

**OREGON STATE BAR  
MEETING OF THE BOARD OF GOVERNORS  
Schedule of Events  
June 17-18, 2010  
6/7/2010 12:44 PM**

<b>Meeting Place</b>	Geiser Grand Hotel 1996 Main Street Baker City, OR 97814	<b>Phone:</b>	888- 434-7374
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**Thursday, June 17, 2010**

<b>1:00 p.m. – 2:00 p.m.</b>	<b>Lunch</b> Queen City Center
<b>2:00 p.m. – 3:00 p.m.</b>	<b>Budget and Finance Committee</b> (Kent, Larson, Lord, Naucner, Garcia, O'Connor, Haglund) Library
<b>3:00 p.m. – 4:00 p.m.</b>	<b>Policy and Governance Committee</b> (Naucner, Kent, DiIaconi, Garcia, O'Connor, Haglund, Knight) Queen City Center
	<b>Public Affairs Committee</b> (Piucci, Johnson, Mitchell-Phillips, Fisher, Matsumonji, Johnnie, Larson) Library
<b>4:00 p.m. – 4:30 p.m.</b>	<b>Appointments Committee</b> (DiIaconi, Haglund, Knight, Fisher, Kent, Piucci) Library
<b>5:00 p.m. – 7:00 p.m.</b>	<b>BOG Dinner</b> Queen City Center

**Friday, June 18, 2010**

<b>8:00 a.m. – 10:00 a.m.</b>	<b>Breakfast</b> Library
<b>9:00 a.m. – 10:00 a.m.</b>	<b>Member Services Committee</b> (Fisher, Johnnie, Matsumonji, DiIaconi, Johnson, Knight) Queen City Center
<b>10:00 a.m. – 11:00 a.m.</b>	<b>Joint Access to Justice and Budget &amp; Finance Committee</b>

(Johnnie, O'Connor, Lord, Matsumonji, Naucler, Johnson, Kent, Larson, Lord, Naucler, Garcia, O'Connor, Haglund)  
Queen City Center

**11:00 a.m. – 12:00 p.m.**      **Executive Director Evaluation Committee** (Garcia, Kent, Fisher, Piucci, Haglund)  
Library

**12:00 p.m. – 1:00 p.m.**      **Lunch**  
Queen City Center

**1:00 p.m. – 5:00 p.m.**      **Board of Governors Meeting**  
Queen City Center

**5:30 p.m. – 8:00 p.m.**      **Dinner with Local Bar and ONLD**  
Queen City Center

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**NO MEETING**      **Appellate Screening Committee**

**NO MEETING**      **Public Member Selection Committee**

**NO MEETING**      **Access to Justice Committee**

**Oregon State Bar**  
**Meeting of the Board of Governors**  
June 18, 2010  
**Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00 p.m. on June 18, 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, June 18, 2010**

**12:00 p.m. – 1:00 p.m.**

**Lunch and Departmental Presentation – Communications Department [Ms. Puju]**  
Queen City Center

**1:00 p.m.**

- |    |  |        |
|----|--|--------|
| 1. | Call to Order/Finalization of the Agenda | Action |
| 2. | Inspiration [Ms. Naucler]                |        |

**1:20 p.m.**

- |    |   |              |
|----|---|--------------|
| 3. | Report of Officers                            |              |
| A. | Report of the President [Ms. Evans]           | Inform 7     |
| B. | Report of the President-elect [Mr. Piucci]    | Inform 8     |
| C. | Report of the Executive Director [Ms. Schmid] | Inform 9-11  |
| D. | Oregon New Lawyers Division [Ms. Cousineau]   |              |
| 1. | ONLD Report                                   | Inform 12    |
| 2. | ONLD Master Calendar                          | Inform 13-14 |

**1:40 p.m.**

- |    |   |              |
|----|---|--------------|
| 4. | Professional Liability Fund                               |              |
| A. | General Update  | Inform       |
| B. | Approve changes to Policy 4.400<br>(Settlement Authority) | Action 15-18 |
| C. | Financial Update  | Inform       |
| D. | Report on BarBooks Request                                | Inform       |

1:50 p.m.

5. **Joint Committee on BarBooks™**

- A. Update Inform

2:00 p.m.

6. **OSB Committees, Sections, Councils, Divisions and Task Forces**

- A. Out of State Lawyers in Arbitration Task Force [Ms. Stevens]
  - 1. Update Inform
- B. Mentoring Task Force [Ms. Stevens]
  - 1. Update Inform

2:10 p.m.

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

- A. Access to Justice Committee [Ms. Johnnie]
  - 1. Update on Joint Committee Discussion of RIS Inform

2:20 p.m.

- B. Budget and Finance Committee [Mr. Kent]
  - 1. Audit of OSB Financial Statements for 2008 and 2009 Action
    - *The board should acknowledge receipt of the audit report.*

2:25 p.m.

- C. Executive Director Evaluation Committee [Ms. Garcia]
  - 1. Update Inform

2:30 p.m.

- D. Member Services Committee [Ms. Fisher]
  - 1. Miscellaneous Inform
- E. Policy and Governance Committee [Ms. Naucler]
  - 1. MCLE Rules Changes Relating to Teaching and Writing Credit Action 18.1-18.4

- *The Committee recommends approval of several changes to the MCLE rules relating to teaching and writing credit.*

F. Public Affairs Committee [Mr. Piucci]

2:40 p.m.

- |    |   |        |       |
|----|---|--------|-------|
| 1. | OSB Court Fees Task Force Report  | Action | 19-20 |
|    | ➤ <i>Consider PAC recommendation to accept report from OSB Court Fees Task Force.</i> |        |       |

3:00 p.m.

- |    |   |        |       |
|----|---|--------|-------|
| 2. | ABA Red Flag Rule Appeal  | Action | 21-26 |
|    | ➤ <i>Consider PAC recommendation to join New York State Bar amicus brief regarding Red Flag Rule.</i> |        |       |

3:10 p.m.

- |    |  |        |    |
|----|--|--------|----|
| 3. | Parenting Plan Work Group Report   | Action | 27 |
|    | ➤ <i>Consider PAC recommendation to accept report from Parenting Plan Work Group</i> |        |    |

3:15 p.m.

- |    |   |               |             |
|----|---|---------------|-------------|
| 8. | <b>Consent Agenda</b>                                 | <b>Action</b> | <b>pink</b> |
| A. | Approve Minutes of Date                               |               |             |
| 1. | Minutes of Open Session<br>April 30, 2010             | Action        | 28-34       |
| 2. | Minutes of Judicial Proceedings<br>April 30, 2010     | Action        | 35-36       |
| 3. | Minutes of Closed Session<br>April 30, 2010           | Action        | 37-38       |
| B. | Appointments  |               |             |
| 1. | Various Committee and Board Appointments              | Action        | Handout     |
| C. | CSF Claims  |               |             |
| 1. | No. 09-11 MOTTRAM (Enterprise<br>Rent-a-Car) \$10,000 | Action        | 39-40       |
| 2. | No. 09-43 CAPETZ (Townsend) \$2,000                   | Action        | 40          |

<b>9.</b>	<b>Default Agenda</b>	<b>Inform</b>	<b>blue</b>
A.	Access to Justice Committee		
1.	Minutes – April 29, 2010	Inform	41
2.	Minutes – May 14, 2010	Inform	42
B.	BarBooks™ Steering Committee		
1.	Minutes – May 14, 2010	Inform	43-44
C.	Budget and Finance Committee		
1.	Minutes – May 14, 2010	Inform	45-46
D.	Joint Committee on BarBooks™		
1.	Minutes – May 14, 2010	Inform	47-48
E.	Member Services Committee		
1.	Minutes – April 29, 2010	Inform	49
F.	Policy and Governance Committee		
1.	Minutes - April 29, 2010	Inform	50-51
G.	Public Affairs Committee		
1.	Minutes – May 14, 2010	Inform	52-53
H.	CSF Claims Report	Inform	54-58
<b>3:20 p.m.</b>			
<b>10.</b>	<b>Closed Sessions</b>		
A.	Judicial Session (pursuant to ORS 192.690(1) Reinstatements	Discuss Action	lavender 59-210
B.	Executive Session (pursuant to ORS 192.660(1)(f) and (h) General Counsel/UPL Report	Discuss Action	211-236
<b>11.</b>	<b>Good of the Order (Non-action comments, information and notice of need for possible future board action)</b>		

## REPORT OF THE PRESIDENT

DATE	EVENT
April 29, 2010	Committee Meetings at the Bar Center
April 30, 2010	BOG Meeting at the Bar Center
May 4 & 5	Northwest Bar Conference in Boise, Idaho
May 6	Lunch with the Supreme Court and Swearing-In Ceremony for new lawyers at Willamette University
May 13	Lane County Bar Association “Spring Fling”—Past President Gerry Gaydos was the proud recipient of an award from his local bar for distinguished service!
May 14	Committee Meetings at the Bar Center and Past BOG Dinner in Happy Valley
June 3	Hunger Soiree at the Riverfront Carousel—Marion County lawyers raising funds to benefit Food Share
June 4	Professionalism Commission meeting at the Bar Center
June 10	Meeting with the Chief Justice in Salem
June 10 <sup>th</sup> and 11 <sup>th</sup>	PLF Meeting in Bend; visit with the Editorial Board of the Bend Bulletin; local bar event in Bend
June 14	Local bar event for lawyers in The Dalles
June 15	Local bar event for lawyers in Pendleton; visit with the Editorial Board of the East Oregonian
June 16	Local bar event for lawyers in LaGrande, Joseph; visit with Editorial Board of the Observer
June 17	Committee meetings in Baker City
June 18	BOG meeting in Baker City

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 18, 2010  
Memo Date: June 3, 2010  
From: Stephen Piucci  
Re: President-elect Report

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May 4-5 NW Bar Leadership Conference, Boise, Idaho

June 11-12 PLF Board meeting  
Bend Bulletin Editorial visit  
Bend Area Lawyers Dinner

June 14 The Dalles-Hood River Area Lawyers Dinner

June 15 East Oregonian Editorial visit  
Pendleton Area Lawyers Dinner

June 16 The Observer Editorial visit  
LaGrande Area Lawyers Lunch

Enterprise Area Lawyers Dinner



**Oregon State Bar**  
**Report of Executive Director, Teresa J. Schmid**  
**To the Board of Governors for the Meeting Held**  
**June 18, 2010**

**Recent Developments**

Update on Federal Activity on Lawyers: The Federal Trade Commission has postponed enforcement of its “Red Flags” identity theft rule. Although the FTC considers lawyers and other professionals to be creditors within the definition of the Fair and Accurate Credit Transactions Act, the American Bar Association has litigation pending against the FTC, currently on appeal, and the American Medical Association recently filed its own suit against the FTC.

On another front, Congress recently passed the Restoring American Financial Responsibility Act of 2010, which is in conference being prepared for presidential signature. However, still pending in conference are issues as to whether transactions of certain groups of service providers may be excepted from oversight by the new Bureau of Consumer Financial Protection. Lawyers are among the groups still under discussion.

National Conference on Professional Responsibility: The ABA’s annual meeting on emerging issues in professional responsibility was held in Seattle on June 3-5, 2010, during which the ABA Commission on Ethics 20/20 held a roundtable discussion on issues related to globalization of practice. Under discussion by both groups were issues relating to cross-border practice; sharing fees with non-lawyers or practicing in legal-service firms owned by non-lawyers; and the impact of technology on the practice of law, including disaggregated legal work and lawyers’ use of social media.

**Current Operational Developments**

*This section of the report tracks current projects with implications for planning, budgeting, and policy development.*

<b>Description</b>	<b>Developments</b>
<b>Barbooks™Benefit</b>	<p>At its 4/30/10 meeting the BOG approved the proposal of the BarBooks™ Steering Committee, including: delivering all current titles as a benefit of active membership beginning in 2011; not seeking a member dues increase for 2011; and a preliminary strategy for providing hard copies of publications through a vendor for a fee. The Steering Committee will meet next on 7/16/10.</p> <p>At its 6/11/10 meeting, the Professional Liability Fund Board of Directors will consider the BOG’s request for contribution to the BarBooks™ project.</p>
<b>Budget &amp; Finance</b>	<p>On 6/17/10, the Budget &amp; Finance Committee will begin discussion of an Executive Summary of the bar’s pro forma budget for 2011, which will include the BarBooks™Benefit and no projected increase in member dues for 2011.</p>

<b>House of Delegates</b>	The countdown to the 10/29/10 annual meeting of the HOD begins with the regional meetings of the delegates, 7/19 through 7/22/10. The deadline to submit HOD resolutions is 5:00 p.m. on 9/14/10.
<b>Member Services</b>	The Member Services Committee will begin a bar-wide program review at its 6/17/10 meeting to consider the costs, impact on members, impact on other operations, history/alternatives, key constituents, and lead time required for transitions, if any, based on information compiled by staff for discussion. (The committee's meeting originally set for 4/29/10 was cancelled.)
<b>Membership Directory</b>	In preparation for a proposed 2011 launch of a fully online version of the <i>Oregon State Bar Membership Directory</i> , on 6/17/10 the Policy and Governance Committee will begin a review of policies concerning member information that may be impacted by the new format.
<b>Referral &amp; Information Service</b>	On 6/18/10, there will be a joint meeting of the Access to Justice and Policy & Governance Committees to discuss issues arising from a proposed change in the RIS business model.
<b>New Project : Mandatory Mentorship Program</b>	The Mandatory Mentoring Task Force has been appointed and has scheduled its first meeting on 6/9/10. The Task Force is chaired by past president Gerry Gaydos.
<b>New Project: Section CLE MP3</b>	Programming for the project, which would allow sections to capture short audio CLE programs for MP3 downloads, is under way. When the model is completed, the new service will be offered to sections.

### **Executive Director's Activities January – April 2010**

<b>Date</b>	<b>Activity</b>
April 28	Conducted Brown Bag luncheon at Markowitz Herbold in Portland.
May 5	Participated in NW Bar Conference in Boise.
May 6	Attended lunch with the Supreme court and members of the Board of Bar Examiners; attended new admittee swearing-in ceremony in Salem.
May 11	Attended Multnomah Bar Association Annual Dinner in Portland.
May 14	Attended annual dinner for past BOG members.
May 19	Attended breakfast meeting with executive directors of the MBA and the Campaign for Equal Justice and president of the MBA.
June 3-5	Attended the ABA's National Conference on Professional Responsibility in Seattle.
June 10	Scheduled meeting with Chief Justice De Muniz.

### **On the Horizon**

*This section of the report is dedicated to giving the Board advance notice of emerging issues that may become significant to the Bar in the future but do not yet require action by the Board.*

**Medical-Legal Partnerships:** The ABA is promoting the development of medical-legal partnerships (MLPs), which are currently in place in nearly 200 hospitals and health centers in 37 states. The partnership is actually a working relationship between a medical provider serving low-income patients and lawyers (mostly legal service providers) when health issues arise from legal problems. Classic examples are cases in which children have health problems because a landlord fails to remedy defects in rental properties.

Both the *Los Angeles Times* and the *Washington Post* have recently published articles about MLP success stories, and the ABA is proposing legislation that would advance the development of these entities. The bill, which is still seeking sponsors, would require the Secretary of Health and Human Services to establish a demonstration program to award grants to, and enter contracts with, medical-legal partnerships. Some scholars have observed that rendering multidisciplinary services may present conflicts between the professional responsibilities for doctors and lawyers, such as in the areas of mandatory reporting of domestic violence. For an interesting discussion of these and other professionalism issues, see Boumil, Freitas & Freitas, "Multidisciplinary Representation of Patients: The Potential for Ethical Issues and Professional Duty Conflicts in the Medical-Legal Partnership Model," 13 J. Health Care L. & Policy 107 (2010).

Teresa J. Schmid, Executive Director

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 18, 2010  
**Memo Date:** June 2, 2010  
**From:** Jessica Cousineau, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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In May the ONLD Executive Committee meet at the OSB Center to conduct business. May was a busy month with the appointment of Raife Neuman as co-chair of the Pro Bono Subcommittee, selection of Jason Hirshon to serve as the young lawyer representative on the Campaign for Equal Justice Board of Directors, and the creation of a reunion planning task force.

Following the May meeting, the Executive Committee and several Law Related Education Subcommittee members participated in grading of the High School Essay Contest submissions. Three winners were selected and will be sent a letter from Chief Justice De Muniz along with their scholarship prize money.

The CLE Subcommittee held two popular brown bag lunch programs in May, Employment Law for the New Practitioner and Professionalism for New Attorneys. In June the subcommittee will host a Child Abuse Reporting program in Portland and an Ethics program in Baker City.

The Member Services & Satisfaction Subcommittee hosted their third after-work social in May. The return of these socials has been great for the ONLD and attendance at the socials continues to grow month after month.

In late May, the ONLD sponsored a refreshment table at the MBA Diversity Golf Tournament at Heron Lakes in Portland. Sponsorship of this event provided the ONLD with an opportunity to strengthen ties with the MBA and the diverse legal community.

Finally, in May the Executive Committee created a task force to review the ONLD's services and programs and the correlation they have to the overall ONLD budget.

## 2010 ONLD Master Calendar

Last updated May 25, 2010

<b>Date</b>	<b>Time</b>	<b>Event</b>	<b>Location</b>
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	5:00 p;m.	Dinner with BOG	Geiser Grand Hotel, Baker City
June 19	9:00 a.m.	Executive Committee Meeting	Geiser Grand Hotel, Baker City
June 30	TBD	After-work Social (pitch and putt)	McMenamins Edgefield
July 15	Noon	Fundamental and current events in Intellectual Property Law ONLD Brown Bag CLE	Multnomah County Court
July 16	Morning	BOG Committee Meetings	OSB, Tigard
<b>July 24</b>	<b>All day</b>	<b>Raft Trip</b>	<b>Maupin</b>
August 5-8	Various	OLIO	Hood River
<b>August 7</b>	<b>9:00 a.m.</b>	<b>Executive Committee Meeting</b>	<b>Hood River</b>
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
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	2:00 p.m.	Swearing In Ceremony Reception	Willamette University
<b>October 16</b>	<b>All day</b>	<b>SuperSaturday</b>	<b>OSB, Tigard</b>
October 21	Noon	Enforcing Victim's Rights in the Criminal Justice System ONLD Brown Bag CLE	Multnomah County Court
October 23	9:00 a.m.	Executive Committee Meeting	OSB, Tigard

**Bold** indicates an update since the last version

October 23	TBD	BOWLIO	Valley Lanes - Beaverton
October 29	10:00 a.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

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 17-18, 2010  
Memo Date: May 27, 2010  
From: Ira Zarov, CEO PLF  
Re: PLF Policy 4.400

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### Action Recommended

Approve the following changes to PLF Policy 4.400.

#### 4.400 CLAIM SETTLEMENT PROCEDURES

(A) The Chief Executive Officer will appoint a designated member of the Board of Directors to review any claim for which a negotiated settlement of ~~\$50,001~~\$100,001 or more is anticipated. Any negotiated claim settlement in the amount of ~~\$50,001~~\$100,001 or more must be approved by the Director designated for review of the claim. Any negotiated claim settlement in excess of ~~\$100,000~~\$150,000 must be discussed by the ~~full~~ Board of Directors in executive session pursuant to ORS 192.660(2)(f) and (h), either at a Board meeting or by telephone conference call, but all final actions or decisions concerning negotiation and settlement of any claim for ~~\$50,001~~\$100,001 or more will be made solely by the Chief Executive Officer or his staff designee with the approval of the designated director.

(B) In the event a judgment has already been rendered against a covered party on a claim, there is an opportunity to satisfy the judgment or to settle the claim for an amount less than the judgment, and the PLF claims department wants to satisfy the judgment or enter into the settlement, any payment in the amount of ~~\$50,001~~\$100,001 or more must be approved by the Director designated for review of the claim, but need not be discussed by the ~~full~~ Board of Directors even if the payment is in excess of ~~\$100,000~~\$150,000 unless the assigned Director so elects. Any payment in satisfaction of a judgment or in settlement in excess of ~~\$100,000~~\$150,000 will be reported to the Board of Directors at its next regular meeting.

(C) When the settlement or repair of any claim includes the purchase of real property the matter must be presented to the Board in the same manner as if it were the settlement of a claim in excess of ~~\$100,000~~\$150,000. If the purchase of real property is made, any subsequent change to the status of the property including the eviction of tenants, foreclosure of the property, or sale of the property must also be discussed by the ~~full~~ Board of Directors, but all final actions or decisions concerning the real property will be made solely by the Chief Executive Officer or his or her staff designee with the approval of a designated-director.

(D) In order to maintain the integrity of the claim-handling process, neither the Board of Directors nor any individual director will communicate with any claimant or any attorney for a claimant regarding any pending claim.



## Background

Over the last several years, there have been several PLF board and staff discussions centered on the question of whether to raise the authority levels of claims attorneys, the Director of Claims, individual directors, and the settlement amount that requires full board discussion. Current authority levels are as follows: Claims Attorney authority - \$25,000; Director of Claims Authority - \$50,000; Single assigned director authority - \$50,001 to \$100,000 with full Board discussion being required for all claims over \$100,000.

The current authority levels have been in place since 1991. From 1991 to 2008, the average indemnity cost of claims has risen in absolute terms; the average claim in 1991 was \$9,490 while the average claim in 2008 is currently over \$18,000. This increase is substantially higher than inflation alone. The consequence of this increase is that the number of claims that exceed the claims attorneys' current authority, the number of claims that exceed the total in-house authority, the number of claims that exceed a single director's authority, and the number of claims that need full board discussion have all risen.

In addition to the increase in the number and cost of claims, the sophistication and experience of the PLF claims attorneys has also grown. The combined experience of PLF claims attorneys is an impressive 144 years. (That number does not include years spent in private practice.) And, although experience alone does not translate into expertise, the expertise and experience of the claims attorneys has been amply demonstrated in contacts with directors and covered parties as well as by the results of the periodic claims audits done by outside consultants. The newer claims attorneys each came with over five years of experience in private practice and were among the most accomplished members of the defense panel.

There are multiple reasons for imposing settlement limits at different organizational levels. The limit granted each claims attorney is designed to facilitate the handling of claims consistent with the claims attorneys' ability to evaluate claims. A requirement that all settlements be reviewed by a third party would be prohibitively costly and inefficient. In-house authority for claims attorneys is standard in every NABRICO company and in all insurance companies. The requirement that settlements over the claims attorneys' authority be approved by the Director of Claims is to ensure that the expertise of the Director of Claims is utilized, to have a second evaluation of the proposed settlement, and to control claim costs. The requirement that a single director approve claims above the Director of Claims' authority is to allow additional expertise to be brought to the claim evaluation process and to ensure that the board is aware of the nature of larger claims. Requiring full Board discussion of larger claims ensures that large settlements are thoroughly vetted and allows the full Board to remain knowledgeable about claim trends.

At the April 30, 2010 Board meeting, the Board reviewed the report of the Claims Committee who met on January 27, 2010 to discuss potential changes to the current settlement authority levels.

The committee was in favor of changing the settlement authority at all levels. They felt that in light of the increase in claim costs, and claim numbers, the increases were warranted and would not frustrate the underlying rationales supporting tiered levels of authority. Furthermore, the committee felt the changes in authority would increase the overall efficiency of claims handling. The basics of the recommendation were:

- to increase experienced claims attorney authority to \$50,000 (retaining the \$25,000 authority level for claims attorneys with less than three years experience);
- to increase the Director of Claims authority to \$100,000;
- to increase the authority of a single director to \$150,000; and
- to require full board discussion for claims above \$150,000.

At the April 30, 2010 meeting, the PLF Board of Directors approved each of the recommended changes of the Claims Committee.

The revisions of PLF Policy 4.4000 reflect the increase in the authority of a single director and the level at which full board discussion is required. (The changes in in-house authority do not require changes to PLF Policies requiring BOG approval.)

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 18, 2010  
Memo Date: April 29, 2010  
From: Mitzi Naucler, Chair, Policy & Governance Committee  
Re: Proposed amendments to MCLE Rules and Regulations

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### Action Recommended

Review requested amendments to various MCLE Rules and Regulations that were approved by the Policy and Governance Committee at its April 29, 2010 meeting.

### Background

The Policy and Governance Committee recommends amending the following MCLE Rules and Regulations<sup>1</sup>:

#### **Rule 3.3(b) Reinstatements, Resumption of Practice After Retirement and New Admittees.**

*(The proposed amendment to Rule 3.3(b) recognizes that the requirements in Rule 3.2 do not all appear in subsection (a).)*

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics (including one in child abuse reporting), and ten credit hours in practical skills. New admittees admitted prior to December 31, 2008 must also complete one access to justice credit in their first reporting period. New admittees admitted on or after January 1, 2009 must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Administrator may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the ~~requirement~~ requirements in Rule 3.2(a) shall apply.

#### **Rule 5.2 Other CLE Activities.**

*(The proposed amendments to 5.2(a)(1) separates the time spent preparing written materials from the time spent teaching a program. This change recognizes that the time involved in preparing written materials varies greatly between presentations. The proposed amendment to 5.2(a)(2) brings this rule into conformity with Rule 5.2(a)(3), which allows teaching credit for some activities where the primary audience is nonlawyers. The proposed amendment to 5.2(a)(4) deletes the sentence regarding two credit hours for each sixty minutes of updated courses since the proposed change to 5.2(a)(1) already allows for credit at a ratio of two credits for each sixty minutes of instruction. The limit on teaching credits has been deleted from this rule and added to Rule 6.2.)*

(a) Teaching Activities.

<sup>1</sup> Amendments to the MCLE Rules must be approved by the Oregon Supreme Court. Amendments to the MCLE Regulations require BOG approval only.

~~(1) Teaching activities may be accredited at a ratio of four credit hours for each sixty minutes of actual instruction if the presentation includes preparation of written materials, or at a ratio of two credit hours for each sixty minutes of actual instruction, if the presentation does not include written materials. No more than 20 hours of teaching credit may be claimed in a three-year reporting period and no more than 10 hours may be claimed in a shorter reporting period.~~

(2) Teaching credit is allowed ~~only~~ for accredited continuing legal education activities or for courses in ABA or AALS accredited law schools. Credit shall not be given to an active member whose primary employment is as a full-time or part-time law teacher, but may be given to an active member who teaches on a part-time basis in addition to the member's primary employment.

(3) Teaching credit is not allowed for programs and activities for which the primary audience is nonlawyers unless the applicant establishes to the MCLE Administrator's satisfaction that the teaching activity contributed to the professional education of the presenter.

(4) No credit is allowed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Administrator. ~~Updated courses satisfying this requirement may be accredited at a ratio of two credit hour for each sixty minutes of actual instruction.~~

## Rule 5.2 Other CLE Activities

*(The proposed amendments provide for time spent preparing written materials for teaching as a legal research and writing activity. Subsection (i) clarifies that the legal research/writing activity must deal with the types of issues for which group CLE activities may be accredited.)*

### (c) Legal Research and Writing.

(1) Legal research and writing activities, including the preparation of written materials for use not included in a teaching activity may be accredited provided the activity satisfies the following criteria:

- (i) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule 5.1(b); and
- ~~(i)~~ (ii) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- ~~(ii)~~ (iii) It contributes substantially to the legal education of the applicant and other attorneys; and
- ~~(iii)~~ (iv) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Administrator, based on the contribution of the written materials to the professional competency of the applicant and other attorneys. One hour of credit will be granted for each sixty minutes of research and writing, but no credit shall be granted for time spent on editing.

## 5.5 Ethics and Access to Justice.

*(The proposed amendment brings this rule into conformity with ORS 9.114, which requires that members “complete one hour of training every three years.” The statute cannot be satisfied by, for example, 30 minutes of teaching credited at the rate of 2:1. This change makes that clear.)*

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism. Of the six hours of ethics credit required by Rule 3.2(b), one hour must be on the subject of a lawyer’s statutory duty to report child abuse (see ORS 9.114). The child abuse reporting training requirement can be completed only by one hour of training by participation in or screening of an accredited program.

## MCLE Regulation 5.100 Other CLE Activities

*(The proposed amendment recognizes that for members of teaching panels, active participation in the instruction includes more than just the time spent talking. Listening and formulating comments and responses to remarks and questions are also teaching activities. It also includes language stating the presently unexpressed policy that attendance credits may be claimed for any portion of an attended session not receiving teaching credit.)*

**5.100 Other CLE Activities.** The application procedure for accreditation of Other CLE Activities shall be in accordance with MCLE Rule 5.2 and Regulation 4.300.

- (a) With the exception of panel presentations, when calculating credit for teaching activities pursuant to MCLE Rule 5.2, for presentations where there are multiple presenters for one session, the number of minutes of actual instruction will be divided by the number of presenters unless notified otherwise by the presenter. Members who participate in panel presentations may receive credit for the total number of minutes of actual instruction. Attendance credit may be claimed for any portion of an attended session not receiving teaching credit.

## MCLE Rule Six – Credit Limitations

*(The proposed amendment to Rule 6.2 changes the combined teaching and legal research and writing credits to 20 in a three year reporting period and 10 in a shorter reporting period. Currently, members may earn 20 teaching AND 20 legal research/writing credits (total of 40) in a three-year reporting period and 10 each in a shorter reporting period.)*

**6.2 Teaching and Legal Research and Writing Limitation.** No more than 15 credit hours shall be allowed for each legal research activity for which credit is sought under MCLE Rule 5.2(c) and no more than 20 hours of combined teaching and legal research and writing credit may be claimed in one three-year reporting period. Not more than 10 hours may be claimed in any shorter reporting period.

### Regulations to MCLE Rule 6 Credit Limitations

*(The proposed amendment clarifies that when the limit on the number of teaching, writing or personal management assistance credits is exceeded, the excess credits may not be claimed in the current reporting period or carried over to future reporting periods.)*

**6.100 Carry Over Credit.** No more than six ethics credits can be carried over for application to the subsequent reporting period requirement. Ethics credits in excess of the carry over limit may be carried over as general credits. Child abuse education credits earned in excess of the reporting period requirement may be carried over as general credits, but a new child abuse education credit must be earned in each reporting period. Access to justice credits may be carried over as general credits, but new credits must be earned in the reporting period in which they are required. Carry over credits from a reporting period in which the credits were completed by the member may not be carried forward more than one reporting period.

6.200 Credits Earned in Excess of Credit Limitations. Any credits earned in excess of the credit limitations set forth in MCLE Rule 6.2 and 6.3 may not be claimed in the reporting period in which they are completed or as carry over credits in the next reporting period.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 18, 2010  
**Memo Date:** June 4, 2010  
**From:** Steve Piucci, Chair, Public Affairs Committee  
**Re:** Proposal to Accept OSB Court Fees Task Force Report

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### **Action Recommended**

Consider Public Affairs Committee recommendation to accept the OSB Court Fees Task Force report. (Handout at Meeting)

### **Background**

The OSB Board of Governors (BOG) formed a Court Fees Task Force to assist the Joint Interim Committee on Justice System Revenues in assessing the effects of the current filing fee and criminal fine structure on the operation of the court system. Immediate past BOG President Gerry Gaydos chairs the group, which includes attorneys from a broad range of practice areas, court administrators, and judges. With the passage of HB 2287 in the 2009 session, court fees and fines have become a more significant source of revenue for the judicial branch and correspondingly a more significant expense for court users.

The task force was created with both immediate and long-term objectives. In the short term, the task force focused on the filing fee structure with the goal of ensuring open and accessible courts at all levels. In the longer term, the task force will recommend a system for funding the courts that recognizes their status as a separate and coequal branch of government, preserves the balance between judicial accountability and independence, and maintains an open and accessible judicial system for all Oregonians. The task force recommendations will go to the Joint Interim Committee, which will make recommendations directly to the 2011 Legislature.

Thus far, the task force has identified the following issues:

- Some of the fees recently imposed have had unintended consequences.
- Fees are not administered uniformly between judicial districts.
- The fee structure is a maze that is difficult, if not impossible, to predict or explain to clients.
- Transaction costs for some fees are significant, both for courts and litigants.
- Cost-benefit analysis: What's the net benefit when the costs of collection and administration are subtracted from gross fee and fine revenue?

The task force also discussed broad long-term approaches to fees, fines, and judicial branch funding. Should fees and fines be placed in a separate judicial branch fund? Should the judicial branch receive a specified percentage of the general fund?

The new fees and fines in HB 2287 were projected to raise roughly \$40 million for the current biennium. The 2287 fees sunset on June 30, 2011. In light of a projected General Fund deficit exceeding \$2 billion for the 2011–2013 biennium, the task force is working on the assumption that its short-term recommendations must raise at least \$40 million.

The group intends to provide the BOG and the Joint Interim Committee with a preliminary report by August 1, 2010.



# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 18, 2010  
Memo Date: June 4, 2010  
From: Steve Piucci, Chair, Public Affairs Committee  
Re: ABA Red Flag Rule Appeal

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### Action Recommended

Consider Public Affairs Committee recommendation that the Oregon State Bar join the New York State Bar in filing an *amicus* brief to challenge the FTC “Red Flag Rule” application to lawyers.

### Background

The Federal Trade Commission (FTC) imposed a rule at the beginning of 2008 under the Fair and Accurate Credit Transactions Act (FACT Act) that imposes requirements on creditors to detect early warning signs of identity theft in their day-to-day operations. The FTC applied this “Red Flags Rule” to lawyers on the theory that lawyers extend credit by performing services and then billing for them.

The ABA and various state bars, including the OSB, have been working with the Commission and Congress to ensure that the Federal Trade Commission (FTC) cannot regulate lawyers under its Red Flags Rule. The ABA was successful in enjoining the FTC from enforcing the Rule against lawyers at the district court level.

The FTC has decided to appeal, so the matter will now go before the Circuit Court of Appeals for D.C. (exact date to be determined). The New York State Bar is planning to file an *amicus* brief and is looking for other states to sign on as well. Attached please find a memo outlining the main points that New York will make in the *amicus*.

# Memorandum

## Attorney Work Product

**Date:** May 14, 2010

**To:** Ann Carmichael  
American Bar Association

**Cc:** James Segroves  
Proskauer

**From:** Bernice Leber  
Matthew Wright  
Jennifer L. Bougher

**Re:** Red Flags Appeal – Proposed Brief for Amici Curiae

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You have asked us for a brief proposed outline of the main arguments for amici curiae in connection with the appeal to the United States Court of Appeals for the District of Columbia Circuit in the matter of the *American Bar Association v. Federal Trade Commission*, No. 10-5057.

On April 30, 2010, as required by the Circuit Court rules, the New York State Bar Association (“NYSBA”) filed with the Court notice of consent by the parties for the NYSBA to file an amicus brief in connection with the appeal.<sup>1</sup> As of that date, the New York County Lawyers’ Association and the Association of the Bar of the City of New York wished to add their names to the brief. We have since learned that the American Bar Association (“ABA”) has received numerous inquiries from other state bar associations, some of which have already approved signing onto the NYSBA brief [Florida, Iowa and Kansas] as well as others of which may still be interested in obtaining approval from their respective state bar organizations to join us.

<sup>1</sup> On April 9, 2010, the NYSBA’s executive committee unanimously approved filing the proposed amicus brief in this matter. The criteria required for filing an amicus brief, and approved in this matter, are: (1) the brief shall be addressed to issues of law alone, and not to questions of fact; (2) the brief is expected to make a significant contribution to the determination of the legal issues involved; and (3) the brief is consistent with previously stated NYSBA policy, would plainly be supported by a large majority of NYSBA’s membership as a policy to be adopted by the NYSBA, and/or is of peculiar importance to the NYSBA or to lawyers generally.

Fundamentally as outlined briefly below, the issues raised in this appeal affect not only the way lawyers practice nationwide but also directly impact the state regulation of lawyers, a long-standing policy derived originally from precedent involving the Supremacy Clause. For all of these reasons, we urge you to invite the other state bar associations to join in the amici brief in order to show our unity as state bar organizations nationwide and our profound concern for respect for state regulation of our profession.

The arguments presented below take into account our review of the prior briefs filed by both the Federal Trade Commission (“FTC”) and the ABA in the court below, as well as the district court opinion (671 F.Supp. 64 (D.C.D.C. 2009)). The outline will necessarily be further refined once we review the Circuit Court briefs from the parties, which we do not anticipate seeing for a few months.

For your convenience and those of the state bar associations, we also attach a copy of the District Court’s decision, and a copy of the FTC’s Statement of Issues to be raised on appeal. Kindly circulate a copy of this memo and the attachments to the remaining state bar associations on our behalf. We will of course, be happy to answer any questions anyone may have and encourage any of them to add any additional thoughts or suggestions they may have.

### **OUTLINE OF ARGUMENT**

- I. Interests of Amici Curiae.
  - A. The state bar associations and local bar associations represent the interests of lawyers nationwide. As such, their members’ interests in practicing law are directly affected by the outcome of this case.
  - B. As a profession heretofore solely regulated by state ethics and disciplinary rules, permitting additional federal regulation by the FTC would severely impact the regulation of attorneys, thus interfering with state regulation.
  - C. In addition, upholding the authority of the FTC would result in differing standards of conduct nationwide, thereby directly impacting the interests of the profession and would unnecessarily burden lawyers.
- II. The Lower Court Ruling Respects the Long-Existing Regulation of the Practice of Law As the Province of the States.
  - A. In *ABA v. FTC*, 430 F.3d 457 (D.C. Cir. 2005), the court held that the practice of law was traditionally the province of the states and that federal laws or regulations

should not be interpreted to reach into areas of state sovereignty unless such an intention is manifest in the language used by Congress.

- B. The Supremacy Clause provides for the separation of powers between State and Federal Governments as well as that imposed between the three branches of government in each State and the Federal Government [citing precedent].
  - C. Traditionally, ever since the Constitution was enacted, lawyers have been licensed by each state and regulated by well-established and comprehensive rules and decisions governing professional conduct. This state framework has existed over centuries, as determined by each state legislature, judiciary, and, as the case may be, regulated in some states having a unified bar association structure. Regardless of the state framework, the responsibility of supervising lawyers has remained steadfastly the role of the state for hundreds of years.
  - D. The policy underlying the state's unique role lies in the "local" nature of the practice of law. State government and state bar associations have, thus, a fundamental interest in promoting public confidence in the legal system and therefore, each state judiciary and bar association has fashioned its own procedures for addressing complaints concerning alleged violations of the Rules of Professional Conduct.
  - E. The sovereignty of the States, their judiciaries and state bar associations in regulating the practice of law has not been limited by prior court decisions [citing precedent] and indeed this Court previously struck down similar federal attempts to expand its regulations into in this area. [Discussion of *ABA v. FTC*, 430 F.3d 457 (D.C.Cir. 2005), *aff'd* g., *N.Y.State Bar Ass'n v. FTC*, Civil Action No. 02-810 (RBW), 2004 WL 964173 (D.D.C. 4/30/2004) in which this Court held that FTC's assertion that certain types of lawyers engaged in the practice of law were "financial institutions" was plainly incorrect].
  - F. It would be inimical to the principle of *stare decisis* to ignore the interests of the states, state judiciaries and state bar associations as a matter of law and policy.
- III. Absent a clear Congressional mandate in the Fair and Accurate Credit Transactions Act, there is no basis to allow the FTC to circumscribe the conduct of lawyers
- A. Clear precedent [citing precedent] requires the Court to find that the manifest purpose of the Red Flags Rule is to regulate lawyers.

- B. Lawyers are not considered “creditors” under state ethics rules [citing examples] and opinions.
  - C. There is no Congressional basis for the FTC to so regulate lawyers.
- IV. As a policy matter, the regulation will also likely cause unnecessary confusion regarding the duties and obligations of lawyers.
- A. The FTC’s broad definition of “creditor” would unduly burden attorneys and law firms to address an issue, identity theft, which simply does not present a problem in the practice of law.
  - B. In contrast to the practices of those creditors permissibly regulated by the FTC, lawyers are ethically prohibited from collecting fees before the legal work is actually performed. This professional restriction should not convert a lawyer into a “creditor.”

- II. Attorneys are not subject to the Identity Theft Red Flags Rule, 16 C.F.R. § 681.1 (2010) (the “Red Flags Rule”)
  - A. The FTC lacks authority to regulate the practice of law.
  - B. Attorneys are not “creditors” as defined by the Rule.
- III. The District Court Correctly Held that, even if the FTC possessed authority to regulate attorneys, the FTC’s implementation of the Rule was Unreasonable.

\* \* \*

Please do not hesitate to contact us with any questions or concerns.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 18, 2010  
**Memo Date:** June 4, 2010  
**From:** Steve Piucci, Chair, Public Affairs Committee  
**Re:** Proposal to Accept Parenting Plan Work Group Report

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### **Action Recommended**

Consider Public Affairs Committee recommendation that the Board of Governors accept the Parenting Plan Work Group report. (Handout at Meeting)

### **Background**

In October 2009, the Judiciary Committees of the Oregon State Senate and House asked the Family Law Section of the state bar to form a work group “to consider the question of parenting time plans and report back” to the legislature before the 2011 session. The committees made the request as a way to approach the issues raised by HB 3402, regarding presumption of joint custody, introduced in the 2009 legislative session at the request of Mr. Matt Minahan of Dads America, but not enacted.

The work group met with a number of interested people who were invited to give information and their perspectives on the issues including Mr. Minahan, Oregon Association for Children and Families, and others. The work group concluded that the most important issues regarding parenting plans and their enforcement are 1) that many parents need help in developing plans because one or both of them are not represented by attorneys, and 2) that parents are often frustrated by the difficulty resolving disputes about enforcing and modifying parenting plans in a timely manner.

The workgroup undertook a comprehensive review of parenting plan and enforcement issues: it reviewed the social and legal background of parenting time; the development of Oregon’s current substantive law of custody and parenting time; the development of Oregon’s law regarding creation and enforcement of parenting time orders; identified problems; and recommended solutions.

**Oregon State Bar**  
**Meeting of the Board of Governors**  
April 30, 2010  
**Open Session Minutes**

The meeting was called to order by President Kathleen Evans at 9:10 a.m. on April 30, 2010, and adjourned at 3:45 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Michelle Garcia, Mike Haglund, Gina Johnnie, Derek Johnson, Chris Kent, Ethan Knight, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, and Steve Piucci. Staff present included Teresa Schmid, Sylvia Stevens, Anna Zanolli, Linda Kruschke, Rod Wegener, Lorraine Jacobs, Jared Gosson, Kay Pulju, Jeff Sapiro, Susan Grabe, and Teresa Wenzel. Present from PLF were Cindy Hill, Ronald Bryant, Greg Greco, Barbara Fishleder, Lisa Almasy Miller, Jeff Crawford, William Carter, Tim Martinez, Fred Ruby, Valarie Fisher, Bruce Schafer, and Laura Rackner. Also present were Dave Madden (SSFP), Jessica Cousineau (ONLD), Marilyn Harbur (ABA Delegate), and Judge Adrienne Nelson (ABA Delegate).

**1. Special Committee on BarBooks™**

**A. BarBooks™ Presentation**

Ms. Evans reported on the steering committee's study of how to implement the BarBooks™ benefit. The steering committee recommends making a one-time draw from existing reserves and asking the PLF for a three-year stepped-down contribution; some operational savings will come through department reorganization and shifting of existing resources. Mr. Kent reported his confidence that the budget for 2011 looks good, but even with the anticipated development of new sources of revenue a dues increase likely will be necessary in 2012. Mr. Kent was optimistic that the membership will be amenable because of the value of the BarBooks benefit and the recognition that the bar has historically raised dues every five years or so to maintain operations. Ms. Evans acknowledged that the future financial impact cannot be known exactly, but she indicated the worst-case scenario would be that members would have to resume paying for the service later if it became financially impossible to continue providing the service to members at no charge.

Linda Kruschke, bar staff, presented information and answered questions concerning the proposed direction of BarBooks™. The presentation included a demonstration of how to access information through its online portal. The board encouraged Ms. Kruschke to make her presentation available to interested parties.

The board discussed the financial impacts including using some of the existing reserves and a requested three-year contribution from the PLF.

**Motion:** Mr. Haglund moved, Ms. DiIaconi seconded, and the board unanimous passed the motion to move forward with the BarBooks™ benefit.



## 2. Presentation of New Bar Logo

Ann Zanolli, IDT Manager, presented enhancements to the bar logo using a palette of Oregon photographs as the header on documents and as the masthead on web pages. Using the photos, taken by Judge Eric Valentine, will further the establishment of an OSB “brand” while allowing great flexibility and creativity. As an example, Ms. Zanolli suggested that OSB presidents could select a unique identity for their presidential year. The plain logo will continue to be used on disciplinary and other formal correspondence. Ms. Zanolli distributed samples of the new photo logo on note cards for each board member to keep.

## 3. Report of Officers

### A. Report of the President

Ms. Evans updated her written report. She attended the Western State Bar Conference in San Antonio with Mr. Piucci, Ms. Fisher, Mr. Mitchell-Phillips, Ms. Schmid, and Ms. Stevens. A particular topic of interest was the Utah and Georgia bars’ mandatory mentoring program for new lawyers. Ms. Evans is appointing a task force to develop a similar program for Oregon State Bar, modeled after the programs in Utah and Georgia. The Chief Justice and the PLF are excited about the program and Ms. Stevens and Ms. Pulju will assist the task force that is looking into its implementation.

Ms. Evans attended ABA Day in Washington, D.C. with Mr. Piucci, Ms. Schmid, David Thornburg, Sandra Hansberger, Judge Ellen Rosenblum, and Ms. Grabe. It was a successful two days and the Oregon delegation was able to meet with all five of Oregon’s legislators.

Ms. Evans encouraged the board to attend the Past BOG Dinner on May 14<sup>th</sup>, where Judge Rosenblum and past BOG members Bette Worcester and Charlie Williamson will lead the attendees in a sing-a-long.

### B. Report of the President-elect

As written.

### C. Report of the Executive Director

As written.

### D. Oregon New Lawyers Division

Ms. Cousineau added to her written report indicating that the ONLD has revised its newsletter with good results; presented CLEs and done public service projects; and now has a liaison to the Affirmative Action Program that allows for better interaction between the groups. Concerns for the ONLD members revolve mainly around jobs, opening their own offices, and questions concerning the profession. BarBooks™ could be a helpful tool for new lawyers dealing with these issues. The ONLD will be in Baker City the same time as the board and will present a CLE to the local bar members while there.

#### **4. Professional Liability Fund**

##### **A. Joint Meeting of PLF/BOG Boards**

The PLF joined the BOG for a joint meeting during lunch. Ms. Evans and Mr. Kent presented information to the PLF board regarding the BOG's plan for implementing the BarBooks™ benefit. Mr. Bryant, PLF Chair, indicated that the PLF board found the overall concept to be a good one that will be valuable in loss prevention and assistance to new lawyers. The BOG's request for a financial contribution matter will be discussed by the PLF board at its next meeting. Mr. Kent assured the PLF that the \$600,000 requested from the PLF over the next three years would be a one-time request.

##### **B. General Update**

Mr. Zarov and Mr. Bryant updated the BOG on the condition and activities of the PLF. Its profits are up about \$500,000 so far this year. It started the year with over 1,000 cases and it is down to approximately 945. The PLF board is hopeful that investments will maintain their positive climb, which would mean no assessment increase. The severity of claims appears to be down and this information will be more apparent after the PLF's next meeting. Lisa Almasy Miller is replacing Suzanne Chanti on the PLF board because Ms. Chanti was appointed to a judgeship. Ms. Miller served previously on the PLF board and with her knowledge of the board; it has been a smooth transition.

##### **1. Change to PLF Settlement Authority**

The PLF board plans to change its settlement authority, which will be the first time it has been changed in 25 years.

##### **2. Audit Report**

There were no unfavorable findings on the audit.

##### **3. Report on Meeting with Reinsurers**

The reinsurer talks went well and the 2009 year was a very good year for the insurance industry. The only cloud on the horizon is that one of the reinsurers is handling the oil spill in the gulf.

#### **5. OSB Committees, Sections, Councils, Divisions and Task Forces**

##### **A. Court Fees Task Force**

Mr. Kent also noted that he is participating on the Court Fees Task Force and the bar is keeping its position at the table and making its voice heard. The task force, chaired by former OSB president Gerry Gaydos, sees the fees mainly as an access issue, effecting mostly the middle class. The task force will continue working with the Chief Justice and the legislature to reach an equitable fee structure.

##### **B. Client Security Fund**

1. CSF Claim No. 09-24 DOUGLAS (Ulle)

Mr. Larson presented information concerning Mr. Ulle's appeal. The CSF Committee originally recommended awarding half of the fees paid based on its conclusion that work was performed. Mr. Ulle appealed and the BOG referred the matter back to the committee. On review, the CSF Committee found this was an "earned on receipt" fee, that more than minimal work had been performed, and that this was a fee dispute with no independent assessment of what amount should have been refunded. In response to the CSF Committee's denial of the claim, Mr. Ulle suggested that his claim be settled with an award of the \$2000 originally approved.

**Motion:** Mr. Larsen moved Ms. Naucner seconded, and the board affirmed the committee's decision with Ms. Fisher opposing.

2. CSF Claim No. 09-12 HORTON (Continental Express)

Mr. Larson presented information concerning the Continental Express appeal. The CSF and BOG previously approved an award reimbursing the client's share of a settlement misappropriated by Horton. On appeal, the client requested an additional award of Horton's attorney fee portion or interest on the award to compensate the client for the length of time it took the claim to be resolved.

**Motion:** Mr. Larson moved, Ms. Lord seconded, and the board passed the motion to deny the appeal with Ms. Fisher opposing.

3. CSF Claim No. 09-42 DOUGLAS (McRobert)

Mr. Larson presented information concerning Mr. McRobert's appeal. The CSF Committee found dishonesty in Douglas' failure to deposit the client's funds in trust, but also found that more than minimal work was done and that the client got the benefit of the funds paid. No new information was provided on the appeal.

**Motion:** Mr. Larson moved, Ms. Naucner seconded, and the board unanimously passed the motion to deny Mr. McRobert's appeal.

6. Committees, Special Committees, Task Forces and Study Groups

A. Access to Justice Committee

1. Update

Ms. Johnnie updated the board on the status of the Columbia County Legal Aid mediation and the possibility that the issue of CCLA's status under the Legal Services Program guidelines will eventually come before the BOG.

B. Budget and Finance Committee

Mr. Kent informed the board that the committee is considering sending bar dues invoices electronically, which will result in substantial cost savings. He reported that the OSB's investment advisor, Washington Trust Bank, is bearish on the U.S., and the small exposure we have through Goldman Sachs will be eliminated.

C. Member Services Committee

Ms. Fisher told the board that the committee has begun its review of all bar programs to ensure that the bar's resources benefit the broadest audience. This is not an exercise to remove individuals or programs, rather an exercise to make the bar more efficient and to serve its members better.

1. OSB Sustainability Awards

The committee continues to study the Sustainable Futures Sections' request for sustainability awards. It has concerns about the proposed application process and the number of awards that may be given.

D. Policy & Governance Committee

1. MCLE Rule Changes

Ms. Naucler informed the board that proposed MCLE rule changes regarding teaching and writing credits will be presented at the next board meeting.

2. Changes to LRAP Policies

Ms. Naucler presented the committee's recommendation for amending the LRAP policies as suggested by the LRAP Advisory Committee to make them consistent with the needs of applicants and to ensure better protection of the OSB funds.

**Motion:** The board unanimously passed the committee motion to approve the policies and guidelines for the LRAP program as set forth in the exhibit in the BOG's April 30, 2010 agenda.

3. MCLE Rule 5.2

Ms. Naucler presented the committee motion to amend MCLE Rule 5.2(e) and Regulation 5.100 to allow legislators to earn ½ of a credit for each week of legislative service.

**Motion:** The board unanimously passed the committee motion to amend MCLE Rule 5.2(e) and Regulation 5.100.

E. Public Affairs Committee

1. Legislative Workshop

Mr. Piucci reported that the legislative workshop was well attended and quite successful. The purpose was to share information about various section legislative proposals and give other interested sections an opportunity to provide input. He thanked Ms. Fisher for suggesting the idea.

2. Law Improvement Package

Mr. Piucci presented information concerning the bar's Law Improvement Package, which includes amending the Bar Act to delete the requirement that candidates for BOG and HOD positions have nominating petitions signed by ten active members. The revised package also removes a RELU proposal regarding property ownership by domestic partners, which will be studied further.

**Motion:** The board unanimously passed the committee motion to approve the bar's Law Improvement Package.

7. Special Appearances

A. Public Affairs Committee

1. E-Court Task Force Report

Mr. Comstock updated the board and submitted the eCourt Task Force' report. The task force has listened to the concerns of various groups and it continues to push the information out to the membership. It continues to ascertain how lawyer confidentiality and access to case information should be administered and how to deal with the confidentiality of special cases such as probate, domestic violence, juvenile cases, etc. Upon adoption, the task force report will go to the judicial department for initial implementation. Mr. Comstock answered questions, commented on confidentiality fears, and clarified information in the task force's report.

**Motion:** Mr. Haglund moved, Mr. Mitchell-Phillips seconded, and the board unanimously passed the motion to approve the first Interim Report of the OJD/OSB Oregon E-court Implementation Task Force.

B. ABA Update

Ms. Harbur and Judge Nelson presented a summary and answered questions about the ABA Annual meeting. The ABA reduced dues in hopes of picking up additional membership. The resolution regarding veteran courts passed and appears incorrectly in the written summary. News magazines including U.S. News and World Report and Newsweek have printed national rankings of attorneys. This is very controversial and concerns the ABA, which will continue to monitor the process. Collaborative law came before the delegation and there will be a resolution concerning it at the annual meeting, August 9-10, 2010 in San Francisco.

**8. Consent Agenda**

**Motion:** Ms. DiIaconi moved, Mr. Haglund seconded, and the board unanimously passed the motion to approve the minutes with typographical changes.

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

**Oregon State Bar  
Board of Governors Meeting  
April 30, 2010  
Judicial Proceedings Minutes**

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

**A. Reinstatements**

1. Lawrence L. Epstein – 790386

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

2. Richard S. Fairclo – 751144

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

3. Patrick T. Hughes – 990614

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

4. Laura J. Larson – 951325

**Action:** Mr. Mitchell-Phillips, Ms. Garcia seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Ms. Larson be reinstated as an active member of the Oregon State Bar.

5. Stella K. Manabe – 930748

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

6. Terry M. Rood – 823283

**Action:** Ms. Matsumonji moved, Ms. Naucier seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Ms. Rood be reinstated as an active member of the Oregon State Bar.

7. Michael A. Schoessler – 964208

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

8. Richard A. Sheard – 975350

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

9. Rose L. Thrush – 801184

**Action:** Ms. Naucner moved, Ms. Matsumonji seconded, and the board unanimously passed the motion to recommend to the Oregon Supreme Court that Ms. Thrush be reinstated as an active member of the Oregon State Bar, conditional upon Ms. Thrush obtaining 45 MCLE credits before the reinstatement is effective.

10. Bernard Frank Veljadic – 041803

**Action:** Ms. Garcia moved, Ms. DiIaconi seconded, and the board unanimously passed the motion to temporarily reinstate Mr. Veljadic as an active member of the Oregon State Bar pursuant to BR 8.7.

I'm not sure if this was temporary or not.

B. Disciplinary Counsel's Report

As written



**Oregon State Bar  
Board of Governors Meeting  
April 30, 2010  
Executive Session Minutes**

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

**A. Unlawful Practice of Law**

**1. Alan Gallagher, UPL No. 09-56**

**Action:** Ms. DiIaconi moved, Mr. Haglund seconded, and the board unanimously passed the motion to seek injunctive relief against Mr. Gallagher to prevent his continued unlawful practice of law.

**2. Lee Greenstone, UPL No. 09-46**

**Action:** Ms. DiIaconi moved, Mr. Piucci seconded, and the board unanimously passed the motion to ratify the cease & desist agreement negotiated with Lee Greenstone.

**B. Pending UPL Litigation**

**Action:** As reported.

**C. General Counsel's Report**

**1. Pending or Threatened Non-Disiplinary Litigation**

**Action:** As reported.

**2. Other Matters**

**a. Washington State Business & Occupation Tax.**

Ms. Stevens reported on the status of negotiations with the State of Washington.

b. DOJ Public Records Fee Agreement.

**Action:** The agreement was approved as submitted.

c. Legal Issues in Implementing a New RIS Fee Structure

**Action:** The board deferred consideration of this issue pending further study.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 18, 2010  
**From:** Sylvia E. Stevens, General Counsel  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Consider the following claims recommended for payment by the CSF Committee:

No. 09-11 MOTTRAM (Enterprise Rent-a-Car)	\$10,000.00
No. 09-43 CAPETZ (Townsend)	2,000.00
<b>TOTAL</b>	<b>\$12,000.00</b>

### Background

#### MOTTRAM (Enterprise Rent-a-Car) - \$10,000

John Mottram was retained by Enterprise Rent-a-Car to handle subrogation claims relating to damaged vehicles. He charged a flat fee of \$300 plus 1/3 of any settlement obtained. In December 2007 Mottram settled a claim for \$15,000, received the funds, but did not disclose the settlement to his client. In May 2008, Mottram told the client that there was still no settlement but that he was "working on it." In October 2008, Mottram advised the client that a settlement had been reached but the defendant was attempting to sell property to procure the necessary funds.

In December 2008, the client contacted the defendant's counsel directly and learned that the payment had been made a year earlier. When confronted, Mottram admitted having negotiated the settlement check and failing to remit any of the proceeds to Enterprise. Mottram resigned from the bar on December 31, 2008. No complaint was filed by Enterprise prior to Mottram's resignation and no disciplinary action resulted from his misappropriation of Enterprise's funds.

In January 2010, the CSF committee concluded that the claim was eligible for reimbursement in the amount of \$10,000 (the client's share of the settlement) because there was an established lawyer-client relationship and dishonesty by Mottram. However, the committee also concluded that the rules required Enterprise to obtain a civil judgment before the claim could be paid. Enterprise's counsel was informed of the committee's decision and recently requested that the committee waive the requirement for a civil judgment. Mottram has filed a no-asset Chapter 7 bankruptcy petition and the automatic stay prevents Enterprise from pursuing judgment.

At its meeting on May 22, the committee discussed the claim again in light of Ms. Stevens' opinion that Enterprise's claim against Mottram is excepted from discharge by 11 USC §523(a)(4) as resulting from fraud while acting as a fiduciary. It was pointed out that by the

time Enterprise pays its counsel to pursue the nondischargeability claim in bankruptcy, its award will be used up. The committee voted unanimously to recommend that the judgment requirement be waived and that staff counsel pursue the bankruptcy issue.

**No. 09-43 CAPETZ (Townsend) - \$2,000**

Townsend (who lives outside Eugene) was arrested for DUI in Lane County in July 2007. For reasons that are not clear, he contacted The Capetti Group and engaged Martin Capetz to represent him. To secure the engagement, Capetz requested a \$2000 advance payment. Townsend paid by credit card and the payment was deposited into Capetz' business account. The next day, Capetz send a fee agreement indicating that the fee was earned on receipt.

No charges had been filed, but Townsend was scheduled for arraignment on August 1, 2007. Capetz contracted with Jason Castanza, a Lane County defense lawyer, to appear at the arraignment. Castanza arrived at court, but found the case wasn't on the docket. He was also unable to find Townsend. Because Townsend's case wasn't on the docket and because he was at court for other business as well, Castanza never charged Capetz for his time.

Townsend called the Lane County DA's Office regularly over the next few months and ultimately, in November 2007, was informed that he would not be charged. Townsend requested a refund of the fees advanced to Capetz, but Capetz refused.

Townsend filed a complaint with the bar in late 2007. DCO charged Capetz with conversion in connection with his representation of Townsend, as well as charging an excessive fee and failing to deposit client funds into trust (among other charges relating to other client matters). Capetz submitted a Form B resignation that was effective January 21, 2010.

The CSF Committee concluded this claim was eligible for reimbursement because there was an established lawyer-client relationship and dishonesty by Capetz. No judgment is required because the claim is for less than \$5,000 and Capetz' resignation arose out of the same matter.

**Minutes**  
**Access to Justice Committee**  
**OSB Board of Governors**  
April 29, 2010  
OSB Center, Tigard

**Committee Members Present:** Gina Johnnie (Chair), Kathy Evans, Derek Johnson, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler. **Guest:** Fred Ruby, PLF Liaison. **Staff:** Judith Baker, Kay Pulju.

**Minutes** of the March 19 meeting were approved as submitted.

**1. Bench/Bar Task Force on Family Law Forms and Services.** The task force will hold its first meeting on May 10 at the OSB Center. There are many “interested parties” who will also receive regular updates on the group’s progress. Mitzi Naucler described the challenges Oregon faces with too many family law litigants proceeding pro se within a system that is too complex. The BOG representatives on the task force will propose the concept of an administrative approach to family law at the May 10 meeting. In addition, Naucler will broach the topic of adding a member from legislative counsel’s office to the task force.

**2. LRS Percentage Fees.** Sylvia Stevens has discussed percentage fee issues with the Legal Ethics Committee and the matter is also on the agenda for today’s BOG Policy & Governance Committee meeting. Kay Pulju reported on a focus group discussion held with long-time and very active users of the LRS. Their main concern was with administration, urging that any change in the fee system be as simple as possible for panel members. A more complete report will be provided at the next committee meeting.

**3. IOLTA Update.** Judith Baker is working to resolve a question of whether unclaimed/abandoned funds in IOLTA accounts should be delivered directly to the bar or to the Division of State Lands.

**4. Columbia County Legal Aid Program.** The Legal Services Program (LSP) is currently in mediation with the Columbia County program over its failure to meet the standards and guidelines required by LSP. The LSP has chosen not to respond to a misleading story printed in a Columbia County newspaper.

**Next Meeting:** Friday, May 14, at the OSB Center in Tigard.

**Minutes**  
**Access to Justice Committee**  
**OSB Board of Governors**  
May 14, 2010  
OSB Center, Tigard

**Committee Members Present:** Gina Johnnie (Chair), Derek Johnson, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler. **Guest:** Chris Kent. **Staff:** Judith Baker, Susan Grabe, Kay Pulju, Teresa Schmid and George Wolff.

**Minutes** of the April 29 meeting were approved as submitted.

**1. Legal Services Program Update.** Judith Baker reported on the mediation between the bar's Legal Services Program (LSP) and Columbia County Legal Aid. There appears to be a basic disconnect in understanding of the most effective models for delivery of legal services. Tom Matsuda from Legal Aid Services of Oregon is working with both groups to review and discuss the issues. Current LSP rules give decision-making authority to the LSP; it is unclear what role the BOG might play and when. Baker will keep this committee informed on any progress and further issues.

**2. Oregon Bench/Bar Task Force on Family Law Forms & Services.** Mitzi Naucler reported on the task force's initial meeting, held on May 10. The task force reviewed a number of earlier reports on relevant issues and also looked at various online models for interactive family law forms. The task force has decided to focus on interactive forms and will conduct thorough reviews of available models. They should have some recommendations available for the BOG's strategic planning session in the fall.

**3. RIS Percentage Fees.** Kay Pulju and George Wolff presented background on a developing proposal to convert the Lawyer Referral Service to a percentage-fee funded program. While this funding model is common across the country, it has never been adopted in Oregon primarily because of legal and ethical concerns over fee-sharing in personal injury cases. Derek Johnson expressed additional concerns, including possible negative public perceptions if such a model were adopted. The committee decided that more direction from the full board should be sought before continuing with development of a percentage fee model.

**Next Meeting:** Friday, June 18 in Baker City, Oregon.

## **Minutes**

### **BarBooks Steering Committee**

May 14, 2010

OSB Center

Kathy Evans, Chris Kent, Mitzi Naucler, Teresa Schmid, Sylvia Stevens, Rod Wegener  
Kay Pulju, Anna Zanolli, Linda Kruschke, Karen Lee, Susan Grabe

The meeting began at 10:00 a.m.

Ms. Schmid introduced the discussion topics, explaining that the issues are potential refinements of the BarBooks benefit and the steering committee's objective is to determine whether any or all of the possibilities should be explored now or later.

"Premium Package" Concept—

1) Ms. Lee provided background on seminar program materials. They are sold separately after a program unless a special speaker contract limits distribution. Sales volume varies and overall revenue is not significant. Most sales are packaged with a video or CD, which enables members to earn MCLE credit, which can't be done with written materials alone. Course material content is changing, which is a strong trend toward more Powerpoint slide handouts. Books with forms generally cause a spike in sales. In response to a question, Ms. Lee indicated her belief that there will continue to be sales of print books even if they are available at no cost online.

2) Ms. Pulju and Ms. Zanolli explained that a "wiki" (which means quickly in Hawai'ian) is a process of content development that can range from wide open to carefully controlled. In the context of BarBooks it would provide a mechanism for readers to contribute comments and suggestions for updating and revising the BarBooks materials. Details of how staff editors and volunteer authors would review and incorporate the comments have yet to be worked out. One possibility would be to invite sections to support and work with the authors.

3) Ms. Zanolli suggest one "premium" that could bring in some revenue would be the creation of "ePublication" where a member could select parts of several publications that would be bundled into a custom electronic book.

After discussion, the group was enthusiastic about all of the ideas and confident they will be valuable to members. The group will recommend that seminar materials be included with BarBooks at no extra cost and that the "wiki" aspect will also be developed as part of the basic package.

Pricing—

Ms. Kruschke explained her proposal for four-tier pricing. The charge for inactive members was calculated to make the total cost of dues, Fastcase and BarBooks close to the cost of active membership as a way of encouraging continued active membership, particularly for members who practice in other states or who are temporarily away from active practice. Non-members would pay a higher price, although it is not expected many would subscribe. Ms. Kruschke also suggested a modest subscription price (\$25) for paralegals in law firms. That would allow them to have their own login information, which would provide greater security for the firms. After discussion, the group agreed to support the proposed pricing structure to the Joint Committee, but with an increase in the paralegal price to \$100.

#### Print on Demand—

Ms. Kruschke reported on her recent discussions with Lithtex Printing, which is interested in taking over the sales of our existing print inventory as well as printing more or less “on demand” in the future. (We will have a “summer sale” of older publications.) Staff believes that online ordering will be seamless from our site to Lithtex. The bar can also direct orders to Lithtex for members who don’t have online access. Pricing has yet to be worked out, and will be driven by whether the OSB should try to maintain some revenue from the sales. The group was receptive to earning some revenue, but suggested the price should be somewhere between what Lithtex charges for printing and the traditional book pricing so that members get some accommodation.

#### Membership Directory—

The steering committee reiterated its support for an online membership directory, but want to make sure it can be available in print form at reasonable cost. (The resource directory including court and geographical information will be online, but also published and distributed with the Bulletin in January of each year.) Ms. Pulju showed the group samples of what the two parts will look like printed. The print directory will not be print-ready on the web because of an interest in preventing a competitor using it for a profit. The group also discussed the current policy of allowing members to display only their names and bar numbers. With online being the primary source of contact information, members are going to have to allow a telephone number or address to be included. Staff will explore ways to give members some choices for limiting their information.

#### RIS Percentage Fee—

Ms. Stevens discussed the two different legal issues raised by converting to percentage fees. First is the ethical propriety of members sharing legal fees with non-lawyers. The second is the arguably broad statutory prohibition against accepting compensation for referring a personal injury claim to a lawyer. The first issue relates to lawyer conduct and can be addressed through an ethics opinion or a rule change. Most states have gone with the first option. If the advisory nature of an opinion doesn’t provide sufficient comfort for the members, the BOG can always propose a rule change in the future; in the meantime no one will be prosecuted for following an opinion. The statutory issue involves the bar’s actions and is slightly more complicated in that the fix would require bringing the issue before the legislature. There is a good argument that the current pricing scheme violates ORS 9.505 and has for 39 years; we also have a strong argument that the bar is not a “person” within the meaning of the statute notwithstanding the broad definition of person in other parts of the ORS. After discussion, the steering committee agreed to recommend going with a formal opinion and moving forward with the proposed percentage fee proposal.

#### Promotion—

There was a brief discussion of the need to have a well organized strategy for informing the membership about the BarBooks benefit and related changes. Ms. Pulju suggested beginning with a Bulletin article by Ms. Evans explaining how the BOG developed the idea and what benefits the changes will bring to members. Additional information can be supplied through regular BOG updates and other sources.



**Minutes**  
**Budget & Finance Committee**  
**May 14, 2010**  
Oregon State Bar Center  
Tigard, Oregon

**Present - Committee Members:** Chris Kent, chair; Steve Larson, vice-chair; Mike Haglund; Mitzi Naucler. **Other BOG Members:** Kathy Evans. **Staff:** Teresa Schmid; Sylvia Stevens; Michelle Peterson; Susan Grabe; Rod Wegener. **Visitor:** Nancy Young (Moss Adams)

**1. Minutes – April 29, 2010 Committee Meeting**

The minutes of the April 29, 2010 meeting were approved.

**2. Financial Report – April 30, 2010**

Mr. Wegener commented on the first draft of the April statements. He indicated the printed report should be available next week. There is a small net expense for April, but that will increase as the statements are finalized. Admissions revenue is greater than a year ago due to bar exam applications. More detail about the increase due to reciprocity will be included in the printed report. Legal Publication revenue continued very positive with total revenue \$103,000 and print book sales \$81,000 more than a year ago. Correspondingly, CLE Seminars revenue is \$114,000 below a year ago after four months. Member Directory sales continue to decline with sales of \$25,195 to date. Total 2009 sales were \$34,055.

**3. Audit Report for 2008 and 2009**

Nancy Young, the lead auditor from Moss Adams, met with the committee and reported the bar received an unqualified opinion for the 2008 and 2009 period. Statement on Auditing Standards (SAS) 114 requires the auditor to meet with “those charged with governance” and report any significant findings from the audit. SAS 115 requires the auditor to report any internal control matters identified in the audit. Ms. Young stated there were four minor internal control findings which were presented to the bar. Mr. Wegener had responded in writing how the bar was addressing the findings. (The auditor’s letter and the bar’s response were emailed to the board on May 12.) Ms. Young reported there were no major issues during the audit and stated it went very smoothly and commended bar staff for their cooperation and assistance. Mr. Wegener then acknowledged the bar’s Controller, Michelle Peterson, as the major factor for the success of the audit.

The committee briefly discussed with Ms. Young the consideration for an annual audit of the bar’s financial statements. Unless there are compelling reasons for an annual audit, the deciding factor still is cost for the bar.

#### **4. BarBooks Project**

Chair Kent updated the committee on the status of the BarBooks project. He didn't provide much detail since the various board committees had met earlier in the day on the same topic.

#### **5. Member Fee Billings via Email**

Following-up on the committee's recommendation from the last meeting, Mr. Wegener reported the accounting staff has developed a lengthy list of the process for sending the annual membership statements to the members as an electronic file only. He reported that since current policy allows members to select how they wish to receive communications from the bar, the bar will notify members well before the statements are distributed, that the statements will be emailed to all members with an email address, unless they decide to receive the statement via the postal service. Even if a member receives the statement via email, the member can print the statement and mail it and a check to the bar.

#### **6. Next committee meeting**

The next meeting will be June 17 prior to the board meeting in Baker City.

## **Minutes**

### **BarBooks Joint Committee**

May 14, 2010

OSB Center

Kathy Evans, Michael Haglund, Gina Johnnie, Derek Johnson, Chris Kent, Steve Larsen, Audrey Matsumonji, Ken Mitchell-Phillips, Mitzi Naucler

Teresa Schmid, Sylvia Stevens, Rod Wegener, Kay Pulju, Anna Zanolli, Linda Kruschke, Karen Lee, Susan Grabe

The meeting began at 1:00 p.m.

Ms. Evans reviewed the discussion of the steering committee earlier in the day (see minutes) and then introduced the steering committee's recommendations:

1. written CLE program materials will be included in BarBooks without charge. Sales are not a significant item so there is little benefit to treating them as a "premium" feature at a higher cost.
2. BarBooks will have a "wiki" feature for receiving member input into updating the material. Single-source publishing will streamline the production process. This is not an add-on, but will become part of BarBooks as it is developed.

There was some question about how the "wiki" feature will work, including who will be allowed to comment and how the comments will be handled. Ms. Kruschke assured that comments will be carefully vetted to avoid anything inflammatory or appropriate; chapter authors and staff editors will review all comments for a determination of whether they should be incorporated and if more help is needed it has been suggested that sections be asked to participate.

3. The steering committee recommends a four-tier approach: free to active members, \$322 for inactive members (so the total paid for BarBooks, Fastcase and dues approximates active member fees); non-members can subscribe for \$595/year; law libraries will pay \$295 per access terminal; and paralegals can have a subscription separate from the lawyers or firms that employ them for \$100/year.

Pricing for paralegals was of some concern, as independent subscriptions would impact small firms more than larger firms. It was pointed out that paralegals currently login using a lawyer's information and can continue to do so, but some firms might like the security of separate logins. After discussion, Mr. Haglund moved, seconded by Mr. Larson, to set the paralegal price at \$50/year. The motion passed unanimously.

4. Members who want printed books will be able to purchase them on the OSB web site through a link to an independent vendor. The price has yet to be established, but is anticipated to be lower than existing prices but at a level that will allow the OSB to derive some revenue from the print sales. The printer will also take our existing inventory and market it.
5. The membership directory will also be available in print form, but not directly from the web. The resource directory portions will be distributed in print with the January *Bulletin*.

6. A “premium” feature to be developed will be the availability of custom e-Publications, with content chosen by members from the various online sources. Ms. Zanolli demonstrated a sample.
7. A proposal to charge percentage fees for RIS participation will be coming from the BOG’s Access to Justice Committee. Percentage fee systems are in place in nearly every jurisdiction that offers such programs and it is anticipated the OSB program could eventually generate more than enough revenue to make RIS self-supporting. The steering committee recommends issuing a formal ethics opinion to satisfy concerns about lawyers, and to take no action at this time to clarify the applicability of ORS 9.505 to the OSB.
8. Bar staff is working on a strategy for publicizing the foregoing changes to the membership, beginning with an article by Ms. Evans in an upcoming issue of the *Bulletin*. In addition, Ms. Evans encouraged all BOG members to mention BarBooks and the online membership directory whenever they meet with sections, committees or other groups.

Ms. Evans invited additional comment and specifically asked whether joint committee members believe this project should keep moving forward as described. Ms. Matsumonji wanted assurance that there will be opportunities for member feedback as we roll out the various aspects. Ms. Naucler pointed out that the online directory policies will have to be reviewed to ensure that contact information is available to all OSB members with perhaps more limited information for the public.

After discussion, the group voted unanimously to proceed as outlined above.

BOG Member Services Committee  
April 29, 2010  
Oregon State Bar Center

**Present:**

Ann Fisher, Chair  
Gina Johnnie, Vice Chair  
Audrey Matsumonji  
Ken Mitchell-Phillips  
Barbara DiIaconi  
Derek Johnson  
Ethan Knight

**Staff:**

Teresa Schmid  
Margaret Robinson  
Kay Pulju  
Karen Lee  
Frank Garcia  
Dani Edwards

**Guest:**

Fred Ruby

**Approval of Minutes**

The minutes of the March meeting were approved as written.

**Member Survey**

Staff provided history on the membership survey for the committee and asked what questions they would like to ask the membership. Possible focuses for questions included sustainability, bar books execution, mentor program, impact of technology on practice of law, e-filing, navigating the bar's website, economics of law practice, volunteerism, and a question from or about the PLF.

**Diversity/AAP Update**

The update included the Affirmative Action Administrator's activities over the month of March and April. The administrator emphasized the return of the OLIO Spring Social, which had great attendance. Fundraising for 2010 OLIO cycle begins in May.

**Member and Public Services Department**

Staff provided the committee with details regarding the merge of the Communications and Member Services Departments.

**Program Review**

The committee discussed their goal and priorities in reviewing all bar programs. Members of the committee were asked to review the information provided about each program and select five or six programs they would like to discuss at future meetings.

## Minutes

### BOG Policy and Governance Committee

April 29, 2010

OSB Center, 4:00 p.m.

Chair – Mitzi Naucner

Committee members present: Barbara Dilaconi, Michelle Garcia, Michael Haglund, Ethan Knight and Maureen O'Connor.

Other attendees: Kathleen Evans, Sylvia Stevens, Frank Garcia, Denise Cline and Max Rae

- |   |
|---|
| <p><b>1. Minutes.</b> The minutes of the March 19, 2010 meeting were approved as submitted.</p>   |
| <p><b>2. MCLE Access to Justice Experiential Learning Proposal.</b> Mitzi introduced the MCLE Committee's proposal for experiential learning credit. She also reviewed the concerns and objections presented by the Affirmative Action Committee, Diversity Section Executive Committee and Access to Justice CLE Advisory Committees. (Ms. Stevens reported that she had received an e-mail from the Oregon Minority Lawyers Association endorsing the stakeholders' position.) The committee members discussed the proposal and length, emphasizing the following points: (1) If the goal is to give lawyers more insight into problems of clients with access to justice issues, how does limiting the credit to representations outside the lawyer's normal scope serve that purpose? (2) Limiting credit to cases outside one's normal practice area without a mentoring component will result in incompetent service and second-rate lawyering, which is the wrong way to achieve access to justice. (3) Experiential learning might be a possible "extra credit" activity but would be a significant paradigm shift in MCLE philosophy. It was suggested that the stakeholders might be interested in developing an experiential component could be made more acceptable, but after discussion it was agreed that the stakeholders have been clear that classroom learning is the preferred approach. Ms. Evans reminded the group that classroom learning was also a key to the concept that made the compromise work. Mr. Garcia concurred and confirmed that the stakeholders put high value on classroom education. Additionally, they are concerned that this proposal would allow end-runs around classroom learning and a diminution in understanding whether you are learning anything? Mr. Rae stated that the MCLE Committee had no idea that stakeholders would be so committed to classroom learning. Mr. Haglund moved, seconded by Ethan Knight, to reject the proposal but encourage the MCLE Committee to continue working if they are interested in developing something with wider support. The motion passed unanimously.</p> |
| <p><b>3. MCLE Committee Teaching, Writing and AtoJ Proposals.</b> Ms. Stevens reviewed her memo explaining the various proposals. Regarding the proposal to eliminate the 1:4 multiplier for teaching where written materials are prepared, the committee was persuaded that allowing credit for actual time spent preparing materials is fairer (subject to the 15 hour/project limitation). Mr. Haglund moved, seconded by Ethan Knight, to approve this change. The motion passed on a 5 to 1 vote (Ms. O'Connor voting no.)</p> <p>The committee then turned to the proposal to allow credit for writing regardless of whether it was published in a traditional sense or whether it contributes to the education of others. After discussion, Ms. Dilaconi moved, seconded by Ethan Knight, to reject the proposal. The motion passed unanimously.</p> <p>The next issue was credit for attending classes other than at accredited law schools. The committee discussed the proposal at some length and also discussed whether the teaching credit should be expanded to allow credit for more than law school and CLE courses. The difficulty is in setting the proper limits while recognizing the broad range of knowledge required by lawyers in serving diverse clients. Several members felt that the current scope of accredited programs covers nearly every area of learning and that the committee's proposal is too broad. Others felt that further development by the MCLE Committee would be helpful. By consensus, the proposal was returned to the MCLE Committee for further development, including broadening the teaching credit.</p>  |

The remaining proposals were deemed non-controversial. Mr. Haglund moved, seconded by Ms. Dilaconi, to approve all of them. The motion passed unanimously.

Ms. Naucier indicated that the committee's recommendations will be given to the BOG on Friday, April 30, 2010, but not submitted for a vote until the June BOG meeting.

**4.** There being no further business, the meeting adjourned at 5:05 p.m.

**5.** The next meeting of the Committee will be May 14, 2010 at the OSB Center.

## OSB Public Affairs Committee

May 14, 2010  
Oregon State Bar  
Portland, Oregon

**Committee Members Present:** Derek Johnson, Gina Johnnie, Audrey Matsumonji, Kenneth Mitchell-Phillips, and Steve Larson. **Staff:** Susan Grabe.

1. **Minutes.** The minutes were approved by acclamation.
2. **Legislative Update.** The committee received a status update on legislative candidates running in the upcoming primary. Rep. Nick Kahl just passed the Oregon bar and there are other lawyers running for office with limited or no opposition, Wally Hicks in Grants Pass and Mike McLane in Redmond.
3. **OSB Court Fees Task Force.** The Court Fees Task Force is developing a preliminary report for the board to consider at its June 18 meeting with recommendations regarding court fees and the justice system. It is hoped that the report will provide constructive ways to assist the legislature.
  - a. **ACTION:** The Public Affairs Committee recommends the board review, modify as necessary, and accept the interim report of the OSB Court Fees Task Force. The motion passed unanimously.
4. **2011 Legislative Package.** The April 13 Forum to discuss legislative proposals from bar groups gave members the opportunity to highlight issues and concerns. Two proposals raised concerns: first the clarification of domestic partnership law, and second, special needs trust legislation under the elective share statutes. Basic Rights Oregon (BRO) raised concerns about the Real Estate and Land Use Section proposal to amend ORS 93.180 to clarify whether tenancies by the entirety apply to registered domestic partnerships. The section ultimately decided to withdraw the proposal after discussions with BRO regarding their concerns. In spite of concerns raised by the Department of Justice regarding special needs trusts under the elective share statute, the PAC chair encouraged the Elder Law Section to continue to work with interested parties to see if more acceptable language could be developed.

The PAC also discussed whether a change to the Lawyer Referral structure would require a legislative change. The committee determined that if a change were to be pursued, the preferred approach would be to seek an ethics opinion, then a change to the Rules of Professional Responsibility as necessary.
5. **Columbia County Legal Aid.** The committee received an update on the status of the mediation. The bar is hopeful that there can be a successful resolution to the situation.
6. **Parenting Plan Workgroup.** The Parenting Plan Workgroup will have its report ready for PAC and board review at the June meeting. The report will then be forwarded on to the interim judiciary committees for consideration.



- a. **ACTION:** The Public Affairs Committee recommends the board review, modify as necessary, and accept the Parenting Plan Workgroup report. The motion passed unanimously.

## **7. Red Flags Rule Appeal.**

**ACTION:** Steve Larson moved and Ken Mitchell-Phillips seconded the motion that the committee join the New York State Bar *amicus* brief and appeal of the Red Flags Rule. The motion passed unanimously.

CLAIM HISTORY									
CLAIM #	NAME	ATTORNEY	CLAIM	PENDING	AMOUNT PAID	DATE PAID	DATE DENIED W/DRAWN	UNPAID BALANCE	ASSIGNED TO
	Paid, Withdrawn or Denied								
09-01	Scott, Kim	Brown, Glenn C	\$1,700.00				6/6/2009		
09-02	Fishler, Kevin	Dunn, Timothy	\$1,500.00		\$1,500.00	12/23/2009		\$0.00	
09-03	Loehr, Cindy	Koch, Jacqueline	\$1,500.00		\$1,500.00	7/9/2009		\$0.00	
09-04	Street, Jeffrey	Sushida, Jon	\$750.00				2/19/2010		
09-05	Balsamo, Rolando	Hammond, Todd	\$10,320.00				10/12/2009		
09-06	Buchholz, William	Read, Karen E	\$250.00				1/1/2009		
09-07	Krueger, Daniel Vance (Symitrio Chiro	Oh, John	\$8,100.00		\$5,000.00	6/30/2009		\$0.00	
09-08	Cousin, Tiffany	Shinn, Michael R	\$20,000.00		\$9,000.01	11/13/2009		\$0.00	
09-09	Dal-Chung, Sang & Min, Seon	Oh, John	\$5,125.00		\$5,125.00	6/30/2009		\$0.00	
09-10	Johnston, David	Brown, Glenn C	\$8,038.06				1/16/2010		
09-12	Dursupek, Vladimir	Horton, William	\$35,000.00		\$24,500.00	12/21/2009		\$0.00	
09-13	Lenhart, Erik M	Douglas, Gerald (Estate)	\$2,000.00				6/6/2009	\$0.00	
09-14	Lenhard, Edward E	Douglas, Gerald (Estate)	\$1,000.00				6/6/2009	\$0.00	
09-17	Sutherlin, Randal and Susan	Douglas, Gerald (Estate)	\$1,000.00		\$500.00	7/9/2009		\$0.00	
09-18	Eutze, Larry	Douglas, Gerald (Estate)	\$2,035.00				12/23/2009		
09-19	Joo, Hyun	Oh, John	\$4,000.00		\$4,000.00	7/9/2009		\$0.00	
09-20	Nolte, Mercedes	LaFollett, Thomas	\$25,000.00		\$17,500.00	9/5/2009		\$0.00	
09-21	Cameron, Chris	Horton, William	\$7,000.00		\$3,500.00	3/16/2010			
09-22	Wilson, Jerry Donald	Dunn, Timothy	\$6,100.00		\$6,100.00	2/2/2009		\$0.00	
09-23	Johnson, Mary Ann	Douglas, Gerald (Estate)	\$5,500.00		\$4,750.00	3/4/2010		\$0.00	
09-24	Ryan, Shawn Michael	Horton, William	\$8,718.00		\$8,718.00	3/4/2010			
09-25	Ulle, Kris Steven	Douglas, Gerald (Estate)	\$4,000.00		\$0.00		3/13/2010	\$0.00	
09-27	Nguyen, Thai	Horton, William	\$50,000.00		\$50,000.00	3/22/2010			
09-28	Hubler, L. Billie	Murphy, Lynn	\$13,000.00				8/22/2009		
09-29	Warren, Chris & Elizabeth	Coulter, Charles (Estate)	\$200.00		\$200.00	Pending			

09-30	Hartwig, Donald	Oakey, James	\$2,500.00		\$2,500.00	3/4/2010			
09-31	Poetzl, Josphe	Oakey, James	\$1,500.00		\$1,500.00	3/4/2010		\$0.00	
09-32	Doblie, Max	Shinn, Michael R	\$66,415.00		\$32,190.50	3/16/2010		\$0.00	
09-33	Puderbaugh, Michael	Coulter, Charles (Estate)	\$1,900.00		\$500.00	Pending			
09-34	White, Randy & Maryanne	Douglas, Gerald (Estate)	\$2,000.00				1/16/2010		
09-35	Iqbal, Tariq	Douglas, Gerald (Estate)	\$1,000.00				1/16/2010		
09-36	Christensen, John & Amber	Coulter, Charles (Estate)	\$675.00		\$675.00	3/29/2010			
09-42	McRobert, Randy	Douglas, Gerald (Estate)	\$1,500.00				3/13/2010		
09-15	LaJoie, Ronald and Jeanne	Douglas, Gerald (Estate)	\$300.00			9/1/2009			
09-26	Gregory, Gail	Read, Karen E	\$2,713.35		\$2,713.35	6/4/2010			
	<b>PENDING</b>								
09-16	Grigsby, Richard	Douglas, Gerald (Estate)	\$800.00						
09-11	Enterprise Rent a Car	Mottram, John	\$10,000.00	\$10,000.00	Judgment Pending			\$10,000.00	
09-37	Wright, Linda & 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
09-41	Ervin, Vladimar J	Richardson, Randy R	\$13,800.00	\$13,800.00				\$13,800.00	Howard
09-43	Townsend, Kenneth	Capetz, Martin	\$2,000.00	\$2,000.00				\$2,000.00	Foster
10-1	Prusiewicz, Piotr	Bowman, Scott`	\$1,995.00	\$1,995.00				\$1,995.00	Wright
10-2	Meyer, Frank D	Hayes, Keith	\$3,300.00	\$3,300.00				\$3,300.00	Barrack
10-3	Reaves, Braden	Hayes, Keith	\$1,050.00	\$1,050.00				\$1,050.00	Barrack
10-4	Way, Linda	Hayes, Keith	\$2,500.00	\$2,500.00				\$2,500.00	Barrack
10-5	Choi, Eui	Oh, John	\$3,000.00	\$3,000.00				\$3,000.00	Marshall
10-6	Lowells, Pricilla	Hayes, Keith	\$4,000.00	\$4,000.00				\$4,000.00	Barrack
10-7	McFeters, William and Barbara	La Follett, Thomas	\$31,371.13	\$31,371.13				\$31,371.13	Quintero
10-8	Johnson, Kenneth and Pyllis	Ginsler, B. William	\$1,200.00	\$1,200.00				\$1,200.00	Marshall
10-9	Bayer, Franklin	La Follett, Thomas	\$142,622.00	\$142,622.00				\$142,622.00	Qun
10-10	Hutchinson, Joseph & Teresa	Hayes, Keith	\$877.00	\$877.00				\$877.00	Barrack

10-11	Gass, Shree	Brown, L Ross	\$3,512.13	\$3,512.13				\$3,512.13	McGean
10-12	Rutledge, Tami	La Follett, Thomas	\$7,656.73	\$7,656.73				\$7,656.73	Quintero
10-13	Kresting, Sara N	Pries, John P	\$2,300.00	\$2,300.00				\$2,300.00	Welch
	<b>TOTALS</b>		<b>\$565,375.40</b>	<b>\$262,235.99</b>	<b>\$181,971.86</b>			<b>\$262,235.99</b>	
	Funds available for claims and indirect costs allocation as of April 2010							<b>\$629,222.00</b>	
						<b>Fund Excess</b>		<b>\$366,986.01</b>	

OREGON STATE BAR  
Client Security - 113  
For the Four Months Ending April 30, 2010

Description	April 2010	YTD 2010	Budget 2010	% of Budget	April Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Interest	\$254	\$1,222	\$7,300	16.7%	\$26	\$2,203	-44.5%
Judgments	360	1,440	4,000	36.0%	486	1,532	-6.0%
Membership Fees	262	206,939	216,100	95.8%	70	67,557	206.3%
TOTAL REVENUE	876	209,601	227,400	92.2%	582	71,292	194.0%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	3,553	10,743	31,300	34.3%	3,385	10,229	5.0%
Employee Taxes & Benefits - Reg	914	3,107	9,100	34.1%	974	3,257	-4.6%
TOTAL SALARIES & BENEFITS	4,466	13,850	40,400	34.3%	4,359	13,486	2.7%
DIRECT PROGRAM							
Claims	27,481	131,971	150,000	88.0%		11,815	1017.0%
Collection Fees	232	232	500	46.4%			
Committees			100				
Pamphlet Production			300				
Travel & Expense		450	1,000	45.0%			
TOTAL DIRECT PROGRAM EXPENSE	27,713	132,653	151,900	87.3%		11,815	1022.8%
GENERAL & ADMINISTRATIVE							
Messenger & Delivery Services			50				
Office Supplies			100				
Photocopying			150				
Postage	10	54	250	21.4%	22	72	-25.6%
Professional Dues			200				
Telephone	19	74	200	37.1%	3	38	97.1%
Training & Education			450		175	350	-100.0%
Staff Travel & Expense	18	18	580	3.0%	211	211	-91.7%
TOTAL G & A	47	145	1,980	7.3%	410	670	-78.3%
TOTAL EXPENSE	32,226	146,648	194,280	75.5%	4,769	25,971	464.7%
NET REVENUE (EXPENSE)	(31,351)	62,953	33,120		(4,187)	45,321	38.9%
Indirect Cost Allocation	1,092	4,368	13,109		1,086	4,344	0.6%
NET REV (EXP) AFTER ICA	(32,443)	58,585	20,011		(5,273)	40,977	43.0%
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Fund Balance beginning of year		570,637					
Ending Fund Balance		629,222					
		=====					
Staff - FTE count		.35	.35				

**2010 JUDGMENTS COLLECTED**

<b>Date</b>	<b>Attorney</b>	<b>Payment Received</b>
1/5/2010	Phil Kelley	360.00
2/10/2010	Phil Kelley	360.00
3/4/2010	Phil Kelley	360.00
4/5/2010	Phil Kelley	360.00
5/3/2010	Phil Kelley	360.00
6/4/2010	Phil Kelley	360.00

<b>TOTAL</b>	<b>\$2,160.00</b>
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