451,338	\$423,888	\$327,702	\$290,189

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	181,914	187,371	192,993	182,217	115,956	195,887
OLF	25,344	26,112	26,900	27,700	28,500	29,400	30,300
Meeting Rooms	34,000	12,000	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	5,600	7,000	8,000	9,000	10,000	4,000
TOTAL REVENUE	888,268	884,333	918,052	939,582	850,245	889,506	977,547
EXPENDITURES							
OPERATING EXPENSE							
Salaries & Benefits	96,600	98,400	101,400	104,400	107,500	110,700	114,000
Opus Management Fee	53,500	54,000	54,800	55,600	4,700		
Operations	332,500	295,414	304,300	313,400	322,800	332,500	342,500
Depreciation	513,264	498,502	498,502	498,502	498,502	498,502	508,502
Other	29,380	41,000	29,800	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)	(158,429)	(161,600)	(165,600)	(168,900)	(173,100)	(178,300)
TOTAL EXPENSES	1,633,005	1,584,726	1,572,052	1,539,987	1,486,003	1,476,757	1,485,401
NET REVENUE/(EXPENSE) - FC Place	(\$744,737)	(\$700,393)	(\$654,000)	(\$600,405)	(\$635,758)	(\$587,251)	(\$507,854)
ACCRUAL TO CASH ADJUSTMENT							
SOURCES OF FUNDS							
Depreciation Expense	513,264	498,502	498,502	498,502	498,502	498,502	508,502
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)	(\$380,360)	(\$344,956)	(\$303,026)	(\$350,763)	(\$315,402)	\$160,039

Funds Available/Reserve Requirement

	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	\$617,257	\$1,226,934	\$1,676,846	\$2,144,872	\$2,512,271
SOURCES OF FUNDS							
Net Revenue/(Expense) from operations	246,236	160,978	679,233	451,338	423,888	327,702	290,189
Depreciation Expense	260,548	303,286	309,400	315,600	321,900	325,100	328,400
Provision for Bad Debts	19,500	30,000	30,000	30,000	25,000	25,000	25,000
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						
USES OF FUNDS							
Capital Expenditures	(51,500)	(134,340)	(50,000)	(80,000)	(50,000)	(80,000)	(50,000)
Capital Reserve Expenditures	(20,000)	(17,600)	(40,000)	(75,000)	(50,000)	(50,000)	(75,000)
Capital Expenditures - New Building	(20,000)	0	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Capital Reserve Expenditures - New Building							(400,000)
Landlord Contingency Interest	(8,300)	(5,600)	(7,000)	(8,000)	(9,000)	(10,000)	(4,000)
Net Cash Flow - Fanno Creek Place	(399,591)	(380,360)	(344,956)	(303,026)	(350,763)	(315,402)	160,039
Addition to PERS Reserve		(192,000)	(96,000)				
Change in Investment Portfolio MV							
Projected lower Net Revenue	(100,000)						
CHANGE IN FUNDS AVAILABLE	186,893	(89,636)	609,677	449,912	468,025	367,400	463,628
Funds Available - End of Year	\$706,893	\$617,257	\$1,226,934	\$1,676,846	\$2,144,872	\$2,512,271	\$2,975,899
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)	(\$532,743)	\$76,934	\$526,846	\$944,872	\$1,312,271	\$1,725,899
Reconciliation Cash to Accrual	BUDGET 2009	BUDGET 2010	F O R E C A S T				
NET REVENUE/(EXPENSE) - Operations	246,236	160,978	679,233	451,338	423,888	327,702	290,189
NET REVENUE/(EXPENSE) - FC Place	(744,737)	(700,393)	(654,000)	(600,405)	(635,758)	(587,251)	(507,854)
NET REVENUE/(EXPENSE) - OSB	(\$498,501)	(\$539,415)	\$25,233	(\$149,067)	(\$211,870)	(\$259,549)	(\$217,665)

Rod Wegener

From: Robert Browning
Sent: Friday, October 16, 2009 3:27 PM
To: (e) Gerry Gaydos; (e) Kathleen Evans; Teresa Schmid; "Mr Christopher H Kent ckent"@kentlaw.com; Rod Wegener; Sylvia Stevens; Linda Kruschke; Margaret Robinson; Ira Zarov; Teresa Wenzel
Cc: Mr W Scott Phinney; Sole & Small Firm Practitioners Section
Subject: SSFPS Resolution re: Office Share Group treatment for the Section
Importance: High

Mr. Gaydos, Sole and Small Firm Practitioners Section Chair Scott Phinney has requested that I send the following to you:

October 16, 2009

Mr. Gary Gaydos, President

Oregon State Bar

P.O. Box 231935
 Tigard, OR 97281-1935

RE: Office Share Group Treatment of the SSFPS with respect to BarBooks

As you are aware, the Sole and Small Firm Practitioners Section of the Oregon State Bar has long supported the online provision of the Bar's printed CLE materials to all members of the Bar. The Section's position since before the 2004 Annual Meeting has consistently stressed the need for universal access to the materials and for a fair pricing structure.

Unfortunately, neither universal access nor an equitable pricing structure were adopted three years ago at the conclusion of the work of the BarBooks Task Force. Under the current BarBooks pricing structure there is an over twelve-fold differential between the cost of BarBooks to a sole practitioner (\$395.00 per attorney) and that of a member of a 200 person firm (\$32.35 per attorney!!). The inequity of the differential is nearly as bad for a member of a five-member firm, \$195.00 per attorney versus the \$32.35 per attorney in the 200 member firm, still more than a six-fold differential.

It is way past time to address the patent inequity of this pricing structure. We in the Section understand that the Bar is undertaking an extensive review of all of the Bar's services. However, in the interim and following a great deal of review of the alternatives available, it has become clear that the members of the Sole and Small Firm Practitioners Section of the Bar (as an association of individuals primarily based on their status as members of small firms than on a focus on a particular substantive area of the law) bear many similarities to the

association of attorneys allowed treatment as an “Office Share Group” under the current BarBooks pricing schedule.

Accordingly, attached to this letter is a Resolution unanimously adopted by the Section Executive Committee at our last meeting. We desire to have the Board of Governors consider and approve this Resolution at its October meeting in Gold Beach so that the necessary planning can take place for a March 1, 2010 implementation.

Also, both I and past-Section Chair Bob Browning wish to appear in person at this meeting for a brief ten to fifteen minute presentation on this proposal, followed by an opportunity to address any questions you or the other members of the Board of Governors may have.

Thank you for your consideration of this long overdue step toward reestablishing equity in the dissemination of these important educational materials. Please do not hesitate to contact either me or Mr. Browning if you have any questions about this Resolution.

Very truly yours

/s/ W. Scott Phinney

W. Scott Phinney, 2009 Chair

Sole and Small Firm Section

Oregon State Bar

Attachment: Adopted Resolution (follows)

cc: Ms. Kathleen A. Evans, President-Elect
 Ms. Teresa J. Schmid, Executive Director
 Mr. Christopher H. Kent, BOG Member / Section Liason
 Mr. Rod Wegener, CFO
 Ms. Sylvia Stevens, General Counsel
 Ms. Linda Kruschke, Manager, Legal Publications
 Ms. Margaret Robinson, Manager, Member Services
 Mr. Ira Zarov, PLF CEO

Ms. Teresa Wenzel, Executive Assistant

Members of the Section

This is the Resolution adopted by the Executive Committee of the Section:

**RESOLUTION OF THE
EXECUTIVE COMMITTEE OF THE
SOLE AND SMALL FIRM PRACTITIONERS SECTION
OF THE OREGON STATE BAR REGARDING TREATMENT
OF THE SECTION AS AN “OFFICE SHARE GROUP” WITH RESPECT
TO THE PURCHASE OF BARBOOKS™ ON BEHALF OF SECTION
MEMBERS**

At the Executive Committee Meeting of the Sole and Small Firm Practitioners Section of the Oregon State Bar held on Saturday, October 10, 2009, by motion duly made, seconded, and unanimously adopted, the Section Executive Committee resolved as follows:

WHEREAS, The adequate, efficient, and economical dissemination of law materials (and specifically the written CLEs) being necessary to the education of the Members of the Oregon State Bar, both for the protection of the public and for the professional practice of law, and

WHEREAS, The Sole and Small Firm Practitioners Section is not as concerned with the substantive aspects of the law as it is with the unique information and practice challenges facing sole and small firm practitioners, and

WHEREAS, Even though often separated geographically, Members of the Section have much in common with lawyers located in an “office share” arrangement,

NOW, THEREFORE, Be it resolved that:

1. Until such time as a universal access model for the dissemination

of BarBooks is adopted by the Oregon State Bar, the Section shall be treated as an Office Share Group with not less than 150 attorneys, and the provision of BarBooks to the Section shall be lump-sum priced accordingly.

2. The Section shall remit to the Bar the sum of \$4,995 for such number of users and, should the number of Section Members desiring to use BarBooks exceed 150 Members and support staff, the Section shall remit to the Bar the further sum of \$295 for each additional 10 users, which prices are as set out for an Office Share Group for the 2010 subscription year for BarBooks.

3. Such group treatment and the availability of access to BarBooks shall be limited to persons who are either Members of the Section or support staff of such Members.

4. The annual subscription period for such Group subscription shall run from March 1 of each calendar year, beginning in 2010.

5. The Section shall charge each user not more than \$40 per subscription. Less than a full year subscription as part of the Group shall not be prorated as to any user under the Section's group subscription.

6. The amounts paid by any Member for such BarBooks subscriptions shall be in addition to the Section's annual member dues and no subscription shall be included in any waiver of the Section dues for any complimentary membership.

Interoffice Memo

Date: October 9, 2009
To: Rod Wegener
cc: SSFP Section Executive Committee
From: Linda Kruschke
Re: BarBooks™ Pricing Modifications

The OSB is exploring two ideas regarding modification of pricing of BarBooks™ in response to concerns raised by the SSFP Section Executive Committee. The goals of any pricing modifications are twofold: (1) to create greater equity between the pricing for solos and large firms; and (2) to ensure that any modifications do not have a significant negative impact on the overall revenue of the Legal Publications Department and the OSB as a whole.

BOG Retreat Agenda

The below ideas represent a preliminary step in the long range planning regarding the future of BarBooks™. At its planning retreat at the end of October, the Board of Governors agenda includes a discussion of Universal Access to BarBooks™. Kathy Evans, the incoming OSB President, is very interested in this topic and exploring ways in which it could become a reality.

Interim Ideas

Idea #1: Provide a discount of \$150 in the form of a coupon or gift certificate for all members of the SSFP Section. This would effectively bring the price of BarBooks™ down to \$245 for sole practitioners, \$445 for two-attorney firms, and \$645 for three- to five-attorney firms. The discount could be applied to the renewal of an existing subscription or the purchase of a new subscription, and would be limited to one discount coupon per firm in the case of firms with more than one attorney.

It has been suggested by the SSFP Executive Committee that all members of the section be required to purchase BarBooks™ in order to get the appropriate discount. However, OSB staff has determined that a \$150 discount would not have a significant negative impact on the Legal Publications budget even if purchase of BarBooks™ remained a voluntary choice for SSFP Section members.

To address the issue of other sections wanting to be offered a similar discount, we would need to make sure that any OSB member was eligible to join the SSFP if they wanted to be eligible for the discount. This will require a review of the section bylaws, which has not yet been done.

Finally, this idea could best be implemented through a modification of the online purchasing system for BarBooks™. Without this modification, all BarBooks™ renewals or purchases accompanied by a SSFP discount coupon would have to be manually processed,

which would require three different steps by two different OSB staff members. However, a modification of the online purchasing system for both BarBooks™ and print books is already in the planning stages. This online purchasing system would be able to accommodate the application of this discount based on a member's status as an SSFP member.

Idea #2: Increase the pricing of BarBooks™ at the upper tiers of the pricing structure. Because there has been no increase in the price of BarBooks™ since it was launched, this idea could be implemented immediately and be effective for the next renewal of BarBooks™ by firms with over 20 attorneys. The additional revenue from this modification would be modest because of the small number of firms in the upper tiers, but would be enough to offset a portion of any potential loss of revenue from a discount offered to SSFP members.

There are no technology hurdles to implementing this idea, because it would simply involve changing the price associated with various price levels in the current pricing structure.

Statistics

The following statistics were used to analyze the potential impact of different discount scenarios:

SSFP Members without BarBooks™

Solo	225
Non-members & Law Students	4
In Firms	33
TOTAL without BarBooks™	262

SSFP Members with BarBooks™

Solo	82
In Office Share Groups	10
In Firms	30
TOTAL with BarBooks™	122

BarBooks™ Solo Subs not in SSFP 320

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 31, 2009
Memo Date: September 29, 2009
From: Gina Johnnie, Appointments Committee Chair
Re: Appointments for the Consent Agenda (memo 1 of 2)

Action Recommended

Approve the following recommendations from the Appointments Committee.

Affirmative Action Committee

Chair: Umscheid, Lisa
Secretary: Torres Mattson, Xiomora
Members with terms expiring 12/31/2010:
Nelson, Adrienne C
Members with terms expiring 12/31/2012:
Haroldson, John M
Lopez, Angel
Meng, Linda
Mitchell-Phillips, Kenneth Stephen
Morales, Mavel
Nelson, Erin
Tavan, Joelle
West, Kristen Jorgensen
Jackson, JoAnn (public member)

Bar Press Broadcasters Council

Chair: Barnett, Russell
Members with terms expiring 12/31/2012:
Horner, Gregory
Mackeson, Wayne
McCrea, Shaun
Weatherby, Candace H

Client Security Fund Committee

Chair: Quintero, Robert
Secretary: Taggart, Max
Members with terms expiring 12/31/2012:
Gouge, Linda
Welch, Elizabeth
Wright, Theresa

Federal Practice and Procedure Committee

Chair: Semler, Elizabeth
Secretary: Tedesco, Elizabeth
Members with terms expiring 12/31/2010:
Dugan, Marianne
Ratoza, Mike
Members with terms expiring 12/31/2012:
Beel, Brian
Colton, Brittney Ann
Marshall, Linda
Aiken, Ann (advisory member)
Acosta, John (advisory member)

Judicial Administration Committee

Chair: Waxler, Eric
Secretary: O'Neil, Yumi
Members with terms expiring 12/31/2012:
Bischoff, Susan G
Cozine, Nancy J
Gerber, Susan
Rainwater, Robert W
Svoboda, John L

Legal Ethics Committee

Chair: Houston, Holli
Secretary: Elkanich, David J.
Members with terms expiring 12/31/2012:
Burt, Robert G
Christoff, Peter A
Harris, Jet
Marr, Charles

Masters, William Alexander
Nye, Bradley
Rosas, Justin N.

Legal Heritage Committee

Chair: Chin, Bill
Secretary: Fu, Ning
Members with terms expiring 12/31/2012:
Burgess, Megan K
Crofoot, Betty I
Nashiwa, Karen M T
Wolf, Jason Edward

Legal Services Committee

Chair: Fabien, Marva
Secretary: Seidman, Scott
Members with terms expiring 12/31/2012:
Edwards, Amy
Newton, Josh
Seidman, Scott
Lee, Debra (advisory member)
Matsuda, Thomas J (advisory member)
Saltus, Ralph (advisory member)
Thornburgh, David (advisory member)
Garrison, Cassandra (public member)

Loan Repayment Assistance Program

Advisory Committee

Members with terms expiring 12/31/2012:
Connors, John
Norris, Dan

MCLE Committee

Chair: Hunt, Cindy
Secretary: Cribbens, Melissa
Members with terms expiring 12/31/2012:
Batlan, Cecelia L
McNair, Charles M
Mitchel-Markley, Caitlin J.
Gordon, Stace (public member)

Pro Bono Committee

Chair: Rizzo, Matthew
Secretary: Bodzin, Jay
Members with terms expiring 12/31/2012:
Coughlin, Jennifer Lee

Hopfe, Traci Renee
Johnson, Philip Alan
Kaufman, Lissa K
Shumaker, Brantley

Procedure and Practice Committee

Chair: Dippel, Courtney
Secretary: Friel, Mark
Members with terms expiring 12/31/2012:
Dozier, Keith
Heekin, Katherine
Hallinan, Michael B
Jarvis, Matthew L
Kafel, Elizabeth A
Marr, Charles

Public Service & Information Committee

Chair: Cousineau, Jessica
Secretary: Tookey, Douglas L
Members with terms expiring 12/31/2010:
Cousineau, Jessica
Members with terms expiring 12/31/2012:
Brittle, Jill E
Harlos, Sarah E
Johnson, Dexter A
Tookey, Douglas L
Griffith, Daniel Boyd (public member)

Quality of Life Committee

Chair: Trant, Deborah
Secretary: Schpak, Andrew
Members with terms expiring 12/31/2012:
Myles, Kevin Milton
Trant, Deborah
Tsohantaridis, Demetrius

State Lawyers Assistance Committee

Chair: Lusk, Robert
Secretary: Hazarabedian, Gregory
Members with terms expiring 12/31/2013:
Clark, Kelly WG
Gumusoglu, Shea
Whitlock, Richard C

**Uniform Civil Jury Instructions
Committee**

Chair: Kathy Rastetter
Secretary: Furrer Newton, Cynthia
Members with terms expiring 12/31/2012:
Bushong, Stephen K.
Coletti, John
Gruetter, Bryan W
Jonsson, Scott A
Lindahl, R Daniel

Unlawful Practice of Law Committee

Chair: Fred Cann
Chair-Elect: Borg, C. Lane
Secretary: Garcia, Oscar
Members with terms expiring 12/31/2013:
Baldwin, Russell L
Bjerk, Haley B
Colton, Britney Ann
Johnson, Roland A
Mopper, Jane E.
Rufolo, Laura B
Siegel, Todd M.
Douglass, Lisa (public member)

Disciplinary Board

State Chair and Chair-Elect terms expire 12/31/2010.
State Chair: Gilbert Feibleman
State Chair-Elect: Paul Frasier

Unless otherwise noted regional chair positions have terms expiring 12/31/2010 and all members have terms expiring 12/31/2012.

Region 1

Chair: Carl W. Hopp Jr.

Region 2

Chair: Jack Gardner
Members: Jet Harris, and Mitchell Rogers (public member).

Region 3

Chair: R. Paul Frasier
Members: Penny Austin, and Phil Paquin(public member).

Region 4

Chair: William Blair
Members: William Bailey (term expires 12/31/2011), Allen Reel, Pamela Yee, and Allen Gabel (public member).

Region 5

Chair: William Crow
Members: Lisanne Butterfield, David W. Green, F. Allen Gordon, Lee Wyatt, Charles Hathaway, Theresa Wright, Patricia Martin (public member), Claudia Pieters (public member), and John Rudoff (public member).

Region 6

Chair: Mary Kim Wood
Members: Walter Barnes, Deanna Franco, and Robert P. Welch (public member).

Bar Counsel

Region 1

Richard Forcum
Michael W. Peterkin

Region 3

Robert L. Cowling
Richard A. Cremer
Bernard S. Moore
Steven L. Wilgers

Region 4

Kathryn M. Pratt

Region 5

John F. Adlard
Mark P. Bronstein
Paul R. Duden
Stephen F. English
James M. Finn
Mark Morrell
Steven L. Myers

BAKER/GRANT

Robert W. Whitnah – CHAIR
Matthew B. Shirtcliff
Ryan S. Joslin

CLACKAMAS/LINN/MARION

Carol A. Parks – CHAIR
Jennifer S. Hisey
Ethan Resnick Hasenstein
David L. Carlson
Dale W. Penn
Michael James Buroker
Linda L. Marshall
Matthew L. Jarvis
Philip A. Johnson
Susan R. Gerber

CLATSOP/COLUMBIA/TILLAMOOK

Sarah E. Hanson – CHAIR
Deborah A. Dyson

Eric J. Neiman
Michael P. Opton
Bruce R. Rubin
Steven W. Seymour
David PR Symes
Steven T. Wax
Jennifer A. Nelson
Jennifer K. Oetter
Christopher R. Piekarski
Candace H. Weatherby

Region 6

Mary Crawford
Michael J. Gentry
Herbert C. Sundby
Conrad E. Yunker

**Local Professional Responsibility
Committee**

COOS/CURRY

Sharon K. Mitchell – CHAIR
Alexandria C. Streich
Rick Inokuchi
Daniel M. Hinrichs
Megan L. Jacquot

**CROOK/DESCHUTES/JEFFERSON/
WHEELER**

Lisa N. Bertalan – CHAIR
Steven D. Bryant
Mark Louis Katzman
Beth M. Bagley

DOUGLAS

Bruce R. Coalwell – CHAIR
Samuel Hornreich

GILLIAM/HOOD

RIVER/SHERMAN/WASCO

William H. Sumerfield – CHAIR
Jeffrey J. Baker

Deborah M. Phillips
Linda K. Gouge

HARNEY/MALHEUR

Brian T. Zanotelli – CHAIR

JACKSON/JOSEPHINE

Gerald M. Shean– CHAIR
Allen G. Drescher
William Francis
Justin Rosas

KLAMATH/LAKE

Andrew C. Brandsness– CHAIR
Marcus M. Henderson
Ronald D. Howen

LANE

Liane I. Richardson– CHAIR
Jane M. Yates
Martha L. Rice
Melya Stylos

MORROW/UMATILLA

Douglas R. Olsen– CHAIR
Elizabeth A. Ballard

MULTNOMAH

Daniel L. Steinberg– CHAIR
Jeffrey P. Chicoine
Saville W. Easley
David W. Hercher
Kelly Lemarr
Shelly Matthys
Sharon L. Toncray
C. Scott Howard
Elizabeth Kafel
Heather Bowman
Michael B. Hallinan
Jennifer K. Oetter
Candace H. Weatherby

UNION/WALLOWA

Mona K. Williams– CHAIR
Paige Louise Sully
Janie M. Burcart

WASHINGTON/YAMHILL

Catherine A. Wright– CHAIR
J. Russell Rain
Elizabeth Kafel
Stephanie M. Lommen
Fred W. Anderson
John Berman
William D. Bailey
Caitlin J. Mitchel-Markley
Thomas J. Flaherty
J. O’Shea Gumusoglu

**State Professional Responsibility
Committee**

Chair: David Hittle, term expires
12/31/2010
Region 1: Greg Hendrix, term expires
12/31/2013
Region 3: Timothy Jackle, term expires
12/31/2013

Leadership College Advisory Board

Anderly, Andrea J, term expires
12/31/2012
Hellis, Lori A G, term expires 12/31/2012
Litzenberger, Marilyn E, term expires
12/31/2012
Pauly, Michelle I, term expires 12/31/2012

**Administrative Law Rule-Making
Advisory Committee**

Janice Krem

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

The meeting was called to order by President Gerry Gaydos at 1:00 p.m. on Friday, August 28, 2009, and adjourned at 5:00 p.m. Members present from the Board of Governors were Barbara DiIaconi (via telephone), Kathy Evans, Ann Fisher, Gerry Gaydos, Ward Greene, Gina Johnnie, Kellie Johnson, Chris Kent, Steve Larson, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. Staff members present were Teresa Schmid, Sylvia Stevens, Margaret Robinson, Jeff Sapiro, Susan Grabe, Rod Wegener, and Teresa Wenzel. Present from the PLF were Ron Bryant, Ira Zarov, and Tom Cave. Also present were Lauren Paulson, Ross Williamson (ONLD), Marilyn Harbur (ABA Delegate), Christine Meadows (ABA Delegate), Judge J. Cheryl Albrecht, Larry Wobbrock, and Peter Jarvis.

1. Report of Officers

A. Report of the President

Mr. Gaydos reminded board member of their right to express publicly their personal opinions on issues addressed by the BOG, so long as it is clear that the opinion is a personal opinion and not the position of the board. He also reminded board members that the BOG decided to place the addition of ABA Model Rule 6.1 on the House of Delegates agenda and the board has not yet taken an official position on the issue.

Mr. Gaydos thanked Ms. Schmid for joining him in travels to the various local bars around the state and expressed the local bars' appreciation for the visits. He also thanked BOG members for their liaison work. Mr. Gaydos reported on his presentation at the ABA meeting in Chicago and his attendance at various investitures, encouraging other BOG members to do the same.

B. Report of the President-elect

1. Report of President-elect

Ms. Evans expressed praise for the OLIO event in Bend and particularly for the classroom portion. She encouraged staff to video the classroom portion of the program for distribution to the three law schools so that all incoming students can have the benefit of the information.

C. Report of the Executive Director

1. Draft of Long Range Plan

Ms. Schmid introduced the draft of the Long Range Plan, explaining that it is a work in progress. The draft plan is based on existing program measures, but looks prospectively at how to achieve the stated goals. Staff has provided some initial ideas, but the ultimate decisions are for the BOG to make. The expectation is that the BOG will review the long-range plan yearly at its retreat as a tool for budget and other planning.

D. Oregon New Lawyers Division

1. ONLD Report

The ONLD thanked the board for allowing it to participate in the board meetings, as it is a great learning experience. The ONLD continues to expand its outreach. It is cementing its relationship with the Affirmative Action Program by having four of its member on the OLIO executive board, participating in BOWLIO, and continuing to work closely with Mr. Garcia. It concluded its second annual rafting trip and anticipates having another next year. In September, it will have a CLE at the law school in Eugene.

2. ONLD Master Calendar

Mr. Williamson encouraged the board to review the ONLD Master Calendar.

E. Board Members' Reports

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

2. **Professional Liability Fund**

A. PLF General Update

Mr. Zarov updated the board on PLF activities and reminded the board that the PLF will be bringing its budget and recommendation for two Board of Director members to the board at its October meeting.

B. Financial Report

Mr. Cave updated the board on the PLF's financial situation, which is very much improved over 2008 and doing better than anticipated for 2009. The PLF board is confident there will be no need to increase the assessment for 2010. At the same time, the PLF board is not likely to lower the assessment until its reserves reach \$12 million. The budget at the end of July is looking good and it is likely that the PLF will break even for 2009. The severity and frequency of claims for 2009 is expected to be less than 2008.

C. Defense Panel Training

The PLF's bi-annual Defense Panel Training was held at Salishan and had 110 attendees, which is up from past years. The PLF is committed to training younger lawyers to carry on as "baby boomer" members of the existing panel move toward retirement.

D. Succession Planning

Mr. Bryant informed the board that the PLF is continuing with its Succession Planning, including preparing for the anticipated retirement of Mr. Zarov in approximately five years. The PLF is contracting for a salary study comparison with

companies similar to the PLF and expects to have a report for the PLF board at its October meeting regarding any recommended salary adjustments.

E. Approval of PLF Policy 3.500 SUA Offsets

Mr. Zarov presented information concerning proposed amendments to PLF Policy 3.500 SUA Offsets

Motion: Ms. Johnson moved, Ms. Matsumonji seconded, and the board unanimously passed the motion to approve PLF Policy 3.500 SUA Offsets.

3. Special Appearances

A. ABA House of Delegates

1. ABA Update

Ms. Harbur reported on behalf of the bar's 2009 ABA Delegates, which include Ms. Harbur, Christine Meadows, Judge Adrienne Nelson and Mark Johnson (ABA Delegate). She gave the board a summary of actions taken at the ABA Annual Meeting.

Ms. Meadows informed the board that the Oregon State Bar would be entitled to one more ABA delegate, based on increased OSB membership. The new delegate must be a new lawyer, as defined by the ABA, which means a member who is 35 years or younger at the time of election.

4. Rules and Ethics Opinions

A. Disciplinary Counsel

B. Proposed Amendments to Bar Rules of Procedure

Mr. Sapiro informed the board that the amendments to Bar Rules of Procedure were housekeeping in nature, as some old rules no longer apply. Also, included in the changes was an increase to the reinstatement fee, which had not been adjusted in twenty years.

Motion: Ms. Wright moved, Mr. Greene seconded, and the board unanimously passed the motion to approve the proposed amendments to Bar Rules of Procedure.

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

A. Client Security Fund

1. CSF Appeals

a. BROWN (Scott)

Ms. Stevens presented information concerning Mr. Scott's request for payment.

Motion: Mr. Greene moved, Mr. Kent seconded, and the board unanimously passed the motion to decline payment to Mr. Scott.

b. SHINN (Rhodes)

Ms. Stevens presented information concerning Mr. Rhodes' request for payment.

Motion: Mr. Greene moved, Ms. Evans seconded, and the board unanimously passed the motion to decline payment to Mr. Rhodes.

c. VANCE (Hines)

Ms. Stevens presented information concerning Ms. Hines' request for payment.

Motion: Mr. Greene moved, Ms. Evans seconded, and the board unanimously passed the motion to decline payment to Ms. Hines.

B. Workers Comp Board of Governors

1. Request of BOG Review of Attorney Fee Changes

Ms. Stevens presented information concerning the Workers Comp Board's request.

Motion: Mr. Kent moved, Ms. Johnson seconded, and the board unanimously passed the motion to approve the Workers Comp Board's request to increase fees.

C. Advertising Task Force

1. Report of the Advertising Task Force

a. Advertising Task Force Majority Report

Peter Jarvis presented the Advertising Task Force Majority Report. The task force members, minus one, believe that most of the current RPCs on advertising and solicitation are impermissible under Article I, Section 8 of the Oregon Constitution and should be repealed. The majority requested that the BOG circulate the report to the membership for discussion before making any decision about proposing rule changes to the HOD.

b. Advertising Task Force Minority Report

Mr. Wobbrock presented the minority position on behalf of himself and the Oregon Trial Lawyers Association, which he represented on the Task Force. He expressed concern that repealing the current rules would impugn the public image of lawyers and would allow the practice of "ambulance chasing" by attorneys. It would also allow the use of non-lawyer "runners" to solicit clients in emergency rooms and at crime scenes. Mr. Wobbrock asked the board to deny the Advertising Task Force' request to distribute the Majority Report, suggesting that the constitutionality of rules should be determined through "case and controversy" and was too important to be decided by the membership.

He indicated that several groups including OTLA, OMA, and ABOTA support the minority report.

Motion: Ms. Evans moved to postpone the discussion indefinitely. The motion passed with Ms. Johnson abstaining. This action releases the committee from duty.

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

1. Access to Justice Committee

Ms. Wright updated the board. The Pro Bono Fair will take place October 26th and will include pro bono awards. Starting September 14th, the “30 Second Law School” public service announcements will begin airing on television. In October, the committee will bring its requests for distribution of pro bono funds to the board for approval. The board requested that Ms. Wright send them a copy of the Pro Bono calendar so board members can participate in upcoming pro bono events.

B. Budget and Finance Committee

1. 2010 Executive Summary Budget

Mr. Wegener presented the first look at the 2010 budget. Issues to consider are that revenue for 2009 is down and 2011 will bring a substantial increase in the PERS employer contribution. The committee will bring a final budget to the board at its October meeting. The committee has reviewed the recommendation of the CSF Committee to increase the CSF assessment from \$5 to \$15 to maintain the reserve minimum in the face of increasing claims.

Motion: The committee motion to increase the CSF assessment passed unanimously.

2. Facilities Management Agreement with Opus Northwest

Mr. Greene informed the board that OPUS Properties Service is being sold to Northmarq Realty Services; no change in service under the management agreement is anticipated.

3. Investment Policy Revision

Mr. Kent reported on the ongoing review of the investment policy and the conclusion that professional advice should be sought. A subcommittee will be appointed to work with Mr. Wegner to submit a request for proposals to several financial investment institutions.

4. OSB Membership Directory and Online Legal Publications Library

The committee is looking at ways to ensure that OSB member information and online legal publications are timely and affordable at the same time that they are cost-effective. The current delivery systems will continue through 2009 and the board will look at possible future changes during its strategic planning session.

5. Selection of an Auditor for Fiscal years 2008 and 2009

Motion: The board unanimously passed the committee motion to continue with Moss Adams, as auditors.

6. Uniform Civil and Criminal Jury Instructions

The Uniform Civil and Criminal Jury Instructions Committees have suggested making the instructions available online at no cost to members or the public.

The committee will review this proposal and its financial implications as part of its strategic planning session.

C. Member Services

1. Approve Committee Recommendations for 2009 OSB Awards

Motion: The board unanimously passed the committee motion to present the awards as recommended by the committee.

D. Policy and Governance Committee

1. BOG Nomination Signature Requirement

Motion: The board unanimously passed the committee motion that candidates for the BOG not be required to submit petitions signed by ten active members.

2. IOLTA Rule Changes

Motion: The board unanimously passed the committee motion to introduce legislation in 2011 and to propose an RPC amendment to change IOLTA certification from a disciplinary to an administration matter.

3. Bylaw Amendment--Diversity Mission and Goals

Motion: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously passed the motion to waive the one meeting notice rule pursuant to Article 26 of the Bar Bylaws.

Motion: The board unanimously passed the committee motion to approve changes to Bar Bylaw 1.2 as follows:

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 the ethical standards of lawyers.

(E) We are leaders helping lawyers serve a diverse community.

(F) We are advocates for access to justice.

4. Fee Arbitration Task Force

Motion: The board unanimously passed the committee motion to appoint a task force to review and update the rules and other aspects of the program.

5. Proposed MCLE Rule Change

The board referred the matter back to the committee for additional review.

E. Public Affairs Committee

1. Wrap up of 2009 Legislative Session

The Public Affairs Department is completing the Legislative Highlights Notebook. The Legislative Highlights CLE will take place November 6th prior to the HOD meeting. The legislature will begin yearly sessions in 2010 with a shortened session and, while the bar will not have any bills in the 2010 session, it will assist with other bills being presented. Ms. Grabe encouraged the board to meet with their sections, flush out upcoming bills, and inform PAC so it can deal in timely fashion with any conflicts or other issues. Voter initiatives are anticipated to repeal two end-of-session tax bills and a former board member asked the board to actively oppose those bills. The board discussed the pros and cons of supporting the initiatives.

Motion: Mr. Kent moved, Ms. Fisher seconded, and the board passed the motion not to submit an informational resolution regarding the tax initiatives to the House of Delegates at its November meeting. Mrrs. Piucci and Greene abstained.

F. Public Member Selection

1. Public Member Recommendation for 2010

Mr. Vieira thanked the committee members and Ms. Edwards for their time and efforts in reviewing the applications and participating in the interviews.

Motion: The board unanimously approved the committee motion to appoint Maureen O'Connor to the Board of Governors as its new Public Member.

7. **Consent Agenda**

Motion: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously passed the Consent Agenda without change.

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

Judy Cheryl Albrecht thanked the board for the opportunity to attend the board meeting.

Oregon State Bar
Meeting of the Board of Governors
September 25, 2009
Special Meeting
Open Session Minutes

The meeting was called to order by President Gerry Gaydos at 12:30 p.m. on Friday, September 25, 2009, and adjourned at 1:30 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Michelle Garcia, Gerry Gaydos, Gina Johnnie, Kellie Johnson, Chris Kent, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. Staff members present were Teresa Schmid, Sylvia Stevens, Susan Grabe, Rod Wegener, and Teresa Wenzel.

Friday, September 25, 2009

A. HOD Agenda

1. Approve Proposed HOD Agenda

By consensus, the board appointed presenters for the BOG resolutions, agreed not to take a position on BOG Resolution No. 2 regarding RPC 6.1, and approved the HOD Agenda for distribution with minor, informational revisions.

By consensus, the board decided to have the HOD Regional Meetings October 19-23, 2009.

B. New Court Filing Fees

Ms. Grabe updated the board on filing fee increases. Information on the matter appears on the bar's website with a letter of explanation from Mr. Gaydos.

C. Fastcase

Mr. Wegener informed the board that Fastcase went live September 21st, everything is progressing well, and the bar presented two classes on the system September 21st, which will be available online for members who were not able to attend the classes at the bar center in person.

**Oregon State Bar
Board of Governors Meeting
August 28, 2009
Judicial Proceedings Minutes**

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

A. Reinstatements

1. John P. Bowles – 971497

Motion: Mr. Green moved, Ms. Johnson, and the board passed the motion to recommend to the Supreme Court that Mr. Bowles be reinstate as an active member of the Oregon State Bar with the following conditions (1) that he completes 45 MCLE credits before his reinstatement becomes effective; (2) that he establishes a monitoring relationship with SLAC and complies with any recommendations made by SLAC including submitting to random UAs; (3) that, should Bowles elect to return to the practice of law, he be required to use PLF practice management assistance in establishing a law practice; and (4) that the term of his conditional reinstatement be three years. Ms. Wright disclosed that Mr. Bowles was a former student of hers.

2. Kathleen Eymann – 792202

Action: Mr. Vieira moved, Ms. Wright seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Ms. Eymann be reinstated as an active member of the Oregon State Bar. Staff will hold off sending the application to the court for two weeks following the distribution of the August/September *Bulletin* to assess any feedback from the notice of Ms. Eymann’s reinstatement application.

3. Brian McQuaid – 953584

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

4. Nancy J. Meserow – 820895

Action: Ms. Evans moved, Ms. Wright seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Ms. Meserow be reinstated as an active member of the Oregon State Bar. Staff will hold off sending the application to the court for two weeks following the distribution

of the August/September *Bulletin* to assess any feedback from the notice of Ms. Eymann's reinstatement application.

5. Joel O'Malley – 041219

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

6. Jack K. Sterne – 955228

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

7. David Edward Van't Hof – 961859

Action: Ms. Fisher moved, Mr. Greene seconded, and the board unanimously passed the motion to temporarily reinstate Mr. Van't Hof as an active member of the Oregon State Bar pursuant to BR 8.7.

B. Disciplinary Counsel's Report

As written.

**Oregon State Bar
Board of Governors Meeting
August 28, 2009
Executive Session Minutes**

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

A. Unlawful Practice of Law

1. Committee Recommendations

a. OSB v. S. Robert Bemel (UPL #09-07)

Motion: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously voted not to seek an injunction against Mr. Bemel.

b. OSB v. Carl Cowan (UPL #09-04)

Motion: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously voted to approve the cease and desist agreement negotiated with Mr. Cowan.

B. General Counsel Report

1. Litigation Report

General Counsel reported on the status of pending litigation.

2. Other Matters

General Counsel reported on non-litigation legal issues facing the bar.

Motion: The board voted unanimously to retain counsel to advise on one such matter.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: October 30-31, 2009
From: Sylvia E. Stevens, General Counsel
Re: CSF Claims Recommended for Payment

Action Recommended

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

No. 08-25 OKAI (Brewer)	\$16,976.50
No. 09-08 SHINN (Cousin)	20,000.00
No. 09-32 SHINN (Doblie)	21,074.21
No. 09-12 HORTON (Continental Express)	24,500.00
No. 09-09 COULTER (Warren)	200.00
No. 09-33 COULTER (Puderbaugh)	500.00
No. 09-36 COULTER (Christensen)	368.00
No. 09-23 DOUGLAS (Johnson)	4,750.00
No. 09-02 DUNN (Fishler)	1,500.00
TOTAL	\$89,868.71

Discussion

No. 08-25 OKAI (Brewer) \$16,976.50

In October 2004, Tom Brewer deposited a retainer of \$23,058.06 with Ontario attorney Thomas Okai for services including an assessment of Mr. Brewer's business tax issues and a possible business bankruptcy. In November, Okai sent \$6000 on Mr. Brewer's behalf to a CPA for accounting services and another \$6000 to a bankruptcy lawyer.

Mr. Brewer subsequently moved to Washington and apparently instructed Okai that he had no further need for the services of the Oregon professionals; Okai continued to work on the real property tax issues. In December 2006, Mr. Brewer was informed of that Okai was shutting down his practice and instructed to retrieve his file.

Mr. Brewer's demands to Okai for the refund of his advanced fees were not answered. Mr. Brewer then contacted the CPA and bankruptcy attorney engaged on his behalf by Okai and learned that they had returned the advanced fees (a total of \$12,000) to Okai at his request in the summer of 2005. Okai was temporarily suspended in July 2007; he stipulated to a four-year suspension in April 2009.

Okai's last invoice to Mr. Brewer in October 2006 showed a trust balance of \$3047.00 and an outstanding charge for services of \$197.50. The prior bill shows the showed the same trust balance. It also reflected two withdrawals from trust in March 2005 totaling \$2100 with no explanation. The CSF computed Mr. Brewer's loss as follows:

Refunds from other professionals	\$12,000.00
Unexplained trust withdrawals	2,100.00
Last trust balance	3,074.00
<i>Subtotal</i>	<i>17,174.00</i>
Less earned fees	(197.50)
<i>Total</i>	<i>\$16,976.50</i>

The committee concluded that the evidence of dishonesty was clear. Additionally, at the committee's request, Mr. Brewer obtained a civil judgment against Okai for \$16,976.50 in Malheur County Circuit Court on September 21, 2009.

No 09-08 SHINN (Cousin) \$20,000

In early 2004, Tiffany Cousin hired Michael Shinn to pursue claims related to the death of her mother, Gladys Loennig, against Multnomah County and Gladys' former attorney, Daniel O'Dell. Shinn agreed to handle the matters on a contingent fee basis. He opened a probate in Multnomah County and Ms. Cousin was appointed personal representative. The wrongful death case against the county was settled for \$300,000 in early 2008 and the funds, less Shinn's fees and costs, were disbursed to the beneficiaries. With the agreement of the beneficiaries, \$20,000 was withheld from their funds for expenses relating to the legal malpractice case against O'Dell.

In September 2008, the court granted O'Dell's motion for summary judgment. Shinn recommended that Ms. Cousins appeal the summary judgment ruling and offered to charge a reduced fee of \$200/hour. Ms. Cousin told him she would decide after conferring with the other beneficiaries. On December 13, 2008, Shinn wrote to Ms. Cousin confirming the entry of the summary judgment and stating that she had authorized Shinn to appeal. Ms. Cousin immediately sent Shinn a letter expressly indicating that she had decided not to appeal and instructing Shinn to disburse the remaining \$20,000 to the beneficiaries of Gladys' estate. Shinn refused to accept her instructions and filed a notice of appeal on January 8, 2009. On January 21, 2009, Ms. Cousin asked Shinn for an accounting of the funds he was holding. He did not respond.

Disciplinary Counsel's investigation disclosed that Shinn had disbursed some of the \$20,000 for purposes that were not intended or authorized before the court granted O'Dell's motion for summary judgment. Only \$6,704.63 of the \$20,000 remained in the trust account at the time the order granting summary judgment was filed on December 11, 2008, and Shinn had disbursed all of the \$20,000 by January 21, 2009.

Shinn was disbarred by a trial panel opinion on September 10, 2009.

The committee concluded that the Loennig estate should be reimbursed for the entire \$20,000, as there is no evidence that any costs were incurred in the malpractice case and Shinn isn't entitled to a fee for filing the notice of appeal without authority. The committee also recommends waiving the requirement for having a judgment, as Shinn does not have any known assets. If the bar wants a judgment, it will be relatively simple for GCO staff to obtain one by default.

No. 09-32 SHINN (Doblie) \$21,074.21

In 2002, after unsuccessfully attempting to collect \$475,000 in underinsured coverage from his own carrier, Max Doblie hired Michael Shinn to represent him in the matter. After an arbitration hearing in March 2005, Doblie was awarded \$74,106.

Doblie was unhappy with the arbitration award and, although he signed the settlement and release documents, over the next several months he tried to get Shinn to re-open the matter. By October 2005 he understood Shinn wasn't going to do so, and Doblie demanded an accounting of the proceeds. After repeated requests with no response, Doblie filed a complaint with the bar. DCO's investigation revealed that Doblie's funds were no longer in Shinn's trust account and appeared to have been misappropriated months before.

In August, 2008, Doblie sued Shinn, alleging breach of fiduciary duty, breach of contract, and other theories. The PLF denied coverage, but paid Doblie \$14,000 "to avoid trial." Shinn also stipulated to a judgment for \$52,415.

In his claim to the CSF, Doblie calculated his loss as follows:

Arbitration award	\$74,106
Litigation costs	21,691
<i>Preliminary Loss</i>	<i>\$52,415</i>
Interest at 9% for 3 years (est.)	14,000
<i>Total Loss</i>	<i>\$66,415</i>

Doblie's calculation does not include an attorney fee for Shinn because there was no written fee agreement and he argues that Shinn forfeited his fee due to his outrageous conduct. Doblie also reduced the amount of costs reimbursed to Shinn because Shinn failed to get a "fee reduction" from one of the providers.

In the disciplinary case leading to Shinn's disbarment, the bar credited Shinn with the 40% contingent fee he claimed and computed Doblie's compensable loss as follows:

Arbitration award	\$74,106.00
Shinn's 40% fee	29,648.40
Litigation costs	23,389.39
<i>Total Loss</i>	<i>\$21,074.21</i>

The CSF favored DCO's computation for several reasons. First, the Fund does not reimburse interest on the misappropriated funds. Moreover, the committee found no reason to reject DCO's conclusions about the correct amount to credit Shinn for costs and his fees. (Doblie claimed that the fee was to be 30%, but in the absence of a written agreement, that is a question of fact that doesn't bear on Shinn's dishonesty in misappropriating Doblie's share of the insurance recovery). Finally, the CSF approved a 20% fee on the CSF reimbursement to Doblie's current counsel.

No. 09-12 HORTON (Durshpek/Continental Express) \$24,500

Continental Express hired William Horton regarding a commercial tractor lease. The matter settled in August 2007, with Horton receiving \$35,000 on the client's behalf. Horton

notified the client of the receipt of the settlement funds on August 29, 2007 and deposited the money into his trust account. The last of the settlement documents were signed in October 2007, but Horton never disbursed the net proceeds to the client, despite many requests. (Horton's trust account records subpoenaed by the bar showed that by the end of September 2007, the balance in his trust account was \$48.)

Continental Express filed a bar complaint and initiated a fee arbitration with the bar, at least in part to resolve the dispute over whether Horton's fee was 30% or 35%. The arbitrator's award was issued January 27, 2009. It concluded that Horton had failed to maintain the funds in trust and that, because he breached his agreement with his clients, was not entitled to a fee. On January 28, 2009, Horton committed suicide.

According to the attorney handling Horton's affairs, the estate is insolvent. The CSF has three other claims involving Horton under investigation.

The CSF committee concluded that the claim is eligible for reimbursement, but that Horton should be credited with a 30% fee. The committee also recommends waiving the requirement for a judgment. Even though the fee arbitration award could be reduced to judgment, there is virtually no likelihood it could be collected and it would be a pointless exercise for the claimant.

No. 09-09 COULTER (Warren) \$200

On January 21, 2009, Mr. and Mrs. Warren hired Coulter to prepare wills for them, depositing \$200 toward his fees. An additional \$200 was due upon completion of the wills. The Warrens spent the next several months gathering the information Coulter requested. When they were ready to meet with Coulter again in early May, they were informed that he had died at the end of April. No work had been done on their wills.

The PLF informed the Warrens that they had a record of their payment, but no indication that it had been deposited into trust. The PLF also advises that Coulter's estate is insolvent. No probate has been established.

The committee concluded that, while there is no evidence that Coulter took the claimant's money without intending to do the work, it was dishonest for him not to have deposited the money in trust or otherwise be able to reimburse them for the unearned fees.

The committee recommends that the claim be paid in full without the need for a judgment.

No. 09-33 COULTER (Puderbaugh) \$500

Michael Puderbaugh hired Coulter in December 2008 to assist with acquiring custody of his son. He deposited a retainer of \$1900. Coulter filed the petition for change of custody but was unable to effect service on the mother because of "no trespassing" signs posted at her driveway. Puderbaugh instructed Coulter not to re-attempt service during the holiday season.

Puderbaugh never contacted Coulter again, and in June 2009 he received notice from the PLF that Coulter had died. The PLF had taken possession of Coulter's files after his death and was having them examined to determine what, if any, action was required to protect the interests of the clients. In the letter to Puderbaugh, he was advised to hire a lawyer if he wishes to proceed with the custody matter. He was also advised to contact the bar to "address any fee dispute you may have based on the sum you paid Mr. Coulter."

Puderbaugh filed a claim with the CSF seeking reimbursement of the entire \$1900 paid to Coulter. Puderbaugh has not pursued legal custody of his son, but informed the CSF investigator that his son is now living with him by voluntary agreement of the mother.

As with the prior claim, the CSF found an element of dishonesty in Coulter's failure to deposit the retainer in trust or to be otherwise unable to refund the unearned fees. The committee disagreed with Puderbaugh, however, on whether Coulter had provided any services of value. In the absence of an independent determination as to how much Coulter had earned, the committee voted to reimburse Puderbaugh \$500 and waive the requirement for a judgment.

No. 09-36 COULTER (Christensen) \$368

Mr. and Mrs. Christensen retained Coulter in April 2009 to handle a step-parent adoption. They gave him \$1005 as a "partial retainer." Coulter filed the Petition and Adoption Report before he died at the end of April. The Christensen's new attorney calculated that Coulter had performed approximately 1/3 of the work necessary to complete the matter.

The Christensen's application indicates that Coulter was charging a flat fee of \$1500, but the receipt they provided shows the flat fee was \$1910 (which presumably included costs). The Christensen's have requested a refund of \$675, which they say is 2/3 of the amount paid to Coulter.

The committee concluded that it was dishonest of Coulter not to have the funds available to refund unearned fees and recommends payment of this claim and waiving the requirement of judgment. However, the CSF computed the appropriate reimbursement by taking 1/3 of the total fixed fee of \$1910 and subtracting that amount from the "partial retainer:"

$$\$1910.00 \times 1/3 = \$637$$

$$\text{Partial retainer } \$1005 - \$637 = \$368$$

No. 09-23 DOUGLAS (Johnson) \$4,750

This is the 10th claim received by the CSF involving Gerald Douglas. Mr. Douglas was a well-regarded IRS attorney for 23 years before opening a private practice in 2003 limited exclusively to helping taxpayers resolve issues with the IRS. He died on February 6, 2009. At the time of his death he had several clients with ongoing matters who, upon contacting

his office, were referred to the OSB for help. Within a few days, his brother Donald stepped in to help wind up Gerald's affairs.

According to Don Douglas, Gerald had been ill for many years, but was still able to work productively. Nevertheless, and although his condition deteriorated as he aged, his death on February 6 was unexpected and unplanned. Gerald lived with his mother and teenaged daughter; no probate has been opened because Gerald's estate is insolvent. Don asserts that his brother was an excellent attorney, that most of his clients were in dire straits when they hired him, and that he was generally able to obtain good results for them. He has no explanation for why Gerald had no trust account or why his business account had no funds.

Don Douglas has been very cooperative with the CSF and has made his brother's files available to the extent possible. According to the CSF investigator, however, the files are not as helpful as they could be and there are some gaps in information.

MaryAnn Johnson hired Douglas in September 2008 to pursue an Offer in Compromise to resolve her tax problems. She paid him \$5500 in two installments. Douglas began working on her matter, gathering information and obtaining powers of attorney for 2008 and 2009 to allow him to communicate with the IRS. He also needed to complete Ms. Johnson's 2006 tax returns before the OIC could be commenced. His last work on the file was January 29, 2009. Ms. Johnson has been unable to pursue the OIC with new counsel, as she lacks the funds to hire anyone.

Although there was no fee agreement in this case and the \$5500 appears to be a flat fee, Douglas's usual hourly rate was \$250. The investigator estimated that Douglas spent a minimum of three hours on Johnson's matter.

The committee, as before, concluded that Douglas' inability to refund unearned fees satisfies the element of dishonesty to make this claim eligible for reimbursement. They credited Douglas with three hours of time (\$750) and recommend reimbursement to Ms. Johnson of \$4,750 with a waiver of the requirement for a judgment.

No. 09-02 DUNN (Fishler) \$1500

Kevin Fishler originally retained Timothy Dunn in February 2006 and gave him a \$1000 retainer. He also paid Dunn \$500 to represent him at a DMV hearing. It appears the \$1000 retainer wasn't used. When Mr. Fishler was arrested on new charges in early 2007, he and Dunn agreed that the existing retainer would cover all the pre-trial work on the new case. Mr. Fishler deposited an additional \$1500 for Dunn's work at the trial, which was scheduled for June 2007. Shortly before the trial, the pending charges were dropped and the DA got a new indictment, with a new trial scheduled for October 2007.

In the meantime, in June 2007, a special referee recommended that Dunn be suspended pending the outcome of several pending disciplinary charges. When he learned of this Mr. Fishler hired new counsel and requested that Dunn refund the \$1500 trial fee. After several weeks of Mr. Fishler leaving messages, Dunn called him and promised a refund which never materialized. Mr. Fishler was unable to follow-up, as he was tied up

with his new charges, for which he was incarcerated. Dunn's interim suspension was ordered in October 2007; he closed his office and disappeared. He was ultimately disbarred in February 2008.

The committee recommends reimbursing Mr. Fishler's \$1500, subject to his providing proof of payment. The committee also recommends waiving the requirement for a judgment. The claim is for less than \$5000 and is identical to the many other claims and representations for which Dunn was disbarred.

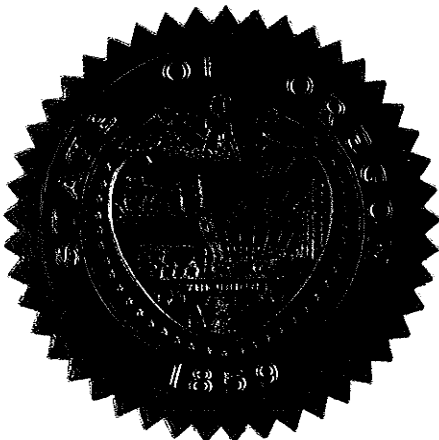
STATE OF OREGON
PROCLAMATION
OFFICE OF THE GOVERNOR

- WHEREAS:** Access to justice is a fundamental and essential right in a democratic society; and
- WHEREAS:** Many Oregonians cannot afford the high cost of legal representation and cannot proceed on their own without an attorney; and
- WHEREAS:** Legal aid organizations, the Oregon State Bar, and local bar associations throughout Oregon have enlisted the services of volunteer attorneys to provide valuable legal services to those in need; and
- WHEREAS:** In Oregon, attorneys volunteer thousands of hours of pro bono time each year and make generous contributions to legal aid organizations; and
- WHEREAS:** The innumerable contributions of volunteer attorneys enable many Oregonians to obtain legal assistance they could not otherwise obtain; and
- WHEREAS:** Despite these efforts, there is a huge unmet need for legal services among economically disadvantaged and vulnerable Oregonians; and
- WHEREAS:** During the week beginning October 25, 2009, bar associations, businesses, government agencies, and community organizations will be celebrating "Oregon Pro Bono Week," to encourage members of the legal community to provide pro bono legal services and support legal aid organizations.
- NOW,**
THEREFORE: I, Theodore R. Kulongoski, Governor of the State of Oregon, hereby proclaim **October 25 – October 31, 2009** to be

OREGON PRO BONO WEEK

in Oregon and encourage all Oregonians to join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand and cause the Great Seal of the State of Oregon to be affixed. Done at the Capitol in the City of Salem in the State of Oregon on this day, October 6, 2009.



Theodore R. Kulongoski
Theodore R. Kulongoski, Governor

Kate Brown
Kate Brown, Secretary of State

Minutes
Access to Justice Committee
OSB Board of Governors
August 28, 2009
Oregon State Bar Center, Tigard

Committee Members Present: Terry Wright (Chair), Mitzi Naucler, Audrey Matsumonji, Gina Johnnie, Robert Vieira. **Staff present:** Judith Baker, Kay Pulju. **Guest:** Lauren Paulson

Minutes of the July meeting were approved as submitted.

1. Family Law Forms Update. The Statewide Family Law Advisory Committee (SFLAC) of the OJD is requesting authorization to continue its work. Legal Aid offices and courthouse facilitation programs are reviewing their use of the family law forms and exploring ways to offer services with reduced courthouse staff. A subcommittee of the SFLAC is developing a proposal for a Bench/Bar task force to advise on the future of the OJD's family law forms and other services to pro se litigants.

2. Pro Bono Update. The Law Student Subcommittee of the OSB Pro Bono Committee has identified barriers to pro bono service by law students. They are working with Lewis & Clark Law School to create and host an online bulletin board to match law students with pro bono attorneys who need help. The bulletin board will launch during Pro Bono week. Other Pro Bono week activities include: Laff-Off (fundraiser for the Campaign for Equal Justice), a pro bono fair (including two CLEs and a provider fair) and annual awards ceremony. There will also be a Veterans' CLE in Salem and a family law clinic in Woodburn.

3. 30-Second Law School. The bar's new campaign of public service announcements entitled "30-Second Law School" will launch on Comcast cable September 14. The PSA series will continue through January, with a series of questions/answers on common legal topics. The goal is to drive traffic to oregonstatebar.org, our public-oriented website, to get information on avoiding common legal mistakes and find legal help if needed. Also new on the bar's site is a set of quizzes on Oregon's constitution, developed with members of the ConLaw Section, in celebration of the Oregon 150 campaign.

4. Comparability Rule for IOLTA Accounts. Judith Baker discussed the issue of "comparability" rules, which require attorneys to hold IOLTA accounts in banks that offer comparable rates for IOLTA and other accounts. She would like to form a study group to explore whether such a rule would be advisable for Oregon.

Next Meeting: Friday, September 25, 2009, at the OSB Center in Tigard.

Minutes
Access to Justice Committee
OSB Board of Governors
September 25, 2009
Oregon State Bar Center, Tigard

Committee Members Present: Terry Wright (Chair), Mitzi Naucler, Gina Johnnie, Robert Vieira, Michelle Garcia. **Staff present:** Judith Baker, Catherine Petrecca, Kay Pulju.

Minutes of the August meeting were approved as submitted.

1. Civil Legal Services Task Force. Judith Baker summarized her background memo proposing that the BOG create a task force to review delivery of civil legal services to low-income people in Oregon. In 1995 a similar task force was formed to address funding shortfalls and new restrictions to be imposed on programs funded by the Legal Services Corporation. It now appears likely that some or all of those restrictions will be removed, which may once again lead to changes in the structure of Oregon's legal services delivery system.

ACTION: The committee approved a recommendation to the full board to establish a new Civil Legal Services Task Force to be chaired by Gerry Gaydos.

2. Pro Bono Certification. The Pro Bono Committee submitted a recommendation to revise OSB Bylaw 13.201 (pro bono certification). The proposed changes will give the bar's Executive Director greater discretion in certifying programs, potentially increasing the number of certified programs available to lawyer volunteers.

ACTION: The committee recommends approval of the bylaw amendments and will submit its recommendation to the BOG Policy & Governance Committee.

3. Public Education Update. The 30-Second Law School series of public service announcements are now airing on Comcast cable stations. Tel-Law/Legal Links materials have been updated and are available online and, for some materials, by telephone.

4. Other Business. The Legal Services Committee is preparing a recommendation on allocation of funds for the most recent legislative appropriation. A recommendation will be made at the October committee and board meetings. Also, congratulations to Michelle Garcia on Washington Trust Bank's designation by the Oregon Law Foundation as a Leadership Bank for 2009.

Next Meeting: Friday, October 30, 2009.

Minutes
Budget & Finance Committee
August 28, 2009
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Ward Greene, chair; Chris Kent; Kathy Evans; Mitzi Naucner; Karen Lord. **Others:** Gerry Gaydos; one visitor **Staff:** Teresa Schmid; Sylvia Stevens; Susan Grabe; Rod Wegener.

1. Minutes – July 17, 2009 Committee Meetings

The minutes of the July 17, 2009 meetings were approved.

2. Financial Report – July 31, 2009

Mr. Wegener reported the July 31 financial report was similar to the June 30 report. He referred to the chart on revenue growth of non-dues income and collectively that growth has averaged about \$34,000 a year indicating that growth in the bar's revenue budget probably will come through membership fees. He also stated the mutual fund portfolio was valued at \$2.252 million on August 27 (the day before the meeting), which is almost \$300,000 more than its low point in February of this year.

Mr. Wegener reported the financial reports are available about mid month. The committee stated the report should be sent to the committee when available and also included in the packet of information with the subsequent BOG agenda.

3. OSB Investment Portfolio and Policy

Mr. Kent and Ms. Lord reported on the efforts of the sub-committee revising the investment policy. The sub-committee met on August 21 and the draft of the revised policy was reviewed by the committee. The committee resolved to accept the sub-committee's revision of the policy. Mr. Kent stated the policy includes an investment committee which will consist of those Budget & Finance Committee members who wish to be on the investment committee and the bar's CFO.

The committee will present the revised policy to the board at the next BOG meeting. The committee then agreed that a Request for Proposal should be sent to eight investment managers to request proposals to actively manage the bar's investment portfolio. Even though the policy is not official until approved by the BOG, the committee agreed the revised policy should be included in the RFP with notice to the investment managers that the policy is presented in draft form and suggested improvements are encouraged..

The committee recommended that the list of approved investments listed as "federal deposit insurance corporation accounts" in the bylaws should read "federal deposit insurance corporation insured accounts."

4. Facilities Management Agreement with Opus Northwest

A decision on the termination of the facilities agreement with Opus Property Services was tabled. Mr. Wegener informed the committee that Opus Property Services had been sold to NorthMarq, a Minnesota LLC, but the bar had not received any formal notice of the sale.

4. 2010 OSB Executive Summary Budget

The committee reviewed in general the executive summary report. Mr. Wegener spoke to the several items of consideration in section 6. These items will be addressed during the development of the 2010 budget. Mr. Wegener specifically addressed the following:

- The discussion last meeting about discontinuing the membership directory created numerous ideas from bar staff. Generally, the staff will pursue methods to reduce the cost of the 2010 directory with different paper and distribution. Staff will survey the members in 2010 to further explore making the directory more of an online product.
- The topic of the publications library available on line for all active members and funded by active members with a fee increase probably will come before the House of Delegates via a resolution from the Sole & Small Firm practitioners Section. This topic came before the HOD in 2004 and 2005.

Funding for an “ethics school” should be included for consideration in the 2010 budget.

The committee stated the request from the Oregon Law Foundation should be processed through the guidelines in the bylaw on grant requests from law-related organizations.

The committee expressed concern about the cost of PERS to the bar and stated that a contingency should be included in the 2010 budget to provide a fund for the expected large increase in the employer’s rate in mid 2011.

The committee recommended the Client Security Fund assessment be increased by \$10.00 to \$15.00 for 2010.

5. Selection of Auditors for Audit of 2008-2009 Financial Statements

The committee recommended selecting Moss Adams to perform the audit of the bar’s financial statements for the two-year 2008 and 2009 period.

5. Exposure to Washington State B&O Tax

The committee met in executive session to review the memo from the bar's general counsel. Upon returning to open session, the committee voted to recommend engaging Stoel Rives to assist the bar in this matter.

6. Next committee meeting

The next meeting will be September 25, 2009 at the bar center. The committee 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.

Minutes
Budget & Finance Committee
September 25, 2009
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, acting chair; Kathy Evans; Mitzi Naucler; Michelle Garcia. **Staff:** Teresa Schmid; Sylvia Stevens; Susan Grabe; Rod Wegener.

1. Minutes – August 28, 2009 Committee Meetings

The minutes of the August 28, 2009 meetings were approved after the amendments to change the title on number 7 to “Special Matter” and correct the numbering of the topics.

2. Financial Report – August 31, 2009

Mr. Wegener reported the August 31 financial report was similar to the July 31 and June 30 reports wherein each reported a positive budget variance. As stated with the two previous reports, the last three to four months of the year typically are months wherein expenses are in excess of revenue. Mr. Wegener did point out that revenue of some program areas, specifically Admissions and MCLE, are doing well and have exceeded or will exceed its 2009 revenue budget. With the lower revenue generated by Legal Publications, the committee acknowledged that BarBooks will be a topic on the board’s October retreat agenda.

3. OSB Investment Portfolio and Policy

Earlier in the week the committee members received responses from seven of the eight investment firms who received the bar’s RFP for investment management services. After discussion and review of the responses, the committee agreed to interview the following: Becker Capital, Ferguson Wellman, Jenson Investment, Washington Trust, and Wells Fargo.

The committee agreed to hold the interviews at the end of a week, preferably at 9:00am on a Friday, in early November. The interviews are to last thirty minutes. Mr. Wegener will survey the committee members to determine the date. Mr. Wegener also will draft a series of questions to which the firms are to respond in writing prior to the interview date, after the committee has the opportunity to review the questions.

4. Facilities Management Agreement with Opus Northwest

No information to report.

5. 2010 OSB Budget

No information to report.

6. Next committee meeting

The next meeting will be the special meeting to review the 2010 budget at 1:00pm on October 9, 2009 at the bar center.

BOG Member Services Committee
August 28, 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

Special Guests:

Yumi O'Neil
Christine Meadows
Danny Lang

Staff:

Margaret Robinson
Frank Garcia Jr.
Shelley Dobson
Danielle Edwards

Approval of Minutes

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

Leadership College

Three members of the Leadership College Advisory Board (LCAB) joined the meeting to discuss the structure and purpose of the college and the board. The discussion centered on the need to limit the number of college fellows admitted each year and the importance of creating standards for session content and programming. The LCAB was asked to create measures for evaluation, standardized programming, and focuses for curriculum that will allow the Leadership College to be evaluated and successes measured.

Membership Directory Advertising and Printing

The committee differed discussion of this agenda item until September.

Diversity/AAP Update

Frank Garcia Jr. updated the committee on current AAP activities and events. His report provided an overview on fundraising efforts for 2009, which is up from last year. Frank also summarized the OLIO conference, which included more than 135 attendees. Additional information was given on the Yunnan lawyer delegation visit, Leadership College session on housing discrimination and the upcoming BOG Diversity Social and Diversity Summit in October.

BOG Member Services Committee
September 25, 2009, Oregon State Bar Center
Minutes

Present:

Kellie Johnson, Chair
Gerry Gaydos, OSB President
Gina Johnnie
Steve Piucci

Staff:

Margaret Robinson
Frank Garcia Jr.
Kay Pulju
Danielle Edwards

Approval of Minutes

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

Leadership College

Staff submitted the 2010 proposed budget, which included a reduction in funding to accommodate the anticipated reduction in the number of fellows selected for next year. In addition to the reduced number of fellows, the college sessions will also change to include a segment on leadership in addition to the topical content.

The LCAB will be creating measures for evaluation, standardized programming, and focuses for curriculum that will allow the Leadership College to be evaluated and successes measured.

Membership Directory Advertising and Printing

Staff presented information on the printed directory and plans to reduce cost for paper and shipping by using a lighter weight and higher recycled content paper. Staff are reviewing bar practices and looking at different options for future printing but at this point, the printed directory is still a source of revenue based on the amount of advertising fees we collect.

Social Networking

The bar now has a Facebook and Twitter page and has begun posting comments to both sites. Staff has also put together an online calendar for various bar and non-bar events that will go live on the website shortly. The calendar should act as a resource for members and other bar entities when planning events or looking for programs to attend.

Online Publications Library

The SSFP Section planned to submit a HOD resolution regarding the online publications library but was not able to meet the deadline. It is possible that the section may try to have a resolution added to the agenda during the HOD meeting however.

BOG and HOD Election Dates

Dates for the 2010 BOG and HOD elections were approved and will be forwarded to the BOG during their October meeting.

Diversity/AAP Update

Frank Garcia Jr. updated the committee on current AAP activities and events. His report provided an overview on fundraising efforts for 2009 and budgeting for 2010. BOWLIO planning is well underway as is a judicial mentorship program that will kick off at BOWLIO. Staff visited the University of Oregon to discuss the job market, how to be resourceful and how to get hired in this economy. The Diversity Summit is scheduled for November 3.

There was discussion about the need to review the allocated and non-allocated funds filtered to the AAP as programming is now all-inclusive the need for allocated funds may be unnecessary.

**OSB Public Affairs Committee
August 28, 2009
Tigard, Oregon**

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

1. **2009 Interim activities.** Staff reported that the interim will be busy, but the legislature will operate in a more organized manner with set meeting dates and times to reduce costs and maximize efficiency. All committees have interim work plans that have been approved by leadership. There has also been significant turnover in seats in both the Senate and the House with more likely in the future.
2. **Oregon eCourt Update.** The Joint OSB/ OJD Task Force met recently and will solicit feedback from select bar groups about key law and policy issues relating to access to documents on the web and in the courthouse that may or may not be confidential or contain protected personal information. OJD is considering restricting access to documents according to a matrix based on user group classification.
3. **Legislation Highlights publication and seminar.** The publication should be finished on time and PA is in the process of lining up speakers for the seminar scheduled for the morning of November 6. The project is going well and has provided many opportunities for cross-departmental cooperation as well as better coordination between the bar the PLF.
4. **Ballot Measures.** The tax measures will likely be before the voters January 26, 2011. If the taxes are repealed, the legislature will need to make further reductions to the state budget in the February Special Session. It also appears that there will be a proposed constitutional amendment to dedicate 3% of the General Fund to court operations. If this does measure does materialize, the bar will need to carefully study the underlying policy issues in the measure.

OSB Public Affairs Review Subcommittee
August 28, 2009
Tigard, Oregon

Committee Members Present: Steve Piucci, Ann Fisher, Kathy Evans, Gerry Gaydos, Gina Johnnie, Kellie Johnson, Chris Kent, Steve Larson. **Staff:** Susan Grabe.

1. **Public Affairs Review.** The subcommittee met to review the Public Affairs process and debrief on the session.
2. **Review PA Mission and Goals.** Steve Piucci reviewed the mission and goals of the Public Affairs Program and the need to review program activities to ensure consistency with those goals.
3. **Discussion.** The committee discussed issues that arose during the legislative session regarding conflicts between sections on legislation and how those conflicts were resolved. In order to improve communication and resolve conflicts in advance, the committee determined that there should be a half-day meeting where all section chairs and legislative contacts are invited to engage in a review and discussion of proposed legislative concepts submitted by bar groups to the board for introduction in the 2011 session. This meeting will be scheduled after the April 1 deadline for bar groups to submit legislative proposals to Public Affairs.

Minutes
BOG Policy and Governance Committee

August 28, 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 except Ms. Dilaconi; also in attendance were Sylvia Stevens and Jeff Sapiro.

1. Approval of prior meeting minutes. The minutes of the July 17, 2009 meeting were approved.

2. Judicial Evaluations. The committee met with the Public Affairs Committee to ensure that both groups were aware of past activities relating to judicial evaluations. Ms. Grabe provided background on the BOG’s 2005 decision to limit OSB involvement to educating the public, defending against unjust criticism, and performing judicial surveys for contested elections. Ms. Evans remind the group that the issue of judicial performance evaluations by lawyers had been raised again by a member and needed to be addressed. She also noted that the Chief Justice is not enthusiastic about the bar taking on such a role. Points discussed included whether the court’s judicial performance measures will address the same issues that individual performance evaluations would, whether lawyers and jurors can effectively evaluate the quality of a judge’s performance, what kind of administrative burden an evaluation process would involve and whether it is a good use of bar resources at this time. After discussion, Mr. Kent moved to put this on the long range plan for review in two years. Ms. Johnson seconded the motion and it passed unanimously.

3. Items on BOG Agenda. The committee confirmed its support for and approval of its recommendations to eliminate the 10 signature requirement for BOG candidates, for changing the sanction for noncompliance with IOLTA certification, and for the amendment of bylaw 2011 legislature, so would not be effective until the 2012 BOG elections for terms beginning in 2013.

4. Reinstatement Requirements. The committee thanked Mr. Sapiro for his memo laying out the history of reinstatement requirements. There was a consensus that the BOG’s discretion is appropriate to allow the needed flexibility and that the standards set out in Mr. Sapiro’s memo provide a helpful “roadmap.” The committee unanimously supported making reinstatement considerations a part of the new board orientation, as well as reviewing it with all BOG members at the beginning of each board year. Mr. Mr. Sapiro will put the information in his memo into guidelines that can be provided to the BOG members or included in the reinstatement agenda.

5. Ethics School. The committee discussed the staff memo laying out the various options for an ethics school. The committee supports the concept of ethics school for disciplined lawyers but open to all members. Tuition should be sufficient to cover the cost of developing and operating the school. The committee also supports the idea of a test component. Staff was requested to estimate the financial impact in 2010 of the committee’s recommendation to the BOG that this new program be implemented.

- 6. Fee Arbitration Task Force.** The committee reviewed staff's recommendation to appoint a task force to conduct a comprehensive review of the OSB Fee Arbitration program and offer any recommendations it might have for improving the program and increasing its utilization, noting that the program has not had such a review other than by staff in the 30+ years of its existence. The committee voted unanimously to forward the recommendation to the BOG.
- 7. Bylaws Amendment to Include Diversity in the OSB Mission.** The committee unanimously approved staff's proposed amendment to Bylaw 1.2 to include the language proposed by the Diversity Mission Task Force. The new language will be recommended to the BOG.
- 8. Miscellaneous Bylaw Amendments.** The committee reviewed the miscellaneous bylaw amendments suggested by staff and recommended adoption of all of them. They will be passed on to the BOG in October.
- 9. MCLE Rule 3.2(c) Amendment.** The committee reviewed the MCLE Committee's suggestion that the rule be changed to clarify in which reporting period a member need not report Access to Justice credits. Several members expressed support for allowing Mr. Mountainspring to report as he requested; others suggested that the proposed change isn't really helpful as it doesn't make the rule any clearer. The committee asked that the MCLE Committee develop a regulation with a specific reporting schedule, rather than amending the rule itself.
- 10. MCLE Certified Mail Change.** The committee discussed the proposal to eliminate the traditional policy of requesting return receipts on certified mail, but concluded that certified mailings should be accompanied by an e-mail notice or a regular mail notice to members who don't have e-mail. The committee requested that the MCLE Committee draft a regulation to that effect.
- 11. Online Jury Instructions.** The committee discussed the request of the UCJI and UCCJI Committees that jury instructions be available online at no cost to members and the public. It was noted that this is closely related to the Solo & Small Firm Section request that the entire membership be assessed to cover the cost of Bar Books, rather than having it be a subscription service. Committee members noted that the idea is quite appealing, but has significant budget implications. It was also suggested that the PLF may have an interest in subsidizing the cost of CLE materials as part of its loss prevention efforts. The committee concluded that this is a complex policy issue for the BOG that should be discussed in more depth in October.

Minutes

BOG Policy and Governance Committee

September 25, 2009

Oregon State Bar Center

Chair – Kathleen Evans

Vice Chair – Barbara Dilaconi

Ward Greene

Chris Kent

Steve Larson

Audrey Matsumonji

Mitzi Naucler

Present: Kathleen Evans, Barbara Dilaconi, Chris Kent, Mitzi Naucler, Teresa Schmid (ED) and Sylvia Stevens (staff).

OLD BUSINESS

1. Approval of prior meeting minutes. The minutes of the August 28, 2009 meeting were approved.

2. Ethics School. The committee discussed Mr. Sapiro’s budget estimate for developing and implementing an ethics school and voted unanimously to put the item on the “wish list” for the Budget & Finance Committee’s meeting on October 2, w009.

3. Standing Committee Assignment Changes. (a) Federal Practice and Procedure: The committee approved #5, publicizing federal practice issues and development, for consideration by the BOG in October, but requested additional information on the rationales behind #6 and #7 relating to the procedures for appointing and evaluating the performance of federal judges. (2) Judicial Administration: the committee approved the request to delete the task of monitoring the work of the legislature’s committee on court facilities and will forward the revised charge to the BOG in October. (3) SLAC: the committee had questions about the reasons for several of the suggested changes and requested a memo from Ms. Hirschbiel, along with a copy of the statutory scheme and Bylaw 24.

4. Sunsetting the Joint OSB/CPA Committee. Ms. Evans explained that the issue of sunsetting this committee had come up previously. Now that the committee chair is requesting it, the time seems right. There was unanimous approval of submitting this request to the BOG.

5. Proposal to Amend RPC 4.4. The committee questioned the value of the rule, as it appeared there would be no circumstance when a lawyer would be able to report the receipt of material disclosed without authorization. Whether the client or a friend of the client is the source of the material, reporting it to the opposing party or counsel would seem always to be prejudicial to the interests of the lawyer’ client. The committee agreed unanimously not to forward the proposal to the BOG, but remained open to a revised proposal from the LEC.

MEMORANDUM

To: Oregon State Bar Membership

From: Lisa Norris-Lampe
Chair, Oregon Judicial Department eCourt Law and Policy Work Group

Re: Oregon eCourt -- Opportunity for Comment on Development of Policies and Rules
Related to Confidentiality and Internet Access to Court Documents

Date: August 19, 2009

As noted in Chief Judge Brewer's accompanying cover memo, in the course of developing Oregon eCourt, the Oregon Judicial Department (OJD) has been in the process of considering a variety of issues relating to the future availability of remote access to electronic court documents via the Internet. (Remote access is anticipated to be available some time during the 2011-13 biennium). To facilitate those discussions, an eCourt Law and Policy Work Group has been working for some time on the following (among other work items):

- (1) the development of general guiding principles concerning the protection of confidential and sensitive information in court documents that may be available by remote access over the Internet, including general policies concerning redaction and segregation of certain information;
- (2) the development of a proposed model of external user access to electronic versions of many court documents via the Internet;
- (3) within the structure of that proposed user access model, the development of a related model of remote access to particular documents, both as to particular case types and across case types; and
- (4) the preparation of a draft Uniform Trial Court Rule (proposed new chapter 22) relating to protected information in court documents, redaction, segregation, and remote access to electronic documents (among other topics).

The Law and Policy Work Group has completed a series of recommendations relating to the first, second, and fourth items listed above (work on the third item is ongoing). Those recommendations were presented to the joint OSB/OJD eCourt Task Force on August 11, 2009. The Bar, in turn, is coordinating distribution of the materials to its membership, via this memo, for further consideration and comment.

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Attached to this memo, you will find four separate documents (listed as Sections I, II, III, and IV), all developed by subgroups of the Law and Policy Work Group and approved for distribution by that Work Group and the OJD eCourt leadership, as follows:

- (I) Foundational Principles and Tools: This document provides background information for the User Access Matrix materials summarized in item II, below. As part of its deliberative process, a subgroup of the Law and Policy Work Group developed this document to serve as an orientation tool as the group worked through issues concerning remote access to electronic documents (including the difference between electronic documents generally and those electronic court documents that will be available through remote access via the Internet).
- (II) Proposed User Access Recommendations: This document consists of two parts: (1) a discussion of the Law and Policy Work Group's proposed user access recommendations; and (2) a proposed User Access Matrix (the matrix appears at the end of this document). This document defines in general terms the Law and Policy Work Group's recommendations for remote user access, via the Internet, to case documents that will be stored in electronic form in the OJD's Electronic/Enterprise Content Management (ECM) system. The Work Group anticipates that the matrix will apply to documents in the circuit courts and the appellate courts, at the point in time when court documents become available via the Internet.
- (III) Redaction-Segregation Subgroup Recommendations: This document is a companion to the User Access Matrix document. Several different subgroups of the Law and Policy Work Group are working on issues concerning confidentiality and remote access to electronic documents; much of the preliminary work (including the draft UTCR chapter 22, item IV, below) has been completed by the Redaction-Segregation Subgroup. As part of its decision-making process, the Redaction-Segregation Subgroup prepared a series of general recommendations that apply across case types, set out in this document.
- (IV) Draft UTCR chapter 22: The purpose of draft UTCR chapter 22 is to establish a process that will facilitate remote access to electronic court documents via the Internet. The draft UTCR is very much a work in progress. The Redaction-Segregation Subgroup (which drafted the UTCR) is satisfied that the draft generally embodies how remote public access to the ECM system will work. The draft is "tentative," however, in that it now is being used by other subgroups of the Law and Policy Work Group that are addressing more particular questions concerning documents in certain types of cases (such as civil generally, criminal generally, domestic relations, criminal, probate, juvenile, and so on). Periodically, as those subgroups complete their work, the Redaction-

10/14/2009 2:11 PM

Segregation Subgroup will revisit draft UTCR chapter 22 and determine whether and to what extent the draft should be modified to accommodate peculiarities of the various case types.

Both the Law and Policy Work Group and the OSB/OJD eCourt Task Force encourage the Bar membership to review the attached materials and to provide feedback in the manner directed by the Bar. Following the feedback period, the Law and Policy Work Group will consider all feedback that is received for incorporation into further recommendations to the OJD eCourt leadership.

Thank you in advance for your assistance and participation as we continue to work together to develop this important aspect of Oregon eCourt.

SECTION I. FOUNDATIONAL PRINCIPLES AND TOOLS

Law & Policy Committee

Confidential Information Workgroup Foundational Principles and Tools June 4, 2009

1. Public Access

If a court file is maintained exclusively in electronic form, anything in the court file must be available to the parties, the court, and the public on the same terms as the paper file is now available, even if that availability is limited to a terminal at a kiosk physically located at the courthouse. Remote electronic access may be limited.

Parties, the court, and the public should have as much access as possible to court files stored electronically, subject to limitations as necessary:

- To comply with laws protecting confidentiality of information;
- To protect the legitimate privacy concerns of parties and other affected persons that are heightened because of the powerful search capabilities of information stored electronically in a database

2. Ease of Implementation

To the extent practicable, whatever steps must be taken to protect confidential information should not require more work by parties and court staff than now required and, if possible, should require less work.

3. Burden

It is the responsibility of parties to take steps to ensure the nondisclosure of protected information with respect to papers filed by parties.

- It is the responsibility of each court to take steps to ensure the nondisclosure of confidential information with respect to documents created by the court (principally notices, letter opinions, orders, judgments).
- It is the responsibility of the Chief Justice/Judicial Department to provide the tools whereby parties and courts can protect confidential information stored

electronically, which includes information contained in documents filed by another party.

- OJD cannot possibly anticipate all the variations and unique circumstances that will arise. It is therefore essential that OJD builds in adequate flexibility to permit staff and judges to easily and quickly respond to unique situations.

4. Models Available to Protect Confidentiality

A. Restrict public access by case types

For example, significantly limit public and court staff access to adoption, mental commitment, and juvenile cases.

B. Restrict public access by user type

- Public View
- Basic Subscription View
- OSB/Authorized Users Viewⁱ
- Party/Attorney of Record View
- Limited Party View
- View by Court Order Only

C. Restrict access by document type

- Do not provide public access to specific types of documents that have little or no public value but contain confidential information (such as, possibly, returns of service, notices of default, writs of garnishment). Rules would have to require standard labels on such documents. How well confidential information in such documents would be protected would depend on the level of party compliance and court staff's ability to recognize such documents and act accordingly.
- Require or provide the opportunity to file full versions and redacted versions of documents. Parties, judges, and court staff would have access to the full versions; the public would have access only to the redacted version. (This approach is the most labor intensive for both parties and court staff, but would be most useful respecting such documents as a motion for summary judgment or a letter opinion, where references to confidential information is dispersed through-out the document and not easily isolated).
- Require or provide the opportunity to put confidential information on a separate page, such that the primary part of the document would be available to the public and the separate page would not. (This approach would be most useful respecting documents such as some domestic relations filings that routinely contained specified and easily isolated confidential information. Might also be useful for small claims and FED complaints as to addresses of residential premises and other confidential information.)

- Where appropriate, use of case captions that replace natural persons' names with initials (or any other convention that disguises the true names of natural persons) and perhaps even partial case numbers. (This approach would be useful to allow public access to letter opinions, orders, and judgments in otherwise confidential cases.)

D. Restrict access at the data element level

This tool is not yet available, because it depends on the availability of eFiling using fill-in-the-blank fields. With fill-in-the-blank fields, the ECM system can be programmed to limit access to information in particular fields.

SECTION II. PROPOSED USER ACCESS RECOMMENDATIONS

Law and Policy Confidential Information Work Group Recommendations -- User Access to Electronic Court Documents via the Internet

The Oregon Judicial Department is developing policies, operational rules, and procedures governing the information and electronic documents that will be available for access through the Internet. The type and extent of access will be determined by a combination of the information or documents sought and a person's or company's status. The attached matrix is one step in that process.

The policies, rules, and procedures being developed apply to only Internet access to electronic documents and case records. Existing laws governing access will continue to apply to the paper-based files currently maintained and to any electronic files maintained at and viewed in courthouses.

The Matrix Described

The matrix divides documents into six categories and users into five categories. The document categories broadly distinguish documents that are unsealed and not segregated in nonconfidential cases from those in cases that are segregated under court rule, confidential by law or sealed by the court, regardless of whether a case type is confidential or nonconfidential. Within these two broad categories, users then are categorized by the level and type of access allowed to case documents. Users range from those seeking only basic case-schedule information or wishing to make a payment, to public subscribers who wish to examine documents in various publicly available cases, to lawyers and self-represented parties who are the only users allowed access to certain documents or files in their own case(s) because a document is confidential or the case type is a confidential case type. The matrix also acknowledges access by judges and Judicial Department staff.

The matrix captures the basic approach for assessing who has access to which documents for purposes of OJD's Enterprise Content Management (ECM) system. Future refinements will occur as the Confidential Information Work Group continues to identify confidential data elements (e.g., Social Security numbers, driver license numbers) and types of documents for each case type that should be withheld from Internet posting.

Regarding business and governmental users of case-based information such as collection agencies, title companies, DOJ, CJC, DHS, OSP and DOC ("OSB/Authorized Users"), the matrix is not intended to change their current access to OJIN. For the new ECM system, the matrix allows OJD to develop rules to limit their access to case files or documents in which such users are parties or otherwise are permitted by law to inspect the identified case files or documents, including under the State Court Administrator's authority to grant access under ORS 7.132.

Policy Issue

Stakeholder input is important to refine the matrix, if needed, before programming for the ECM system is finished and public access is available. The Work Group is particularly interested in your views about the access category, “OSB/OSB/Authorized Users View.”

The policy debate comes down to whether all public users should have full remote electronic access to all files in nonconfidential cases or only parties to a case and their lawyers should have full remote access. The OSB/Authorized Users View category is a middle ground between these two positions in that it grants full access with some conditions to some users but not to all:

- Some attorneys and parties oppose giving remote electronic access to every document in a domestic relations case or a sexual assault criminal case and support limiting remote access to the parties and their lawyers.
- Others oppose limiting access to unsealed and unsegregated documents in all nonconfidential cases for two reasons:
 1. Unless active OSB members have broad access to all nonconfidential case files and documents, many attorneys will not be interested in subscribing to the ECM system, thus reducing materially the benefits of the system for both the courts and the public.
 2. Remote electronic access should be provided to the same extent as exists with paper files today for any person who goes into a courthouse.

The LPC Confidential Information Work Group believes that, at the document level, the ECM system should allow remote electronic access in the “basic subscription view” in nonconfidential cases to unsealed and unsegregated court orders and judgments, but that access to other documents may vary by case type. Substantive law subgroups are working to identify those documents, if any for a particular case type, over the next few months. Their work will be completed within the framework of this access matrix and basic rules that are being developed separately for redaction of confidential or sensitive information within documents. These redaction rules will be circulated for comment separately.

The middle ground represented by the OSB/Authorized Users View category seeks to provide access to those unsealed and unsegregated documents in nonconfidential cases to OSB and authorized governmental and business users that have a recognizable and legitimate business reason to access information that otherwise is deemed to be confidential. For example, collection agencies and title companies need to confirm that the person named in one case is the person in another case with whom they are dealing in a business matter. These entities will be required by law or by contract to maintain as confidential any information to which they are given remote electronic access. The legislature has authorized a similar approach by statute for access to personal information in DMV records.

10/14/2009 2:11 PM

An illustration may help. For example, in a dissolution of marriage action, a “Basic Subscription View” user would see the case register and the court’s orders and judgments, but not all pleadings, motions, and affidavits. For that same case, a registered “OSB/Authorized Users View” user would see every document in that action—and any other cases the user desires—unless the individual document has been segregated by court rule or sealed by court order. This differentiation protects parties’ sensitive information from unlimited remote access while allowing remote electronic access by OSB members and other authorized users who are bound by law or contract to keep the information confidential. This category of user does not limit access to nonconfidential orders and judgments that affect community well being and general commerce. It does, however, deny self-represented litigants the same level of access as members of the OSB.

The majority view within the Law and Policy Work Group and most other state court systems that have grappled with this issue support adopting an OSB/Authorized Users view for several reasons:

1. Once information is released through the Internet via remote access, it cannot effectively be retrieved. Therefore, courts have tended to take a conservative approach to the information that can be accessed remotely, with the understanding that remote access can be expanded at a later date, if desired. This caution argues against starting with everyone having the same level of access to documents remotely that they may have when they walk into a courthouse.
2. Lawyers and some governmental and business users currently are given access to records in OJIN that is not generally available. This category continues that practice as to electronic documents but assures safeguards for sensitive information.
3. Self-represented litigants come to court with some inherent disadvantages that the judicial system cannot and should not try to overcome. Not having remote electronic access to documents in all nonconfidential cases—but retaining access to paper documents and files in all nonconfidential cases in the courthouse—is one of the consequences of self-representation.
4. The increase in identify theft and the significant risk of increased identity theft if self-represented parties or the general public had the same access to case documents as OSB members and authorized users argues against granting everyone access that equals the access of those in this category.
5. Lawyers and the self-represented both would be subject to denial of access if they violate the terms of their subscription by using information inappropriately, but the consequences of being denied access would be much greater for attorneys and other authorized users than for the self-represented or a member of the public. If a member of the public, including a self-represented litigant, were to roam through a number of files to

obtain identity information, denying access after that single broad search is no deterrent, because the damage already will have been done. OSB members and other authorized users are less likely to abuse their access privilege, because they have continuing business needs for access.

No member of the Law and Policy Work Group argues that everyone should have remote electronic access equivalent to that which would be available to those in the OSB/Authorized Users View category. Some argue, however, that self-represented litigants should have the same level of access as members of the Bar. If members of the Bar could benefit in preparing their cases by checking all other cases involving a party or witness, so could a self-represented litigant. Remote electronic access to case records is akin to access to a public law library; nobody advocates giving lawyers access to law library facilities to which self-represented litigants would not have access. The legislative requirement that the Judicial Department make legal forms available to self-represented litigants illustrates a policy decision to help level the field between those represented by attorneys and those who self-represent. The legislature has not accepted that the self-represented must accept inherent disadvantages. Limiting self-represented litigants' remote electronic access while granting attorneys full access to all files, it is suggested, may not withstand legal challenges.

The Law and Policy Work Group is particularly interested in comments concerning the access category of "OSB/Authorized Users View."

USER ACCESS TO DOCUMENTS THROUGH OJD'S E-COURT ECM SYSTEM

The following definitions apply to the column headings on the User Access Matrix. "Confidential Cases" refers to juvenile cases (any type), adoption cases, and mental commitment proceedings.

Public View

- Any User (Free; subscription not required)
- Limited view of next scheduled action in a case and payment information re: fines/fees

NOTE: Access to the following categories will require a paid subscription

Basic Subscription View

- Any User (with subscription)
- Documents in nonconfidential cases only
- Access to most, but not all, documents that have not been sealed or segregated (Subgroups of the LPWG are in the process of determining which documents, in which types of cases, might be excluded from this view.)

OSB/Authorized Users View (2 components)

Component #1 (access provided following execution of agreement to maintain confidentiality)

- Active OSB Members/Other Authorized Users (with subscription)
- Documents in nonconfidential cases only
- Unrestricted access to all case files and documents that have not been sealed or segregated

Component #2:

- Non-Represented Parties/Pro Hoc Vice Lawyer Users (with subscription)
- Documents in nonconfidential cases only
- Access to all documents that have not been sealed or segregated, in own cases only (for pro hoc vice users, cases in which admitted as counsel of record)

Party/Attorney of Record View

- Parties/Active OSB Members/Pro Hoc Vice Lawyer Users (with subscription)
- Documents in confidential cases
- Access to all documents in own cases only, except documents that have been sealed or segregated as to which the party and the party's lawyer have no right to access

Limited Party View

- Parties/Active OSB Members/Pro Hoc Vice Lawyer Users (with subscription)
- Sealed or segregated documents in nonconfidential and confidential cases
- Access to own sealed or segregated documents, in own cases only

View by Court Order Only

- For case types that are confidential by law (e.g., adoption, mental health) and for certain documents that are sealed by law or by court order, access is available only by operation of law or by court order

10/14/2009 2:11 PM

USER ACCESS MATRIX

User Type	Unsealed/Unsegregated Documents in Nonconfidential Cases			Documents in Confidential Cases and Sealed/Segregated Documents in Other Cases		
	Public View	Basic Subscription View	OSB/Authorized Users View*	Party/Attorney of Record View	Limited Party View	View by Court Order Only -- sealed & closed docs or when law changes classification based on an event (e.g., arbitration award)
Basic – limited case register fields	X					
Subscription— General User Public Access	X	X				
Subscription— OSB Member Protected Access	X	X	X			
Subscription— Party and Lawyer Case Access	X	X	X	X		
Subscription— Party and Lawyer Document Access	X	X	X	X	X	

- This view distinguishes active OSB from non-OSB (pro hac vice/specially admitted from out of state) lawyers

User Type	Unsealed/Unsegregated Documents in Nonconfidential Cases			Documents in Confidential Cases and Sealed/Segregated Documents in Other Cases		
	Public View	Basic Subscription View	OSB/Authorized Users View*	Party/Attorney of Record View	Limited Party View	View by Court Order Only -- sealed & closed
General OJD Access	X	X	X			
Confidential OJD – statewide	X	X	X	X	X	
<ul style="list-style-type: none"> • All • By case type 	X	X	X	By case type	By case type?	
Confidential OJD – own court only	X	X	X	X	X	
Confidential OJD – own court only; limited case types	X	X	X	By case type	By case type	
Some very limited personnel	X	X	X	X	X	X
<ul style="list-style-type: none"> • Statewide-all • Statewide by case type 	X	X	X	By case type	By case type	By case type
<ul style="list-style-type: none"> • Own Court – all • Own Court – by case type 	X	X	X	X	X	X
	X	X	X	By case type	By case type	By case type

SECTION III. REDACTION-SEGREGATION SUBGROUP RECOMMENDATIONS

July 7, 2009

MEMORANDUM

To: Confidential Information Workgroup
Fr: Redaction Segregation Subgroup
Re: Confidentiality Recommendations

I. OVERVIEW OF THE REDACTION SEGREGATION SUBGROUP

The Confidential Information Workgroup formed the Redaction Segregation Subgroup (the "Subgroup") to develop recommendations addressing public electronic access to filings with the courts. Members of the Redaction Segregation Subgroup include:

- Joel Bruhn, Legal Analyst, CPSD
- Nori Cross, Special Counsel, Executive Services
- Brian DeMarco, Staff Counsel, CPSD (Chair)
- Bruce Lowther, ECM Systems Analyst
- Jim Nass, Appellate Commissioner, Appellate Court Services
- Lorraine Odell, Information Security Officer, BFSD
- Rebecca Orf, Juvenile Law staff counsel, CPSD
- Erin Ruff, Analyst, CPSD (Staff)
- Robin Selig, SFLAC Representative
- Brenda Wilson, Court Records and Procedures Analyst

The Redaction-Segregation Subgroup was charged with determining (1) what information should be protected in all case types, and (2) mechanism(s) for protection of information in all case types. In addition, case-type committees (i.e., civil, criminal) were formed and charged to review and comment on the Redaction Segregation Subgroup's draft recommendations. This memorandum includes those reviews and the Subgroup's resulting recommendations.

II. RECOMMENDATIONS ON PUBLIC ELECTRONIC ACCESS TO COURT FILINGS.

A. DEVELOP AND ADOPT COURT RULE(S)¹ TO DIRECT AND GOVERN ELECTRONIC ACCESS.

The gradual roll-out of Oregon eCourt by judicial district and case type, and the ongoing co-existence of conventional and eFiling, will require that such rules also take into account that many documents will continue to be filed conventionally, and that documents will continue to be

¹ The Subgroup has been working on a draft UTCR, tentatively numbered UTCR 2.112. However, the draft rule is long, with many subsections, and the Subgroup is considering breaking it down into multiple smaller rules and making them part of a new chapter 22 of the UTCR (following the new UTCR chapter of rules on eFiling). Also, note that the Subgroup will likely be recommending that the appellate courts and the Tax Court, by rules(s), adopt comparable provisions.

10/14/2009 2:11 PM

made available at the courthouse conventionally. Because many documents will continue to be filed conventionally and courts will need to make some documents available conventionally at the courthouse, Oregon eCourt will require the rules take into account paper documents.

The court rule regarding electronic content management would become effective in a local court when the State Court Administrator “acknowledges” that court’s electronic content management system. The Subgroup recommends that the court rule contain provisions addressing the following:

1. Define personal and sensitive information to protect in all case types;
2. Place the burden of protecting personal and sensitive information contained in party-created documents on the parties, and on the court for court-created documents;
3. Define filings and documents subject to restricted online access;
4. Create a process to delay online access to filed documents (except to named parties and attorneys of record) to allow time for objections based on inclusion of protectable personal and sensitive information;
5. Create a process to handle objections to information included in or redacted from a filing; and
6. Make available three (3) mechanisms to protect information as appropriate in each individual case types – redaction, segregation and sealing.

B. ADOPT ONE STANDARD LIST OF SENSITIVE INFORMATION TO PROTECT IN BOTH CONVENTIONAL AND ONLINE ENVIRONMENTS BY:

1. Revising UTCR 2.100 as recommended in Exhibit A;
2. Amending ORAP 8.50; and
3. Adopting court rules that reference UTCR 2.100 as revised

The following personal and sensitive information across all case types should be protectable from online disclosure; this information is or will be covered under current UTCR 2.100:

Identifying Information:

- Former names;
- Full birth dates;
- Places of birth;
- Full Social security numbers;
- Full driver license or other state-issued identification numbers;
- Full passport or other United States-issued identification numbers; and
- Names of minors

Contact Information:

- Of certain victims and witnesses; or
- That is confidential or exempt from disclosure by state or federal law or court order

Financial Information:

- Bank or other financial account locations;
- Full Credit card numbers;
- Full bank or other financial account numbers;
- Financial account access codes; or
- Similar information that is used for financial transactions and can be kept confidential by state or federal law or court order

Other Information:

- Information that is exempt from public inspection under state or federal law or court order

10/14/2009 2:11 PM

C. REVIEW AND RECONCILE COURT RULES THAT INCLUDE DEFINITIONS RELEVANT TO ELECTRONIC CASE MANAGEMENT.

The definition of "protected personal information" in ORAP 8.50 differs from that in UTCR 2.100. See also how ORAP 1.35(1)(b) treats party contact information, and note that ORAP 16.60 cross-references ORAP 8.50. There are also variations in how rules define protectable personal, residential, employment or mailing information; as opposed to address, phone number and/or email addresses at which the person can be contacted by the court and other parties to the case for notice and service. These are some examples of variations in definitions of important terms that should be addressed and may need to be reconciled. Furthermore, the case-type subgroups may raise issues and suggest definitions for use within the ECM system that may need to be reconciled with definitions elsewhere.

D. RESTRICT ONLINE ACCESS TO ALL DOCUMENTS FILED WITH THE COURT FOR A SPECIFIED NUMBER OF DAYS.

To allow opposing parties a meaningful opportunity to request protection of personal information, the Subgroup recommends:

1. Limiting any document filed to "restricted" or "secure" access during which any person can request protection of personal and sensitive information as defined;
2. Publishing documents according to proposed document access matrix, as revised by the recommendations of the Law and Policy Committee after consideration of the work of each case-type subgroup, only after:
 - a. For a case-initiating document: 30 days from the date of service on all parties to the action (or appearance where a party appears before filing of the return of service as to that party); or
 - b. For subsequent filings, including court-created documents: 14 days from the date of filing with the court; and
 - c. A decision has been made on any requests for protection or publication.
3. Providing a form for requests for protection or publication of personal information via court rule; and
4. Adopting rules to address disputes regarding disclosure of personal or sensitive information.

- E. PROGRAM ECM TO AUTOMATICALLY ASSIGN APPROPRIATE ACCESS LEVELS BASED ON FOUR IDENTIFIERS²:
1. Case type (certain case types will be categorically confidential, such as Juvenile, Mental Health and Adoption);
 2. Document type (certain document types will be protected, such as Returns of Service);
 3. Security label on document (such as segregated, redacted or sealed); and
 4. Unique individual identifier of the parties referenced in the document (recognizing that OJD may not be able to implement this recommendation pending development of an individual identification system and modification or replacement of OJIN).
- F. RECOGNIZING THAT IN SOME INSTANCES A PERSON TENDERING A DOCUMENT FOR FILING AS A PROTECTED DOCUMENT MAY FAIL TO LABEL THE DOCUMENT PROPERLY, BY RULE OR POLICY THE OJD SHOULD ALLOW BUT NOT REQUIRE COURTS TO GIVE THE PERSON WRITTEN NOTICE:
1. To correct the document within a specified period of time; and
 2. That if the person fails to correct the filing in that time, the document may become available to the public on the Internet.

****THIS RECOMMENDATION DOES NOT APPLY TO DOCUMENTS THAT THE COURT PROPERLY REJECTS UNDER STATUTE OR RULE.**

The subgroup preferred this alternative to one that would allow the court to dismiss a pleading or deny a motion, believing that the recommendation requires less staff work and no judge involvement. The recommendation does not require courts to send notice, but presumes that courts can classify many or most documents even if they do not comply with whatever identifiers a new UTCR may require filers to include. The recommendation keeps the burden on the filers and parties to the case to ensure that they provide the information the court needs to protect protectable information, consistent with the Confidential Information Workgroup's Foundational Principles. ECM should include a field to enter that the court has sent a notice to correct by a certain date and either tickle the document for review within 10 days to determine whether the court has received a correction (as courts review for return of service) or to publish within 10 days if no correction is entered. If the court receives correction in meantime, clerk can cancel the auto schedule and edit as needed.

Because state law provides very limited authority to reject filings and because the subgroup believes that self-represented litigants will find this process complex and make mistakes, the recommendation avoids additional work of dismissing pleadings/cases or denying motions for failure to comply; instead the sanction for failure to comply is that the document is public unless it is in a categorically confidential case.

² Document access rules based on these four identifiers are being developed.

G. LIMIT DISCLOSURE OF CONTACT ADDRESSES OF NATURAL PERSONS, AS MUCH AS PRACTICABLE, TO USERS WHO HAVE A LEGITIMATE BUSINESS INTEREST IN THE INFORMATION AND ARE OBLIGATED BY LAW OR CONTRACT NOT TO REDISCLOSE THE INFORMATION.

The Subgroup recommends that court rules define "contact address" to include residential or mailing addresses, not including "alternate" contact addresses provided under statute or rule.

The Subgroup also recommends that the courts:

1. Stop disclosing contact addresses and other personal identifying information contained in non-civil cases through OJIN to the general public (i.e. criminal, traffic, violations, etc). For these purposes, "general public" should be differentiated from stakeholders with a legitimate business purpose, including but not limited to bulk data customers, law enforcement, and other similar agencies;
2. Limit online access to contact information contained in ECM data fields to the "restricted" or "secure" view;
3. Limit online access to scanned citations that contain address information (such as traffic, boating, and game violations) to the "restricted" or "secure" view until such time as the uniform statewide citations are revised to protect contact addresses and other "protected personal information" as defined by UTCR 2.100 (2)(a); and
4. Adopt a procedure to allow any natural person to cause their contact address, which otherwise would be part of a document filed with the court, to be protected from public disclosure.

H. FOR ANY RECORD (PAPER OR ELECTRONIC) FILED BEFORE THE ACKNOWLEDGMENT OF ECM FOR THAT COURT, GIVE THE LOCAL COURT DISCRETION TO ENTER THOSE DOCUMENTS INTO ECM ON A CASE-BY-CASE BASIS, CLASSIFYING ANY SUCH DOCUMENTS AS "BACKLOADED" WITH ACCESS LIMITED TO JUDICIAL OFFICERS AND COURT STAFF ONLY UNLESS THE COURT GRANTS PARTY ACCESS CASE BY CASE.

I. DEVELOP RULES, FORMS, PUBLIC OUTREACH MATERIALS, POSTERS, SELF-HELP INSTRUCTIONAL MATERIALS TO INFORM ALL PARTIES ABOUT ONLINE PUBLICATION, AND THE OPPORTUNITY AND PROCESS TO REQUEST PROTECTION OF PERSONAL AND SENSITIVE INFORMATION.

SECTION IV. DRAFT UTCR CHAPTER 22

08/03/09.1 Version

CHAPTER 22. ELECTRONIC CONTENT MANAGEMENT SYSTEM

- UTCR 22.010. Purpose; Authority to Waive/Modify.
- UTCR 22.020. Effective Dates; Applicability.
- UTCR 22.030. Definitions Generally.
- UTCR 22.040. When Documents Become Available Via Remote Electronic Access
- UTCR 22.050. Definition of Protected Information.
- UTCR 22.060. Avoiding Disclosure of Protected Information.
- UTCR 22.070. Service of Documents Containing Protected Information.
- UTCR 22.080. Court Response to Documents Filed Under This Chapter.
- UTCR 22.090. Protected Information in Court-Generated Documents.
- UTCR 22.100. Viewing Case Records Via Remote Electronic Access.
- UTCR 22.110. Confidentiality Motions and Determinations.
- UTCR 22.120. Exhibits.
- UTCR 22.130. Record of Oral Proceedings.

CHAPTER 22. ELECTRONIC CONTENT MANAGEMENT SYSTEM

UTCR 22.010. Purpose; Authority to Waive/Modify.

(1) The Judicial Department is establishing an electronic content management (ECM) system that will maintain ~~court~~ **case** records electronically rather than by paper and that will allow access to those ~~court~~ **case** records via remote electronic access. Making ~~court~~ **case** records available via remote electronic access facilitates public access to ~~court~~ **case** records, and commensurately increases the risk of disclosure of information that is protected by law, that can be used in identify theft and financial fraud, that can identify children who are involuntarily parties to or the subject of legal proceedings, and that can place at risk the personal safety and liberty of some persons. The purpose of this rule is to establish procedures for persons and the court to facilitate reasonable access to electronically-maintained ~~court~~-**case** records via remote electronic access and, at the same time, avoid inappropriate disclosure of protected information in those records.

(2) The primary responsibility for avoiding inappropriate disclosure of protected information rests with the person filing a document. A person who believes that protected information about that person may be or has been disclosed is responsible for using the procedure provided in these rules to challenge the disclosure. The trial court administrator should encourage compliance with these rules, but need not review each filed document for compliance and should not reject for filing any non-compliant document.

(3) The court on its own motion or on the motion of any person may waive or modify any provision of this chapter as necessary or convenient to achieve the purpose of this chapter.

UTCR 22.020. Effective Dates; Applicability.

(1)(a) The electronic content management system initially will be operational only in certain judicial districts and for certain types of cases, but eventually will be operational in all judicial districts and all case types. As the electronic content management system becomes operational in one or more judicial districts and for one or more specific case types, the State Court Administrator will certify those facts, together with the date that the system becomes operational for those cases. The State Court Administrator's certifications will be published online at *[specify OJD web location where this information or a link to the information will be published]*.

(b) This rule is applicable only to a case filed in the judicial district and in a case type certified by the State Court Administrator as ready to be maintained in electronic form, on or after the date specified in the State Court Administrator's certification. A court may make documents filed before the State Court Administrator's certification date part of the electronic content management system, but the documents will be available only to the court and its personnel, **to the parties as determined by the court on a case by case basis**, and will not be available ~~to parties or~~ the public via remote electronic access.

(c) Notwithstanding that the electronic content management system becomes operational in a judicial district and for specified case types, the court will continue to make ~~court~~ **case** records available at the courthouse as if the records were maintained in paper form, such as by providing a computer terminal for 20viewing case records maintained in electronic

form and by providing paper copies on request.

UTCR 22.030. Definitions Generally.

As used in this chapter:

(1) "Attorney" means the attorney of record in a case.

(2) "Case" means an action or proceeding.

(3) "Case record" means the court file as provided in ORS 7.095, excluding exhibits and the record of oral proceedings of the court.

(4) "Court contact information" means the name, mailing address, telephone number and fax number, if any, , as to a person whose personal contact information is not subject to disclosure, alternative contact information sufficient to enable the court to communicate with the person and to enable any other party to the case to serve the person under UTCR 2.080(1).

(5) "Document" has the same meaning as provided in UTCR 21.010(2).

(6) "Initiating document" means a complaint, petition, indictment, information, or other document that initiates a case, and a cross-complaint, cross-petition, or other document that adds a person as a party to case.

(7) "Remote electronic access" means access to ~~case records of court cases~~ in the Oregon Judicial Information Network (OJIN), including the electronic content management system, via the Internet.

(8) "Secure case" means:

(i) An adoption case subject to ORS 7.211, a juvenile court case subject to ORS 419A.255 and ORS 419A.256, a mental commitment case subject to ORS 426.160 or ORS 427.293, ~~[a domestic relations case subject to UTCR chapter 8?], and [the record of a case initiated by the filing of an arbitration award under ORS _____ until the court enters judgment on the award,?]~~ , **and a drug court program case subject to ORS 3.450**, and

(ii) Consistent with the limitations on disclosure of information in case records imposed by 18 USC § 2265(3), ~~the case record in the following case types: Family Abuse and Prevention Act cases, Elderly Persons and Persons With Disability Abuse Prevention Act cases, and civil stalking protective order cases pursuant to ORS 30.866 or ORS 163.738[-and any other case in which a person is seeking a protection or restraining order for the personal safety or liberty of the person or the person's minor children to be determined?].~~

UTCR 22.040. When Documents Become Available Via Internet.

(1)The court will not make any document filed with a court available via remote electronic access until after expiration of:

(a) Thirty days following the date of filing of proof of service of the initiating document on the defendant or, if there is more than one defendant, the filing of proof of service of the initiating document on all defendants or following the appearance by ~~a party~~ **all defendants**, whichever is earlier, **or a combination of**

defendants. Upon motion of a party and for good cause shown, the court may direct that any document filed in a case in which there are multiple parties be made available via remote electronic access notwithstanding that the party filing the document has not provided proof of service on all other parties to the case or that not all parties have appeared.

(b) Fourteen days following the date of filing of any document other than an initiating document.

(2) During the time periods prescribed in subsection (1) of this rule, if a party seeks relief under UTCR 22.110, the trial court administrator will not make the document available via remote electronic access until the request has been resolved.

(3) When a person files an initiating document in a case type in which the documents may be available via remote electronic access, the person must accompany the initiating document with a notice in the form prescribed in UTCR Form 22.040.3. informing any other party to the case that documents filed in the case may be available via remote electronic access, the opportunity of the person to seek relief under UTCR 22.110 and the time within which the request for relief must be filed. When a party files a cross-complaint, cross-petition, or other document that adds a person to the case, the party must provide the notice prescribed in this clause only to any person being added as a party to the case

UTCR 22.050. Definition of Protected Information.

As used in this rule, “protected information” means:

(1) Protected personal information as defined in UTCR 2.100(2)(a) and (b).

(2) Personal contact information of a natural person.

(a) “Personal contact information” means the residential address, mailing address (if different from residential address), any telephone number, facsimile transmission number, email address, Internet Protocol address, or other similar means by which a natural person may be contacted personally and directly.

(b) “Personal contact information” excludes court contact information, **and excludes** contact information about a person’s place of employment unless the person is the victim or a witness, other than a law enforcement officer in the capacity of a law enforcement officer, in:

(i) A criminal or juvenile delinquency case; or

(ii) A Family Abuse and Prevention Act, Elderly Persons and Persons With Disability Abuse Prevention Act, civil stalking order pursuant to ORS 30.866 or ORS 163.738, and any other case in which a person is seeking a protection or restraining order for the personal safety or liberty of the person or the person’s minor children.

(3) The name of a person under the age of 18 years who is not voluntarily a party to or the subject of a legal proceeding.

(4) Any photograph of involuntary nudity **of a natural person**, obscene materials, **or other explicitly sexual material**, and any photograph of a victim of crime.

(5) Information that can be made confidential under ORS 25.020(8)(d), ORS 109.767(5), ORS 110.375, or ORS 192.445 or 22 that otherwise is exempt from public

inspection under state or federal law.

(6) Information protected by other specific law or by court order.

UTCR 22.060. Avoiding Disclosure of Protected Information.

(1) Subsections (2), (3), and (4) of this rule prescribe the means available in this chapter to avoid inappropriate disclosure of protected information in documents filed with the court. A person filing a document containing protected information *about another person must* use one of the prescribed means. Except as provided in subsections (5) and (6) of this rule, a person filing a document containing protected information *about the person may* use one of the prescribed means.

(2) Segregated Documents.

(a) Segregation means that protected information is set forth on one or more pages separate from the primary document. The primary document must be labeled “Segregated Document” and the separate page must be labeled “Segregated Information.” “Page” includes pages if the segregated information consists of multiple pages. A party may refer to protected information by referring to a party by that party’s status (for example, child, husband, wife, mother, father, personal representative), by use of an assumed name or initials, by truncating numbers, or by any other suitable convention that maintains the readability of the primary document and avoids disclosure of protected information. A party may file segregated information also labeled as “Sealed” as provided in ~~paragraph (3)(b)~~ **subsection (5)** this rule.

(b) If a person files protected information by a segregated document, as long as the specific protected information remains current, a person need not re-submit the protected information each subsequent time that the already segregated information otherwise would be submitted in that case. The person should add a written notation to any document subsequently submitted to the effect that the information already has been submitted in the case under this rule.

(c) A document filed under UTCR 2.100 or UTCR 2.110 must be filed as a segregated document.

(3) Confidential Documents.

(a) A confidential document is a document that, by law or court order, is available to other parties to the case but is not available to the public. If a document is not protected from disclosure by law, a party seeking to prevent access to the document via remote electronic access must file a motion seeking a protective order. A confidential document must be labeled “Confidential Document Under _____” and identify the law or court order under which the document is confidential.

(b) The following documents must be filed as confidential documents:

(i) Any report or similar document submitted directly to a court by a social worker, licensed medical or mental health practitioner, presentence investigator, or other similar person, which report contains alcohol or drug, mental or medical information about a person or otherwise contains information that is not subject to public disclosure, including but limited to a court visitor’s report in a protective proceeding under ORS Chapter 125, a child custody study, a presentence investigation report, and a report concerning a defendant’s fitness to proceed or

criminal responsibility under ORS Chapter 161.

(ii) Any photograph of involuntary nudity **of a natural person**, obscene materials, **or other sexually explicit material**, or [a] **any** photograph of a crime victim;

(iii) An affidavit or declaration in support of a motion to waive or defer court costs and fees under ORS 21.605.

(iv) Any return of service, if the return of service contains personal contact information of the person served.

(v) Any list of assets or other document in a probate, domestic relations, or other type of case that includes financial information as defined in UTCR 2.100(2)(b)(i).

(vi) Any confidential information form filed under UTCR 2.130 **that is not filed as a sealed document**.

(4) Redacted Documents. Redaction means that the person submits two ~~copies~~ **versions** of ~~the a~~ document: a complete version with no content hidden from view, and a redacted version with protected information hidden from view. The complete version ~~of the document~~ must be labeled "Complete Version of Redacted Document" and the redacted version must be labeled "Redacted Version Document." Parties are encouraged to use redaction only when filing a segregated or confidential document is not practical or appropriate under the circumstances.

(5) Sealed Documents. A sealed document is a document that, by law or court order, is not available for viewing by any other party to the case or by the public. A party may file a sealed document only upon order of the court. A sealed document must be labeled "Sealed Document Under _____" and identify the **law or** court order under which the document is sealed.

UTCRC 22.070. Service of Documents Containing Protected Information.

For purposes of UTCR 2.080(1), a person filing a document subject to this chapter must mail or deliver to parties the segregated document and the page of a document containing segregated information, a confidential document, and the complete version and the redacted version of a redacted document unless the person, based on specific legal authority, believes that the person is entitled to prevent disclosure of the protected information in the document to that party. If a person serves less than a full copy of a document on a party, the certificate of service accompanying the document shall describe the document or part of a document that was not served on the party.

UTCRC 22.080. Court Response to Documents Filed Under This Chapter.

Generally and subject to the provisions of UTCR 22.100 and 22.110, when a segregated, confidential, redacted, or sealed document is filed under this rule, the trial court administrator will restrict access to the document or part of the document containing protected information as follows:

(1) The primary document of a segregated document will be made available to the public via remote electronic access, but the segregated page will not and will be made available only to the parties to the case, unless the segregated page was filed as "Sealed," in

which case the document will only be available to the court.

(2)(a) A document labeled “Confidential” will not be available to the public via remote electronic access, but will be made available to the parties.

(b) A document labeled “Sealed” will not be made available to either the public or to any party, except with leave of the court.

(3) The parties to a case will have access via remote electronic access to the complete and redacted versions of a redacted document, but the public will have access via remote electronic access only to the redacted version of a document.

UTCR 22.090. Protected Information in Court-Generated Documents.

The court is responsible in the first instance to insure that any notice, letter opinion, order, judgment or other writing issued by the court does not make protected information available via remote electronic access to a person not entitled under this rule to access the information. A person adversely affected by an inappropriate disclosure may file a request with the court to take measures as necessary to avoid the inappropriate disclosure. A person seeking relief under this paragraph may use the form substantially like UTCR Form 22.090 to present the request. The trial court administrator will resolve the request, subject to review by the court on motion of a person adversely affected by the trial court administrator’s resolution.

UTCR 22.100. Viewing Case Records Via Remote Electronic Access

(1) Basic Public View. With respect to a case other than a secure case, any person, without a subscription to OJIN, may view via remote electronic access the full case title, the case number, the next scheduled event in the case, if any, and, if the court has imposed a fine or a fee, the amount of the fine and fee owing at that time.

(2) Expanded Subscription Public View. Any person who has subscribed to OJIN may view via remote electronic access the **case** record of any case except:

(a) In a secure case, the entire case record;

(b) In case other than a secure case, the segregated page of a segregated document, a confidential or sealed document, and the unredacted version of a redacted document.

(3) Party/Attorney View. Any party to a case or any attorney for a party, including an attorney admitted *pro hac vice*, who has subscribed to OJIN may view via remote electronic access ~~all documents in the case~~ **record** except, in a secure case:

(a) Any sealed document, and

(b) In an adoption case subject to ORS 7.211, ~~no party or attorney for a party may view any part of~~ the case record after entry of the general judgment of adoption.

(4) In a ~~confidential~~ **secure** case, ~~the parties, but not the public,~~ may **not** have access to the **case** record via remote electronic access.

(5) If the court sets aside a conviction under ORS 137.225 or orders expunction of a case record under ORS 419A.260 and 419A.262, neither the public nor the parties ~~will~~ **may** have access to the case record via remote electronic access.

(6) State court judges and Judicial Department personnel may view the **case** record of any case via the ECM system as necessary and convenient to carry out the duties of the court and the Department, **[except that a judge may not view an arbitration award to the extent provided under ORS _____ ?]**.

[(7)(a) An attorney representing a party in a domestic relations case may apply to the Judicial Department for access to the records of domestic relations cases. Any attorney having access to the record in a domestic relations case shall maintain as confidential information derived from the record of a domestic relations case. ?]

(b) Any government agency or business entity for whom it is necessary and convenient for the business purpose of the agency or business **may apply to the Judicial Department for access as appropriate via the ECM system** ~~as appropriate to have access to the case records of confidential cases~~ **a secure case, except for any sealed document in the case,** or the segregated page of a segregated document; ~~or the full version of a redacted document; or sealed documents in a non-confidential~~ **secure** cases ~~may apply to the Judicial Department for access to such records or documents via the ECM system as appropriate.~~ The Judicial Department will grant access to such cases or documents as appropriate for the agency's business purpose. Any agency or business entity having access to protected information shall maintain the information as confidential.

UTCR 22.110. Confidentiality Motions and Determinations.

(1) Where protected information about a person in a document filed with a court has not been adequately protected from disclosure, the trial court administrator, on the trial court administrator's own initiative or at the request of a person adversely affected by the disclosure, may require the person who filed the document to refile it in a manner that avoids disclosure of protected information or may restrict access to the document consistent with this rule. A person seeking relief under this paragraph may use the form substantially like UTCR Form 2.110.1 to present the request. A person adversely affected by the trial court administrator's resolution may request review of the trial court administrator's decision. The request must be in the form of a motion filed in the manner prescribed by UTCR 5.020 to 5.050.

(2) If the court, on motion of a person or on the court's own motion after giving the person filing a document reasonable notice and opportunity to be heard, determines that a document filed under this rule does not contain protected information or, if the document contains protected information but was filed in a manner that restricts access to the document via remote electronic access inconsistent with this rule, the court may direct the trial court administrator to modify, as appropriate, access to the document via the remote electronic access system. A person seeking relief under this paragraph may use the form substantially like UTCR Form 22.100.2 to present the motion.

UTCR 22.120. Exhibits.

The court may scan documentary exhibits offered and received by the court or offered as an offer of proof, and make such exhibits ~~part of the record of the case in~~ **available via** the electronic content management system. The court may arrange with the parties to submit documentary exhibits in digital form, provided that the form of submission allows the exhibits to become part of the electronic content management system. The parties to the case, but not the public, will have access to the exhibits via remote electronic access.

UTCRC 22.130. Record of Oral Proceedings.

(1) When the electronic content management system acquires the capability to capture audio and visual recordings of proceedings before the court, the audio or visual records will be available to the parties to the case, but not the public, via remote electronic access.

(2) If prepared and filed with the court, the transcript of a proceeding before the court will be maintained as part of the electronic content management system and will be available to the parties and, **except in secure cases, to** the public via remote electronic access.

Definitions in Existing UTCR

UTCR 1.110 Definitions

As used in these rules:

- (1) Party means a litigant or the litigant's attorney.
- (2) Trial Court Administrator means the court administrator, the administrative officer of the records section of the court, and where appropriate, means trial court clerk.
- (3) Plaintiff and Petitioner mean any party asserting a claim for relief, whether by way of claim, third-party claim, crossclaim, or counterclaim.
- (4) Defendant and Respondent mean any person against whom a claim for relief is asserted.
- (5) Days mean calendar days, unless otherwise specified in these rules.

UTCR 21.010 Definitions

The following definitions apply to this chapter:

- (1) "Conventional filing" means a process where a filer files a paper document with the court.
- (2) "Document" means a pleading, a paper, a motion, a declaration, an application, a request, a brief, a memorandum of law, an exhibit, or other instrument submitted by a filer, including any exhibit or attachment referenced in the instrument. Depending on the context, as used in this chapter, "document" may refer to an instrument in either paper or electronic form.
- (3) "Electronic filing" means the process where a filer electronically transmits to a court a document in an electronic form to commence an action or to be included in the court files for an action.
- (4) "Electronic filing system" means the system provided by the Oregon Judicial Department for the electronic filing and the electronic service of a document via the Internet. A filer may access the system through the Oregon Judicial Department's website (<http://www.ojd.state.or.us>).
- (5) "Electronic service" means the electronic transmission of a notice of filing or a notice of a scheduled court proceeding by the electronic filing system to the electronic mail (e-mail) address of a party registered as a filer with the electronic filing system. The notice may contain a hyperlink to access a document that is filed electronically for the purpose of effecting service.
- (6) "Filer" means a person registered with the electronic filing system who submits a document for filing with the court.
- (7) "Pro se litigant" means a person who by law may appear in an action without a lawyer.

ⁱ OSB/Authorized Users View may include members of the Bar who are not the attorney of record, self-represented parties, and identified commercial interests.

August 19, 2009

MEMORANDUM

TO: OSB Members

FROM: David V. Brewer, Chief Judge, Oregon Court of Appeals

Re: Oregon eCourt - Opportunity for comment on development of policies and rules related to confidentiality and internet access to court documents

On behalf of Chief Justice Paul J. De Muniz, I am writing to provide all Oregon lawyers with an update on the status of the Oregon eCourt Program. As part of that update, I encourage you to consider ongoing policy decisions that concern future internet access to electronic court documents and to provide feedback in that regard, as discussed further below.

Oregon eCourt will give courts and judges the tools they need to provide just, prompt, and safe resolution of civil disputes; to improve public safety and the quality of life in our communities; and to improve lives of children and families in crisis. Oregon eCourt will transform the business operations of the court and its users. Court operations will be streamlined through electronic document management, management reporting capabilities and data sharing with partners. The internet based public features will allow electronic filing, electronic payment, access to documents, dockets and related content from anywhere, anytime.

The 2009 Legislative Assembly provided continued funding for Oregon eCourt, although at a reduced level due to state budget constraints. The major focus in the 2009-11 biennium will be implementing Enterprise Content Management (ECM) in trial courts throughout the state. The ECM system is the primary tool in the achievement of the OJD's goal of moving to an electronic court environment that can provide paper on demand. ECM provides the ability to manage electronic documents and digital data (photos, voice recordings, etc.) providing the foundation for future implementation of electronic filing and decision support systems.

The ECM implementation process begins this month, with Yamhill County, and soon thereafter, Multnomah County, serving as the initial pilot courts for Small Claims cases and Forcible Entry and Detainer cases. Additional courts and case types will be added throughout the course of the biennium.

Work also is underway to establish policies and procedures for internet-based access of documents produced in the ECM system; as such access becomes available in the future. All members of the Bar now have an opportunity to provide input through the Bar on decisions relating to confidentiality (what types of information and documents will be available through the internet) and process (how to access the available material). These decisions will not affect information available at the courthouse, but will govern what information may be accessible over the internet, as well as the processes for accessing that information, as the ECM system expands to provide for internet access to electronic court documents.

The OSB eCourt Task Force has been involved in the initial development work and is expanding the opportunities for individual members and sections to become more involved by reviewing and commenting on draft policies and procedures. The Bar will be making these drafts available to individual members and sections, and will coordinate a response to the Judicial Department for further consideration. If you have more specific questions about this process, please contact Susan Grabe at the Bar at sgrabe@osbar.org.

The Judicial Department looks forward to its ongoing partnership with the Bar to develop Oregon eCourt, as we strive to make court processes more efficient and to provide improved access to Oregon's state courts.



Oregon eCourt

Oregon eCourt will give courts and judges the tools they need to provide just, prompt, and safe resolution of civil disputes; to improve public safety and the quality of life in our communities; and to improve lives of children and families in crisis.

August 2009 Program Status

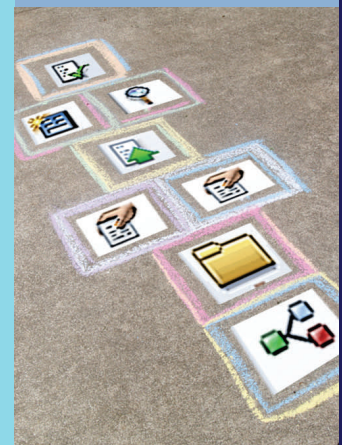
ECM Rollout Begins for Small Claims and FED Cases in Yamhill

The Enterprise Content Management (ECM) Project has tentatively scheduled a rollout of the system that will provide case information workflow for small claims and forcible entry, and detainer (FED) case types, on Thursday, August 20, 2009 in Yamhill County Circuit Court. This rollout is the result of several months of hard work by the Oregon Judicial Department (OJD) ECM project team, subject matter experts from Crook, Jackson, Jefferson, Multnomah, and Yamhill County circuit courts, the Project Steering Committee members, and the software vendor, ImageSoft.

In preparation for this rollout, the ECM project team recently completed a three-week user acceptance testing (UAT) activity which involved approximately 24 participants across all five pilot courts, Enterprise Technology Services Division, and ImageSoft. Participants performed numerous test scenarios in workflow processing to ensure the ECM software functioned as required by OJD. Identifying and resolving problems and issues during this testing phase is critical to ensuring that a quality workflow solution is implemented. The UAT activity began on July 27, 2009 and concluded on August 14, 2009, and was a shining example of dedication and teamwork among all involved.

At the conclusion of UAT, the ECM project team obtained a recommendation from the pilot court's trial court administrators to proceed with the rollout. This recommendation will be forwarded to the ECM Steering Committee, and presented to the Oregon eCourt Implementation Committee on August 18, 2009 for final approval to implement. Training is scheduled to occur in Yamhill County Circuit Court on August 17th and August 18th and includes end user, judicial, workflow, and scanning and indexing training.

After the ECM solution for small claims and FED case types is implemented in Yamhill, the Oregon eCourt quality assurance vendor, InfoSentry, Inc., will conduct a series of "lessons learned"



Oregon eCourt's QA vendor, InfoSentry Inc, will conduct a series of "lessons learned" sessions to assist the team in preparing for the rollout in Multnomah on Sept 23, 2009.

Continued ~

sessions. The outcome of these sessions will assist the team in preparing for the planned rollout of small claims and FED case types in Multnomah County Circuit Court on Wednesday, September 23, 2009.

The ECM rollout for small claims and FED is tentatively scheduled for Jackson County Circuit Court in late November 2009, followed by Crook and Jefferson Circuit Courts in late January 2010.

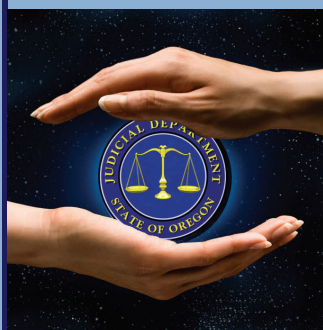


Oregon Judicial Department's (OJD) Security Management Plan Essential to Oregon eCourt

The OJD is developing a comprehensive Security Management Plan that will define programs for managing technology security, information security, and physical security in both the courts and Office of the State Court Administrator. The Security Management Team is comprised of OJD staff from various divisions including: Enterprise Technology Services Division (ETSD), Office of Education, Training, and Outreach, Business and Fiscal Services Division, Security and Emergency Preparedness Office, and Human Resource Services Division .

This team is completing an analysis of OJD's current security processes and programs to identify any improvements that should be made, and will develop initiatives recommending additional security processes if needed. The analyses and recommendations will be included in the first version of the Plan by the end of August. The ability of OJD to manage security risks will be essential for the Oregon eCourt Program as case information is collected, distributed, and stored. Secure methods for handling information in the course of court business must be in place to ensure the confidentiality, integrity, and availability of information.

The completed Security Management Plan will guide ETSD in the development of a formalized enterprise information security program under the leadership of OJD's new Information Security Officer, Sam Taylor. Sam was formerly the Information Security Manager for HP's Imaging and Printing Division, and was responsible for the security of over 500 applications worldwide.



The ability of OJD to manage security risks will be essential for the Oregon eCourt program as case information is collected, distributed, and stored.

Oregon eCourt Prepares for Disaster Recovery

As court information is converted to electronic transmission and storage systems, OJD's disaster recovery plans and procedures must ensure the protection of these systems to allow continuity of court business in the event of an emergency. In order to accomplish this, ETSD is working with SunGard, an information technology security consulting company, to develop and test the recovery performance of OJD's IT infrastructure. OJD's existing disaster and business continuity plans will be updated to include recovery time objectives resulting from ETSD's work with SunGard. This will allow OJD to continue to meet the operational needs of the courts in the event of a disaster affecting OJD's technology infrastructure.



Web Portal Team Achieves Stellar Success for the OJD

The Web Portal Team has converted a total of 40 Internet sites to the new three-tiered webpage format including the Supreme Court, Court of Appeals, Tax Court, Circuit Courts, and the Office of the State Court Administrator (OSCA). The circuit court webpages are live and online. On August 25, 2009 the Appellate Courts, Tax Court, and OSCA will also be live. Almost 100 staff have been trained to use SitePublisher, the new webpage software.

The team's coordinated efforts throughout this project have not only made the new websites for OJD a reality in record time, but have also shown the results of focused teamwork and leadership. The team's success is attributed to the following activities:

- Conducted research to assure a professional and successful relationship with the webpage design contractor
- Worked and re-worked the design until it was right for the OJD
- Planned ahead to address potential problems
- Strengthened working relationships with the courts
- Checked and re-checked everything
- Ensured SitePublisher training stayed on target
- Initiated the lead in bringing the OJD into a completely new system of managing Web information

OJD's Web Portal Team has recently been recognized for its work by Wally Rogers, the Program Manager of the Oregon



Continued ~

OREGON JUDICIAL DEPARTMENT

Office of Education,
Training, and Outreach
1163 Stae Street
Salem, Oregon 97301

Phone: 503-986-7046
Fax: 503-373-2238
E-mail:
oeto@ojd.state.or.us



E-Government Program at the Department of Administrative Services (DAS). Bud Borja, OJD's Chief Information Officer, received an email from Mr. Rogers congratulating the OJD on the impact of the OJD effort on the DAS team and other agencies. Excerpts from that email are below:

Bud,

Congratulations on getting all 36 of your courts moved to the enterprise platform today. In about 6 months you have transitioned 36 individual groups in the same time it would normally take two medium size groups to make the transition.

We work with 83 agencies that have their website on Oregon.gov and they are all good, hard working people committed to doing the best job. But your team has been transformational. Our EDS developers have been inspired by the fundamental innovation that OJD has insisted upon. The result? They are pushing me and the E-Governance board to adopt the core innovations the OJD project spearheaded for the state. They will bring productivity increases statewide whenever we change the structure or look and feel of our site – not just for one agency, for 83 other agencies.

Your team had been exceptionally focused on transformation and getting the job done. We are working hard to keep up with the pace you have set and are reaping rewards that will be felt statewide as we take the new productive implementations spearheaded for Judicial and roll them out state wide.

Please thank your staff, your e-court manager, and those who support them for leading the way in implementing this productive technology. Your team can execute and you've got our E-Government team focused on your success as well. I offer my congratulations. Very well done!

Wally Rogers

Oregon E-Government Program Manager

DAS/Enterprise Information Strategy and Policy Division

The team is now concentrating on the next phase which includes converting the OJD's Intranet pages and completing the first stage of the new OJD Web portal, including linking to the new enterprise content management system. These two projects must be completed at the same time, since the Web portal provides the security functions that separate the public from our classified Intranet material.



OJD Mission:

Provide fair and accessible justice services that protect the rights of individuals, preserve community welfare, and inspire public confidence.

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www.piucci.com *steve@piucci.com*

August 27, 2009

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

Re: Notification of Candidacy for the office of President Elect

Dear Ms. Schmidt:

Please accept this letter as notification of my intent to seek the position as President-Elect of the Oregon State Bar Association, pursuant to §2.201(b) of the Bylaws.

My qualifications for this position include my work over the last two years as a Governor, and as Chair of the Public Affairs Committee during this year's challenging legislative session. I would also point to my experience in leadership positions with the Oregon Trial Lawyers Association culminating with my year as President in 2000-2001. From 1994 through the present, I have been the Chair of OTLA's Appointments Committee with primary focus on recruiting qualified candidates for important OSB committees and also in assisting both OTLA and our governors and staff regarding judicial appointments around the state.

These bar leadership roles have enabled me to develop strong relationships with many key individuals who serve in the three branches of our state government. Moreover, my credibility as a litigator and active member of the bar allows me personal access to most of the important politicians and policy makers in Oregon.

Additionally, I should mention that for many years I was an Oregon State Delegate to the Association of American Trial Lawyers (ATLA) and the American Association of Justice (AAJ), until relinquishing that role to run for the Board of Governors. Last year, I was honored by being admitted into a select and prestigious national law organization, the American Board of Trial Advocates. Finally, I believe that my public speaking skills match well with the legacy of all the President-Elects and Presidents of the Oregon State Bar that have come before me. I have been a presenter at dozens of Continuing Legal Education programs in and outside of Oregon. Furthermore, I was host of a cable access television show that ran for several years in the Portland market: "Twelve People, One Jury". This program was dedicated to promoting the civil justice system and featured many Oregonians whose stories about their cases brought life to the notion of access to justice.

I seek this position for many reasons, but all can be considered subsets of my basic belief: that as citizens, we have a duty to participate in our democratic society. I learned this at a young age and it is why I have always been engaged in politics and why I am proud to help people on a daily basis as a trial lawyer. It is also why I ran for the Board of Governors: to help promote the

rule of law and the basic right of all people to have access to justice. In so doing I was pleased to join a group of lawyers who obviously feel the same way.

I must admit to being driven by a basic level of frustration with certain forces in America which work to take advantage of those with less and which feed upon one of the most negative elements in our society: apathy. Yet I choose to resist these forces with positives: participation, professionalism and deep concern for all people. A person only has one chance to make an impact in this world and I do not want to waste mine. Thus, I see my service on the Board of Governors and as a leader of our bar as an extension of this philosophy.

My vision for the bar is simply that it can be even better than it already is. I seek only to assist in any improvements that we, as bar leaders can achieve in full support of the rule of law, increased access to justice for all people of every persuasion and in support of our members so that they are able to join us in this mission. I also see a future in which, with the help of lawyers, all citizens believe in government and see government as a positive force in their lives.

I see a future where civics education is returned to all classrooms and I vow to remain a huge supporter of the Classroom Law Project, which undoubtedly is the best model for achieving this goal.

I see a future where all Oregonians have the ability to obtain an excellent lawyer and have access to a fully functional justice system. I will continue to support all efforts to achieve this, whether through the Campaign for Equal Justice, healthy funding and removal of all restrictions on Legal Aid, or through efforts to properly fund not only our judicial system but the other branches of government as well.

I see a future where young lawyers are not saddled by debilitating debt nor by lack of opportunity to survive in the practice of law. I am fully supportive of all efforts to not only properly train young lawyers but to also ensure opportunities to get them the experience they need, including the trial of cases before juries.

I see a future where the bar is fully representative of the diversity of our society and will work to dissolve the barriers that keep us from this goal. We need to constantly re-examine the process through which a young person must navigate to become a member of our bar in order to ensure that the Oregon State Bar is diverse and representative of the society in which we live.

To conclude, I should point out that I believe in people and the simple notion that if we all work together we will make the world better for everyone. I am willing to work in support of this goal and of course, would be proud to do so as President-Elect and ultimately, President of the Oregon State Bar Association.

Thank you for the opportunity.

Sincerely,



Stephen V. Piucci

OREGON STATE BAR
Client Security - 113
For the Eight Months Ending August 31, 2009

Description	August 2009	YTD 2009	Budget 2009	% of Budget	August Prior Year	YTD Prior Year
REVENUE						
Interest	\$19	\$2,295	\$16,900	13.6%	\$2,007	\$18,114
Judgments	360	2,718	5,000	54.4%	296	27,331
Membership Fees	72	68,564	70,800	96.8%	15	66,617
Miscellaneous Income	3,350	5,500				
TOTAL REVENUE	3,801	79,077	92,700	85.3%	2,318	112,063
EXPENSES						
SALARIES & BENEFITS						
Employee Salaries - Regular	2,257	19,238	29,800	64.6%	2,218	18,856
Employee Taxes & Benefits - Reg	655	6,144	8,900	69.0%	742	6,034
TOTAL SALARIES & BENEFITS	2,912	25,382	38,700	65.6%	2,960	24,891
DIRECT PROGRAM						
Bank Fees	16	16				
Claims	150	76,623	150,000	51.1%	6,286	59,006
Collection Fees			500			
Committees		45	250	18.0%		177
Pamphlet Production			300			
Travel & Expense	600	600	1,285	46.7%		
TOTAL DIRECT PROGRAM EXPENSE	766	77,284	152,335	50.7%	6,286	59,182
GENERAL & ADMINISTRATIVE						
Messenger & Delivery Services			50			
Office Supplies			100			
Photocopying			150			
Postage	14	158	250	63.3%		106
Professional Dues			200			
Telephone		89	200	44.6%	2	96
Training & Education		350	375	93.3%		120
Staff Travel & Expense		643	758	84.9%	92	869
TOTAL G & A	14	1,241	2,083	59.6%	94	1,191
TOTAL EXPENSE	3,691	103,907	193,118	53.8%	9,340	85,264
NET REVENUE (EXPENSE)	110	(24,830)	(100,418)		(7,021)	26,799
Indirect Cost Allocation	1,086	8,688	13,032		784	6,272
NET REV (EXP) AFTER ICA	(976)	(33,518)	(113,450)		(7,805)	20,527
Fund Balance beginning of year		695,390				
Ending Fund Balance		661,872				
Staff - FTE count		.35	.35			

2009 JUDGMENTS COLLECTED

Date	Attorney	Payment Received
1/2/2009	Coover, Lewis Bryan III	73.90
2/24/2009	Anunsen, Roger	252.00
3/2/2009	Kelley, Phil	360.00
3/31/2009	Kelley, Phil	360.00
4/1/2009	Anunsen, Roger	126.00
5/1/2009	Anunsen, Roger	126.00
5/4/2009	Kelley, Phil	360.00
5/29/2009	Kelley, Phil	360.00
6/30/2009	Kelley, Phil	360.00
8/4/2009	Kelley, Phil	360.00
9/3/2009	Kelley, Phil	360.00
	TOTAL	\$3,097.90

