

**Board of Governors
Future Calendar of Events
Revised February 2, 2010**

BOG 2010 Meeting Schedule

<u>Committees Meetings at OSB Center</u>	<u>Board Meeting Various Locations</u>	<u>BOG Meeting Locations</u>	<u>Special Events in Conjunction w/Meetings</u>
	February 18-20	The Oregon Gardens	Board Mtg., ONLD, Lunch w/Supreme Court, Local Bar Social, President's Reception
March 19	April 29-30	OSB Center	Board Meeting, Past BOG Dinner
May 14	June 17-18	Geiser Grand, Baker City	Board Meeting, Local Bar Social
July 16	August 12-13	Tigard	Board Meeting, Local Bar Social (tentative), approve HOD Agenda
September 24	October 29	OSB Center	<u>HOD Annual Meeting (10:00 a.m.)</u>
	November 11-13	Timberline Lodge	Board Retreat, Board Mtg., Local Bar Social

BOG 2011 Meeting Schedule

<u>Committees Meetings at OSB Center</u>	<u>Board Meeting Various Locations</u>	<u>BOG Meeting Locations</u>	<u>Special Events in Conjunction w/Meetings</u>
January 7	February 17-19	Phoenix Grand, Salem	President's Reception, Lunch w/Supreme Court, Dinner w/ONLD, Leadership College
March 18	April 14-16	Manzanita?	Board Meeting, Regional Bar Social
May 20	June 23-25	Tigard	Board Meeting, Past BOG Dinner, PLF Joint Mtg.
July 29	August 25-27	Pendleton	Board Meeting, Regional Bar Social
September 23	November 4	Tigard	<u>HOD Annual Meeting (10:00 a.m.)</u>
	November 17-19	The Allison, Newberg	BOG Planning Retreat, Regional Bar Social

Upcoming Events

BOG members are encouraged to attend

Bar Exam (2010)	February 23-24	MBA Annual Dinner	May 11
OHBA Awards Dinner	February 26	Bar Exam (2010)	July 27-28
OWLs Awards Dinner	March 12	Swearing In Ceremony	October 7
WSBC	March 24-27	Nat'l Lawyer Referral Workshop	October 27-30
Hispanic CC Scholarship Lunch	May 4	Convocation on Equality	November 4, 2011
Swearing In Ceremony	May 6		

Upcoming Events/Meetings of Interest

<u>SPRB</u>		<u>Professional Liability Fund Board</u>	
March 13	2010 Tigard	April 23	2010 Tigard
April 16	Conference Call	June 11	2010 Bend
May 15	2010 Tigard	Aug. 13	2010 Hood River
June 11	Conference Call	Oct. 8	2010 Astoria
July 17	TBD	Dec. 10	2010 Tigard
August 13	Conference Call		
September 11	2010 Tigard		
October 15	Conference Call		
November 13	2010 Tigard		
December 17	Conference Call		

National/Regional Meetings

Mar. 24-27	2010	WSBC San Antonio, TX
June 2-5	2010	ABA Conf. on Professional Responsibility Seattle, WA
Aug. 5-10 <i>Annual Mtg.</i>	2010	NABE/NCBP/ABA San Francisco, CA
Feb. 9-15 <i>Midyear Mtg.</i>	2011	NABE/NCBP/ABA Atlanta, GA
Aug. 4-9 <i>Annual Meeting</i>	2011	NABE/NCBP/ABA Toronto, Canada

Feb. 1-7 <i>Midyear Meeting</i>	2012	NABE/NCBP/ABA New Orleans, LA
Aug. 2-7 <i>Annual Meeting</i>	2012	NABE/NCBP/ABA Chicago, IL
Feb. 6-12 <i>Midyear Meeting</i>	2013	NABE/NCBP/ABA Dallas, TX
Aug. 8-13 <i>Annual Meeting</i>	2013	NABE/NCBP/ABA San Francisco, CA
Aug. 7-12 <i>Annual Meeting</i>	2014	NABE/NCBP/ABA Boston, MA
July 30-Aug. 4 <i>Annual Meeting</i>	2015	NABE/NCBP/ABA Chicago, IL

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 17-18, 2010
Memo Date: February 8, 2010
From: Teresa Wenzel, Ext. 386
Re: Maps to Meetings

Attached are two maps with directions from Prudence Uncorked in Salem to the Oregon Garden in Silverton. If you are unfamiliar with the area or tend to be direction-challenged, the Mapquest map may prove to be your best choice. If you are somewhat familiar with the area and/or a little more adventurous, the Google map may be for you. If you get lost, just call the Oregon Garden and they will be glad to help you find your way. (And, yes, that is the “voice-of-experience.”)



MAPQUEST

Trip to 895 W Main St
 Silverton, OR 97381-2243
 17.35 miles - about 26 minutes

Notes



325 High St SE, Salem, OR 97301-3613



1. Start out going **SOUTH** on **HIGH ST SE** toward **MILL ST SE**. go 0.0 mi



2. Turn **RIGHT** onto **MILL ST SE**. go 0.0 mi



3. Turn **RIGHT** onto **LIBERTY ST SE**. go 0.1 mi



4. Turn **LEFT** onto **FERRY ST SE / OR-22 W / OR-99E BR N / SALEM HWY**. Continue to follow **OR-99E BR N / SALEM HWY**. go 2.2 mi



5. Turn **RIGHT** onto **SALEM PKWY / OR-99E BR / SALEM HWY**. Continue to follow **SALEM PKWY / OR-99E BR**. go 2.9 mi



6. Take the **I-5 S / CHEMAWA RD**. ramp toward **OR-99E-BR / KEIZER**. go 0.5 mi



7. Turn **RIGHT** onto **CHEMAWA RD NE**. go 0.9 mi



8. **CHEMAWA RD NE** becomes **HAZELGREEN RD NE**. go 5.0 mi



9. Turn **RIGHT** onto **HOWELL PRAIRIE RD NE**. go 1.2 mi



10. Turn **LEFT** onto **SILVERTON RD NE / OR-213**. go 3.1 mi



11. Turn **RIGHT** onto **PARADISE ALLEY RD NE**. go 1.0 mi



12. Turn **LEFT** onto **W MAIN ST / CASCADE HWY NE.**

go 0.2 mi



13. 895 W MAIN ST is on the **RIGHT.**

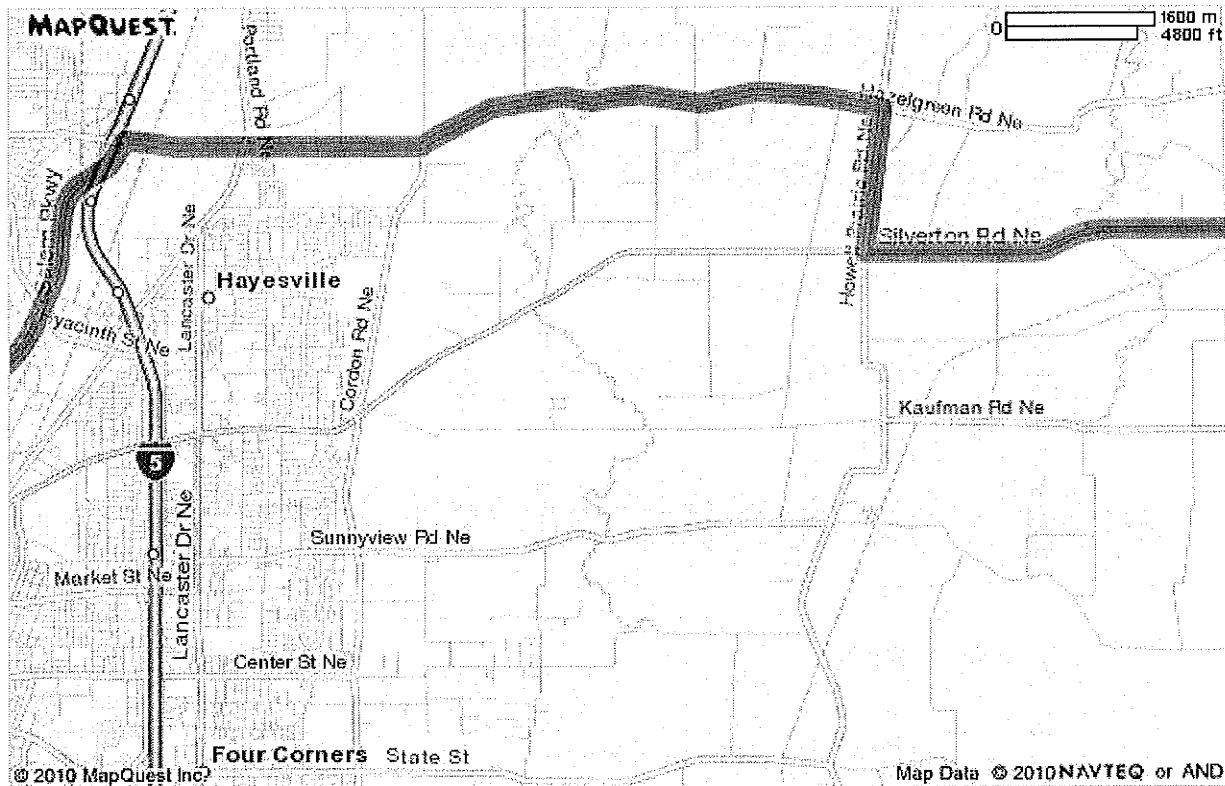
go 0.0 mi



895 W Main St, Silverton, OR 97381-2243

Total Travel Estimate : 17.35 miles - about 26 minutes

Route Map [Hide](#)

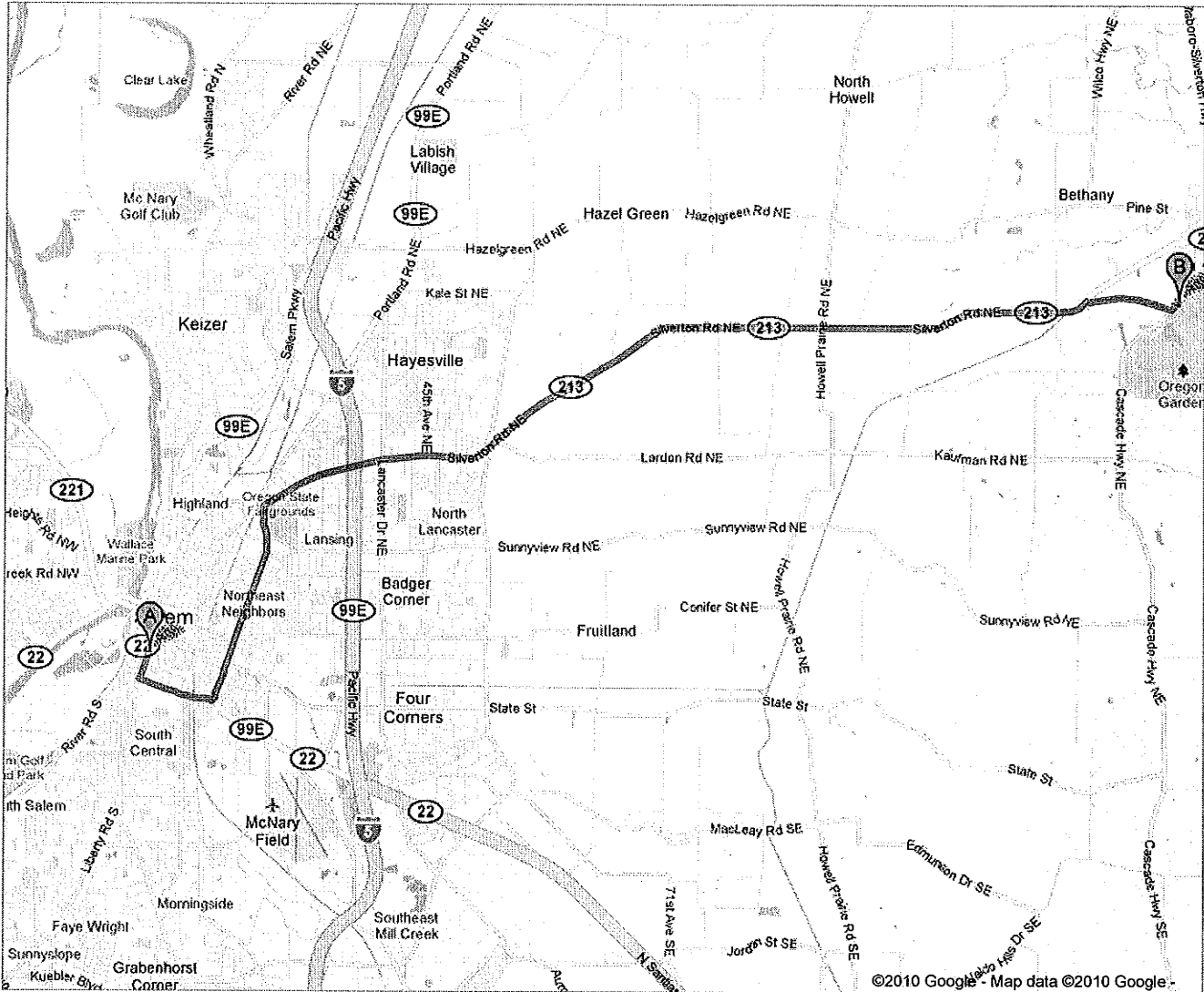


All rights reserved. Use subject to License/Copyright | [Map Legend](#)

Directions and maps are informational only. We make no warranties on the accuracy of their content, road conditions or route usability or expeditiousness. You assume all risk of use. MapQuest and its suppliers shall not be liable to you for any loss or delay resulting from your use of MapQuest. Your use of MapQuest means you agree to our [Terms of Use](#)

Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.



Driving directions to 895 W Main St, Silverton, OR 97381

A 325 High St SE
Salem, OR 97312

1. Head south on High St SE toward Mill St SE
2. Turn left at Mission St SE
3. Turn left at 17th St SE
4. Turn right at Silverton Rd NE
5. Turn right at Paradise Alley Rd NE
6. Turn left at W Main St
Destination will be on the right

- 0.3 mi
- 0.9 mi
- 2.4 mi
- 10.1 mi
- 1.0 mi
- 0.1 mi

B 895 W Main St
Silverton, OR 97381

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2010, Google

[Report a problem](#)

6:00 p.m. – 7:30 p.m. **Dinner**
The Oregon Garden’s Orchid Room A

Friday, February 19, 2010 – Casual attire for meetings and business attire for President’s Reception and dinner.

8:00 a.m. – 9:00 a.m. **Executive Director Evaluation Committee** (Garcia, Kent, Fisher, Piucci, Haglund)
The Oregon Garden’s Trillium Room

9:00 a.m. – 12:00 p.m. **Board of Governors Meeting**
The Oregon Garden’s Trillium Room

12:00 p.m. – 1:00 p.m. **Lunch**
The Oregon Garden’s Orchid Room A

1:00 p.m. – 3:00 p.m. **Board of Governors Meeting**
The Oregon Garden’s Trillium Room

3:00 p.m. – 4:00 p.m. **Joint Meeting – Budget & Finance and Policy & Governance**
The Oregon Garden’s Trillium Room

5:30 p.m. – 7:00 p.m. **President’s Reception** – with the local bar and legislators
The Oregon Garden’s Orchid Room A

7:30 p.m. – 9:00 p.m. **Reception/Dinner**
BOG, ONLD, and Leadership College
The Oregon Garden’s Orchid Room A

NO MEETING **Appellate Screening Committee** (Kent, DiIaconi, Garcia, Johnnie, Johnson, Larson, Matsumonji)

NO MEETING **Public Member Selection Committee** (Lord, Matsumonji, Naucler, O’Connor)

Oregon State Bar
Meeting of the Board of Governors
 February 19, 2010
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00 a.m. on February 19, 2010; 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, February 19, 2010, 9:00 a.m.

9:00 a.m.

- | | | | |
|----|-------------------------------------------------|--------|---------|
| 1. | Call to Order/Finalization of the Agenda | Action | |
| 2. | Inspiration Words | Inform | |
| 3. | Report of Officers | | |
| A. | Report of the President [Ms. Evans] | Inform | Written |
| 1. | Western States Bar Conference | Inform | |
| B. | Report of the President-elect [Mr. Piucci] | Inform | Written |
| C. | Report of the Executive Director [Ms. Schmid] | | |
| 1. | ED Report | Inform | Written |

9:30 a.m.

- | | | | |
|----|------------------------------------------------|--------|----------|
| 2. | Long Range Plan | Inform | Separate |
| D. | Oregon New Lawyers Division [Ms. Cousineau] | | |
| 1. | ONLD Report | Inform | 14 |
| 2. | ONLD Workshops | Inform | 15-17 |
| 3. | ONLD Master Calendar | Inform | 18-19 |
| 4. | Professional Liability Fund [Mr. Zarov] | | |

9:50 a.m.

- | | | | |
|----|----------------------------------------------------|--------|-------|
| A. | PLF Bylaws and Policy Manual - Chapter 6 Revisions | Action | 20-25 |
|----|----------------------------------------------------|--------|-------|

5. Special Appearances

10:05 a.m.

A. Disciplinary Counsel's Office [Mr. Sapiro]

- 1. Board's Role in Reinstatements Inform 26-36

6. Rules and Ethics Opinions

10:30 a.m.

A. Revision of OSB Formal Op. No. 2005-48

- 1. Revised Opinion Action 37-40

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

10:35 a.m.

A. Client Security Fund [Mr. Larson]

- 1. CSF Appeal No. 09-32 SHINN (Doblie)
 - a. Memo Regarding Appeal Inform 41-43
 - b. PDF Material from Doblie Action 44-58
- 2. CSF Appeal No. 09- 04 SUSHIDA (Street) Action 59-77

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

10:20 a.m.

A. Access to Justice Committee [Ms. Johnnie]

- 1. Update Inform

B. Budget and Finance Committee [Mr. Kent]

- 1. Revised Investment Portfolio Action 78-81
 - *Bylaw 7.4 Investment Policy has been revised by the committee and is presented to the board for approval.*
- 2. Request from SSFP Section on BarBooks Subscription Rate Action 82-83
 - *The section has requested to be treated as a virtual office group to receive a reduced subscription rate for its members. The committee will provide a recommendation.*
- 3. 2009 Financial Report Inform 84-86
 - *An oral report of the final, or near final, financial report for 2009 will be given at the meeting.*

- | | | | |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------|
| 4. | Guidelines for BOG Special Account | Action | 87-88 |
| | ➤ <i>The committee has reviewed guidelines for the management of the board members self-funding a special account for alcoholic beverages at board sponsored events and is presenting to the board for action.</i> | | |

10:50 a.m.

- | | | | |
|----|----------------------------------------|--------|--|
| C. | Member Services Committee [Ms. Fisher] | | |
| 1. | Update | Inform | |

10:55 a.m.

- | | | | |
|----|---------------------------------------------------------------------------------------------|--------|-------|
| D. | Policy and Governance Committee [Ms. Naucler] | | |
| | ➤ <i>See P&G Committee packet for additional information for items C.1 through C.8.</i> | | |
| 1. | Implementing the Senior Lawyers Task Force Recommendations | Action | |
| 2. | BOG Spouse/Guest Expense Reimbursement Policy | Action | |
| 3. | Adoption of Bar Rule of Procedure for Ethics School | Action | |
| 4. | Miscellaneous MCLE Regulation Amendments | Action | |
| 5. | Bar Rule of Procedure Changes from Redistricting | Action | |
| 6. | Bylaw 3.4 Amendment re: Distribution of HOD Agendas | Action | |
| 7. | Misc. Housekeeping Bylaw Amendments | Action | |
| 8. | CSF Rule 2.2.1 Amendment | Action | |
| 9. | Proposed Amendments to LPRC Statute | Action | 89-92 |
| E. | Public Affairs Committee [Mr. Piucci] | | |
| 1. | Legislative Update | Inform | Grabe |

12:00 p.m.

9. **Lunch**

1:00 p.m.

10. Consent Agenda	Action	pink
A. Approve Minutes		
1. Minutes of Open Session		
a. October 30, 2009	Action	93-113
b. November 6, 2009	Action	114-116
c. December 28, 2009	Action	117
d. January 9, 2010	Action	118
2. Minutes of Judicial Proceedings		
a. October 30, 2009	Action	119-120
3. Minutes of Closed Session		
a. October 30, 2009	Action	121
B. Appointments Committee		
1. Appoint Members to Various Bar Committees, Councils and Boards	Action	Handout
C. Client Security Fund		
1. No. 09-21 HORTON (Cameron) - \$3,500	Action	122-123
2. No. 09-24 HORTON (Ryan) - \$8,718	Action	123-124
3. No. 09-27 HORTON (Nguyen) - \$50,000.00	Action	124
4. No. 09-30 OAKY (Hartwig) - \$2,500	Action	124-125
5. No. 09-31 OAKY (Poetzl) - \$1,500	Action	125
6. No. 09-20 COULTER (Warren) - \$200	Action	125-126
7. No. 09-33 COULTER (Puderbaugh) - \$500	Action	126-127
8. No. 09-36 COULTER (Christiansen) - \$675	Action	127
9. No. 09-23 DOUGLAS (Johnson) \$4,750.00	Action	127-128
D. Ratifying Endorsement of MBA Statement of Diversity Principles	Action	129
1. Statement of Diversity Principles	Action	130

11.	Default Agenda	Inform	blue
	A. Access to Justice Committee		
	1. Minutes - October 30, 2009	Inform	131
	2. Minutes - January 15, 2010	Inform	132-133
	B. Budget and Finance Committee		
	1. Minutes - October 30, 2009	Inform	134-135
	2. Minutes - January 15, 2010	Inform	136-137
	C. Member Services Committee		
	1. Minutes - January 15, 2010	Inform	138
	D. Policy and Governance Committee		
	1. Minutes - October 30, 2009	Inform	139
	2. Minutes - January 15, 2010	Inform	140
	E. Public Affairs Committee		
	1. Minutes - January 15, 2010	Inform	141-142
	F. CSF Claims Report	Inform	143-145

12. Closed Sessions

1:00 p.m.

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

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

DATE	EVENT
November 3, 2009	Attended the Diversity Summit at the Bar Center
November 5, 2009	Participated in all-day interviews of potential financial advisors at the Bar Center
November 6, 2009	Met with the Executive Director and the Evaluation Committee at the Bar Center
	Attended the HOD meeting at the Bar Center
December 8, 2009	Participated in a panel discussion regarding leadership roles for women in non-profit organizations, presented by the Mary Leonard Law Society, at Willamette University
December 11, 2009	Attended PLF meeting at the Bar Center and annual dinner in Portland
December 17, 2009	Attended regular meeting with the Chief Justice at the Supreme Court in Salem
January 8, 2010	Attended the Chief Justice's State of the Court address at the Salem City Club
January 12, 2010	Attended the Campaign for Equal Justice Reception at the Governor's Mansion in Salem
January 14, 2010	Guest speaker at Oregon Minority Lawyers Association luncheon in Portland
January 15, 2010	BOG Committee Meetings at the Bar Center
January 21, 2010	Led the House of Delegates portion of the Conference of Bar Leaders at the Bar Center
	Attended the Marion County Bar Association Awards Dinner
January 22, 2010	Acted as a Judge at the Classroom Law Project "We the People" Constitutional Competition at the State Capitol
February 3 - 7, 2010	Attended the ABA National Conference of Bar Presidents in Orlando, Florida, including a dinner event hosted by Fastcase and a reception hosted by the ABA Fellows, as a guest of Judge Rosenblum
February 11, 2010	Attended the regular meeting with the Chief Justice at the Supreme Court in Salem.
February 12, 2010	Attended the PLF meeting at the Bar Center

Mission

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.

Functions of the Oregon State Bar

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

And the bar does this as a “public” corporation – as an instrumentality of the Oregon Supreme Court.

Values of the Oregon State Bar

Integrity

Integrity is the measure of the bar’s values through its actions. The bar’s activities will be, in all cases, consistent with its values.

Fairness

The bar embraces its diverse constituencies and is committed to the elimination of bias in the justice system.

Leadership

The bar will actively pursue its vision. This requires the bar and all individual members to exert leadership to advance their goals.

Diversity

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

Promote the Rule of the Law

The rule of law is the premise of the democratic form of government. The bar promotes the rule of law as the best means to resolve conflict and achieve equality. The rule of law underpins all of the programs and services the bar provides.

Accountability

The bar is committed to accountability for its decisions and actions and will provide regular means of communicating its achievements to its various constituencies.

Excellence

Excellence is a fundamental goal in the delivery of programs and services by the bar. Since excellence has no boundary, the bar strives for continuous improvement. The bar will benchmark its activities to organizations who exhibit “best practices” in order to assure high quality and high performance in its programs and services.

About the Bar

The Oregon State Bar (OSB) was established in 1935 by the Oregon Legislative Assembly to license and discipline lawyers, regulate the practice of law and provide a variety of services to bar members and the public. The bar is a public corporation and an instrumentality of the Oregon Judicial Department, funded by membership and program fees. It is not a state agency and does not receive any financial support or taxpayer dollars from the state's general fund.

Membership

The OSB has nearly 14,000 active members. Approximately half of our members engage in the private practice of law. The rest work primarily in government, corporate and business settings. More than 4,500 of our active members are women. More than 2,000 reside in a state other than Oregon.

Governance

A sixteen-member volunteer Board of Governors oversees the activities of the OSB. Twelve board members are lawyers, elected by the membership by geographic region. The other four board members are public (non-lawyer) members appointed based on their areas of interest and expertise. The Board of Governors has established numerous committees and interests group to advise and make recommendations to the board on matters involving the legal profession and justice system.

The OSB House of Delegates serves as the representative assembly of the membership, voting on proposed changes to rules, membership fees and other matters. It has more than 200 members, most of whom are elected by geographic region. Other delegates represent OSB Sections and local bar associations, and six public members are appointed by the Board of Governors on a regional basis. The House of Delegates meets annually.

The Oregon Supreme Court has authority over appointments to the Disciplinary Board and the Board of Bar Examiners. Members of these boards are also volunteers, and receive staff and administrative support from the OSB.

The OSB Executive Director oversees bar operations, managing a staff of approximately 90 people and an \$11 million annual budget.

Summary
Board of Governors Strategic Planning Session
Saturday, October 31, 2009

Issues for Group Discussions

1. Joint Budget & Finance and Policy & Governance (Moderators: Kathy Evans and Rod Wegener)
 - a) Integrated electronic information for members, including universal member access to BarBooks, Uniform Jury Instructions, Legislative Update; SSFP proposal.
 - b) Sustainability Task Force recommendations
 - c) MCLE reporting issues for “Access to Justice” credits

2. Member Services (Moderators: Ann Fisher and Gerry Gaydos, with Anna Zanolli as staff resource.)
 - a) Senior Lawyer Task Force recommendations
 - b) Urban/Rural Task Force recommendations
 - c) Review of Section Survey:
 - i. Section CLE capture and distribution, financial impact (staff, capital investment)
 - ii. Other new services indicated, financial impact (administration fees, fees for service)

3. Public Affairs (Moderators: Steve Pucci and Susan Grabe)
 - a) Effect of repeal of state tax measures
 - b) Response to emerging tort reform issues
 - c) Proposed SB 818 (Cultural competency MCLE requirement)

4. Access to Justice (Moderators: Terry Wright and Teresa Schmid)
 - a) Formation of joint Task Force with OLF and legal services organizations to address potential impact of eliminating restrictions on LSC funding.
 - b) Formation of Bench-Bar Task Force on Family Law forms and Services.
 - c) RIS: impact of Modest Means Program changes and overview of lawyer referral models. Uniform Jury Instructions, Legislative Update; SSFP proposal.

Questions for Reports

- What decisions or actions on this issue might be before the BOG in 2010?
- What input or information will the BOG need in order to address the issue?
- To which BOG committee(s) should the issue be assigned to develop that information?

Summary by Break-Out Group and Issues

Issue	BOG Decisions or Action?	Input/Information Needed?	Committees Assigned?
1(a): Universal access to BarBooks, etc.	<p>Conversion to exclusively electronic publications.</p> <p>Moving from subscription model to universal access.</p> <p>Creating the new model for service delivery.</p>	We need a structural model & budget forecast.	B & F initially, with ultimate impact on all committees
1(b): Sustainability T.F.	<p>Not recommending any further rule changes as necessary.</p> <p>Heighten awareness of sustainability bylaw by having staff report to BOG & membership annually on progress</p> <p>Communicate with membership on issue via website.</p>	We need sustainability facts that we can distribute via website to inspire and promote policy.	P & G
1(c): MCLE Reporting	<p>Direct the MCLE Committee to communicate more clearly to membership the alternate reporting period.</p> <p>No change to actual rule recommended.</p> <p>(Communicate to CLE providers the effect of this model)</p>	<p>Regulation from MCLE Committee to implement rule.</p> <p>Ideas from MCLE to better educate on requirements.</p>	P & G

Issue	BOG Decisions or Action?	Input/Information Needed?	Committees Assigned?
2(a): Senior Lawyer T.F.	<p>Explore other models (division, section, etc.)</p> <p>Pursue a senior division using the recommendation of the T.F. and focusing on providing a positive resource for lawyers.</p>	<p>What role will PLF play?</p> <p>Cost of this support?</p> <p>Survey membership for needs assessment.</p> <p>Acquisition of group disability insurance.</p> <p>Assess need for socializing within this group.</p> <p>ORS Chapter 9 revisions needed.</p>	B & F Member Services Public Affairs (for statutory changes.)
2(b): Urban/Rural T.F.	Whether to go forward with the statutory recommendations outlined in the T.F. report.	<p>Political assessment.</p> <p>Economic forecasts and impact.</p> <p>Member input survey.</p>	Public Affairs
2(c): Section Survey	Making effective use of current and emerging technology to effectuate the ultimate goals of the bar.	<p>Explore different models.</p> <p>Obtain specifications from staff.</p> <p>Needs assessment of sections.</p> <p>Long range capital improvement plan.</p> <p>Communications with local bars.</p>	<p>Member Services & section liaisons</p> <p>Member Services & f & O for finances.</p>

Issue	BOG Decisions or Action?	Input/Information Needed?	Committees Assigned?
3(a): State tax measures	Public information no impact of budget cuts on court services. Coalition building. Adopt system approach to balanced reductions to court and public safety.	Results of Jan. 26 vote & legislative response in February session. Need to support comprehensive tax reform.	Public Affairs.
3(b): Tort reform issues	Monitor its development. Allocate funds for polling & public education.	Prepare education on impact of tort reform on court system & lawyers. P.R. on Military Assistance Panel. Utilize cable access programming.	Public Affairs
3(c): SB 818	Kathy should write a letter to Cal Henry inviting him to meet	Background information to help inform the discussion.	Public Affairs
4(a): LSC funding T.F.	Composition of T.F. Committee charge. Sunset date/deadline Resources Evaluation standards of legal services programs	Financial cost Reallocation of staff time. Monitoring progress of elimination of restrictions Monitoring and approving recommendations re: evaluation stats & committee report.	Acc. to Justice (most) Public Affairs (monitoring national developments) B & F (to decide allocation of resources and year)

Issue	BOG Decisions or Action?	Input/Information Needed?	Committees Assigned?
4(b): Bench-Bar T.F.	Implement the T.F. Facilitate putting membership of T.F. together. Financial impact.	Financial information Periodic reports Implementation of recommendations and impact on Bar.	Acc. To Justice B & F Public Affairs
5(c): RIS models	Should we change RIS model? What should be goals of change? If new model, should we use space on market for rent in new building? What should OSB's role be in upcoming national LRIS 2010 conference in Portland?	Background/alternative models What is going on nationally? Bring in ABA evaluator (free!)	Acc. To Justice B & F (New Task Force?)

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 18, 2010
Memo Date: February 5, 2010
From: Jessica Cousineau, Oregon New Lawyers Division Chair
Re: ONLD Report

To begin the year the ONLD Executive Committee met in Vernonia for their annual retreat and January meeting. In addition to continuing the projects the Executive Committee administered last year, we are enthusiastic about creating a Facebook page and working with Kathy Evens and the BOG on issues related to BarBooks and the solo and small firm practitioners.

Since the last BOG meeting, members of the ONLD attended and hosted several events. In early November the ONLD's annual meeting brought more than 100 new lawyers together in Portland, the following day the CLE Subcommittee executed a full-day CLE program with three tracks of programming. In December, the ONLD hosted a workshop in Eugene focusing on the future of professionalism and the practice of law. A report of the conference is attached.

January 21 was the first brown bag CLE seminar held at the Multnomah County Courthouse this year. Last year the ONLD saw a growth in seminar attendance and based off January's attendance, we expect the same this year. Future programs are scheduled each month for the remainder of this year. This year the subcommittee will also be exploring avenues that will allow live streaming of CLE programs to more of the ONLD membership.

The Law Related Education Subcommittee has finalized the 2010 Essay Contest materials, which will be mailed to all Oregon high schools in March. The contest offers students an opportunity to compete for a \$500, \$350, or \$250 scholarship (respectively for first, second, and third place) by demonstrating their analytical and writing skills in a persuasive essay.

We appreciate Ann Fisher's support and confidence shown by allowing the ONLD to have representatives on the Rural/Urban Split Task Force. Tamara Gledhill and James Bruce are eager to participate on the task force and look forward to representing the ONLD.

ONLD FUTURES WORKSHOP

Eugene, OR

December 10th, 2009

Conference Report

Background: In September of 2008, the Oregon State Bar convened lawyers and others for a futures conference in Bend. Nearly 150 people met to discuss issues and priorities related to the future of the practice of law in Oregon in three topic areas: 1) technology, 2) the practice of law, and 3) diversity and changing demographics. Based on this conference, a document was created identifying the generational shift in Oregon practice, shifts in practice in each of the topic areas, and proposed action items for the Oregon State Bar.

The OSB New Lawyers Division (ONLD), determined to continue the conversation on the future of the profession. The division created a subcommittee that collected information from the Multnomah Young Lawyers Section Futures Summit, the Washington State Bar futures conference, and the ABA futures event. The subcommittee then organized a Futures Workshop for new lawyers to focus on challenges and opportunities the future will present the legal profession at the Wayne Morse US Courthouse in Eugene, Oregon on December 10th, 2009..

The Futures Workshop featured a presentation by the Honorable Judge John D. Acosta titled “Professionalism in the Future: The Effect of Technology on Professionalism” and then the attendees broke into two discussion groups tasked with identifying three challenges that will arise in the next years that need to be addressed.

Presentation Summary: Judge Acosta presented on technology and its effect on professionalism. Professionalism is distinguished from ethical rules as things a lawyer should do in pursuit of the profession, rather than things a lawyer must do to maintain bar membership. Recent examples of attorneys and judges misusing emails, the use of Facebook to smear the reputation of a local attorney, and the revocation of health coverage due to pictures posted on a social networking site highlight how new communication methods are affecting the profession.

The profession is also taking advantage of technology in many ways, forcing changes in practice, including electronic communication, searches and filings. Lawyers adopt technology advances at different rates, and this creates imbalances that can create professionalism concerns.

Looking at specific areas that technology affects the practice of law, the first and most discussed is the effect of email communication. Email is inexpensive, immediate and capable of containing large quantities of information. However, it also operates simultaneously as a convenient informal conversation method and a formal written communication. Email can generate boldness and incivility due to its “impersonal” nature. Email may also reduce the quality of writing, reduce the need for personal communication and reduce collegiality. Text messages create similar concerns.

More importantly, electronic communications are easily forwarded, but not easily destroyed. This can cause important ethical problems under privacy, attorney-client privilege, and document destruction requirements after a case concludes.

Further, clients and attorneys have come to expect 24/7 availability. There is additional pressure to answer cell phones, send and receive emails and text messages during meetings with clients. There are generational differences as to the appropriateness of this behavior that needs to be recognized as well.

Other technology on the rise is the expansion of social networking, attorney blogging, and internet research. Each of these create interesting professional issues. Social networking by attorneys can publicize behaviors that are not considered professional, but can also create a forum to attack reputation and credibility. Clients access to this and client's own social networking can damage the both the attorney-client relationship and the attorney-client privilege. These sites will also be valuable as evidence more and more going forward.

Blogs, and responses to internet lists can constitute legal advice, but are critical opportunities to advertise and show expertise creating familiar ethical issues. Internet research can be conducted by lay people, meaning that there is greater access to legal advice, but a greater propensity to do things pro se. The sanctity of the courtroom is also at risk due to the enhanced proximity to information.

Judge Acosta finished by reminding everyone that professionalism is every attorney's responsibility, and that young attorneys must model behavior that we want to be afforded others.

Discussion Summary:

The participants of the workshop broke into groups to discuss the OSB Futures Conference report as well as the presentation, and congregated to provide recommendations for the OSB as issues that most immediately require action related to legal professionalism in the future.

- 1) Develop Electronic Communication Tips (or more formally Best Practices): Create a list that contains do's and don'ts for attorneys, electronic storage recommendations, IT personnel access information, instructions for attorneys to use with clients, including instructions for setting reasonable expectations for communication and preserving the privilege of communications, opponent communications, and information on metadata and hidden information. **PLF may be appropriate here, and could include a "tech hotline"**. **
- 2) Sustainability vs. Professionalism: There will continue to be a push toward sustainability (and recent OSB events focus on this). However, as we encourage less paper, less travel, and less paper filing and less personal communication, we will risk losing the personal relationships between attorneys, with court personnel, with clients and with the public that are critical to maintaining a strong profession. We recognize the need to preserve the professional standards set here in Oregon.

- 3) Access to Justice: Technology necessarily enhances the ability to project services to farther reaches of the state (electronic communication) as well as to many people at once (through internet postings and “ask the expert” forum sites). This will necessary lead to concerns over the quality of advise, the unauthorized practice of law, and inappropriate marketing. The OSB needs to continue to ease the process of getting legal services to those typically unable to access it by continuing to invest in and provide electronic services through a web presence.
- 4) eDiscovery: The expense of e-Discovery and the expansion of the concept of “perfect” discovery advantage the tech savvy and the well-heeled. OSB should adopt comparable eDiscovery rules to those developed at the federal level. Oregon is one of a small handful of states that have either not adopted or at least have under consideration the adoption of eDiscovery rules.

2010 ONLD Master Calendar

Last updated February 3, 2010

Date	Time	Event	Location
February 1		Deadline to report pro bono hours	www.osbar.org/probono
February 18	Noon	Networking and Organization ONLD Brown Bag CLE	Multnomah County Court
February 18-20	All day	BOG & BOG Committee Meetings	Oregon Garden, Salem
February 20	9:30 a.m.	Executive Committee Meeting	OSB, Tigard
March 18	Noon	Product Liability Defense	Multnomah County Court
March 19	Morning	BOG Committee Meetings	OSB, Tigard
March 20	9:00 a.m.	Executive Committee Meeting	Cannery Pier Hotel, Astoria
March 25	Noon	Professionalism ONLD Brown Bag CLE	Multnomah County Court
April 15	Noon	HIPPA Primer and other issues in Healthcare Law ONLD Brown Bag CLE	Multnomah County Court
April 17	9:00 a.m.	Executive Committee Meeting	Holiday Inn, Eugene
April 29-30	All day	BOG & BOG Committee Meetings	OSB, Tigard
May 6		Swearing In Ceremony Reception	Willamette University
May 14	Morning	BOG Committee Meetings	OSB, Tigard
May 15	9:30 a.m.	Executive Committee Meeting Grade HS Essay Contests	OSB, Tigard
May 20	Noon	Employment Law primer for the new Practitioner ONLD Brown Bag CLE	Multnomah County Court
June 17	Noon	Child Abuse Reporting ONLD Brown Bag CLE	Multnomah County Court
June 17-18	All day	BOG & BOG Committee Meetings	Geiser Grand Hotel, Baker City
June 18	TBD	Dinner with BOG	Geiser Grand Hotel, Baker City
June 19	9:00 a.m.	Executive Committee Meeting	Geiser Grand Hotel, Baker City
July 15	Noon	Fundamental and current events in Intellectual Property Law ONLD Brown Bag CLE	Multnomah County Court

Bold indicates an update since the last version

July 16	Morning	BOG Committee Meetings	OSB, Tigard
August 5-8	Various	OLIO	TBD
August 12-13	All day	BOG & BOG Committee Meetings	OSB, Tigard
August 18-23	11:00 a.m.	Lane County Fair	Eugene
August 19	Noon	IP Issues for Business Lawyers ONLD Brown Bag CLE	Multnomah County Court
August 21	9:30 a.m.	Executive Committee Meeting	OSB, Tigard
September 16	Noon	Jury Selection ONLD Brown Bag CLE	Multnomah County Court
September 17	All day	Constitution Day	Oregon
September 24	Morning	BOG Committee Meetings	OSB, Tigard
September 25	9:00 a.m.	Executive Committee Meeting	TBD, Bend
October 7		Swearing In Ceremony Reception	Willamette University
October 21	Noon	Enforcing Victim's Rights in the Criminal Justice System ONLD Brown Bag CLE	Multnomah County Court
October 23	9:30 a.m.	Executive Committee Meeting	OSB, Tigard
October 23	TBD	BOWLIO	Valley Lanes - Beaverton
October 29	1:30 p.m.	HOD meeting	OSB, Tigard
November 11-14	All Day	BOG retreat	Timberline Lodge, Timberline
November 12	5:30 p.m.	ONLD Annual Meeting	TBD, Portland
November 18	Noon	Diversity Awareness ONLD Brown Bag CLE	Multnomah County Court
December 16	Noon	Ethics ONLD Brown Bag CLE	Multnomah County Court

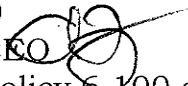
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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010

Memo Date: February 3, 2010

From: Ira Zarov – PLF CEO 

Re: Revision of PLF Policy 6.100 et. seq.

Action Recommended

Approve changes to PLF Policy 6.100 et. seq. The changes make clear that judges are eligible for Personal and Practice Management Assistance and the Oregon Attorney Assistance Program.

Background

In response to recent suggestions from judges, the OAAP and a group of local judges are working together to survey the needs of judges. In an effort to make sure that judges know that they are eligible for OAAP services, the PLF believes it would be useful to specifically refer to judges (in addition to lawyers) in the PLF Policy manual.

Chapter 6 of the PLF Policies applies to the Personal and Practice Management Assistance programs. A tracked version of PLF Policies, Chapter 6, with the proposed changes is included as an attachment. Those changes were approved by the PLF Board of Directors during their December 2009 meeting.

Attachment

CHAPTER 6 - PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE

6.100 GENERAL STATEMENT

* Personal and practice management assistance programs are of primary importance to the Professional Liability Fund to reduce the frequency and severity of future claims. Personal and practice management programs will include 1) educating lawyers on avoiding malpractice 2) practice management assistance and 3) personal assistance. The education activities will include collection and analysis of claims data, periodic publications, handbooks, workshops, seminars (including participation in programs and seminars of the Oregon State Bar and other organizations) and audiotapes and videotapes of programs. Practice management assistance will include assistance with docket control, tickler systems, conflict of interest systems, mail handling, billing, trust accounting, general accounting, time management, file management, client communications, computer systems, and other practice management issues. Personal assistance will include assistance with alcoholism, drug addiction, burnout, career change and satisfaction, depression, anxiety, gambling addiction, procrastination, relationship issues, stress management, time management or other distress that impairs a lawyer's or judge's ability to function.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 8/27/04; BOG 10/13/04)

6.150 PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE (PLF-PPMAC)

(A) The PLF Personal and Practice Management Assistance Committee (PLF-PPMAC) has been created by the Board of Governors under OSB Bylaw 24 pursuant to ORS 9.568. The members of the PLF Board of Directors will serve as the members of the PLF-PPMAC (the "Committee").

(BOD 6/17/05; BOG 6/24/05)

(B) (1) The Committee will provide personal and practice management assistance through the Oregon Attorney Assistance Program (OAAP) and the Practice Management Adviser Program (PMAP) described in these policies. The Committee delegates to PLF CEO and OAAP Executive Director such authority as is necessary to administer those programs, to receive complaints and referrals under ORS 9.568(6), and to provide assistance to attorneys pursuant to PLF Policy 6.100. All assistance will be provided in accordance with the Bylaws and Policies of the Oregon State Bar and of the Professional Liability Fund. Neither the Committee nor the PLF CEO will request or require disclosure of the names of participants in the OAAP or PMAP.

(BOD 8/27/04; BOG 10/13/04)

(2) PLF CEO or OAAP Executive Director will report general program results to the Committee at each regularly scheduled meeting of the Committee, and will provide periodic written reports to the Committee at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions for program changes, proposed amendments to

applicable bylaws and policies, and such other general information as the Committee may request. However, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(BOD 6/20/03; BOG 9/18/03)

(C) The Committee will meet with the Board of Governors and provide periodic written reports of its activities at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions for program changes, proposed amendments to applicable bylaws and policies, and such other general information as the Board of Governors may request. However, the identity of any person who has received assistance from the OAAP or the PMAP will not be requested or required to be disclosed, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(D) For the purposes of ORS 9.568, all PLF employees as well as all other persons providing help through, at the request of, or with the approval of the OAAP and PMAP, will be deemed to be agents of the PLF-PPMAC (in addition to all others who fall within the definition of ORS 9.568(8)).

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00)

6.200 OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP)

The Professional Liability Fund has established an assistance program called the Oregon Attorney Assistance Program (OAAP). The purpose of the OAAP is to provide personal assistance to attorneys and judges pursuant to ORS 9.568.

(A) The purpose of the OAAP is:

(1) To provide assistance to Oregon lawyers and judges who experience alcoholism, drug addiction, burnout, career transition, depression, anxiety, compulsive disorders (including gambling addiction), time management issues, relationship issues, stress, or other distress that impairs a lawyer's or judge's ability to function:

(2) To aid in the curtailment of malpractice claims and disciplinary complaints;

(3) To educate the legal community about the diseases of alcoholism, chemical dependency, depression, and other distress that impacts a lawyer's or judge's ability to function effectively; and

(4) To educate the legal community and families of Oregon lawyers and judges about the scope of services offered by the OAAP.

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(B) The OAAP will be based on the concept of lawyers helping lawyers.

* (C) In order to assist Oregon lawyers and judges, the OAAP will be available to all Oregon lawyers and Oregon judges. In addition, to the extent permitted by available resources, the OAAP will also be available to law office staff, court staff, families of lawyers and judges, and law students in Oregon law schools.

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* (D) The OAAP will be conducted in the strictest basis of confidentiality. The OAAP program will use federal and state regulations on confidentiality of alcohol and chemical dependency programs as a basis for all OAAP guidelines and procedures. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by any person will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the lawyer or judge accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

* (E) OAAP services will be provided at a physical location that is separate from the Oregon State Bar and the Oregon State Bar Professional Liability Fund offices in order to maintain the program's confidentiality and anonymity and to enhance participation in the programs by lawyers and judges seeking assistance.

(F) The OAAP will not maintain records of participant's names or the nature of participation. Statistical data will be maintained including the number of people utilizing the OAAP. Statistical reports will be produced periodically as requested by the program Director.

(G) The OAAP will be administered by attorneys who are trained to provide problem identification, assessment, motivation, and referral to appropriate services. All OAAP Attorney Counselors will (1) be licensed attorneys (2) have experience or training in alcohol and chemical dependency, intervention, mental health issues, group dynamics, and public speaking, (3) have an understanding of or experience with 12-Step programs, and (4) if in recovery, have at least five years of consecutive recovery. OAAP Attorney Counselors will attain CEAP (Certified Employee Assistance Professional), CADC (Certified Alcohol and Drug Counselor), or other comparable counseling credentials within four years of employment and will maintain the certification or credential in addition to other appropriate continuing education.

(H) The OAAP Attorney Counselors will provide knowledgeable referrals to the community, public and private resources for diagnostic and/or treatment services including therapists, treatment centers or other appropriate community resources. The OAAP Attorney Counselors may also refer individuals to the attorney support network of the OAAP or other available organizations, agencies or resources.

(BOD 6/20/03; BOG 9/18/03)

(I) Involvement in the OAAP will be at no or nominal cost to the program participant.

(BOD 6/21/91, BOG 10/1/91; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 8/9/01; BOG 11/17/01; BOD 2/8/02; BOG 4/5/02; BOD 6/20/03; BOG 9/18/03)

6.250 PRACTICE MANAGEMENT ADVISOR PROGRAM (PMAP)

The Professional Liability Fund has established an assistance program called the Practice Management Advisor Program (PMAP). The purpose of the PMAP is to provide practice management assistance to attorneys pursuant to ORS 9.568.

(A) The PMAP shall:

(1) provide assistance to Oregon attorneys in the areas of mail handling, conflict of interest systems, computer software and hardware, general and trust accounting, tickler systems, client relations, time management, and billing systems.

(2) aid in the curtailment of malpractice claims and disciplinary complaints arising from practice management errors.

(3) educate the legal community about practice management issues.

(B) The PMAP will be available to all Oregon lawyers, Oregon judges, and Oregon law students.

(C) The Practice Management Advisor Program will be conducted on the strictest basis of confidentiality. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by any person will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the lawyer or judge accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

(BOD 02/08/08; BOG 02/22/08)

(D) The PMAP practice management advisers will have (1) a minimum of five years experience in law office systems and management, (2) experience and expertise in

teaching, (3) familiarity with a wide range of computer software and hardware, and (4) excellent interpersonal skills.

(E) Involvement in the PMAP will be at no or nominal cost to the program participant.

(BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 6/20/03; BOG 9/18/03)

6.300 CONFIDENTIALITY

| All personal and practice management assistance programs provided by the Oregon Attorney Assistance Program (OAAP) and Practice Management Advisor Program (PMAP) will be conducted on the strictest basis of confidentiality. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by an attorney will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the lawyer or judge accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

(BOD 8/6/99; BOG 9/16/99; BOD 8/27/04; BOG 10/13/04; BOD 02/08/08; BOG 02/22/08)

6.400 COOPERATION WITH BAR DISCIPLINE COUNSEL AND STATE LAWYERS' ASSISTANCE COMMITTEE

| The PLF's personal and practice management assistance programs will cooperate with the Oregon State Bar's Disciplinary Counsel and the State Lawyers Assistance Committee in the following areas:

(1) provision of general claims and other statistics as appropriate which do not disclose the identity of any lawyer being assisted by the personal and practice management assistance programs and which does not otherwise breach Policy 6.150 concerning confidentiality, and

(2) supervision and progress reports about an attorney who is already within the jurisdiction of the State Bar's disciplinary process or the State Lawyers Assistance Committee and who is undergoing a prescribed program of treatment or remedial efforts under the supervision of PLF staff members. Such reports will be provided only with the prior approval of the attorney who is subject of the reports.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 8/27/04; BOG 10/13/04)

OREGON STATE BAR

Board of Governors Memo

Memo Date: October 13, 2009
From: Jeffrey D. Sapiro, Disciplinary Counsel – Ext. 319
Re: Board’s Responsibilities Concerning Reinstatements

Action Recommended

No action is necessary. This memo is designed to inform new board members and remind existing board members of the Board of Governors’ responsibilities in the consideration of reinstatement applications.

Discussion

1. Nature of Applications.

Every individual who is admitted to practice law in Oregon is admitted as an active member of the Oregon State Bar. However, not every lawyer remains an active bar member. Some voluntarily change their membership status to inactive or active pro bono, or resign. Some are suspended for administrative reasons (nonpayment of bar dues or the PLF assessment, noncompliance with MCLE requirements) or disciplinary reasons.

Every lawyer who relinquishes his or her active membership status, voluntarily or otherwise, is required to file an application for reinstatement in order to return to active status. The type of application required for any individual applicant will depend on the reason he or she is not an active member at the time of application, the length of time the individual has been in a status other than active, or both. For details about the various types of reinstatement applications, see the Bar Rules of Procedure (BRs) 8.1 to 8.5.

Most of the reinstatement applications that the Board of Governors reviews are filed under BR 8.1. These are the applicants who, according to the policy underlying the rules, require a higher level of scrutiny by the board and by the Supreme Court in order to determine whether they meet the qualifications necessary to return to the practice of law. These applicants fall into one of the following categories:

- Members who voluntarily resigned from the bar more than five years ago;
- Members who voluntarily transferred to inactive status more than five years ago;
- Members who were suspended for administrative reasons and did not seek reinstatement for more than five years;

- Members who were suspended for disciplinary reasons for more than six months, or were suspended for a lesser term but did not seek reinstatement for more than six months;
- Members who were involuntarily transferred to inactive status (due to mental illness or incapacity, or substance addiction).

2. Staff Investigations and Initial Board Review.

Disciplinary Counsel's Office (DCO) is responsible for investigating the merits of each reinstatement application and ultimately reporting our findings to the Board of Governors. BR 8.7(a). We make a variety of due diligence inquiries (criminal records check, credit report, DMV record, disciplinary history check in all jurisdictions, reference checks, litigation report) in all cases and make more extensive inquiries (applicant interviews, examination of tax or medical records, contact with past employers or opposing counsel, interviews with others) in cases where the applicant's background or circumstances warrant.

Notice that a reinstatement application has been filed under BR 8.1 is published in the Bar *Bulletin* with a request that persons with information relevant to the applicant's qualifications contact the bar.

The Board of Governors also receives notice that a BR 8.1 application has been filed, in the form of a short memo from staff that appears in board agenda materials while the investigation is ongoing. Placing these notices on the board agenda gives board members a preview of the applications that will require final board action at a later date. OSB Bylaw 6.103 provides that the board is not to take final action on an application the first time it comes before the board unless 2/3 of the board waives this "one meeting notice" requirement.

3. Standards to be Applied by the Board.

It is important to note that the Board of Governors is not adjudicating the merits of reinstatement applications. You will not hear directly from witnesses, make evidentiary rulings or render a court-like decision concerning applications. Rather, the board reviews DCO's written investigative report in each case, discusses the application and ultimately votes on a recommendation to the Oregon Supreme Court. It is then up to the court to take action on the board's recommendation, after a period of time in which an applicant can contest an adverse recommendation made by the board. In the case of such a contest, a formal contested reinstatement proceeding is initiated and the applicant has the opportunity (and the burden) to prove his or her qualifications before an adjudicative panel appointed by the court. The record of that proceeding then is reviewed by the Supreme Court and, after appellate briefs and argument, the court renders a decision.

The BRs establish the standards that the board must apply in making its recommendation to the Supreme Court. The standards are two-fold:

- Applicants must show that they possess “good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest,” BR 8.1(b); and
- Applicants must show that they have “the requisite learning and ability to practice law in this state.” BR 8.1(c).

4. Character and Fitness.

With most of the reinstatement applications submitted to the board, the applicant’s good moral character and fitness to practice law is not in question. If DCO uncovers something in its investigation that suggests otherwise, staff will highlight that issue for board consideration. In many cases, however, the highlighted issue will not be enough to result in an adverse recommendation by the board.

It becomes more difficult analytically when our investigation reveals that there is a significant question about an applicant’s character or fitness or when an applicant is seeking to return from a significant disciplinary suspension. For these cases, we look to the Supreme Court for guidance, in court decisions involving both reinstatement and initial admission applications. (The character and fitness standards for admission and reinstatement are similar.) From those decisions, we see a number of factors that may reflect on an applicant’s present moral character or fitness to practice law. An applicant must prove that he or she is “in all respects . . . a person who possesses the sense of ethical responsibility and the maturity of character to withstand the many temptations which [the applicant] will confront in the practice of law.” *In re Nash*, 317 Or 354, 362, 855 P2d 1112 (1993). We also see that “any substantial doubt about an applicant’s character must be resolved in favor of protecting the public by denying the application for reinstatement.” *In re Starr*, 330 Or 385, 389, 9 P3d 700 (2000).

a. Factors reflecting on present character or fitness:

(1) Has the applicant engaged in criminal conduct in the recent past? *In re Carter*, 334 Or 388, 49 P3d 792 (2002); *In re Parker*, 314 Or 143, 838 P2d 54 (1992); *In re Taylor*, 293 Or 285, 647 P2d 462 (1982).

(2) Has the applicant exhibited a lack of candor in dealing with others or in dealing with the bar in the admissions/reinstatement investigation? *In re Starr*, 330

Or 385, 9 P3d 700 (2000); *In re Bernath*, 327 Or 422, 962 P2d 685 (1998); *In re Fine*, 303 Or 314, 736 P2d 183 (1987).

(3) Does the applicant have a history of drug or alcohol dependency and, if so, has the applicant demonstrated adequate resolution of those problems? *In re Gunter*, 344 Or 368, 182 P3d 187, *recon* 344 Or 540 (2008); *In re Beers*, 339 Or 215, 118 P3d 784 (2005); *In re Covington*, 334 Or 376, 50 P3d 233 (2002); *In re Rowell*, 305 Or 584, 754 P2d 905 (1988).

(4) Has the applicant demonstrated financial responsibility in his or her professional and personal life? Filing for bankruptcy, by itself, is not a reason to deny reinstatement, but the bar may look into the reasons for the bankruptcy to determine if the applicant was financially irresponsible. *In re Gunter*, 344 Or 368, 182 P3d 187, *recon* 344 Or 540 (2008); *In re Scallon*, 327 Or 32, 956 P2d 982 (1998); *In re Taylor*, 293 Or 285, 647 P2d 462 (1982).

(5) Does the applicant have a history of mental health conditions that could impair the applicant's ability to practice, or has the applicant exhibited behavior indicative of mental health concerns? *In re Gear*, 342 Or 59, 149 P3d 136 (2006); *In re Zielinski*, 341 Or 559, 146 P3d 323 (2006).

b. Analysis regarding prior discipline.

A lawyer suspended in Oregon for a fixed period for disciplinary reasons is not reinstated automatically when the term of suspension expires. That lawyer has the burden of proving that he or she has the requisite character and fitness (see discussion above) for reinstatement. On the other hand, a suspended lawyer should not be excluded from consideration for reinstatement simply because his or her past misconduct was very serious.¹ Reformation, while often difficult to prove, is possible. *In re Jolles*, 235 Or 262, 383 P2d 388 (1963). It requires, however, more than the absence of additional misconduct since the date of suspension. *In re Nash*, 317 Or 354, 855 P2d 1112 (1993). The Supreme Court looks to a number of factors in deciding whether an applicant who engaged in past misconduct has reformed.

(1) Has the applicant acknowledged the wrongful nature of his or her past misdeeds, or does the applicant minimize or continue to excuse that conduct? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Gortmaker*, 308 Or 482, 782 P2d 421 (1989).

¹ Note that when conduct is so serious as to result in disbarment or involuntary (Form B) resignation, reinstatement is not an option. Disbarment and Form B resignation are permanent in this state. BR 6.1(e); BR 9.4.

(2) Has the applicant resolved the causes or conditions that led to the prior misconduct such that the court can be assured that similar conduct is not likely to recur? *In re Starr*, 330 Or 385, 9 P3d 700 (2000); *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Nash*, 317 Or 354, 855 P2d 1112 (1993).

(3) Has the applicant presented character evidence, particularly from people who knew the applicant over a course of time and can speak to the applicant's change in character? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Jaffee*, 319 Or 172, 874 P2d 1299 (1994).

(4) Has the applicant made restitution to those who were harmed by his or her prior misconduct? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Graham*, 299 Or 511, 703 P2d 970 (1985).

(5) Has the applicant engaged in activities for the public good? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996).

Ultimately, the inquiry is whether the applicant has demonstrated by clear and convincing evidence not only that he or she generally is of good moral character, but also that the applicant has overcome and will not again be influenced by the specific character flaw that led to the prior disciplinary action. *Griffith, supra*, 323 Or at 106.

5. Learning and Ability to Practice Law.

If the Board of Governors does not believe that an applicant has kept current in the law during a period when he or she was not an active bar member, BR 8.1(c) and OSB Bylaw 6.103 permit the board to recommend to the Supreme Court that, as a condition precedent to reinstatement, the applicant:

- Retake and pass the Oregon bar examination (something that the board has almost never recommended); or
- Successfully complete a prescribed course of CLE credits (which is a fairly common board recommendation).

There are several factors that the board considers in deciding whether to recommend a prescribed course of CLE credits as a condition of reinstatement. Some are found in BR 8.1(c): the length of time since the applicant was an active bar member; whether and when the applicant ever practiced law in Oregon; whether the applicant practiced law in any other jurisdiction while not active here; whether the applicant participated in CLE activities during the period of non-active status in this state.

Other factors that the board has considered in the past when deciding whether additional CLE credits are a necessary condition of reinstatement include:

- a. Whether the applicant is seeking reinstatement from a disciplinary suspension, as opposed to a period of voluntary inactive status or resignation. To the extent that CLE can be remedial, there is a rationale for requiring more CLE from a disciplined lawyer than other applicants;
- b. Whether the applicant, regardless of law-related experience, is licensed in another state and has been complying with that state's MCLE requirements;
- c. Whether the applicant's law-related experience was substantial and continuous, as opposed to occasional or episodic;
- d. Whether the applicant was employed in a governmental or business position that, while not a position as a lawyer or judge, required the applicant to work closely with a wide variety of legal issues;
- e. Whether the applicant had a lengthy or substantial legal career before he or she ceased being an active bar member;
- f. Whether the applicant's plans for employment upon reinstatement involve the same area of law that the applicant dealt with prior to reinstatement.

As a further guide to how the board has approached this "learning and ability" issue in the past, attached is a chart summarizing board decisions over the past year or so.

6. Temporary Reinstatements.

The intervals between Board of Governors meetings and the amount of time necessary to complete a reinstatement investigation can work against an applicant who has a job offer waiting or an Oregon client who needs immediate assistance. For this reason, some applicants request temporary reinstatement under BR 8.7(b). That rule permits the board to reinstate an applicant on a temporary basis pending completion of the investigation. Of course, this should be done only when we are close to finishing our due diligence inquiries and no adverse information has surfaced to date. Under those circumstances, the board has been known to invoke BR 8.7(b) at the first meeting an application is considered. (It is not necessary to waive the one meeting notice requirement to temporarily reinstate an applicant.)

7. Conditional Reinstatements.

The Bar Rules permit the board to recommend that an applicant be reinstated subject to certain conditions. BR 8.7(a). (One such condition – completion of MCLE credits, has already been mentioned.) An example in which this may be appropriate is when a lawyer has had an alcohol or drug dependency in the past, has gone through treatment successfully and has demonstrated sustained sobriety. That lawyer may benefit from, and the board may be more comfortable with, a reinstatement that is conditioned on the lawyer being monitored over 1-3 years for continued participation with Alcoholics Anonymous (AA) or the Oregon

Attorney Assistance Program (OAAP). The board can make that recommendation to the Supreme Court.²

Note, however, that conditional reinstatement should be used only when the board believes an applicant has demonstrated present good moral character and fitness, but could benefit from additional support to maintain that level of character and fitness over time. It should not be used when the board has substantial doubt about an applicant's present character and fitness, and is tempted to impose conditions as a hedge against the reason for that doubt. The Supreme Court has rejected agreements when it believes the latter circumstance exists.

8. Meeting Assignments.

Written material concerning reinstatements that come before the board at any particular meeting is part of the Judicial Proceedings Agenda, exempt from the public meetings law pursuant to ORS 192.690. The table of contents page for that portion of the agenda will reflect that each application is assigned to a board member [name shown in brackets] who leads the discussion at the meeting. A reporting board member should read the staff summary for the application assigned to him or her. The physical reinstatement files also are present at board meetings (in a labeled plastic bin) so that board members can review them prior to the full board discussion. You also will find a reporting protocol in your agenda materials, which essentially is a template designed to focus the discussion on relevant information for the full board.

This concludes the summary of board responsibilities concerning reinstatement applications. Feel free to contact me if you have any question about procedure or about a specific reinstatement application that has been assigned to you for discussion.

JDS

² In such a case, staff typically negotiates a conditional reinstatement agreement with the applicant, setting forth the specific terms of the treatment and monitoring arrangement, which is then presented to the court with the board's recommendation. Applicants in this position usually are motivated to enter into such an agreement because it is better than an alternative, adverse reinstatement recommendation.

**BR 8.1 Reinstatements
BOG Action re: CLE Conditions**

Meeting Date	Applicant	OSB Status	Experience/ Employment	CLE Conditions
June 2009	J. C.	Inactive 10 yrs	Continuous practice in other states	None
	K. E.	Inactive 11 yrs	Lobbyist, presided over APA hearings	25 CLE credits
	S. F.	\$ susp 7 yrs	Assisted with spouse's business	45 CLE credits
	K. J.	Inactive 6 yrs	BPA account executive; contract administration	25 CLE credits
	K. K.	Inactive 16 yrs	Continuous practice in other states	None
	C. S.	Inactive 8 yrs	DOJ Crime Victim Services Director; legal research and CLE speaking	None
	S. W.	Inactive 12 yrs	Continuous corp. counsel and practice in other states	None
April 2009	S. G.	Form A 18 yrs	ALJ '88 – '07	None
	L. M.	Inactive 9 yrs	Com. volunteer, energy consulting	45 CLE credits
	W. P.	Disc. susp. 9 yrs	Continuous legal research and writing employment	None
February 2009	A. D.	Inactive 16 yrs	Com. volunteer, small business	45 CLE credits

	T. H.	Inactive 7 yrs	Continuous military lawyer	None
	R. K.	Inactive 8 yrs	Practice in other state last four years	None
	D. N. Y.	Form A 6 yrs	Limited paralegal work	45 CLE credits
	S. N.	Inactive 7 yrs	Various policy, legislative and political positions	None
	S. O.	Inactive 6 yrs	Science writer and editor	45 CLE credits
	N. P.	Inactive 30 yrs	Continuous practice in other state	None
	J. S.	Inactive 7 yrs	Continuous practice in other state	None
	A. T.	Inactive 8 yrs	BOLI deputy commissioner; legislative staffer	None
November 2008	K. B.	Inactive 13 yrs	Seven yrs paralegal employment	None
	R. F.	Inactive 7 yrs	Continuous employment by US DOJ in other state	None
	A. G.	Pro bono 7 yrs	Limited pro bono volunteer	45 CLE credits
	J. N.	Inactive 10 yrs	Full-time law professor	None
	J. P.	Inactive 8 yrs	Document reviewer and translator	45 CLE credits
	S. R.	Inactive 8 yrs	Recent LLM degree	None
	S. T.	Inactive 21 yrs	ALJ for past 20 yrs	None
	A. W.	Pro bono 6 yrs	Consistent lawyer volunteer past 6 yrs; some CLE	None

	G. Y.	Inactive 6 yrs	Bank trust officer; 40 CLE credits	None
	D. Y.	Inactive 9 yrs	Compliance officer with investment firm; on-going CLE & training	None
September 2008	K. F.	Form A 3 yrs; inactive prior to that 5 yrs	Title officer, paralegal	25 CLE credits
	T. H.	Inactive 11 yrs	Continuous practice in other state	None
	T. H.	Inactive 7 yrs	ALJ for past 16 yrs	None
	M. T.	Inactive 6 yrs	Stay at home dad	45 CLE credits
July 2008	S. J.	Disc. susp. 2 yrs	Continuous practice in other state	None
	S. W.	Inactive 7 yrs	Continuous practice in other state	None
May 2008	S. C.	Inactive 14 yrs	Practice in other state past year	None
	R. C.	Inactive 14 yrs	Real estate consulting; 45 CLE credits	None
	K. F.	Inactive 9 yrs	Continuous practice in other state	None
	S. G.	Inactive 6 yrs	Military lawyer past 6 yrs; LLM degree	None
	L. H.	Inactive 9 yrs	Continuous practice in other state	None
	M. H.	Inactive 17 yrs	Financial analyst	45 CLE credits
	M. S.	Inactive 9 yrs	Teacher; stay at home dad	45 CLE credits

	M. S.	Inactive 16 yrs	Continuous practice in other state	None
February 2008	V. A.	Inactive 6 yrs	Family law mediator; some CLE training	25 CLE credits
	L. B.	Inactive 16 yrs	Lobbyist; political and administrative law consultant	None
	J. G.	Inactive 8 yrs; then Form A 1 yr	Loan officer; bankruptcy and foreclosure specialist; 15 CLE credits	30 CLE credits
	T. K.	Inactive 22 yrs	Director of admin. agencies	45 CLE credits
	R. N.	Inactive 7 yrs	Title officer; §1031 specialist; some CLE & training	30 CLE credits
	S. P.	Disc. susp. 6 yrs	Frequent pro bono volunteer past 2 yrs; 45 CLE credits	None

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
From: Sylvia E. Stevens, General Counsel
Re: Revision of OSB Formal Ethics Op. No. 2005-48

Action Recommended

Consider the Legal Ethics Committee's recommendation to revise OSB Formal Ethics Op. No. 2005-48 to conform to the changes in the Uniform Disposition of Unclaimed Property Act.

Background

The 2009 Legislature amended ORS Chapter 98 regarding the distribution of unclaimed property so that after January 1, 2010, unclaimed funds in Lawyer Trust Accounts will be paid to the OSB rather than to the Department of State Lands. According to the statute as revised, the funds are appropriated to the OSB solely for funding legal services provided through the Legal Services Program established by ORS 9.572.

The revised opinion sets out the basic obligations imposed by the act and offers a little more guidance to lawyers than the original opinion. The LEC voted unanimously in favor of the revisions.

FORMAL OPINION NO. 2005-48

**Trust Accounts:
Unclaimed Client Funds in Trust**

Facts:

Lawyer represented Client in obtaining a judgment against Defendant. When the judgment was obtained, it was not enforced because Defendant had no assets.

Some years later, Defendant delivered money to Lawyer to satisfy the judgment. Lawyer placed the funds received in Lawyer's trust account but was unable to contact Client, notwithstanding a diligent effort to do so.

Question:

What should Lawyer do with the sum held in trust for Client?

Conclusion:

See discussion.

Discussion:

Oregon RPC 1.15-1 provides, in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to Rule 1.15-2. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

.....

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third

person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. . . .

Oregon RPC 1.15-2 provides, in part:

(b) All client funds shall be deposited in the lawyer’s or law firm’s IOLTA account unless a particular client’s funds can earn net interest. . . .

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client’s benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

- (1) a separate account for each particular client or client matter; or
- (2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client’s funds and the payment thereof, net of any bank service charges, to each client.

(d) In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:

- (1) the amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (3) the rates of interest at financial institutions where the funds are to be deposited;
- (4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client’s benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm’s services, and the cost of preparing any tax-related documents to report or account for income accruing to the client’s benefit;
- (5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients and
- (6) any other circumstances that affect the ability of the client’s funds to earn a net return for the client.

(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine wither circumstances have changed that require further action with respect to the funds of a particular client.

. . . .

(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer’s firm.

. . . .

Lawyer ~~is~~ obligated to ~~promptly notify Client and~~ place the funds in a trust account on receipt. ~~If the funds are of sufficient quantity to justify placing them in an interest-bearing trust account for Client’s benefit, Lawyer~~ must do so.

Pursuant to Oregon RPC 1.15-1, Lawyer must continue to hold the funds in trust ~~until the funds can be delivered to Client or are deemed abandoned and subject to the Uniform Disposition of Unclaimed Property Act, ORS 98.302–98.436. Pursuant to ORS 98.332, funds held by a fiduciary are presumed abandoned unless the owner has, within two years after it becomes payable or distributable, “increased or decreased the principal, accepted payment of~~

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principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.”

The Act requires Lawyer to “exercise reasonable diligence” to determine the whereabouts of Client and, where possible, to communicate with Client and take necessary steps to prevent abandonment from being presumed. This same duty is implicit in the duty under RPC 1.15-1 to safeguard Client’s property.

Once the funds are presumed abandoned, Lawyer must comply with the provisions of the Act regarding reporting to the Department of State Lands and payment of the abandoned funds to the Oregon State Bar. Abandoned funds in a Lawyer Trust Account are continuously appropriated solely for funding legal services provided through the Legal Services Program established by ORS 9.572.

After funds from the Lawyer Trust Account have been paid to the Oregon State Bar as required by the Act, Lawyer ~~should~~ continue to take ~~steps~~ reasonable under the circumstances to try to locate Client and must maintain reasonable records sufficient to permit Client to make a claim for the return of property for the period permitted by the Act.

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Approved by Board of Governors, February 2010.

Deleted: August 2005

COMMENT: For additional information on this general topic and related subjects, see THE ETHICAL OREGON LAWYER §§11.1–11.16 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§43–46 (2003); and ABA Model Rule 1.15.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
From: Sylvia E. Stevens, General Counsel
Re: Appeal from CSF Decision—Case No. 09-32 SHINN (Doblie)

Action Recommended

Consider Max Doble's request for review of the CSF Committee's recommendation (on reconsideration) to award him less than the amount he claimed.

Background

The CSF Committee decided this claim initially on October 10, 2009 and forwarded its recommendation to the BOG for consideration on October 30, 2009. Before the BOG could consider the claim, Doble appealed the Committee's decision and, without discussion, the BOG referred the claim back to the CSF for further consideration.

On December 19, 2009, Doble's lawyer, Larry Peterson, appeared at the CSF Committee meeting to explain his client's position. The CSF Committee then voted to recommend a slightly larger award, but still less than Doble is requesting. Doble has made a timely request for BOG review of the Committee's revised award decision.

Basis of Doble's Claim

In 2002, after unsuccessfully attempting to collect \$475,000 in underinsured coverage from his own carrier, Max Doble hired Portland attorney Michael Shinn to help him with an uninsured motorist claim. After arbitration in April 2005, Doble was awarded \$116,606. His insurance company sent Shinn a check for \$76,106, after deducting \$17,500 for PIP benefits already paid and \$25,000 that Doble had already received from the other driver. Doble signed the release and satisfaction and Shinn deposited the check into his trust account, assuring Doble he would pay the costs and expenses of the case and send Doble the rest.

Within a few hours Doble began to have second thoughts about the \$25,000 deduction and he contacted Shinn demanding that he stop the processing of the check. Shinn did nothing and over the next several months failed to respond to Doble's many inquiries about the settlement, the payment of expenses, and when Doble would receive his share. In March 2006, Doble filed a complaint with the Bar, and in the subsequent investigation it was discovered that Shinn had insufficient funds in his trust account to pay Doble his share of the proceed. Shinn was ultimately formally charged and prosecuted by the Bar on claims arising from his representation of Doble and others.

In August 2008, Doble filed a civil suit against Shinn alleging breach of fiduciary duty, breach of contract, and outrageous conduct, and seeking an accounting. The PLF defended Shinn and in April 2009 the case was settled. The PLF paid Doble \$14,000, based

on interest that Doble would have earned on the money Shinn wrongly held and misappropriated. Additionally, Shinn stipulated to judgment for \$52,415. That amount represents the \$76,106 award less \$21,691 for costs incurred by Shinn.¹ No allowance was made for Shinn's attorney fee.

CSF Committee Initial Recommendation

In September 2009, Doble filed his claim with the CSF, claiming that his loss was \$66,415 (the amount of his judgment against Shinn plus interest from April 2006 to April 2009 of approximately \$14,000).

The CSF Committee's initial determination was that Doble be awarded \$21,074.21, based on the calculations used by Disciplinary Counsel during the Shinn prosecution:

Net Arbitration Award	\$76,106.00
Shinn's claimed fee (40%)	(29,642.40)
Out-of Pocket costs and expenses	<u>(23,389.39)</u>
Doble's Loss (CSF Award)	\$21,074.21

Pursuant to its authority under CSF Rule 2.10, the Committee also determined that a reasonable fee for Mr. Peterson's services in connection with the CSF claim would be 20% of the award.

Doble's Appeal

In his appeal, Doble contended that there should be no deduction for Shinn's fees. He bases this on the fact that Shinn stipulated to judgment for an amount that gave him no credit for his fees, apparently claiming that the stipulation was an admission that Shinn was not entitled to a fee or had collected one dishonestly. Doble's lawyer reiterated this argument to the CSF Committee, suggesting that no court would allow an attorney to collect a fee in the face of such egregious wrongdoing.

Additionally, Doble contends that the 20% fee authorized for his attorney in the CSF matter is unreasonable. He submitted a copy of the fee agreement entered into in March 2008 "related to the case against Michael Shinn." The agreement provides for a fee of 20% of the total recovery if the case is settled before a complaint is filed and 28% if the case settled after the filing of a complaint but prior to trial. Doble contends that using the lower amount ignores the requirement that he have a judgment in order to be eligible for an award from the CSF and the work that his lawyer was required to do in preparing the matter for the CSF's consideration.

CSF Decision on Reconsideration

The CSF Committee was not persuaded that Shinn should be deprived of a reasonable fee for the services he provided, notwithstanding his theft of the client's portion

¹ As discussed below, Shinn claimed the costs were \$23,389. Doble deducted \$1,618 for 1/3 of the amount owed to a medical provider, arguing that Shinn should have negotiated a reduction of the bill, which would have reduced the costs Doble owed by that amount.

of the settlement. The Committee has never taken that position and routinely assumes in considering claims that the lawyer is entitled to a reasonable fee for services. Doblie has never provided a copy of his fee agreement with Shinn, although he acknowledged to Disciplinary Counsel’s Office on more than one occasion that he believed the fee was to be 1/3 of his recovery. Shinn argued it was a 40% fee and, for reasons that are not clear, Disciplinary Counsel ultimately used the 40% figure in her arguments before the trial panel. However, after discussion, the Committee voted to reduce Shinn’s fee to 1/3, thereby increasing Doblie’s award by \$5,187.79:

	Initial Recommendation	After Reconsideration
Net arbitration recovery	\$74,106.00	\$74,106.00
Shinn’s attorney fee	(\$29,642.40) (40%)	(\$24,455) (1/3)
costs & expenses	(\$23,389.00)	(\$23,389.00)
CSF Award	\$21,074.21	\$26,262.00

The Committee also voted to allow Peterson an attorney fee of 28% of the award.

Doblie’s 2nd Appeal

In his appeal of the Committee’s decision on reconsideration, Doblie reiterates his position that Shinn’s breach of fiduciary duty and other misconduct demands forfeiture of his fee. He cites no authority for that proposition, but cites CSF Rule 2.6, which requires claimants to have a civil judgment against the defalcating attorney. Doblie suggests that his judgment for \$52,415 is the appropriate calculation of his loss, at least in part because it constitutes Shinn’s stipulation to the forfeiture of his fee.

Attachments: Doblie Appeal Correspondence (incl. exhibits)

**Lawrence K. Peterson
Law Office**

301 Lakeside Plaza – 8 North State Street – Lake Oswego, Oregon 97034 – 503/635-3546 - FAX 503/636-8512
larry@petersonlaw.info patty@petersonlaw.info

December 30, 2009

Teresa Schmid
Executive Director
OREGON STATE BAR
Box 231935
Tigard, Oregon 97281-1935

**RE: *Max Doble and Michael R. Shinn*
Multnomah County Circuit Court Case No. 0808-11613**

Dear Ms. Schmid:

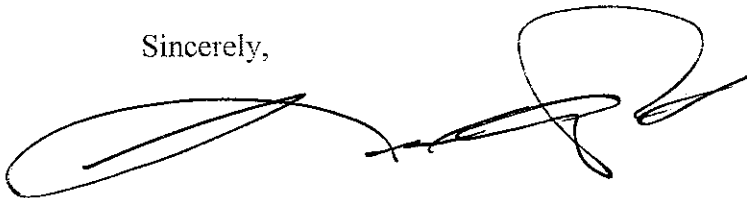
Enclosed is our amended request for review in the above-mentioned matter.

Please provide copies to each member of the Board of Governors so that this matter can be considered.

Claimant's attorney will appear for an oral presentation.

Thank you for your courtesies.

Sincerely,



Lawrence K. Peterson

encl/pd

cc: Max Doble
Michael Shinn
Susan Alterman
Sylvia Stevens

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BEFORE THE OREGON STATE BAR

CLIENT SECURITY FUND

In The Matter of the Claim of:)	Claim No. 2009-32
)	
MAX DOBLIE,)	AMENDED REQUEST FOR REVIEW
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AMENDED REQUEST FOR REVIEW

Claimant Max Doblief requests the Board of Bar Governors to review the amended decision by the Client Security Fund (“CSF”) dated December 23, 2009 as allowed by CSF Rule 4.10.1.

BACKGROUND AND RELEVANT FACTS

Claimant filed an application to the CSF on August 19, 2009 setting forth the amount of loss at \$66,415 which included \$14,000 of interest. The claim was for \$52,415 as Claimant was aware that the CSF rules do not allow for the payment of interest. See, Rule 2.9 (a copy of the CSF Rules are attached as *Exhibit 1*). Claimant was aware that the maximum award he could receive was \$50,000. See, Rule 6.3. It is assumed that the Board has been supplied a copy of

1 Claimant's application to the CSF that contains additional facts. The claim was based on a
 2 stipulated judgment dated July 7, 2009 in the case of *Max Doblle v. Michael Shinn* in the
 3 Multnomah County Circuit Court, Case No. 0808-11613 filed in August 2008. A copy of the
 4 judgment is attached hereto as **Exhibit 2**. Claimant's complaint set forth claims of relief for
 5 breach of fiduciary duty, amongst others, and pled that because Mr. Shinn did not disburse to
 6 him the money due Claimant from an arbitration award, that Mr. Shinn should forfeit his fees.
 7 The arbitration award granted Claimant was \$74,106, as reflected in Claimant's application to
 8 the CSF. The undersigned has represented Claimant in the above case since March 2008, and
 9 Claimant executed a contingency fee contract related thereto, dated March 12, 2008. A copy of
 10 the contract is attached is **Exhibit 3**.

12 On October 13, 2009, the CSF awarded Claimant (**Exhibit 4**) ("the decision") \$21,074.21
 13 and further found that the undersigned should receive 20% as his attorney fees. On December
 14 23, 2009, the CSF amended its decision (**Exhibit 5**) and awarded Claimant \$26,262, and further
 15 found that the undersigned should receive 28% for his attorney fees ("Amended Decision"). The
 16 calculation of the award for the Amended Decision is as follows:

17	Claimant's Arbitration Award (<i>See</i> Claimant's application)	\$ 74,106.00
18	33-1/3% Attorney Fees to Michael Shinn (<i>See Ex. 5</i>)	[24,455.00]
19	Litigation Costs Incurred by Mr. Shinn (<i>See</i> Claimant's application)	[23,389.00]
20		
21	CSF Award (<i>See Ex. 5</i>)	\$ 26,262.00

22 ////

23 ////

24 ////

25 ////

1 **ARGUMENT**

2 **The CSF rules support an award to Claimant of \$50,000.**

3 The CSF award in its Amended Decision implies that Claimant's application met
4 all of the requirements needed to demonstrate a "reimbursable loss" under Section 2 of the Rules,
5 and specifically Rules 2.1-2.8. Therefore, the only issue was the amount of the award which is
6 determined by Rules 2.5, 2.9, and 6.2.

7 The Rules specifically limit recovery and are very specific as to who can recover (2.1)
8 and under what circumstances a loss needs to occur (2.2 and 2.5). The Rules exclude recovery if
9 the claimant could recover elsewhere (2.3, 2.4, and 2.7).

10 The Rules also speak to how a loss is established. The threshold criteria needed to be met
11 for a claimant to recover is that the offending attorney's conduct must have been dishonest. *See,*
12 Rule 2.2. The Rules then require that the dishonest conduct must result in either a criminal
13 conviction or a civil judgment entered against the attorney. *See,* Rule 2.6. Claimant herein has a
14 civil judgment against an attorney, Michael Shinn, for \$52,415. Mr. Shinn stipulated that the
15 funds he received (\$52,415) were due Claimant and he failed to pay them to Claimant.
16 Therefore, the dishonesty factor and the loss amount are stipulated to by both the attorney
17 involved and Claimant, with the \$52,415 amount being calculated without Mr. Shinn receiving a
18 credit for attorney fees. The CSF Committee in calculating the amount awarded to Claimant in
19 its amended decision herein inexplicably deducted from the \$52,415 the amount of 33-1/3% for
20 Mr. Shinn's fees. This deduction has no support in the Rules and in fact is at odds with Rule 2.6
21 requiring a civil judgment against the offending attorney as a condition precedent to obtaining a
22 disbursement from the CSF. As noted in this case, the civil judgment is for \$52,415.
23

24
25 /////
26

1 The analysis of the Rules continues with a review of 2.9 which excludes certain types of
2 damages:

3 **2.9** A claim approved by the Committee shall not include attorney's fees, interest
4 on a judgment, prejudgment interest, and any reimbursement of expenses of a
5 claimant in attempting to make a recovery, or prevailing party costs authorized by
6 statute, except that a claim may include the claimant's actual expense incurred for
7 court costs, as awarded by the court.

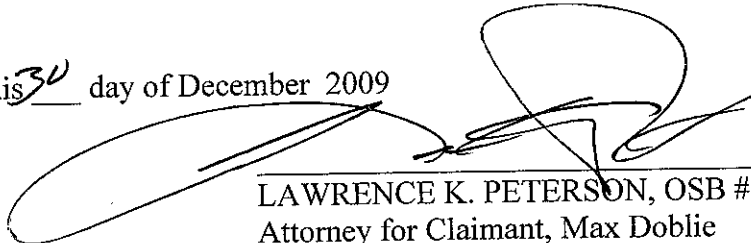
8 None of the damages set forth in the \$52,415 are damages prohibited by 2.9. The entire
9 amount represents monies awarded Claimant in the arbitration award, all of which was kept by
10 Mr. Shinn. *See*, Claimant's application, No. 3.

11 Rule 6.3 limits any CSF award to \$50,000.

12 CONCLUSION

13 The CSF should be required to pay Claimant \$50,000.

14
15 DATED: This 30 day of December 2009

16 
17 _____
18 LAWRENCE K. PETERSON, OSB #83006
19 Attorney for Claimant, Max Doble
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing AMENDED REQUEST FOR REVIEW, on:

Michael R. Shinn, Esquire
618 NW Glisan St., Suite 203
Portland, OR 97209

Susan Alterman
OREGON STATE BAR
Box 231935
Tigard, OR 97281-1935

Sylvia Stevens
OREGON STATE BAR
Box 231935
Tigard, OR 97281-1935

by the following indicated method or methods:

- By MAILING a full copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney[s] listed above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- By HAND DELIVERING a full, true, and correct copy thereof to the attorney[s] listed above, on the date set forth below.
- By SENDING VIA OVERNIGHT COURIER a full, true, and correct copy thereof in a sealed, postage-prepaid envelope, addressed to the attorney[s] listed above, on the date set forth below.

By FAXing a full, true, and correct copy thereof to the attorney[s] at the FAX number[s] shown above, on the date set forth below.

DATED this 30 day of December 2009



P. Taylor Dreyer, Legal Assistant to:
LAWRENCE K. PETERSON, OSB #83006
Attorney for Plaintiff, Max Doble

Rules Of The Client Security Fund

(As approved by the Board of Governors through
April 2002)

Section 1. Definitions.

For the purpose of these Rules, the following definitions shall apply:

- 1.1 "Committee" means the Client Security Fund Committee.
- 1.2 "Fund" means the Client Security Fund.
- 1.3 "Lawyer" means one who, at the time of the act or acts complained of, was an active member of the Oregon State Bar and maintained an office for the practice of law in Oregon.
- 1.4 "Client" means the individual, partnership, corporation, or other entity who, at the time of the act or acts complained of, had an established attorney-client relationship with the lawyer.
- 1.5 "Claimant" means one who files a claim with the Fund.
- 1.6 "Dishonest conduct" means 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 a lawyer's client is eligible for reimbursement if:

- 2.1 The claim is made by the injured client or the client's conservator, personal representative, guardian ad litem, trustee, or attorney in fact.
- 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 legal fee, "dishonest conduct" shall include a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee.
- 2.2.2 A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.
- 2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is

supported by a determination of a court, a fee arbitration panel, or an accounting accessible 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.

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

2.3 The loss was not covered by any bond, surety agreement or insurance contract, including losses to which any 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 insurance or surety 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 against the lawyer, or the lawyer's estate, and that judgment 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 the claimant to collect the amount claimed, to no avail.

2.8 The claim was filed with the Bar within two years after the latest of the following: (a) the date of the lawyer's conviction; or (b) 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; (c) the date a judgment is obtained against the lawyer; or (d) the date the claimant knew or should have known, in the exercise of reasonable diligence, of the loss. In no event shall any claim against the Fund be considered for reimbursement if it is submitted more than six (6) years after the date of the loss.

2.9 A claim approved by the Committee shall not include attorney's fees, interest on a judgment, plaintiff's 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 incurred for court costs, as awarded by the court.

2.10 No attorney's fees shall be paid directly from the Fund for services rendered by an attorney in preparing or presenting a claim to the Fund. Members of the Bar are encouraged to assist claimants without charge in preparing and presenting a claim to the Fund. Nevertheless, a member of the Bar may contract with a claimant for a reasonable attorney fee, which contract must be disclosed to the Committee at the time the claim is filed or as soon thereafter as an attorney has been retained. The Committee may disapprove an attorney fee that it finds to be unreasonable. No attorney shall charge a fee in excess of the amount the Committee has determined to be reasonable, and no attorney fee shall be paid in addition to the award. In determining a reasonable fee, the Committee may refer to factors set out in ORS 20.075.

2.11 In cases of extreme hardship or special and unusual circumstances, the Committee, in its sole discretion, may recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of these rules.

Section 3. Statement of Claim for Reimbursement.

3.1 The Committee shall prepare a form of claim for reimbursement.

3.2 The claim form shall require, as minimum information:
3.2.1 The name and address of the lawyer alleged to have engaged in "dishonest conduct."

3.2.2 The amount of the alleged loss.

3.2.3 The date or period of time during which the alleged loss occurred.

3.2.4 A general statement of facts relative to the claim, including a statement regarding efforts to collect any judgment against the lawyer.

3.2.5 The name and address of the claimant and a verification of the claim by the claimant under oath.

3.2.6 The name of the attorney, if any who is assisting the claimant in presenting the claim to the Client Security Fund Committee.

3.3 The Statement of Claim shall contain substantially the following statement: ALL DECISIONS REGARDING PAYMENTS FROM THE CLIENT SECURITY FUND ARE DISCRETIONARY. Neither the Oregon State Bar nor the Client Security Fund are responsible for the acts of individual lawyers.

Section 4. Processing Statements of Claim.

4.1 All statements of claim shall be filed with the office of the General Counsel, Oregon State Bar, 5200 S. W. Meadows Road, P. O. Box 1689, Lake Oswego, Oregon 97035-0889, and shall be forthwith transmitted by such office to the chairperson of the Committee.

4.2 The chairperson of the Committee shall cause each statement of claim to be sent to a member of the Committee for investigation and report. Such member shall be reimbursed by the State Bar for reasonable out of pocket expenses incurred by said attorney in making such investigation. A copy of the statement of claim shall be sent by regular mail to lawyer who is the subject of the claim at the lawyer's last known address. Before transmitting a statement of claim for investigation, the chairperson may request of the claimant further information with respect to the claim.

4.3 A Committee member to whom a statement of claim is referred for investigation shall conduct such investigation as seems necessary and desirable to determine whether the claim is for a "reimbursable loss" and is otherwise in compliance with these rules in order to guide the Committee in determining the extent, if any, to which such claim shall be reimbursed from the Fund.

4.4 Reports with respect to claims shall be submitted by the Committee member to whom the claim is assigned for investigation to the Committee chairperson within a reasonable time after the referral of the claim to that member, subject to the call of the chairperson of the Committee. Reports submitted shall contain criteria for payment set by these rules and shall include the recommendation of the member for the payment of any amount on such claim from the Fund.

4.5 The Committee shall meet from time to time upon the call of the chairperson. At the request of least two members of the Committee and with reasonable notice, the chairperson shall promptly call a meeting of the Committee.

4.6 At any meeting of the Committee, claims may be considered for which a report has been completed. In determining each claim, the Committee shall be considered the representative of the Board of Governors and, as such, shall be vested with the authority conferred by ORS 9.655.

4.7 In the discretion of the Chairperson, or as otherwise authorized by the Committee, the claimant, the claimant's attorney, the lawyer or the lawyer's attorney

continued on other side

ney may be allowed to present their respective positions regarding the claim at a meeting called to consider a claim.

4.8 The Committee, in its sole discretion, shall determine the amount of loss, if any, for which any claimant shall be reimbursed from the Fund. The Committee may, in its sole discretion, allow further reimbursement in any year to a claimant who received only a partial payment of a "reimbursable loss" solely because of the balance of the Fund at the time such payment was made.

4.9 No reimbursement shall be made to any claimant if the claim has not been submitted and reviewed pursuant to these rules. No reimbursement shall be made to any claimant unless approved by a majority of a quorum of the Committee. The Committee shall be authorized to accept or reject claims in whole or in part to the extent that funds are available to it, and the Committee shall have the discretion to determine the order and manner of payment of claims.

4.10.1 The denial of a claim by the Committee shall be final unless a claimant's written request for review by the Board of Governors is received by the Executive Director of the Bar within 20 days of the Committee's decision. The 20 days shall run from the date the Committee's decision is sent to the claimant by mail, exclusive of the date of mailing.

4.10.2 Claims approved by the Committee shall be reviewed by the Board of Governors prior to final action being taken thereon.

4.10.3 Decisions of the Committee which are reviewed by the Board of Governors shall be considered under the criteria stated in these rules. The Board shall approve or deny each claim presented to it for review, or it may refer a claim to the Committee for further investigation prior to making a decision.

4.11 The Committee, in its sole discretion, may make a finding of "dishonest conduct" for the purpose of adjudicating a claim. Such a determination shall not be construed to be a finding of unprofessional conduct for purposes of discipline.

Section 5. Subrogation for Reimbursements Made.

5.1.1 As a condition of reimbursement, a claimant shall be required to provide the Bar with a pro tanto transfer of the claimant's rights against the lawyer, the lawyer's legal representative, estate or assigns, and of the claimant's rights against the person or entity who may be liable for the claimant's loss.

5.1.2 Upon commencement of an action by the Bar as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

5.1.3 In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another person or entity who may be liable for the claimant's loss, the claimant shall be required to notify the Bar of such action.

5.1.4 The claimant shall be required to agree to cooperate in all efforts that the Bar undertakes to achieve restitution for the Fund.

5.2 A claimant shall not release the lawyer from liability or impair the Bar's assignment of judgment or subrogated interest without the prior approval of the Board of Governors.

5.3 The Committee shall, from time to time, recommend to the Board that collection efforts be brought and that various claims be assigned to collection agencies or referred to counsel for collection. The Board may authorize such efforts as it deems proper and, upon the recommendation of the Committee, may authorize the expenditure of money from the Client Security Fund for reasonable costs and expenses of collection.

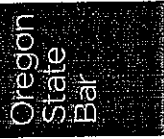
Section 6. General Provisions.

6.1 These Rules may be changed at any time by a majority vote of a quorum of the Committee subject to approval by the Board of Governors of the Oregon State Bar. A quorum is a majority of the entire Committee membership.

6.2 No reimbursement from the Fund on any one claim shall exceed \$25,000 for claims filed on or before July 1, 1993, and \$50,000 for claims filed after that date.

6.3 A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or review of a claim involving the claimant or lawyer.

6.4 These Rules shall apply to all claims pending at the time of their enactment.



Client Security Fund

Rules



Oregon State Bar
16037 S.W. Upper Boones Ferry Rd
P.O. Box 231935
Tigard, OR 97281-1935
(503) 620-0222, ext. 399, or
Toll Free in Oregon: (800) 452-8260, ext. 399

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MAX DOBLIE,)	Case No.0808-11613
)	
Plaintiff,)	GENERAL JUDGMENT
)	(STIPULATED) and MONEY
v.)	AWARD
)	
MICHAEL R. SHINN,)	
)	
Defendant.)	

THIS MATTER came on for mediation on June 10, 2009, before Mediator, John R. Barker. The following findings are made based on the stipulation of the parties as follows:

1. Defendant received funds from the arbitration award in the UIM case in which he represented Plaintiff and has paid none of those funds to Plaintiff.
2. Plaintiff contends that \$52,415 of such funds are due him; Defendant contends that a lesser amount is due Plaintiff.
3. Defendant has not disbursed the funds so received and due Plaintiff and Defendant's client trust account does not have sufficient funds to pay what is due Plaintiff.
4. Defendant has no funds or means by which to pay any funds due Plaintiff.

1 Based on this stipulation of facts, and that this case has been fully compromised between
2 Plaintiff and Defendant;

3 NOW, THEREFORE,

4 IT IS ADJUDGED that Plaintiff recover from and have judgment against Defendant in
5 the amount of \$52,415 plus interest thereon at 9% per annum from entry of judgment until paid.

6 Each party shall pay their own attorney fees and costs.

7 MONE AWARD

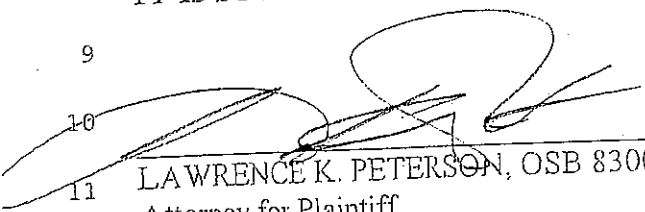
- 8
- 9 1. Name of Judgment Creditor: Max Doblje
- 10 2. Judgment Creditor's Attorney: Lawrence K. Peterson, OSB 83006
11 8 North State Street, Suite 301
12 Lake Oswego, Oregon 97034
13 503/635-3546
- 14 3. Name of Judgment Debtor: Michael R. Shinn
- 15 4. Judgment Debtor's Attorney: William Davis, OSB 771546
16 DAVIS, ROTHWELL, EARLE & XOCHIHUA
17 111 SW 5th Avenue, Suite 2700
18 Portland, Oregon 97204
19 503/222-4422
- 20 5. Amount of Judgment (Principal): \$52,415
- 21 6. Prejudgment [simple] interest: None
- 22 7. Postjudgment [simple] interest: 9% per annum on the total judgment from the
23 date judgment is entered until fully paid.
- 24 8. Attorney Fees: \$0
- 25 9. Costs: \$0
- Judgment Type:
- A. Stipulated
- (1) Amount: \$52,415
- (2) Beginning Date: Entry of Judgment

1 (3) Interest: 9% per annum on total judgment from the date judgment is
2 entered until fully paid.


3
4 DATED this 7th day of July 2009.

5 [S] JEAN KERR MAURER
6 CIRCUIT COURT JUDGE

7
8 IT IS SO STIPULATED:

9
10 
11 LAWRENCE K. PETERSON, OSB 83006
12 Attorney for Plaintiff

Dated: 8/17/09

13 
14 WILLIAM A. DAVIS, OSB 771546
15 Of Attorneys for Defendant

Dated: 7/1/07

CONTINGENT FEE AGREEMENT

Max Dobie
("Client") retains the law firm of **LAWRENCE K. PETERSON**, 301 Lakeside Plaza, 8 North State Street, Lake Oswego, Oregon 97034, (hereinafter referred to as "Attorney"), as attorney to represent Client in the following matter: recovery of Michael

Shim or others

A. Client shall pay Attorney a fee contingent upon total recovery received according to the following schedule:

- 20 1. 25% of total recovery if case is settled before complaint is filed;
- 28 2. 33-1/3% of total recovery if case is settled prior to trial or entry of judgment;
- 32 40% of total recovery if trial takes place or judgment is entered;
- 4 50% of total recovery received if appeal takes place.

B. Client shall be responsible for payment of all court costs and other necessary expenses incurred in this case. Attorney may advance such costs and expenses, and Client shall reimburse them on demand. Attorney may require an advance deposit from client to cover estimated costs and expenses which are likely to be incurred.

C. In the event recovery is had for Client's attorney fees, that amount shall be included as part of the "total recovery received" for purposes of calculating the attorney fees described in Paragraph A. If the attorney fees recovered from the other side are greater than the fee which would otherwise be payable under Paragraph A, Attorney shall be entitled to the attorney fees actually recovered.

D. Attorney reserves the right to associate other attorneys or to withdraw as Client's attorney at any time. In the event of withdrawal as Client's attorney, Attorney shall not receive a fee for his services except as provided in Paragraph E.

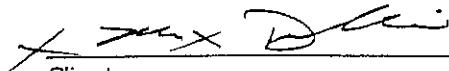
E. Attorney shall have the right to charge Client a reasonable fee for its services on a normal non-contingent basis, rather than a contingency fee, if Attorney is discharged or withdraws as attorney due to:

- 1. The failure of Client to fully cooperate with Attorney; or
- 2. The failure of Client to disclose material facts about the case known to client; or
- 3. The failure of Client to make requested payments or deposits for costs and expenses; or
- 4. The Client discharges Attorney from the case when attorney is willing to continue and has been performing in a competent and professional manner. In the event Client discharges Attorney under such

circumstances, Attorney shall have the right to collect a fee based on the contingent percentages if such fee would be larger than the non-contingent amount.

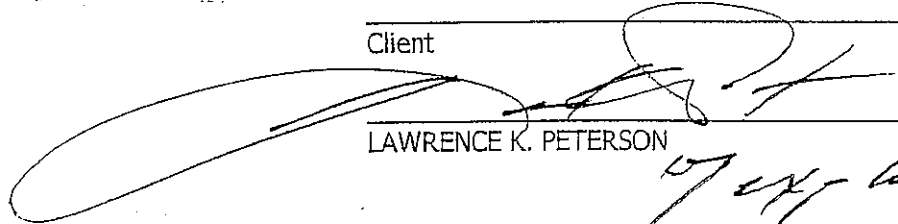
F. **CLIENT SHALL HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHIN 24 HOURS AFTER SIGNING, UPON WRITTEN NOTICE TO ATTORNEY.** Client acknowledges receipt of a copy of this agreement.

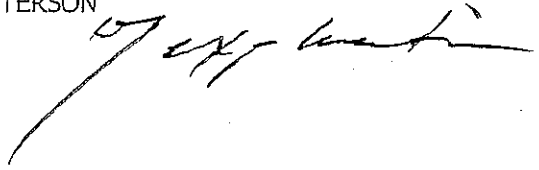
DATED: 3/12/08, at 1100 A.M. (time)

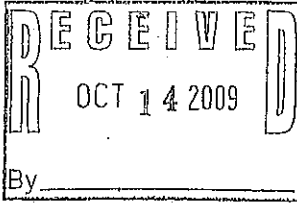


Client

Client



LAWRENCE K. PETERSON




October 13, 2009

Lawrence K Peterson
8 N State St Ste 301
Lake Oswego, OR 97034

Re: Client Security Fund Claim No. 2009-32
Claimant: Max Doble
Lawyer: Michael Shinn

Dear Mr. Peterson:

At its meeting on October 10, 2009 the Client Security Fund Committee considered your client's claim for reimbursement. The Committee voted, after crediting Shinn with a 40% attorney fee, to recommend to the OSB Board of Governors that he be reimbursed for his loss in the amount of \$21,074.21. The committee also approved a 20% attorney fee to you from the award. The fund does not pay interest.

The committee's recommendation will be considered by the Board of Governors at its next regularly scheduled meeting on October 30, 2009. We will report the Board's decision to you after that meeting.

Please contact me or my assistant, Cassandra Stich, if you have questions in the meantime. Thank you for your continuing cooperation and patience in this matter.

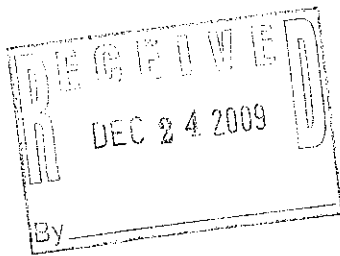
Sincerely,

Sylvia E. Stevens
Sylvia E. Stevens
General Counsel
Ext. 359, Fax: (503) 598-6959
Email: sstevens@osbar.org

SES:cs

cc: Michael Shinn
Susan Alterman, CSF Committee Chair

EXHIBIT 4



Oregon State Bar

December 23, 2009

Lawrence K Peterson
8 N State St Ste 301
Lake Oswego, OR 97034

Re: Client Security Fund Claim No. 2009-32
Claimant: Max Doblle
Lawyer: Michael Shinn

Dear Mr. Peterson:

At its meeting on December 19, 2009 the Client Security Fund Committee considered the additional arguments made on behalf of your client and, after discussion, voted to recommend an award in the amount of \$26,262. The Committee was not persuaded that there should be no deduction for Shinn's fee, but used 1/3 (\$24,455) instead of 40%. The Committee then deducted the costs of \$23,389 to arrive at the award amount. Finally the Committee approved your fee at 28% of the award.

The committee's recommendation will be considered by the Board of Governors at its next regularly scheduled meeting on February 5, 2010. We will report the Board's decision to you after that meeting.

Please contact me or my assistant, Cassandra Stich, if you have questions in the meantime. Thank you for your continuing cooperation and patience in this matter.

Sincerely,

Sylvia E. Stevens
General Counsel
Ext. 359, Fax: (503) 598-6959
Email: sstevens@osbar.org

SES:cs

cc: Michael Shinn
Susan Alterman, CSF Committee Chair

EXHIBIT 5

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 20, 2010
From: Sylvia E. Stevens, General Counsel
Re: CSF Claim No. 09-04 SUSHINDA (Street) Appeal

Action Recommended

Review the decision of the CSF Committee to deny Mr. Street's claim for reimbursement.

Background

Jeff Street hired Jonathan Sushida on June 21, 2007 to represent him in a divorce with custody issues. There was no written fee agreement, but Street paid \$750 in advance. Presumably the agreement was for hourly fees, because Street's application indicates that he knew the fee could be more than the deposit. Sushida did not deposit the money into trust.

Street was anxious to get the case moving because of pending child support issues. Sushida promised to file by July 6 if Street provided the necessary information quickly. Street sent it via e-mail on June 24, but by July 10, Sushida still hadn't filed the petition. Sushida eventually got the petition filed July. Street had having reaching Sushida for updates, but they had a meeting in mid-August. By that time Street was frustrated and demanded his file materials and an accounting for the money he had paid. Street called again in September and was advised by Sushida to hire new counsel, which Street did.

The CSF Committee concluded that Street's claim was not eligible for reimbursement. Of the \$750 advanced by Street, \$371 was used for the filing fee. The Committee concluded that issues relating to the remaining \$379 were essentially a fee dispute over the reasonableness of such a fee for the work actually done by Sushida.

Mr. Street argues on appeal that he should be reimbursed for the entire \$750 on the ground that Sushida's work was of no value. He claims the petition was deficient and that his new attorney, William Hensley spent hours redoing the petition Sushida filed, which cost him considerable in additional fees. However, Hensley denies having to redo the petition, although he did file the related documents that are required by the court. He reports being unsure whether Sushida ever effected service on the respondent, but it was a moot point because she participated in negotiating a stipulated divorce judgment.

Additionally, Street claims that if Sushida had acted promptly, there would not have been an administrative child support order entered against him. (This is probably incorrect; the administrative order was entered on July 23 or 24 and Street didn't expect the petition to be filed before July 6.) Finally, Street complains that he was "ill prepared by the time [he] hurriedly got a new attorney, which forced him to take a deal pursuant to which he "hardly EVER get[s] to see [his] kids."

DCO's investigation into Street and other client's complaints revealed that Sushida suffers from PTSD and multiple personality disorders. At the suggestion of DCO, Sushida took inactive status at the beginning of 2008. He currently lives in Japan. He is trying to resolve the pending disciplinary cases, but it is quite likely he will end up with a lengthy suspension. Given that, Mr. Street should not be required to have a judgment because the claim is for less than \$5000 and is the subject of an impending disciplinary sanction.

Attachments: Investigator's report

LPRC Report (excerpt)

DCO Complaint (excerpt)

Street request for review

Hensley letter 11/24/09

Excerpts from LPRC Report on Sushida Complaints

BACKGROUND

In conjunction with my investigation into the Terri Cline complaint, I was alerted to the fact that Sushida suffered from a “serious mental health condition” that impaired his ability to remember things at times. I was provided no other details or more specific information. However, he was reportedly scheduled to enter into an in-patient treatment program related to this condition in September 2007, and requested that he be permitted to delay any additional responses related to the Bar’s inquiries on the Cline complaint until following his release. I granted Sushida’s request, but later learned that he did not undertake in-patient treatment, because he apparently could not obtain medical coverage. Instead, Sushida continued to practice on at least a limited basis, without notifying or responding to the Bar.

When I learned the foregoing, I contacted Sushida and requested his response to my prior inquiries. I also suggested to him that he might want to consider going inactive until he was able to address his unspecified mental health issue. Sushida took my advice and transferred to inactive status at the beginning of 2008. He did not, however, address all of the substantive inquiries posed in my prior correspondence. His roommate (also reportedly a lawyer), was going to assist with his open files and matters in the winding down of Sushida’s practice. It is unknown who this person is or whether he followed through on assisting with Sushida’s clients and cases.

Since that time, Disciplinary Counsel’s Office (DCO) has received the referenced complaints from Street, the Williamses and LaBlanc. On March 24, 2008, I received a call from Sushida instructing that he is intending to start applying for jobs that might require him to return to active status with the Bar and inquiring whether DCO would have any objection to him doing so.¹ I expressed some reluctance based on the foregoing and the existence of these complaints. I told him that was my intention to submit these matters to the LPRC for additional investigation and he seemed agreeable to that. I also told him that we would need some medical documentation of his issues. He agreed to provide a release and suggested that the investigator get in touch with Sheri Gregory at OAAP, who is reportedly familiar with his condition and the circumstances.

Jeff Street Matter (Case No. 08-31)

On June 21, 2007, Jeff Street consulted with and hired Sushida to file a

¹ His counselor had reportedly released him to engage in part-time work, so long as it was not in a firm environment.

divorce. He paid him \$750. It is unclear whether there is a written fee agreement. Due to support issues, Street wanted the divorce filed as soon as possible, and Sushida agreed that it would be done no later than July 6, 2007.

Pursuant to Sushida's instructions, Street emailed him relevant detailed information on June 24, 2007, but he received no response. Beginning July 1, 2007, Street emailed and repeatedly phoned Sushida to inquire as to the status of his filing. When Street finally reached Sushida by telephone on July 10, 2007, Sushida claimed that he had never received Street's June 24, 2007 email, and attributed his failures to respond to Street's messages on being sick or out-of-town.

Street resent his June 24, 2007 email to Sushida and received a draft petition the following day. Street made minor revisions (mostly typos) and returned it to Sushida for filing on July 12, 2007. The petition was not filed for another two weeks (on July 27, 2007), despite no substantive changes by Street, and a number of messages from Street urging that it be filed.²

On August 1, 2007, Street inquired about service and was told by Sushida that he would check into whether service had been completed. When Street heard nothing, he made an appointment to meet with Sushida on August 7, 2007. Sushida did not appear. When they finally met on August 14, 2007, Sushida represented to Street that he had filed the petition at least a week before the July 27th date indicated on the file. Street requested his file materials, which Sushida had allegedly promised him for weeks.

Sushida left a message for Street the following day indicating that the petition had been served, but did not respond to Street's subsequent attempts to communicate with him. And although Sushida had promised to get Street's file materials to him in time for Street to take them with him on a trip to see his father, Sushida's assistant arrived on the day of Street's departure with only one item.

On September 6, 2007, Sushida answered his office phone, sounded disoriented, and told Street that someone from the Bar was there.³ Sushida recommended that Street find replacement counsel. Sushida has not communicated with Street since that time. Sushida has not refunded any part of Street's retainer, nor did he respond to replacement counsel's subsequent efforts to get Street's file materials.

² This is significant because a support order against Street had been entered on July 23, 2007, making support retroactive to June 1, 2007. Street does not believe this order would have been entered if Sushida had sooner filed the divorce petition.

³ If accurate, this was presumably someone from the PLF, as no one from our office has visited Sushida in person.

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13.

On or about May 8, 2008, Cline’s complaint was referred to the Clackamas/Linn/Marion County Local Professional Responsibility Committee (hereinafter “LPRC”) for investigation. The Accused later provided some of the requested file materials to the LPRC.

14.

The aforesaid conduct of the Accused constituted a failure to comply with a lawful demand for information from a disciplinary authority in violation of the following standard of professional conduct established by law and by the Oregon State Bar:

A. RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct.

**Case 08-31
Jeffrey Street Matter**

AND, for its SECOND CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

15.

Realleges and incorporates by reference the allegations of paragraphs 1 and 2 of its First Cause of Complaint as if fully set forth herein.

16.

On or about June 21, 2007, Jeff Street (hereinafter “Street”) hired the Accused to file a petition for dissolution of marriage on his behalf. There was no written fee agreement, but Street paid the Accused \$750. The Accused did not deposit this money into his lawyer trust account. Street informed the Accused that he wanted the petition filed promptly and the reasons therefor. The Accused promised to prepare and file the petition for dissolution no later than July 6, 2007. The Accused failed to do so.

1 17.

2 On or about June 24, 2007, July 1, 2007, and again on July 10, 2007, Street emailed the
3 Accused with information necessary to complete the petition, and repeatedly emailed and phoned
4 the Accused to inquire if the petition had been filed. On July 11, 2007, the Accused sent a draft
5 petition to Street for review. Street made corrections to the draft and returned it to the Accused
6 the following day. In the subsequent weeks, Street made numerous attempts to contact the
7 Accused to find out whether the petition had been filed and served. The Accused failed to
8 respond to these inquiries and failed to attend at least one scheduled appointment with Street.

9 18.

10 On or about July 24, 2007, an administrative child support order was entered against
11 Street, requiring him to pay child support retroactive to June 1, 2007.

12 19.

13 At all relevant times herein, ORS 107.085(2)(b)(C) required that a petition for dissolution
14 of marriage state to the extent known whether there was then pending in Oregon or any other
15 jurisdiction any type of support proceeding involving dependents of the marriage. ORS
16 107.085(3) required the petitioner to include in the petition a certificate regarding any pending
17 support proceeding and any existing support order.

18 20.

19 At all relevant times herein, ORS 107.085(4) required that a petition for dissolution of
20 marriage contain specific information concerning the parties and the parties' children including
21 the full names and any former names of the parties.

22 21.

23 On or about July 27, 2007, the Accused prepared and filed a petition for dissolution of
24 marriage on Street's behalf. The petition did not state that an administrative child support
25 proceeding was pending, as required by ORS 107.085. To the contrary, the petition incorrectly

1 stated that there was no "proceeding involving support in this or any state," and did not attach a
2 certificate regarding the support proceeding or the then-existing support order. In addition, the
3 petition did not provide any former names of the parties, including the respondent's former
4 names or maiden name.

5 22.

6 When Street learned of and questioned the Accused about the July 27, 2007 filing date,
7 the Accused represented to Street that it had been filed at least a week before that date.
8 This statement was false, and the Accused knew that it was false and material to Street when he
9 made it.

10 23.

11 Beginning in July 2007, based upon the Accused's misrepresentation that he had earlier
12 filed the petition, Street repeatedly asked the Accused to correct the court's filing information.
13 Street also requested his file materials and an accounting of the \$750 that he had paid to the
14 Accused with a refund of some or all of that money. The Accused did not respond to or act on
15 these requests or provide Street with an accounting or refund any of his \$750.

16 24.

17 On or about August 15, 2007, the Accused caused the petition to be served on Street's
18 wife. Thereafter, the Accused failed to file the proof of service with the court or take any other
19 substantive action on Street's behalf.

20 25.

21 In or around mid-September 2007, Street hired attorney William Hensley (hereinafter
22 "Hensley") to determine the status of and complete the dissolution of his marriage. On or about
23 September 14, 2007, Hensley notified the Accused that he would be representing Street and
24 requested certain documents and information from the Accused. The Accused did not respond.

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26.

On or about September 18, 2007, a staff member from Hensley's office contacted the Accused by telephone. The Accused assured Hensley's staff member that he would be mailing Street's file to Hensley's office that day. Hensley did not receive Street's file.

27.

On or about October 2, 2007, Hensley confirmed the Accused's September 18, 2007 conversation with his staff and requested that the Accused advise him of the status of Street's file. The Accused did not respond or provide the requested file materials.

28.

The aforesaid conduct of the Accused constituted a failure to provide competent representation; a failure to abide by his client's decisions concerning the objectives of the representation; neglect of a legal matter entrusted to him; a failure to keep his client reasonably informed about the status of a matter and promptly comply with requests for information; a failure to hold property of clients or third persons in lawyer's possession separate from his own property; a failure to deposit and maintain legal fees and expenses that have been paid in advance in trust until earned; a failure to account for and promptly deliver to his client property that the client was entitled to receive; and conduct involving misrepresentation, in violation of the following standards of professional conduct established by law and by the Oregon State Bar:

- A. RPC 1.1 of the Oregon Rules of Professional Conduct;
- B. RPC 1.2(a) of the Oregon Rules of Professional Conduct;
- C. RPC 1.3 of the Oregon Rules of Professional Conduct;
- D. RPC 1.4(a) of the Oregon Rules of Professional Conduct;
- E. RPC 1.15-1(a) of the Oregon Rules of Professional Conduct;
- F. RPC 1.15-1(c) of the Oregon Rules of Professional Conduct;
- G. RPC 1.15-1(d) of the Oregon Rules of Professional Conduct; and

1 H. RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct.

2

3 AND, for its THIRD CAUSE OF COMPLAINT against the Accused, the Oregon State

4 Bar alleges:

5

29.

6 Realleges and incorporates by reference the allegations of paragraphs 1 and 2 of its First
7 Cause of Complaint and the allegations of paragraphs 16 through 27 of its Second Cause of
8 Complaint as if fully set forth herein.

9

30.

10 Between June and September 2007, the Accused was suffering from a serious mental
11 condition that materially impaired his ability to represent Street in his legal matter. The Accused
12 accepted Street's case in June 2007 and did not thereafter make any efforts to withdraw.

13

31.

14 The aforesaid conduct of the Accused constituted a failure to withdraw where his mental
15 condition impaired his ability to represent his client in violation of the following standard of
16 professional conduct established by law and by the Oregon State Bar:

17 A. RPC 1.16(a)(2) of the Oregon Rules of Professional Conduct.

18

19 AND, for its FOURTH CAUSE OF COMPLAINT against the Accused, the Oregon State

20 Bar alleges:

21

32.

22 Realleges and incorporates by reference the allegations of paragraphs 1 and 2 of its First
23 Cause of Complaint and the allegations of paragraphs 16 through 27 of its Second Cause of
24 Complaint as if fully set forth herein.

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33.

On or about November 16, 2007, Street complained to the Bar about the Accused's conduct. The Accused was notified of the complaint by mail on or about November 27, 2007. On November 30, 2007, Disciplinary Counsel's Office (hereinafter "DCO") requested that the Accused respond to Street's allegations, provide a copy of Street's client file, and confirm that he had accounted for and refunded the remainder of Street's retainer by December 21, 2007. The Accused did not respond, despite additional requests from DCO on December 18, 2007 and January 11, 2008 that he do so.

34.

On or about May 8, 2008, DCO referred the matter to the Clackamas/Linn/Marion County Local Professional Responsibility Committee (hereinafter "LPRC") for investigation.

35.

On or about May 27, 2008, the LPRC members requested that the Accused provide documents and materials responsive to Street's complaint. The Accused did not provide any documents or materials.

36.

On or about July 24, 2008, the LPRC members interviewed the Accused. The Accused promised to provide a number of items, including general and trust account records, and cellular telephone records. The Accused did not provide these items to the LPRC.

37.

On or about September 2, 2008, the LPRC members issued a subpoena *duces tecum* and served it on the Accused. The subpoena requested the documentation the Accused had promised to provide in his interview. The Accused did not comply with the subpoena or provide any of the requested documentation.

1 38.

2 The aforesaid conduct of the Accused constituted a failure to comply with a lawful
3 demand for information from a disciplinary authority in violation of the following standard of
4 professional conduct established by law and by the Oregon State Bar:

5 A. RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct.

6 **Case 08-32**
7 **Roger & Carol Williams Matter**

8 AND, for its FIFTH CAUSE OF COMPLAINT against the Accused, the Oregon State
9 Bar alleges:

10 39.

11 Realleges and incorporates by reference the allegations of paragraphs 1 and 2 of its First
12 Cause of Complaint as if fully set forth herein.

13 40.

14 On or about December 1, 2006, the Accused undertook to represent Jenny Herren
15 (hereinafter "Herren") in a dissolution of marriage proceeding. Herren gave the Accused
16 permission to talk to her parents, Roger and Carol Williams (hereinafter collectively the
17 "Williamses") regarding the case. At the time, the Accused was employed by the firm of
18 Churchill Leonard (hereinafter the "Churchill Firm") in Salem, Oregon. Pursuant to an oral
19 agreement, on or about December 1, 2006, the Williamses paid the Accused \$2,500.

20 41.

21 On or about December 1, 2006, the Accused assisted Herren in completing a *pro se*
22 petition for dissolution of marriage and related documentation and filed it with the court. There
23 was no real property involved in the marriage, and the parties' only substantial asset was a
24 vehicle. However, Herren and her husband did have two small children. The Accused did not
25

Sylvia Stevens

From: Sylvia Stevens
Sent: Monday, November 16, 2009 2:20 PM
To: 'Jeff'
Subject: RE: CSF Claim No. 2009-04

Mr. Street, I apologize for not sending you a letter informing you of the Committee's denial of your claim. I understood you were considering an appeal, but I never received anything from you confirming that. I will treat your recent e-mail as such a request. Your claim will be submitted to the Board of Governors at its meeting on February 19, 2010. If there is anything else you want the BOG to consider in reviewing the CSF's decision, please get it to me by January 15, 2010.

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

From: Jeff [mailto:jtstreet@q.com]
Sent: Monday, November 16, 2009 2:06 PM
To: Sylvia Stevens
Subject: Re: CSF Claim No. 2009-04

Sylvia,

I never got any paperwork in the mail as to the result of the Board's decision.....

Frankly, I'm just a little upset about the fact that, regardless if Mr. Hensley refiled or not, he had to take hours to redo whatever was filed and that cost me an enormous amount of money. Mr. Sushida did not do anything as he had represented he would and because I was under a huge time restraint by the time he was clearly out of the picture I had to retain a VERY expensive lawyer in order to Redo and process anew my filing, etc.

I argue that Mr. Sushida's work was non-existent and therefore should be paid back. He did nothing for me and this has gone on long enough. His supposed \$371 for filing and supposed \$379 in fees should be returned to me somehow and he should be responsible for that.

I had to take a deal and now hardly EVER get to see my kids, because I was ill prepared by the time I hurriedly got the new lawyer to help me. If that emotional loss is not worth the \$750 that Mr. Sushida did nothing for than I don't know what is??

Sincerely,

Jeff Street

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

From: "Sylvia Stevens" <sstevens@osbar.org>

To: "Jeff" <jtstreet@q.com>

Sent: Monday, October 12, 2009 8:10 AM

Subject: RE: CSF Claim No. 2009-04

Mr. Hensely told the CSF investigator that he did not refile the petition or pay a second filing fee. If that is not the case, please get some documentation from him to support your appeal.

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

From: Jeff [mailto:jtstreet@q.com]

Sent: Monday, October 12, 2009 9:02 AM

To: Sylvia Stevens

Subject: Re: CSF Claim No. 2009-04

My new attorney did in fact have to file all over again. But thank you, I will put that information in.

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

From: "Sylvia Stevens" <sstevens@osbar.org>

To: "Jeff" <jtstreet@q.com>

Sent: Monday, October 12, 2009 8:56 AM

Subject: RE: CSF Claim No. 2009-04

Yes. Be sure to include any additional information you think the Board should consider.

The Committee's analysis was that Sushida prepared and filed a petition for dissolution before he abandoned your case. The filing fee was \$371 of the \$750 you advanced. The committee concluded there was no evidence that \$379 was not a clearly excessive fee for the work that was done. Your new attorney didn't have to re-do Sushida's work and thus it isn't clear that Sushida owed you a refund that he failed or refused to give you. The committee concluded that, at best, you have fee dispute with Mr. Sushida. The fact that he is being disciplined in connection with his representation of you is not evidence of theft or dishonesty for the CSF's purposes.

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

From: Jeff [mailto:jtstreet@q.com]
Sent: Monday, October 12, 2009 8:47 AM
To: Sylvia Stevens
Subject: Re: CSF Claim No. 2009-04

A fee dispute??

The guy took my fee and ran with it. He never did anything for my case worth any fee. Wow??

I will appeal.

Will they decide on it on the 31st if I return it right away??

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

From: "Sylvia Stevens" <sstevens@osbar.org>
To: "Jeff" <jtstreet@q.com>
Cc: "Cassandra Stich" <CStich@osbar.org>
Sent: Monday, October 12, 2009 8:42 AM
Subject: RE: CSF Claim No. 2009-04

Mr. Street, the CSF Committee considered your claim on Saturday and concluded it was a fee dispute with no evidence of theft by Mr. Sushida. You will be getting a letter to that effect in a day or so, which also explains your right to appeal the committee's decision to the Board of Governors. If you wish to do that, please note that the BOG meets next on October 31 and then not again until mid-February 2010.

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

From: Jeff [mailto:jtstreet@q.com]
Sent: Monday, October 12, 2009 8:40 AM
To: Sylvia Stevens
Subject: Re: CSF Claim No. 2009-04

Hi Sylvia,

Any word?? Sorry to be so anxious.....just really could use that money.

Thank you

Jeff

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

From: "Sylvia Stevens" <sstevens@osbar.org>
To: "Jeff" <jtstreet@q.com>

Sent: Monday, August 31, 2009 8:05 AM
Subject: RE: CSF Claim No. 2009-04

Mr. Street, I am sorry, but your claim has not yet been reviewed by the CSF Committee. It should be on the October 10 agenda. I will be in touch with you after that meeting.

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

From: Jeff [mailto:jtstreet@q.com]
Sent: Sunday, August 30, 2009 9:13 PM
To: Sylvia Stevens
Subject: Re: CSF Claim No. 2009-04

Sylvia,
Just checking in.....How did the August 22 meeting go and can I expect anything soon??

Thank you
Jeff Street

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

From: "Sylvia Stevens" <sstevens@osbar.org>
To: "'Jeff'" <jtstreet@q.com>
Sent: Monday, June 29, 2009 8:06 AM
Subject: RE: CSF Claim No. 2009-04

Sorry, no. The committee meets again on August 22. I am optimistic your claim will be addressed then. We have been inundated with claims this year, so things are moving more slowly than usual.

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

From: Jeff [mailto:jtstreet@q.com]
Sent: Sunday, June 28, 2009 9:12 AM
To: Sylvia Stevens
Subject: Fw: CSF Claim No. 2009-04

Hi Sylvia,
Sorry to bother once again. Thought I would check to see if the committee got to it on the 6th???

Thank you
Jeff Street

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

From: "Jeffrey Street" <Jeffrey.Street@sterlingsavings.com>

To: <jtstreet@q.com>

Sent: Monday, May 18, 2009 9:47 AM

Subject: FW: CSF Claim No. 2009-04

Jeff Street

Community Manager

503-394-3334 / 541-327-2223

VOF 332 / 048

jeff.street@sterlingsavings.com

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

From: Sylvia Stevens [mailto:sstevens@osbar.org]

Sent: Monday, May 18, 2009 8:09 AM

To: Jeffrey Street

Subject: RE: CSF Claim No. 2009-04

Regretfully, the committee did not get to your matter in February. The committee meets next on June 6 and I am pretty sure your claim will be decided then. If the committee recommends payment, the recommendation can be submitted to the Board of Governors at its June 13 meeting. All payments must be approved by the BOG.

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

From: Jeffrey Street [mailto:Jeffrey.Street@sterlingsavings.com]

Sent: Monday, May 18, 2009 8:04 AM

To: Sylvia Stevens

Subject: CSF Claim No. 2009-04

Hello Sylvia,

I was wondering if I could get the status of this claim against Jonathon Sushida.

The last contact I had with you or anyone else was back in late January,

early February with a possible refund of \$750 coming to me. There was a meeting to be held in February with a finalization to the case.

Thank you

Jeff Street

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MOUNTAIN VIEW PROFESSIONAL CENTER
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OREGON CITY, OREGON 97045-3753

FACSIMILE COVER LETTER

DATE: 11/24/09

NUMBER OF PAGES (including this page): 2

NAME OF CLIENT Street / Sushida

PLEASE DELIVER THIS TRANSMISSION TO:

NAME : Sylvia Stevens

COMPANY/FIRM : _____

FACSIMILE NUMBER : 503-598-6959

THIS TRANSMISSION IS FROM:

NAME : Bill Hensley (Pat)

ADDITIONAL MESSAGE:

1) Ltr of 11/24/09

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November 24, 2009

Via US mail, Fax at 503.598.6959, and email at sstevens@osbar.org

Sylvia Stevens
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 321935
Tigard, OR 97224

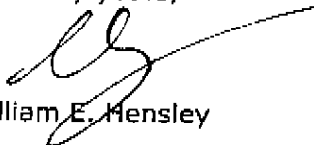
RE: Jeff Street/Jonathan Sushida matter

Dear Counsel:

This attempts to answer your questions of November 19th.

1. The Divorce Petition was filed by Mr. Sushida, we did not to "re-do it," or pay a filing fee.
2. We did prepare and submit other petition related documents such as a Certificate of Residency, Certificate of Child Support Proceedings, and possibly the Vital Statistic form, because those forms were not in the court file when I reviewed it.
3. The parties ultimately signed a Stipulated Divorce Judgment (which we prepared), and the court approved it.
4. Mr. Sushida informed us that he would send us a copy of his case file, and that respondent Teresa Street had been served. However, I never received anything, and the service question remained unclear to me. I don't see from my file that we proceeded to have Ms. Street served, or served again, and it appears that became unimportant when she signed the Stipulated Judgment and the court entered it.
5. Jeff Street also had an administrative child support proceeding pending when I took on his case, and we addressed that satisfactorily. I don't know whether Mr. Sushida was involved in that.
6. You may already know that I communicated to Jennifer Niegel of the OSB Local Professional Responsibility Committee in August 2008.

Sincerely yours,


William E. Hensley

WEH/pf

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 10 2009
Memo Date: February 5, 2010
From: Chris Kent, chair, Budget & Finance Committee
Re: OSB Investment Policy

Action Recommended

Decision on the revised bylaw 7.4 Investment Policy.

Background

The Budget & Finance Committee spent considerable time in 2009 reviewing and eventually revising the bar's investment policy at bylaw 7.4. The committee believed that the bar's investment portfolio should be more actively managed, especially the funds invested for reserve purposes, rather than remain in an S&P 500 index and an international index mutual fund. The committee revised the policy and then instructed the bar's CFO to distribute a RFP to investment managers. Through an interview process on November 5, the committee resolved to transfer half the funds invested in the reserve accounts to Becker Capital Management and Washington Trust Bank.

The amount of the reserves transferred to the two managers would be approximately \$3.6 million (the final amount will be shared at the meeting).

The committee approved the revised policy (Exhibit A) and announced the approved managers' names at the January 15, 2009 meeting (see the minutes of that meeting).

OSB Investment Policy, Bylaw 7.4

Revisions approved by Budget & Finance Committee, January 15, 2010

Additions underlined and in **blue**; deletions with ~~striketrough~~ and in **red**

Section 7.4 Investment Policy

Subsection 7.400 Purpose

This investment policy is established to provide direction and limits for the Bar's investment manager in investing all cash assets held by the Bar. The funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The objective of the **Short-term Investment** policy is to provide for short-term investment of cash to be used within the Bar's current fiscal year, generally one year or less. The objective shall be to minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The objective of the **Long-term Investment** policy is to provide for long-term growth and stability of all reserves, designated, and contingency funds. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. This investment fund shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the Bar. Long-term investment strategy should achieve reasonable yields while minimizing exposure to risk.

Subsection 7.401 Investment Management

The Executive Director or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as he or she may require. The Bar will maintain a list of all authorized institutions that are approved for investment purposes. ~~The Budget & Finance Committee will review the investment portfolio at least annually, using expert advice and assistance as it may require.~~

Management and Monitoring of Performance

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall monitor the investment policy and portfolio.

Investment(s). The Committee may engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of this policy and the specific direction of the Committee. The investment managers may contact the designated liaison of the Committee, who shall be the Bar’s Chief Financial Officer between meetings of the Committee to implement or suggest changes in investments or strategy. If necessary, the Committee may meet by telephone to consider changes in investments or strategies. The selection and allocation of funds to individual statement managers will be made by the Committee.

Committee Meetings. The investment manager(s) shall prepare quarterly reports of the portfolio’s performance. The Committee will meet at least quarterly to monitor the performance of the assets.

Performance Standards. The investment committee will evaluate investment managers using a number of factors including performance relative to the most applicable benchmarks, quality of communications with the investment committee, and adherence to the Bar’s investment policy.

Annual Review. This investment guidelines and policies shall be reviewed at least annually by the Budget & Finance Committee.

Subsection 7.402 Approved Investments

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

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments.
- (g) Mutual funds of U.S. and foreign equities and not including individual stock ownership.
- (h) Federal deposit insurance corporation insured accounts
- (i) individual publicly-traded stocks excluding margin transactions, short sales, and derivatives.

<u>Security</u>	<u>Minimum credit quality</u>
<u>Interest bearing deposits of banks, savings and loans and credit unions</u>	<u>The issuing financial institution must be rated “well capitalized” as defined by the financial institution’s regulator. Those that are not “well capitalized” will be</u>

	<u>limited by the level of their deposit insurance.</u>
<u>Obligations issued or guaranteed by U.S., local, city and state governments and agencies</u>	<u>A-/A3 as defined by Standard & Poor's and Moody's</u>
<u>Money Market Funds</u>	<u>The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.</u>
<u>Money Market Mutual Funds</u>	<u>The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.</u>
<u>Obligations issued or guaranteed by the U.S. Federal government</u>	<u>Not applicable</u>
<u>Obligations issued or guaranteed by U.S. Federal agencies</u>	<u>AAA/AAA as defined by Standard & Poor's and Moody's</u>
<u>Obligations issued or guaranteed by U.S. government-sponsored enterprises</u>	<u>AAA/AAA as defined by Standard & Poor's and Moody's</u>
<u>Obligations issued or guaranteed by local, city and state governments and agencies.</u>	<u>A-/A3 as defined by Standard & Poor's and Moody's</u>
<u>Obligations of U.S. corporations</u>	<u>A-/A3 as defined by Standard & Poor's and Moody's</u>

Subsection 7.403 Limitations

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

Subsection 7.404 Prudent Person Standard

The standard of prudence to be used by the investment manager in managing the overall portfolio will be the prudent investor rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
Memo Date: February 5, 2010
From: Chris Kent, chair, Budget & Finance Committee
Re: Request from SSFP Section on BarBooks

Action Recommended

Consider the request from the Sole & Small Firm Practitioners (SSFP) Section to create a special subscription pricing structure for BarBooks for members of the SSFP Section.

Background

The SSFP Section executive committee's request for a special subscription rate for BarBooks for members of the section has been on the Budget & Finance Committee's agenda for the past few meetings. On December 14, 2009, the section sent the following letter to bar staff.

Dear Ms. Schmid, Ms. Kruschke and Mr. Wegener:

The Sole and Small Firm Practitioners Section, through the unanimous vote of its Executive Committee, has authorized the purchase of a block of BarBooks attorney subscriptions at the 809 price level as indicated on the BarBooks information page of the Oregon State Bar's website. This section is, in fact, a virtual office share and is entitled to the same benefits at the same cost as other office shares.

With this letter, we hereby direct Rod Wegener to debit the appropriate Sole and Small Firm Practitioners Section financial account in the amount of \$4,995.00 and to apply this sum to the BarBooks purchase as set forth above.

The Sole and Small Firm Practitioners Section subscription is to commence on December 31, 2009. An initial list of attorney subscribers will be forwarded for activation prior to that date. Thank you for your assistance and continued efforts to make BarBooks available to all Oregon attorneys on an equitable basis.

Very truly yours,

W. Scott Phinney, Chair, Sole and Small Firm Practitioners Section
Kelly Doyle, 2010 Chair Elect, Sole and Small Firm Practitioners Section
Janice L Hazel, 2010 Chair Elect, Sole and Small Firm Practitioners Section

cc: Gerry Gaydos, President, OSB Board of Governors
cc: Kathleen Evans, President-Elect, OSB Board of Governors

The section's plan is to create a "virtual office" share for BarBooks for all members of the SSFP Section; thereby allowing the section to be considered like a large firm for cost of a

BarBooks subscription. This means that once the section achieves 150 members, the section will pay the bar \$4,995 and each member thereafter pays \$33.30 (\$4,995 divided by 150). A one-person subscription is \$395.

The section has been critical of the bar's current subscription method since its inception and in the past has encouraged the bar to consider a "universal access" plan which consists of all active bar members paying for the cost of BarBooks as part of the annual membership fee. The section has been informed that the BOG is studying options for funding BarBooks during 2010.

Although the section's plan is a benefit for those section members, it will cause an estimated \$40,000 to \$60,000 drop in overall revenue for the Legal Publications department.

The letter followed with the executive committee's request to meet with the Budget & Finance Committee. At the January 15, 2010 meeting, four members of the section met for approximately thirty minutes to state the section's request and the plans for funding BarBooks with an increase in active membership fees. After the meeting, President Evans sent this email to the section:

I appreciate the good work you are doing on behalf of the section. Sadly, it isn't possible for me to give you an answer you would like to hear prior to month end. The Budget & Finance committee and the Policy & Governance committee have scheduled a joint meeting to work on the BarBooks issue at our upcoming committee meetings on Thursday, February 18th.

I do not have the authority to speak on behalf of the BOG until the committees are able to complete their work. I can tell you that my personal position—at this moment in time—is that our duty is to all Bar members, whose needs will be best served by an overall review of the entire BarBooks issue. Our budget, while large, is as close to break-even as it can be, and intentionally changing one piece of the budget has serious impact that I cannot sanction on my own without the overall BOG input.

As stated at the meeting, the BOG did commit itself, at the retreat last fall, to a move to universal access to BarBooks. We simply have to do so in a prudent manner.

I don't want to dampen anyone's enthusiasm, but we will be working on this issue on a BOG level with great industry this year. I invite the Section to work with us toward that end goal.

The committee generally was not in favor of granting the special subscription to the section and will have a formal recommendation to the board at its February 18 meeting.

At the BOG planning retreat last October, President Evans assigned the Budget & Finance and the Policy & Governance Committees to study the BarBooks funding and methods to get legal publication information to members. The committees are holding a joint committee meeting after the board meeting adjourns on February 19. Additional data on BarBooks subscriptions, printed book sales, and related data will be included with the committees' agendas.

OREGON STATE BAR

Financial Statements Summary November 30, 2009



Narrative Summary

November's financial statements were a bit unusual as the month had a break-even bottom line. The schedule below shows a \$297,792 Net Revenue after eleven months, and still with a positive budget variance. The 2009 budget is a \$248,993 Net Revenue. December typically is a month where expenses exceed revenue. The last month for 2008 had expenses exceeding revenue by \$255,000, so the current year net revenue could disappear.

As 2009 winds down, we have a reasonable idea where there is good news and bad news financially for the bar. See the next pages for that "news."

Executive Summary

Revenue	Actual 11/30/2009	Seasonal Budget 11/30/2009	Budget Variance	% of Budget	Actual 11/30/2008
Member Fees	\$ 5,958,238	\$5,926,707	\$31,531	0.5%	\$ 5,825,625
Program Fees	3,608,146	3,788,126	(179,980)	-4.8%	3,654,249
Other Income	123,193	154,344	(31,151)	-20.2%	288,241
Total Revenue	<u>9,689,577</u>	<u>9,869,176</u>	<u>(179,599)</u>	<u>-1.8%</u>	<u>9,768,115</u>
Expenses					
Salaries & Benefits	6,223,646	6,265,394	(41,748)	-0.7%	6,263,731
Direct Program, G & A	3,168,140	3,378,877	(210,737)	-6.2%	3,271,912
Contingency	0	22,917	(22,917)	-100.0%	0
Total Expense	<u>9,391,786</u>	<u>9,667,187</u>	<u>(275,401)</u>	<u>-2.8%</u>	<u>9,535,643</u>
Net Operating Rev (Exp)	297,792	\$ 201,989	<u>95,802</u>		232,473
Fanno Creek Place	<u>(657,201)</u>	<u>(671,977)</u>			<u>(985,540)</u>
Net Rev Bef Mkt Adj	<u>(359,410)</u>	<u>(469,989)</u>			<u>(753,068)</u>
Market Adjustment	435,553				<u>(1,212,845)</u>
Net Revenue	<u>\$ 76,144</u>	<u>\$ (469,989)</u>			<u>\$ (1,965,913)</u>

Positive Budget Variance

The Financial Good News and Bad News



First, the good news . . .

. . . *Member Fee revenue* and the expenses for *Salaries, Taxes, and Benefits* will on target with the 2009 budget.

. . . Both revenue and expense are below budget for *Fanno Creek Place*. Revenue is below as the interest earnings on the reserve account are very low due to low interest rates and third-party meeting room rentals not reaching expectations. Also, expenses are below budget as operating costs are coming in lower than budget estimates. The year should end with a net expense slightly lower than the budgeted net expense.

. . . Revenue for *Admissions, Lawyer Referral, and MCLE* all have exceeded their respective budgets and 2008 revenue.

. . . *BarBooks* subscriptions revenue will exceed the budget by about \$15,000.

. . . The aggregate of all departments/programs *Direct Program* and *General & Administrative* costs will be below budget. Part of that is due to offsetting lower revenue for some activities.

. . . Clearly a sign of the times. The 2009 budget for *Hiring & Recruiting* is \$21,000. Through the end of November, the bar has expended only \$1,817. Part of the reduction is due to advertising on web sites like Craigslist, but most is due to low staff turnover.



Now some bad news . . .

. . . *Investment Income*, which is the interest earnings on the short-term dollars and the dividends and earnings on the reserve accounts will be well below budget, primarily because the interest rate on the short-term funds will average slightly below 1% for the year. The earnings on the reserve accounts will be close to the budget.

. . . *CLE Seminars* and *Legal Publications* revenue will be below budget between 10% and 20% and probably not match 2008 revenue.

The shift in how members get their CLE credits continues. Registrations at live or taped events will be well below budget, but revenue from video rentals has already exceeded the budget and will be well above 2008.

. . . *Legal Publications* revenue will be well below budget even though *BarBooks* subscriptions revenue will exceed the budget. The decline has been in printed book sales, which at the end of November are only 50% of budget. New books have recently come to

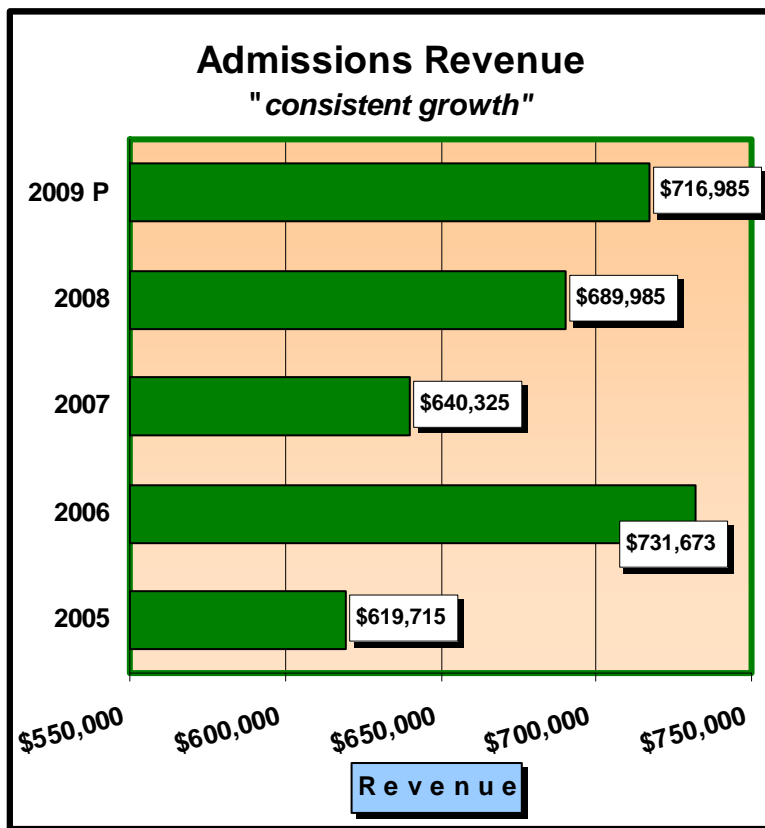
market, but certainly not enough to make up the difference. Much of the decline has been lower sales of typically popular books. Of the 13 books that had a budget revenue of \$10,000 or more, only five will attain 90% or higher of its annual budget.

Neither good news nor bad news, but in November Moss Adams began some of the field work for the audit of the bar's 2008 and 2009 financial statements.

A Reason for Membership Growth

The growth in Oregon State Bar membership the past few years has been between 2% and 2.5% annually. Most of that is due to candidates sitting for and passing the bar exam.

The chart below shows the growth in the Admissions Department revenue for the past five years. This is all sources of revenue with no change in the bar exam fee. Not all who sit and pass join the bar, but it still is a good indication of membership growth. Each year since 2005, revenue has grown, except for the unusual year of 2006 when the number of exam takers was an all-time high.



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
Memo Date: February 5, 2010
From: Chris Kent, chair, Budget & Finance Committee
Re: Special BOG Account

Action Recommended

Decision to establish a special account for BOG events and approve the guidelines to administer the account.

Background

The consideration to establish written guidelines for a special account to pay for alcoholic beverages funded by Board of Governors' members was first reviewed by the Budget & Finance Committee at its October 30, 2009 meeting. The guidelines were drafted to establish a consistent and less troublesome manner to pay for beer and wine at official BOG events. For several years, a fund of board members' contributions was maintained by a board member who acted as treasurer, the executive director, or lastly the executive director's assistant. The administration of the fund often has been challenging and on occasion not enough funds were in the account to pay the cost of the wine and beer. The practice was established because of OSB bylaw 7.501 Eligible Expenses, which states:

Eligible reimbursable expenses while on official business include the following:

(e) Miscellaneous Costs:

Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. **Bar funds must not be used to pay the cost of alcoholic beverages.**

To eliminate the problems of past practices, the committee reviewed and approved the following guidelines for the maintenance of the "OSB Board of Governors Special Account."

1. The bar will open a no or low-cost checking account at a bank with branches throughout the state. The account signers will be the bar's executive director, the executive assistant, and the CFO.
2. The account shall not be commingled with assets of the bar, but will be acknowledged to the bar's auditing firm.

3. The bar's CFO and controller shall oversee the administration of the account.
4. The CFO will provide an accounting of all funds to the chair of the Budget & Finance Committee each quarter. The accounting will include a record of all deposits and contributors, and the amount, date, and event for each expenditure.
5. The account will be used to pay the cost of wine and beer only, no hard liquor.
6. The fund is to be used for board events only. No funds may be used by any individual board member even if on official board business.
7. The account will maintain a minimum balance of \$xxx.xx. At least once a year, or as often as necessary to maintain the necessary minimum account balance, the CFO will notify all board members to contribute funds to the account.
8. The account will be funded by contributions from board members who partake of wine and beer at special events hosted by the board. All contributions are voluntary. For those who partake of the wine and beer should contribute at least \$100.00 a year. All contributions are to be in cash or checks payable to "(TBD)."
9. At all BOG events, the facility or caterer will be instructed to put all beer and wine purchases on a separate invoice. The preferred payment method will be to invoice the bar and a check written by the bar's CFO. Any direct purchases by the executive director or the executive assistant will be reimbursed from the account, or funds may be requisitioned prior to the purchase.
10. No alcoholic beverages are to be purchased on a bar-issued credit card.

The bar's controller has found a low-cost checking account with Wells Fargo Bank.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
From: Mitzi Naucler, Chair, Policy & Governance Committee
Steve Pucci, Chair, Public Affairs Committee
Re: Proposed Amendments to LPRC Statute

Action Recommended

Authorize staff to include in the 2011 Bar Bill an amendment to ORS 9.532 eliminating the requirement that volunteer investigators be grouped by regional committees.

Discussion

For many years, the Oregon State Bar has utilized the services of unpaid volunteers for assistance in investigating disciplinary complaints. The authority for this is found in ORS 9.532, the same statute that gives the Board of Governors authority to appoint the SPRB. That statute provides:

9.532 Local professional responsibility committees; state professional responsibility board; powers; witnesses; subpoenas; oaths.

(1) The board of governors shall create local professional responsibility committees to investigate the conduct of attorneys. The composition and authority of local professional responsibility committees shall be as provided in the rules of procedure.

(2) The board of governors shall also create a state professional responsibility board to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure.

(3)(a) The state professional responsibility board and local professional responsibility committees shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the member being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(b) A witness in an investigation conducted by the state professional responsibility board or a local professional responsibility committee who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The state professional responsibility board or local professional responsibility committees may enforce any subpoena issued pursuant to paragraph (a) of this subsection by application to any circuit court.

(c) Any member of the state professional responsibility board or a local professional responsibility committee may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection.

Presently, there are 16 LPRCs. There is one for Douglas County, one for Lane County and one for Multnomah County. The rest are multi-county committees. When rosters are full, total LPRC membership is roughly 100. Each year, staff gathers the names of those lawyers who express interest in LPRC service, solicits additional volunteers, puts together a proposed roster for each of the 16 committees and presents them to the Board of Governors Appointments Committee. The Appointments Committee then makes recommendations to the full Board of Governors, which makes the final appointments. Members are then notified of their appointments, a training manual is updated by staff and circulated, and pending committee assignments are coordinated with the new chairpersons.

Two developments suggest that it is time to amend ORS 9.532 to do away with the committee structure (but *not* with volunteer investigators):

(1) The number of investigative assignments made to LPRCs has diminished substantially as Disciplinary Counsel's Office (DCO) has assumed most of the responsibility for investigating complaints. For example, 131 assignments were made to LPRCs in 1997. Ten years later, in 2007, the number of assignments was 18, and the average is even fewer since then;

(2) Interest in LPRC service has diminished radically over the last several years such that it is extremely difficult to fill vacant positions on LPRC rosters. Staff expends a good bit of time drumming up volunteers, but over the last few years has had to resort to asking existing members to consider reappointment year after year.

Staff suggests that the LPRC committee structure has outlived its usefulness. In fact, the Bar and the Supreme Court took a step in the direction of reducing reliance on the committee structure in 2004, when Bar Rule of Procedure (BR) 2.3(a) was amended to provide that investigative assignments are to be made by disciplinary counsel directly to *individual* members of an LPRC, rather than routing assignments through committee chairpersons. Although an LPRC member may request that the LPRC chair convene a meeting of the full committee to discuss an assignment, the investigating member "need not obtain the approval of the LPRC as a whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel." BR 2.3(a)(2)(E). To staff's knowledge, the only LPRC that actually meets as a committee and discusses investigative reports is in Multnomah County.

Disciplinary Counsel's Office still has occasional need for investigative assistance from volunteer lawyers in local communities. It is not always practical for DCO to travel to Burns or Pendleton or Medford to interview a witness or meet face-to-face with an interested party. Disciplinary Counsel envisions keeping a list of volunteers who are willing to take on an investigative assignment as the need arises. However, continuing with the present committee recruitment, appointment and maintenance process is not an effective use of time given the low numbers of investigative assignments each year, the limited number of volunteers and the rule that provides for direct assignments to and direct reports back from individual investigators.

The Policy & Governance and Public Affairs Committees propose that ORS 9.532 be amended as set out below. The amendments eliminate LPRCs, but authorize the designation of individual bar members to serve as investigators with all the authority to issue subpoenas and compel the attendance of witnesses and the production of records that LPRCs presently have.

9.532 ~~State professional responsibility board; powers; witnesses; subpoenas; oaths.~~

(1) ~~The board of governors shall create a state professional responsibility board to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure.~~

~~(2) The state professional responsibility board shall have the authority to designate one or more members of the bar to investigate the conduct of attorneys on behalf of the state professional responsibility board.~~

~~(3)(a) The state professional responsibility board and any member of the bar designated to investigate the conduct of attorneys pursuant to subsection (2) shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the member being investigated, and the production of books, papers and documents pertaining to the matter under investigation.~~

~~(b) A witness in an investigation conducted by the state professional responsibility board or by a designated investigator who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The state professional responsibility board or designated investigator may enforce any subpoena issued pursuant to paragraph (a) of this subsection by application to any circuit court.~~

Deleted: Local professional responsibility committees; s

Deleted: The board of governors shall create local professional responsibility committees to investigate the conduct of attorneys. The composition and authority of local professional responsibility committees shall be as provided in the rules of procedure.

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(c) Any member of the state professional responsibility board or a ~~designated investigator~~ may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection.

Deleted: local professional responsibility committee

Conclusion

The above amendments are not likely to reduce the involvement of volunteer lawyers in the investigative process beyond the current level of that involvement. However, the amendments will streamline the appointments process and eliminate a level of structure that is not necessary or beneficial. The SPRB has seen the above amendments and are not opposed to them.

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

The meeting was called to order by President Gerry Gaydos at 10:10 a.m. on Friday, October 30, 2009, and adjourned at 4:15 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Gerry Gaydos, Ward Greene, Gina Johnnie, Chris Kent, Steve Larson, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. New board members present were Derek Johnson, Mike Haglund, and Maureen O'Connor. Staff members present were Teresa Schmid, Sylvia Stevens, Rod Wegener, Susan Grabe, Anna Zanolli, and Teresa Wenzel. Others present were Ross Williamson and Jessica Cousineau from the ONLD; Ira Zarov, Jeff Crawford, and Bill Carter from the PLF; Dick Roy, Bill Kabeiseman, and Jim Kennedy from the Sustainability Task Force; and via phone, Bob Browning of the Sole and Small Firm Practitioners Section.

Friday, October 30, 2009

1. Nominating Committee

A. Nomination of Steve Piucci as President-elect

The board agreed by consensus to approve Steve Piucci as the 2010 President-elect.

2. Report of Officers

A. Report of the President

Mr. Gaydos thanked the board for its support and efforts during his term in office, directed their attention to his written report, and encouraged them to attend the Diversity Summit, House of Delegates meeting, and bar's awards dinner.

B. Report of the President-elect

Ms. Evans directed the board's attention to her written report and indicated that she continues to prepare for her term as president in 2010.

C. Report of the Executive Director

As written.

D. Oregon New Lawyers Division

1. ONLD Report

Mr. Williamson introduced the 2010 ONLD Chair, Jessica Cousineau and thanked the board for the opportunity of participating in the board meetings. His report was presented as written.

3. Board Members' Reports

A. Proposed HOD Resolution

1. Veterans' Day Resolution

Mr. Kent presented his request for an annual Veterans' Day Resolution honoring military service and sacrifice.

Motion: Mr. Kent moved, Mr. Piucci seconded, and the board voted unanimously to adopt the Veterans' Day Resolution.

4. Professional Liability Fund

A. General Update

Mr. Zarov informed the board the 2010 assessment would remain the same as 2009 and that he was optimistic it would remain the same for 2011.

B. 2010 Pro Bono Coverage Plan Changes

1. PLF Policy 3.800

Motion: Mr. Kent moved, M. _____ seconded, and the board voted unanimously to approve the proposed changes to PLF Policy 3.800 to allow coverage for all certified programs, provided they do not present an unacceptably high risk of claims, as shown on Exhibit A.

C. Primary Plan Retroactive Dates

1. PLF Policy 3.100 Claims Made Plan and Retroactive Date

Motion: Mr. Kent moved, M. _____ seconded, and the board voted unanimously to approve the proposed changes to PLF Policy 3.100 regarding the retroactive date of coverage for lawyers who discontinue and resume practice in the same coverage year, as shown on Exhibit B.

D. Primary and Excess Coverage Plan Changes

Mr. Crawford presented the PLF's recommendation to amend the Primary Coverage Plan to clarify the year to which a claim will be assigned. He also presented a recommendation to amend both the Primary and Excess Plans to limit statutory damages.

Motion: Ms. Evans moved, Mr. Kent seconded, and the board voted unanimously to approve the plan as shown on Exhibit C.

E. Adoption of 2010 Master Plans

Mr. Crawford presented the 2010 Master Primary (Claims Made), Excess and Pro Bono Plans for the board's approval as amended.

Motion: Mr. Kent moved, Ms. DiIaconi seconded, and the board voted unanimously to approve the plan.

F. Excess Rates for 2010

Mr. Zarov presented the PLF's request to increase the Excess Plan rates for 2010 by approximately 10%.

Motion: Mr. Kent moved, Ms. DiIaconi seconded, and the board voted to approve the revised rates.

G. Changes to 2010 Policy Manual

Mr. Zarov presented a recommendation to amend Chapter 7 of the PLF Policy Manual to charge additional rates for high-risk practices, redefine what constitutes securities practice, and clarify the rates for out-of-state firm members.

Motion: Mr. Piucci moved, Ms. DiIaconi seconded, and the board voted unanimously to approve the policy changes as set forth on Exhibit D.

H. 2010 PLF Assessment and Budget

Mr. Carter presented information about the PLF 2010 budget that includes a raise for the CEO. He acknowledged that the salary change will mean that the PLF CEO and the OSB Executive Director salaries will no longer be in parity, in contravention of the policy in recent years. Ms. Schmid informed the board that circumstances have changed and that, in her opinion, salary parity is less of an issue. Mr. Carter expressed the PLF Board of Directors' view that the raise will bring the CEO's salary in line with the market and will enhance recruitment and retention. Several board members inquired about

the process for determining a comparable market and the PLF's experience in recruitment and retention. Some concern was expressed that eliminating parity at the top would lead to increased salaries for all PLF staff. Mr. Carter assured the board that was not the intention.

Motion: Ms. Fisher moved, Ms. DiIaconi seconded, and the board voted to approve the PLF's 2010 Budget. Ms. Wright, Ms. Evans, Ms. Naucler, and Mr. Greene abstained.

5. Special Appearances

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

Mr. Greene introduced the chair of the Sustainability Task Force (STF), Mr. Kabeiseman, and task force members Mr. Roy and Mr. Kennedy. The members of the STF thanked the board for its interest in sustainability and reviewed the STF report and recommendations. They put particular emphasis on the creation of a Sustainable Futures Section, for which they had obtained more than 400 petition signatures, and the adoption of an OSB bylaw recognizing the bar's commitment to sustainability. Mr. Greene thanked the task force for the enormous amount of effort put forth.

Motion: Ms. Evans moved, Ms. Wright seconded, and the board voted unanimously to create a Sustainable Futures Section.

Motion: Mr. Greene moved, Ms. DiIaconi seconded and the board voted to waive the one meeting notice requirement for changing the OSB Bylaws. Mr. Kent and Ms. Fisher opposed.

Motion: Mr. Greene moved, Ms. Evans seconded and the board approved new bylaw Article 26 as set forth below. Mr. Kent opposed.

Article 26 – Sustainability

The bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because bar operations and the practice of law impact the environment and society generally, the bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the executive director will designate a sustainability coordinator for bar operations, will encourage continuous sustainability improvement in bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in addressing competing economic, social, and

environmental priorities that impact future generations. The bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

The board will discuss implementation of other issues in the SSTF report at its planning session on October 31, 2009.

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

1. Resolution for “Office Share” Pricing of BarBooks™

Mr. Browning presented the Section’s request that the bar implement a more equitable pricing of BarBooks™ by treating the Section as a large law firm or “office share” arrangement. Mr. Gaydos responded that the board would be discussing BarBooks™ pricing and related issues at the strategic planning session on October 31, 2009.

6. Rules and Ethics Opinions

A. Proposed Ethics Opinion

1. Formal Opinion Request No. 07-03

Ms. Stevens summarized for the board the proposed formal ethics opinion relating to a lawyer’s obligation to withdraw when a client files a bar complaint.

Motion: Mr. Piucci moved, Ms. DiIaconi seconded, and the board voted unanimously to issue the opinion as a Formal Ethics Opinion .

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

A. Client Security Fund

1. Request for Review of Claim Denial

a. No. 2009-28 MURPHY (Hubler)

Ms. Lord presented information concerning Ms. Hubler’s claim.

Motion: Ms. Wright moved, Ms. Evans seconded, and the board voted unanimously to uphold the decision of the CSF Committee to deny Ms. Hubler’s claim.

b. No. 2009-25 DOUGLAS (Ulle)

Ms. Lord and Ms. Stevens presented information concerning the claimant's request for review of the CSF Committee's recommendation to award only half of the money paid to his lawyer.

Motion: Ms. Evans moved to reimburse the full amount of the claim, Ms. Lord seconded the motion, but the motion failed (yes, 6 [Evans, Fisher, Gaydos, Lord, Piucci, Vieira]; no, 8 [DiIaconi, Greene, Johnnie, Kent, Larson, Marsumonji, Naucler, Wright]; absent, 2 [Garcia, Johnson])

B. Senior Lawyers Task Force

1. Senior Lawyers Task Force Report

Ms. Stevens presented the Senior Lawyers Task Force report on behalf of the chair, Albert Menashe. In the report, seniors are defined as lawyers over 55 and the task force recommended that the board establish a Senior Lawyers Division similar to the ONLD. The board thanked the task force for its work. Board members acknowledged the contributions that senior lawyers make as well as the problems of age-related impairments, but concluded that creation of a Senior Lawyers Division should be deferred pending further exploration into the level of interest among members and what the financial implications would be.

C. Urban /Rural Task Force

1. Update

Ms. Fisher indicated that the task force may continue for another year. Half of Oregon lawyers live outside of the Portland area, and many feel disenfranchised because of their distance from Portland. The task force is looking for ways to facilitate interaction throughout the entire bar. This will be an issue for the board's 2010 planning session.

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

A. Access to Justice Committee

1. Access to Civil Legal Services Task Force

Motion: The board passed the committee motion to establish the Access to Civil Legal Services Task Force, with Mr. Gaydos as chair. Ms. Naucler abstained.

2. Legal Services Program Appropriations

Motion: The board passed the committee motion to approve the LSP appropriations recommendation as set forth in Exhibit E. Ms. Naucner abstained.

B. Member Services Committee

1. Approve Election Dates for 2010

Motion: The board unanimously passed the committee motion to approve the election dates for 2010 with the understanding that the dates may change if the BOG retreat cannot be rescheduled.

C. Policy and Governance Committee

1. Miscellaneous Housekeeping Bylaw Amendments

Motion: The board unanimously passed the committee motion to approve the various housekeeping changes to the Bar Bylaws as shown on Exhibit F.

2. Revised Committee Assignments

Motion: The board unanimously passed the committee motion to approve the revised committee assignments for SLAC, as shown on Exhibit G.

3. Proposed Amendments to Bylaw 13.01

Motion: The board unanimously passed the committee motion to approve the amendments to Bar Bylaw 13.01 to expand eligibility for certified pro bono program, as shown on Exhibit H.

4. Anonymous Payments to the CSF

Ms. Stevens explained that the CSF had received an offer of an anonymous “donation” of funds that “may be due to the CSF.” The CSF Committee sought the board’s guidance on whether such payments should be accepted.

Motion: The board unanimously passed the committee motion to accept anonymous donations to the Client Security Fund provided they are unrestricted and not available as “credit” against a future obligation to the Fund.

5. Housekeeping MCLE Rule Amendments

Motion: The board unanimously passed the committee motion to approve the amendments to MCLE Rule 3.6 and MCLE Regulation 3.500 as shown on Exhibit I.

6. Sunsetting the Joint OSB/CPA Committee

Motion: The board unanimously passed the committee motion to sunset the Joint OSB/CPA Committee, as requested by the joint committee chair and members.

D. Public Affairs Committee

1. Public Affairs Update

Mr. Piucci updated the board on legislative issues, including the likelihood of passage or failure of various bills and reminding them that 2010 will be a short session proposed to last less than 30 days.

E. Budget and Finance Committee

1. 2010 OSB Budget

Mr. Greene summarized the proposed 2010 OSB Budget, informing the board that the bar has received significant savings from implementing electronic procedures.

Motion: The board unanimously passed the committee motion to approve the 2010 OSB budget.

2. Request from Sole & Small Firm Practitioners Section on BarBooks™

The committee had no recommendation regarding the request from the SSFPS. The board will review this matter during its strategic planning session on October 31, 2009.

Executive Session

3. Facilities Management Agreement
(closed pursuant to ORS 192.660(2)(e) and (h))

Mr. Greene updated the board on the status of the facilities management agreement. The committee brought no motion forward.

Open Session

4. Executive Director Contract and Salary
Recommendation

Ms. Naucler reported that the committee would recommend renewal of Ms. Schmid's contract at the board's November 6, 2009, special meeting.

9. Consent Agenda

The following items were removed from the Consent Agenda for discussion No. 09-08 SHINN, No. 09-32 SHINN, No. 09-09 COULTER, No. 09-33 COULTER, No. 09-36 COULTER, and No. 09-23 DOUGLAS:

1. No. 09-08 SHINN (Cousin)

Ms. Stevens explained that Mr. Shinn objected to the amount of award recommended by the CSF Committee and that she had verified his calculations, indicating that the award should be reduced to \$9000.01. Ms. Stevens also explained the Disciplinary Counsel's Office believed Mr. Shinn had charged the claimant for costs he had either not incurred or was not entitled to charge .

Motion: Mr. Greene moved, Ms. DiIaconi seconded, and the board voted to award \$9,000.01, concluding that there was insufficient evidence of dishonesty regarding the additional questioned amounts, which appear to be a fee dispute. Mr. Piucci opposed.

2. No. 09-32 SHINN (Doblie)

Ms. Stevens presented Mr. Doblie's request for review of the amount recommended for reimbursement by the CSF Committee.

Motion: Ms. Wright moved, Ms. Fisher seconded, and the board voted unanimously to return the matter to the CSF Committee for further action.

3. No. 09-09 COULTER (Warren), No. 09-33 COULTER (Puderbaugh), No. 09-36 COULTER (Christensen), No. 09-23 DOUGLAS (Johnson).

Motion: Ms. Wright moved to deny payment of No. 09-09, No. 09-33, No. 09-36, and No. 09-23. The motion died for lack of a second.

Motion: Ms. Evans moved, Mr. Piucci seconded, and the board voted unanimously to rescind action on No. 2009-25 DOUGLAS (Ulle) and send it along with No. 09-09, No. 09-33, No. 09-36, and No. 09-23 back to the CSF Committee for additional analysis and a recommendation for a consistent standard to apply in the cases.

Motion: Ms. Evans moved, Ms. Wright seconded, and the board unanimously approved the remainder of the Consent Agenda with a change to the October 30, 2009 minutes in 6.1. Access to Justice Committee. It should read "...the committee will bring its requests for distribution of legal services funds to the board for approval..."

10. Good of the Order

None.

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).

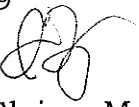
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OREGON STATE BAR

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.~~

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

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 legal aid providers were asked to make a recommendation concerning how best to disburse the general fund appropriation after the allocation of administrative costs to the OSB-LSP. Legal aid recommended that the remaining appropriated funds be distributed as follows: 10.06% to Lane County Legal Aid, 5.93% to Center for Nonprofit Legal Services, 0.98% to Columbia County Legal Aid, and the remainder to Legal Aid Services of Oregon and Oregon Law Center. The statewide percentages are based on the latest available county-by-county poverty population figures. LASO and OLC will divide the remainder with 75.19% going to LASO and 24.81% going to OLC. This division is based on an analysis of each organization's respective implementation costs under the statewide strategic plan which controls the internal decisions on usage of the general fund money. The following is the \$500,000 disbursement for the legal aid providers. The disbursement will happen in quarterly increments.

Oregon State Bar Legal Services Program	\$40,000
Center for Nonprofit Legal Services (5.93%)	\$27,276
Lane County Legal Aid (10.06%)	\$46,276
Columbia County Legal Aid (.98%)	\$4,508
Legal Aid Services of Oregon (75.19% of remainder)	\$287,195.00
Oregon Law Center (24.81% of remainder)	\$94,745.00
Total	\$500,000

This disbursement method was approved by the LSP Committee on September 29, 2009 and was approved by the Access to Justice Committee on October 30.

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

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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.

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- Deleted: and Senior Assistant
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4. Expense Reimbursement General Policy

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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- Deleted: If these two requirements are not met, reimbursement will not be paid.

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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STATE LAWYERS ASSISTANCE COMMITTEE (SLAC) CHARGE

General:

Investigate and resolve complaints or referrals regarding lawyers whose performance or conduct may impair their professional competence. Protect the public from, and provide assistance to, lawyers whose professional competence is impaired, as set forth in ORS 9.568.

Specific:

1. Investigate referrals of lawyers whose professional competence may be impaired.
- 1.2. Coordinate with PLF Loss Prevention Program and other appropriate resources for lawyer assistance OAAP and other appropriate programs and professionals to establish an appropriate remedial program and provide referrals for impaired lawyers.
3. Monitor lawyers as necessary to assure compliance with remedial programs.
4. Report non-cooperating lawyers to disciplinary counsel as provided in ORS 9.568(4), OSB bylaw 24.700 and RPC 8.1.
5. Educate the public regarding the functions of SLAC and resources available to address lawyers whose professional competence is impaired.
2. Continue education and publicity efforts.
- 3.6. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

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.

(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 ~~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.

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 3.7(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
Meeting of the Board of Governors
November 6, 2009
Special Meeting
Special Session Minutes

The meeting was called to order by President Gerry Gaydos at 12:00 p.m. on Friday, November 6, 2009, and adjourned at 1:00 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Michelle Garcia, Gerry Gaydos, Ward Greene, Gina Johnnie, Chris Kent, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, and Terry Wright. Staff members present were Teresa Schmid, Sylvia Stevens, Rod Wegener, and Teresa Wenzel. Also present was Ethan Knight and Maureen O'Connor.

Friday, November 6, 2009

Open Session

A. BOG Positions on HOD Agenda

1. Fair Compensation for Senators and Legislators

Action: The board agreed to take no position (support, 4 [DiIaconi, Piucci, Wright, Garcia]; oppose, 4 [Kent, Lord, Johnnie, Matsumonji]; no position, 4 [Gaydos, Fisher, Evans, Greene]).

2. Paralegals in FED Cases

Action: The board agreed to oppose (support, 3 [Kent, Lord, Greene]; oppose, 7 [DiIaconi, Gaydos, Piucci, Garcia, Johnnie, Matsumonji, Naucler]; no position, 3 [Fisher, Wright, Evans]).

3. Priority Placement of HOD Items on the HOD Agenda

Action: The board agreed to take no position (support, 5 [DiIaconi, Kent, Piucci, Garcia, Naucler]; oppose, 5 [Wright, Evans, Lord, Greene, Matsumonji]; no position, 4 [Gaydos, Fisher, Wright, Johnnie]).

4. Notice Pleading

Action: The board agreed to oppose (support, 0; oppose, 9 [DiIaconi, Gaydos, Kent, Piucci, Evans, Lord, Garcia, Johnnie, Matsumonji]; no position, 3 [Fisher, Wright, Greene]).

5. Simplified MCLE Reporting

Action: The board agreed to oppose (support, 1 [DiIaconi]; oppose, 9 [Evans, Kent, Piucci, Wright, Lord, Garcia, Naucler, Greene, Johnnie]; no position, 2 [Gaydos, Fisher]).

6. ORCP 54E – Mutual Offers of Compromise

Action: The board agreed to oppose (support, 0; oppose, 10 [Kent, Piucci, Evans, DiIaconi, Johnnie, Matsumonji, Lord, Garcia, Naucler, Greene]; no position, 3 [Gaydos, Fisher, Wright]).

7. ORCP 54E – Extend Time to Accept

Action: The board agreed to oppose (support, 0; oppose, 8 [Kent, Piucci, Evans, Johnnie, Lord, Garcia, Naucler, Greene]; no position, 5 [Gaydos, Fisher, Wright, Matsumonji,] DiIaconi).

8. Study Registration of Out-of-state Lawyers in Arbitration

Action: The board agreed to support (support, 9 [Kent, Piucci, Evans, DiIaconi, Johnnie, Lord, Naucler, Greene, Matsumonji]; no position, 4 [Gaydos, Fisher, Wright, Garcia]).

9. Oppose Repeal of Tax Measures

Action: The board agreed to take no position (support, 2 [Piucci, Garcia]; oppose, 1 [Kent]; no position, 9 [Gaydos, Fisher, Evans, DiIaconi, Johnnie, Wright, Lord, Greene, Matsumonji]).

10. Defer Reciprocal Admission Expansion

Action: The board agreed to oppose (support, 3 [Kent, Piucci, Garcia]; oppose, 7 [DiIaconi, Gaydos, Wright, Evans, Lord, Johnnie, Matsumonji]; no position, 2 [Fisher, Greene]).

11. Support Funding for Low-income Legal Services

Action: The board agreed to support (support, 10 [DiIaconi, Gaydos, Kent, Piucci, Wright, Evans, Garcia, Matsumonji, Greene, Johnnie]; oppose, 0; no position, 1 [Fisher]).

B. Budget and Finance Committee

1. Authorize President to Execute Investment Advisor Contracts.

Action: The board unanimously approved the committee motion to authorize the OSB President to sign the contract(s) with the investment advisor(s) selected by the Budget & Finance Committee if that choice is made prior to the February 2010 meeting.

Executive Session

2. Facilities Management Agreement.

Mr. Greene presented the proposed form of agreement between Opus and the Bar regarding Opus's assignment of the Facilities Management Agreement.

C. Executive Director Evaluation Committee

Ms. Naucler presented the committee's evaluation of the Executive Director's performance in 2009 and recommendation for 2010.

Open Session

Action : The board unanimously approved the Budget and Finance Committee motion to enter into the Agreement Concerning Consent to Assignment of Management Agreement.

Action: The board unanimously approved the Executive Director Evaluation Committee motion to extend the Executive Director's contract for 2010, with the same 3% salary increase that all staff will receive.

Oregon State Bar
Meeting of the Board of Governors
December 28, 2009
Special Meeting Agenda

The meeting was called to order by President Gerry Gaydos at 9:00 a.m. on Monday, December 28, 2009, and adjourned at 9:20 a.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Michelle Garcia, Gerry Gaydos, Ward Greene, Gina Johnnie, Kellie Johnson, Chris Kent, Steve Larson, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, and Terry Wright. Staff members present were Sylvia Stevens, Margaret Robinson, Danielle Edwards, and Teresa Wenzel.

1. Appellate Selection Committee

A. Approve Recommendations to the Governor

Motion: The board unanimously passed the committee recommendation to forward the names of all 19 candidates to the Governor for consideration for the vacant seat on the Court of Appeals.

2. For the Good of the Order

Ms. Johnson informed the board that she will be resigning from the Board of Governors to take a position with the Oregon State Bar. Staff explained that notice will be sent to all members in Region 5 seeking candidates and a replacement will be appointed at a special BOG meeting on January 15, 2010.

Oregon State Bar
Meeting of the Board of Governors
January 9, 2009
Special Session Minutes

The meeting was called to order by President Gerry Gaydos at 11:45 a.m. on Friday, January 9, 2009 and adjourned at 12:00 p.m. Members present from the Board of Governors were Steve Piucci, Steve Larson, Gina Johnnie, Michelle Garcia, Barbara Dilaconi, Mitzi Naucner, Ward Greene, Bob Viera, Terri Wright, Kathy Evans, Kellie Johnson and Gerry Gaydos. Members of staff present were Teresa Schmid, Susan Grabe, and Helen Hierschbiel.

January 9, 2009

1. Unlawful Practice of Law

A. Rachel Kosmal McCart No. 07-33

On motion the board unanimously approved the settlement agreement with Rachel McCart and authorize bar staff to sign upon receipt of the requested proof of business location from McCart.

**Oregon State Bar
Board of Governors Meeting
October 30, 2009
Judicial Proceedings Agenda**

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

A. Reinstatements

1. Deborah S. Berg – 771141

Action: Mr. Piucci moved, Ms. Evans seconded, and the board unanimously passed the motion to reinstate temporarily Ms. Berg to active status and to consider her unconditional reinstatement at a later meeting.

2. Virginia Bond – 893938

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

3. Janine Curtis – 824798

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

4. Sohayee Lee – 984387

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

5. Brian McQuaid – 953584

Action: Ms. Wright moved, Ms. DiIaconi seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Mr. McQuaid be reinstated as an active member of the Oregon State Bar.

6. Joel O'Malley – 041219

Action: Mr. Piucci moved, Ms. Wright seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Mr. O'Malley be reinstate as an active member of the Oregon State Bar.

7. M. Maila Putnam – 811418

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

8. Kathey I. Shaw – 813684

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

9. Jack K. Sterne – 955228

Action: Ms. Lord moved, Ms. Evans seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Mr. Sterne be reinstate as an active member of the Oregon State Bar. Ms. Wright disclosed that Mr. Sterne is one of her former students.

10. David Edward Van't Hoff – 961859

Action: Ms. Fisher moved, Ms. Wright seconded, and the unanimously passed the motion to recommend to the Oregon Supreme Court that Mr. Van't Hoff be reinstate as an active member of the Oregon State Bar.

B. Disciplinary Counsel's Report

As written

**Oregon State Bar
Board of Governors Meeting
October 30, 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

No action was taken by the board; all items before the board were informational.

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.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
From: Sylvia E. Stevens, General Counsel
Re: CSF Claims Recommended for Payment

Action Recommended

Consider the Client Security Fund Committee's recommendation for awards in the following claims:

No. 09-21 HORTON (Cameron)	\$3,500.00
No. 09-24 HORTON (Ryan)	\$8,718.00
No. 09-27 HORTON (Nguyen)	\$50,000.00
No. 09-30 OAKEY (Hartwig)	\$2,500.00
No. 09-31 OAKEY (Poetzl)	\$1,500.00
No. 09-20 COULTER (Warren)	\$200.00
No. 09-33 COULTER (Puderbaugh)	\$500.00
No. 09-36 COULTER (Christiansen)	\$675.00
No. 09-23 DOUGLAS (Johnson)	\$4,750.00
Total	\$72,343.00

Background

WILLIAM HORTON CLAIMS (3)

Common Facts

William Horton committed suicide on January 28, 2009, apparently in response to a fee arbitration award finding that he had dishonestly misappropriated a client's funds. The CSF received claims from four of Horton's clients. The CSF received applications for reimbursement from four of Horton's clients. One has been paid, in the amount of \$24,500. In the course of investigating the claims, the CSF subpoenaed Horton's trust and business account records. His trust account was closed with a zero balance on November 25, 2008. Most of the claimants have made claims in Horton's estate. While not denying the claims, the lawyer for the personal representative says the estate is insolvent and there will be no distribution for creditors. The CSF Committee found no reason not to believe that to be the case and concluded that the claimants have no recourse but the CSF.

No. 09-21 HORTON (Cameron) \$3,500

Cameron hired William Horton to defend a lawsuit filed against Cameron in Washington. On August 21, Cameron gave Horton a check for \$2,500, which Horton

deposited into his business account. On September 10, Cameron gave Horton a check for \$5,000, which Horton deposited into his trust account. The balance in Horton's trust account on September 30, 2008 was \$5.

Cameron's matter was still pending when Horton died. Cameron contends that Horton's work was ineffective and not worth the \$7,500 he paid. There was no written fee agreement and Cameron received no billing statements from Horton. Cameron's claim in Horton's estate was denied. Horton's former legal secretary says Horton probably would have charged between \$175 and \$200/hour. The PR's attorney says \$225/hour would have been a reasonable rate and he believes the file demonstrates 30 hours of work, for a fee of \$6750.

The investigator's review of the file indicates that Cameron was sued in May 2008. Horton wrote to the plaintiff's lawyer indicating that Cameron would appear and requesting that no default be taken without notice. Horton prepared a notice of appearance for Cameron to sign and send to the court, but there is no record it was ever filed. A default was entered in September 2008 and Horton's motion to set it aside was granted in October 2008. Horton also filed a motion to appear pro hac vice, an answer and counterclaim, and a request for production.

The investigator estimates that Horton probably spent 20 hours on the file and, using Horton's legal assistant's suggestion of \$200/hour, Horton would have been entitled to \$4,000 in fees and Cameron would be entitled to a refund of \$3,500. The Committee recommends awarding Cameron that amount and waiving the requirement that he have a judgment against Horton's estate. The Committee also approved a fee of \$1500 (from the award) to the attorney who assisted Cameron with his CSF claim.

No. 09-24 HORTON (Ryan) \$8,718

Shawn Ryan hired William Horton on October 30, 2008 to defend a fraud and unlawful trade practices claim. On November 14, 2008, Ryan deposited \$10,000 with Horton toward his fees in the matter. On that same day, Horton filed an Answer to the complaint. No portion of Ryan's fee advance was deposited into Horton's trust account and there was no agreement that it was "earned on receipt."

Horton's statement to Ryan at the end of November showed fees earned of \$1,282 and a "Trust Account Balance" of \$8,718. Ryan filed a small claims case against Horton's estate in March 2009, but because he had not first made a claim in the estate, his small claims case was dismissed and he was ordered to pay \$569 to the estate for its costs in the matter. Ryan then filed a claim in the estate, which was denied. Ryan requested summary adjudication and in December 2009 the court entered an order (but not a judgment) allowing Ryan's claim in the amount of \$8,149, after offsetting the costs awarded to the estate in the small claims matter.

The Committee recommends awarding Ryan \$8,718, the trust balance shown on Horton's final statement, as that is the amount misappropriated by Horton. While Ryan may

owe Horton's estate for costs in the small claims matter, the CSF Committee concluded that was not an appropriate deduction from the CSF award. The Committee also recommends waiving the requirement that Ryan have a judgment; he has an order against an insolvent estate and finalizing it as a judgment will not make it more collectible.

No. 09-27 HORTON (Nguyen) \$50,000

William Horton began representing Thai Nguyen in January 2004 in connection with their dispute with a contractor, Vo. Horton represented Nguyen at trial, which they lost, and again on appeal. In June 2008, Nguyen deposited \$150,000 in escrow in lieu of a bond or undertaking on appeal. The trial court judgment was affirmed without opinion and in September 2008, Horton and Vo's attorney submitted escrow instructions requesting distribution of \$40,549.20 to Vo, \$56,927.80 to Vo's attorney, and the balance (\$52,758.25)¹ to Horton. No fees were due to Horton and it is not clear why the client's portion of the escrow funds was not distributed directly to Nguyen.

Horton's trust account records show that Horton deposited \$52,658.25 in his trust account on September 16, 2008. By the end of the month, the trust account balance was \$0. The largest single withdrawal was a check for \$40,797 payable, apparently, to another client and bearing the notation "final distribution/close files."

Horton never notified Nguyen of the Court of Appeals' decision, nor did he remit any of the funds from escrow. The personal representative's attorney did not dispute Nguyen's claim in Horton's estate and Nguyen was awarded a judgment against the estate for his principal loss plus interest.

The Committee found that this claim meets all the requirements for reimbursements and recommends an award of \$50,000 to Nguyen. Pursuant to its authority under CSF Rule 2.10, the Committee has also concluded that the fees charged by Nguyen's counsel (Kilmer, Voorhees & Laurick) for assisting with the CSF claim, including obtaining the required civil judgment, are reasonable. Nguyen agreed to pay Jeff Kilmer the lesser of \$400/hr. or 50% of the CSF award, with the proviso that no fee would be due if the CSF claim was denied. Kilmer's fees total \$7,384.62, which constitutes approximately 14% of the recommended award.

No. 09-30 OAKY (Hartwig) \$2,500

Mr. Hartwig hired James Oakey in November 20, 2008 to obtain a guardianship and conservatorship over his wife. Oakey's engagement letter of that date estimated the total for fees and costs would be \$2500. Of that amount (paid in advance), "2000 will be held in trust for my hourly wage of \$180, and \$500 will be due and owing at the time of payment."

¹ The additional \$235.25 appears to be interest accrued while the funds were in escrow.

Hartwig didn't hear anything from Oakey after their initial meeting and got no response to his telephone messages. When he eventually contacted the Bar, Hartwig learned that Oakey had died in April 2009. There were no funds in Oakey's trust account and no evidence that he performed much, if any, work on Hartwig's matter. Hartwig's successor attorney said he had to "start the case from scratch."

Hartwig filed a claim in Oakey's estate. The claim was not denied, but the personal representative's attorney informed Hartwig that due to the limited assets of the estate and the number of priority claims it is very unlikely that the estate will have any assets available with which to pay general creditor claims. The priority claims include Oakey's child support obligation, expenses of estate administration, past due income taxes, expenses of Oakey's last illness, and child support arrearages.

The Committee recommends reimbursement to Hartwig of the entire \$2,500 and further recommends waiving the requirement for a judgment against Oakey's insolvent estate.

No. 09-31 OAKEY (Poetzl) \$1,500

Mr. and Mrs. Poetzl hired James Oakey in October 2008 to prepare wills and a living trust. They paid \$1,500 in advance as the "base cost of the trust," with additional charges to be assessed for the preparation and filing of deeds or other titles of ownership. Oakey did not put the advance fee into his trust account. His fee agreement cites that the \$1500 was "due upon receipt."

After the initial meeting, they had no further contact with Oakey. In June 2009, they learned that Oakey had died unexpectedly in April 2009. At the time that Oakey undertook the Poetzl's matter he was dealing with a disciplinary complaint filed by another client that involved similar conduct (failure to deposit advance fees into trust, complete the work or stay in contact with the client).

There is no evidence that Oakey did any work on Poetzl's wills and trust before he died. There is also no money in his trust account. The Poetzls filed a claim in Oakey's estate, but were told that after payment of priority claims there would be no money for general creditors.

The Committee concluded that Oakey's fee agreement does not meet the requirement for being "earned on receipt" and should have been held in trust until his work was complete. The Committee recommends awarding the Poetzls \$1,500 and waiving the requirement that they have a judgment against his insolvent estate.

CHARLES COULTER CLAIMS (3)

Common Facts and Committee Recommendation

Charles Coulter died unexpectedly in April 2009. The PLF assisted in closing his law office. It determined that there is money in Coulter's trust account, but because there is no

probate and no one authorized to sign on trust account checks, the money has not been refunded to any clients. The PLF has also not found records sufficient to identify the rightful owners of the trust account funds. The CSF has received claims from three of Coulter's clients who claim entitlement to a refund. The Committee does not believe that Coulter engaged in any dishonest conduct, but is desirous of facilitating refunds to the claimants.

There are two ways to accomplish this. One would be to petition the court for a custodianship under ORS 9.705 et seq., which gives the circuit court jurisdiction over the practice of an attorney who "[f]or any...reason...is incapable of devoting the time and attention...to the law practice of the attorney which is necessary to protect the interests of the clients of the attorney." The statutory scheme contemplates notice to the affected attorney (or his heirs or personal representative, of which there are none known) and a hearing. Presumably, a petition to establish a custodianship over Coulter's practice would go by default.

The simpler approach would be for the CSF to pay the claims and then, under its statutory subrogation rights, request that the bank turn over the funds in Coulter's trust account to the OSB. We have done this successfully in the past, so long as we agree to indemnify the bank against any subsequent claims from clients.

The funds in Coulter's trust account exceed the amount the CSF believes should be reimbursed to the three claimants. Nevertheless, the Committee recommends paying the claims and trying to get the trust account released to the OSB. Any excess would be held by the CSF and ultimately disposed of as required under the Uniform Disposition of Unclaimed Property Act.

No. 09-29 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 2009, they were informed that he had died at the end of April. No work had been done on their wills.

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. 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. Puderbaugh's claim seeks reimbursement of the entire \$1900 paid to Coulter, on the ground that any work Coulter did was of no value to him. The Committee disagreed that

the proper test is whether the work was of any ultimate value, particularly since Coulter did precisely what he was asked to do and it was Puderbaugh who decided not to follow up on the matter. 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 early 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 is 2/3 of the \$1,500 paid to Coulter. 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:”

$$\$1910.00 \times 1/3 = \$637$$

$$\text{Partial retainer } \$1005 - \$637 = \$368$$

Here, too, the Committee recommends waiving the requirement for a judgment in making the award.

No. 09-23 DOUGLAS (Johnson) \$\$4,750

Gerald Douglas died unexpectedly in February 2009. Twelve of his former clients have submitted claims for reimbursement of unearned legal fees advanced to Douglas. The BOG has made awards in three of the cases, but in October returned several to the CSF Committee for further consideration on the issue of dishonesty. Having concluded that it is dishonest for a lawyer to wrongfully fail to deposit advanced fees into trust,² the Committee proceeded to analyze the remaining Douglas claims.

Mary Ann Johnson hired Douglas in September 2008 to resolve her federal and state tax problems with an Offer in Compromise. She initially deposited \$2,500 toward his estimated fee of \$3,000. In December 2008, she dissolved her business and deposited an additional \$3,000 of funds for him to hold and apply to fees; he assured her there would be a refund when he was finished. The Committee estimated that Douglas spent about three hours working on Johnson’s matter. At his customary hourly rate of \$250 he earned \$750, entitling the client to a refund of \$4,750.

There was no written fee agreement or other evidence of the terms of the engagement. There was no written agreement that the fees paid at the beginning of the

² See CSF Committee’s recommendation to amend CSF Rule 2.2 on the P&G Agenda for February 18, 2010.

representation were “earned on receipt.” On the contrary, Johnson understood that Douglas would charge her hourly for his time. Douglas did not have a trust account and it is not clear what happened to Johnson’s advance fees. His estate was insolvent at the time of his death in February 2009.

The Committee found that Douglas’ failure to deposit the advanced fee in trust was dishonest and that this claim is eligible for reimbursement in the amount of \$4,750. The Committee also recommends waiving the requirement for a civil judgment as there is no likelihood that it could be collected.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
From: Sylvia E. Stevens, General Counsel
Re: Ratifying Endorsement of MBA Statement of Diversity Principles

Action Recommended

The BOG needs to ratify its endorsement of the MBA Statement of Diversity Principles that was done by e-mail vote last month.

Background

The Multnomah Bar Association has invited all members of the bar to sign on to its Statement of Diversity Principles (attached), explaining:

“The statement was adopted by the MBA Board in April 2009. It presents an opportunity for all legal employers - law firms big and small, governments, businesses, nonprofits and everyone else - to publicly acknowledge their commitment to developing the diversity of the legal community in Oregon. The statement is offered as a vehicle to continue and expand upon our conversation about diversity in the bar - diversity as an encompassing idea, important to all of us.”

Frank Garcia, OSB Diversity Manager, urged that the Board of Governors endorse the Statement as a group, in addition to signing individually as desired. Because the MBA intends to publish the names of all signers on or about February 19, 2010, BOG action in advance of the February meeting was necessary.

The question was submitted to the BOG by e-mail on January 25, 2010. Fifteen members responded with a vote tally as follows:

Yes (all but Kent and O'Connor)

No (Kent)

No response (O'Connor)

The BOG now needs to ratify its informal action in regard to the Statement of Diversity Principles.



Statement of Diversity Principles

The Multnomah Bar Association and the signatories hereto remain committed to fostering diversity in the legal profession. Diversity is an inclusive concept and encompasses, without limitation, race, color, ethnicity, gender, sexual orientation, gender identity and expression, religion, nationality, age, disability and marital and parental status.

With greater diversity, we can be more creative, effective and just, bringing more varied perspectives, experiences, backgrounds, talents and interests to the practice of law and the administration of justice. A diverse group of talented legal professionals is critically important to the success of every law firm, corporate or government law department, law school, public service organization and every other organization that includes attorneys.

We recognize that achieving diversity is an evolutionary process that requires a continued renewal of our commitment to strategies of inclusion. Diversity is not about quotas or different standards. Rather, the opportunity to increase diversity should be one important consideration in the decision making process. We want to hire, retain and promote our attorneys based on each of our unique criteria, while simultaneously maintaining our commitment to diversity.

We believe that all members of the bar should have the opportunity to participate equally and fully in our profession. To this end, we pledge to facilitate diversity in the hiring, retention and promotion of attorneys and in the elevation of attorneys to leadership positions within our respective organizations.

Minutes
Access to Justice Committee
OSB Board of Governors
October 30, 2009
Oregon State Bar Center, Tigard

Committee Members Present: Terry Wright (Chair), Gina Johnnie, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Bob Vieira. **Guest:** Maureen O'Connor, new BOG member in 2010. **Staff:** Anna Zanolli, Judith Baker (by phone), Kay Pulju (by phone).

Minutes of the September 25 meeting were approved as submitted.

1. Legal Services Program funding allocation. The committee discussed the LSP Committee's recommendation on allocating the general fund appropriation awarded to the bar from the 2009 Oregon Legislature.

ACTION: The committee approved the LSP Committee's recommendation to the full board. This item is on the agenda for the BOG meeting later this same day.

2. Pro Se Legal Services for Family Law. The Self-Representation Subcommittee of the Statewide Family Law Advisory Committee is proposing a bench/bar task force to advise on maintaining and improving family law court forms and legal services for self-represented litigants. The Chief Justice has approved this proposal and will be submitting a recommendation to the bar for formal action. Meetings will be coordinated by bar staff and handled at the bar center. No additional expenses are anticipated.

ACTION: No action was required by the committee on this item.

Next Meeting: Friday, January 15, 2010.

Minutes
Access to Justice Committee
OSB Board of Governors
January 15, 2010
Oregon State Bar Center, Tigard

Committee Members Present: Gina Johnnie (Chair), Derek Johnson, Audrey Matsumonji, Mitzi Naucler. **Staff:** Judith Baker, Catherine Petrecca, Kay Pulju, Teresa Schmid.

Minutes of the October 30, 2009, meeting were approved as submitted.

1. Overview of ongoing committee responsibilities. Staff provided an overview of the various bar programs and committees for which this committee provides policy oversight and assistance. These include:

- The OSB Pro Bono Program and the OSB Pro Bono Committee encourage Oregon lawyers to commit to pro bono service.
- The Loan Repayment Assistance Program and OSB LRAP Committee provide financial assistance to Oregon lawyers who work in public service and carry high student debt loads.
- The Oregon Law Foundation and OLF Board of Directors manage allocation of funds from Interest on Lawyer Trust Accounts to support access to justice activities.
- The OSB Legal Services Program and LSP Committee provide oversight and administer filing fee revenue for the benefit of legal aid programs across the state.
- The Referral & Information Services program matches people with legal needs and questions with lawyers registered with its Lawyer Referral Service, Modest Means Program, Military Assistance Panel and Problem Solvers program for teens.
- The OSB Public Service Advisory Committee advises on the referral service programs above, as well as other public education and outreach activities conducted by the OSB Communications Department.

2. Committee assignments from the 2009 BOG strategic planning session. The following focus areas have been assigned to this committee for 2010. Regular reports will be provided along with issues for the committee's consideration.

Legal Services Funding Task Force: Develop and monitor task force charge, composition, duration, resources.

Bench/Bar Task Force on Pro Se Assistance in Family Law: Facilitate establishment, review periodic reports, monitor financial impact, study recommendations.

RIS funding models: Receive reports on various funding models, national trends, stakeholder interests in Oregon, financial impact, meet with consultants from the ABA.

3. New Business. Chair Johnnie invited additional items for the committee's consideration. Mitzi Naucner suggested converting all or most family law matters to administrative processes, such as the system currently in place for child support. After some discussion, the committee agreed to pursue this idea.

Next Meeting: Thursday, February 18, 2010.

Minutes
Budget & Finance Committee
October 30, 2009
Tu Tu Tun Lodge
Gold Beach, Oregon

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

1. Minutes – September 25 and October 9, 2009 Committee Meetings

The minutes of the September 25 and October 9, 2009 meetings were approved.

2. Financial Report – September 30, 2009

Mr. Wegener highlighted some information on the September 30 financial report. He also distributed a revised chart of the bar's reserves and investment portfolio. The new chart separated the reserves that were "restricted" (e.g. sections' fund balances) and "board designated" (e.g. capital reserve).

3. 2010 OSB Budget

Mr. Wegener reported that the report on the 2010 budget included on the board agenda is similar to the report the committee reviewed on October 9, and includes the recommendations of the committee from that meeting.

4. OSB Investment Portfolio and Policy

The committee updated itself on the process to select one or two investment management firms to manage the bar's investment portfolio, which consists of the bar's reserve funds. The responses by the five firms to ten more questions or statements asked by the bar were distributed to the committee. The responses will be part of the committee's interviews with the firms on November 5.

5. Request from SFP Section on BarBooks

The committee took no action on the request knowing that the topic is on the board agenda, a section representative will call in to the board meeting when the topic arises, and the topic with expanded issues is on the agenda of the board's strategic planning session the next day.

6. Facilities Management Agreement with Opus Northwest

Mr. Greene reported that David Weiner and he await the confirmation from Opus Northwest's attorney that Opus will agree to terminate the facilities management agreement if for any reason the master lease between the bar and Opus is terminated.

7. Capital reserve

This topic was not discussed due to time constraints.

8. Guideline for BOG Special Account

The committee reviewed the draft of guidelines for the management of the board members self-funding a special account for alcoholic beverages at board sponsored events. The committee recommended some changes to make contributions voluntary. The guidelines will be presented to the committee at its next meeting for recommendation to the board.

9. Dues Increase Requests for 2010 from Sections

Mr. Wegener reported that four sections have requested an increase in their member dues for 2010 and action needs to be taken on those requests so any changes can be reported on the 2010 member fee statement. The committee approved these increases: Appellate Practice from \$10 to \$15; Intellectual Property from \$15 to \$20; and Juvenile Law from \$20 to \$25. The committee rejected the Real Estate & Land Use increase from \$25 to \$30. The action on each request was the committee's assessment of the section's annual budget and the size of its fund balance.

10. Next committee meeting

The next meeting will be the first meeting of the 2010 committee on January 15 at the bar center.

Minutes
Budget & Finance Committee
January 15, 2010
Oregon State Bar Center
Tigard, Oregon

Present - Committee Members: Chris Kent, chair; Steve Larson; Mitzi Naucler; Mike Haglund; Michelle Garcia. **Other BOG Members:** Kathy Evans **Staff:** Teresa Schmid; Sylvia Stevens; Linda Kruschke; Rod Wegener. **Guests:** Four members of the SSFP Section

1. Minutes – October 30, 2009 Committee Meetings

The minutes of the October 30, 2009 meeting were approved.

2. Financial Report – November 30, 2009 and end of year

Mr. Wegener reported that the preliminary statements for 2009 include a small net revenue; however, he believes that number will decrease as more year-end information becomes available. The bar's records for 2009, as in previous years, remain open until January 31 to collect the outstanding expenses and revenue from the previous year. The final 2009 statements are expected by mid February. The preliminary statements indicated that the largest revenue and expense categories are positive as membership fees revenue will be slightly over budget and salaries, taxes, and benefits will be slightly below budget.

3. Final Budget Report 2010

By consensus, the committee agreed not to change the 2010 budget with the changes made by the bar's CFO after the board approved the budget at the October 31, 2009 meeting.

4. Approval of Investment Portfolio

The committee approved the revised investment policy at bylaw 7.4. The revision was approved with the understanding that 7.402(h) is changed to the correct language. The revised policy will be included on the board agenda at the February 19 meeting.

The committee will meet with the investment managers from Becker Capital and Washington Trust at the February 18 meeting.

Note: The correct language of bylaw 7.402 is: "federal deposit insurance corporation insured accounts."

5. Sole & Small Firm Practitioners (SSFP) Section Request on BarBooks Subscription Rate

Four representatives of the SSFP Section attended to present the section's request to allow the section to be treated as a virtual office group and thereby be charged the same subscription rate of \$4,995 as a large firm. The section understood the board was discussing

the BarBooks matter during 2010 and acknowledged that their request is a “one year, one time adjustment.” The section also is a strong proponent that the cost of BarBooks be allocated to all bar members and be included in the annual membership fee. The section believes the information in BarBooks “facilitate(s) the effective practice of law” for all members.

The committee resolved not to change the subscription plans for this one-time request of the section.

6. 2010 Sections’ Budgets

The committee ratified the CFO’s approval of the sections’ budgets for 2010.

7. Other Business

The committee acknowledged the decline of Opus’ operations in the Portland area and asked the CFO to develop a contingency plan if Opus, or any other tenant, defaulted on its lease payments to the bar.

8. Next committee meeting

The next meeting will be on Thursday afternoon, February 18 at the Oregon Gardens in Silverton. Sometime during the February 18-19 meetings, there will be a joint meeting of the Policy & Governance and eth Budget & Finance Committees.

BOG Member Services Committee
January 15, 2010, Oregon State Bar Center
Minutes

Present:

Ann Fisher, Chair
Gina Johnnie, Vice Chair
Audrey Matsumonji
Barbara DiIaconi (by phone)
Derek Johnson
Ethan Knight

Staff:

Margaret Robinson
Frank Garcia Jr.
Danielle Edwards
Sarah Hackbart
Anna Zanolli

Approval of Minutes

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

Introduction to the Member Services Committee

Chair, Ann Fisher, provided the new members with an overview of the committee's role and responsibilities.

HOD Election Recruitment

The House of Delegates election will be held in March and committee members were asked to assist in the recruitment of candidates.

Section Services

The committee received copies of the recent survey of section members. This year the committee will review the results and determine which services the bar should aspire provide sections. It was noted that most sections are interested in assistance with CLE programming.

Communication Tools

Staff provided the committee with information on the types of communication the bar currently utilizes. Staff noted that the website provides allows us the opportunity to build automated systems that will not require staff manipulation and time.

Diversity/AAP Update

Frank Garcia Jr. updated the committee on current AAP activities and events. His report provided an overview of efforts in 2009 and program goals for 2010. Frank noted the addition of language to the bar's value statements to reflect the organizations commitment to diversity.

MINUTES

BOG Policy and Governance Committee

October 30, 2009

Tu Tu' Tun Lodge, Gold Beach, Oregon

Chair – Kathleen Evans

Vice Chair – Barbara Dilaconi

Ward Greene

Chris Kent

Steve Larson

Audrey Matsumonji

Mitzi Naucler

<p>1. Minutes. The minutes of the September 18, 2009 meeting were approved.</p>
<p>2. Proposed Amendment of MCLE Rule 3.2. The committee reviewed the history of the AtoJ MCLE rule and concluded that the Court intended that members complete the requirement in alternate reporting periods, not just anytime in a six-year period. The committee also concluded that the rule does not need amending, but that the MCLE Committee should draft a regulation clarifying the application of the rule.</p>
<p>3. Revised SLAC Charge. The committee reviewed the proposed revision to its charge drafted by SLAC and agreed unanimously to recommend its adoption by the BOG.</p>
<p>4. Proposed Amendments to Bylaw 13.01. The committee reviewed the Access to Justice Committee's proposal for amending Bylaw 13.201 to allow greater flexibility in certifying pro bono programs. The committee voted unanimously to recommend the amendment to the BOG.</p>
<p>5. Anonymous Payments to the CSF. The committee considered a proposed "anonymous donation" to the Client Security Fund from a lawyer who "may" owe the Fund now or in the future. After discussion, the committee agreed unanimously to recommend to the BOG that donations be accepted only if they are unconditional and unrestricted and not considered "credits" against future obligations to the CSF.</p>
<p>6. Housekeeping MCLE Rule Amendments. The committee reviewed proposed amendments to MCLE Rule 3.6 (to delete reference to Active Emeritus status) and MCLE Regulation 3.500 (to correct an internal reference) and voted unanimously to recommend the amendments to the BOG.</p>
<p>7. Request for Military MCLE Waiver. The committee discussed the request from two members that OSB members in active military service (JAG Corps) be exempted from MCLE requirements. It was pointed out that neither the BOG nor the court can waive the statutory child abuse reporting requirement. There is also no evidence that the MCLE Administrator has denied requests for accreditation of military programs. She also routinely grants extensions for members who military assignments make it difficult to report on time. The committee concluded that the only "exemption" should be for members are who deployed away from their regular duty post. The MCLE Committee was asked to develop any rules or regulations to implement such an exemption.</p>

Minutes

BOG Policy and Governance Committee

January 15, 2010

Oregon State Bar Center

Chair – Mitzi Naucner

Vice Chair – Chris Kent

Barbara Dilaconi

Michelle Garcia

Michael Haglund

Ethan Knight

Maureen O'Connor (absent)

- | |
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| <p>1. Approval of Minutes. The minutes of the October 30, 2009 meeting were approved.</p> |
| <p>2. Elimination of LPRCs. Jeff Sapiro presented his recommendation to eliminate Local Professional Responsibility Committees. He explained that this will be a structural rather than a substantive change, as only one LPRC continues to meet and deliberate as a committee. DCO and the SPRB now assign investigations to an individual LPRC member, who reports directly to the bar. If approved by the BOG, the Bar Act changes for the 2011 legislature will include repeal of the enabling statute. Mr. Sapiro suggested that the BOG could approve “panels” of investigators much like it does with volunteer bar counsel if the BOG wishes to continue being involved in the selection of investigators. Mr. Haglund moved, Ms. Dilaconi seconded, and the committee voted unanimously to advance Mr. Sapiro’s proposal to the BOG.</p> |
| <p>3. MCLE Rule Changes. Two members of the MCLE Committee, Max Rae and Michael Nichols, presented recommendations for amending the MCLE rules: (1) The first proposal would eliminate the multiplier credit for preparing written materials for a teaching activity—members would submit a separate application for the writing activity. The Administrator pointed out that the multiplier rule was adopted in 2005 and the proposed change would essentially repeal the 2005 change. (2) The MCLE Committee also recommends allowing Access to Justice credit for “experiential” learning when a lawyer represents a clients who face barriers to justice so long as the client is not someone the lawyer would ordinarily represent or the legal matter is not part of the lawyer’s regular practice. The P&G Committee had questions about whether lawyers should be encouraged to undertake matters for which they aren’t qualified. It was also suggested that the proposal would be giving credit for doing pro bono work. Most importantly, the P&G Committee wanted to have input from the Diversity Section and other interested groups before considering the experiential credit proposal further. (3) The third recommendation is to expand the types of activities that qualify for writing credit, eliminating the requirement that the product be of value to others, so long as it provided a learning experience for the author and was approved by the administrator or the MCLE Committee as to quality. No action was taken; the proposals will be discussed further at a subsequent meeting.</p> |
| <p>4. Adjourn. The meeting adjourned after one hour. The remaining items from the day’s agenda will be deferred to subsequent meetings. The chair asked staff to prioritize agenda items so that matters requiring immediate attention are discussed first.</p> |

OSB Public Affairs Committee
January 15, 2010
Oregon State Bar
Tigard, Oregon

Committee Members Present: Steve Piucci, Ann Fisher, Gina Johnnie, Derek Johnson, Steve Larson, Audrey Matsumanji. **Staff:** Susan Grabe, Jeff Sapiro.

1. **Legislative seats.** The committee discussed candidates for office in both the legislature and on the different courts.
2. **Oregon eCourt Update.** The Joint OSB/OJD Task Force has solicited 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. Comments from bar groups will be compiled for task force review sometime in January.
3. **Ballot Measures.** The committee considered a number of pending ballot measures including the previously filed jury nullification measure along with a host of other criminal/victim's rights issues.
 - a. **Measure 66 and 67.** 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. Failure of the tax measures would result in a projected loss of \$733 million—roughly 5 percent of the total projected general fund and lottery resources for the 2009–2011 biennium plus an additional \$250 million in matching federal funds. In response to a request from the legislative budget writing committee, the Oregon Judicial Department submitted reductions at both the 5 percent and 10 percent levels.
 - b. **Keep the Courts Open Act.** The committee also considered the implications of a newly filed initiative petition that proposes a statutory amendment to dedicate 3% of the General Fund to court operations. The bar will need to carefully study the underlying policy issues in the measure before any formal position is taken.
4. **Disciplinary changes.** Jeff Sapiro provided the committee an overview of two proposed changes to ORS Chapter 9 relating to the disciplinary process. The first proposal would change the sanction for an IOLTA violation from a disciplinary sanction to an administrative one. The

committee agreed that it does not make sense to expend disciplinary resources on something that is more administrative in nature. The second proposal would clarify the language of the LPRC statute to eliminate the LPRC structure, but provide the board more flexibility to appoint volunteer attorneys to conduct investigations as the need arises throughout the state. This amendment is intended to streamline the process and continue to encourage the use of volunteer lawyers in the bar discipline process.

Action: The committee moved to recommend adoption of both proposals as bar legislation for the 2011 session. The motion passed unanimously.

5. **Legal Services.** The committee also considered a request from the Brennan Center to sign onto a letter urging Congress to support the Civil Access to Justice Act that lifts all the LSC restrictions and increases funding for legal aid.

Action: The committee moved to recommend the board sign onto the Brennan Center letter in support of LSC funding and lifting the restrictions on Legal Services providers. The motion passed unanimously.

CLAIM HISTORY									
CLAIM #	NAME	ATTORNEY	CLAIM	PENDING	AMOUNT PAID	DATE PAID	DATE DENIED W/DRAWN	UNPAID BALANCE	ASSIGNED TO
07-04	Casey, Kimberly & Christina	Tripp, Dennis Estate of	\$101,454.91	\$0.00			12/23/2009	\$0.00	
07-25	Coyote, Ulises	Dunn, Timothy	\$4,000.00		\$4,000.00	1/17/2009		\$0.00	
08-12	Green, Robert & Leah	Dunn, Timothy	\$200.00		\$200.00	2/9/2009		\$0.00	
08-13	Hines Linda & Alan	Vance, Calvin	\$30,000.00	\$0.00			4/18/2009	\$0.00	
08-14	Lillard, Kevin	McGaughey, Morgain	\$1,250.00	\$0.00			4/18/2009	\$0.00	
08-15	Johnson, Eric Lyndon	Oh, John	\$500.00	\$0.00	\$500.00	7/9/2009		\$0.00	
08-17	Adams, William	Brown, Glenn C	\$5,000.00		\$2,117.50	7/9/2009			
08-19	Friesen, Larry and Uhde, Denise	Smith, Robert J	\$1,500.00	\$0.00			8/22/2009	\$0.00	
08-25	Brewer, Tom	Okai, Thomas	\$16,976.50	\$0.00	\$16,976.50	10/30/2009		\$0.00	
08-27	Moynagh, Christopher	Dunn, Timothy	\$300.00	\$0.00	\$300.00	7/9/2009		\$0.00	
08-28	Algain, Mosaab & Barzaji, Alyaa	Oh, John	\$2,865.00	\$0.00	\$2,865.00	6/30/2009		\$0.00	
08-31	Paresi, Mark (Hubbard, Rose esq)	Koch, Jacqueline	\$4,791.00	\$0.00	\$4,691.00	7/9/2009		\$0.00	
08-32	Eisele, Linda (Michael Greene esq)	Nicholls, Samuel	\$7,000.00	\$0.00	\$7,000.00	1/17/2009		\$0.00	
08-35	Alameda, Robert	Brown, Glenn C	\$5,972.50	\$0.00	\$5,972.00	7/9/2009		\$0.00	
08-36	Holan, Sally A	Brown, Glenn C	\$1,500.00	\$0.00	\$1,350.00	7/9/2009		\$0.00	
08-37	Jones, David F	Watson, Joe	\$615.00	\$0.00	\$615.00	3/16/2009		\$0.00	
08-38	Grady, Patrick J	Genna, Michael	\$4,000.00	\$0.00	\$3,600.00	7/9/2009		\$0.00	
08-39	Heagerty, Michael Scott	Brown, Glenn C	\$1,250.00	\$0.00	\$1,250.00	7/9/2009		\$0.00	
08-40	Walter, Steve	Brown, Glenn C	\$877.50	\$0.00	\$877.50	7/9/2009		\$0.00	
08-41	Lehman, Joanne Maris	Wilson, Linda	\$224,358.24	\$0.00			4/18/2009	\$0.00	
08-42	Phantant-Angkul, Deborah	Brown, Glenn C	\$1,312.50	\$0.00	\$656.25	1/16/2010		\$0.00	
08-43	Evans, Roger W.	Detlefsen, Jeffrey	\$21,825.23	\$0.00	\$21,825.23	7/9/2009		\$0.00	
08-44	Jensen, Jens	Marsh, Steven	\$3,681.00	\$0.00			8/22/2009	\$0.00	
08-45	Montague, Loletha	Johnston, Jacob	\$2,000.00	\$0.00	\$2,000.00	9/5/2009		\$0.00	
08-46	Murphy, Corbin	Hockett, Sharon	\$1,435.00	\$0.00	\$1,435.00	7/9/2009		\$0.00	
09-01	Scott, Kim	Brown, Glenn C	\$1,700.00	\$0.00			6/6/2009	\$0.00	
09-02	Fishler, Kevin	Dunn, Timothy	\$1,500.00	\$0.00	\$1,500.00	12/23/2009		\$0.00	
09-03	Loehr, Cindy	Koch, Jacqueline	\$1,500.00	\$0.00	\$1,500.00	7/9/2009		\$0.00	
09-04	Street, Jeffrey	Sushida, Jon	\$750.00	\$750.00				\$750.00	Quintero
09-05	Balsamo, Rolando	Hammond, Todd	\$10,320.00	\$0.00			10/12/2009	\$0.00	Taggart
09-06	Buchholz, William	Read, Karen E	\$250.00	\$0.00				\$0.00	
09-07	Krueger, Daniel Vance (Symitrio Chiropra	Oh, John	\$8,100.00	\$0.00	\$5,000.00	6/30/2009		\$0.00	
09-08	Cousin, Tiffany	Shinn, Michael R	\$20,000.00	\$0.00	\$9,000.01	11/13/2009		\$0.00	
09-09	Dal-Chung, Sang & Min, Seon	Oh, John	\$5,125.00	\$0.00	\$5,125.00	6/30/2009		\$0.00	
09-10	Johnston, David	Brown, Glenn C	\$8,038.08	\$8,038.08			1/16/2010	\$0.00	
09-11	Enterprise Rent a Car	Mottram, John	\$10,000.00	\$10,000.00				\$10,000.00	Quintero
09-12	Dursupek, Vladimir	Horton, William	\$35,000.00	\$0.00	\$24,500.00	12/21/2009		\$0.00	
09-13	Lenhart, Erik M	Douglas, Gerald (Estate)	\$2,000.00	\$0.00			6/6/2009	\$0.00	
09-14	Lenhard, Edward E	Douglas, Gerald (Estate)	\$1,000.00	\$0.00			6/6/2009	\$0.00	
09-15	LaJoie, Ronald and Jeanne	Douglas, Gerald (Estate)	\$300.00	\$0.00	\$150.00	9/1/2009		\$0.00	
09-16	Grigsby, Richard	Douglas, Gerald (Estate)	\$800.00	\$25.00				\$25.00	Swenson
09-17	Sutherland, Randal and Susan	Douglas, Gerald (Estate)	\$1,000.00	\$0.00	\$500.00	7/9/2009		\$0.00	
09-18	Eutze, Larry	Douglas, Gerald (Estate)	\$2,035.00	\$0.00			12/23/2009	\$0.00	
09-19	Joo, Hyun	Oh, John	\$4,000.00	\$0.00	\$4,000.00	7/9/2009		\$0.00	
09-20	Nolte, Mercedes	LaFollett, Thomas	\$25,000.00	\$0.00	\$17,500.00	9/5/2009		\$0.00	
09-21	Cameron, Chris	Horton, William	\$7,000.00	\$7,000.00				\$7,000.00	McGean
09-22	Wilson, Jerry Donald	Dunn, Timothy	\$6,100.00	\$100.00	\$6,000.00	9/5/2009		\$100.00	
09-23	Johnson, Mary Ann	Douglas, Gerald (Estate)	\$5,500.00	\$5,500.00				\$5,500.00	Swenson
09-24	Ryan, Shawn Michael	Horton, William	\$8,718.00	\$8,718.00				\$8,718.00	McGean
09-25	Ulle, Kris Steven	Douglas, Gerald (Estate)	\$4,000.00		\$2,000.00	9/5/2009		\$0.00	
09-26	Gregory, Gail	Read, Karen E	\$2,713.35	\$2,713.35				\$2,713.35	Palmer
09-27	Nguyen, Thai	Horton, William	\$50,000.00	\$50,000.00				\$50,000.00	McGean
09-28	Hubler, L. Billie	Murphy, Lynn	\$13,000.00	\$0.00			8/22/2009	\$0.00	
09-29	Warren, Chris & Elizabeth	Coulter, Charles (Estate)	\$200.00	\$200.00				\$200.00	Quintero
09-30	Hartwig, Donald	Oakey, James	\$2,500.00	\$2,500.00				\$2,500.00	Michelsen
09-31	Poetzi, Joseph	Oakey, James	\$1,500.00	\$1,500.00				\$1,500.00	Michelsen
09-32	Doblie, Max	Shinn, Michael R	\$66,415.00	\$50,000.00				\$50,000.00	Quintero
09-33	Puderbaugh, Michael	Coulter, Charles (Estate)	\$1,900.00	\$1,900.00				\$1,900.00	Quintero
09-34	White, Randy & Maryanne	Douglas, Gerald (Estate)	\$2,000.00	\$2,000.00			1/16/2010	\$0.00	
09-35	Iqbal, Tariq	Douglas, Gerald (Estate)	\$1,000.00	\$1,000.00				\$1,000.00	Swenson
09-36	Christensen, John & Amber	Coulter, Charles (Estate)	\$675.00	\$675.00				\$675.00	Quintero
09-37	Wright, Linda and Michael, Cossette, Daniel	Shinn, Michael R	\$10,000.00	\$10,000.00				\$10,000.00	Quintero
09-38	Johnson, Steven R	Dalrymple, Richard	\$852.00	\$852.00				\$852.00	Foster
09-39	Pottle, John Robert	Ryan, T. Michael	\$200.00	\$200.00				\$200.00	Howard
09-40	Wollenberg, Kurt	Samwick, Matthew D	\$20,000.00	\$20,000.00				\$20,000.00	Taggart
	TOTALS		\$787,355.79	\$183,671.41	\$155,005.99			\$173,633.35	
	Funds available for claims and indirect costs allocation as of Nov 2009							\$597,737.00	
						Fund Excess		\$424,103.65	

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
10/30/2009	Kelley, Phil	360.00
12/3/2009	Kelley, Phil	360.00

TOTAL

\$3,817.90

OREGON STATE BAR
Client Security - 113
For the Eleven Months Ending November 30, 2009

Description	November 2009	YTD 2009	Budget 2009	% of Budget	November Prior Year	YTD Prior Year
REVENUE						
Interest	\$160	\$5,202	\$16,900	30.8%	\$1,518	\$22,929
Judgments	360	3,898	5,000	78.0%	486	28,337
Membership Fees	50	70,376	70,800	99.4%	280	68,762
Miscellaneous Income		63				
TOTAL REVENUE	570	79,539	92,700	85.8%	2,284	120,029
EXPENSES						
SALARIES & BENEFITS						
Employee Salaries - Regular	2,310	27,201	29,800	91.3%	2,232	26,641
Employee Taxes & Benefits - Reg	564	8,099	8,900	91.0%	659	8,243
TOTAL SALARIES & BENEFITS	2,874	35,300	38,700	91.2%	2,890	34,883
DIRECT PROGRAM						
Bank Fees		39				
Claims	26,977	128,100	150,000	85.4%	13,775	73,181
Collection Fees			500			
Committees		92	250	36.6%		177
Pamphlet Production			300			
Travel & Expense		600	1,285	46.7%		1,154
TOTAL DIRECT PROGRAM EXPENSE	26,977	128,831	152,335	84.6%	13,775	74,511
GENERAL & ADMINISTRATIVE						
Messenger & Delivery Services			50			
Office Supplies			100			
Photocopying		100	150	66.8%		
Postage	23	216	250	86.6%	28	169
Professional Dues			200			
Telephone	18	155	200	77.6%	1	128
Training & Education	(350)		375			120
Staff Travel & Expense		643	758	84.9%		869
TOTAL G & A	(309)	1,115	2,083	53.5%	29	1,285
TOTAL EXPENSE	29,541	165,246	193,118	85.6%	16,694	110,680
NET REVENUE (EXPENSE)	(28,971)	(85,707)	(100,418)		(14,410)	9,349
Indirect Cost Allocation	1,086	11,946	13,032		784	8,624
NET REV (EXP) AFTER ICA	(30,057)	(97,653)	(113,450)		(15,194)	725
Fund Balance beginning of year		695,390				
Ending Fund Balance		597,737				
Staff - FTE count		.35	.35			