

**OREGON STATE BAR  
MEETING OF THE BOARD OF GOVERNORS  
Schedule of Events  
August 12, 2010  
8/5/2010 10:20 AM**

<b>Meeting Place</b>	OSB Center 16037 SW Upper Boones Ferry Rd. Tigard, OR 97281-1935	<b>Phone:</b>	503-620-0222
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**Thursday, August 12, 2010**

<b>10:30 a.m. - 11:30 a.m.</b>	<b>Barbooks™ Steering Committee</b> (Evans, Fisher, Naucner, Kent) McKenzie
<b>11:30 a.m. – 12:00 p.m.</b>	<b>Special SUA Appeal Meeting</b> (Kent, Johnnie, Larson) Santiam
<b>12:00 p.m. – 1:00 p.m.</b>	<b>Lunch</b> McKenzie
<b>1:00 p.m. – 2:00 p.m.</b>	<b>Executive Director Evaluation Committee</b> (Garcia, Kent, Fisher, Piucci, Haglund) Santiam
<b>2:00 p.m. – 2:15 p.m.</b>	<b>Appointments Committee</b> (DiIaconi, Haglund, Knight, Fisher, Kent, Piucci) McKenzie
<b>2:30 p.m. – 3:30 p.m.</b>	<b>Budget and Finance Committee</b> (Kent, Larson, Lord, Naucner, Garcia, O'Connor, Haglund) McKenzie
<b>2:30 p.m. – 4:00 p.m.</b>	<b>Member Services Committee</b> (Fisher, Johnnie, Matsumonji, DiIaconi, Johnson, Knight) Santiam
<b>4:00 p.m. – 4:30 p.m.</b>	<b>Policy and Governance Committee</b> (Naucner, Kent, DiIaconi, Garcia, O'Connor, Haglund, Knight) McKenzie

4:00 p.m. – 4:45 p.m.	Public Affairs Committee (Piucci, Johnson, Mitchell-Phillips, Fisher, Matsumonji, Johnnie, Larson) Santiam
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5:00 p.m. – 6:30 p.m.	BOG/OSB Staff BBQ
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**Friday, August 13, 2010**

9:00 a.m. – 12:00 p.m.	Board of Governors Meeting
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12:00 p.m. – 1:00 p.m.	Lunch
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1:00 p.m. – 4:00 p.m.	Board of Governors Meeting
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NO MEETING	Public Member Selection Committee
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NO MEETING	Appellate Screening Committee
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NO MEETING	Access to Justice Committee
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**Oregon State Bar  
Meeting of the Board of Governors**

August 13, 2010

**Open Session Agenda**

*The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 9:00 a.m. on Date, 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, August 13, 2010, 9:00 a.m.**

- |    |  |        |       |
|----|--|--------|-------|
| 1. | <b>Call to Order/Finalization of the Agenda</b>  | Action |       |
| 2. | <b>Inspiration</b> [Steve Piucci]                | Inform |       |
| 3. | <b>Departmental Presentation</b>                 |        |       |
|    | A. Public Affairs [Susan Grabe]                  | Inform |       |
| 4. | <b>Report of Officers</b>                        |        |       |
|    | A. Report of the President [Ms. Evans]           | Inform | 8     |
|    | B. Report of the President-elect [Mr. Piucci]    | Inform |       |
|    | C. Report of the Executive Director [Ms. Schmid] | Inform | 9-12  |
|    | D. Oregon New Lawyers Division [Ms. Cousineau]   | Inform | 13-14 |

9:30 a.m.

- |    |   |        |         |
|----|---|--------|---------|
| 5. | <b>Professional Liability Fund</b> [Mr. Zarov]    |        |         |
|    | A. SUA Appeal [Kent]                              | Action | Handout |
|    | B. General Update                                 | Inform | 15      |
|    | C. Preliminary June 30, 2010 Financial Statements | Inform | 16-23   |

10:20 a.m.

- |    |  |        |           |
|----|--|--------|-----------|
| 6. | <b>OSB Committees, Sections, Councils, Divisions and Task Forces</b> |        |           |
|    | A. Client Security Fund [Mr. Larson]                                 |        |           |
|    | 1. No. 09-24 HORTON (Ryan) Appeal                                    | Action | 24-46     |
|    | ➤ <i>Consider the claimant's request for an additional award.</i>    |        |           |
|    | 2. No. 09-41 RICHARDSON (Ervin) Appeal                               | Action | 26-1-26-8 |
|    | ➤ <i>Consider the claimant's request for an additional award.</i>    |        |           |

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

10:25 a.m.

### A. Access to Justice Committee [Ms. Johnnie]

1. Update Inform

### B. Budget and Finance Committee [Mr. Kent]

1. 2011 Executive Summary Budget Action 47-58
2. Five Year Forecast Inform 59-66

11:00 a.m.

### C. Policy and Governance Committee [Ms. Naucler]

1. Proposed Amendments to RPC Action 66-71
  - *Consider the P&G Committee's recommendation that the Oregon Rules of Professional Conduct changes discussed below be presented to the House of Delegates on October 29, 2010.*
2. Proposed Amendments to MCLE Rule 5.5(b) Action 72
  - *Consider the P&G Committee's recommendation to amend MCLE Rule 5.5(b) to include "military service" as a category for access to justice credit.*
3. Ethics School Action 73-74
  - *Consider the P&G Committee's recommendation to forward a proposed Bar Rule of Procedure to the Supreme Court to implement an Ethics School program.*

### D. Public Affairs Committee [Mr. Piucci]

11:10 a.m.

1. Political Update Inform
2. Court Fees Task Force Legislative Recommendation Action Handout

*Consider Court Fees Task Force recommendation to State Justice System Revenue Committee regarding proposed legislation.*

### E. Public Member Selection [Ms. Lord]

1. Appoint a Public Member to the BOG Action 75-81
  - *The committee conducted interviews in July and is recommending a new public member for the BOG.*

11:25 a.m.

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

**A. BarBooks™ Steering Committee**

- |    |   |        |       |
|----|---|--------|-------|
| 1. | Legal Publications Print Book Revenue Projections | Inform | 82-85 |
| a. | Exhibit A – Projected Revenue for 2011            | Inform | 86    |
| b. | Exhibit B – Projected Revenue Split               | Inform | 87    |
| c. | Exhibit C – Net Revenue Comparison                | Inform | 88    |

**12:00 p.m. – 1:00 p.m. Lunch**

1:00 p.m.

**9. Closed Sessions**

- |    |   |        |         |
|----|---|--------|---------|
| A. | Judicial Session (pursuant to ORS 192.690(1) Reinstatements                         | Action | 89-156  |
| B. | Executive Session (pursuant to ORS 192.660(1)(f) and (h) General Counsel/UPL Report | Action | 157-164 |

**10. BOG Committees, Special Committees, Task Forces and Study Groups (continued)**

2:00 p.m.

**A. Out of State Lawyers in Arbitration Task Force [Ms. Stevens]**

- |    |   |        |         |
|----|---|--------|---------|
| 1. | Out of State Lawyers in Arbitration Task Force Report | Action | 165-172 |
|----|---|--------|---------|

2:30 p.m.

**B. Member Services Committee [Ms. Fisher]**

- |    |  |        |         |
|----|--|--------|---------|
| 1. | Recommendation to Create Senior Lawyers Division   | Action | 173     |
|    | ➤ <i>Consider the recommendation of the Committee to create a Senior Lawyer Division as recommended in the Senior Lawyers Task Force Report of October 2009.</i> |        |         |
| 2. | Recommendations for 2010 OSB Annual Awards   | Action | Handout |

<b>11.</b>	<b>Consent Agenda</b>	<b>Action</b>	<b>pink</b>
A.	Approve Minutes of Date		
1.	Minutes of Open Session - June 18, 2010	Action	174-222
2.	Minutes of Judicial Proceedings - June 18, 2010	Action	223-224
3.	Minutes of Executive Assistant Session - June 18, 2010	Action	225
B.	Appointments Committee		
1.	Appointments to Various Bar Committees, Councils, and Boards	Action	Handout
C.	Client Security Fund		
1.	No. 09-37 SHINN (Wright & Cossette)  ➤ <i>The committee recommends payment of \$8,000.00.</i>	Action	226-227
2.	No. 10-05 OH (Choi)  ➤ <i>The committee recommends payment of \$3,000.00.</i>	Action	227
D.	Member Services Committee		
1.	Bylaw Amendment to Incorporate Sustainability Award	Action	228-229
<b>12.</b>	<b>Default Agenda</b>	<b>Inform</b>	<b>blue</b>
A.	Access to Justice Committee		
1.	Minutes – July 16, 2010	Inform	230
B.	Budget and Finance Committee		
1.	Minutes – July 16, 2010	Inform	231-232
C.	Member Services Committee		
1.	Minutes – June 18, 2010	Inform	233
2.	Minutes – July 16, 2010	Inform	234
D.	Policy and Governance Committee		
1.	Minutes – June 18, 2010	Inform	235

E.	Public Affairs Committee		
1.	Minutes – June 18, 2010	Inform	236
2.	Minutes – July 16, 2010	Inform	237
F.	Public Member Selection		
1.	Minutes – April 29, 2010	Inform	238
G.	CSF Claims Report	Inform	239-241
13.	<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
July 15	Participated with the Chief in the investiture of the Hon. James Egan in Linn County
July 16	BOG Committee Meetings at the Bar Center
July 21	Conducted out-of-state HOD delegate meeting by telephone
July 22	Marion County Bar Association summer social mixer at Garrett Hemann
July 23	Met with OWLS President Concetta Schwesinger
August 2	Meeting with the Chief Justice
August 5 <sup>th</sup> - 7 <sup>th</sup>	National Conference of Bar Presidents in San Francisco
August 10	Investiture of the Hon. Ilisa Rooke-Ley in Lane County
August 12	BOG Committee Meetings
August 13	BOG Board Meeting

**Oregon State Bar  
Report of Executive Director, Teresa J. Schmid  
To the Board of Governors for the Meeting Held  
August 13, 2010**

**Recent Developments**

During the week of July 19, 2010, I attended regional meetings of the House of Delegates that were outside of the Portland/Washington/Clackamas metro area, including Regions 1 (Klamath Falls), 2 (Eugene), 3 (Albany), and 6 (Salem). I took that opportunity to also meet with local bar leaders in Lane, Klamath, and Lake Counties. Following are some of the themes from those meetings:

1. All participants expressed great satisfaction with the prospect of the BarBooks™ Benefit being available in January 2011 without a dues increase. In all counties visited, bar leaders asked that the bar schedule BarBooks™ training for local members.
2. Participants also expressed their approval of the mentoring program for new admittees that is currently in development.
3. Many members would like to see more live CLE programs being offered in the larger metro areas of southern Oregon. While they appreciate and use the electronic CLE resources, they also would like more opportunities to attend live programs.
4. Local members also expressed a need for more opportunities to volunteer for the state bar, citing difficulties with travel and the inadequacy of participating by telephone conference. Most courthouses have videoconferencing, which could provide a resource for long-distance participation in bar activities.
5. There is a continuing need for affordable health care insurance for solos and small firm practitioners.
6. Rural areas need an influx of new lawyers to meet growing demand and to replace lawyers nearing retirement.
7. There is also a marked increase in self-represented clients appearing in court. A court-based, on-site assistance program would help. The Klamath County Bar leadership is considering a volunteer program of that kind.
8. All participants reported being very busy, and few are able to accept modest means clients. The local legal aid office serving Klamath and Lake Counties is overwhelmed with family law clients, especially those seeking protection under the Family Abuse Protection Act, and few private practitioners can accept other types of consumer cases, such as landlord/tenant and employment.

## **Current Operational Developments**

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

<b>Project</b>	<b>Recent Developments</b>	<b>Next Steps</b>
<b>Budget 2010</b>	July 16 - The Budget & Finance committee reviewed the Executive Summary for the 2011 budget	Aug. 13 – The BOG will review the Executive Summary.
<b>BarBooks™ Benefit</b>	July 16 – The BarBooks™ Steering Committee reviewed printing options; requested further information from staff.	Aug. 13 – The Steering Committee will review print options, advertising, and training.  January 2011 - Projected implementation date for the BarBooks™ Benefit
<b>Mandatory Mentorship Program</b>	July 30 – Mentoring Task Force will meet and receive reports from subcommittees.	November 2010 - Projected date for the Task Force to report to the BOG.  May 2011 – Projected implementation date for successful February bar applicants.
<b>Program Review: Member Services Committee</b>	July 16 – The Committee reviewed the Leadership College and the Oregon New Lawyers Division	August 12 – The Committee will continue its program review.
<b>Referral &amp; Information Service</b>	July 16 – The B & F Committee reviewed the 5-year financial projections, including the impact of changes to the RIS business model.	Aug. 22 – The Ethics Committee will meet and continue its review of any rule implications.
<b>Senior Lawyers Division</b>	July 16 – The Member Services Committee reviewed the implementation status of the Senior Lawyer Task Force recommendations and recommended that the BOG authorize formation of a new Senior Lawyer Division.	Aug. 13 – The BOG will consider the Committee's recommendation.

### **Executive Director's Activities June-August 2010**

<b><u>Date</u></b>	<b><u>Activity</u></b>
June 9	Participated in the organizational meeting of the Mandatory Mentoring Task Force.
June 22	Attended a meeting of the Board of Directors for the Campaign for Equal Justice.
July 6	Lunch meeting with Oregon Women Lawyers President and Executive Director.
July 13	Met with the Mentor Recruitment Subcommittee of the Mandatory Mentoring Task Force.
July 15	Conducted a meeting of the Implementation Subcommittee of the Mandatory Mentoring Task Force.
July 18	Attended the ABA Delegates dinner.
July 19	Attended the HOD Region 3 meeting in Albany, hosted by Mitzi Naucler; attended the HOD Region 6 meeting in Salem, hosted by Gina Johnnie.
July 20	Attended the HOD Region 2 meeting in Eugene, hosted by Derek Johnson; attended a dinner with Lane County Bar leaders in Eugene.
July 21	Attended the HOD Region 1 meeting in Klamath Falls, hosted by Barbara DiIaconi; participated telephonically in the HOD out-of-state delegates' meeting, hosted by Kathy Evans; attended lunch with Klamath County Bar leaders in Klamath Falls; attended dinner with Lake County District Attorney David Schutt in Lakeview.
July 22	Participated telephonically in the HOD Region 4 meeting, hosted by Ann Fisher; participated telephonically in the HOD Region 5 meeting, hosted by Steve Piucci.
July 30	Participated in a meeting of the Mandatory Mentoring Task Force in Tigard.
August 2	Attended meeting with Chief Justice De Muniz in Salem.
August 3-6	Attended meeting of the National Association of Bar Executives and the American Bar Association in San Francisco.

### **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.*

**Ranking of Law Firms:** The *U.S. News and World Report* has proposed ranking law firms. The ABA's Commission on Ethics 20/20 and Section on Legal Education and Admissions to the Bar are studying the proposed firm ranking system, as well as the publication's continued ranking of law schools. Included with the BOG materials is a letter dated July 16, 2010 from Richard Steen, President of the New Jersey State Bar,

encouraging the Oregon State Bar to contact the chairs of the ABA entities to ensure that the issue remains a priority for the ABA.

Red Flags Rule: The Federal Trade Commission has delayed the enforcement date for its new rule, which requires service providers who extend credit to take steps to prevent identity theft of clients to January 1, 2011. This is the third delay of the enforcement date, which is due to the ABA's litigation seeking to exempt lawyers from the rule's application. In October 2009, the U.S. District Court for the District of Columbia ruled that lawyers are exempt, which the FTC appealed. The issue is now before the Circuit Court for the District of Columbia.

Teresa J. Schmid, Executive Director

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**Memo Date:** August 2, 2010  
**From:** Jessica Cousineau, Oregon New Lawyers Division Chair  
**Re:** ONLD Report

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The ONLD last met in June following the BOG meeting in Baker City. An ethics CLE program was offered to local attorneys on Friday afternoon in conjunction with the trip to Baker City and was well received by attendees.

In July, the ONLD held a brown bag CLE program in Multnomah County on intellectual property law. Attendance at the monthly programs has been higher than average this year likely due to the low registration cost of \$10.00 for each program. Next year the ONLD plans to reduce their costs and utilize online registration for the brown bag programs, thus saving more than \$2,000.

Currently the ONLD is gearing up for their participation in the AAP's OLIO weekend. The ONLD is assisting with training sessions on IRAC and networking, in addition to hosting a casino night social event during OLIO.

The ONLD Executive Committee has two task forces busily at work this summer. The first task force is concentrating on revisions to the ONLD bylaws to ensure the new bar region is represented on the ONLD's Executive Committee. The second task force is focused on the ONLD's spectrum of programs and looking at ways to reduce expenses.

Members of the ONLD Executive Committee attended the July Member Services Committee meeting to discuss the ONLD's programs and budget. The Executive Committee appreciates the time the Member Services Committee gave us to discuss our programs and we look forward to working with the committee and the BOG to determine budgetary changes for the future.

## 2010 ONLD Master Calendar

Last updated August 2, 2010

<b>Date</b>	<b>Time</b>	<b>Event</b>	<b>Location</b>
August 6	PM	OLIO After Party	Hood River
August 7	9:00 a.m.	Executive Committee Meeting	Hood River
August 12-13	All day	BOG & BOG Committee Meetings	OSB, Tigard
August 18-23	All Week	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
October 16	All day	SuperSaturday	OSB, Tigard
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
October 23	TBD	BOWLIO	Valley Lanes - Beaverton
October 28	2:00 p.m.	Pro Bono CLEs/Fair/Awards Ceremony	Oregon Historical Society, PDX
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

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

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 12-13, 2010

**Memo Date:** August 3, 2010

**From:** Ira Zarov, PLF CEO

**Re:** Update

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Due to the concurrent dates for the BOG and BOD meetings this month, no PLF representative will be able to attend the BOG meeting. In lieu of attendance, I am submitting a written update.

We are pleased to report that the announcement of the PLF's bridge grant to enable the BarBooks project was made on the PLF Web site and coordinated with the OSB announcements. Bar staff were extremely helpful and their respect for PLF concerns was much appreciated. The PLF has not received any comments about the bridge grant.

The PLF continues to see a high claim count, although the count is down approximately 5% from last year's high water mark. At the current rate, we will receive 938 claims in 2010. The mid-year actuary report has not yet been received and, as a result, we are unable to make a definitive statement about the severity of claims but there is reasonable hope that severity may be lower than expected.

The PLF is in the process of developing our 2011 budget. The 2011 budget will include the addition of an IT position. The hiring of an IT position is part of the PLF succession planning and is a response to the growing IT needs. The addition of the new position, the expected increase in PERS, and other incremental expenses make the positive performance of investments and a positive claims report critical to meeting the Board's goal of maintaining the assessment at its current level. Budgeting will be completed after receipt of the August actuary report.

The Coverage Committee has recently met and will be presenting a number of modest changes to the Primary Coverage Plan. Most changes are designed to clarify the Plan and to conform it to current practices.

The full PLF Board is examining the Special Underwriting Assessment (SUA) in depth at the August meeting to determine if changes in the program are desired. Among the choices discussed will be two different directions – one to expand SUA the other to discontinue it.

The PLF financials indicate that in the first two quarters of 2010, the PLF lost about \$930,000. Investment results were the driving force behind the losses. The continued market volatility remains a concern although we estimate that half of the current loss was recouped in July. (A Preliminary Financial Statement is attached.)

Attachment



# Professional Liability Fund

Ira R. Zarov  
Chief Executive Officer

August 2, 2010

To: Professional Liability Fund Board of Directors  
From: R. Thomas Cave, Chief Financial Officer  
Re: Preliminary June 30, 2010 Financial Statements

*RTC*

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I have enclosed preliminary June 30, 2010 Financial Statements. These statements do not include the actuarial June 30 adjustment. We should receive the actuarial liability report later this month. This report will be reviewed by the Finance Committee and Board of Directors in early September.

These statements show a Primary Program net loss of about \$930,000 for the first six months of 2010. The loss is the result of very poor investment results during the second quarter. Investment results improved during July.

I will have an update regarding July investment results at the August 13, 2010 BOD meeting.

If you have any questions, please contact me.

# PRELIMINARY

Processed on 7/23/2010

## **Oregon State Bar Professional Liability Fund Financial Statements 6/30/2010**

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3	Primary Program Income Statement
4	Primary Program Operating Expenses
5	Excess Program Income Statement
6	Excess Program Operating Expenses
7	Combined Investment Schedule

# PRELIMINARY

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## Oregon State Bar Professional Liability Fund Combined Primary and Excess Programs Balance Sheet 6/30/2010

### ASSETS

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
Cash	\$1,035,723.96	\$832,702.10
Investments at Fair Value	36,558,652.48	33,454,163.14
Assessment Installment Receivable	4,412,699.00	4,079,062.01
Due from Reinsurers	77,828.34	1,106,500.50
Other Current Assets	79,825.70	51,485.65
Net Fixed Assets	1,216,797.22	1,310,416.51
Claim Receivables	51,463.83	49,559.30
Other Long Term Assets	<u>12,743.58</u>	<u>13,280.00</u>
<b>TOTAL ASSETS</b>	<b><u>\$43,445,734.11</u></b>	<b><u>\$40,897,169.21</u></b>

### LIABILITIES AND FUND EQUITY

	<u>THIS YEAR</u>	<u>LAST YEAR</u>
<b>Liabilities:</b>		
Accounts Payable and Other Current Liabilities	\$115,237.34	\$78,261.30
Due to Reinsurers	\$893,739.71	\$885,104.02
Liability for Compensated Absences	349,618.37	344,122.43
Liability for Indemnity	13,360,923.58	11,600,000.00
Liability for Claim Expense	10,631,791.59	10,300,000.00
Liability for Future ERC Claims	2,400,000.00	2,400,000.00
Liability for Suspense Files	1,300,000.00	1,300,000.00
Liability for Future Claims Administration (AOE)	2,200,000.00	2,100,000.00
Excess Ceding Commission Allocated for Rest of Year	375,405.17	396,051.21
Assessment and Installment Service Charge Allocated for Rest of Year	<u>11,284,626.50</u>	<u>11,081,662.33</u>
<b>Total Liabilities</b>	<b><u>\$42,911,342.26</u></b>	<b><u>\$40,485,201.29</u></b>
<b>Fund Equity:</b>		
Retained Earnings (Deficit) Beginning of the Year	\$1,720,386.49	(\$1,294,907.62)
Year to Date Net Income (Loss)	<u>(1,185,994.64)</u>	<u>1,706,875.54</u>
<b>Total Fund Equity</b>	<b><u>\$534,391.85</u></b>	<b><u>\$411,967.92</u></b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b><u>\$43,445,734.11</u></b>	<b><u>\$40,897,169.21</u></b>

# P R E L I M I N A R Y

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## Oregon State Bar Professional Liability Fund Primary Program Income Statement 6 Months Ended 6/30/2010

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<b><u>REVENUE</u></b>					
Assessments	\$11,109,420.00	\$11,116,999.98	\$7,579.98	\$10,914,720.34	\$22,234,000.00
Installment Service Charge	175,206.50	169,500.00	(5,706.50)	166,942.00	339,000.00
Other Income	28,764.76	0.00	(28,764.76)	44,730.63	0.00
Investment Return	(534,041.01)	1,049,778.00	1,583,819.01	1,312,395.91	2,099,556.00
<b>TOTAL REVENUE</b>	<b><u>\$10,779,350.25</u></b>	<b><u>\$12,336,277.98</u></b>	<b><u>\$1,556,927.73</u></b>	<b><u>\$12,438,788.88</u></b>	<b><u>\$24,672,556.00</u></b>
<b><u>EXPENSE</u></b>					
<b>Provision For Claims:</b>					
New Claims at Average Cost	\$9,025,000.00			\$8,854,000.00	
Actuarial Adjustment to Reserves	0.00			(909,593.48)	
General Expense	26,135.72			29,778.31	
Less Recoveries & Contributions	(3,545.10)			(10,194.91)	
Budget for Claims Expense		<u>\$9,423,176.52</u>			<u>\$18,846,353.00</u>
<b>Total Provision For Claims</b>	<b><u>\$9,047,590.62</u></b>	<b><u>\$9,423,176.52</u></b>	<b><u>\$375,585.90</u></b>	<b><u>\$7,963,989.92</u></b>	<b><u>\$18,846,353.00</u></b>
<b>Expense from Operations:</b>					
Administrative Department	\$987,088.75	\$973,186.26	(\$13,902.49)	\$949,438.59	\$1,946,373.00
Accounting Department	277,166.73	269,907.96	(7,258.77)	285,643.89	539,816.00
Loss Prevention Department	791,524.08	893,539.32	102,015.24	863,376.74	1,787,078.00
Claims Department	1,117,177.08	1,145,176.08	27,999.00	1,093,612.69	2,290,352.00
Allocated to Excess Program	(610,720.44)	(610,720.44)	0.00	(601,237.86)	(1,221,441.00)
<b>Total Expense from Operations</b>	<b><u>\$2,562,236.20</u></b>	<b><u>\$2,671,089.18</u></b>	<b><u>\$108,852.98</u></b>	<b><u>\$2,590,834.05</u></b>	<b><u>\$5,342,178.00</u></b>
Contingency (2% of Operating Exp)	\$11,330.04	\$65,636.52	\$54,306.48	\$0.00	\$131,273.00
Depreciation and Amortization	\$106,431.98	\$95,500.02	(\$10,931.96)	\$91,826.99	\$191,000.00
Allocated Depreciation	(17,820.48)	(17,820.48)	0.00	(16,680.72)	(35,641.00)
<b>TOTAL EXPENSE</b>	<b><u>\$11,709,768.36</u></b>	<b><u>\$12,237,581.76</u></b>	<b><u>\$527,813.40</u></b>	<b><u>\$10,629,970.24</u></b>	<b><u>\$24,475,163.00</u></b>
<b>NET INCOME (LOSS)</b>	<b><u>(\$930,418.11)</u></b>	<b><u>\$98,696.22</u></b>	<b><u>\$1,029,114.33</u></b>	<b><u>\$1,808,818.64</u></b>	<b><u>\$197,393.00</u></b>

# P R E L I M I N A R Y

Page 4

## Oregon State Bar Professional Liability Fund Primary Program Statement of Operating Expense 6 Months Ended 6/30/2010

	CURRENT MONTH	YEAR TO DATE ACTUAL	YEAR TO DATE BUDGET	VARIANCE	YEAR TO DATE LAST YEAR	ANNUAL BUDGET
<b><u>EXPENSE:</u></b>						
Salaries	\$313,994.44	\$1,889,038.62	\$1,895,793.00	\$6,754.38	\$1,825,662.41	\$3,791,586.00
Benefits and Payroll Taxes	88,170.55	519,867.68	533,991.06	14,123.38	593,726.49	1,067,982.00
Investment Services	6,809.25	13,338.75	13,999.98	661.23	13,268.25	28,000.00
Legal Services	1,248.00	1,825.00	9,000.00	7,175.00	8,723.43	18,000.00
Financial Audit Services	0.00	23,800.00	11,899.98	(11,900.02)	22,700.00	23,800.00
Actuarial Services	0.00	7,091.20	8,749.98	1,658.78	6,342.50	17,500.00
Claims MMSEA Services	850.00	5,700.00	6,000.00	300.00	0.00	12,000.00
Information Services	7,667.20	65,499.54	61,750.02	(3,749.52)	56,499.89	123,500.00
Document Scanning Services	7,799.04	67,381.78	15,000.00	(52,381.78)	40,878.37	30,000.00
Other Professional Services	3,613.57	19,029.97	19,749.96	719.99	17,730.39	39,500.00
Staff Travel	3,476.32	4,801.75	5,374.98	573.23	8,294.06	10,750.00
Board Travel	6,799.84	10,680.86	17,999.94	7,319.08	21,162.97	36,000.00
NABRICO	0.00	0.00	8,599.98	8,599.98	0.00	17,200.00
Training	625.35	4,265.50	8,250.00	3,984.50	4,683.78	16,500.00
Rent	40,304.00	241,015.59	244,999.98	3,984.39	237,606.83	490,000.00
Printing and Supplies	10,770.97	46,463.12	46,499.94	36.82	44,006.76	93,000.00
Postage and Delivery	3,704.98	18,154.93	20,599.98	2,445.05	17,267.18	41,200.00
Equipment Rent & Maintenance	1,939.75	15,525.56	22,500.00	6,974.44	10,147.02	45,000.00
Telephone	3,066.79	16,561.13	16,999.98	438.85	12,272.86	34,000.00
L P Programs (less Salary & Benefits)	21,327.89	158,639.22	254,400.30	95,761.08	206,016.64	508,800.00
Defense Panel Training	8.10	3,665.55	0.00	(3,665.55)	933.17	0.00
Insurance	0.00	8,619.00	32,000.52	23,381.52	10,369.00	64,001.00
Library	2,129.76	11,905.53	13,750.02	1,844.49	11,960.40	27,500.00
Subscriptions, Memberships & Other	777.05	20,086.36	13,900.02	(6,186.34)	21,819.51	27,800.00
Allocated to Excess Program	(101,786.74)	(610,720.44)	(610,720.44)	0.00	(601,237.86)	(1,221,441.00)
 TOTAL EXPENSE	 \$423,296.11	 \$2,562,236.20	 \$2,671,089.18	 \$108,852.98	 \$2,590,834.05	 \$5,342,178.00

# PRELIMINARY

Page 5

## Oregon State Bar Professional Liability Fund Excess Program Income Statement 6 Months Ended 6/30/2010

	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	<u>ANNUAL BUDGET</u>
<b><u>REVENUE</u></b>					
Ceding Commission	\$375,405.17	\$406,999.98	\$31,594.81	\$396,051.22	\$814,000.00
Prior Year Adj. (Net of Reins.)	1,270.95	0.00	(1,270.95)	589.45	0.00
Installment Service Charge	41,655.00	22,000.02	(19,654.98)	39,773.00	44,000.00
Investment Return	<u>5,723.32</u>	<u>129,748.02</u>	<u>124,024.70</u>	<u>144,031.84</u>	<u>259,496.00</u>
<b>TOTAL REVENUE</b>	<b><u>\$424,054.44</u></b>	<b><u>\$558,748.02</u></b>	<b><u>\$134,693.58</u></b>	<b><u>\$580,445.51</u></b>	<b><u>\$1,117,496.00</u></b>
<b><u>EXPENSE</u></b>					
Operating Expenses (See Page 6)	\$661,810.49	\$668,520.48	\$6,709.99	\$665,707.89	\$1,337,041.00
Allocated Depreciation	<u>\$17,820.48</u>	<u>\$17,820.48</u>	<u>\$0.00</u>	<u>\$16,680.72</u>	<u>\$35,641.00</u>
<b>NET INCOME (LOSS)</b>	<b><u>(\$255,576.53)</u></b>	<b><u>(\$127,592.94)</u></b>	<b><u>\$127,983.59</u></b>	<b><u>(\$101,943.10)</u></b>	<b><u>(\$255,186.00)</u></b>

# P R E L I M I N A R Y

Page 6

## Oregon State Bar Professional Liability Fund Excess Program Statement of Operating Expense 6 Months Ended 6/30/2010

	CURRENT <u>MONTH</u>	YEAR TO DATE <u>ACTUAL</u>	YEAR TO DATE <u>BUDGET</u>	<u>VARIANCE</u>	YEAR TO DATE <u>LAST YEAR</u>	ANNUAL <u>BUDGET</u>
<b><u>EXPENSE:</u></b>						
Salaries	\$64,448.33	\$386,689.98	\$386,689.50	(\$0.48)	\$372,540.54	\$773,379.00
Benefits and Payroll Taxes	17,984.71	107,863.32	107,343.00	(520.32)	116,876.40	214,686.00
Investment Services	690.75	1,661.25	1,999.98	338.73	1,731.75	4,000.00
Office Expense	0.00	0.00	0.00	0.00	0.00	0.00
Allocation of Primary Overhead	26,498.00	158,988.00	158,988.00	0.00	153,653.28	317,976.00
Reinsurance Placement & Travel	0.00	5,335.44	6,000.00	664.56	2,618.07	12,000.00
Training	0.00	0.00	499.98	499.98	0.00	1,000.00
Printing and Mailing	0.00	772.50	2,500.02	1,727.52	932.50	5,000.00
Program Promotion	0.00	500.00	499.98	(0.02)	500.00	1,000.00
Other Professional Services	0.00	0.00	4,000.02	4,000.02	16,855.35	8,000.00
Software Development	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
 TOTAL EXPENSE	 <u>\$109,621.79</u>	 <u>\$661,810.49</u>	 <u>\$668,520.48</u>	 <u>\$6,709.99</u>	 <u>\$665,707.89</u>	 <u>\$1,337,041.00</u>

# PRELIMINARY

Page 7

## Oregon State Bar Professional Liability Fund Combined Investment Schedule 6 Months Ended 6/30/2010

	CURRENT MONTH <u>THIS YEAR</u>	YEAR TO DATE <u>THIS YEAR</u>	CURRENT MONTH <u>LAST YEAR</u>	YEAR TO DATE <u>LAST YEAR</u>
<b>Dividends and Interest:</b>				
Short Term Bond Fund	\$8,871.50	\$89,828.45	\$21,876.53	\$228,975.62
Intermediate Term Bond Funds	19,104.12	107,349.45	30,831.70	185,576.29
Domestic Common Stock Funds	12,772.26	21,462.72	11,027.71	20,469.57
International Equity Fund	0.00	0.00	0.00	0.00
Real Estate	27,800.20	52,280.00	22,956.66	59,040.67
Hedge Fund of Funds	0.00	0.00	0.00	0.00
Real Return Strategy	<u>53,325.02</u>	<u>90,095.51</u>	<u>37,410.99</u>	<u>63,601.69</u>
<b>Total Dividends and Interest</b>	<b><u>\$121,873.10</u></b>	<b><u>\$361,016.13</u></b>	<b><u>\$124,103.59</u></b>	<b><u>\$557,663.84</u></b>
<b>Gain (Loss) in Fair Value:</b>				
Short Term Bond Fund	\$35,378.32	\$182,387.17	\$8,183.76	\$243,310.37
Intermediate Term Bond Funds	105,995.84	302,782.24	11,861.54	183,165.10
Domestic Common Stock Funds	(408,424.68)	(668,759.34)	(33,212.68)	241,583.36
International Equity Fund	(69,823.03)	(822,492.03)	(135,427.66)	406,062.44
Real Estate	(5,246.60)	(8,781.46)	(228,487.28)	(766,301.28)
Hedge Fund of Funds	(36,836.63)	15,694.24	32,933.98	354,828.19
Real Return Strategy	<u>(6,959.66)</u>	<u>109,835.36</u>	<u>10,370.76</u>	<u>236,115.73</u>
<b>Total Gain (Loss) in Fair Value</b>	<b><u>(\$385,916.44)</u></b>	<b><u>(\$889,333.82)</u></b>	<b><u>(\$333,777.58)</u></b>	<b><u>\$898,763.91</u></b>
<b>TOTAL RETURN</b>	<b><u>(\$264,043.34)</u></b>	<b><u>(\$528,317.69)</u></b>	<b><u>(\$209,673.99)</u></b>	<b><u>\$1,456,427.75</u></b>
<b>Portions Allocated to Excess Program:</b>				
Dividends and Interest	\$12,491.99	\$42,632.96	\$12,211.79	\$73,406.44
Gain (Loss) in Fair Value	<u>(39,556.44)</u>	<u>(36,909.64)</u>	<u>(32,843.71)</u>	<u>70,625.40</u>
<b>TOTAL ALLOCATED TO EXCESS PROGRAM</b>	<b><u>(\$27,064.45)</u></b>	<b><u>\$5,723.32</u></b>	<b><u>(\$20,631.92)</u></b>	<b><u>\$144,031.84</u></b>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**From:** Sylvia E. Stevens, General Counsel  
**Re:** CSF Claim No. 09-24 HORTON (Ryan) Appeal

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### Action Recommended

Consider Mr. Ryan's appeal from the CSF Committee's denial of his request for an additional award.

### Background

In January 2010, the CSF Committee considered Shawn Ryan's claim for reimbursement of \$10,000 deposited with William Horton. The Committee recommended an award of \$8,718 based on the last statement Ryan received from Horton showing services performed and a trust balance in that amount. Ryan was notified of the Committee's decision by letter of January 20, 2010, and at its February 2010 meeting, the BOG approved the award recommended by the Committee.

In the meantime, Ryan requested an additional award of \$4150 to reimburse him for the legal fees he incurred pursuing a judgment against Horton's estate. The CSF Committee considered Ryan's request for an additional award at its meeting in June 2010 and denied it based on CSF Rule 2.9:

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

The Committee rejected Ryan's argument that an additional award was justified in his case by "extreme hardship or special and unusual circumstances."<sup>1</sup> The circumstances to which he refers are the difficulties he encountered in exhausting his remedies as required by CSF Rules 2.6.2 and 2.7.<sup>2</sup> Ryan made a timely appeal from the Committee's June decision.

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<sup>1</sup> 2.11 In cases of extreme hardship or special and unusual circumstances, the Committee, in its sole discretion, may recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of these rules.

<sup>2</sup> "A loss of money or other property of a lawyer's client is eligible for reimbursement if:

\*\*\*

2.6 As a result of the dishonest conduct, either:

2.6.1 The lawyer was found guilty of a crime;

2.6.2 A civil judgment was entered against the lawyer, or the lawyer's estate, and that judgment remains unsatisfied; or

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

2.7 A good faith effort has been made by the claimant to collect the amount claimed, to no avail.

## Facts

Ryan hired William Horton on October 30, 2008 to defend a fraud and unlawful trade practices claim. On November 14, 2008, Ryan deposited \$10,000 with Horton toward his fees in the matter. No portion of Ryan's fee advance was deposited into Horton's trust account and there was no agreement that it was "earned on receipt." Horton filed an Answer to the complaint, but there is no evidence that he did any other work on Ryan's matter. Horton's statement to Ryan at the end of November showed fees earned of \$1,282 and a "Trust Account Balance" of \$8,718.

Horton died suddenly at the end of January 2009.

Ryan filed a small claims action against Horton and Horton's estate on March 18, 2009, but because he had not first submitted his claim in the probate estate,<sup>3</sup> Ryan's small claims case was dismissed and he was ordered to pay \$569 to the estate for its costs in the matter. On or about April 29, 2009, Ryan submitted his application for reimbursement from the CSF.

On June 24, 2009, Ryan filed his claim in the Horton estate. The personal representative's lawyer, Roger Leo, requested additional information, which Ryan didn't have. Leo then refused Ryan's request for documents from Horton's file. There followed protracted dealings between Ryan's lawyer and Leo, as reflected in the attachments. The matter was quite contentious, with accusations of wrongdoing on both sides.<sup>4</sup> In December 2009, after a hearing, the court allowed Ryan's claim in the amount of \$8,149 after offsetting the costs awarded to the estate in the small claims matter.

Ryan paid \$4150 to Steven Burke for his help on the Horton estate claim. Ryan believes he should be reimbursed for those fees because he was told that having a judgment or otherwise exhausting his recourse against the defalcating lawyer was a precondition to an award from the Fund. He also believes that Roger Leo's objections to his claim were unwarranted since Leo has maintained from the beginning that the estate is insolvent.<sup>5</sup>

## Conclusion

It is undisputed that the CSF Rules do not allow the fund to compensate a claimant for the legal fees they incur obtaining a judgment or otherwise making a good faith effort to collect from the defalcating lawyer. Moreover, the CSF Committee did not believe that the waiver provision of Rule 2.11 overrides the reimbursement prohibition in Rule 2.9. Rather, Rule 2.11 allows the CSF to waive eligibility requirements such as having a judgment or not having a third party determination of an unearned fee.

It is not clear why Mr. Ryan didn't request a waiver of the judgment requirement in this case, since it was apparent that any judgment against Horton's estate would be worthless. None of the other three claimants were required to have judgments. There is some evidence that Ryan was informed by OSB staff when he first inquired about the CSF that having a

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<sup>3</sup> Court records suggest the probate was opened in May 2009.

<sup>4</sup> At one point in the proceedings, Leo represented to the court that Burke refused to respond to his request for available hearing dates. Burke filed a bar complaint alleging, among other things, that Leo's representations to the court were knowingly false. The matter is pending in Disciplinary Counsel's Office.

<sup>5</sup> The CSF has made awards totaling more than \$90,000 to four of William Horton's former clients, including Ryan.

judgment was a requirement and nothing in the file indicates he ever inquired further after he began to experience difficulty with Roger Leo.

The CSF was sympathetic to Mr. Ryan's plight but felt it had no choice but to deny his request.

Attachments: Ryan appeal letter (2/15/10)  
Burke/Leo correspondence  
Burke billings

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Sylvia E. Stevens  
General Counsel Oregon State Bar  
16037 SW Upper Boones Ferry Rd., Tigard, OR 97224

RE: CSF Claim No. 09-24 HORTON (Ryan)

February 15, 2010

To Whom It May Concern:

I am writing to request the Committee use its authority to recommend payment of an amount not otherwise allowed except for "cases of extreme hardship or special and unusual circumstances." My case is a special and unusual situation because after my attorney, Mr. Horton, made me a victim of fraud through his own actions, Mr. Roger Leo, the personal representative for the Horton Estate, compounded the severity of the injustice through his actions as enumerated below.

Mr. Horton illegally handled my money in violation of Oregon Law. This became evident upon Mr. Horton's demise. All our research shows Mr. Horton never used an IOLTA account as required by law, which means he committed fraud. See *In re Complaint as to the Conduct of Murdock*, 328, Or 18, 31032 (Or. 1998).

My dealings with Mr. Leo resulted from me attempting to recover the funds Mr. Horton stole from me.

Mr. Roger Leo Refused to Provide Discovery

In the course of resolving this matter, I made a timely claim to the Estate, submitted proof of the ultimate source of the funds both in terms of a statement, and written representations by my attorney, Mr. Steven Burke, to Mr. Roger Leo. Mr. Roger Leo refused to provide discovery for the duration of the litigation against the Estate, which vastly increased litigation time and expense.

Mr. Roger Leo Filed a Notice of Disallowance Improperly Addressed

Further, Mr. Leo filed a Notice of Disallowance with the court that included a certificate of service showing the pleading was mailed to an address other than my attorney and myself. Of the many pieces of documents necessary to my claim that Mr. Leo mailed, it was only this specific document that had this improperly addressed certification, which is highly suspect. It resulted in months of litigation, which was both costly and Mr. Leo's fault.

Mr. Roger Leo Violated ORS 135.115

Upon making Mr. Leo's mistake clear to him, he wrongfully maintained and persisted that the notice of disallowance was effective, in violation of ORS 135.115, "which governs the requirement for properly serving a Notice of Disallowance, and provides if it is not delivered 'in whole or in part to

the claimant and, if any, the attorney of the claimant' the claim is barred (Burke, Summary Determination, 12/07/2009). The court records reflect the fact that Mr. Roger Leo did not send any notice to me, the actual claimant, and the notice sent to my attorney was improperly addressed and never made it to him, which means Mr. Roger Leo completely and willfully violated ORS 135.115.

Mr. Roger Leo Willfully Fabricated A Statement to the Court –Evidence Attached.

At a later point Mr. Roger Leo suggested the reason for the denial was because Daniel Lioy was unknown to the Estate. My partner, Mr. Daniel Lioy, lent me the money with which I entered into the transaction with Mr. Horton. The receipt from Mr. Horton was in my name and as it is concerned, it was my money given to Mr. Horton. Even though we made this clear in writing by both me and my attorney on different occasions, Mr. Roger Leo made a materially false statement aloud to the court: "Mr. Daniel Lioy is unknown to the Estate...." His statement was a fabrication and severe. He didn't restrain himself from continuing his lie. Mr. Roger Leo said, "and despite requests during the time between the filing of the claim and its disposition, neither Mr. Ryan nor his attorney have cooperated...."

For the record, Mr. Roger Leo knew of Mr. Daniel Lioy, as evidenced by Mr. Roger Leo's own letter he wrote to me dated July 6, 2009, where he used "Daniel Lioy" in writing (See Attached Exhibit 1). Mr. Burke has also supplied the Bar with his letter dated July 09, 2009, informing Mr. Roger Leo about Mr. Daniel Lioy's relationship with me, the claimant (Exhibit #2). This supports the position that Mr. Roger Leo stated untrue facts for his benefit, not the benefit of justice. Mr. Roger Leo misrepresented the situation as part of strategy, which is reprehensible, and his actions created unnecessary expenses.

Mr. Roger Leo Denied My Claim in Bad Faith

Lastly, Mr. Roger Leo disallowed my claim against the Estate in bad faith. I paid Mr. Horton \$10,000 retainer, and was given a signed receipt. Mr. Horton did not perform \$10,000 in work before his demise, and he illegally managed my money. I was never refunded my money, and Mr. Horton had no records to reflect where my money was, how it was billed, if at all. Given all this, there was no objective reason to deny my claim and Mr. Roger Leo denied it in bad faith.

Mr. Roger Leo's Cumulative Actions

Any one of these alone can be simple human error. Taken collectively, however, it shows Mr. Roger Leo had no interest in justice, but rather an interest in increasing the cost of litigation, resulting in nearly a year of struggle and \$4150.00 in attorney's fees, (see attached statements as evidence of fees). I've enclosed a letter from Mr. Burke substantiating the billing statements. Also, if you examine the notes themselves, you see billing for Mr. Leo, Mr. Horton, etc. (Exhibit #3)

It is for all these reasons my situation is one of extreme hardship or special and unusual circumstances. I humbly request reimbursement of the attorney fees I spent to acquire justice in this situation, because the cost of justice was intentionally bloated by Mr. Roger Leo as part of his strategy, through his willful inconsistencies, and violations of Oregon Law.

Regards,



Shawn Ryan

EB-06-2010 10:04 PM

Exhibit #1

Admitted to Practice  
in Oregon and  
Washington

Mr. Leo's Letter Head

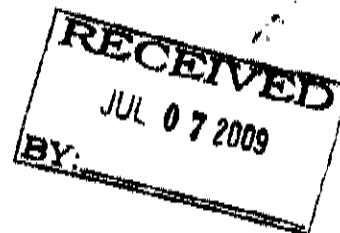
# ROGER J. LEO

ATTORNEY AT LAW

520 S.W. Yamhill, Suite 1025  
Portland, Oregon 97204  
(503) 222-1414

FAX (503) 274-4773  
E-mail: roger@rjleo.com

July 6, 2009



Steven C. Burke  
Attorney at Law  
16287 SW Lanier Lane  
Tigard, OR 97224

Re: *Estate of William P. Horton*  
Multnomah County Circuit Court Probate No. 0905-90794

Dear Mr. Burke:

Your Notice of Claim dated June 24 was received here on Monday, June 29, 2009. It meets the requirement for a timely claim pursuant to ORS 115.025.

However, I note the following issues, and request supplementation to the claim pursuant to ORS 115.045:

1. "Costs Related to Litigation": This \$604 charge will be denied. The costs arose in Multnomah County Circuit Court Case 0904-05080, which was filed by Mr. Ryan as a small claims matter in violation of ORS 115.305 to 115.325. You have no right to recover costs in that proceeding, which you dismissed. You may not recoup costs in this proceeding, because if the costs are awarded, they will due by Mr. Ryan and will be a reduction against the amount which Mr. Ryan may recover in this matter. Will you voluntarily resubmit your claim to remove this item?

2. Proof of Payment: In addition to your claim, you have enclosed a November 14, 2008 invoice which does not reflect time billed. However, there is no direct support for any amount having been deposited. What we have from you is an unidentified account statement, with both the name of the account and the number removed in the name of "Daniel Liroy" who is not Shawn Ryan. Someone has written "cash advance for Horton" on the face of this document, but the October 24 and October 26 dates are not consistent with the November 14 receipt.

3. Balance Due: Aside from the costs item, which will be denied if you do not amend it, the balance claimed is \$8,718.00 which may have been the current balance as of November 14, 2008 when Mr. Horton apparently received the retainer. Mr. Horton's time records show an additional 3.7

Daniel Liroy

FEB-06-2010 10:04 PM

P.02

July 6, 2009

Page 2

hours at \$310 per hour, which would reduce the balance by \$1,147.00 to \$7,571.00. Of course, this would be contingent upon proof of ownership of the claim by Shawn Ryan.

On the basis of the materials you submitted June 29, 2009, I am prepared to recommend denial of the claim on all three grounds. You can then request either summary determination, or file litigation over this particular item against the Personal Representative.

On the other hand, if the claim is amended, properly documented, and credited for whatever may be allowed for costs and additional un-billed hours, then I am prepared to recommend to the Personal Representative that he allow the claim.

If we reach a negotiated result to this matter, then a Limited Judgment may be entered in the estate against the estate. I think you understand that there is insufficient funds in the estate to pay this or other claims that have been brought against Mr. Horton's estate. Your ultimate recourse would be to petition the Client Security Fund for recompense, and from what I see here, I would expect you would have success once you resolve these issues.

I will act on this matter ten days from the date of this letter. If you wish an amicable resolution rather than a contested hearing, please reply to me within that time period.

Very truly yours,

  
ROGER J. LEO

Signed by Mr. Leo

RJL:lg

pc: Personal Representative

Exhibit #2

**STEVEN C. BURKE P.C.****ATTORNEY AT LAW**

16287 SW LANIER LANE

TIGARD, OREGON 97224

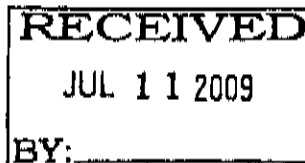
TEL 503-521-8029

FAX 503-521-1827

EMAIL STEVE@FIBERSPHERE.NET

ADMITTED IN OREGON AND WASHINGTON AND U.S. COURTS

July 9, 2009



Mr. Roger Leo  
520 SW Yamhill, Ste. 1025  
Portland Oregon 97204

Re: Estate of William P. Horton  
Request for Documentation

**Greetings:**

I was surprised to see from your letter of July 6, 2009 that you now claim to have some billing records from Mr. Horton. You had previously indicated Mr. Horton left behind no billing records. Accordingly, I am requesting the following documentation from the estate:

1. All billing records related to any legal services allegedly provided by Mr. Horton regarding Shawn Ryan.
2. All work product materials related to any legal services provided by Mr. Horton regarding Shawn Ryan, including but not limited to email, letters, notes, research, briefs, pleadings, and invoices.
3. All records regarding any IOLTA account maintained by Mr. Horton, including account ledger, record of deposits and withdrawals, and bank identity.
4. A true and correct copy of the most recent inventory of the estate filed with the court.

The billing materials I submitted with the notice of claim were the only billing materials ever provided by Mr. Horton. If he did do any work following that bill, it would be inappropriate to assume Mr. Horton is entitled to payment automatically. I took over that case, and settled it very quickly, with little cost. Mr. Horton was, and is, ethically required to submit bills to his client and allow a reasonable time period for a dispute of the billed amounts. No bill was ever submitted, and considering the current information strongly indicates Mr. Horton converted, or misappropriated, Mr. Ryan's entire retainer, there is a significant question of whether any work performed by Mr. Horton was for the benefit of his client. The PLF confirmed Mr. Horton did not have any IOLTA account, which would have been both unethical, and illegal on the part of Mr. Horton.

EXHIBIT B  
Page 1 of 3

Mr. Roger Leo  
Page 2 of 2  
July 9, 2009

Considering how little effort I took to resolve the case, there is a presumption the "work" Mr. Horton performed had no value, and may have been a guise to justify the absence of retainer funds. Once I have the requested documentation from you, I can properly evaluate the situation.

Finally, I need to ask you to clarify what you meant in you last letter on page two when you said, "this would be contingent upon proof of ownership of the claim by Shawn Ryan." I don't understand what claim you are referring to. If it is the claim submitted to the personal representative, then we did submit that proof. The signed receipt for the retainer funds, which was corroborated by Horton's billing statement, is more than sufficient proof. Otherwise, I don't understand what claim you refer to. The fact the funds tendered as retainer came from Mr. Ryan's partner's account has no bearing on the indisputable fact Mr. Ryan was the client to Mr. Horton and tendered a \$10,000 cash retainer. The retainer money was the property of Shawn Ryan by any standard of law, and he is not required to prove anything but the fact he tendered it to Horton as a retainer.

I look forward to promptly receiving the documentation from your office.

Very Truly Yours,



Steven C. Burke

c: Client via email

Mr. Leo informed of Mr. Lioy

EXHIBIT B  
Page 2 of 2

Exhibit #3

Mr. Shawn Ryan  
Page 1 of 2  
February 15, 2010

**CASE & DUSTERHOFF, LLP**  
**ATTORNEYS AT LAW**

JAMES D. CASE\*  
R. BRUCE DUSTERHOFF  
BENJAMIN O. FALK  
ALEX GOLUBITSKY  
STEVEN C. BURKE\*  
ERIN FITZGERALD

The 9800 Professional Building  
9800 S.W. Beaverton Hillsdale Hwy, Suite 200  
Beaverton, Oregon 97005  
Telephone (503) 641-7222  
Facsimile (503) 643-6522

\*Member Oregon and  
Washington State Bars

LEO A. REINIKKA  
RETIRED

[www.case-dusterhoff.com](http://www.case-dusterhoff.com)  
[steve@case-dusterhoff.com](mailto:steve@case-dusterhoff.com)

, 2010

Via Email

Mr. Shawn M Ryan  
3525 SE Milwauakie Ave.  
Portland Oregon 97202

Re: Attorney Fees Related to Claims Against William Horton

Dear Shawn:

I have reviewed my prior billing regarding the matters I have worked on and determined that the billings on and after May 4, 2009 on invoices and statements identified as "Ryan v. Matula" relates to the legal work to obtain your client retainer funds from the Estate of William Horton. When the billing matter was originated on the Matula case, I included the Horton attorney fee time as well, since it seemed that based on what I believed was Mr. Horton's fraud against you and his exceptionally poor quality of work on the case, we would be looking at a malpractice case against Mr. Horton, thus combining the time on the billing made sense.

Unfortunately, I cannot create new invoices showing the matters billed separately without undoing and recreating a significant amount of accounting, which both my CPA and bookkeeper tell me is not acceptable to engage in the first place. Accordingly, the existing invoices and statements will have to do.

If anyone has any questions about the billing related to the pursuit of the fees from the Horton estate, they can call my office to ask. I know you do not have any objections to this, should someone call. I should also note that in my opinion the attorney fee issue would have been resolved quickly were not for the constant obstruction and difficult of Roger Leo, who has been acting as the attorney for the estate. Mr. Leo forced a lot of work that should never have been necessary in the first place.

Mr. Shawn Ryan  
Page 2 of 2  
February 15, 2010

Please do not hesitate to contact my office with any questions. Please note I have moved firms, and my contact information is provided above.

Very truly yours,

**CASE & DUSTERHOFF, LLP**

**/s/ Steven C. Burke**

JAN-27-2010 02:25 AM

P.08

**Steven C. Burke P.C.**16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3547
4/16/2009	
<i>Horton</i>	

Shawn Ryan  
3526 SE Milwaukie Ave.  
Portland, OR 97202

10/TA

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	1	Meeting with client; review pleadings and evidence and advise client on case. Prepare notice of appearance. Call to attorney regarding options to obtain client funds from deceased attorney IOLTA.	190.00	4/9/2009	190.00
Attorney Services	2.25	Travel to and attend ex parte regarding show cause. Review client documents. Prepare notice of appearance; file and serve same on opposing counsel.	190.00	4/10/2009	427.50
Attorney Services	0.25	Review email from opposing counsel. Call from client regarding settlement offer. Email to opposing counsel regarding conditions for payment terms.	190.00	4/14/2009	47.50
Attorney Services	0.25	Review and respond to client email.	190.00	4/15/2009	47.50
<b>HORTON</b>					
			<b>Total</b>		\$712.50
<b>Phone #</b>		<b>Fax #</b>	<b>E-Mail</b>		<b>Payments/Credits</b> \$-500.00
503-521-8029		503-521-1827	steve@fibersphere.net		<b>Balance Due \$212.50</b>

**Steven C. Burke P.C.**16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3595
5/16/2009	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.25	Call from opposing counsel regarding discovery, settlement, and case trial date.	190.00	5/4/2009	47.50
Attorney Services	0.1	Emails from and to client regarding settlement offer. Forward same to opposing counsel.	190.00	5/5/2009	19.00
Attorney Services	0.2	Review letter from client assistance fund and Roger Leo regarding claim against estate of former attorney. Review probate statutes regarding timing of claims. Call from opposing counsel regarding settlement terms.	190.00	5/11/2009	38.00
Attorney Services	0.3	Miscellaneous calls regarding Horton estate.	190.00	5/15/2009	57.00
			<b>Total</b>		\$161.50
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		\$-59.50
503-821-8029	503-521-1627	steve@fibersphere.net	<b>Balance Due</b>		<b>\$102.00</b>

JAN-27-2010 02:26 AM

P.10

**Steven C. Burke P.C.**16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3596
5/18/2009	
Rothstein v. Ryan	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.75	Letter to plaintiff's counsel regarding notice of intent to appear. Review complaint and prepare request for production to plaintiff. Email to client regarding same.	190.00	5/8/2009	142.50
			<b>Total</b>		\$142.50
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		\$0.00
503-521-8029	503-521-1827	steve@fibersphere.net	<b>Balance Due</b>		<b>\$142.50</b>

JAN-27-2010 02:25 AM

P.07

**Steven C. Burke P.C.**18287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3875
7/24/2009	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.25	Review response on claim and probate attorney. Letter to client regarding same.	190.00	7/7/2009	47.50
Attorney Services	0.5	Review Leo letter; call from client regarding same and probate status. Letter to Leo regarding document request. Legal research regarding probate. (Discounted from 2 hours).	190.00	7/9/2009	95.00
			<b>Total</b>		\$142.50
<b>Phone #</b>	<b>Fax #</b>	<b>E-Mail</b>	<b>Payments/Credits</b>		\$0.00
503-521-8029	503-521-1827	steve@fibersphere.net	<b>Balance Due</b>		<b>\$142.50</b>

JAN-27-2010 02:27 AM

P.11

**Steven C. Burke P.C.**16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3572
5/1/2009	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.75	Review emails from client and prepare materials for fees claim. Review discovery issues. Call to client regarding settlement. Call and email to opposing counsel regarding same. Miscellaneous calls regarding client retainer. Letter to estate of former attorney regarding same.	190.00	4/21/2009	142.50
Attorney Services	0.2	Call from opposing counsel regarding case discovery, settlement, and pending motion hearing.	190.00	4/23/2009	38.00
			<b>Total</b>		\$180.50
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		\$-180.50
503-521-8028	503-521-1827	steve@fibersphere.net	<b>Balance Due</b>		<b>\$0.00</b>

JAN-27-2010 02:24 AM

P.05

**Invoice**

Invoice #	3869
7/2/2009	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202


Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.1	Review notice to court regarding settlement and dismissal.	190.00	6/18/2009	19.00
Attorney Services	0.4	Prepare claim on estate of Horton.	190.00	6/24/2009	76.00
Attorney Services	0.5	Calls regarding assignment of judge to motion for attorney fees. Prepare motion to change judge.	190.00	6/29/2009	95.00
Attorney Services	0.5	Attend ex parte to remove judge from hearing on attorney fees.	190.00	6/30/2009	95.00
			<b>Total</b>		<b>\$285.00</b>
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		
503-521-8029	503-521-1827	steve@fibersphere.net	<b>Balance Due</b>		
			<b>\$137.50</b>		

JAN-27-2010 02:24 AM

P.04

**Steven C. Burke P.C.**16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3813
10/16/2009	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202


Item	Quantity	Description	Rate	Date	Amount
Attorney Services	2.5	Prepare reply to answer on request for summary determination. Prepare declaration.	190.00	10/7/2009	475.00
Attorney Services	0.1	Review letter from Leo and prepare email to client regarding potential hearing dates.	190.00	10/8/2009	19.00
			<b>Total</b>		\$494.00
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		
603-521-8029	503-521-1827	steve@fibersphere.net	<b>Balance Due \$494.00</b>		



JAN-27-2010 02:23 AM

P. 02

Steven C. Burke P.C.

16287 SW Lanier Lane  
Portland, OR 97224

## Statement

11/3/2009

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

This is a monthly statement summarizing activity beginning with the date listed at the top of the Date column and ending with the date printed in the upper right corner. Detailed information regarding services and charges is located on your invoice, which is mailed after the 15th and end of each month. Statements are mailed after the end of each month.				Shawn, We are close to the end of this! Steve	
DATE	TRANSACTION/DESCRIPTION			AMOUNT	BALANCE
09/30/09	BALANCE FORWARD				0.00
10/04/09	RYAN 001 - INV #3794, DUE 10/04/09. --- ATTORNEY SERVICES, 0.1 @ \$190.00 = 19.00 --- ATTORNEY SERVICES, 0.5 @ \$190.00 = 95.00 --- COURT FEES \$73.00			187.00	187.00
10/04/09	PMT #2430, FROM RETAINER, REMAINING BALANCE = \$0.00,			-3.50	183.50
10/16/09	PMT #1272.			-183.50	0.00
10/16/09	INV #3813, DUE 10/16/09. --- ATTORNEY SERVICES, 2.5 @ \$190.00 = 475.00 --- ATTORNEY SERVICES, 0.1 @ \$190.00 = 19.00			494.00	494.00
11/03/09	INV #3835, DUE 11/03/09. --- ATTORNEY SERVICES, 0.4 @ \$190.00 = 76.00 --- ATTORNEY SERVICES, 1 @ \$190 = 190.00 --- PARKING \$1.50			267.50	761.50
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
267.50	494.00	0.00	0.00	0.00	<b>\$761.50</b>
Finance charges are 1.5% (18% per annum) on the unpaid balance over 30 days. Minimum charge is \$1.00. We appreciate your prompt payment.		PHONE #	FAX #	DUE UPON RECEIPT.	
		503-521-5029	503-521-1827	STEVE@FIREFSPHERE.NET	

JAN-27-2010 02:22 AM

P. 01

**Steven C. Burke P.C.**16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3891
12/14/2009	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.25	Review brief from opposing counsel.	190.00	12/3/2009	47.50
Attorney Services	0.25	Prepare materials for hearing and call.	190.00	12/6/2009	47.50
Attorney Services	4.5	Travel to and attend call for summary determination hearing. Call to client. Call to another claimant's attorney regarding opposing counsel and conduct in claims. Prepare reply brief to correct misrepresentations by Leo to court. Calls to client regarding hearing setting. Finalize materials for hearing.	190.00	12/7/2009	855.00
Attorney Services	0.5	Travel to and attend hearing. (Discounted from 2.5 hours.)	190.00	12/8/2009	95.00
Attorney Services	0.25	Review proposed order from opposing counsel. Draft proposed order and send to same.	190.00	12/14/2009	47.50
			<b>Total</b>		\$1,092.50
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		
503-821-8028	503-821-1827	steve@fibersphere.net	<b>Balance Due</b>		
			<b>\$863.00</b>		

Steven C. Burke P.C.

16287 SW Lanier Lane  
Portland, OR 97224

## Statement

1/3/2010

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

This is a monthly statement summarizing activity beginning with the date listed at the top of the Date column and ending with the date printed in the upper right corner. Detailed information regarding services and charges is located on your Invoice, which is mailed after the 15th and end of each month. Statements are mailed after the end of each month.

DATE	TRANSACTION/DESCRIPTION			AMOUNT	BALANCE
11/30/09	BALANCE FORWARD				0.00
12/14/09	RYAN 001- INV #3891. DUE 12/14/09. -- ATTORNEY SERVICES, 0.25 @ \$190.00 = 47.50 -- ATTORNEY SERVICES, 0.25 @ \$190.00 = 47.50 -- ATTORNEY SERVICES, 4.5 @ \$190.00 = 855.00 -- ATTORNEY SERVICES, 0.5 @ \$190.00 = 95.00 -- ATTORNEY SERVICES, 0.25 @ \$190.00 = 47.50			1,092.50	1,092.50
12/15/09	PMT #2444. FROM RETAINER. REMAINING BALANCE = \$0.00.			-229.50	863.00
01/03/10	INV #3909. DUE 01/03/10. -- ATTORNEY SERVICES, 0.5 @ \$190.00 = 95.00 -- ATTORNEY SERVICES, 0.1 @ \$190.00 = 19.00			114.00	977.00
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
114.00	863.00	0.00	0.00	0.00	<b>\$977.00</b>
Finance charges are 1.5% (18% per annum) on the unpaid balance over 30 days. Minimum charge is \$1.00. We appreciate your prompt payment.		PHONE #	FAX #	DUE UPON RECEIPT.	
		503-521-8029	503-521-1827	STEVE@FIBERSPHERE.NET	

Steven C. Burke P.C.

16287 SW Lanier Lane  
Portland, OR 97224**Invoice**

Invoice #	3909
1/3/2010	
Ryan v. Matula	

Shawn Ryan  
3525 SE Milwaukie Ave.  
Portland, OR 97202

Item	Quantity	Description	Rate	Date	Amount
Attorney Services	0.5	Travel to and attend hearing. (Discounted from 2.5 hours.)	190.00	12/8/2009	95.00
Attorney Services	0.1	Call from insurance attorney regarding claim.	190.00	12/16/2009	19.00
			<b>Total</b>		\$114.00
Phone #	Fax #	E-Mail	<b>Payments/Credits</b>		
503-521-8029	503-521-1827	steve@fibersphere.net	<b>Balance Due</b>		
			<b>\$114.00</b>		

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**From:** Sylvia E. Stevens, General Counsel  
**Re:** CSF Claim No. 09-41 RICHARDSON (Ervin) Appeal

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### Action Recommended

Claimant Vladimar Ervin (aka Vladimar Mask) requests BOG review of the CSF Committee's denial of his claim for reimbursement.

### Background

On or about February 20, 2009, Ervin retained Randy Richardson to defend him against robbery and burglary charges pending in Multnomah County. The fee agreement called for a flat fee of \$20,500 that was "non-refundable, and earned at the time of receipt." Ervin paid \$7,500 on signing the fee agreement and was to have paid the balance in installments by April 13, 2009. However, he actually paid only \$13,900 toward the total.

At the time Ervin retained him, Richardson was the subject of criminal and disciplinary proceedings. In fact, the first day of his disciplinary trial had taken place on February 16, 2009.<sup>1</sup> Richardson's fee agreement with Ervin included the following statement:

"If Attorney is unable to fulfill the contract due to *discipline*, then attorney will automatically convert to the flat rate option billed at \$250.00 per hour, and charge Client for work completed including fractions of an hour to the nearest one-twentieth (three minutes), and return any remaining balance to Client."

Richardson's accompanying cover letter to the client included the following, which appears to be an effort to have the client's consent to a "self-interest" conflict under RPC 1.7(a)(2):<sup>2</sup>

"Before you sign [the fee agreement], please reflect on our earlier conversation from today. You'll recall that I am charged by the same Multnomah County DA's office as you, stemming from my representation of a former client with an allegation of theft. Although I expect to be fully vindicated, I advise you of this so you may make informed decisions about if you want me as your attorney. My personal matter will not affect my professional judgment as I represent you to the fullest."

Represented by Richardson, Ervin entered a plea of not guilty in the case and it was set for trial on June 30, 2009. However, the charges were dismissed on May 27, 2009 due to lack of cooperation by the state's witness.

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<sup>1</sup> The trial was continued pending the outcome of the criminal trial.

<sup>2</sup> Under RPC 1.7(a)(2), a conflict exists if there is a substantial risk that the lawyer's representation of a client will be "materially limited" by the lawyer's own interests.

In the meantime, on April 16, 2009, Ervin had been indicted on a felony drug charge. Richardson agreed to represent Ervin on the new charges, and in his application for reimbursement, Ervin says that he and Richardson “agreed to switch the funds from [the] Measure 11 case to the drug case.” Although he entered and appearance and obtained discovery from the state, Richardson was unable to complete the drug case for Ervin because Richardson was convicted in his own criminal trial on or about June 17, 2009 and incarcerated.<sup>3</sup> On June 22, 2009 the court appointed counsel to represent Ervin in the drug case and pleaded guilty on September 21, 2009.

Ervin seeks an award of 80-90% of the \$13,900 paid to Richardson. In his application, he said he believed that Richardson “couldn’t have put more than 40 hours” on both cases. In his request for review, he claims Richardson’s work couldn’t have been more than 8-10 hours.

The CSF Committee reviewed Ervin’s claim under Rule 2.2:

2.2.1 In a loss resulting from a lawyer’s refusal or failure to refund an unearned legal fee, “dishonest conduct” shall include (i) a lawyer’s misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer’s wrongful failure to maintain the advance payment in a lawyer trust account until earned.

2.2.2 A lawyer’s failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee’s judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

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

### **CSF Committee Analysis**

First, the CSF Committee found no dishonesty within the meaning of Rule 2.2.1. There was no false promise to provide legal services and the advance fee was properly denominated “earned on receipt” and not required to be held in trust.

---

<sup>3</sup> Richardson’s criminal conviction resulted in the Supreme Court entering an order September 30, 2009 suspending Richardson from practicing law during the pendency of the disciplinary proceeding. Richardson’s disciplinary trial was completed in June 2010 and the trial panel decision is pending.

Second, the CSF Committee was not persuaded that Richardson's services were "minimal or insignificant" and there has been no independent determination establishing an amount of a refund to which Ervin might be due.

Third, the Committee concluded that Rule 2.2.4 precludes an award to Ervin because he received "equivalent legal services...without cost" from a court-appointed lawyer. Finally, the Committee found that Ervin has not sought or obtained a civil judgment against Richardson nor made a good faith effort to collect from Richardson.<sup>4</sup>

For all of those reasons, the CSF Committee concluded that Ervin's claim was in the nature of a fee dispute and not compensable from the CSF.

---

<sup>4</sup> Ervin's disciplinary complaint about Richardson's conduct is pending before the SPRB. However, even if Richardson is eventually disciplined in connection with Ervin's complaint, he would still need to have a civil judgment because his claim is for more than \$5,000.

From: MT SCOTT FUNERAL HOME

5037745093

01/20/2010 14:16

#854 P.002/002

(503) 888-1040

RANDY R. RICHARDSON  
ATTORNEY AT LAW

6636 N.E. 32<sup>nd</sup> Place  
Portland, Oregon 97211

Randy@RR3LAW.com  
www.RR3LAW.com

February 20, 2009

Vladimir J. Mask  
9058 N.E. Sandy Blvd  
Portland, Oregon 97220

Attorney-Client  
CONFIDENTIAL

Re: Legal Representation

Dear Vladimir,

Thank you for selecting me to represent you and defend your rights against criminal prosecution related to the Multnomah County case C09-01-30188. I consider the opportunity to represent you in this matter a privilege. My goal is to provide you with excellent legal services and advice as we work together to defeat these charges.

Enclosed is the Retainer Agreement you will need to sign before I can accept professional responsibility of your case. But before you sign it, please reflect on our earlier conversation from today. You'll recall that I am charged by the same Multnomah County D.A.s office as you, stemming from my representation of a former client with an allegation of theft. Although, I expect to be fully vindicated, I advise you of this so that you may make informed decisions about if you want me as your attorney. My personal matter will not affect my professional judgment as I represent you to the fullest.

Also, you are charged with serious class A felonies including Robbery, Burglary, and Unlawful Use of a Weapon. The current bail is set at \$500,500. 10% (\$50,050) of that is required to be posted in order to bail out. Although your arraignment process cannot start until you make an appearance before the Court, my representation starts once you sign the Retainer Agreement.

If it is your intention to proceed as we discussed by retaining me, then please sign, date, and initial paragraphs #3, 3a, & 3b. Again, I appreciate the opportunity to represent you in this matter. If you have any questions, anytime, please feel free to call.

Sincerely,

**R-RAY-R**

Randy R. Richardson  
Attorney at Law

RRR:s  
Enclosure

C:\RR3LAW\Clients\Mask\Engagement letter

From: MT SCOTT FUNERAL HOME

5037745093

01/20/2010 14:15

#854 P\_001/002

# NON-REFUNDABLE CRIMINAL DEFENSE RETAINER AGREEMENT

THIS AGREEMENT is entered into between Vladimir J. Mask hereinafter referred to as "Client", and Randy R. Richardson, Attorney at Law, hereinafter referred to as "Attorney":

1. Client has agreed to retain Attorney for legal representation in a criminal matter in connection with charges filed with Multnomah County District Attorney's Office C09-01-20188 & 2158719-1G - Robbery 1x2, Burglary 1, Unlawful use of a weapon.
2. Attorney has agreed to be legal counsel for Client and to render the legal services and professionalism required of him as an attorney by the Oregon State Bar and by this agreement on the terms and conditions herein stated. Attorney cannot and does not warrant a guaranteed result or final outcome of any case, and Attorney makes no representation and no guarantees as to the final result or outcome of the case.
3. The Attorney's fee for legal service on behalf of Client will be \$20,500 (Twenty Thousand & Five Hundred Dollars) flat fee, non-refundable, and earned at the time of receipt. This fee does include the time and cost of consultations and telephone calls with Client, witnesses, lawyers, and other relevant persons associated with Client's case, legal research, drafting and preparing legal documents and letters, depositions, trial preparation, court appearances, travel time, long distance telephone calls, and on call 24/7, but not any scientific testing, expert witnesses, travel, witness appearance fees, investigation, photocopying, and postage cost, which all remains Client's financial responsibility. This fee also does not cover Attorney's fees in the event of a retrial or an appeal. Attorney will not commence representation or accept professional responsibility of Client's criminal matter until such fee is received and this Agreement signed by Client.
  - a. Client has considered the [REDACTED] and settled on the flat fee option described above. Thus, Client will deposit \$7,500 with Attorney to begin work before February 20, 2009. Client consents, and Attorney reserves the right to withdraw from the case for non-payment of fees if Client does not comply with this fee schedule.
  - b. [REDACTED] Client agrees to pay the \$13,000 balance as follows: (1) \$2,500 before 3/6/09, (2) \$2,500 on 3/13/09, (3) \$2,500 on 3/20/09, (4) \$2,500 on 3/27/09 and (5) \$3,000 on 4/13/09.
4. Client reserves the right to terminate Attorney's representation at anytime upon telephone notice followed by written notice either from Client or a new attorney who Client chooses to hire. However, Client understands and agrees that the entire fee is non-refundable. Client may secure additional copies of Client's file at any time upon payment to Attorney of any balance owing on all fees and costs, including the cost of photocopying Client's file. If Attorney is unable to fulfill the contract due to discipline, then attorney will automatically convert to the flat rate option billed at \$250.00 per hour, and charge Client for work completed including by fractions of an hour to the nearest one-twentieth (three minutes), and return any remaining balance to Client.
5. Attorney expects and Client agrees by this agreement to be truthful in all respects about the facts and circumstances regarding this case, and aid and assist Attorney in the legal representation. Attorney may withdraw as Client's legal counsel at any time if Client fails to meet the financial agreements or any other provisions contained herein. Written notice of the withdrawal will be sent to Client's last-known mailing address.
6. Attorney may associate or engage other attorneys to assist Attorney in Client's representation or to assist with the closure of Attorney's law office in the event of Attorney's death, disability, impairment, or incapacity. In such event, Client agrees that the assisting attorney can review Client's file to protect

From: MT SCOTT FUNERAL HOME

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Client's rights and can assist with the closure of Attorney's law practice. Unless otherwise agreed, this will be at Attorney's sole expense and at no additional cost to Client.

7. Attorney will send Client information and correspondence throughout the case. These copies will be Client's file copies. Attorney will also keep the information in Attorney's file. When Attorney has completed all the legal work necessary for Client's case, Attorney will close Attorney's file and return original documents to Client. Attorney will then store the file for approximately 5 years. Attorney will destroy the file after that period of time.
8. Client acknowledges reading a copy of this Agreement and consents to its terms. Any modifications of this Agreement will be valid and binding only if in writing, signed by both parties.

R-RAY-R

Randy R. Richardson, Attorney

2/20/09

Date

Vladimir J. Mask

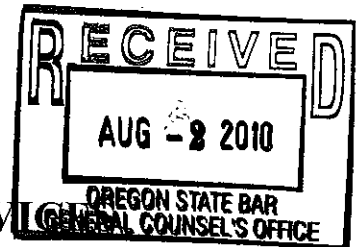
Vladimir J. Mask, Client

2/20/09

Date

**MACE BUSINESS CENTER**  
**EBONiISOFT, DOCUMENTED RECORD OF SERVICE**

126 N.E. ALBERTA  
PORTLAND, OREGON 97212  
[eboniisoftinc@yahoo.com](mailto:eboniisoftinc@yahoo.com)  
(503) 287-7338  
Cell (503) 679-1813



**July 28, 2010**

**From Client:** Mr. Vladimar Ervin  
8316 N.E. Schuyler  
Portland, Oregon 97220

**To:** Oregon State Bar  
P.O. Box 231935  
Tigard, Oregon 97281-1935

**RE: Request for review of case 2009-41**

Response to Client Security Fund

This response is to clarify that Mr. Ervin is seeking a "partial" refund of fees paid to attorney Randy Richardson in the total amount of \$13,900. This complaint is to address the process of reimbursement for \$11,400 for work Mr. Richardson was unable to complete.

**Case Review Summary:**

In this case on February 20, 2009, Mr. Ervin entered into a "Non-refundable Criminal 'Defense' Retainer Agreement" for legal services costing \$20,500 in defense of several (3) Class A felonies. Mr. Ervin in person and thorough family members paid Attorney Mr. Randy R. Richardson \$7,500 based on the document provided, and roughly \$3,400 in two more payments. Mr. Ervin hired Mr. Richardson on February 22, 2009 on the general basis that he may need one. Mr. Ervin was arrested on March 14<sup>th</sup>, 2009, and had a maximum of two preliminary hearings with Mr. Richardson as counsel, at which time "if" Mr. Richardson was paid an hourly rate of \$250 dollars per hour, Mr. Richardson would have earned \$2,000 for 8 hours, ( Note: "Mr. Ervin did not use 8 hours of service".) It was embarrassing, during the second hearing when Mr. Richardson "did not show" for the hearing, Mr. Ervin learned that Mr. Richardson would not be able to represent him, because he was going to court for himself; the date was June 1<sup>st</sup>, 2009.

**Statement of Facts**

1. Per the contract signed by Mr. Ervin and Mr. Richardson, dated February 20, 2009, in the event that Mr. Richardson Became unable to represent Mr. Ervin, the agreement would be changed to one billable at \$250 per hour, see section 4. third paragraph:

**Page 1**

4. "If Attorney is unable to fulfill the contract due to discipline, then attorney will automatically convert to the flat rate option billed at \$250.00 per hour, and charge client for work completed including by fractions of an hour to the nearest one-twentieth (three minutes), and return any remaining balance to the client".

2. Being more than reasonable, Mr. Ervin believes that Mr. Richardson worked a maximum of 8 to 10 hours, for a maximum billable amount of \$2,500. Mr. Ervin would like a refund for the balance of the unearned funds of \$11,400 that Mr. Richardson could not earn, because he could not perform his contracted duties, due to his own discipline for his prior representation of different client. Mr. Richardson is currently incarcerated and unable to conduct business transactions to close this matter as a part of his professional affairs.

3. Mr. Ervin is requesting assistance to determine which part of the "Bar" Association assists the attorney's with wrapping up unfinished business with clients when the attorney's themselves are unable to. Mr. Ervin was under the impression that the "Client Security Fund" may assist its clients with wrapping up last minute business, however, if you do not, please foreword this request for payment to the Professional liability fund".

Finally, it is not the intent of this letter to give the impression that Mr. Randy R. Richardson has provided Mr. Ervin any false or misleading information regarding his ability to represent me, however, Mr. Ervin is saying that though he left partial instructions in writing to ensure that the contract would "convert" to an hourly rate in the event that he was unable to represent me. It is unfortunate that he could not represent me, however, Mr. Ervin would like to know if your organization would be able to foreword this request to the PLF to see if they assist with such matters.

Thank you for your time regarding this matter, sincerely Mr. Vladimar Ervin.

  
Mr. Vladimar Ervin

Cc:  
Mr. Ervin  
Client DRS File  
Client Security Fund  
Information Research counselor EDK

## **EXECUTIVE SUMMARY BUDGET**

*Report to the Board of Governors  
August 13, 2010*

### **PURPOSE OF THIS REPORT**

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The purpose of the Executive Summary budget is the ongoing look at the 2011 budget and to identify and evaluate the fiscal implications on the next year's budget and subsequent years' forecasts for:

- new or revised policy approved by the board;
- planning or recommendations of the various board committees;
- new programs or modifications to current programming;
- the projected year and amount of the next member fee increase;
- the impact of financial decisions today on future budgets.

The 2011 budget and subsequent forecasts are developed on anticipated trends and percentage increases using the 2010 budget as a base and assumptions in this report, which is based on the three pages of projections for 2011 and the five years thereafter in Exhibit A.

The Budget & Finance Committee reviewed the Executive Summary Budget at its July 16 meeting and its recommendations are incorporated into this next version of the report. Additionally, the conclusions of the memo dated July 30, 2010 on the projected revenue from printing legal publications is incorporated into this phase of the 2011 budget.

### **C** ONTENTS

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1. Budget Development Calendar
  2. Summary of 2010 and 2009 Budgets
  3. Member Fee Change If and/or When?
  4. Assumptions for Developing 2011 Budget
  5. Program, Policy, and Operational Considerations for 2011
  6. Fanno Creek Place
  7. Summary of 2011 Budget Projection
  8. Five-year Forecast – What it Means
  9. Reserves and Other Contingency Funds
  10. What Happens After 2011?
  11. Action Items for the Board of Governors
- Exhibit A – 2011 Budget and Five-Year Forecast

# 1 BUDGET DEVELOPMENT CALENDAR

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Date	Process
July 16	<b>Budget &amp; Finance Committee</b> reviewed the 2011 Executive Summary Budget
August 12-13	The <b>Board of Governors</b> reviews the Budget & Finance Committee's review of the 2011 Executive Summary Budget
Mid August to mid September	Bar staff prepare 2011 line by line program/department budgets
September 24	<b>Budget &amp; Finance Committee</b> review 2011 Budget Report
Mid September to late October	Bar staff refine 2011 budget
November 11	<b>Budget &amp; Finance Committee</b> review revised 2011 Budget Report
November 12-13	<b>Board of Governors</b> reviews and approves 2011 Budget

# 2 SUMMARY OF 2009 AND 2010 BUDGETS

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Before we look at 2011, here is a summary of the last two budget years and any significant additions, deletions, or changes from the previous year.

2010
<ul style="list-style-type: none"> <li>○ The operation budget projects a Net Revenue of \$140,085 with the total operating revenue projected at \$12,862 less than and expenditures \$96,046 more than the 2009 budget.</li> <li>○ The Fanno Creek Place budget has a Net Expense of \$700,693 and adjusting to a cash basis, the negative cash flow is \$380,442 – both in line with what happened in 2009.</li> </ul>
Additions, Deletions, Changes
<ol style="list-style-type: none"> <li>1. <i>The bar exam application fee was increased by \$100.</i></li> <li>2. <i>The service fee to sections was increased by \$1.25 to \$6.50 (the first increase in three years).</i></li> <li>3. <i>The ethics school was added - \$27,000</i></li> <li>4. <i>The number of participants in the Leadership College was reduced; thus decreasing this program budget.</i></li> <li>5. <i>The PERS Contingency was increased to \$192,000.</i></li> </ol>

**2009**

- The operation budget was a \$116,060 net revenue; the budget was a net revenue of \$248,993.
- The budget variances were much lower Program Fee revenue (7.4% below budget) with a corresponding below budget by 3.9% of Direct Program expenses
- The Fanno Creek Place net expense was \$713,156, in line with the budget of \$733,066.
- With the above items and the gains and losses in the investment portfolio, the bar's ended 2009 with a Net Revenue of \$26,562.
- The reserves, contingencies, and restricted fund balances were \$3.660 million at year end; the amount of funds available and invested was \$3.638 million.

**Additions, Deletions, Changes**

1. *inclusion of LRAP's administrative budget in general fund - \$9,100 to \$9,500*
2. *one new FTE for operations or technology officer, manager level - \$130,000.*  
This position was not added.

### **3 MEMBER FEE CHANGE – IF AND/OR WHEN?**

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There is no member fee increase in the 2011 budget. The forecast indicates a fee increase for 2012. The increase projected then is an 11%, or \$50.00 increase in the active member fee.

Also included in 2012 is a \$40.00 increase in the inactive member fee from \$110.00 to \$150.00. The last inactive member fee increase was \$30.00 from \$80.00 to \$110.00 in 2002. With this increase, the bar can expect some inactive members dropping their membership. In 2002, inactive member fees were projected to fall by 10% because of the fee increase, but this membership declined only 6.5%.

**The last active member fee increase was for 2006,  
so 2011 would be the sixth year of the same membership fee  
(excluding the Client Security Fund assessment).**

**It has been as far back as the mid-1960's that  
the member fee has been the same for  
at least six consecutive years.**

## 4 ASSUMPTIONS FOR DEVELOPING 2011 BUDGET

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The 2011 budget and the forecasts for bar operations are prepared with these assumptions:

### ■ ■ Member Fee Revenue

There is no increase in the individual member fee in 2011. A 2.5% increase in Membership Fee revenue is projected for 2011 due to increase in membership. This is a slightly higher percent increase than usual, but enhanced reciprocity has caused a higher than usual increase in membership.

### ■ ■ Program Fee Revenue

The revenue budget for the largest Program Fee revenue source, CLE Seminars, is the same as 2011. The usual sales of print Legal Publications and BarBooks subscription revenue is replaced by \$400,000 in OSB reserves reallocation and the \$300,000 contribution by the PLF.

**A significant change in this next phase of the budget is increasing the revenue of print legal publications revenue from the original estimate of \$200,000 to \$348,000 based on the memo on projected print book revenue in 2011. This revenue number is subject to change once the results of the member survey are known and evaluated. The impact of this revenue source has a significant impact on the bar's overall 2011 budget.**

The other program fee activities increase 2% a year over year as programs like Admissions and MCLE consistently have generated a net revenue.

### ■ ■ Investment Income

The interest rate earned on the bar's short-term invested funds is expected to remain very low, so the revenue from all investments will be lower than the 2010 earnings. No unrealized gain or loss from equities is included in this budget number.

At mid-year 2010, the rate earned on the LGIP is .55% and the CD's are earning a rate between .25% and .40%. Four of the long-term notes transferred to the investment managers mature in 2011 and three more in later years. Three of the rates on these notes are 5.1%, and any new fixed income investments will have rates much lower than the average 4.27% the outstanding notes earn.

### ■ ■ Salaries, Taxes & Benefits

The 2011 salary pool is 3%. This is the recommendation of the bar Executive Director and the PLF CEO. The committee agreed to review the pool rate based on the outcome of the developing budget.

- There is a one-time decrease in salaries in 2011 due to the merging of the Communications and Member Services Departments and the subsequent elimination of one senior manager position.
- Beginning in 2012 the salaries budget is modified to include the anticipated retirement of senior bar staff.
- Taxes & Benefits are calculated as a percentage of salaries. The rate for 2011 is projected at 33%. This is an increase over the 2010 rate of 29.2% because the bar's contribution rate for PERS will increase July 1, 2011. The actual rate the bar will be charged will not be known until late this year, so the taxes and benefits percentage may change before the budget is finalized.

### **Direct Program and General & Administrative Expenses**

For the sake of this summary budget, these cost increases vary between 2% and 3%. These costs are not really known until the line item budgets are prepared, and may fluctuate with changes to programs or operations.

## **5 PROGRAM, POLICY, AND OPERATIONAL CONSIDERATIONS FOR 2011**

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The lists in the three tables on the next three pages are activities that have surfaced from discussions by the board, committees, or staff. The Budget & Finance Committee reviewed a similar list of activities at its June 17 meeting and the result of the committee recommendations are the three tables which separate the activities into:

### **Changes Proposed for 2011**

### **No Changes Proposed for 2011**

### **Possible Changes to 2011 Budget**

Only the items in the "Changes Proposed for 2011" are incorporated into the projected 2011 budget on Exhibit A. If any of the activities in the second and third table are added to the budget, the final budget amount will not be known until the activity is more clearly defined. In some cases the dollar amount listed is simply a placeholder number.

Changes Proposed for 2011	\$ Change to Budget
<ul style="list-style-type: none"> <li>• <b>BarBooks available to all active members as part of membership fee</b>  <i>The funding comes from: OSB reserves (\$400,000); PLF contribution (\$300,000); sale of print books (\$348,000). The revenue from print books sales will cause more scrutiny with further discussion.</i> </li> </ul>	TBD
<ul style="list-style-type: none"> <li>• <b>Eliminate Leadership College</b>  <i>Recommendation from last Budget &amp; Finance Committee meeting</i> </li> </ul>	\$ 38,400
<ul style="list-style-type: none"> <li>• <b>Eliminate Ethics School</b>  <i>Recommendation from last Budget &amp; Finance Committee meeting; possible that servicing may come from existing staff and Disciplinary Counsel budget</i> </li> </ul>	\$ 27,000
<ul style="list-style-type: none"> <li>• <b>Convert Membership Directory to Resource Directory and eliminate publishing directory of all members</b>  <i>This has been shared with the board as part of the changes created by the BarBooks benefit. Although a significant savings in postage and printed occurs, the change is advertising revenue is unknown.</i> </li> </ul>	\$ 40,000
<ul style="list-style-type: none"> <li>• <b>Send annual Membership Fee statement electronically instead of U.S. post office</b>  <i>The savings through this process has been on the last two committee agendas.</i> </li> </ul>	\$ 12,000
<ul style="list-style-type: none"> <li>• <b>Combine Communications &amp; Member Services Departments into one</b>  <i>This already has been shared with the board and the savings is incorporated into the forecasts. The manager of the Member Services Department is retiring and the two departments will be combined under one manager and the reclassification of an existing position.</i> </li> </ul>	\$ 92,000
<ul style="list-style-type: none"> <li>• <b>Mandatory Mentoring</b>  <i>This is a new proposal of a special task force (including the Chief Justice) which recommends having this program in place by May 2011.</i> </li> </ul>	\$ unknown

**Total savings on the second to fifth items on this schedule**

**\$117,400**

## No Changes Proposed for 2011

## 2010 Budget

The Budget & Finance Committee reviewed each of the following items and recommended no changes to the activity for the 2011 budget. However, when the budget is finalized, the cost of the last three activities may change with the development of the final dollar budget.

<ul style="list-style-type: none"> <li>• <b>Increase allocation to LRAP by \$5.00 (to \$10.00) per active member</b>  <i>The Access to Justice Committee discussed this allocation initially when a member fee increase was considered for 2011. The change would have added \$72,000 to the expense budget if there were no additional revenue.</i> </li> </ul>	No change
<ul style="list-style-type: none"> <li>• <b>Grant to Campaign for Equal Justice</b>  <i>The first commitment of \$50,000 was made in 2001. For 2007 to 2010 the grant has been \$45,000.</i> </li> </ul>	\$ 45,000
<ul style="list-style-type: none"> <li>• <b>Grant to Classroom Law Project</b>  <i>The first commitment of \$20,000 was made in 1999, and has been that amount every year except 2006 when the grant was reduced to \$10,000.</i> </li> </ul>	\$ 20,000
<ul style="list-style-type: none"> <li>• <b>New Lawyers Division</b>  <i>The Direct Program costs are \$82,800 and .8 FTE is allocated to the division.</i> </li> </ul>	\$166,229 net expense
<ul style="list-style-type: none"> <li>• <b>Cost of the House of Delegates</b>  <i>The amount in the 2010 budget is \$10,000 for the event and \$8,000 for reimbursement of delegates' travel.</i> </li> </ul>	\$ 18,000
<ul style="list-style-type: none"> <li>• <b>Reduce BOG travel expense by holding only BOG retreat away from bar center</b>  <i>There are four BOG meetings scheduled for locations other than at the bar center in 2011.</i> </li> </ul>	\$ 30,000

Possible Changes to 2011 Budget	\$ Change to Budget
<ul style="list-style-type: none"> <li>• <b>Implement Senior Task Force recommendations</b>  <i>The report is not finished; may be integrated with New Lawyers Division or mentoring program</i></li> </ul>	\$ 10,000 (placeholder)
<ul style="list-style-type: none"> <li>• <b>Diversity Convocation</b>  <i>This convocation was held a few years ago and an ad hoc group of members intends to hold a second one in Portland in 2011. The group already has inquired about funding from the bar (and the Multnomah Bar), but gave no dollar amount.</i></li> </ul>	\$ 10,000 (placeholder)
<ul style="list-style-type: none"> <li>• <b>Allow percentage fees on referrals from OSB Lawyer Referral program</b>  <i>The new funding resource of percentage fees on referrals is under current consideration by the board and committees. If this program is implemented, no revenue is projected until 2012.</i></li> </ul>	revenue increases as program matures
<ul style="list-style-type: none"> <li>• <b>Increase service charge revenue from Sections</b>  <i>Increased membership in sections projected due to marketing of current and new services (e.g. audio downloads)</i></li> </ul>	\$ unknown
<ul style="list-style-type: none"> <li>• <b>Online Bookstore</b>  <i>The online bookstore would consolidate all products and services (including registrations) sold by the bar in one location on the bar's web site with the intent of increasing sales due to easier access by the member.</i></li> </ul>	\$ unknown
<ul style="list-style-type: none"> <li>• <b>Salary Pool</b>  <i>The executive directors of the bar and the PLF recommend a salary pool for their respective budgets. The pool in the 2010 budget was 3% and that rate is considered for 2011.</i></li> </ul>	1% change equals about \$69,000
<ul style="list-style-type: none"> <li>• <b>Reduce or eliminate indirect costs associated with the elimination of print Legal Publications</b>  <i>Most indirect costs allocated to Legal Publications will remain. However, if the bar no longer sells, accounts for, invoices, refunds, ships, stores, and inventories print books, some costs can be eliminated.</i></li> </ul>	\$ unknown

## 6 FANNO CREEK PLACE

The 2011 budget for Fanno Creek Place is prepared with these assumptions:

- The bar receives a full year's rent from all tenants (PLF, Opus, 20/20). However, that may change with the stagnant commercial leasing market and economy. The lease with Opus expires January 2013.
- The PLF lease at its former location expires July 31, 2011, then eliminating the bar's exposure to a default and excess operating costs.
- Operating costs increase minimally.
- The annual debt service (principal and interest) for the fourth year of the mortgage is \$891,535 (\$744,850 interest and \$189,458 principal) (*lines 77 and 90. This and all further references to a line are on Exhibit A*).
- Depreciation is a non-cash expense of \$498,500 (*line 87*).
- The net expense is \$656,000 and the cash flow is a negative \$347,000, both of which are in line with the forecasts leading to the development of the building (*lines 83 and 92*).



## 7 SUMMARY OF 2011 BUDGET PROJECTION

The projected 2011 Net Revenue for operations at this stage is \$383,400 (*line 48 column D, page 1, Exhibit A*). In its initial review, the Budget & Finance Committee resolved that the net revenue should approximate \$250,000 for 2011.

- ❖ No member fee increase is included in the 2011 budget; and 2011 will be the sixth consecutive year of the same active member fee (excluding the CSF assessment).
- ❖ The budget includes the recommendations of the Budget & Finance Committee from its June 17 meeting. Those recommendations and other adjustments are included on page 6, "Changes Proposed for 2011," of this report.
- ❖ Any additions to the budget from the list on page 8, "Possible Changes to 2011 Budget," are not incorporated in this budget draft, so any dollar additions will affect the bottom line unless additional sources of revenue are identified or cost reductions made.
- ❖ The net expense and cash flow for Fanno Creek Place align with the previous projections with the assumption that all tenants continue with their rent commitments throughout the year. If there is a default, the bar maintains \$457,557 (after the \$100,000 allocation to fund BarBooks) in the Landlord Contingency Fund.
- ❖ Legal Publications Impact

This projection includes funding of BarBooks with the reallocation of bar reserves (\$400,000), the PLF contribution (\$300,000), and \$348,000 in print legal publications revenue (*line 15*). Expenses related to the print books are on line 38.

This latter number is subject to further scrutiny since it includes information from a July 30 memo addressing questions of the BarBooks Steering Committee. Review of that memo and results from a related survey to members may change that number.

## 8 FIVE-YEAR FORECAST – WHAT IT MEANS

Exhibit A is the summarized 2011 budget projection and the five-year forecast for operations, Fanno Creek Place, and reserves, and intends to demonstrate what the future budget and financial condition will be for the bar under the known and current operations and programming.

Here are key assumptions in this forecast:

- a. The **operation budget** is in the black for the five year-period (*line 48, page 1*).
- b. **Fanno Creek Place** operates as expected with six month vacancies in 2013 and 2014 (*lines 83 and 92, page 2*).
- c. The **reserves** remain above the established levels through 2016 (*line 128, page 3*).



d. An **active and inactive member fee increase** is needed in 2012 since the reserve allocation was intended for one year only, a lower PLF contribution, and fewer print book sales. If there is no fee increase, there must be a dramatic reduction in operations or program costs.

e. Additional revenue from a **new Lawyer Referral funding model** (i.e. a percentage fee or other funding) is projected to begin in 2012 with modest increases annually. If a new model is not approved, other revenue must be identified or an equivalent cost reduction in operations or programs.

- f. All **non-dues revenue and direct program and administrative costs** increase annually by 1% to 2.5% over the five year period.
- g. The 2011 **salary pool** increase is 3% and that amount is extended throughout the five-year forecast. The salaries budget is adjusted each year for projected retirements of senior bar staff in the next five years.
- h. **Taxes & Benefits** are calculated as a percentage of salaries and the rate begins to increase in 2011 to allow for the increase in the employer's contribution rate to PERS.
- i. The **FUNDS AVAILABLE** schedule (*page 3*) is prepared to convert from accrual accounting to a cash basis so actual cash and investments available can be compared with the reserve requirements. This schedule adjusts for non-cash items as depreciation and capital purchases, which are projected to remain relatively small for the next five years.
- j. A key to maintaining to a positive reserve balance is for the **investment portfolio** to continue to grow- or at least not decline. At June 30, 2010, the portfolio value is \$3.562 million, of which \$1,000,000 is allocated to the Operating and Capital Reserves. The five-

year forecast includes a very conservative annual average increase of 3% a year. The portfolio value is at the mercy of the national economy, so the portfolio value could fluctuate considerably during this five-year period. The portfolio will be reduced by \$400,000 in 2011 to fund part of BarBooks.

## 9 RESERVES AND OTHER CONTINGENCY FUNDS

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The two reserves connected to the operating budget are the Operating Reserve and the Capital Reserve.

The *Operating Reserve* policy is fixed at \$500,000 since the approval of the Executive Summary Budget in 1999.

The *Capital Reserve* is based on the expected equipment and capital improvement needs of the bar in the future. Moving to a new building reduced the amount needed in this fund initially. The estimated reserve in 2010, and the next few years is \$500,000, which is for building improvements and furniture replacement costs and major technology related capital purchases.

All other reserves, fund balances, and contingencies – *fund balances for Affirmative Action, CSF, Legal Services, LRAP, and sections* and the *contingencies for legal fees, landlord, and PERS* - are not factored into this budget summary and forecasts since they are either restricted or reserved by board action. The accumulated total of these reserves at January 1, 2010 was \$3.660 million (\$2.660 if the operating and capital reserves are excluded). This sum is not included in these schedules as those dollars are set aside and fully funded.

## 10 WHAT HAPPENS AFTER 2011?

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The 2011 budget is developing such that the bar should maintain a healthy net revenue without a fee increase that originally had been projected. However, there are numerous issues and unanswered questions to be resolved surfacing with the 2011 budget that will impact 2012 and the years thereafter. Here are some.

1. The projection for 2012 includes an increase in the active member fee of \$50.00 and an increase in the inactive member fee of \$40.00.
  - *Although it will be six years since the last fee increase, will the increase in fees be approved by the House of Delegates?*
  - *Will the economy still have an effect on the attitude about increased costs to members, such as a fee increase?*
  - *To the best of my knowledge, there never has been an increase in both the active and inactive fees in the same year. What will be the response from inactive members without a perceived benefit to them with the increase?*

2. Beginning in 2012, additional revenue is projected for a new model of funding for lawyer referral services.
  - *Will the considered percentage fee funding be approved?*
  - *How much additional revenue will it raise?*
3. The 2011 budget includes \$348,000 in revenue from the continued printing and selling of legal publications in their existing format.
  - *Will that practice and the related revenue level continue in subsequent years?*
  - *How will the revenue from the declining PLF grant and no more reserve allocation be replaced?*
4. This 2011 budget projection includes the reduction of numerous operation costs (no longer printing white pages of the member directory, e-mailing member fee statements, eliminating a manager position with the combining two departments ) and elimination of some programs (leadership college and the ethics school). It doesn't include the cost for any programs that might still be added (mandatory mentoring, senior lawyers division, et al) since the costs have not been determined yet. That will impact the budgets for 2011 and subsequent years.
  - *What new programs will be added in 2011, and what is their financial impact on 2012 and subsequent years?*
5. The economy in Oregon continues to lag and could have more negative impact on tenants in the bar center and the members.
  - *Will the bar lose tenants before their leases expire in 2013?*

# 11

## ACTION ITEMS FOR THE BOARD OF GOVERNORS

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1. No changes in the general membership fee (\$447.00), the Affirmative Action Program assessment (\$30.00), and the Client Security Fund assessment (\$15.00).
2. Target the net revenue for 2011 to approximate \$250,000 (or another target).
3. Action Item: Approval of changes proposed for 2011.
4. Action Item: What new programs/activities to add in 2011.
5. Action Item: Decision on print legal publications in 2011.

**Reserves vs Funds Available**  
**December 31, 2009**

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**Fund Balances**

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CSF	570,454	
AAP	102,288	
Legal Services	281,224	
Sections	589,649	
Total		\$ 1,543,615

**Contingencies**

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Legal Fees	181,031	
PERS	157,288	
Landlord	557,557	
LRAP	68,787	
Total		964,663

**Reserves**

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Operating	500,000	
Capital	650,000	
Total		1,150,000

Total - All Reserves \$ 3,658,278

**Funds Available**

---

Mutual Funds	1,224,180	
Transferred to Wash Trust	1,222,013	
	2,446,193	
Fixed Income	1,200,000	
Total - Funds Available		\$ 3,646,193

Excess Reserve \$ (12,085)

**Five Year Forecast**

---

1,150,000  
(12,085)  
1,137,915

Funds Available - Five Year Forecast **\$ 1,138,000**

2011 Budget			Oregon State Bar		BarBooks Benefit		
No Fee Increase							
April-10							
Proposed Fee increase for Year		\$0		\$0	\$0	\$0	\$0
Operations	BUDGET	BUDGET 2011	F O R E C A S T				
	2010		2012	2013	2014	2015	2016
REVENUE							
MEMBER FEES							
General Fund	\$6,619,000	\$6,784,000	\$6,937,000	\$7,110,000	\$7,270,000	\$7,452,000	\$7,620,000
General Fund Increase		0					
% of Total Revenue	60.8%	61.3%	65.0%	65.4%	65.8%	65.7%	65.4%
PROGRAM FEES:							
CLE - Seminars	1,372,895	1,372,895	1,386,624	1,407,423	1,428,535	1,449,963	1,471,712
CLE - Publications	940,358	0	20,000	20,000	20,000	20,000	20,000
Sale of Inventory		200,000	0	0	0	0	0
All Other Programs	1,821,436	1,875,415	1,921,500	1,968,300	2,015,800	2,064,000	2,112,900
Reallocation of Reserves		400,000	0	0	0	0	0
PLF Contribution		300,000	200,000	100,000			
New LRS Model		0	55,000	88,000	125,000	160,000	202,000
Total Program Fees	4,134,689	4,148,310	3,583,124	3,583,723	3,589,335	3,693,963	3,806,612
OTHER INCOME							
Investment Income	114,400	124,900	138,000	157,000	178,000	180,000	202,000
Other	15,900	16,400	17,100	17,800	18,500	19,200	20,000
TOTAL REVENUE	10,883,989	11,073,610	10,675,224	10,868,523	11,055,835	11,345,163	11,648,612
EXPENDITURES							
SALARIES & BENEFITS							
Salaries - Regular	5,313,700	5,381,100	5,514,400	5,671,400	5,832,800	5,998,800	6,169,500
Personnel Adjustments (incl)							
Benefits - Regular	1,548,700	1,774,149	2,036,500	2,094,400	2,159,900	2,212,400	2,250,600
Salaries - Temp	91,155	50,000	30,000	50,000	30,000	50,000	30,000
Taxes - Temp	8,332	4,500	2,700	4,500	2,700	4,500	2,700
Total Salaries & Benefits	6,961,887	7,209,749	7,583,600	7,820,300	8,025,400	8,265,700	8,452,800
% of Total Revenue	64.0%	65.1%	71.0%	72.0%	72.6%	72.9%	72.6%
DIRECT PROGRAM:							
CLE - Programs	621,850	628,069	640,630	653,442	666,511	679,842	693,438
CLE - Publications	225,995	35,415	37,000	39,000	40,000	41,000	42,000
Eliminate Print Production							
All Other Programs	2,344,619	2,391,511	2,451,299	2,500,325	2,562,833	2,639,718	2,718,910
Expense Adjustments		(75,000)	(76,500)	(78,030)	(79,981)	(82,380)	(84,852)
Total Direct Program	3,192,464	2,979,995	3,052,429	3,114,738	3,189,364	3,278,180	3,369,497
GENERAL & ADMIN							
Expense Adjustments	564,553	575,844	590,240	604,996	623,146	641,840	661,096
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
TOTAL EXPENSES	10,743,904	10,770,588	11,251,269	11,565,034	11,862,910	12,210,720	12,508,392
NET REVENUE/(EXPENSE) - OPERATIONS	\$140,085	\$303,022	(\$576,045)	(\$696,510)	(\$807,075)	(\$865,557)	(\$859,780)
		60					

2011 Budget				Five-Year Forecast				
Fanno Creek Place								
Fanno Creek Place		BUDGET	BUDGET 2011	F O R E C A S T				
		2010		2012	2013	2014	2015	2016
REVENUE								
RENTAL INCOME								
	PLF	\$483,648	\$490,903	\$498,267	\$505,741	\$513,327	\$521,027	\$528,842
	Opus Master Lease (includes Zip Realty)	175,059	177,658	180,323	90,387	180,323	185,733	191,305
	20/20	181,914	187,371	192,993	182,217	115,956	195,887	198,826
	OLF	26,112	26,900	27,700	28,500	29,400	30,300	31,200
	Meeting Rooms	12,000	24,000	28,000	30,000	36,000	36,000	36,000
REIMBURSEMENTS								
	TI Payback	0	0	0	0	0	0	0
	Operating Expense Pass-through	0	4,220	4,300	4,400	4,500	4,600	4,700
INTEREST		5,600	7,000	8,000	9,000	10,000	4,000	4,500
TOTAL REVENUE		884,333	918,052	939,582	850,245	889,506	977,547	995,373
EXPENDITURES								
OPERATING EXPENSE								
	Salaries & Benefits	98,400	101,400	104,400	107,500	110,700	114,000	117,400
	Opus Management Fee	54,000	54,800	55,600	4,700			
	Operations	295,414	304,300	313,400	322,800	332,500	342,500	352,800
	Depreciation	498,502	498,502	498,502	498,502	498,502	508,502	508,502
	Other	41,000	29,800	1,000	1,000	5,000	1,000	1,000
DEBT SERVICE								
	Interest	755,839	744,850	733,185	720,901	707,655	693,699	678,884
	Principal	0	0	0	0	0	0	0
ICA to Operations		(158,429)	(161,600)	(165,600)	(168,900)	(173,100)	(178,300)	(183,600)
TOTAL EXPENSES		1,584,726	1,572,052	1,540,487	1,486,503	1,481,257	1,481,401	1,474,986
NET REVENUE/(EXPENSE) - FC Place		(\$700,393)	(\$654,000)	(\$600,905)	(\$636,258)	(\$591,751)	(\$503,854)	(\$479,613)
ACCRUAL TO CASH ADJUSTMENT								
SOURCES OF FUNDS								
	Depreciation Expense	498,502	498,502	498,502	498,502	498,502	508,502	508,502
	Landlord Contingency						400,000	
USES OF FUNDS								
	Principal Pmts - Mortgage	(178,469)	(189,458)	(201,123)	(213,507)	(226,653)	(240,609)	(255,424)
NET CASH FLOW - FC Place		(\$380,360)	(\$344,956)	(\$303,526)	(\$351,263)	(\$319,902)	\$164,039	(\$226,535)

2011 Budget				Five-Year Forecast			
Funds Available/Reserve Requirement							
	BUDGET	BUDGET	F O R E C A S T				
	2010	2011	2012	2013	2014	2015	2016
FUNDS AVAILABLE							
Funds Available - Beginning of Year	\$1,138,000	\$954,471	\$1,205,938	\$729,967	\$167,381	(\$816,296)	(\$1,598,214)
SOURCES OF FUNDS							
Net Revenue/(Expense) from operations	140,085	303,022	(576,045)	(696,510)	(807,075)	(865,557)	(859,780)
Depreciation Expense	303,286	309,400	315,600	321,900	328,300	331,600	334,900
Provision for Bad Debts	30,000	30,000	30,000	30,000	25,000	25,000	25,000
Change in Investment Portfolio MV	73,000	101,000	79,000	135,000	0	142,000	179,000
Allocation of PERS Reserve		96,000	192,000	157,288			
USES OF FUNDS							
Capital Expenditures	(134,340)	(50,000)	(80,000)	(50,000)	(100,000)	(50,000)	(80,000)
Capital Reserve Expenditures	(17,600)	(40,000)	(75,000)	(50,000)	(50,000)	(75,000)	(50,000)
Capital Expenditures - New Building	0	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
Capital Reserve Expenditures - New Building						(400,000)	
Landlord Contingency Interest	(5,600)	(7,000)	(8,000)	(9,000)	(10,000)	(4,000)	(4,500)
Net Cash Flow - Fanno Creek Place	(380,360)	(344,956)	(303,526)	(351,263)	(319,902)	164,039	(226,535)
Addition to PERS Reserve	(192,000)	(96,000)					
Change in Investment Portfolio MV							
Projected lower Net Revenue							
CHANGE IN FUNDS AVAILABLE	(183,529)	251,467	(475,971)	(562,585)	(983,677)	(781,918)	(731,915)
Funds Available - End of Year	\$954,471	\$1,205,938	\$729,967	\$167,381	(\$816,296)	(\$1,598,214)	(\$2,330,130)
RESERVE REQUIREMENT							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	650,000	500,000	500,000	525,000	550,000	575,000	600,000
Total - Reserve Requirement	\$1,150,000	\$1,000,000	\$1,000,000	\$1,025,000	\$1,050,000	\$1,075,000	\$1,100,000
RESERVE VARIANCE							
Over/(Under) Reserve Requirement	(\$195,529)	\$205,938	(\$270,033)	(\$857,619)	(\$1,866,296)	(\$2,673,214)	(\$3,430,130)
Reconciliation	BUDGET	BUDGET	F O R E C A S T				
Cash to Accrual	2010	2011	2012	2013	2014	2015	2016
NET REVENUE/(EXPENSE) - Operations	140,085	303,022	(576,045)	(696,510)	(807,075)	(865,557)	(859,780)
NET REVENUE/(EXPENSE) - FC Place	(700,393)	(654,000)	(600,905)	(636,258)	(591,751)	(503,854)	(479,613)
NET REVENUE/(EXPENSE) - OSB	(\$560,308)	(\$350,977)	(\$1,176,950)	(\$1,332,768)	(\$1,398,826)	(\$1,369,411)	(\$1,339,393)

	A	B	C	D	E	F	G	H	I	J
1		2011 Budget		Oregon State Bar				Five-Year Forecast		
2		No Fee Increase in 2011; Increase in 2012								
3		August-10								
4		Proposed Fee increase for Year	→	\$0		\$50	\$0	\$0	\$0	\$0
5		Operations	BUDGET	BUDGET	F O R E C A S T					
6			2010	2011	2012	2013	2014	2015	2016	
7		REVENUE								
8		MEMBER FEES								
9		General Fund	\$6,619,000	\$6,784,000	\$6,937,000	\$7,993,000	\$8,173,000	\$8,377,000	\$8,565,000	
10		Active (\$50) & Inactive (\$40) Increase		0	861,000					
11		% of Total Revenue	60.8%	60.6%	60.3%	68.2%	68.6%	68.5%	68.4%	
12		PROGRAM FEES:								
13		CLE Seminars	1,372,895	1,372,900	1,386,629	1,400,495	1,421,503	1,442,825	1,464,468	
14		Legal Publications	940,358	0	20,000	20,000	20,000	20,000	20,000	
15		Print Book Sales		348,000	0	0	0	0	0	
16		All Other Programs	1,821,436	1,857,900	1,895,100	1,933,000	1,971,700	2,011,100	2,035,200	
17		Reallocation of Reserves		400,000	0	0	0	0	0	
18		PLF Contribution		300,000	200,000	100,000				
19		New RIS Model		0	55,000	88,000	125,000	160,000	202,000	
20		Total Program Fees	4,134,689	4,278,800	3,556,729	3,541,495	3,538,203	3,633,925	3,721,668	
21										
22		OTHER INCOME								
23		Investment Income	114,400	107,900	137,000	168,000	192,000	194,000	219,000	
24		Other	15,900	16,400	17,100	17,800	18,500	19,200	20,000	
25		TOTAL REVENUE	10,883,989	11,187,100	11,508,829	11,720,295	11,921,703	12,224,125	12,525,668	
26										
27		EXPENDITURES								
28		SALARIES & BENEFITS								
29		Salaries - Regular	5,313,700	5,381,100	5,514,400	5,671,400	5,832,800	5,998,800	6,169,500	
30		Personnel Adjustments (included)								
31		Benefits - Regular	1,548,700	1,774,100	2,036,500	2,094,400	2,159,900	2,212,400	2,250,600	
32		Salaries - Temp	91,155	50,000	30,000	50,000	30,000	50,000	30,000	
33		Taxes - Temp	8,332	4,500	2,700	4,500	2,700	4,500	2,700	
34		Total Salaries & Benefits	6,961,887	7,209,700	7,583,600	7,820,300	8,025,400	8,265,700	8,452,800	
35		% of Total Revenue	64.0%	64.4%	65.9%	66.7%	67.3%	67.6%	67.5%	
36		DIRECT PROGRAM:								
37		CLE Seminars	621,850	628,100	640,662	653,475	666,545	679,876	693,473	
38		Legal Publications	225,995	101,000	37,000	39,000	40,000	41,000	42,000	
39		Begin Phase out of Print Production								
40		All Other Programs	2,344,619	2,391,500	2,451,288	2,500,313	2,562,821	2,639,706	2,718,897	
41		Proposed Changes (see p. 6)		(117,400)	(119,748)	(122,143)	(125,197)	(128,952)	(132,821)	
42		Total Direct Program	3,192,464	3,003,200	3,009,202	3,070,646	3,144,169	3,231,629	3,321,549	
43										
44		GENERAL & ADMIN	564,553	575,800	590,195	604,950	623,098	641,791	661,045	
45		Expense Adjustments		(10,000)						
46		CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000	
47		TOTAL EXPENSES	10,743,904	10,803,700	11,207,997	11,520,895	11,817,668	12,164,120	12,460,394	
48		NET REVENUE/(EXPENSE) - OPERATIONS	\$140,085	\$383,400	\$300,833	\$199,400	\$104,035	\$60,005	\$65,274	
49										

	A	B	C	D	E	F	G	H	I	J
50	2011 Budget									
51	Five-Year Forecast									
52	Fanno Creek Place									
53	F O R E C A S T									
54	Fanno Creek Place									
55	BUDGET									
56	BUDGET									
57	2010									
58	2011									
59	2012									
60	2013									
61	2014									
62	2015									
63	2016									
64	REVENUE									
65	RENTAL INCOME									
66	PLF									
67	Opus Master Lease (includes Zip Realty)									
68	20/20									
69	OLF									
70	Meeting Rooms									
71	REIMBURSEMENTS									
72	TI Payback									
73	Operating Expense Pass-through									
74	INTEREST									
75	TOTAL REVENUE									
76	EXPENDITURES									
77	OPERATING EXPENSE									
78	Salaries & Benefits									
79	Opus Management Fee									
80	Operations									
81	Depreciation									
82	Other									
83	DEBT SERVICE									
84	Interest									
85	Principal									
86	ICA to Operations									
87	TOTAL EXPENSES									
88	NET REVENUE/(EXPENSE) - FC Place									
89	ACCRUAL TO CASH ADJUSTMENT									
90	SOURCES OF FUNDS									
91	Depreciation Expense									
92	Landlord Contingency									
93	USES OF FUNDS									
94	Principal Pmts - Mortgage									
95	NET CASH FLOW - FC Place									
96										

	A	B	C	D	E	F	G	H	I	J
94		2011 Budget							Five-Year Forecast	
95		Funds Available/Reserve Requirement								
96										
97			BUDGET	BUDGET		F O R E C A S T				
98			2010	2011		2012	2013	2014	2015	2016
99		<b>FUNDS AVAILABLE</b>								
100		Funds Available - Beginning of Year	\$1,128,000	\$905,271		\$1,182,615	\$1,540,722	\$1,801,247	\$1,728,680	\$1,795,624
101		<b>SOURCES OF FUNDS</b>								
102		Net Revenue/(Expense) from operations	140,085	383,400		300,833	199,400	104,035	60,005	65,274
103		Depreciation Expense	303,286	309,400		315,600	321,900	328,300	331,600	334,900
104		Provision for Bad Debts	30,000	30,000		30,000	30,000	25,000	25,000	25,000
105		Change in Investment Portfolio MV	33,800	46,500		36,200	62,200	0	65,300	78,400
106		Allocation of PERS Reserve		96,000		192,000	157,288			
107		<b>USES OF FUNDS</b>								
108		Capital Expenditures	(134,340)	(50,000)		(80,000)	(50,000)	(100,000)	(50,000)	(80,000)
109		Capital Reserve Expenditures	(17,600)	(40,000)		(75,000)	(50,000)	(50,000)	(75,000)	(50,000)
110		Capital Expenditures - New Building	0	(50,000)		(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
111		Capital Reserve Expenditures - New Building							(400,000)	
112		Landlord Contingency Interest	(5,600)	(5,000)		(7,000)	(8,000)	(10,000)	(4,000)	(4,500)
113		Net Cash Flow - Fanno Creek Place	(380,360)	(346,956)		(304,526)	(352,263)	(319,902)	164,039	(226,535)
114		Addition to PERS Reserve	(192,000)	(96,000)						
115		Change in Investment Portfolio MV								
116		Projected lower Net Revenue								
117		<b>CHANGE IN FUNDS AVAILABLE</b>	(222,729)	277,344		358,107	260,525	(72,567)	66,944	92,538
118										
119		<b>Funds Available - End of Year</b>	<b>\$905,271</b>	<b>\$1,182,615</b>		<b>\$1,540,722</b>	<b>\$1,801,247</b>	<b>\$1,728,680</b>	<b>\$1,795,624</b>	<b>\$1,888,163</b>
120										
121		<b>RESERVE REQUIREMENT</b>								
122		Operating Reserve	500,000	500,000		500,000	500,000	500,000	500,000	500,000
123		Capital Reserve	650,000	500,000		500,000	525,000	550,000	575,000	600,000
124										
125		<b>Total - Reserve Requirement</b>	<b>\$1,150,000</b>	<b>\$1,000,000</b>		<b>\$1,000,000</b>	<b>\$1,025,000</b>	<b>\$1,050,000</b>	<b>\$1,075,000</b>	<b>\$1,100,000</b>
126										
127		<b>RESERVE VARIANCE</b>								
128		Over/(Under) Reserve Requirement	(244,729)	\$182,615		\$540,722	\$776,247	\$678,680	\$720,624	\$788,163
129										
130										
131		<b>Reconciliation</b>	BUDGET	BUDGET		F O R E C A S T				
132		<b>Cash to Accrual</b>	2010	2011		2012	2013	2014	2015	2016
133		<b>NET REVENUE/(EXPENSE) - Operations</b>	140,085	383,400		300,833	199,400	104,035	60,005	65,274
134		<b>NET REVENUE/(EXPENSE) - FC Place</b>	(700,393)	(655,998)		(601,903)	(637,256)	(591,749)	(503,852)	(479,611)
135										
136		<b>NET REVENUE/(EXPENSE) - OSB</b>	(\$560,308)	(\$272,598)		(\$301,070)	(\$437,856)	(\$487,714)	(\$443,847)	(\$414,338)
137										

	A	C	D	F	G	H	I	J	K	L
1	<b><u>PERS Rates and Contingency</u></b>									
2										
3		<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
4										
5	Period of Rate Change	<b>Jul-07</b>		<b>Jul-09</b>		<b>Jul-11</b>		<b>Jul-13</b>		<b>Jul-15</b>
6										
7	PERS Rate in Budget	11.76%	11.76%	11.46%	8.28%	8.28%	12.14%	16.00%	16.00%	16.00%
8										
9	Adjustment for PERS Rate Change	0.0%	-0.30%	0.00%	0.00%	3.86%	3.86%	0.00%	0.00%	-0.25%
10										
11	Adjusted PERS % in Budget	<b>11.76%</b>	<b>11.46%</b>	<b>11.46%</b>	<b>8.28%</b>	<b>12.14%</b>	<b>16.00%</b>	<b>16.00%</b>	<b>16.00%</b>	<b>15.75%</b>
12					(A)	(B)				
13										
14	Adjustment for PERS Rate Change (Row 7)		-0.30%	0.00%	0.00%	3.86%	3.86%	0.00%	0.00%	-0.25%
15	Rate Changes - other coverage			0.10%	-0.15%	0.00%	0.10%	0.00%	0.10%	0.10%
16										
17	<b>Total Benefits Percentage in Forecast</b>	<b>30.5%</b>	<b>30.2%</b>	<b>29.3%</b>	<b>29.1%</b>	<b>33.0%</b>	<b>36.9%</b>	<b>36.9%</b>	<b>37.0%</b>	<b>36.9%</b>
18										
19	Actual Per Cent Used in Budget	30.42%	30.66%	29.26%						
20										
21	Variance - This Schedule vs Budget	-0.08%	0.46%	0.00%						
22										
23										
24										
25										
26										
27		(A)	Tier 1/2	2.06%	65%	1.34%				
28			OPSRP	2.84%	35%	0.99%				
29			Weighted PERS rate			2.33%				
30			DAS			5.95%				
31			<b>2010 PERS Rate</b>			<b>8.28%</b>				
32										
33		(B)	Anticipate ca 6% increase in PERS beginning July 1, 2011 to 16%..							
34			Jan-Jun	8.28%	50.0%	4.14%				
35			Jul-Dec	16.00%	50.0%	8.00%				
36			<b>2011 PERS Rate</b>			<b>12.14%</b>				
37										
38										
39										

rev 8/14/2009

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**From:** Mitzi Naucier, Chair, Policy & Governance Committee  
**Re:** Proposed Amendments to Oregon Rules of Professional Conduct

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### Action Recommended

Consider the P&G Committee's recommendation that the Oregon Rules of Professional Conduct changes discussed below be presented to the House of Delegates on October 29, 2010.

### Background

General Counsel and Disciplinary Counsel staff recently identified three areas where they believe minor amendments to the RPCs would add valuable clarity for practitioners. The proposals were reviewed by the Legal Ethics Committee, which supports the proposals and suggested only minor changes.

The Policy & Governance Committee reviewed the proposals at its meeting on June 17, 2010 and agreed with the staff and LEC support for the rule changes. Although we recognize that, if amended as proposed, the rules will deviate from the ABA Model Rules on which they are based,<sup>1</sup> the lack of any official comment to the Oregon RPCs and the increasingly few cases decided by the Supreme Court leaves interpretive gaps that can be best addressed by including specific language in the rules.

### "Earned on Receipt" Fees

We suggest that Rules 1.5 and 1.15 be amended as follows:

#### Rule 1.5 Fees

\* \* \*

(c) A lawyer shall not enter into an arrangement for, charge or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement;

(2) a contingent fee for representing a defendant in a criminal case;

<sup>1</sup> One of the rationales expressed in 2005 for adopting rules based on the ABA Model Rules was to increase uniformity in the face of increasing reciprocity and multi-jurisdictional practice.

(3) a fee paid in advance and denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

(i) the funds will not be deposited into the lawyer trust account, and

(ii) the client may discharge the lawyer at any time and in that event the lawyer may be required to refund of all or part of the fee if the services for which the fee was paid have not been completed.

#### **Rule 1.15-1 Safekeeping Property**

\* \* \*

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as "earned on receipt," "nonrefundable" or similar terms and complies with Rule 1.5(c)(3).

The Oregon Supreme Court has long made it clear that a lawyer may be excused from depositing into a trust account money received from a client before services are performed "if the client has agreed, in writing, that all legal fees paid are deemed earned by the lawyer upon receipt." *In re Balocca*, 342 Or 279 (2007), citing its first pronouncement of the rule in *In re Hedges*, 313 Or 618 (1992). The court had elaborated on its holding in *Hedges* in *In re Biggs*, 318 Or. 281 (1994): "Without a clear written agreement \* \* \* that fees paid in advance constitute a non-refundable retainer earned upon receipt, such funds must be considered client property and are, therefore, afforded the protections imposed by [former] DR 9-101(A)." The court has also made it clear that a fee collected for services that is not earned is "clearly excessive" regardless of the amount. *In re Fadeley*, 342 Or 403 (2007); *In re Balocca*, *supra*; *In re Thomas*, 294 Or 505 (1983).

Notwithstanding the clear language in the case law, in OSB Formal Opinions and THE ETHICAL OREGON LAWYER, the foregoing principles are elusive to many practitioners. Moreover, the BOG recently amended the Client Security Fund rules to provide that a lawyer acts dishonestly if the lawyer "wrongfully fails to maintain client funds in trust." That definition will be much easier to apply when there is clear direction about when client funds must be deposited into trust.

#### **Violation of a Court Order**

We recommend that RPCs 3.4 and 1.2 be amended as follows:

#### Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

\* \* \*

(c) knowingly disobey an obligation under the rules or a ruling of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

\* \* \*

#### Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

\* \* \*

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal, [or] fraudulent, or in violation of a court rule or ruling, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

\* \* \*

*Former DR 7-106(A)* generally prohibited a lawyer from “disregard[ing] or advis[ing] the lawyer’s client to disregard a standing rule of a tribunal or a ruling of a tribunal.” By contrast, Oregon RPC 3.4(c) prohibits a lawyer from knowingly disobeying “an obligation under the rules of a tribunal.” On its face the rule does not appear to apply to “rulings” of a tribunal.

Commentators suggest that ABA Model Rule 3.4(c) was intended to mirror *former DR 7-106(A)* and to encompass *rulings* as well as *standing rules* of tribunals. Courts in several jurisdictions have so held, but there is no such authority in Oregon. There is some question whether the Supreme Court would extend the scope of 3.4(c) to rulings of the court in view of its statement in *In re Gatti*, 330 Or 517 (2000) that the “court will not add language to a disciplinary rule.”

Moreover, RPC 3.4(c) does not clearly prohibit a lawyer from advising a client to ignore a court order or standing rule. RPC 1.2 prohibits counseling or assisting a client to engage in illegal conduct, and RPC 3.5(a)(5) prohibits a lawyer from engaging in illegal conduct in connection with a matter pending before a tribunal.<sup>2</sup> The term “illegal” clearly encompass conduct forbidden by statute. *In re Conduct of Hockett*, 303 Or 150 (1987). The dictionary definition of “illegal” includes forbidden by regulation or ordinance, but there is no Oregon case law indicating that “illegal conduct” includes violation of standing court rules or rulings.

<sup>2</sup> This language is not part of the ABA Model Rules, but was preserved from Oregon’s *former DR 7-102*.

The Oregon Supreme Court has indicated it believes Oregon lawyers should be subject to professional discipline for more than engaging in criminal conduct. During the discussions leading up to the Court's adoption of the RPCs, the Court specifically rejected the language in ABA Model Rule 1.2 which prohibited counseling or assisting a client with conduct known to be "criminal or fraudulent." The Court wanted lawyer to be held to a higher standard, prohibited from assisting in any illegal conduct whether civil or criminal in nature.

The deficiency in the language of RPC 3.4(c) was highlighted in a recent disciplinary matter in which the lawyer admitted advising his client to ignore a parenting time schedule ordered by the court in the parties' dissolution. The SPRB concluded that the conduct did not violate RPC 3.4(c) because the rule did not refer to "rulings of the tribunal." The bar proceeded on the theory that the lawyer's conduct was prejudicial to the administration of justice in violation of RPC 8.4(a)(3). The trial panel dismissed the charge, concluding that any prejudice to the administration of justice was the result of the client's decision based on the lawyer's advice and not on the lawyer's conduct *per se*.

Amending Rules 3.4 and 1.2 as proposed will make it clear that a lawyer may neither counsel a client to nor personally disobey a court's rulings as well as its standing rules.

### Candor Toward the Tribunal

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We recommend the following changes to RPC 3.3:

#### Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

\*\*\*

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures[, including, if necessary,] disclosure to the tribunal, subject to paragraph (c) of this rule. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;

\*\*\*

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, *[unless compliance]* but in no event require[s] disclosure of information otherwise protected by Rule 1.6.

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Under *former* DR 7-102(B), a lawyer who learned that his client had perpetrated a fraud on the court was required to call upon the client to rectify the fraud, but if the client refused,

the lawyer was required to reveal the fraud to the court unless the information was a confidence as defined in DR 4-101 (i.e., privileged communication). If the lawyer learned that someone other than a client has perpetrated a fraud on the court, the lawyer was required to promptly reveal the fraud to the court.

Former DR 7-102(B) was supplanted by Oregon RPC 3.3(a)(3), which requires a lawyer who learns that false evidence has been offered by the lawyer's client or witness to take "reasonable remedial measures, including, if necessary, disclosure to the tribunal." That language is from the ABA Model Rule. However, the ABA Model Rule also requires, in 3.3(c) that the duty in 3.3(a)(3) continues to the conclusion of the proceeding *"even if* compliance requires disclosure of information otherwise protected by Rule 1.6."

The drafters of the Oregon RPCs wanted to retain Oregon's approach that did not require disclosure of confidential client information, so replaced the Model Rule language with *"unless"* compliance requires disclosure of information otherwise protected by Rule 1.6."

As we have cited the rule to practitioners over the past few years, we have become increasingly concerned that the structure of the rule is not as clear as the drafters had hoped. For one thing, a lawyer who stops after paragraph (a)(3) will miss the prohibition against disclosure in paragraph (c). Even one who reads both provisions may find the rule confusing. The suggested amendments are designed to make the application of the rule easier to understand.

# OREGON STATE BAR

## Policy & Governance Committee Agenda

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**Meeting Date:** August 12, 2010  
**Memo Date:** June 14, 2010  
**From:** Cindy Hunt, Chair, MCLE Committee  
**Re:** Proposal to amend MCLE Rule 5.5(b)

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### **Action Recommended**

Review and approve the amendment to MCLE Rule 5.5(b) as proposed by the Oregon War Veterans Association and OSB member Jess Barton.

### **Background**

At its meeting on June 11, the MCLE Committee reviewed the attached letter from Jess Barton with a proposal to amend MCLE Rule 5.5(b) to include military service as a category that qualifies for access to justice credit. In addition to his position as associate counsel to the OWVA, Mr. Barton is a member of the bar's Military Assistance Panel.

Mr. Barton attended the meeting and provided information regarding access to justice issues for veterans and members of the military. Following a discussion and review of the materials, the MCLE Committee voted to recommend this change to the Board of Governors.

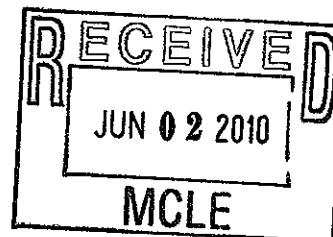
Attachment: Barton Letter 5/31/10

Attachment



*Advocating for Oregon's U.S. Military Veterans*

May 31, 2010



Denise Cline  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935

Re: Proposed Amendment to MCLE Rule 5.5

Dear Denise:

Enclosed is the text of my proposed amendment to MCLE Rule 5.5. As we have previously discussed, this proposal is intended for the MCLE Committee's June 11, 2010 meeting here in Salem. I plan to attend the meeting.

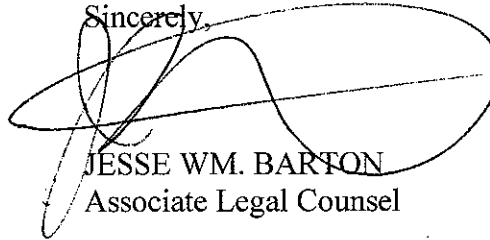
The amendment specifically addresses MCLE Rule 5.5(b). It would include military service as a category that qualifies for access-to-justice credit. The text shown in italics and brackets would be deleted, while the text shown in boldface would be added.

I am presenting this proposal not only on behalf of the Oregon War Veterans Association (OWVA), but also as a member of the bar's Military Assistance Panel (but **not** on behalf of the Panel or the bar itself; I lack authority to do that). Last week I conducted an informal poll of the Panel, to survey the members' position on the proposed amendment. The several members who responded unanimously support the amendment.

The reasons for the OWVA's support are palpable. The association is the state's preeminent non-governmental veterans-service organization. It is dedicated to serving not only veterans, but current servicemembers and their families. The OWVA has become acutely aware of the challenges veterans and servicemembers have faced during the last several years, in obtaining **meaningful** access to the legal system (both civil and criminal). This limited access stems from the fact that too many system participants—judges and attorneys included—have insufficient training or experience in the military culture generally, and in the unique issues presented by veteran and servicemember cases.

Previously, I intended to include discussions of some specific examples of the problems that have come to OWVA's attention. I will instead reserve those for the June 11 meeting. But if in the meantime you need any additional information from me, please let me know.

Sincerely,



JESSE WM. BARTON  
Associate Legal Counsel

Enclosure

c: Greg Warnock (w/enclosure)  
Executive Director  
Oregon War Veterans Association

**Please reply to:**

P.O. Box 5545  
Salem, OR 97304  
Phone (503) 391-6283  
Fax (503) 391-8362  
jessbarton@owva.org

### **MCLE Rule 5.5 Ethics and Access to Justice.**

(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).

(b) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(c), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age, *[or]* sexual orientation **or military service**.

(c) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**From:** Sylvia E. Stevens, General Counsel  
**Re:** "Ethics School" for Disciplined Lawyers (Staff Model)

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### Action Recommended

Consider the recommendation of staff to go forward with the development of an "ethics school" using existing staff and resources.

### Background

In February 2010, following several months of discussion, the BOG approved a recommendation from the Policy & Governance Committee for a new Bar Rule of Procedure establishing a mandatory "ethics school" for lawyers who are disciplined (reprimanded or suspended).

The proposal as envisioned by the BOG included a \$30,000 budget item, most of which was to cover salary of a part-time staff member to administer the ethics school. It was anticipated that the expense would be partially offset by the course fee paid by attendees (approximately 40 per year at \$200 each).

However, as the BarBooks™ Benefit developed, the budget for ethics school was eliminated. Rather than let the idea die entirely, General Counsel, Disciplinary Counsel and the Client Assistance Office Manager have spent some time discussing the possibility of establishing an ethics school using existing resources. We have concluded it can be done. We believe the staff time required will be no greater than what many of us contribute regularly to CLE presentations for the OSB and other groups and giving priority to ethics school is appropriate.

Under our "staff model," the CAO Manager and one Asst. Disciplinary Counsel (tbd) would serve as program planners. Staff lawyers in GCO, DCO and CAO would share the responsibility on some kind of rotating basis for teaching course segments. Course topics would include proper handling of client funds; conflicts of interest; competence, diligence and communication; fees and billing; and possibly something on malpractice avoidance. We would also include a brief presentation from the PLF and OAAP on substance abuse, life balance and other personal issues that affect one's ability to practice.

The course would be held twice each year at the OSB Center and would be open to any bar member. Support staff would assist with administration including registration. Direct costs would be minimal, but there should still be a fee of some amount at least to cover the cost of materials and such.

If the BOG approves of staff's proposal and wishes to advance the ethics school idea, the BR needs to be presented to the Supreme Court for adoption. Attached is the BR approved by the BOG in February, with a few changes suggested by Jeff Sapiro to make suspension by order of the Court rather than administrative.

## Proposed Ethics School Bar Rule of Procedure

### BR 6.4. Ethics School.

(a) An attorney sanctioned under BR 6.1(a)(ii), (a)(iii) or (a)(iv) shall successfully complete a one-day course of study developed and offered by the Bar on the subjects of legal ethics, professional responsibility and law office management. Successful completion requires that the attorney attend in person the course offered by the Bar and pay the attendance fee established by the Bar.

(b) An attorney reprimanded under BR 6.1(a)(ii) who does not successfully complete the course of study when the course is next offered by the Bar following the effective date of the reprimand shall be suspended from the practice of law upon the order of the Supreme Court until the attorney successfully completes the course.

(c) An attorney suspended under BR 6.1(a)(iii) or (a)(iv) shall not be reinstated until the attorney successfully completes the course of study, unless the course is not offered before the attorney's term of suspension ~~lapses~~ expires, in which case the attorney may be reinstated if otherwise eligible under applicable provisions of Title 8 of these Rules until the course is next offered by the Bar. If the attorney does not successfully complete the course when it is next offered, the attorney shall be suspended from the practice of law upon the order of the Supreme Court until the attorney successfully completes the course.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 12, 2010  
**Memo Date:** July 22, 2010  
**From:** Karen Lord, Public Member Selection Committee Chair  
**Re:** Board of Governors Public Member Recommendation

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### **Action Recommended**

Appoint Jenifer Billman as Public Member to the Board of Governors for a four-year term.

### **Background**

The Public Member Selection Committee conducted interviews on July 21. Based on those interviews and the information provided by the candidates, the committee recommends the appointment of Jenifer Billman. Ms. Billman is a retired school administrator residing in Salem. More information about Ms. Billman is provided on her application and resume.

Should Billman not accept the appointment, the committee recommends Vaughn Edsall of Keizer. Mr. Edsall's application also attached for your review.

Each of the eight candidates interviewed for the seat on the BOG were impressive. The committee recommends that the candidates not selected for the BOG be appointed to serve the bar in another capacity. Those candidates include:

Vaughn Edsall  
Dr. John Kilian  
Robert Meyers  
Charles Peterson  
David Phelps  
Sheila Ritz  
Valerie Saiki

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last) <b>Jenifer Schuttish Billman</b>		
Residence Address: (number, street, city, state, zip) <b>1690 Saginaw St. S. Salem, OR 97302</b>		Residence Phone: <b>503-585-6572</b>
County: <b>Marion</b>		Office Phone: <b>503-569-0764</b>
Office Address: (number, street, city, state, zip)		E-Mail Address: <b>jenifer.billman@gmail.com</b>
County:		
Office Mailing Address: (if different)		Occupation: (and job title, if any) <b>Retired School Administrator</b>
County:		

## College and Post-Graduate Education:

School	Location	Dates	Degrees
Portland State University	Portland, OR	1979	Administrative Certificate
Western Oregon University	Monmouth, OR	1976	M.A. Early Childhood Ed.
California State University - Sac	Sacramento, CA	1963	B.A. Elementary Education
Diablo Valley College	Concord, CA	1961	A.A. Transfer Degree

## Employment: List major paid employment chronologically beginning with most recent experiences.

Dates (from/to)	Employer and Position Held	Address
2000-2003	San Benito Cty. Fam. Commission Exec. Director	Hollister, CA
1999-2000	Willamette ESD Staff Development Coordinator	Salem, OR
1983-1998	Salem-Keizer Sch. Dist. Elementary Principal	Salem, OR
1979-1983	Salem-Keizer Sch. Dist. Dir. of Federal Programs	Salem, OR
1972-1979	Salem-Keizer Sch. Dist. Head Start Coordinator	Salem, OR

## Community/Volunteer Services: List major volunteer employment and significant volunteer activities chronologically beginning with most recent services.

Dates (from/to)	Organization and Position Held	Address
2009-	Westminster Foundation: Board Member	Eugene, OR
2003-2006	Westminster Presbyterian Elder: Personnel Director	Salem, OR
1998-1999	Howard Street Charter School Board of Directors	Salem, OR
1994-1995	Statesman Journal Newspaper: Editorial Board Member	Salem, OR

**Statement:** Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

I am interested in contributing to the Oregon State Bar as a public member because the health of our democracy requires that citizens participate in every way they can to ensure the continued vitality of our justice system. I see the legal system and the attorneys at the core of it as the linchpins that hold together the infrastructure of our democracy and very freedom.

As the Director of Federal Programs and Elementary School Principal, I served children and families from a variety of ethnic and socioeconomic backgrounds, which provided me with an understanding of the diverse demographics of Oregon. As Administrator of those programs, I worked with district level and federal level government agencies and am well-versed in compliance issues. This is some of the experience I will bring to the Oregon State Bar as a public member.

I can see no better way to serve the citizens of Oregon than to be a part of the process safeguarding the rule of law upon which our blessing of liberty depends. I am at a point in my life in which I recognize that my background, skills, experience and unique perspective would be an asset to the Oregon State Bar Board of Governors.

**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime or violation? Do not include minor traffic offenses or juvenile convictions if expunged.

☐ Yes ☒ No

Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?

☐ Yes ☒ No

If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

**Opportunities:**

If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

☒ Board of Governors ☒ Disciplinary Board ☐ Fee Arbitration ☐ House of Delegates  
☒ Professional Liability Fund

Committees: ☐ Affirmative Action ☐ Client Security Fund ☐ Minimum Continuing Legal Education  
☐ Judicial Administration ☐ Legal Services ☐ Quality of Life  
☐ State Lawyers Assistance ☐ Unlawful Practice of Law ☐ Public Service Advisory  
☐ Professionalism Commission

**References:** List names, addresses, and phone numbers of three people who may be contacted as references.

Name	Address	Phone
Martha Pagel	530 Center St. NE, Ste. 400 Salem, OR	503-540-4260

Name	Address	Phone
Ken Ammann	880 Liberty Rd. NE, Salem, OR	503-364-6734

Name	Address	Phone
John Moody	3737 Liberty Rd. S, Salem, OR	503-364-3327

Applicant's Signature	Today's Date
	June 30, 2010

Where did you learn about the public member opportunities available at the Oregon State Bar?

Statesman Journal Newspaper

Application deadline is July 2, 2010. Return applications to  
Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935

## JENIFER BILLMAN

1690 Saginaw St. S.  
Salem, OR 97302

jeniferbillman@gmail.com  
503.585.6572

### EDUCATION

- A.A., Diablo Valley College
- B.A., Elementary Education, California State University - Sacramento
- M.S., Education-Early Childhood, Western Oregon University
- Administrative Credential Program, Portland State University

### EXPERIENCE

#### **San Benito County Children's and Families Commission**

**Hollister, CA**

##### **2000-2003 Executive Director**

- San Benito County is a small rural county of about 50,000 people, located between San Jose & Monterey, CA with a population that is 46% Latino. The economy consists of farms, cattle ranches and housing for population growth from Silicon Valley.
- The Commission's objective was to develop and fund programs and build facilities to provide services to children and families from 0-6 years of age.
- While I was Director, this agency was designed and established, a preschool was built, and grant process and funding procedures were implemented. These activities were directed by a board consisting of Public Health, School District, Human Services, private non-profits, and faith communities.

#### **Willamette Education Service District**

**Salem, OR**

##### **1999-2000 Staff Development Coordinator, Marion & Polk County Schools**

- This is a county school district that serves 75 schools in a two county area outside of Salem-Keizer school district.

#### **Salem-Keizer School District**

**Salem, OR**

##### **1983-1998 Elementary Principal**

- Salem Heights Elementary – Magnet School for deaf and hard of hearing children from three counties.
- Kennedy Elementary – Large Title I, Dual Language bilingual school (Spanish/English).
- Bush Elementary – In this large Title I school, my leadership team and I wrote and implemented grants for Bilingual Education, Oregon Head Start, Interagency Social Service Teams, Even Start, Points of Light mentor program, 21st Century School Improvement, and a preprimary program for medically fragile, deinstitutionalized, developmentally-delayed children. Facilitated enrollment growth from 220 students to 696 students.
- Middle Grove and Lake Labish Elementaries – Small rural schools.

##### **1979-1983 Director of Federal Programs**

- District-wide supervisor of programs for: Migrant Education, Indian Education, Bilingual Education, Early Childhood, Grant Writing, Social Services and First Grade Success.

##### **1972-1979 Coordinator: Early Childhood Education, Head Start**

- Supervisor of Federal Head Start, Title I and Migrant Preprimary Programs.

**1971-1972 Teacher, Title I Preprimary**

**1967-1972 Education Coordinator, Head Start**

**1966-1967 Teacher, 2nd grade,**

**Sitka Public Schools**

**Sitka, AK**

**1964-1966 Teacher, Kindergarten**

**Monterey Public Schools**

**Monterey, CA**

**1963-1964 Teacher, Kindergarten**

### **Honors and Awards**

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- Oregon Principal's Association: Western Region Principal of the Year
- YMCA: Woman of Achievement
- Soroptimist International of the Americas: Woman of Distinction
- Associated Oregon Industries Foundation: Oregon Business Fellowship

### **Committees and Professional Memberships**

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- Board Member: Westminster Foundation – This board manages the operation of all the ministries for the public universities in Oregon.
- Elder: Westminster Presbyterian Church – Responsible for all personnel activities of the Church including budget preparation, staff evaluations and personnel searches including hiring a new pastor
- Principal Administrator responsible for creating and implementing the Salem Schools Kindergarten Program
- Founding Board Member: Salem Schools Foundation
- Community Member: Statesman Journal Newspaper Editorial Board
- Founding Board Member: Salem Volunteer Bureau

### **References**

---

Martha Pagel  
Schwabe, Williamson & Wyatt  
530 Center St. NE, Ste. 400  
Salem, OR 97301  
503-540-4260 (Salem)  
503-796-2872 (Portland)  
[mpagel@schwabe.com](mailto:mpagel@schwabe.com)

Ken Ammann  
880 Liberty Rd. NE  
Salem, OR 97301  
503-364-6734  
[ken@kenammann.com](mailto:ken@kenammann.com)

John Moody, Pastor  
Westminster Presbyterian Church  
3737 Liberty Rd. S  
Salem, OR 97302  
503-364-3327  
[westpresjohn@hotmail.com](mailto:westpresjohn@hotmail.com)

Lou Medeiros, Chairman  
San Benito County Children & Families Commission  
P.O. Box 288  
Tres Pinos, California 95075  
831-637-0503

# Oregon State Bar Public Member Application

Oregon  
State  
Bar

Name: (First, Middle, Last) <b>Vaughn Stanley Edsall</b>		
Residence Address: (number, street, city, state, zip) <b>444 Hornet Court North Kelzer, Oregon 97303</b> County:		Residence Phone: <b>503-932-7726</b>
		Office Phone: <b>503-856-3465</b>
Office Address: (number, street, city, state, zip) <b>930 Chemawa Road NE Kelzer, Oregon 97303</b> County:		E-Mail Address: <b>vedsall@comcast.net</b>
Office Mailing Address: (if different)  County:		Occupation: (and job title, if any)

## College and Post-Graduate Education:

School	Location	Dates	Degrees
Washington State Univ	Pullman	2000-2003	Working Towards

## Employment: List major paid employment chronologically beginning with most recent experiences.

Dates (from/to)	Employer and Position Held	Address
10/2000 - Present	Keizer Police Department - Detective	930 Chemawa Rd NE
07/1995 - 10/2000	North Bend Oregon Police Department Offc	760 California St
02/1994 - 07/1995	Oregon State Corrections - Officer	Shutter Creek CF
11/1984 - 07/1993	United States Navy - Various	Various

## Community/Volunteer Services: List major volunteer employment and significant volunteer activities chronologically beginning with most recent services.

Dates (from/to)	Organization and Position Held	Address
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**Statement:** Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

I would like to volunteer to support the Oregon State Bar and the mission it is designed for.

**Miscellaneous:**

Have you ever been convicted or have you pleaded guilty to any crime or violation? Do not include minor traffic offenses or juvenile convictions if expunged.

☐ Yes ☒ No

Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended or restricted?

☐ Yes ☒ No

If your answer to either of these questions is "yes," please give full details on a separate sheet of paper.

**Opportunities:**

If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is included with this application.

☒ Board of Governors ☒ Disciplinary Board ☐ Fee Arbitration ☒ House of Delegates  
☐ Professional Liability Fund

Committees: ☐ Affirmative Action ☒ Client Security Fund ☐ Minimum Continuing Legal Education  
☐ Judicial Administration ☐ Legal Services ☐ Quality of Life  
☒ State Lawyers Assistance ☒ Unlawful Practice of Law ☐ Public Service Advisory  
☐ Professionalism Commission

**References:** List names, addresses, and phone numbers of three people who may be contacted as references.

Name	Address	Phone
John Troncoso	930 Chemawa Rd NE Keizer, Oregon	503-390-3713

Name	Address	Phone
John Teague	187 Southeast Court Street Dallas, OR	503- 623-2338

Name	Address	Phone
Mark Adams	930 Chemawa Rd NE Keizer, Oregon	503-390-3713

Applicant's Signature	Today's Date
	06-04-10

Where did you learn about the public member opportunities available at the Oregon State Bar?

Keizertimes

Application deadline is July 2, 2010. Return applications to  
Danielle Edwards, Oregon State Bar, 16037 SW Upper Boones Ferry Rd, PO Box 231935, Tigard, OR 97281-1935

# OREGON STATE BAR

## BarBooks Steering Committee

### Budget & Finance Committee

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**Meeting Date:** August 12, 2010  
**Memo Date:** July 30, 2010  
**From:** Linda L. Kruschke & Rod Wegener  
**Re:** Legal Publications Revenue Projections for 2011

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#### **Purpose of Memo**

At the last Steering Committee meeting, the committee asked for the following information: 1) a survey of selected members to determine the interest in the purchase of print Legal Publications once BarBooks is available to all members in 2011; 2) a projection of revenue that could be earned on the sale of print books in 2011; 3) a summary of the revenue and costs if a third-party vendor were to process all sales and orders of BarBooks in 2011.

This information was requested to ascertain the value of phasing out the creation and sale of all print legal publications during 2011, or terminating the printing of the books in their current condition at January 1, 2011 when BarBooks are available online to all members of the bar.

To address the second and third points, three exhibits are included with this memo. The exhibits are one-page summaries of a collection of relevant data.

#### **Background**

##### **Survey Status**

A survey was sent to approximately 2,000 members (individuals and firms) who have purchased a print book in the past two years. Additionally, the managing partners of the law firms in Multnomah County received an email from Steve Larson inquiring about the firms' interest in purchasing print books in 2011. The number of responses in the first days of the surveys has been surprisingly high. The results of the surveys will be available at the meetings on August 12 and those results could change the projections of the exhibits on which this memo is based.

##### **Print Books Projected Revenue for 2011 (Exhibit A)**

Exhibit A estimates how much revenue from the sale of print books could be earned in 2011 if print books are still available in their existing format during 2011.

The Legal Publications Department anticipates developing eleven new releases (subject to modification) in 2011. Exhibit A shows the revenue projected for each title, and the total projected revenue on those new releases and the books in the existing inventory. The definitions of the columns on the exhibit are explained at the bottom of the chart.

With the legal publications library available online to all members, the Legal Publications Manager estimates about one-third of the books that would have been sold under the existing conditions will be sold during 2011. The projections shown in the “2011 Projected Units” column could change once the results from the survey are known and analyzed.

The “Backlist Revenue” projection is revenue that would be realized by selling 20% of the books in inventory as of June 30, 2010. This is a conservative projection and may be adjusted based on the outcome of the Summer Sale and other inventory changes between now and the end of this year.

### **Projected Revenue Split under Outsourcing Plan (Exhibit B)**

The Steering Committee asked to review the revenue projections evaluated by Teresa Schmid, Rod Wegener, and Linda Kruschke in reaching the conclusion that the use of a vendor (Lithtex) to print, process, sell, inventory, and ship the bar’s new and existing print books in 2011 was not in the best financial interest of the bar. The summary of that decision is Exhibits B and C.

Exhibit B depicts the total projected revenue for each title scheduled for release in 2011 (the same amount as on Exhibit A) with a 70% revenue share for Lithtex and a 30% share for the bar. This revenue share was proposed by Lithtex once it had evaluated its costs and processes to enter into an outsourcing agreement with the bar.

This exhibit also shows a split of 60% to Lithtex and 40% to the bar for revenue from existing inventory (“backlist revenue”), also proposed by Lithtex. This revenue projection is based on the sale of 20% of the inventory on hand as of June 30, 2010 at full retail prices (same total as Exhibit A).

### **Print Books Net Revenue Comparison (Exhibit C)**

Exhibit C shows the projected Net Revenue to the bar under the outsourced option and the bar continuing the sale and delivery of all print books. The **“Gross Revenue to OSB”** under both options is the data from Exhibit B.

**“Direct Expenses of OSB”** under the vendor option are those expenses essential to creation of the intellectual property (i.e., indexing, research, miscellaneous expenses) that the bar will continue to incur for the development of the print books. The Direct Expenses under the “OSB Processes” column include those expenses and the cost to print the books (the largest expense) and bank fees. Direct Expenses related to marketing will be eliminated in both options, since all marketing will be done via email and other electronic communication.

**“Indirect Costs of OSB”** would be slightly reduced or eliminated if the process were outsourced (although new technology-related costs would incur as a link between the vendor’s and the bar’s servers and software has to be created and maintained). That

reduction is shown in the third row of numbers Most indirect costs would remain with the bar continuing the sale and distribution process.

To summarize, under the “Outsourced to Vendor” column, the bar would receive \$116,817 in revenue from the vendor, but the bar would continue to pay for direct costs of \$34,300 and save approximately \$29,000 in indirect costs. This totals \$111,517 in Net Revenue to the bar. If the bar retains the process, its Net Revenue is \$251,543 – about \$140,000 more than if outsourced. This greater benefit to the bar occurs because the bar is retaining all revenue from the print book sales, rather than only a portion of the sales.

### **Terminating the Creation of Print Books at January 1, 2011**

The initial draft of the bar’s projected budget for 2011 prepared for “BarBooks Benefit” analysis indicated Legal Publications revenue would be replaced by a grant from the PLF, the reallocation of bar reserves, and \$200,000 from the sale of existing print books inventory. The \$200,000 was based on a sale at reduced prices of the existing inventory and was an estimated one-fourth of the approximate \$800,000 of the listed price of all inventory at December 31, 2009. The initial budget analysis also included a reduction of some direct and indirect costs caused by eliminating the creation, sale, processing, and distribution of print books on January 1, 2011.

Thus, to attain an approximate \$250,000 net revenue for all bar operations in 2011, revenue from legal publications must approximate \$200,000.

If print book creation is terminated for 2011, the \$200,000 could be raised by:

1. The “fire sale” of all existing inventory at the end of 2010;
2. A combination of revenue from the “fire sale” and a planned reduction and/or elimination of the indirect costs related to print books, and an assessment of the direct cost functions of the Legal Publications Department.

The indirect costs related to print books are the functions and processes of accounting, technology, warehousing, and shipping (a list of those functions is available).

Beginning in 2012, the projected revenue from Legal Publications is only \$20,000, which is estimated royalty income from certain publications.

### **Conclusion**

The following conclusions are based on the projections of the exhibits included with this memo.

1. Projected print book sales could reach \$347,668 in 2011. The amount of revenue from print book sales was only \$200,000 in the initial budget projections. Thus, if the \$347,668 revenue projection is achieved, **it is financially beneficial for the bar to continue to develop and sell print books in their existing format during 2011.**

2. In considering whether the bar should outsource the print book processes to a print house, or retain them in 2011, Exhibit C indicates **the processes and functions should remain with the bar.** In outsourcing the process, the bar's gross revenue is \$116,817; with retaining the process, the revenue is \$347,668. By outsourcing, the bar sacrifices too much revenue (especially on print products it already has created and are in inventory) while many of the costs and processes still remain at the bar. Correspondingly, the net revenue to the bar is potentially twice as great if the bar retains the process rather than outsource (see the last line of the chart on Exhibit C).

### **Further Considerations**

- The conclusions are based on projections developed before the member survey results are known. The conclusions could change if the survey indicates the projected sales of print books are too high or too low.
- The conclusions are based on 2011 projections only and provide no indication whether the “phase out” of print books will continue beyond 2011. That decision can be made if the survey results provide an indication for print book sales in 2011, or if the actual sales of print books in 2011 indicate terminating or continuing with the sale of print books in their existing format.
- How will revenue from print books in 2011 be replaced after 2011? The bar's overall budget will balance in 2011 because of the other sources of revenue allocated to online BarBooks. However, those other revenue sources begin to decline in 2012, and any revenue from print books could be minimal then. This condition will require revenue from other sources and absolutely require a member fee increase to offset that revenue loss – or a reduction of other bar services.

### **Print Options for the Member**

With all legal publications available via the bar's web page, the member also is able to print any portion of or an entire book (or the entire library even if not practical). At the committee meeting, bar staff will display various print samples of the library which can be printed by the member at his/her office, at a local print/copy service, or at the bar and sent to the member. Also demonstrated will be the various electronic formats available to the member.

<b>Print Books</b> <b>Projected Revenue for 2011</b>					
<b>New Releases in 2011</b>	<b>Type</b>	<b>Historic Units</b>	<b>2011 Projected Units</b>	<b>Historic Price</b>	<b>2011 Projected Revenue</b>
Uniform Civil Jury Instructions	Supp	600	200	\$ 40	\$ 8,000
Insurance	Rev	400	200	\$ 170	\$ 34,000
Fundamentals of Real Estate	Rev	400	150	\$ 155	\$ 23,250
Real Estate Disputes	Rev	250	75	\$ 280	\$ 21,000
Appeal & Review: Advanced Topics	Rev	300	100	\$ 195	\$ 19,500
Torts	Supp	700	300	\$ 65	\$ 19,500
Consumer Law	Rev	250	100	\$ 280	\$ 28,000
Administering Oregon Estates	Rev	500	150	\$ 135	\$ 20,250
Criminal Law	Supp	500	150	\$ 160	\$ 24,000
Civil Pleading & Practice	Supp	900	250	\$ 70	\$ 17,500
Uniform Criminal Jury Instructions	Supp	400	150	\$ 50	\$ 7,500
<b>Total - New Release Revenue</b>		5,200	1,825		\$ 222,500
<b>Total - Backlist Revenue (20% of inventory)</b>					\$ 125,168
<b>Total - All Print Books Revenue</b>					<b>\$ 347,668</b>

#### **Definitions:**

##### **Historic Units**

The number of copies OSB would anticipate selling over the useful life of the book under the current BarBooks subscription plan

##### **2011 Projected Units**

Number of copies OSB would anticipate selling based on pre-orders

##### **Historic Price**

The price OSB would have charged for the book under the current pricing method

##### **2011 Projected Revenue**

The **2011 Projected Units** times the **Historic Price**

##### **Backlist Revenue**

An estimate that 20% of the existing inventory (June 30, 2010 amount) would be sold during 2011

<b>Projected Revenue</b> <b>Split under Outsourcing Plan - Vendor &amp; OSB</b>			
<b>2011 New Releases</b>	<b>Total Revenue</b>	<b>Vendor Share 70%</b>	<b>OSB Share 30%</b>
Uniform Civil Jury Instructions	\$ 8,000	\$ 5,600	\$ 2,400
Insurance	34,000	23,800	10,200
Fundamentals of Real Estate	23,250	16,275	6,975
Real Estate Disputes	21,000	14,700	6,300
Appeal & Review: Advanced Topics	19,500	13,650	5,850
Torts	19,500	13,650	5,850
Consumer Law	28,000	19,600	8,400
Administering Oregon Estates	20,250	14,175	6,075
Criminal Law	24,000	16,800	7,200
Civil Pleading & Practice	17,500	12,250	5,250
Uniform Criminal Jury Instructions	7,500	5,250	2,250
<b>Total - New Release Revenue</b>	<b>\$ 222,500</b>	<b>\$ 155,750</b>	<b>\$ 66,750</b>
<b>Total - Backlist Revenue</b> (Vendor 60% / OSB 40%)	<b>\$ 125,168</b>	<b>\$ 75,101</b>	<b>\$ 50,067</b>
<b>Total - All Print Books Revenue</b>	<b>\$ 347,668</b>	<b>\$ 230,851</b>	<b>\$ 116,817</b>

## Exhibit B

Print Books "Net Revenue" Comparison Vendor or OSB		
If / Then	Outsourced to Vendor	OSB Processes
Gross Revenue to OSB	\$ 116,817	\$ 347,668
Less: Direct Expenses of OSB	(34,000)	(96,125)
Add: Reduction in Indirect Costs to OSB	29,000	-
<b>Net Revenue to OSB</b>	<b>\$ 111,817</b>	<b>\$ 251,543</b>

**Notes:**

**Gross Revenue to OSB**

Revenue projections from Exhibit B.

**Direct Expenses of OSB**

These are the direct costs the bar would incur if all processes were outsourced to the vendor, or if the bar were to print only per the number of pre-orders and process all orders. Personnel costs are not included .

**Reduction in Indirect Costs to OSB**

If the OSB processes the books, indirect costs would remain. If outsourced, some indirect costs are eliminated, but some new costs created.

**Exhibit C**

Report of the  
**Out of State Lawyers in Arbitration  
Task Force**

August 13, 2010

## Introduction

The Out of State Lawyers in Arbitration (OOSLA) Task Force was created on January 6, 2010 by OSB President Kathleen Evans in response to a 2009 House of Delegates Resolution which directed the Board to Governors (BOG) to:

“...study and implement a program whereby out-of-state attorneys appearing in Oregon in an arbitration...register with the Oregon State Bar prior to any hearing..., provide a certificate of good standing from the [jurisdiction] in which the attorney is admitted to practice and certificate of insurance [and] that the registration program collect a reasonable fee from out-of-state attorneys applying to appear in arbitration in Oregon.”

The Task Force was chaired by Richard G. Spier (Portland). The other members of the Task Force were Robert S. Banks, Jr. (Portland); Jeffrey M. Batchelor (Portland); Hon. Frank L. Bearden (Portland); James M. Brown (Portland); Hon. Mary J. Deits (Portland); M. Christie Helmer (Portland); David A. Hilgemann (Salem); Michelle Vlach-Ing (Salem); Leslie S. Johnson (Portland); James L. Knoll (Portland); Michael Moffitt (Eugene); Katherine H. O’Neil (Portland); James R. Uerlings (Klamath Falls); O. Meredith Wilson, Jr. (Portland); and Barbara Woodford (Portland). Christopher Kent (Portland) was the Board of Governors liaison. OSB General Counsel Sylvia E. Stevens served as reporter. The OOSLA Task Force met on February 17, March 13, May 26, and June 24, 2010.

After thoroughly and carefully analyzing the myriad issues raised by the HOD resolution, a majority of the Task Force (9 members) recommends against establishing a registration program for OOSLs participating in arbitrations in Oregon. A minority of the Task Force (6 members) recommends that new language be added to Oregon Rule of Professional Conduct 5.5 requiring (1) certification by OOSLs participating in pending or potential arbitrations to be held in Oregon that they are in good standing in their home jurisdictions and (2) evidence that they possess malpractice insurance equivalent to that required of Oregon attorneys or that they have informed their client that they do not possess such insurance.

## Task Force Analysis and Findings

The Task Force began its work by reviewing the HOD resolution which, according to the proponent, was aimed at addressing the following concerns:

- clarifying whether representation of a client in arbitration constitutes the practice of law in Oregon;
- ensuring that OOSLs are subject to discipline in Oregon;
- filling any gaps in existing regulation, including what is meant by “temporary practice” in RPC 5.5; and
- gathering information about the frequency of OOSL participation in Oregon arbitrations

There was agreement among Task Force members, as an initial proposition, that a lawyer representing a client in an arbitration proceeding is engaged in the practice of law, no different than representing a client in court-based litigation.<sup>1</sup> The Task Force then turned to a review of Oregon RPCs 5.5 and 8.5. The Task Force acknowledged that RPC 5.5(c)<sup>2</sup> clearly contemplates the provision of legal services by OOSLs in connection with “pending or potential arbitration” proceedings without any kind of registration. The Task Force read RPC 8.5<sup>3</sup> to unequivocally subject OOSLs who provide or offer to provide legal services in Oregon to

<sup>1</sup> The Task Force recognized that certain arbitration forums allow representation by nonlawyers, and that such practice is outside the Task Force’s purview.

<sup>2</sup> Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice) provides in pertinent part:

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(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

\*\*\*

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

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(5) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

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<sup>3</sup> Rule 8.5 (Disciplinary Authority; Choice of Law) provides in pertinent part:

the disciplinary authority of the Oregon State Bar, although there was some question about the efficacy of such authority. Finally, the Task Force reviewed ORS 36.670, which expressly allows OOSLs to appear in arbitration proceedings in Oregon. There was some discussion about whether the statute prohibited the imposition of any regulations or requirements, but it was ultimately concluded that modest requirements wouldn't impinge with the statutory mandate.

To ensure it considered as wide a range of views as possible, the Task Force directed the following inquiry to arbitration organizations:

1. Have your administrators, arbitrators or participants identified any problems or concerns with the performance or conduct of out-of-state lawyers as advocates in Oregon arbitration proceedings?
2. Have there been any concerns or allegations of misconduct or incompetence?
3. Has your organization identified any significant difference in the outcome of proceedings when out-of-state lawyers are involved?
4. If out-of-state lawyers were required to register with the Oregon State Bar in order to appear in an Oregon arbitration, would that have any impact on the manner in which your organization handles the proceedings?

Responses were received from the American Arbitration Association, US Arbitration & Mediation, and the Arbitration Service of Oregon. None had experienced any problems with OOSLs and they were unanimous in opining that a registration requirement would create unnecessary barriers to client's ability to be represented by the lawyer of their choosing. The American Arbitration Association reported that there are only a handful of states that require OOSLs to register in order to appear in an arbitration and that lawyers and parties tend to avoid those jurisdictions, especially when insurance is a requirement.

A similar inquiry was sent to members of the ADR, Litigation, Business, Insurance and Consumer Law Sections of the OSB:

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

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1. Have you identified any problems or concerns with the performance or conduct of out-of-state lawyers as advocates in Oregon arbitration proceedings?
2. Have you identified any significant difference in the outcome of proceedings when out-of-state lawyers are involved?
3. Do you think it would be a good idea for the bar to require out-of-state lawyers appearing in Oregon arbitrations to register with the bar?

Nineteen lawyers responded. Of those, 10 were strongly opposed to any requirement for registration or certification of OOSLs; 4 were in favor and 5 were ambiguous. The principal arguments in opposition were that registration would create barriers to clients' free choice of counsel and risk the imposition of reciprocal limits imposed against Oregon lawyers. Some respondents also questioned the authority or propriety of the OSB regulating private dispute resolution proceedings. Those in favor cited the similarity of arbitrations to court proceedings and analogized a registration or certification obligation to the existing requirement for *pro hac vice* admission to appear in an Oregon court proceeding.

Synthesizing the many views expressed as well as their own experience and opinions, the Task Force identified the following factors as important to a final decision:

- There is no evidence, anecdotal or otherwise, to suggest that OOSL practice in Oregon arbitrations is currently a problem;
- Arbitrations are often complex and significant, comparable to court cases, and there is a similar need for protection of affected clients;
- Clients are typically unaware of the jurisdictional limits of a lawyer's practice and the corresponding differences in what recourse is available in the event of a fee dispute, malpractice claim or complaint of disciplinary misconduct;
- The guiding principle for practicing law in Oregon, including through *pro hac vice* or reciprocity admission, is "thou shalt be insured;"
- Registration would be a minor inconvenience and not anti-competitive;
- No registration program will assure that clients have full recourse against incompetent lawyers even if they have malpractice coverage;

- Compliance with any registration rule must be the obligation of lawyers, with no duty to monitor or enforce imposed on or expected of arbitrators; and
- Registration should not erect unnecessary or overly burdensome barriers to an out-of-state client's choice of counsel.

### **Conclusions and Recommendation**

After considering all the information received from within and outside the group, a majority of the Task Force concluded that the bar should not impose a certification or registration program on OOSLs in Oregon arbitrations. They found no evidence or other basis to indicate that a problem existed that would be corrected by a certification or registration; moreover, they had some concern that erecting such a barrier might have unfortunate consequences for Oregon lawyers who handle arbitrations in other jurisdictions.

A minority of Task Force members disagreed, concluding that protection of clients justifies the imposition of a modest certification requirement focusing on malpractice coverage. They are concerned that widespread and ever-increasing Internet advertising by OOSLs coupled with the growing use of arbitration to resolve disputes in a wider variety of practice areas will mean more OOSL practice in Oregon. A certification or registration program will assist the bar in monitoring the magnitude of temporary practice and ensuring appropriate action to protect clients.

While the majority of the Task Force recommends against any kind of certification for OOSLs in Oregon arbitrations, they recognize that the HOD resolution appears to require the BOG to "implement" such a program. Accordingly, the Task Force offers a proposed amendment to RPC 5.5 for the BOG's consideration if it determines implementation of a certification program is required. The proposal is a compromise between the desire of the minority to require malpractice insurance of all OOSLs in Oregon arbitrations. Task Force members recognize that lawyers in other jurisdiction are not required to have such insurance, and that mandating coverage would inappropriately intrude on an out-of-state client's ability to be represented by a lawyer of their choosing. Accordingly, the Task Force agreed that the rule should require *either* proof of malpractice coverage equivalent to that required of Oregon lawyers *or* that the client has been notified that the lawyer does not have the coverage required of Oregon lawyers. It was also agreed that in-house counsel (including government lawyers) should be exempt from the certification requirement. A question was raised whether to exempt collective bargaining arbitrations, but after discussion, the group concluded that no special treatment in that area is needed.

### **Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission;
- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or
- (5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide

legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

(1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and

(2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer

(i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or

(ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

The Task Force recognizes that certification, if required, will impose administrative burdens on the Oregon State Bar and on OOSLs and their clients. The costs to the bar can be alleviated by the fee, and any burden on the lawyers and clients is outweighed by the protection it will afford to clients of OOSLs, commensurate with those available to clients of Oregon lawyers.

Respectfully submitted,

OUT-OF-STATE LAWYERS IN ARBITRATION TASK FORCE

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**From:** Ann Fisher, Chair, Member Services Committee  
**Re:** Senior Lawyers Division

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### **Action Recommended**

Consider the recommendation of the Committee to create a Senior Lawyer Division as recommended in the Senior Lawyers Task Force Report of October 2009.

### **Background**

The Senior Lawyers Task Force recognized the value that the “baby boomers” and other experienced lawyers have made and will continue to make to the profession and to the public. It also recognized a widespread concern, however, that a large number of senior lawyers will continue to practice, without adequate support or assistance, past the point at which their health and abilities require a change. There was also concern that existing lawyer regulatory systems are not equipped to address the pressures that large numbers of aging lawyers will bring. The Task Force identified a variety of strategies to assist senior lawyers in addressing age-related deficits and risks, while harnessing their strengths and experiences, that will allow for dignified withdrawal from professional life while maintaining the quality of law practice expected by the public.

The Task Force considered the creation of a Senior Lawyers Division as the best way to implement the recommendations in its report. As envisioned by the Task Force, every OSB member would automatically become a member of the Senior Lawyers Division (SLD) upon reaching age 55. The SLD would be similar to the ONLD, but focusing on the needs of lawyers nearing the end of, rather than just starting out in, the practice of law.

The SLD would be charged with identifying and coordinating opportunities for senior lawyers to share their expertise and knowledge through activities including the delivery of pro bono and civic service and mentorship. The SLD would also organize educational and social opportunities targeting senior lawyers including CLEs, networking and social activities, retirement and financial planning seminars, and career transition counseling. The division could also act as the voice of senior lawyers within the OSB and develop a greater sense of community among senior lawyers. Like the ONLD, the SLD would have a liaison to the BOG.

The Members Services Committee voted unanimously to recommend the creation of a division for senior lawyer members with a caveat that the Budget and Finance Committee will need to discuss funding for division expenses at a later time.

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

The meeting was called to order by President Kathleen Evans at 1:00 p.m. on June 18, 2010, and adjourned at 3:15 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathleen Evans, Ann Fisher, Michelle Garcia, Michael Haglund, Gina Johnnie, Derek Johnson, Ethan Knight, Steve Larson, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, Maureen O'Connor, and Stephen Piucci. Staff present included Teresa Schmid, Sylvia Stevens, Rod Wegener, Jeff Sapiro (phone), Susan Grabe, Kay Pulju, and Teresa Wenzel. Present from PLF were Ron Bryant and Fred Ruby. Also present was Jessica Cousineau from the ONLD.

Friday, June 18, 2010

1. Departmental Presentation – Communications Department

Kay Pulju, Communications Manager, presented an overview of the Communications Department and its upcoming merger with the Member Services Department, after which the new department will be called Member and Public Services. Services provided by the current Communications Department include publication of the *Bulletin* and online BarNews; media and public relations for the bar ; special events, conferences, summits, and the former tent show; public education, LegalLinks, public pages of the website, pamphlets, and video; customer service, receptionists, and bar room rentals; and lawyer referral, modest means, and military assistance panels. Additional services anticipated after the two departments combined are development and maintenance of an MP3 library of CLEs, additional volunteer recruiting, team-based event planning, and ONLD mentoring.

2. Inspiration

Ms. Naucler read the commencement address given by The Honorable Mary Muehlen Maring of the North Dakota Supreme Court to the University of North Dakota Law School class of 2010. (See Exhibit 1)

3. Report of Officers

A. Report of the President

As written

B. Report of the President-elect

As written

C. Report of the Executive Director

As written

D. Oregon New Lawyers Division

1. ONLD Report

In addition to her written report, Ms. Cousineau reported that the ONLD was also in Baker City providing a CLE to the attorneys in the region.

4. Professional Liability Fund

A. General Update

Ron Bryant provided a general update on PLF activities. Claim volume appears to be trending downward. The PLF is implementing a trial college to train their outside defense counsel. The PLF continues to plan for the retirement of several claims attorneys, some of whom have been with the PLF since its inception.

B. Approve changes to Policy 4.400 (Settlement Authority)

Mr. Bryant summarized the proposed amendments to Policy 4.400 relating to the claims settlement authority of the claims attorneys and the Director of Claims, explaining that the changes are in response to increasing claim amounts.

Motion: Ms. DiIaconi moved, Ms. Fisher seconded, and the board unanimously approved the changes to PLF Policy 4.400 raising the settlement authority of the Director of Claims and claims attorneys.

C. Financial Update

Investment returns were up earlier in the year, but seem to be heading back down. The PLF continues to scan documents and the process is proceeding faster than expect. This has resulted in an increase to the current budget, but scanning is expected to be completed shortly.

D. Report on BarBooks™ Request

The PLF unanimously approved contributing \$600,000 to assist in making BarBooks™ a member benefit. The money will be paid in installments over a three-year period.

1. Miscellaneous

Mr. Zarov appeared by phone informing the board that he had received a Special Underwriting Assessment (SUA) appeal on June 18, 2010, and the timeframe for review was 30-60 days.

5. Joint Committee on BarBooks™

- A. Update

Ms. Evans informed the board that, with the PLF's contribution, the bar will be moving forward with the BarBooks™ project. Mr. Piucci and she announced the project to the local bars during their Eastern Oregon visit and the response was uniformly positive. Staff will continue to fine tune the project and get the word out to the members. Ms. Evans also confirmed that the subscription price for the remainder of 2010 will be prorated and existing BarBooks™ subscribers will get a pro rata refund as appropriate.

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

- A. Out of State Lawyers in Arbitration Task Force

1. Update

Ms. Stevens informed the board that the task force has met four times and is close to reaching a consensus about what to recommend to the board. Its principal focus has been on whether to require proof of and malpractice coverage.

- B. Mentoring Task Force

1. Update

Ms. Stevens provided the board with background and reported on activities of the Mentoring Task Force. The former president of the Utah State Bar gave a presentation at the first task force meeting, which was very helpful. Oregon's program will likely be similar to that of Utah and will include required and elective tasks that new lawyers will need to complete in the first twelve months of practice. Task force chair, Gerry Gaydos, anticipates a report for the board at its September 2010 meeting. The Chief Justice is excited about the program and would like to see it implemented for those who pass the bar exam in February 2011. Ms. Evans and Mr. Piucci received positive feedback when they discussed the program during their Eastern Oregon trip. It is anticipated that 200 mentors will be

needed by May 2011 and an additional 400 by September 2011. There likely will be a cost to the new lawyer participants. Subcommittees have been formed to consider what the program should look like, what the cost would be and how it would be administered, how to select mentors, possible changes to MCLE rules, and how to coordinate with existing local and specialty bar mentoring programs. Mr. Zarov assured the board that the PLF's "Learning the Ropes" will continue to be available to new lawyers.

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

A. Joint Access to Justice and Budget & Finance Committee

The committee is not yet prepared to make a recommendation regarding the RIS program to the board. It is waiting for additional information reflecting how much revenue a percentage fee structure is expected to bring.

B. Budget and Finance Committee

1. Audit of OSB Financial Statements for 2008 and 2009

The board received the Moss Adams audit. Minor procedural changes have been made to conform to auditors' recommendations.

Motion: Mr. Haglund moved, Mr. Piucci seconded, and the board unanimously passed the motion to accept the audit.

C. Executive Director Evaluation Committee

The committee continues to meet regularly and is developing an evaluation instrument.

D. Member Services Committee

1. Sustainability Awards

Ms. Johnnie reported on the committee's analysis of the Sustainable Futures Section's proposal for a sustainability award. The committee recommended a single award, the recipient of which will be determined by the Board's awards committee using the criteria suggested by the section.

During the discussion the following points were raised: whether the award focuses too much on office administration and differs significantly from current awards recognizing service to the bar and the community; whether it would be more appropriate for the

section to give this award ; whether the award criteria will favor large firms that have the most money to spend on sustainability and thus eliminate most smaller firms and solos; and whether sustainability is principally a “Portland” agenda. Ms. Evans reminded the board that it has incorporated a commitment to sustainability in the bylaws and an award would reflect that continuing commitment.

Motion: The board passed the committee motion to add the sustainability award to the existing President’s awards (See Exhibit 2). Ms. Naucner, Ms. DiIaconi, Mr. Knight, and Ms. Fisher opposed the motion.

E. Policy and Governance Committee

1. Email Requirement for all Members of the Bar

Motion: The board passed the committee motion to require all bar members to provide the bar with a valid email address. Staff will draft an amendment to Bar Rule of Procedure 1.11 and present it to the Supreme Court as soon as possible. Ms. Fisher opposed the motion.

Motion: The board unanimously passed the committee motion to require all bar members to provide the bar with at least a phone number or an e-mail address for the electronic membership directory. The board also encouraged staff to develop a mechanism for bar members to purchase an “enhanced” directory listing to include photographs and information about the member’s practice.

2. MCLE Rules Changes Relating to Teaching and Writing Credit

Motion: The board passed the committee motion to approve the changes to the MCLE Rules relating to teaching and writing credit. (See Exhibit 3)

F. Public Affairs Committee

1. OSB Court Fees Task Force Report

Mr. Piucci thanked Mr. Gaydos, Mr. Kent, Mr. Johnson, and Ms. Grabe for participation in the task force. Ms. Grabe distributed copies of the report (See Exhibit 4).

The task force considered where the courts are today financially; how to administer fees in light of access to justice and legal aid issues; and whether it was wise to fund courts long-term with fees. Two issues surfaced and will come to the board: (1) how to fund

legal aid adequately and fairly and (2) if law library fees, now a percentage, should be changed a flat fee.

The report acknowledges there are inconsistencies in fees but as all courts move to e-filing, that issue should resolve itself.

Motion: The board unanimously passed the committee motion to approve the task force report and forward it to the legislature.

2. ABA Red Flag Rule Appeal

Motion: The board unanimously passed the committee motion to join with the New York bar in filing an *amicus* brief regarding the ABA Red Flag Rule.

3. Parenting Plan Work Group Report

Motion: The board passed the committee motion to accept the Parenting Group Report (See Exhibit 5). Mr. Mitchell-Phillips opposed the motion.

8. Consent Agenda

Motion: Ms. Fisher moved, Ms. DiIaconi seconded and the board unanimously passed the Consent Agenda included the Appointments Committee recommendations (See Exhibit 6)

9. Good of the Order

Mr. Johnson asked about deferment of bar dues due to financial hardship. Ms. Schmid explained that members with both financial and mental or physical disabilities can apply for a hardship exemption. Other members unable to pay their bar dues typically elect for inactive status until they are in a better financial position.

The Honorable Mary Muehlen Maring, North Dakota Supreme Court, Commencement address to the UND Law School class of 2010.

In the words of the late Ted Koskoff, a civil trial lawyer:

If you are a lawyer, you stand between the abuse of corporate power and the individual.

If you are a lawyer, you stand between the abuse of governmental power and the individual.

If you are a lawyer, you stand between the abuse of judicial power and the individual.

If you are a lawyer, you are helping to mold the rights of individuals for generations to come.

If you think about those who have been part of our professional heritage, your thoughts would, I think, turn to some of these.

A Philadelphian in New York, the first Philadelphia lawyer, who undertook the defense of John Peter Zinger to protect his right to publish what he chose, free from censorship or interference. His name was Andrew Hamilton, and he was a lawyer.

You would see him at the trial of Captain Preston, another political trial. A trial that arose out of the Boston Massacre. His name was John Adams, and he was a lawyer.

You would see him at that miracle in Philadelphia, the Constitutional Convention of 1787, fighting for the Bill of Rights, which became the basis of American freedom. His name was James Madison. He was a lawyer.

I know you would see him at Gettysburg, with tears in his eyes, gaunt and morose, rededicating our country to the principles of equal justice for all. "As I would not be a slave, so I would not be a master." His name was Abraham Lincoln, and he was a lawyer.

I know we all see him, an elemental man fighting for one cause or another, and in Dayton, Tennessee, preaching the legitimacy of evolution. His name was Clarence Darrow, and he was a lawyer.

You would see him speaking to us from his wheelchair, lifting our spirits, making us stronger with his inspirational philosophy, "the only thing we have to fear is fear itself." His name was Franklin Delano Roosevelt. He was a lawyer.

You could see her standing before the podium in the U.S. Supreme Court chambers and insisting that her client, Gerald Gault, a 15-year-old boy, had the right to due process of law, a radical and dangerous proposition at the time. Her name is Amelia Lewis. She was a lawyer.

Certainly, we see him, passionate and stubborn, brilliant and volatile, a product of segregated education, whose extraordinary skills ended it, "Separate, but equal is a legal fiction. There never was and never will be any separate equality. Our constitution cannot be used to sustain

ideologies and practices which we as a people abhor." He is the ultimate long distance runner. His name is Thurgood Marshall. He was a lawyer.

We may also see him in Birmingham, Atlanta, and Portland, modest, unassuming, soft-spoken, but with the courage to face down the enemies of liberty and to march on despite threats to himself and his family -- using the civil justice system to bring the Klan, the Skinheads, and the other hate mongers to their knees. "Remember me by my clients." His name is Morris Dees and Elden Rosenthal, and they are lawyers.

You might see her in Congress and state legislatures advocating for women's rights. The first woman appointed to the federal bench. Her name is Burnita Shelton Matthews, and she was a lawyer.

You would see him pushing Hernandez v. Texas through the courts, winning Latinos equal rights protection under the 14<sup>th</sup> Amendment. Working with so few resources, he had to collect donations to pay the filing fees at the U.S. Supreme Court. His name is James De Anda, and he was a lawyer.

You would see them representing Salim Ahmed Hamdan, Osama Bin Laden's driver, taking on an unpopular cause and defending an unpopular person, challenging the constitutionality of executive power and trying the first war crimes trial of a Guantanamo detainee. Their names are Harry Schneider, Jr. and Brian Mizer, and they are lawyers.

Justice Brandies observed a century ago that "[t]here is a call upon the legal profession to do great work for this country." Many lawyers have answered this call. Lawyers not only have a responsibility to their clients; lawyers are the guardians of the rule of law.

## **2010 OSB SUSTAINABLE FUTURE SECTION (SFS) AWARDS**

### **SUSTAINABLE LAW OFFICE LEADERSHIP AND SUSTAINABLE LEADERSHIP**

The Sustainable Future Section is seeking nominations for a new annual awards program to recognize leadership in moving the legal profession and law office practices along the path of sustainability. The award program will recognize leadership in two categories: law office and individual lawyer.

#### **I. BACKGROUND AND PURPOSE**

On October 30, 2009, the Oregon State Bar (“OSB”) Board of Governors adopted several recommendations presented to it by the OSB Task Force on Sustainability.<sup>1</sup> One of the recommendations adopted was the formation of a new OSB section—the Sustainable Future Section. The Task Force further recommended five actions/initiatives to be undertaken by the Sustainable Future Section. Creation of an annual award to recognize leadership in sustainability efforts was one of these recommendations. The ten member Executive Committee of the Sustainable Future Section has met to discuss the awards program and believes that the award should be included as part of the annual OSB Awards program.

The mission of the OSB Sustainable Future Section is

to support sustainability by providing institutional expertise to the Oregon State Bar and its members, by educating attorneys and other legal professionals on sustainability and its integration into the law and in best office practices and by promoting a dialogue on how law interfaces with the needs and interests of future generations.

The Sustainable Future Section believes that the awards program will advance the mission of the Section, particularly as it pertains to educating attorneys and legal professionals about the relationship between sustainability and the practice of law and to promoting a dialogue on how law interfaces with the needs and interests of future generations.

The purpose of these awards is to recognize the efforts of law offices and individual lawyers who make exceptional voluntary efforts in advancing the societal goal of sustainability. Although advancements in providing paid legal services are important, the awards are not intended to recognize them.

<sup>1</sup> See <http://www.osbar.org/docs/resources/09SustainabilityTaskForceReport.pdf> for the full Task Force Report.

## II. OSB SUSTAINABLE LAW OFFICE LEADERSHIP AWARDS

One award may be given annually for a law office.

1. Eligibility. A law office located in the State of Oregon comprised of OSB members.
2. Criteria. The law office has demonstrated leadership in sustainability manifested through some combination of the following modes:
  - a. Firm policy or policies
  - b. Office operations
  - c. Training/education of office personnel
  - d. Transportation practices
  - e. Firm support of organizations or initiatives through donated time, resources or other means
  - f. Other comparable modes

## III. OSB SUSTAINABLE LEADERSHIP AWARDS

Up to two awards, one in each of two eligibility categories, may be given annually to lawyers who demonstrate leadership in moving the legal profession to embrace sustainability as a goal of the profession.

1. Eligibility. The two eligibility categories are: (a) an active or inactive OSB Member who passed the bar within 10 years of the date of application; and (b) an active or inactive OSB member who passed the bar more than 10 years from the date of application.
2. Criteria. A lawyer who has demonstrated leadership in sustainability by volunteering time to move any of the following along the path of sustainability:
  - a. The legal profession
  - b. Law office operations
  - c. Law schools
  - d. Judicial or administrative proceedings
  - e. Other forums where law or the practice of law provides the primary context

## IV. NOMINATING GUIDELINES

To ensure full consideration of the nominee's contributions, your nomination packet should include:

1. Award Nomination Forms. Fill in all requested information and specify the desired award category. A letter can be substituted if it includes the same information.

2.      Supporting Detail. The thoroughness of this information can make the difference in the selection process. Supporting detail may include resume information, narratives describing significant contributions and special qualifications, a list of references with phone numbers, letters of recommendation, articles, copies of firm policies or programs.
3.      Who May Nominate. Any lawyer may nominate one or more law office or lawyers, and self-nominations are accepted and given the same weight as a nomination by others.
4.      Submitting Nominations. Nominations must be postmarked or delivered by 5:00 p.m. Friday, July 23, 2010, by one of the following methods: U.S. Mail: Oregon State Bar, Attn: #####, 16037 SW Upper Boones Ferry Rd., P.O. Box 231935, Tigard, Oregon 97281-1935; email: #####@osbar.org. Electronic submissions are preferred. For further assistance, please contact #####.

#### IV      SELECTION PROCESS

Nominations for the SFS Sustainable Leadership Awards will be reviewed by the SFS Executive Committee designated review panel. No member of the review panel or Executive Committee may be eligible for an award. Awardees shall be selected by consensus.

#### V.      AWARDS RECOGNITION EVENT

Award recipients will be honored at the SFS Annual Meeting, date to be announced.

**2010 OSB SUSTAINABLE FUTURE SECTION (SFS) AWARDS  
SUSTAINABLE LAW OFFICE LEADERSHIP  
AND  
SUSTAINABLE LEADERSHIP**

Nominee Information Sheet

Nominee Name \_\_\_\_\_ Bar No.: \_\_\_\_\_

Office Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Office Telephone \_\_\_\_\_ Email \_\_\_\_\_

**Award Category:** Please indicate the award category for which this nomination is submitted (select one)

- ☐ Sustainable Office Leadership
- ☐ Sustainable Leadership (Individual 10 or fewer years)
- ☐ Sustainable Leadership (Individual more than 10 years)

Based on the criteria for the award indicated above, explain why you believe the nominee is deserving of this honor. You are encouraged to attach additional information as outlined in the nomination guidelines to completely describe the nominee's unique qualifications.

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Nominating Group/Person \_\_\_\_\_

Contact Person \_\_\_\_\_

Office Telephone \_\_\_\_\_ Email \_\_\_\_\_

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2.     Supporting Detail. The thoroughness of this information can make the difference in the selection process. Supporting detail may include resume information, narratives describing significant contributions and special qualifications, a list of references with phone numbers, letters of recommendation, articles, copies of firm policies or programs.
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#### IV     SELECTION PROCESS

Nominations for the SFS Sustainable Leadership Awards will be reviewed by the SFS Executive Committee designated review panel. No member of the review panel or Executive Committee may be eligible for an award. Awardees shall be selected by consensus.

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**2010 OSB SUSTAINABLE FUTURE SECTION (SFS) AWARDS  
SUSTAINABLE LAW OFFICE LEADERSHIP  
AND  
SUSTAINABLE LEADERSHIP**

Nominee Information Sheet

Nominee Name \_\_\_\_\_ Bar No.: \_\_\_\_\_

Office Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Office Telephone \_\_\_\_\_ Email \_\_\_\_\_

**Award Category:** Please indicate the award category for which this nomination is submitted (select one)

- ☐ Sustainable Office Leadership
- ☐ Sustainable Leadership (Individual 10 or fewer years)
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Based on the criteria for the award indicated above, explain why you believe the nominee is deserving of this honor. You are encouraged to attach additional information as outlined in the nomination guidelines to completely describe the nominee's unique qualifications.

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Nominating Group/Person \_\_\_\_\_

Contact Person \_\_\_\_\_

Office Telephone \_\_\_\_\_ Email \_\_\_\_\_

# 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.

# OSB COURT FEES TASK FORCE

## INITIAL REPORT

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JUNE 2010

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Oregon State Bar Task Force Members

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## **Executive Summary**

The Oregon State Bar Board of Governors commissioned a task force of attorneys, judges, and trial court administrators to advise the legislative Interim Committee on Justice System Revenues. The charge to the task force was to prepare short-term and long-term recommendations 2009 HB 2287, the statutory fee structure, and court funding. This report contains the short-term recommendations of the task force, as approved by the BOG.

## **Key Findings**

### **General Findings**

- The courts are a critically important, constitutionally mandated, core function of government.
- Courts must be open and accessible to all Oregonians.
- The OSB's highest legislative priority is open and accessible courts.
- Keeping courts open and accessible requires stable and adequate funding.

### **Specific Findings**

- The current statutory fee structure is confusing and complex even to experienced practitioners.
- Any changes to the fee structure must not impede reasonable access to justice, including access by indigent persons, un-represented litigants, and middle-income Oregonians.
- The legislature should simplify the current fee structure to make it more predictable and more uniform.
- Any changes to the fee system must maintain adequate funding for services critical to the justice system, such as Legal Aid services.
- Some of the fees enacted in 2009 HB 2287 have created unintended and high transaction costs and/or unduly impaired access to justice, and should be modified or allowed to sunset.
- Court-imposed financial obligations upon conviction of a crime or offense are an important part of the accountability process of the justice system.
- Much of the liquidated and delinquent court-imposed debt cannot be collected and/or is owed to victims of crime, and does not represent a reasonable opportunity to increase revenue to the state or local governments.

## **Recommendations**

- Consolidate many existing fees that occur in the lifetime of a case (e.g., ex parte order and judgment fee, and fees for routine motions) into the filing and first response fees.

- Enact consistent fee amounts for motions and other individual fees, so they are consistent within and among different types of cases.
- Modify the following specific fees:
  - Sunset the \$10 ex parte order and judgment fee. This fee imposes excessive administration costs on litigants and the courts.
  - Establish a statutory cap on fees in cases involving multiple parties and/or large prayer amounts. The current structure has created excessive fees in some cases.
  - Sunset the expunction fee in cases where an arrest occurred but no conviction resulted. Imposing a substantial fee in these cases does not reflect court workload and imposes an unfair burden on persons not convicted of a crime.
  - Restore a statutory limit on the amount retained from release security deposits, but at a higher limit than the previous \$200 limit.
  - Modify the mediation/ conciliation fee and law library fee to a fixed amount set by statute, rather than a percentage of the filing fee set by individual counties.
- The legislature should encourage efficient, effective and fair collection of court-imposed financial obligations, maintain long-term judgments for accountability, and develop a mechanism to classify/ categorize debt that reasonably can be expected to be collected.

## **Introduction**

An open, accessible and adequately funded state court system is the OSB's highest legislative priority. This includes funding our constitutional structure of state government, maintaining public access to justice, ensuring our economy succeeds, and maintaining public safety through the speedy and fair adjudication of criminal and civil matters.

The bar welcomed the creation in HB 2287 of the Joint Interim Committee on State Justice System Revenues as an opportunity for the legislature to review Oregon's filing fee and criminal fine structure. The bar formed a Court Fees Task Force to assist and provide the perspective of lawyers and other users of the justice system to the Joint Interim Committee.

This is the preliminary OSB Court Fees Task Force Report. A final report will include long range recommendations. The task force charge for the short term was to identify specific fees and fines to be retained, amended or eliminated to ensure open and accessible courts at all levels.

The OSB Court Fees Task Force has studied the impact of 2287(2009) and HB 3696 (2010) on Oregon's filing fee structure. That legislation established fees and surcharges to fund directly the operation of the Oregon Judicial Department and the Public Defense Services Commission by creating the Judicial System Surcharge Account (JSSA) and directing fees and surcharges into that account. The task force concluded that changes can be made to that structure of fees and surcharges to remove financial barriers to access to justice and to ensure that disputes involving private and public rights can be initiated and adjudicated as guaranteed by Article I, Section 10 of Oregon's Constitution.

When the judicial system is not funded adequately, the public, business, and members of the bar are adversely affected. Delay is inevitable when court resources are stretched thin and courts are partially closed, since constitutional and statutory priorities push civil and non-emergency family matters to the bottom of the docket as criminal defendants have a constitutional right to a speedy trial. Yet, all cases are of great importance to the parties involved. Justice delayed is justice denied.

The bar supports the efforts of the legislature and the judicial department to fund state courts. Attorneys recognize the importance and the necessity of court filing fees and fines in financing state government, including funding the justice system. The passage of HB 2287 in 2009, however, drew the attention of the bar to fees and violation fines more sharply than in the past. Many members of the bar and the public are concerned over the proliferation and increase in court fees which impacts access to justice.

## **Oregon Court Fee and Fine System**

### **Court Fees**

Base court fees in Oregon are set by statute. Fees vary by type of case. In civil actions, the fees vary based on the dollar amount at issue and with the number of parties involved, except for

claims under \$10,000 and residential landlord tenant matters. Fees and surcharges created or increased by HB 2287 will sunset on June 30, 2011 unless renewed by the legislature.

Examples of several current fee calculations illustrate the fee structure.

- In a divorce case, the petitioner's filing fee ranges from \$256 to \$405, depending on the county. The respondent's fee ranges from \$154 to \$319.
- In a civil business case, if a plaintiff alleges two out-of-state companies have caused \$300,000 harm to an Oregon company, the filing fees for the plaintiff would be \$751 and for each defendant \$399.
- The fee in a probate proceeding with the probate estate value of \$800,000 is \$559.
- In addition, fees are charged for court trials (\$110 per day), jury trials (\$150 per day for 6 person juries and \$225 per day for 12 person juries), recorded hearing fees, if the party wants the hearing recorded (\$45 for 3 hours or less, \$110 for more than 3 hours), motions (\$50 for the moving party and \$35 for the respondent), and most orders (\$10).
- If parties wish to use the court to assist in settling a dispute (which is encouraged), the parties must pay \$50.

A fee schedule from Clackamas County Circuit Court, effective May 1, 2010, is attached as Appendix 1.

In order to support the judicial system and provide access to justice and the courts, the legislature has enacted specific fees to ensure that the judicial system operates effectively.

These fees include:

- Fees that support legal services programs for low income people and agriculture mediation programs (ORS 21.480), which vary depending on case type from \$10.50 to \$58.
- Law library fees (ORS 21.350), which are 28 percent of the base filing fees. Note that the law library fee is \$154 in the civil case example.
- Dispute resolution fees (ORS 36.170) ranging from \$2 to \$6, which support dispute resolution programs housed at the University of Oregon and Portland State University. See also ORS 36.155, 36.175, 36.179.
- A \$1 fee in adoption and divorce initial filings to support Department of Human Services Office of Children's Advocate. (ORS 417.825)
- In family law proceedings, a \$10 fee to support law school domestic violence programs (ORS 21.111(4)).
- In family law proceedings, at the option of the county governing body, a fee for mediation and conciliation services ranging from \$75 to \$224 for petitioners and up to \$165 for respondents. (ORS 21.112)

If a party's fees are deferred, HB 2287 Section 34 establishes an additional \$50 to \$200 fee as an addition to the ORS 1.202 collection account fee. Fees over \$100 are to be paid to the Judicial System Surcharge Account ("JSSA"). These fees are intended to reflect the additional costs incurred to collect accounts receivable.

## **Criminal Fees and Fines**

The system for determining fines for violations is complex, varying with the court into which the violation is cited. The system for distribution of fine revenue received is also difficult to understand, and again depends to a great extent on whether the fine is imposed in circuit, municipal or justice court.

In addition to the fines and fees already charged against criminal defendants, HB 2287 imposed these:

- Offense surcharges. On conviction of any crime or violation (excluding parking violations), Section 2 of HB 2287 requires the trial court to impose an offense surcharge in the nature of a fine in the amount of \$35 for felonies and misdemeanors and \$45 for violations. Surcharges imposed in circuit court are deposited in the JSSA.
- Security release deposits. Before October 1, 2009, the court retained 15 percent of a criminal defendant's security release deposit (bail) as a service charge up to \$200. Section 9 eliminates the \$200 cap: the court's 15 percent charge is unlimited, unless a judge orders a lower amount or waives the fee. (For example, a \$100,000 security amount for a defendant's release from jail would require a \$10,000 security deposit which would result in a \$1,500 security release cost to the person who posted the security deposit.)
- Bench probation fees and probation violation assessments. Section 21 of the bill requires the defendant to pay a \$100 fee for bench probation with a \$25 fee for each probation violation.
- Diversion program. In addition to DUI and marijuana diversion fees, the defendant pays a \$100 program administration fee under Section 26.
- Expunction fee. In addition to a fee payable to the Oregon State Police, HB 2287 created a fee to file a motion to set aside an adult record of arrest or conviction (expunction of criminal records), Section 27 of the bill calls for a fee of \$250. This fee applies both to guilty and not guilty dispositions. OJD legal counsel advises that this fee may be waived in criminal actions.
- Collection account/deferred payment fee. If a fee or fine is not paid when imposed, the court adds a collection fee of \$50 to \$200 pursuant to Section 34. Amounts in excess of \$100 are deposited in the JSSA.

These fees and surcharges apply to cases in municipal, justice and circuit courts. HB 2287 clarifies that most of the fines and fees it generates are payable to the level of government of the court that imposed them, e.g., fines and fees imposed in municipal court are payable to the city and those imposed in justice court to the county.

## Principles

- 1) Access to Justice. Maintaining an open and accessible court system to make the rule of law a reality and ensure that everyone has access to the court system to resolve disputes is an integral part of our constitutional form of government. The filing fees dedicated for the support of legal services historically have been and remain crucial to ensure access to justice for low income Oregonians.

- 2) Strong Courts Help Build Strong Communities. The courts maintain public safety and social and economic order through the timely, efficient and fair adjudication of criminal offenses and civil disputes.
- 3) Core Function of Government. The judicial system is a core function of government and should be funded by General Fund dollars. The judicial system has a constitutional mandate to deliver justice. It should not be scaled back in lean economic times.
- 4) Constitutional and statutory mandate. State courts do not solicit business; nor do they turn away cases for lack of resources. Courts have constitutional and statutory mandates to hear certain types of cases within certain time constraints.
- 5) Revenue generation. It is appropriate for the judicial system to generate revenue. In *Allen v Employment Department*, 84 Or App 681 (2002), the imposition of filing fees withstood challenge in the courts under Article I, section 10 of the Oregon Constitution, which requires that “justice shall be administered, openly and without purchase\*\*\*.” However, the revenue generated from fees alone will never adequately fund the courts fully, nor should it.
- 6) Balance. A healthy fee structure is a balance between generating revenue and the policy to preserve access to justice for all and an impartial judiciary.
- 7) Fee Structure. In structuring court fees and fines, the fee structure should be transparent, simple and understandable for Oregonians who use the courts.
  - Fees should not impede reasonable access to justice.
  - Fees and fines from violations should be uniform across the state and from one judicial district to the next.
  - Fees should be cost effective and transaction costs should be minimized taking into consideration the level of court resources involved.
- 8) As stewards of public funds, OJD must ensure that parties who are granted fee waivers or deferrals are qualified for them.
- 9) Revenue Neutrality. Changes proposed to the fee and fine structure should be revenue neutral at least for the 2011–13 biennium with respect to the income anticipated from HB 2287 in the 2009–11 biennium in the absence of adequate funding.

## Findings

### General findings

- People come to court to seek fair, prompt and effective justice.
- Court filing fee revenue should accrue to the general fund, except for designated fees.
- Thirty five percent of the revenue generated from HB 2287 is used to support the Public Defense Services Commission.

- The courts have no control over the volume or kinds of cases that will be filed and therefore budgeting based on revenue generated from fees is speculative.
- The courts have no control over selection of who will owe financial obligations to the state from court filings or adjudications. The court cannot deny service to those who have no ability to pay the debt imposed from a deferred fee or a fine imposed on conviction of a crime or violation.
- The transaction costs for some new fees – especially the *ex parte* order and judgment fees – are burdensome for litigants, lawyers and the courts. The transaction costs for litigants can be many times the amount of the fee because the attorney has to bill the client for the time spent standing in line to determine and pay the correct fee.
- Access to justice
  - Fees and fines in criminal actions have been increased to address budget shortfalls. The result is a complex and confusing structure that imposes fees at most stages of litigation leading to high transaction costs for litigants and the court, and to unreasonably high fees in some instances.
  - Access can be a problem for middle income people who do not qualify for fee waivers or deferrals. Under the current structure, with virtually every court service there is a fee. Citizens will eventually become disillusioned with the system.
  - Individuals and businesses have helped fund the courts through payment of taxes. Vulnerable and indigent citizens are also entitled to reasonable access to courts.
  - Dedicated filing fees are crucial to provision of legal services and access to justice for low income Oregonians.
- Administrative issues
  - The administration of the current system is impeded by the court's antiquated technology. The fee structure must work within this system, at least until an appropriate system is in place.
  - Uniformity in fee schedules across the state will assist in implementing the e-Court system.
  - There is inconsistency in the fees charged from court to court, and there **is** inconsistency in the application of fees within the same court.
  - OJD has substantial accounts receivable, mostly in the form of unpaid and largely uncollectible judgments for criminal fines.
- Revenue. The Judicial Department is anticipated to collect a total of \$278.4 million in revenues during the 2009-'11 biennium, including \$161.7 million from fines and forfeitures, \$104.5 million from state court fees and \$6.9 million in other revenue. Only \$25.1 million of its revenue goes to the court system itself and only \$50.6 million goes directly to the General Fund. The majority of OJD revenue is dedicated to recipients other than the court system. The recipients who receive these dedicated dollars collected by OJD – dollars that are outside the pressures of the General Fund – include counties, cities, several special recipients and the beneficiaries of the Criminal Fine and Assessment Account.
  - Revenues collected by OJD include amounts added to the base filing fees to support various services related to the justice system, including legal services, law libraries, law school domestic violence programs, mediation programs, and local mediation/ conciliation programs in domestic relations cases. Specifically designated fees have been used to support specific programs which assist in providing access to justice and assist in avoiding citizens' disillusionment with the

judicial system. These designated fees are added to the base filing fees and support various services.

- The law library fee is a percentage whereas other fees are fixed and not variable.
- In some local jurisdictions, municipal and justice courts have taken an increasing share of traffic violation cases in several counties, the fines from which inure to the benefit of the cities and counties. This trend has substantially reduced the potential revenue to the state.
- OJD charges and retains an administrative assessment of 8% of the revenue it collects, the use of which is restricted to efforts associated with the collection of revenue. In addition, the department receives a portion of the county assessment that may only be used to address court facility security issues.

## **Findings Specific to Practice Areas**

### **Probate and Family Law**

- In family and probate litigation, required practice involves filing multiple motions and seeking multiple orders, all of which incur additional individual small fees with large transaction costs for attorney time.
- In some family law cases, the fees are inconsistent. A motion for a set over or to compel production in a pre-judgment dissolution case requires payment only of the \$10 ex parte order fee; in a post judgment modification the same procedure would require payment of a \$50 motion fee plus a \$10 order fee.
- Fees may create special problems in protective proceedings (guardianships and conservatorships) in which the protected persons are indigent and are unable to complete an application for a fee waiver or deferral.
- Small conservatorship estates can be depleted by the repeated imposition of the annual accounting fees of \$100. (Example: a five year old who inherits \$5,000 that is placed in a conservatorship would lose \$1,300 (and more in interest foregone) in annual accounting fees, not counting the conservatorship administration costs and attorney fees to deal with the paperwork for processing the annual fee, before gaining access to the funds upon reaching age 18.)

### **Civil Practice**

- The current fee structure specifies five different surcharges based on the amount in issue and adds an additional amount for each additional party, without limit.
- Some civil cases (including lien, foreclosure, securities, partnership and franchise matters) require joinder of many parties. The current multi-party fee severely affects litigants in these cases.
- The amount at stake and the number of parties in a case may indicate to some extent the amount of court resources that a case will require. The current fee structure places too much weight on these factors, and the result can be a significant barrier to access to justice.

- The task force received information that the multi-party fee and the fee based on amounts at issue are motivating some litigants to file in federal court rather than filing in state court. The task force received a report from the construction law practitioners of a case in which the prayer is roughly \$46,000, but 65 parties are involved. Plaintiff's filing fee in that case will be nearly \$19,000. The amount of the required fee sometimes exceeds the amount of the claim. Middle-income clients cannot afford such fees, nor would some qualify for a fee waiver or deferral.

### **Criminal Practice**

- Some courts have implemented procedures to waive the expunction fee (on the advice of OJD legal counsel); others have ruled it must be paid. The fee applies only to adult court records and to motions to set aside adult records of arrest, where the person arrested was not prosecuted or not convicted.
- Prior to passage of HB 2287, the state could retain 15 percent of a criminal defendant's security deposit as a security release cost, up to a cap of \$200. HB 2287 removed this \$200 cap but left unchanged the judicial discretion to order a different amount be retained or to waive the fee entirely. Some courts have declined to exercise this discretion or believe their authority has been removed. The result is imposition of a security release fee which does not reflect the actual cost of the service.
- In general, due to local discretion to establish violation bureau fine amounts under ORS 153.800, fines for violations are unpredictable from court to court.
- The amount written on a violation citation as "bail" may not have a relationship to the actual amount owed following adjudication.

## **Recommendations**

The fee and violation fine structures should be simplified, streamlined and applied statewide to be more transparent, predictable and uniform.

### **Civil Cases**

1. Initial filing fee for plaintiff and defendant should be increased at first appearance and thus avoid many of the fees currently imposed as litigation progresses. Revenue now generated from fees imposed as litigation progresses should be included in first appearance fees.
2. The Chief Justice Order 09-052 authorizes waiver of the multiple party fee in excess of five additional parties after considering whether the fees impose a hardship on the parties and the level of judicial resources necessary to process that case. In practice, however, courts rarely do so.
3. Civil filing fees should be based on the complexity of the matters brought before the court.
  - o The number and amounts of these steps should be simplified from the current system.
  - o A cap should be placed on civil filing fees: in no event should a filing fee exceed this cap, regardless of the amount in issue or the number of parties.

- Charge higher fees for motions that require substantial court resources, e.g., summary judgment motions.
- Eliminate fees for events in cases that require little court time, e.g., the *ex parte* order fee and routine motion fees.
- Increase fees for court settlement conferences in which substantial judicial resources are required (i.e., over three hours).
- 4. Establish a default fee that applies to all proceedings other than those civil actions for which a calculated fee is charged that is set by the amount claimed as damages.
- 5. Eliminate yearly probate and conservatorship accounting fees for modest estates.
- 6. Eliminate fee anomalies, e.g., charge the same fee for the same service in a dissolution as in a modification proceeding.
- 7. With respect to dedicated fees:
  - Institute a uniform statutory fee amount for mediation and conciliation services in domestic relations cases.
  - Set uniform statutory amount for law libraries as opposed to percentage of filing fees.
  - Maintain the dedicated fee for the support of legal services for low income Oregonians.
- 8. Fee waiver or deferral process.
  - Streamline the process by which litigants petition for fee deferrals or waivers.
  - Develop a statewide web based fee waiver or deferral form for all judicial districts.
  - The legislature should classify or categorize outstanding debt that cannot reasonably be collected.

### **Criminal Cases and Violations**

- 9. Eliminate the fee for expunctions and motions to set aside records of arrest.
- 10. Re-institute a cap on the amount the state can retain as a fee for accepting and administering security release deposits. Consider increasing the cap from the former level of \$200 to \$750.
- 11. Simplify the fine structure for violations, and make the structure uniform and more transparent statewide. One base fine table should be mandatory for state courts, and local discretion to set a higher schedule should be eliminated.

**CIRCUIT COURT FEE SCHEDULE**  
**OREGON JUDICIAL DEPARTMENT**  
**EFFECTIVE: MAY 1, 2010**

**CLACKAMAS**

**Clarification**  
**FEE CHANGE**

Code Total Fee

**Plaintiff:**

Filing action, suit, proceeding ("default fee" under ORS 21.110 (6)(a))	CVL5	197.00
Second and each additional moving party filing action, suit, proceeding ("default fee")	CVLC	197.00
Additional Party Fee	APA6	150.00

Claim of \$10,000 or less	CVL3	137.00
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**Defendant:**

Filing or appearance ("default fee" under ORS 21.110 (6)(a))	CVL6	197.00
Second, and each additional responding party ("default fee")	CVLD	197.00

Claim of \$10,000 or less	CVL4	137.00
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**CIVIL ACTIONS FOR RECOVERY OF DAMAGES**

**Plaintiff:**

Plaintiff filing action, suit, proceeding (over \$10,000 to \$49,999)	CVL1	197.00
Second and each additional moving party filing action (over \$10,000 to \$49,999)	CVLA	197.00
Additional Party Fee (over \$10,000 to \$49,999) (except first named defendant)	APA7	150.00
Each Plaintiff filing action, suit, proceeding \$50,000 to \$149,999	CVA1	335.00
Additional party fee when claim is \$50,000 to \$149,999 (except first named defendant)	APA2	288.00
Each Plaintiff filing action, suit, proceeding \$150,000 to \$499,999	CVA3	399.00
Additional party fee when claim is \$150,000 to \$499,999 (except first named defendant)	APA3	352.00
Each Plaintiff filing action, suit, proceeding \$500,000 to \$999,999	CVA5	463.00
Additional party fee when claim is \$500,000 to \$999,999 (except first named defendant)	APA4	416.00
Each Plaintiff filing action, suit, proceeding over \$1,000,000	CVA7	527.00
Additional party fee when claim is over \$1,000,000 (except first named defendant)	APA5	480.00

**Defendant:**

Defendant filing response to action, suit, proceeding from \$50,000 to \$149,999	CVA2	335.00
Defendant filing response to action, suit, proceeding from \$150,000 to \$499,999	CVA4	399.00
Defendant filing response to action, suit, proceeding from \$500,000 to \$999,999	CVA6	463.00
Defendant filing response to action, suit, proceeding over \$1,000,000	CVA8	527.00

**CIVIL ACTIONS - THIRD PARTY COMPLAINTS**

**Plaintiff:**

Plaintiff Filing Third-Party complaint \$10,000 or less	TPC1	137.00
Plaintiff Filing Third Party complaint over \$10,000 to \$49,999	TPC2	197.00
Plaintiff Filing Third-Party Complaint \$50,000 to \$149,999	TPC3	335.00
Plaintiff Filing Third-Party Complaint \$150,000 to \$499,999	TPC4	399.00
Plaintiff Filing Third-Party Complaint \$500,000 to \$999,999	TPC5	463.00
Plaintiff Filing Third-Party Complaint over \$1,000,000	TPC6	527.00

**Defendant:**

Defendant Filing Third-Party appearance \$10,000 or less	TPA1	137.00
Defendant Filing Third-Party appearance over \$10,000 to \$49,999	TPA2	197.00
Defendant Filing Third-Party Response \$50,000 to \$149,999	TPA3	335.00
Defendant Filing Third-Party Response \$150,000 to \$499,999	TPA4	399.00
Defendant Filing Third-Party Response \$500,000 to \$999,999	TPA5	463.00
Defendant Filing Third-Party Response over \$1,000,000	TPA6	527.00

**CIVIL FINES**

Civil Fines imposed	CVFN	actual amount
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**COPIES**

Copies of Audiotape, Videotape, or any information provided on electronic media	CP	10.00 per medium
Certified copies of letters, files, testamentary, etc.	CP	5.00 plus .25/page
Copies of records, files, documents, court rules, etc	CP	.25 per page
FAX - sent outgoing or incoming as a courtesy convenience for parties, public, or counsel	CP	\$2 first page, plus \$1 ea additional page

**COURT REPORTER FEE**

CIRCUIT COURT FEE SCHEDULE  
OREGON JUDICIAL DEPARTMENT  
EFFECTIVE: MAY 1, 2010

**CLACKAMAS**

**Clarification  
FEE CHANGE**

Court Reporter Fees	Code	Total Fee	
	RPFE	actual amount	
DOMESTIC RELATIONS CASES			
Annulment or Separation:		100%	50%
Petitioner, moving party	DRA1	380.00	190.00
Respondent	DRA2	304.00	152.00
Custody or Support of Child Determination Under ORS 109.103:			
Petitioner, moving parent	DRC1	370.00	185.00
Respondent	DRC2	294.00	147.00
Motion to modify custody or child support determination	DRC3	100.00	50.00
Response to motion	DRC4	75.00	37.50
Dissolution:			
Petitioner, moving party	DRD1	381.00	190.50
Respondent	DRD2	304.00	152.00
Dissolution of Domestic Partnership:			
Petitioner, moving party	CVL1	197.00	98.50
Respondent	CVL2	197.00	98.50
Filiations petition under ORS 109.124 to 109.230:			
Petitioner, moving party	DRF1	370.00	185.00
Respondent	DRF2	294.00	147.00
Motion to modify filiations determination	DRF3	100.00	50.00
Response to motion	DRF4	75.00	37.50
Motion After Entry of Dissolution, Annulment, or Separation Judgment:			
Moving party modification motion after judgment entry	DRM1	153.00	76.50
Moving party modification motion one year or less after judgment entry	DRM5	150.00	75.00
Moving party motion other than modification	DRM3	50.00	25.00
Response to modification motion	DRM2	115.00	57.50
Response to Motion other than modification	DRM4	40.00	20.00
Motion to Enforce Parenting Time:			
Moving party motion	DRP1	98.00	49.00
Response to motion	DRP2	35.00	17.50
EMANCIPATION OF JUVENILE			
Application for emancipation	EMJ1	150.00	
EXECUTION			
Issuing writ of execution	WRIT	18.00	
EXEMPLIFICATION			
Per Exemplification	CP	10.00 plus .25/page	
EX-PARTE ORDER OR JUDGMENT FEE			
Filing or submission of ex-parte order or judgment for judge's signature	EOJF	10.00	
Filing or submission of ex-parte order or judgment for judge's signature - District Court	EOJ1	10.00	
EXPUNCTION APPLICATION FILING FEE			
Filing application for expunction under 137.225 (1)	EXAP	250.00	
Filing application for expunction under 137.225 (1) - District Court	EXA1	250.00	

**CIRCUIT COURT FEE SCHEDULE**  
**OREGON JUDICIAL DEPARTMENT**  
**EFFECTIVE: MAY 1, 2010**

**CLACKAMAS**

**Clarification**  
**FEE CHANGE**

Code Total Fee

**FED-RESIDENTIAL**

Plaintiff filing complaint (These fees and surcharges are non-refundable)	FED1	67.00
Defendant, demanding trial (These fees and surcharges are non-refundable)	FED2	110.00
Plaintiff's additional fees after defendant demands trial (These fees and surcharges are non-refundable)	FED3	63.00
Issuing notice of restitution	FED4	3.00
Issuing writ of execution of judgment	FED5	18.00

**FIREARM PROCEEDINGS**

Petition from Firearm Possession or Purchase Denial	FIR1	197.00
Petition from Concealed Handgun License Denial	FIR2	197.00

**FOREIGN JUDGMENT**

Filing copy of foreign judgment and affidavit under ORS 24.115 and 24.125	FJG1	41.00
Filing copy of foreign child custody determination under ORS 109.787 (UCCJEA)	FJG2	41.00
Filing copy of foreign guardianship or conservatorship under ORS 125.842 or ORS 125.845	FJG3	41.00

**FORMS**

Forms Sales	FORM	Actual cost
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**GARNISHMENT**

Issuing writ of garnishment	GARN	18.00
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**HABEAS CORPUS**

Petition for writ of habeas corpus	HAB1	29.00
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**HEARING FEES**

Hearing Fees:		
3 hours or less	HRGV	45.00
More than 3 hours	HRGW	110.00

**JUDGMENT**

Filing and entering transcript of judgment	TRJ1	7.00
Making/issuing transcript of judgment	TRJ2	7.00
Transcript of judgment in District Court Cases	TRJ9	7.00
Preparing certified copy of satisfaction under ORS 18.225(5)	SAT1	6.00
Preparing clerk's certificate of satisfaction after motion to court under ORS 18.235(10)	SAT2	5.00

**JUDGMENT DEBTOR EXAM**

Proceedings in court other than court of original judgment under ORS 18.265	JDE1	4.00
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**MAILING COSTS**

Actual Costs to mail documents, etc.	CP	Actual Cost
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**MANDAMUS**

Petition for writ of mandamus	MAN1	197.00
Answer or motion to dismiss	MAN2	197.00
Motion to intervene	MAN3	197.00

**MARRIAGE**

Marriage solemnized by judge	MRG1	25.00
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**MOTIONS ON CIVIL PROCEEDINGS**

Motion to dismiss, make more definite/certain, strike, or quash - Petition (ORCP 21)	MOD1	50.00
Motion to dismiss, make more definite/certain, strike, or quash - Response (ORCP 21)	MOD2	35.00
Motion to compel discovery - Petition (ORCP 46)	MCD1	50.00
Motion to compel discovery - Response (ORCP 46)	MCD2	35.00
Motion for summary judgment - Petition (ORCP 47)	MSJ1	50.00
Motion for summary judgment - Response (ORCP 47)	MSJ2	35.00

**CIRCUIT COURT FEE SCHEDULE**  
**OREGON JUDICIAL DEPARTMENT**  
**EFFECTIVE: MAY 1, 2010**

**CLACKAMAS**

**Clarification**  
**FEE CHANGE**

	Code	Total Fee
Motion for judgment notwithstanding the verdict or reconsideration - Petition (ORCP 63)	MJN1	50.00
Motion for judgment notwithstanding the verdict or reconsideration- Response (ORCP 63)	MJN2	35.00
Motion for new trial or reconsideration - Petition (ORCP 64)	MNT1	50.00
Motion for new trial or reconsideration - Response (ORCP 64)	MNT2	35.00
Motions to reconsider rulings on the Motions identified above - Petition	MOQ1	50.00
Motions to reconsider rulings on the Motions identified above - Response	MOQ2	35.00
<b>PATERNITY</b>		
		<b>100% 50%</b>
Petition to initiate filiations proceedings under ORS 109.125	PAT1	320.00 160.00
Answer to filiations petition under ORS 109.125	PAT2	253.00 126.50
<b>POSTCONVICTION RELIEF</b>		
Petition for postconviction relief under ORS 138.510 to 138.680	POST	29.00
<b>PROBATE</b>		
Small Estates Act affidavit	PBSE	78.00
Filing initial papers for appointment of personal representative, conservatorship, probate, or contest of wills (based on amount of estate):		
Not more than \$10,000	PBT1	78.00
\$10,001 to \$25,000	PBT2	150.00
\$25,001 to \$50,000	PBT3	253.00
\$50,001 to \$100,000	PBT4	355.00
\$100,001 to \$500,000	PBT5	457.00
\$500,001 to \$1,000,000	PBT6	559.00
\$1,000,001 and over	PBT7	662.00
Difference Between Step 1 and Step 2	PBTA	72.00
Difference Between Step 2 and Step 3	PBTB	103.00
Difference Between Step 3 and Step 4	PBTC	102.00
Difference Between Step 4 and Step 5	PBTD	102.00
Difference Between Step 5 and Step 6	PBTE	102.00
Difference Between Step 6 and Step 7	PBTF	103.00
Filing annual or final accounting in a probate or conservatorship proceeding:		
Annual/Final Accounting less than \$500,000	PAC1	100.00
Annual/Final Accounting \$500,001-\$999,999	PAC2	200.00
Annual/Final Accounting over \$1,000,000	PAC3	300.00
Guardianship, initial papers	PRG1	78.00
Filing answer, motion, or objection	PBA2	73.00
Summary determination request when PR disallows claim	PBA3	73.00
Request for notice	PBA4	20.00
Summary determination request when trustee disallows claim	PBN1	197.00
Trustee petition to determine creditor claims	PBN2	197.00
Will without petition for probate	PBW1	8.00
Will, notice of destruction	PBW2	18.00
Trial/hearing fee	PBTX	41.00
<b>PUBLICATIONS</b>		
Publications	PUBS	actual cost
<b>REAL PROPERTY</b>		
Division of property under ORS 105.215	CVP1	197.00

**CIRCUIT COURT FEE SCHEDULE**  
**OREGON JUDICIAL DEPARTMENT**  
**EFFECTIVE: MAY 1, 2010**

**CLACKAMAS**

**Clarification  
FEE CHANGE**

	Code	Total Fee
<b>RECORDS</b>		
Redaction of personal informations	PYFE	\$25 per case, plus \$1
<b>SETTLEMENT CONFERENCE PARTY FEE</b>		
Settlement Conference before a judge when proceeding is subject to a fee under 21.110, 21.114 or 21.310	SCPF	50.00
<b>SEX OFFENDER REPORTING</b>		
Petition to terminate juvenile sex offender reporting under ORS 181.607 or 181.608	SXJ1	300.00
Petition to terminate adult sex offender reporting under ORS 181.600	SXA1	197.00
<b>SMALL CLAIMS (See also TRANSFER)</b>		
<b>When Plaintiff's claim is \$1,500 or less:</b>		
Plaintiff, filing claim	SCM1	46.50
Defendant, denying claim and demanding hearing	SCM2	74.50
Plaintiff, filing formal complaint after defendant demands jury trial	SCM3	91.50
Defendant, denying claim and claiming right to jury trial (plus \$150 Trial Fee)	SCM4	137.00
<b>When Plaintiff's claim is more than \$1,500:</b>		
Plaintiff, filing claim	SCM5	86.50
Defendant, denying claim and demanding hearing	SCM6	143.50
Plaintiff, filing formal complaint after defendant demands jury trial	SCM7	51.50
Defendant, denying claim and claiming right to jury trial (plus \$150 Trial Fee)	SCM8	137.00
<b>STALKING PROTECTIVE ORDER ISSUED BY COURT</b>		
Petitioner filing action damages claimed \$10,000 or less	STK1	137.00
Defendant filing response damages claimed \$10,000 or less	STK2	137.00
Petitioner filing action damages claimed more than \$10,000	STK3	197.00
Defendant filing response damages claimed more than \$10,000	STK4	197.00
<b>SUPPORT (See also APPEAL or DOMESTIC RELATIONS CASES)</b>		
Petition for support under ORS 108.110	SUP1	6.00
Minor filing petition for support under ORS 109.100	SUP2	6.00
Objection to registration or enforcement of foreign support order before order is confirmed (UIFSA)	SPF5	197.00
Challenge to DCS garnishment to enforce foreign child support judgment under ORS 18.718	SPF6	197.00
<b>TRANSCRIPT ON APPEAL</b>		
Transcript on Appeal	TRAP	Actual Amount
<b>TRANSFER</b>		
<b>From justice court to circuit court:</b>		
Defendant, transfer for excessive counterclaim when claim \$10,000 or less	TFJ1	137.00
Defendant, transfer for excessive counterclaim when claim more than \$10,000	TFJ2	197.00
<b>From small claims to circuit court when plaintiff's claim is \$1,500 or less</b>		
Defendant, motion requesting transfer when claim \$10,000 or less (includes a \$12 transfer fee)	TFS2	74.50
Plaintiff, reply to counterclaim when claim \$10,000 or less	TFS1	90.50
Defendant, motion requesting transfer when claim more than \$10,000 (includes a \$12 transfer fee)	TFS4	65.50
Plaintiff, reply to counterclaim when claim more than \$10,000	TFS3	110.50
<b>From small claims to circuit court when plaintiff's claim is more than \$1,500</b>		
Defendant, motion requesting transfer when claim \$10,000 or less (includes a \$12 Transfer Fee)	TFM2	5.50
Plaintiff, reply to counterclaim when claim \$10,000 or less	TFM1	50.50
Defendant, motion requesting transfer when claim more than \$10,000 (includes a \$12 transfer fee)	TFM4	63.50
Plaintiff, reply to counterclaim when claim more than \$10,000	TFM3	110.50
<b>TRIAL FEES</b>		
Non-Jury Trial (per day)	TRLX	110.00
6 person jury trial (per day)	TRLY	150.00
12 person jury trial (per day)	TRLZ	225.00

CIRCUIT COURT FEE SCHEDULE  
OREGON JUDICIAL DEPARTMENT  
EFFECTIVE: MAY 1, 2010

**CLACKAMAS**

Clarification  
**FEE CHANGE**

Code      Total Fee

**TRUST MODIFICATION AGREEMENT/MEMORANDUM OF AGREEMENT**

Filing agreement or memorandum

TRM1      134.00

Filing objections under ORS 130.045 (6)

TRM2      91.50

**DIVERSION AGREEMENTS**

**DUII Diversion - \$458.00**

136.00 - OPTS

100.00 - DICO

100.00 - DPAS

25.00 - INDF

97.00 - UNAS

458.00

**Marijuana Diversion - \$333.00**

123.00 - OPTS

100.00 - DPAS

110.00 - DICO

333.00

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**Oregon State Bar Section of Family Law  
Parenting Plan Work Group**

**REPORT TO THE LEGISLATURE:  
ESTABLISHING AND ENFORCING  
PARENTING PLANS**

**June 2010**

**Reporter  
Prof. Leslie Harris  
University of Oregon School of Law**

## **I. Introduction**

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 that were raised by HB 3402, which was introduced into the 2009 legislative session at the request of Matt Minahan of Dads America, but not enacted.

In response to this request, the Family Law Section of the bar recruited members for the work group during the winter of 2009, and the group met throughout the first half of 2010. The members of the work group were David Gannett, attorney in private practice, Portland (chair); Anna Braun, Oregon Judicial Department staff; Sonya Fischer, attorney in private practice, Lake Oswego; Jennifer Gilmore, attorney, Child-Centered Solutions, Portland; Susan Grabe, Public Affairs Director, Oregon State Bar; Leslie Harris, University of Oregon School of Law, Eugene; Sybil Hebb, Oregon Law Center, Portland; Ronald Allen Johnston, attorney in private practice, Portland; Robert McCann Jr., attorney in private practice, Albany; Margaret Olney, attorney in private practice, Portland; Kate Richardson, attorney, Oregon Department of Justice; and Sharon A. Williams, attorney in private practice, Portland.

The work group met with a number of interested people who were invited to give information and their perspectives on the issues. They included Phil Cook, Matt Minahan, Brenda Miller, Trudi Morrison, Theresa O'Halloran, and Nitin Ray. Mr. Minahan and the other interested parties presented their view of the issues and problems with parenting plans and explained their proposed solutions to those problems. The work group agreed with the presenters that some of the most important issues regarding parenting plans and their enforcement are that 1) the development of appropriate and effective parenting plans that work for children as well as parents is a complex process, and many parents need help with this process; 2) parents are often frustrated by the difficulty of getting timely resolution of disputes about enforcing and modifying parenting plans; and 3) these problems are exacerbated by the fact that many parents who need help do not have and are not able to afford legal assistance in navigating the system.

The work group then considered Mr. Minahan's suggested legislative solutions to these problems. The work group listened to the input of the interested parties and researched current Oregon state statutes, other state statutes, and relevant national reports and data. In addition, the work group members shared their experiences and perspectives on the issue. After consideration, the work group determined that the legislative proposal presented by Mr. Minahan would not be a good solution to the problems that the work group was examining. Indeed, the work group found that that the specifics of the legislative proposal presented would be potentially harmful to parents as well as children, by imposing standardized, one-size fits all, automatic provisions on unique and varied family situations. The proposed legislation would increase, and not decrease, conflict in families, and would be contrary to well-established public policy principles. For these reasons, the workgroup does not support the legislative proposal presented.

However, the work group agreed that children, mothers, and fathers have a compelling and common interest in easily obtaining and enforcing safe, appropriate, and fair parenting plans for their families. The group spent considerable time studying alternative ways of achieving these goals. In light of the financial difficulties currently facing Oregon, the work group

identified some inexpensive short-term, immediate solutions as well as some longer-term solutions that would require greater resources. In the short term, existing groups of experts could be encouraged to collaborate to develop training materials and assistance programs to help parents understand their rights and obligations and develop parenting plans that will work best for their families and children. In the longer term, additional resources and assistance sites could be ideally located at the courthouses to help parents in creating their documents, negotiating discussions, and if necessary, filing any paperwork to modify and/or enforce their plans.

The remainder of this report first describes existing Oregon law that is relevant to these issues, and then it outlines in more detail the problems that the work group identified. The next section discusses Mr. Minahan's proposal and the reasons that the work group does not support it, and the final section outlines solutions that the work group considers likely to be helpful.

## **II. The development of Oregon's law of custody and visitation**

*Note: The statutory citations in this section are to provisions of ORS Chapter 107, which governs divorce. However, all these rules apply to unmarried parents and their children as well, once legal paternity has been established. ORS 109.103 provides in relevant part that once paternity is established, ORS 107.093 to 107.425 that relate to custody, support and parenting time apply.*

By the last quarter of the twentieth century, American families had begun to change significantly, and family law changed to accommodate these changes. During the 1970s, the federal and state governments had begun to construct a complex system for establishing and enforcing child support orders that grew increasingly effective over the next 30 years. Also during the 1970s unmarried fathers gained legal protection for their relationships with their children. In the area of child custody law, two of the most important changes were acceptance of the idea that both parents should play a significant role in a child's life when this is in the child's best interests, and that parents should work out how they will share parenting of a child, with judges make the decision only when parents cannot. These ideas were incorporated into Oregon law beginning in the 1980s, and they have continued to be the topics of legislative attention since then.

Statutes enacted in Oregon in 1987 first explicitly recognized the value of having both parents regularly involved in a child's life if in the child's best interests. The main child custody statute was amended to authorize both sole custody and joint custody.<sup>1</sup> In Oregon, "joint custody" is defined as "an arrangement by which parents share rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's residence, education, health care and religious training."<sup>2</sup> In other words, in Oregon "joint custody" means "joint legal custody." This is a term that has nothing to do with where and how *time* with parents is divided, but rather addresses only how decisions, rights, and responsibilities are allocated between parents. Oregon, like the majority of states, recognizes that successful joint decision-making about children depends upon the existence of parents who are able to engage productively in that process. Parents who are unable to effectively communicate with one another – for whatever reason (fear, abuse, lack of skills, etc.) – cannot effectively make

<sup>1</sup> ORS 107.105(1)(a).

<sup>2</sup> ORS 107.169(1).

important decisions for or about their children. Putting children at the center of such conflict is not good for them. Therefore, Oregon's statutes are built to encourage joint legal custody (and joint decision making powers) when parents agree to it, and discourage joint custody when parents are not able (with assistance) to agree to it. Under those statutes, a court cannot order joint custody over the objection of either parent, and if the parents agree to joint custody, the court must order it.<sup>3</sup> If one parent requests joint custody and the other objects, the court must send the parties to mediation unless one of the parents objects and the court finds, after a hearing, that participation in mediation would subject the parent to severe emotional distress.<sup>4</sup> If joint custody is ordered but either parent becomes unable or unwilling to continue to cooperate, the joint custody order must be modified.<sup>5</sup>

If one parent is awarded sole legal custody, the other parent still has rights to information about the child and to make decisions for the child in emergency situations unless the court explicitly limits these rights. The legislation that makes this clear was enacted at the same time that the statutes allowing joint custody were enacted. Under ORS 107.154, the parent who does not have custody still has the right to inspect and receive school records and to consult with school staff, to inspect and receive government and law enforcement records concerning the child, to consult with anyone who provides medical, dental or psychological care for the child and to receive those records, and to authorize emergency health care if the custodial parent is unavailable. The parent may also apply to be the child's conservator or guardian ad litem. ORS 107.159 provides that if either parent intends to move more than 60 miles away from the other parent, he or she must first give notice to the other parent unless a court suspends this requirement.

For purposes of determining what legal custody and parenting time arrangement is in a child's best interests, the Oregon statutes focus on the child's emotional and psychological well-being and again expresses the importance of the child's relationship with both parents. The best interests of the child standard is nationally accepted as the key principle by which to make these decisions. Oregon's main statute is ORS 107.137, which says that in determining a child's best interests, the court shall consider:

- a) The emotional ties between the child and other family members;
- (b) The interest of the parties in and attitude toward the child;
- (c) The desirability of continuing an existing relationship;
- (d) The abuse of one parent by the other;
- (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and
- (f) The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. However, the court may not consider such willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child.

<sup>3</sup> ORS 107.169(3) and (4).

<sup>4</sup> ORS 107.179.

<sup>5</sup> ORS 107.169(6)(a).

The legislation introduced in 2009 at the request of Mr. Minahan’s group, HB 3402, would significantly change Oregon law regarding both legal custody and parenting time. This is not the first time that such legislation has been proposed. Since 1987, bills that would create a presumption in favor of joint custody have been introduced into the Oregon legislature several times, but they have never been enacted.

### **III. Procedures for creating and enforcing parenting plans in Oregon**

Since 1997 Oregon law has required that there be a “parenting plan” in every case involving minor children that sets out whether the parents will have joint or sole legal custody and how they will share parenting time. The law expresses a strong preference for parents to decide these matters themselves.<sup>6</sup> However, if the parents cannot reach an agreement or one parent asks the court to impose a plan, it will.<sup>7</sup> If the parents later agree to a modification of the parenting plan, they may submit a notarized stipulation signed by both of them to the court, and the court must either enter an order consistent with the stipulation or order the matter set for a hearing.<sup>8</sup>

The statutes also include a number of provisions that are intended to facilitate the creation and enforcement of parenting time orders. First, ORS 107.425(3) allows a court to appoint an individual, a panel, or a program to help parents create and implement parenting plans. ORS 107.425(3). However, the availability of this assistance depends on the presiding judge having established qualifications for the appointment and training of people or programs to fill this role. ORS 107.425(3)(d). This legislation has not been implemented statewide, probably because of lack of funds.

Second, ORS 107.434(1) requires that the presiding judge in each judicial district create an expedited parenting time enforcement procedure that is easy to understand and initiate. The court must provide forms for: 1) a motion alleging a violation of parenting time, 2) an order requiring the parties to appear and to show cause why the parenting plan should not be enforced in a particular manner, and 3) a motion, affidavit and order providing for waiver of any mediation requirement on a showing of good cause. The procedure must require that a hearing on a motion seeking enforcement of a parenting order be conducted within 45 days of filing. If the court finds a violation of the parenting time order, it may impose any of these remedies:

- 1) modification of the parenting plan,
- 2) ordering the party who violated the parenting plan provisions to post bond or security,
- 3) ordering either or both parties to attend counseling or educational sessions that focus on the impact of violation of the parenting plan on children,
- 4) awarding the prevailing party expenses, including, but not limited to, attorney fees, filing fees and court costs, incurred in enforcing the party’s parenting plan,
- 5) terminating, suspending or modifying spousal support,
- 6) terminating, suspending or modifying child support as provided in ORS 107.431, or
- 7) scheduling a hearing for modification of custody.

<sup>6</sup> ORS 107.101, 107.102.

<sup>7</sup> ORS 107.102, 107.105(1)(b)..

<sup>8</sup> ORS 107.174(1).

If a parent's right to custody (but not visitation or parenting time) is being violated by someone else holding the child, the parent may apply to a court for an *ex parte* order of assistance directing the appropriate law enforcement agency to pick up the child and deliver him or her to the person or place that the court orders. ORS 107.437. The Uniform Child Custody Jurisdiction and Enforcement Act also provides expedited procedures for immediate enforcement of valid custody orders from out-of-state. See ORS 109.797-109.807.

In addition to these legislative provisions, intended to empower parents to make arrangements about how to care for their children following the parents' separation, the state judicial department has taken steps to make this process easier for parents. The State Family Law Advisory Committee to the Oregon judicial department and the staff of the judicial department have created model parenting plans with instructions in English and in Spanish that are available on the Web.<sup>9</sup> The judicial department has developed forms for unmarried parents to use to establish custody and parenting time orders that are available on the Web,<sup>10</sup> as well an informational brochure and forms for enforcing parenting time.<sup>11</sup> The web site also includes links to each county's website, where information specific to each locale is available.

While the legislation and materials provided by the judicial department are excellent, the work group found that parents still have problems creating and enforcing parenting plans. The work group concluded that part of the reason is that information is not always easy to find and is often difficult for parents to understand. These problems are aggravated by the fact that more than two-thirds of all Oregon family law cases involve at least one party who is unrepresented.<sup>12</sup>

#### **IV. The work group's analysis of the legislative solutions proposed by Matt Minahan**

On behalf of the Oregon Association for Children and Families, Matt Minahan submitted proposed legislative changes to the work group proposes legislative that he said are intended to make it easier to establish and enforce parenting plans. To a large extent, these recommendations mirror those in the legislation that Mr. Minahan supported in 2009. As stated above, the work group disagrees that these legislative changes are likely to be effective in reducing conflict and finds that some of the proposals are inconsistent with the fundamental goal of protecting the best interests of the children whose parents do not live together in the same household. This section describes each of the proposed legislative changes and the work group's analysis of them.

Expanding Parenting Plans The proposal says that parenting plans are only required in "custodial cases," that is, divorces. This is incorrect; as noted above, under ORS 109.103, all the rules set out for divorcing parents apply to unmarried parents once legal paternity is established.

Maximizing Involvement From Both Parents The proposal argues that the law should create a rebuttable presumption that a child attending school will spend half of his or her time with each parent if the parents live in the same school district, and makes similar proposals for

<sup>9</sup> <http://www.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/parentingplan.page?>

<sup>10</sup> <http://www.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/flpacket3.page?>

<sup>11</sup> <http://www.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/flPacket5.page?>

<sup>12</sup> State Family Law Advisory Committee, Self-Representation in Oregon's Family Law Cases: Next Steps (2007) (hereinafter SFLAC report), available at <http://courts.oregon.gov/OJD/docs/OSCA/cpsd/courtimprovement/familylaw/FINALReportonSelfRepresentation9-6-07.pdf>.

children of other ages. The work group rejects this presumption because such arrangements are not feasible in a vast majority of circumstances and do not adequately reflect the needs of most children. The work group also rejects the notion that the presumption of specific parenting time arrangements reduces conflict. The work group studied the parenting time statutes of all 50 states and the District of Columbia. No state in the United States has a statute that prescribes a specific division of parenting time; instead, all say that this should be determined on a case-by-case basis.<sup>13</sup>

Relocation The proposal recommends that parents be deterred from moving more than a certain amount of time away and apparently is intended as a proposal to amend ORS 107.159, which requires parents to give notice to the other parent before moving more than 60 miles away. The work group rejects this proposal because it penalizes a parent who moves without regard to the reason. Because of the great variety of reasons for which parents move, these issues are best handled by judges on a case-by-case basis.

Major Decisions This section of the proposal would apply when a court has ordered sole legal custody in one parent, rather than joint legal custody. It calls for the parent without legal custody to share the right to make major legal decisions, including whether to have children attend counseling, to authorize medical care, and to make educational decisions. This proposal in effect goes a long way toward mandatory joint legal custody, since these are the major issues that parents share when they do have joint legal custody. The proposal also recommends that parents be allowed to participate in their children's activities, which the law currently permits, and that parents be allowed extra parenting time to take their children to activities. The work group does not support the latter proposal as a legal rule, although it agrees that parents could be encouraged to address these decisions in their parenting plans and given guidance as to how to share authority and structure their parenting time if they desire.

The work group strongly rejects mandatory joint legal custody or a presumption in favor of joint legal custody. No state in the United States mandates shared decision-making authority as this proposal would do, and only 10 establish a presumption favoring joint legal custody other than where both parents request this arrangement.<sup>14</sup> Some states that at one time had presumptions favoring joint custody have since repealed these provisions, most notably California and Utah. California adopted joint custody in 1979 and repealed it in 1989; the Utah statute was enacted in 1988 and repealed in 1990.<sup>15</sup> The empirical evidence shows that imposing legal custody on parents who do not want it is inconsistent with the best interests of children.

<sup>13</sup> The arguable exceptions are West Virginia and Utah. West Virginia which has a statute providing that time should be divided between the parents in approximately the way each parent spent time doing actual parenting before the parents split up, unless the parents agree otherwise or this arrangement is manifestly harmful to the child. W. Va. Code § 48-9-206 (2010). Utah has a statutory model parenting time plan that operates as a presumption. Utah Stat. § 30-3-34 (2010).

<sup>14</sup> They are the District of Columbia (does not apply in cases of domestic violence or child abuse), D.C. Stat. § 16-914 (2010); Florida (unless detrimental to the child), Fla. Stat. Ann. § 61.13(c)(2) (2010); Idaho (does not apply in cases of domestic violence), Id. Code § 32-717B(5) (2010); Iowa (does not apply in cases of domestic violence), Ia. Code § 598.41 (2010); Louisiana, La. Stat. C.C. Art. 132 (2010); Minnesota (does not apply in cases of domestic violence), Minn. Stat. §518.17 subd. 2 (2010); New Hampshire, N.H. Stat. §461-A:5 (2010); New Mexico, N.M. Stat. § 40-4-9.1 (2010); Texas (does not apply in cases of domestic violence), Tex. Fam Code. § 153.131(b) (2010); Wisconsin (does not apply in cases of domestic violence), Wis. Stat. §767.41(2)(am). In addition, a number of states provide that a court should order joint custody if both parents request it, a position similar to that taken by Oregon.

<sup>15</sup> The legislative history of both statutes is discussed in *Thronson v. Thronson* (810 P.2d. 428 (Utah App. 1991)).

Input from the Child The proposal recommends that once children reach a certain age, they should be allowed to participate in decisions regarding what school to attend, which religion to follow, and how much time they should spend with each parent. Current Oregon statutes give judges discretion about how to gain information about children's needs and perspectives but does not give children decision-making authority. The work group believes that children's interests are not best served by telling them that they have the responsibility to decide matters which should be decided by their parents and possibly a judge and that the existing variety of mechanisms for including children's voices should be preserved.

Judicial Discretion The proposal generally seeks to reduce judicial discretion by creating rebuttable presumptions. The work group disagrees with this premise and instead believes that the best way to conserve judicial resources and to improve decision-making in these cases is to more effectively empower and assist parents in making their own decisions. As discussed above, the group does not believe that presumptions reduce conflict in this area.

Enforcement The proposal suggests that first time "offenders" be required to take parenting classes, that repeat offenders be fined, and that parenting time and custody be "reevaluated" for continued violations. The work group observes that courts already have the authority to impose these sanctions and more, as described above. The workgroup believes that automatic mandatory sanctions, as proposed by Mr. Minahan, do not reach the underlying problems that escalate to conflict over parenting plans and fail to capture the complexities of situations. Imposing mandatory sanctions could be harmful to children in some circumstances.

## **V. Recommended solutions**

The working group supports the goal of promoting the involvement of both parents when this is in the child's best interests and recognizes the value of affirming the importance of fathers' roles in their children's lives. It also supports the policy of encouraging parents to work together to make their own plans. The group spent the great bulk of its meeting time discussing ways to help parents learn how to create their own parenting plans, to resolve conflicts before they become overwhelming, and to navigate the legal system. The group concluded that the most important tools that need to be developed would provide education and models for parents, as well as providing them expert assistance when they do not have attorneys. We understand that these proposals carry a price tag but argue that money spent helping parents solve their own problems will save judicial resources and, even more importantly, increase the well-being of children and their families.

### *A. More parenting plan models that are more accessible*

The workgroup concluded there is a need for model parenting plans that are adapted to children's varying circumstances, including variations based on age of the child, geographical distance between the parents' homes, etc. The models should include language about modifications such as sunset clauses or dates of review and agreements to use particular dispute resolution processes such as mediation. The plans and instructions should include instructions on how to modify plans, including how to modify court orders based on the plans.

The group believes that the State Family Law Advisory Committee (SFLAC) has done good work in this area and is best situated to continue it. We urge the legislature to support SFLAC's work in this area.

The work group also believes that it is critical that the models be available on-line, easy to find, and reasonably easy to understand and use. The work group observes that SFLAC in 2007 recommended the development of "consumer-friendly, electronically-interactive forms."<sup>16</sup> Hard copies should also be available at county courthouses.

#### *B. Expert assistance for parents*

Even with simpler, more accessible forms and informational brochures, many parents will still need assistance to develop their own plans. Assistance by courts and state agencies is a necessary service that could be provided by personnel connected to child support enforcement services or a self-standing government entity. Another possibility would be for courts to employ contract attorneys or facilitators to assist parents in formulating parenting plans. Again, the work group observes that legislation already authorizes courts to appoint parenting plan coordinators but that funds are not available to implement the legislation.

#### *C. More education about parenting rights and responsibilities*

Information about available assistance in formulating and enforcing parenting plans and resolving disputes should be provided to people at the time paternity is voluntarily acknowledged or established through an administrative or judicial process and in child support enforcement and other appropriate cases. The state Department of Human Services could also provide this information to people seeking public assistance.

The work group recommends that interested parties consider opportunities to offer, where appropriate, user-friendly classes and clinics about establishing and enforcing parenting plans.

High schools should be encouraged to offer classes on the law of parentage and parenting, as well as healthy child development and the relationships between children and parents.

#### *D. Mandatory alternative dispute resolution programs*

The work group believes that in most cases alternative dispute resolution programs, especially mediation, are a better means of solving disputes about custody and parenting time than going to court, unless safety of a child or parent precludes this alternative. Since legislation already exists to allow courts to refer these disputes to mediation, the group recommends funding to make alternative dispute resolution services available statewide.

#### *E. The relationship between child support and parenting plans*

The work group recognizes that allowing state child support enforcement agencies to coordinate parenting plan disputes resolution would respond to the belief of some parents that the

<sup>16</sup> SFLAC Report, *supra* note 1.

state unfairly supports parents who claim that they are not getting the child support they are owed while not helping parents who claim they are not getting the access to their children that they should have. The work group also believes it is possible that if the child support enforcement agency coordinated parenting plan dispute resolution that child support compliance as well as parenting plan compliance might improve. However, the work group also recognizes that the child support agency is limited to using the federal funds it receives for purposes of the child support program. The work group has been informed that in some states, notably Texas, parenting plan mediators or coaches have offices in some child support offices to help parents with parenting plan disputes, and that the child support enforcement agency collaborates with other entities to provide clinics to parents with problems regarding custody and visitation. The work group recommends that the Department of Justice examine the feasibility of offering similar services in Oregon.

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: June 18, 2010  
Memo Date: June 18, 2010  
From: Michael Haglund, Appointments Committee Vice Chair  
Re: Appointments for the Consent Agenda

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### Action Recommended

Approve the following Appointments Committee recommendations.

#### Judicial Administration Committee

Recommendation: Travis Sewell, term expires 12/31/2011

#### Quality of Life Committee

Recommendation: Allyson Keo, term expires 12/31/2012

#### House of Delegates

Region 3 recommendation: Karen Ford, term expires 12/31/2012

Region 4 recommendation: Margaret Baricevic, term expires 12/31/2012

Region 4 recommendation: Rebecca Pihl Mehringer, term expires 12/31/2012

Region 4 recommendation: J. Douglas Wells, term expires 12/31/2012

Region 5 recommendation: Elizabeth Bonucci, term expires 12/31/2011

Region 5 recommendation: Paresh K. Patel, Public Member, term expires 12/31/2012

Region 6 recommendation: John C. Young, term expires 12/31/2011

Out of state region recommendation: Sara L. Watkins, term expires 12/31/2012

#### Oregon Law Commission

Recommendation: Scott Shorr, term expires 6/30/2014

**Oregon State Bar  
Board of Governors Meeting  
June 18, 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. William G. Benjamin

**Action:** Ms. O'Connor moved, Mr. Haglund seconded, and the board unanimously passed the motion to recommend that the Supreme Court deny Mr. Benjamin's application for reinstatement

2. Timothy M.B. Farrell

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

3. Ruth E. Heller

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

4. Allan F. Knappenberger

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

5. Arthur C. Piculell, Jr.

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

6. Bernard Frank Veljacic

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

B. Disciplinary Counsel's Report

Mr. Sapiro added to his written report that the Oregon Supreme Court recently decided the case involving former board member Robert Newell and that Portland lawyer Michael Shinn recently submitted a Form B resignation.

**Oregon State Bar  
Board of Governors Meeting  
June 18, 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. Cheryl Saunders, UPL No. 08-12

**Action:** Ms. DiIaconi presented information concerning Ms. Saunders. Ms. DiIaconi moved, Mr. Piucci seconded, and the board voted unanimously to approve the cease and desist agreement negotiated with Ms. Saunders.

2. Blanca Matus, UPL No. 09-47

**Action:** Ms. DiIaconi presented information concerning Ms. Matus. Ms. DiIaconi moved, Mr. Piucci seconded, and the board voted unanimously to approve the cease and desist agreement negotiated with Ms. Matus.

3. Sharon Shields, UPL No. 09-55

**Action:** Deferred until next meeting.

4. John Dalton Newkirk, UPL No. 07-44

**Action:** Ms. DiIaconi presented information concerning Mr. Newkirk. Ms. DiIaconi moved, Mr. Piucci seconded, and the board unanimously voted not to initiate prosecution of Mr. Newkirk.

B. Pending UPL Litigation

As reported

C. General Counsel's Report

As reported

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**From:** Sylvia E. Stevens, General Counsel  
**Re:** CSF Claims Recommended for Payment

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### Action Recommended

Review the recommendation of the Client Security Fund that the following claims be paid:

No. 09-37	SHINN (Wright & Cossette)	\$8,000.00
No. 10-05	OH (Choi)	\$3,000.00
TOTAL		\$11,000.00

### Background

#### No. 09-37 SHINN (Wright & Cossette) \$8,000.00

Linda and Michael Wright and Daniel Cossette retained Michael Shinn in December 2007 to represent them in a City of Portland code enforcement dispute. They gave Shinn a \$10,000 retainer. There was no written fee agreement, but the clients understood that Shinn would bill hourly at a rate of somewhere between \$350-400/hour.

Shinn did some work on the case (meeting with clients, corresponding with City officials, site visit to the client's building, gathering documents) before essentially abandoning the matter in about March 2008. According to the clients, Shinn "missed a statute of limitations" and then filed a request for review with the City. The clients subsequently retained another attorney to represent them in the matter.

The clients estimate that Shinn spent 4-5 hours on the case; their subsequent lawyer estimated that Shinn spent "at least a few hours" but "less than a day" on it. The successor lawyer also indicated that he believed Shinn's approach to the case was wrong and that he essentially started over for the client.

CSF Rule 2.2.3 governs reimbursement of unearned fees:

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

refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

The committee acknowledged (as do the claimants) that Shinn provided legal services on the matter, probably between 4 and 6 hours worth. The issue for the committee was whether services provided are “insignificant” within the meaning of the rule if they are of little or no value to the client. Ultimately, the committee concluded that claimants should be awarded \$8,000, allowing \$2,000 for the work performed by Shinn.

Because Shinn has been disbarred, has numerous debts, and has little likelihood of being able to satisfy a civil judgment, the committee also recommends waiving the requirement that the claimants have a civil judgment against Shinn. (This was not one of the matters that led to Shinn’s Form B resignation.)

#### **No. 10-05 OH (Choi) \$3,000**

Mr. and Mrs. Choi retained John Oh in September 2007 in connection with an immigration matter involving Choi’s children. The written fee agreement is internally inconsistent. The first paragraph says the clients will be charged \$200/hour, while the second paragraph indicates a flat fee for the representation of \$3,000. The claimants believe they were paying a flat fee.

The Chois didn’t hear anything further from Oh and in March 2008 they learned that he had relocated to Los Angeles. When Mr. Choi contacted Oh and requested a refund of the fee so he could have the work completed by a local attorney, Oh promised to calculate the unearned portion of the fee and refund it by the end of April 2008. The Chois heard nothing more from Oh and there is no evidence that he did any work on their legal matter.

The Chois filed a complaint with the Bar, one of ten that was presented to a trial panel in February 2010. Oh defaulted and the panel recommended his disbarment. It also ordered restitution to the Chois of \$3,000. Oh has not paid any part of that amount.

The committee recommends reimbursing the Chois \$3,000. No judgment is required because their claim is for less than \$5,000 and Oh was disciplined for the conduct.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** August 13, 2010  
**Memo Date:** July 27, 2010  
**From:** Kay Pulju, Ext. 402  
**Re:** Bylaw amendment to incorporate Sustainability Award

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### Action Recommended

Approve addition to OSB Bylaw Article 4 as “Section 4.9 President’s Sustainability Award.”

### Background

At its June 18, 2010 meeting the BOG approved creation of a new award recognizing outstanding efforts in the area of sustainability. The bar’s award categories are detailed in its bylaws under Article 4, which appears below with language incorporating the new sustainability award.

#### Article 4 Awards

##### Section 4.1 General Policy

The Board will select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

##### Section 4.2 President’s Membership Service Award

The criteria for the President’s Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections, boards or the Bar’s legislative/public affairs process or similar activities through local bar associations or other law-related groups.

##### Section 4.3 President’s Public Service Award

The criteria for the President’s Public Service Awards is as follows: The nominee must have volunteered his or her time for the activity in which she or he was involved; the nominee must be an active member of the Oregon State Bar; the nominee must have made a significant contribution to the public through efforts involving pro bono services; coordination of local public service law-related events, such as those associated with Law Day; service with community boards or organizations or similar activities that benefit the public.

##### Section 4.4 President’s Affirmative Action Award

The criteria for the President’s Affirmative Action Award is as follows: The nominee must be an active member of the Bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of increasing minority representation in the legal profession in Oregon through progressive employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

##### Section 4.5 President’s Special Award of Appreciation

The President’s Special Award of Appreciation is a discretionary award of the President of the Bar, with the concurrence of the Board, to be presented to a person who has made recent outstanding contributions to the bar, the bench and/or the community. The award will be made in conjunction with the OSB Awards Dinner or House of Delegates events within the following guidelines. In any given year, there may be no award, one award or more than

one award. The recipient may be a lawyer or a non-lawyer. The President will present his or her proposed award recipient to the Board at the same time the Board considers the Bar's other awards.

#### Section 4.6 Award of Merit

The Award of Merit is the highest honor that the Bar can bestow. The recipient may be (1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism or (2) a non-lawyer who has made outstanding contributions to the bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year and only one award may be bestowed in any year.

#### Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state's judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity, and judicial independence.

#### Section 4.8 President's Public Leadership Award

The criteria for the President's Public Leadership Award is as follows: The nominee must not be an active or inactive member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

#### Section 4.9 President's Sustainability Award

The criteria for the President's Sustainability Award is as follows: The nominee must be an active member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

# MINUTES

## BOG Access to Justice Committee

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**Meeting Date:** July 16, 2010  
**Location:** Oregon State Bar Center  
**Chair:** Gina Johnnie  
**Vice-Chair:** Maureen O'Connor  
**Members Present:** Derek Johnson, Ken Mitchell-Phillips, Mitzi Naucner  
**Members Absent:** Karen Lord, Audrey Matsumonji  
**Guests:** Kathy Evans  
**Staff Members:** Kay Pulju

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### ACTION ITEMS

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| 1. <b>Topic:</b> Minutes of the May 14 meeting were approved.  |
| 2. <b>Topic:</b> Staff will arrange for lawyer referral consultants from the ABA's Program of Assistance & Review to meet with this committee and the bar's Public Service Advisory Committee. |

### INFORMATION ITEMS

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| 3. <b>Topic:</b> The bar's pro bono coordinator would like the committee to nominate an Oregon bar member for a national award. Details will be provided at the next meeting.  |
| 4. <b>Topic:</b> Columbia County Legal Aid and Legal Aid Services of Oregon are working together on how to coordinate services to meet the Legal Services Program's guidelines.  |
| 5. <b>Topic:</b> The task force on Family Law Forms & Services met with two vendors that produce interactive family law forms. Interactive forms appear to be a priority for the OJD's e-court team, and the state's child support program has secured funding for developing parenting plan forms online. |

**Minutes**  
**Budget & Finance Committee**  
**July 16, 2010**  
Oregon State Bar Center  
Tigard, Oregon

**Present - Committee Members:** Steve Larson, vice-chair; Michelle Garcia; Mike Haglund; Mitzi Naucler; Maureen O'Connor. **Other BOG Members:** Kathy Evans. **Staff:** Teresa Schmid; Sylvia Stevens; Christine Kennedy; Rod Wegener.

**1. Minutes – June 17, 2010 Committee Meeting**

The minutes of the June 17, 2010 meeting were approved.

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

Mr. Wegener's oral report on the June 30 financial statements indicated the mid year net revenue was an unprecedented high of \$1,007,000. He did not recall a net revenue this high this late in the fiscal year. Much of the high net revenue is due to early receipt of Program Fee revenue. Through June 30, all Program Fee revenue was 64% of budget and Direct Program expenses were only 44% of budget. Admissions, Lawyer Referral, and Production Services already had received most of its annual budget. He cautioned that as every year, net revenue declines significantly during the second half of the year, but for this year it should exceed the budgeted net revenue by year end.

Mr. Wegener stated the printed financial report will be emailed to the committee and board members in a few days.

**3. Investment Portfolio Report – June 30, 2010**

The committee asked that the summarized one-page report on the bar's investment portfolio include the managers' benchmark against which the bar's portfolio is compared and a rate of return net of management fees.

**4. 2011 Executive Summary Budget**

The committee reviewed the summary report and focused much of its discussion on the impact of Legal Publications on the 2011 budget. The report includes \$200,000 in revenue from print book sales in 2011, but that is an unsubstantiated number. The committee recommended that print publications not be stopped "cold turkey" in 2011, but evaluated to determine their interest by members and the budget implications. With the loss in revenue by offering BarBooks as a member service, the committee believes the print publications should be phased out over time, and the pricing remain consistent with the current pricing structure. The committee asked staff to prepare revenue and expense scenarios for print book sales for 2011 at its next meeting.

The report's projected net operating revenue in 2011 is \$243,000. Mr. Wegener stated the revenue and expense numbers are only estimates and projections and will change with the further development of the budget. However, he stated that the net operating revenue should approximate \$250,000 to maintain a stable 2011 and future budgets. The report also assumed an increase in the active and inactive member fees in 2012 and additional revenue from Lawyer Referral beginning in 2012.

The meeting finished with a review of the lists of changes proposed for 2011, no changes proposed for 2011, and the possible changes to 2011 budget.

**5. Update on Tenants Status at the Bar Center**

Mr. Wegener reported that the tenants had made the June lease payments and Opus had made the July payment to the PLF for its former office space. Even though there have been rumors about 20/20 vacating its space at the bar center, an email from its corporate office did not support the rumor.

**6. Next committee meeting**

The next meeting will be Thursday, August 12 prior to the BOG meeting at the bar center in Tigard.

BOG Member Services Committee  
June 18, 2010  
Geiser Grand Hotel, Baker City

**Present:**

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

**Staff:**

Teresa Schmid  
Margaret Robinson  
Kay Pulju  
Frank Garcia  
Susan Grabe  
Rod Wegener  
Sylvia Stevens  
Dani Edwards

**Guest:**

Christine Meadows

**Approval of Minutes**

Minutes from the April meeting were approved as submitted.

**Diversity/AAP Update**

The Affirmative Action Administrator provided an update on his activities over the last several months. In addition to the update on past events the Administrator provided the committee with donation request materials and asked for support in fundraising for OLIO. August 5-8 is the weekend for OLIO which will be held in Hood River.

**Member Survey**

The committee discussed waiting to send out the membership survey this year because the Rural/Urban Split Task Force recently distributed a survey that likely would overlap with the membership survey in several areas. There was discussion surrounding a traveling CLE program to provide information on bar services including Bar Books and how rules and regulations are created.

**Sustainable Future Section Award**

Members of the committee discussed the section's request to create a sustainable award at great length. There was concern regarding the proposed criteria due to the equal opportunity for all bar members to be recognized for this award. Members of the committee expressed support of sustainability. After much debate, the committee voted and approved a recommendation to the BOG for the creation of a sustainability award.

**OSB Program Review Project**

Before the next meeting members of the committee were asked to communicate by email and identify four or five areas they would like to discuss and review at their next meeting. The amount of money compared to the number of members the funding supports should be used as the evaluating criteria. Ann identified her areas as the ONLD, Leadership College, minority and local bar support, and sponsorships to CEJ and CLP.

# MINUTES

## BOG Member Services Committee

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**Meeting Date:** July 16, 2010  
**Location:** Oregon State Bar  
**Chair:** Ann Fisher  
**Vice-Chair:** Gina Johnnie  
**Present Members:** Ken Mitchell-Phillips, Barbara DiIaconi, Derek Johnson, Ethan Knight  
**Absent Members:** Audrey Matsumonji  
**Guests:** Kathy Evans (BOG), Mitzi Naucner (BOG), Christine Meadows, Jessica Cousineau, Ben Eder, Jason Hirshon  
**Staff:** Teresa Schmid, Susan Grabe, Sylvia Stevens, Rod Wegener, Kay Pulju, Margaret Robinson, Dani Edwards

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### ACTION ITEMS

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| 1. <b>Approval of Minutes:</b> minutes from the June Member Services Committee meeting were passed with no changes.   |
| 2. <b>Senior Lawyers Task Force Recommendations:</b> The committee reviewed recommendations made by the Senior Lawyers Task Force and discussed the need for the creation of a formal member group to help meet the needs of this growing member population. Based on the recommendations made by the task force the committee approved a motion to recommend the creation of a division for senior lawyer members with a caveat that the Budget and Finance Committee will need to discuss funding for division expenses at a later time. The motion was passed unanimously. |

### INFORMATION ITEMS

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| 3. <b>Diversity/AAP Update:</b> The Diversity Administrator submitted a report for the committee with updates on program activities. Activities since June included MPT writing workshops, OLIO planning and fundraising, and several meetings focusing on pipeline development and MCLE rule changes to the Access to Justice credits. |
| 4. <b>OSB Program Review:</b> The committee reviewed each program description and budget information and heard from Leadership College and Oregon New Lawyers Division representatives. During the next meeting, the committee will continue their review of bar programs and consider the member benefits of each program.             |

## Minutes

### BOG Policy and Governance Committee

June 17, 2010

Geiser Grand Hotel, Baker City, Oregon

Chair – Mitzi Naucier

Committee members: Michelle Garcia, Michael Haglund, Ethan Knight, Maureen O'Connor

Staff: Teresa Schmid, Sylvia Stevens

Topic
<b>1. Approval of Minutes.</b> The minutes of the April 19, 2010 meeting were approved as submitted.
<b>2. Proposed Amendments to Oregon Rules of Professional Conduct.</b> The Committee reviewed proposals by DCO and GCO to modify rules relating to earned on receipt fees, candor toward the tribunal, and disregarding a court order. Bar staff believes the changes will fill some interpretive gaps and make the rules clearer for practitioners. Ms. Stevens reported that the LEC had reviewed the proposals and suggested minor changes. After discussion, the Committee voted to present the proposed RPC amendments to the BOG in August.
<b>3. Mandatory E-mail Addresses.</b> The Committee discussed whether to require all OSB members to designate an e-mail address for receiving communication from the bar. It was noted that nearly 90% of members have an e-mail address on file, so any change would affect relatively few members. There was support for the idea that a mandatory e-mail should be used only for regulatory and other official communications (dues statements, MCLE compliance reports, BOG updates, etc.) and that members should continue to opt-out of receiving e-mail notice of CLE programs and other items for purchase. Also, members should not have to get an e-mail address of their own, but only designate one where they can be contacted. The Committee voted unanimously to present this proposal to the BOG on June 18.
<b>4. Online Member Directory.</b> Ms. Stevens explained that members can opt-out entirely of the print directory and elect to have no contact information available on the online directory. The Committee recognized that some members have privacy and security concerns, but concluded that members have an obligation to be available for contact by clients and other members. Having separate online directories for the public (open) and members (password protected) was determined to be inconvenient and unnecessary. After discussion, the Committee voted unanimously to recommend to the BOG on June 18 that all members provide either an e-mail address or a telephone number in the online directory and that no members be allowed to opt-out except those that qualify for the personal safety exemption. The committee also expressed strong support for allowing members to purchase and “enhanced” directory entry and encouraged staff to develop and implement the idea.

# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** June 17, 2010  
**Location:** Baker City, OR  
**Chair:** Stephen Piucci  
**Vice-Chair:** Derek Johnson  
**Members Present:** Steve Piucci, Derek Johnson, Gina Johnnie, Audrey Matsumonji, Kenneth Mitchell-Phillips, and Steve Larson.  
**Members Absent:** Ann Fisher  
**Guests:** None  
**Staff Members:** Susan Grabe

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### ACTION ITEMS

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| 1. <b>Topic: Minutes.</b> The minutes were approved by consensus |
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### INFORMATION ITEMS

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| 2. <b>Topic: OJD Budget.</b> The revenue forecast shows Oregon facing a \$577 million deficit this biennium with the prospect of facing a \$2.5 billion deficit by next session. OJD has responded to this news by stating that the judicial department cannot survive a 9% budget reduction. What reductions the department will ultimately face is still uncertain at this time. |
| 3. <b>Topic: Legislative Update.</b> The committee received an update regarding the May 24-27 interim committee meeting days including a summary of the bar panel testimony on cultural competency and an overview of the recent Joint System Revenue Committee hearing.   |
| 4. <b>Topic: 2011 Legislative Package.</b> The bar submitted its package of proposals to legislative counsel's office for bill drafting and pre-session filing. The timeframe for the process has been compressed so bar groups are bracing for rapid fire response time on questions that arise.  |
| 5. <b>Topic: Columbia County Legal Aid.</b> The committee received an update on the status of the mediation. The bar continues to be hopeful that there can be a successful resolution to the situation.   |

# MINUTES

## BOG Public Affairs Committee

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**Meeting Date:** July 16, 2010  
**Location:** Oregon State Bar Center  
**Chair:** Stephen Piucci  
**Vice-Chair:** Derek Johnson  
**Members Present:** Steve Piucci, Derek Johnson, Gina Johnnie, Kenneth Mitchell-Phillips, and Steve Larson was present as a walk through.  
**Members Absent:** Ann Fisher, Audrey Matsumonji  
**Guests:** None  
**Staff Members:** Susan Grabe

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### ACTION ITEMS

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| 1. <b>Topic: Minutes.</b> The minutes were approved by consensus.   |
| 2. <b>Topic: State Justice System Revenue Committee (SJSRC)</b> Gerry Gaydos and Chris Kent presented the OSB Court Fees Task Force report to the SJSR committee on June 29. The report was well-received and the bar was complimented on its hard work. The SJSR committee has requested the bar address Part II of its charge re long term durable solutions for the judicial branch as well as feedback on an OJD bill draft re court fee schedule for its August 31 meeting. The OJD workgroup will provide the bar with a draft to comment on before the August 31 SJSR committee meeting. |

### INFORMATION ITEMS

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| 3. <b>Topic: Legislative Update.</b> The deadline for initiatives to qualify for the November ballot was July 7. More details will be available for the next meeting. The bar's law improvement package will be pre-session filed during the September interim committee meeting days 9/24-27. The national Legal Services Corporation budget is before a House and Senate congressional conference committee where it looks like the budget figure under discussion is \$40 million higher than before and serious discussions about eliminating the restriction on class actions are taking place. |
| 4. <b>Topic: OSB Priorities for 2011.</b> The committee began initial discussions about setting priorities for the Oregon State Bar for the 2011 legislative session.  |
| 5. <b>Topic: Columbia County Legal Aid.</b> The committee received an update on the status of the mediation. The bar continues to be hopeful that there can be a successful resolution to the situation.   |

**Minutes**  
**Public Member Selection Committee**  
April 29, 2010

**Present:** Karen Lord- Chair, Audrey Matsumonji- Vice Chair, and Mitzi Nacler

**Staff:** Danielle Edwards

**Absent:** Maureen O'Connor

**Member Selection Timeline**

The committee discussed the timeline and future meeting dates. There will likely be a change in meeting date for the selection of candidates to be interviewed for the BOG position. Final selection of interview days will be determined by email.

**Application and Questions**

The committee reviewed the application and interview questions, no changes were made.

**Recruitment**

The committee discussed last year's recruitment efforts and decided to continue to utilize the BOG informational brochure, the bar's press release, letters to minority and women owned businesses, and Frank's list of contacts.

CLAIM HISTORY									
CLAIM #	NAME	ATTORNEY	CLAIM	PENDING	AMOUNT PAID	DATE PAID	DATE DENIED W/DRAWN	UNPAID BALANCE	ASSIGNED TO
	PENDING								
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				7/13/2010		
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				7/13/2010		
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
10-14	Becker, Warren R	Long, Michael D	\$1,500.00	\$1,500.00				\$1,500.00	Swenson
10-15	Mastroieni, Kathleese C	Morasch, Marsha	\$4,612.00	\$4,612.00				\$4,612.00	Wright
10-16	Bazurto, Cecilia	Fields, Stanley	\$25,000.00	\$25,000.00				\$25,000.00	Gouge
10-17	Macey, Steve F.	Hayes, Keith	1,159.56	1,159.56				\$1,159.56	Barrack
10-18	Hendricks, Sandra L	Hayes, Keith	1,968.44	1,968.44				\$1,968.44	Barrack
10-19	Rawson, Kathryn Eilene	Dickerson, Daniel	5,000.00	5,000.00				\$5,000.00	Marshall
	TOTALS		\$301,475.99	\$284,163.86	\$0.00			\$284,163.86	
	Funds available for claims and indirect costs allocation as of June 2010				Total in CSF Account			\$621,630.00	
						Fund Excess		\$337,466.14	Gouge

**OREGON STATE BAR**  
**Client Security - 113**  
**For the Six Months Ending June 30, 2010**

Description	June 2010	YTD 2010	Budget 2010	% of Budget	June Prior Year	YTD Prior Year	Change v Pr Yr
<b>REVENUE</b>							
Interest	\$206	\$1,653	\$7,300	22.6%	\$24	\$2,255	-26.7%
Judgments	3,052	4,852	4,000	121.3%	360	1,998	142.9%
Membership Fees	330	209,829	216,100	97.1%	670	68,332	207.1%
<b>TOTAL REVENUE</b>	<b>3,588</b>	<b>216,334</b>	<b>227,400</b>	<b>95.1%</b>	<b>1,054</b>	<b>72,584</b>	<b>198.0%</b>
<b>EXPENSES</b>							
<b>SALARIES &amp; BENEFITS</b>							
Employee Salaries - Regular	2,379	15,499	31,300	49.5%	2,249	14,743	5.1%
Employee Taxes & Benefits - Reg	684	4,522	9,100	49.7%	782	4,811	-6.0%
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>3,064</b>	<b>20,021</b>	<b>40,400</b>	<b>49.6%</b>	<b>3,031</b>	<b>19,554</b>	<b>2.4%</b>
<b>DIRECT PROGRAM</b>							
Claims	2,713	134,694	150,000	89.8%	57,590	69,405	94.1%
Collection Fees	668	986	500	197.2%			
Committees			100			45	-100.0%
Pamphlet Production			300				
Travel & Expense	2,437	2,887	1,000	288.7%			
<b>TOTAL DIRECT PROGRAM EXPENSE</b>	<b>5,818</b>	<b>138,568</b>	<b>151,900</b>	<b>91.2%</b>	<b>57,590</b>	<b>69,450</b>	<b>99.5%</b>
<b>GENERAL &amp; ADMINISTRATIVE</b>							
Messenger & Delivery Services			50				
Office Supplies			100				
Photocopying			150				
Postage	22	98	250	39.4%	50	129	-23.8%
Professional Dues			200				
Telephone		74	200	37.1%	30	69	6.7%
Training & Education			450			350	-100.0%
Staff Travel & Expense		28	580	4.7%	10	221	-87.5%
<b>TOTAL G &amp; A</b>	<b>22</b>	<b>200</b>	<b>1,980</b>	<b>10.1%</b>	<b>90</b>	<b>769</b>	<b>-74.0%</b>
<b>TOTAL EXPENSE</b>	<b>8,904</b>	<b>158,789</b>	<b>194,280</b>	<b>81.7%</b>	<b>60,711</b>	<b>89,773</b>	<b>76.9%</b>
<b>NET REVENUE (EXPENSE)</b>	<b>(5,315)</b>	<b>57,545</b>	<b>33,120</b>		<b>(59,657)</b>	<b>(17,188)</b>	<b>-434.8%</b>
Indirect Cost Allocation	1,092	6,552	13,109		1,086	6,516	0.6%
<b>NET REV (EXP) AFTER ICA</b>	<b>(6,407)</b>	<b>50,993</b>	<b>20,011</b>		<b>(60,743)</b>	<b>(23,704)</b>	<b>-315.1%</b>
	=====	=====	=====		=====	=====	=====
Fund Balance beginning of year		570,637					
<b>Ending Fund Balance</b>		<b>621,630</b>					
		=====					
<b>Staff - FTE count</b>		<b>.35</b>	<b>.35</b>			<b>.35</b>	

**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
7/2/2010	Phil Kelley	360.00

<b>TOTAL</b>	<b>\$2,520.00</b>
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